



City of Grand Island

Monday, December 22, 2014

Council Session

Item I-4

#2014-384 - Consideration of Approving Appointment of Marlan Ferguson as City Administrator and Approving Employment Agreement

Staff Contact: Mayor Jeremy Jensen

Council Agenda Memo

From: Mayor Jeremy Jensen
Meeting: December 22, 2014
Subject: Appointment of Marlan Ferguson as City Administrator and Employment Agreement
Item #'s: I-4
Presenter(s): Mayor Jeremy Jensen

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

According to Grand Island City Code Section 2-30, I am requesting approval of Marlan Ferguson 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. Approve the appointment of Marlan Ferguson as City Administrator.
2. Deny the appointment of Marlan Ferguson as City Administrator.

3. Ask the Mayor to reconsider his recommendation for the appointment of City Administrator.

Recommendation

City Council is recommended to approve the appointment of Marlan Ferguson as City Administrator and the Employment Agreement.

Sample Motion

Move to approve the appointment of Marlan Ferguson as City Administrator and the Employment Agreement.

EMPLOYMENT AGREEMENT

This Agreement, made and entered into this 22nd day of December, 2014, by and between the City of Grand Island, State of Nebraska, a Municipal Corporation, hereinafter referred to as "Employer," and Marlan Ferguson hereinafter referred to as "Employee." Employer and Employee hereby stipulate and agree as follows:

WITNESSETH

WHEREAS, Employer desires to employ the services of Marlan Ferguson as the City Administrator of the City of Grand Island, Nebraska, as provided for under Nebraska law, and City Code; and

WHEREAS, it is the desire of the Employer to provide certain benefits, establish certain conditions of employment, standards of employment, obligations and responsibilities, and to set working conditions of Employee; and

WHEREAS, Employee desires to accept employment as City Administrator of said City.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

Section 1. Duties

Employer hereby agrees to employ Marlan Ferguson as City Administrator of said Employer to 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.

Section 2. Term

A. The term of this Agreement shall be for a period beginning January 5th, 2015, and shall expire at the end of the current Mayor's term of office.

B. 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.

C. 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.

D. 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.

Section 3. Termination

A(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 Paragraph A(3) of this section. 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 Paragraph A(3) of this section.

A(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 Paragraph A(3) of this section in exchange for a full release of all claims against the City, including but not limited to those claims as specified in Paragraph A(3) of this section.

A(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:

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.
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.
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. 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.
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.
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.

Section 4. 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, paragraph A (3). However, Employee shall be compensated for any accrued vacation.

Section 5. Salary

Employer agrees to pay Employee for his services rendered pursuant hereto 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 is \$152,280.80. This is equivalent to Step 10 of the non - union employees salary schedule Ordinance 9512 effective January 1, 2015. 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.

Section 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.

Section 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.

Section 8. Mileage

For travel beyond the City Limits Employee shall be reimbursed at the IRS approved rate, if personal vehicle is utilized.

Section 9. Vacation, Medical, and Military Leave

A. 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.

B. Employee shall be entitled to military reserve leave time pursuant to State law and City policy.

Section 10. Insurance Benefits

Employee shall receive all insurance benefits provided to all City employees 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.

Section 11. Retirement

Employer shall provide Employee the same retirement plan and percentage rate of monthly base pay contribution provided to all City civilian employees as enumerated in the City Personnel Rules.

Section 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.

Section 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.

Section 14. Bonding

Employer shall bear the full cost of any fidelity or other bonds required of Employee under any law or ordinance.

Section 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.

Section 16. Moving Expenses

Employee shall be reimbursed, or Employer may pay directly, for the moving and relocation expenses of Employee an amount not to exceed \$5,000 to move to Grand Island, which shall also include unpacking, any storage costs necessary and insurance charges.

Section 17. 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: Marlan Ferguson
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.

Section 18. General Provisions

A. 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.

B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee.

C. This Agreement shall become effective commencing January 5th, 2015.

D. 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.

Section 19. 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.

Section 20. 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.

Section 21. 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.

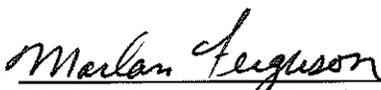
IN WITNESS WHEREOF, the parties have hereto affixed their signatures as of the date and year above written.

CITY OF Grand Island, NEBRASKA, Employer

By: _____
Jeremy L. Jensen, Mayor

Attest:

City Clerk



Marlan Ferguson, Employee

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:

Tenet 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.

Tenet 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

Tenet 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.

Tenet 4

Recognize that the chief function of local government at all times is to serve the best interests of all people.

Tenet 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.

Tenet 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.

Tenet 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.

Tenet 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.

Tenet 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.

Tenet 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.

Tenet 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.

Tenet 12

Seek no favor; believe that personal aggrandizement or profit secured by confidential information or by misuse of public time is dishonest.

RESOLUTION 2014-384

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, under Grand Island City Code, §2-30, 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, 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, Marlan Ferguson, to hold the office of City Administrator for the City of Grand Island, Nebraska; and

WHEREAS, this position appointed by the Mayor and confirmed by the City Council shall hold the position to which they may be appointed until the end of the Mayor's term of office; and

WHEREAS, this position appointed by the Mayor 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 MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that a negotiated contract for the position of City Administrator is to be offered to Marlan Ferguson and he is hereby duly appointed the City Administrator for the City of Grand Island, Nebraska, beginning January 5, 2015 until the end of the Mayor's term of office.

Adopted by the City Council of the City of Grand Island, Nebraska, December 22, 2014.

Jeremy L. Jensen, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
December 19, 2014	☐ City Attorney