



City of Grand Island

Tuesday, December 4, 2018

Council Session

Item I-5

#2018-374 - Consideration of Approving Contract with Brent Clark as Assistant City Administrator

Staff Contact: Marlan Ferguson

Council Agenda Memo

From: Mayor Roger Steele

Meeting: December 4, 2018

Subject: Appointment of Brent Clark as City Administrator and Employment Agreement

Presenter(s): Mayor Roger Steele

Background

According to Article III – Appointed and Hired Officials, Section 2-30 Officers; Appointive of the Grand Island City Code and Neb. Rev. Stat., §16-308, the Mayor is required to appoint statutory officers for his term. Statutory officers include:

- 1). City Administrator
- 2). City Attorney
- 3). City Clerk
- 4). City Engineer/Public Works Director
- 5). City Treasurer/Finance Director

These officers also must be approved by the City Council.

Discussion

I am pleased to present Brent Clark as my choice for appointment to the City Administrator position.

Mr. Clark has been the City Administrator/Zoning Administrator in Broken Bow, Nebraska since February 2015. Prior to that, he was the City Administrator/Treasurer in the City of Dakota City, Nebraska and has held various other positions in South Sioux City and the City of Wayne. He has a Bachelor of Science Degree in Public Administration with concentration on Political Science and Business, from Wayne State College. In his current capacity he has administered daily operations of the municipality and utilities department, prepared an annual \$26 million dollar budget, supervised all city functions and oversaw the development and revitalization of over \$11.7 million in public projects. He has been active in numerous local, state and national organizations.

The terms of the employment agreement for the City Administrator position have been reached and are included in the packet. Current City Administrator, Marlan Fergusson, has decided to retire effective March 1, 2019. As part of the City Administrator employment agreement, Brent Clark will first be employed by the City as the Assistant City Administrator and assume the City Administrator position following Mr. Ferguson's retirement.

According to Grand Island City Code Section 2-30, I am requesting approval of Brent Clark as City Administrator and approval of the Employment Agreement.

Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

Recommendation

City Council is recommended to approve the appointment of Brent Clark as City Administrator and the Employment Agreement.

Sample Motion

Move to approve the appointment of Brent Clark as City Administrator and the Employment Agreement.

EMPLOYMENT AGREEMENT
BRENT E. CLARK

THIS AGREEMENT is made and entered into this _____ day of December, 2018, by and between the CITY OF GRAND ISLAND, A Municipal Corporation, hereinafter called the “City”, and BRENT E. CLARK, hereinafter called “Employee:

Witnesseth:

Recitals:

WHEREAS, City desires to employ Employee as Assistant City Administrator and to promote Employee to the position as City Administrator, contingent upon satisfactory evaluation of Employee’s performance, to commence upon the effective resignation or other termination of employment of the current City Administrator, Marlan V. Ferguson; and

WHEREAS, it is the desire of City to provide certain benefits and establish certain conditions of employment for Employee in accordance with this Agreement; and

WHEREAS, Employee desires to accept employment in accordance with the terms of this Agreement; and

WHEREAS, City and Employee agree this Agreement shall be contingent on a satisfactory post-offer employment physical and drug test, background check, reference checks, and evidence of eligibility to work in the United States of America.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS HEREIN CONTAINED, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Assistant City Administrator. City agrees to employ said Employee as Assistant City Administrator to City commencing December 10, 2018.
 - 1.1. *Duties*. The principal duties of the Assistant City Administrator are as set forth in the job description for the position and such other duties and responsibilities as directed by the City Administrator.
 - 1.2. *Salary*. City agrees to pay Employee for his services rendered pursuant hereto an annual salary initially established at step 12 of the position pay scale (\$132,246.61 annually, \$5,086.41 bi-weekly). The Personnel Rules for City in

regards to step increases shall apply to Employee in consideration of any salary adjustments.

1.3. *Benefits.* During the term of employment as Assistant City Administrator for City, Employee shall receive employment benefits as set forth herein.

1.4. *City Administrator-Offer of Employment.* Provided Employee's performance as Assistant City Administrator is satisfactory, as determined by City's Mayor, upon the resignation or termination of employment of City Administrator Marlan V. Ferguson, who is anticipated to retire as City's City Administrator on March 1, 2019, City shall offer employment to Employee as City Administrator for City.

2. City Administrator. Commencing upon City's offer of employment to Employee as City Administrator as set forth in Section 1.4, above, and acceptance of the same by Employee, the following terms and conditions of employment shall apply:

2.1. *Duties.* Employee shall perform the functions and duties specified in the City Code and job description, and to perform other legally permissible and proper duties and functions as Employer shall from time to time assign.

2.2. Salary. Employer agrees to pay Employee for his services rendered pursuant hereto as City Administrator an annual base salary as per the annual salary and classification ordinance, payable in such installments at the same time as other employees are paid. The annual base salary at which Employee shall start step 1 of the position pay scale (\$150,943.20 annually, \$5,805.51 bi-weekly). In addition, the Employer agrees to increase said salary or other benefits or both of Employee in such amounts and to such an extent as the mayor and City Council may determine that it is desirable to do so in advance of the adoption of the City's annual operating budget and any salary adjustment shall conform to the City's pay plan system.

3. Term. The term of this Agreement shall commence upon the date provided in Section 1, above, and shall expire at the end of the current Mayor's term of office.

3.1. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employer to terminate the services of Employee at any time, subject only to the provisions set forth in Section 4 of this Agreement.

3.2. Nothing in this Agreement shall prevent, limit or otherwise interfere with the

right of Employee to resign from his position with Employer provided there is thirty (30) days advance notice to Employer.

- 3.3. Employee agrees to remain in the exclusive employ of Employer during the term of this contract or any extensions thereof. Both parties acknowledge that exclusive employment shall mean that Employee shall not accept outside employment from any source whatsoever without first obtaining written approval from the Mayor and City Council.
- 3.4. During the City Administrator's term, Employee and his family shall reside in Grand Island, Nebraska.

4. Termination

4.1. *Termination for Just Cause.* The Mayor with the approval of the City Council shall have the right at any time during the term of this Agreement to terminate the Employee for just cause. "Just cause" is defined as: (a) Employee's fraud, misappropriation, embezzlement, or willful misconduct; (b) Employee's material violation of any provision of this Agreement; (c) Employee's conviction of any intentional or willful act constituting a crime, defined as felonies, crimes of dishonesty, involving substance abuse, or moral turpitude or any activity that would impair the Employee's ability to perform his duties or impair the reputation of the City; (d) Employee's willful failure to adequately perform any duties assigned under this Agreement; or (e) Employee's willful failure or refusal to comply with City ordinances, policies or procedures. Termination for just cause shall not require the City to request the granting of any release under Section 4.3.6. However, the City may request such waivers of the employee terminated for just cause, which shall then trigger the obligation of the City to pay any sum specified in Section 4.3.

4.2. *Termination for Any or No Reason and Consideration Given for Release of All Claims against City.* In the event the Mayor, with the approval of the City Council, during the term of this Agreement, terminates Employee for any or no reason, the City shall make payments as specified in Section 4.3 in exchange for a full release of all claims against the City, including but not limited to those claims as specified in Section 4.3.

4.3. *Value of Claims against City Released by City Administrator and Participation in Post-Agreement Proceedings.* The City agrees to provide a lump sum cash payment equal to three months of the Employee's salary, plus the cost of the medical (health, dental, life) insurance premium for that three month period, to avoid the expense of:

4.3.1. Conducting a pre-and post-termination grievance hearing which would cost the City at a minimum one-half month's salary and benefits for the City Administrator.

4.3.2. Conducting a *Loudermill* hearing and "full blown" due process hearing

which would cost the City at a minimum one month's salary and benefits for the City Administrator.

4.3.3. Defending a discrimination charge brought under the municipal code, state law, and/or federal law which would cost the City at a minimum one month's salary and benefits for the City Administrator.

4.3.4. Defending a breach of contract claim which would cost the City at a minimum one-half month's salary and benefits for the City Administrator.

4.3.5. The Employee, in accepting this lump sum payment, agrees after termination of employment with the City that he will voluntarily participate and cooperate with the City in the defense of the City and its elected officials and employees and the prosecution of any action or proceeding about which the Employee has knowledge, including any litigation related to these actions. Such participation and cooperation includes, for example, agreeing to speak with the City's attorneys at mutually convenient times regarding the facts of the matter and agreeing to make him available for a deposition and/or trial.

4.3.6. The City shall prepare a release of all claims by the Employee against the City to be signed by the Employee in accordance with this paragraph.

5. Disability. If Employee is permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or health for a period of four (4) consecutive work weeks beyond any accrued sick leave or for twenty (20) working days over a thirty (30) working day period, Employer shall have the option to terminate this Agreement subject to the severance pay requirements of Section 4.3. However, Employee shall be compensated for any accrued vacation.
6. Performance Evaluation. The Mayor and City Council or committee thereof shall review and evaluate the performance of Employee at least annually through the target sheet evaluation system set forth in the City Personnel Rules. Said target sheet evaluation criteria shall be developed jointly by the Mayor and Employee.
7. Hours of Work. It is recognized that Employee must devote a great deal of time outside the normal office hours to business of Employer, and to that end Employee will be allowed to take time off during said normal office hours as the Mayor shall

deem appropriate.

8. Mileage. For travel beyond the City Limits Employee shall be reimbursed at the IRS approved rate, if a personal vehicle is utilized for travel on City business.
9. Vacation, Medical, and Military Leave.
 - 9.1. Employee shall be entitled to eighty (80) hours of vacation leave at the beginning of Employment and thereafter receive all vacation and medical leave credits as provided to all City employees as enumerated in the City Personnel Rules.
 - 9.2. Employee shall be entitled to military reserve leave time pursuant to State law and City policy.
10. Insurance Benefits. Employee shall receive all insurance benefits provided to all City employees, including long term disability benefits, as enumerated in the City Personnel Rules. The Employer will pay any Cobra premiums for the employee until which time employee is eligible for the insurance benefits.
11. Retirement. Employer shall provide Employee the same retirement plan and percentage rate of monthly base pay contribution provided to all City non-union civilian employees as enumerated in the City Personnel Rules.
12. Indemnification. Employer shall defend, save harmless and indemnify Employee against any claim or demand or other legal action, whenever groundless or otherwise arising out of any act or omission incurred in the performance of Employee's duties as City Administrator. This indemnification by Employer shall not include any intentional criminal acts or torts committed by Employee for which Employer would not have insurance coverage.
13. Incorporation of Code of Ethics. Inasmuch as Employee is an active member and participant in ICMA, the "Code of Ethics" promulgated by ICMA are incorporated herein and attached hereto, and by this reference made a part thereof. That said Code of Ethics shall furnish principles to govern Employee's conduct and actions as administrator of City.
14. Bonding. Employer shall bear the full cost of any fidelity or other bonds required of Employee under any law or ordinance.
15. Other Terms and Conditions of Employment. Employer shall fix any such other terms and conditions of employment as it may determine from time to time, relating

to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, City Code or any other law or City ordinances.

16. Notices. Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

Employer:

Mayor
City of Grand Island
100 East 1st Street
Grand Island, Nebraska 68801

Employee:

Brent E. Clark
100 East 1st Street
Grand Island, Nebraska 68801

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

17. General Provisions

- 17.1. This Agreement contains the entire understanding of the parties. It may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification, extension, or discharge is sought.
- 17.2. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee.
- 17.3. The recitals hereinabove set forth are hereby incorporated into and made a part of this Agreement.
- 17.4. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall

remain in full force and effect.

18. Waiver of Breach. The waiver by either the Employer or the Employee of any breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach of any provision of this Agreement. No waiver of any provision of this Agreement shall be valid unless in writing and signed by both the Employee and the Mayor.
19. Assignment. The Employee acknowledges that the services to be rendered by him are unique and personal. Accordingly, the Employee may not assign any of his rights or delegate any of his duties or obligations under this Agreement.
20. Applicable Law. This Agreement is made pursuant to and shall be governed, construed and enforced in all respects and for all purposes in accordance with the laws of the State of Nebraska.

IN WITNESS WHEREOF, City has caused this Agreement to be signed and executed in its behalf by its Mayor and duly authenticated by its City Clerk, and Employee has signed and executed this Agreement the day and year first above written.

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CITY OF GRAND ISLAND, NEBRASKA,
A Municipal Corporation

By: _____
Roger G. Steele, Mayor

[Attest]

RaNae Edwards, City Clerk

Brent E. Clark, Employee

ICMA CODE OF ETHICS

The mission of ICMA is to create excellence in local governance by developing and fostering professional local government management worldwide. To further this mission, certain principles, as enforced by the Rules of Procedure, shall govern the conduct of every member of ICMA, who shall:

1. Be dedicated to the concepts of effective and democratic local government by responsible elected officials and believe that professional general management is essential to the achievement of this objective.
2. Affirm the dignity and worth of the services rendered by government and maintain a constructive, creative, and practical attitude toward local government affairs and a deep sense of social responsibility as a trusted public servant.
3. Be dedicated to the highest ideals of honor and integrity in all public and personal relationships in order that the member may merit the respect and confidence of the elected officials, of other officials and employees, and of the public.
4. Serve the best interests of the people.
5. Submit policy proposals to elected officials; provide them with facts and advice on matters of policy as a basis for making decisions and setting community goals; and uphold and implement local government policies adopted by elected officials.
6. Recognize that elected representatives of the people are entitled to the credit for the establishment of local government policies; responsibility for policy execution rests with the members.
7. Refrain from all political activities which undermine public confidence in professional administrators. Refrain from participation in the election of the members of the employing legislative body.
8. Make it a duty continually to improve the member's professional ability and to develop the competence of associates in the use of management techniques.
9. Keep the community informed on local government affairs; encourage communication between the citizens and all local government officers; emphasize friendly and courteous service to the public; and seek to improve the quality and image of public service.
10. Resist any encroachment on professional responsibilities, believing the member should be free to carry out official policies without interference, and handle each problem without discrimination on the basis of principle and justice.
11. Handle all matters of personnel on the basis of merit so that fairness and impartiality govern a member's decisions pertaining to appointments, pay adjustments, promotions, and discipline.
12. Public office is a public trust. A member shall not leverage his or her position for personal gain or benefit.

Adopted by the ICMA Executive Board in 1924, and most recently revised by the membership in June 2018.



RESOLUTION 2018-374

WHEREAS, under Neb. Rev. Stat., §16-308, the office of City Administrator for the City of Grand Island, Nebraska, is an appointed position; and

WHEREAS, Grand Island City Code, §2-30 provides the office of City Administrator for the City of Grand Island, Nebraska shall be appointed by the mayor and approved by the council; and

WHEREAS, under Grand Island City Code, §2-35, the office of City Administrator for the City of Grand Island, Nebraska may be administered by a negotiated contract; and

WHEREAS, it is desirable to provide a limited transition period whereby current City Administrator Marlan Ferguson continues to hold such office and that a successor City Administrator first be employed by the City as Assistant City Administrator pursuant to the terms and conditions of an employment agreement; and

WHEREAS, City Administrator Marlan Ferguson submitted his resignation effective March 1, 2019; and

WHEREAS, the Mayor has chosen on the basis of executive and administrative qualifications with special reference to actual experience, or knowledge of accepted practice in respect to the duties of the office, Brent E. Clark to hold the office of City Administrator for the City of Grand Island with such term of office to commence March 1, 2019, and until such time Brent E. Clark be appointed to and hold the office of Assistant City Administrator; and

WHEREAS, the City Administrator is a position appointed by the Mayor and confirmed by the City Council and shall hold the position to which appointed until the end of the Mayor's term of office; and

WHEREAS, the City Administrator may be removed at any time by the Mayor with approval of a majority of the City Council.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL AND MAYOR OF THE CITY OF CITY OF GRAND ISLAND as follows:

1. The resignation of City Administrator Marlan Ferguson effective on March 1, 2019 is hereby accepted and approved;
2. The employment and appointment of Brent E. Clark as Assistant City Administrator is approved;
3. The employment and appointment of Brent E. Clark as City Administrator to commence on March 1, 2019 is hereby approved and confirmed;

Approved as to Form	by _____
November 30, 2018	City Attorney

4. The employment agreement by and between the City of Grand Island and Brent E. Clark should be and is hereby approved;
5. Until March 1, 2019 Marlan Ferguson shall continue to be employed by the City and shall hold the office of City Administrator pursuant to the terms of the Employment Agreement by and between the City of Grand Island and Marlan Ferguson dated December 22, 2014, except as otherwise hereby provided; and
6. For such time as his employment by the City as City Administrator shall continue, Marlan Ferguson shall continue to receive the current salary and employee benefits provided to him by the City.

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Adopted by the City Council of the City of Grand Island, Nebraska, December 4, 2018.

Roger G. Steele, Mayor

Attest:

RaNae Edwards, City Clerk