

City of Scottsbluff, Nebraska

Monday, May 15, 2017

Regular Meeting

Item Reports1

Council to consider and take action on the City Manager's Contract.

Staff Contact: City Council

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this “Agreement”) is made on May ____, 2017, between the City of Scottsbluff, Nebraska, a political subdivision of the State of Nebraska (“City”) and Nathan Johnson (“Johnson”).

Johnson is currently serving as the City Manager for the City pursuant to an Agreement which was effective May 1, 2016. The parties now desire to revise Johnson’s Employment Agreement according to the terms of this Agreement.

1. Duties:

The City Agrees to employ Johnson as City Manager of the City to perform the functions and duties specified in Sections 6-2-35 through 6-2-39 of the Scottsbluff Municipal Code and to perform such other legally permissible and proper duties and functions as the Mayor and City Council shall, from time to time, assign, to include serving as Program Administrator of the City’s Economic Development Program. Johnson agrees to discharge the duties of City Manager in a professional and reasonable manner and in accordance with the Scottsbluff Municipal Code and Nebraska State Statute, as, from time to time, they may be amended.

2. Term.

A. Johnson shall serve at the pleasure of the Mayor and City Council and nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Mayor and City Council to terminate this Agreement at any time, with or without cause, subject only to the applicable provisions set forth in paragraph 3 of this Agreement.

B. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of Johnson to resign at any time from his position with the City subject only to the provisions set forth in paragraph 3 of this Agreement.

C. Johnson agrees to remain in the exclusive employ of the City until termination or resignation as provided in paragraph 3 of this Agreement. Johnson shall not use any confidential information obtained through his position as City Manager for personal gain. Both parties acknowledge that exclusive employment shall mean that Johnson shall not accept any outside employment from any source whatsoever without first obtaining written approval from the City. Outside employment shall not be construed to include occasional teaching, writing or consulting performed on Johnson’s time off. It is further understood that any activity of this nature outside of the workplace cannot represent a conflict of interest.

D. Johnson’s job performance will be evaluated on a bi-annual basis for the first year of employment and annually thereafter. In addition, for the first year of employment Johnson will provide the Mayor and City Council quarterly information reports listing the activities worked on and addressed by Johnson.

3. Termination.

A. The Mayor, with the approval of City Council, shall have the right at any time during the term of this Agreement to terminate Johnson for just cause. "Just Cause" is defined as: (i) a conviction for a felony or any misdemeanor involving moral turpitude, (ii) breach of this Agreement, (iii) commission of any dischargeable offense as defined in the personnel rules for the City, (iv) neglect of duty, (v) unprofessional conduct, (vi) insubordination, (vii) physical or mental incapacity, or (viii) any other conduct which substantially interferes with the continued performance of duties.

B. If Johnson tenders his resignation, he agrees to give 60 days advance written notice.

C. The parties acknowledge that the Ordinances of the City provide that the City Manager shall be appointed by the Mayor with the approval of the majority of the City Council, and may be removed at any time by the Mayor with the approval of the majority of the City Council. It is, therefore, not possible for the City to offer Johnson any guaranty of continued employment. To induce Johnson to continue to serve in the position of City Manager, it is in the best interests of the City to provide a severance package in the event Johnson's employment by the City is terminated. All sums payable to Johnson pursuant to this Agreement are compensation for services rendered before payment is made or agreed to be made. The City agrees to pay Johnson on the City's regular pay days, six months severance in the case of termination for other than Just Cause, resignation or change from a council-manager form of government. This severance shall include City-paid family health, dental, retirement, life and long-term disability (if applicable) for the duration of the severance. Severance shall be reduced as follows:

(i) Ceases in the event Johnson commences employment in another comparable position.

(ii) If a lesser paying position commences during the severance period then severance will continue as the difference between his City regular gross pay minus the regular gross pay of his new position multiplied by the reduction factors set forth below:

- (a) The first seven bi-weekly payments shall be at 100% of the regular gross pay.
- (b) Payments eight and nine shall be at 80% of the regular gross pay.
- (c) Payments ten and eleven shall be at 60% of the regular gross pay.
- (d) Payments twelve and thirteen shall be at 40% of the regular gross pay.

(iii) Johnson shall use his best efforts to secure comparable employment as quickly as possible following separation from the City. In addition, during the severance period, Johnson will provide his current address and telephone number information, a report on his efforts to find employment every two weeks, and will be available for assistance to the City as needed. Johnson

will also cooperate as needed with the City's legal counsel on the prosecution of or defense of lawsuits where the testimony of Johnson is necessary.

4. Compensation.

A. The initial salary will be One Hundred Thousand Dollars (\$100,000.00) annually. Said compensation shall be paid in installments at the same time as other employees of the City are paid.

B. The City agrees it will review Johnson's compensation and other benefits and adjust the same in such amount and to such an extent as the City may determine for its other employees. Any annual review of Johnson's compensation shall be made at the same time, but not necessarily to the same extent, as similar consideration is given to other employees of the City generally. Provided, an increase of compensation to other City employees based on COLA, will also be given to Johnson, at a minimum. Any increase to Johnson will be effective on the date determined by the City. Johnson will be considered an exempt employee for overtime pay.

5. Automobile.

In addition to the compensation, Johnson shall receive \$250.00 per month as a monthly reimbursement allowance for the use of his personal automobile while in the performance of his duties. Johnson shall bear all maintenance, insurance, and other expenses in connection with the operation of his automobile.

6. Telephone.

The City shall pay Johnson a \$30.00 per month telephone allowance in lieu of providing Johnson with a cellular telephone for City business.

7. Professional Development.

The City agrees to support Johnson in becoming involved in regional and national activities. The City agrees to pay the annual dues and pre-approved conference expenses to the following organizations: the Government Finance Officers Association, the International City Managers Association, the Nebraska City Managers Association, the League of Nebraska Municipalities, Rotary Club, the Scottsbluff/Gering Chamber of Commerce and Next Young Professionals.

8. Expenses and Bond.

The City shall reimburse Johnson for payment of City business expenses while conducting official City business as long as not in conflict with established rules and regulations of the Nebraska Accountability Commission or other provisions of this Agreement. The City also agrees to pay for any fidelity or other bond required as City Council may approve.

9. Employment Benefits.

The City agrees to provide such employment benefits to Johnson as it provides to other City employees, including health insurance, disability insurance and retirement.

Retirement: City shall contribute an amount equal to 12% of Johnson's salary to Johnson's ICMA-RC account in lieu of his participation in the City retirement plan. Johnson may make voluntary contributions to his ICMA-RC account to the extent City employees are allowed to make voluntary contributions to the City retirement plan pursuant to the City Personnel Manual, City Ordinance, Internal Revenue Codes and its applicable regulations. However, if Johnson makes any voluntary contributions to his ICMA-RC account, the City will not be required to make corresponding matching contributions as any such contribution of the City required by this Agreement will be limited to 12% of Johnson's salary. The City shall not be required to make any other contribution to Johnson's IMCA-RC account.

10. Other Terms and Conditions.

The Mayor and City Council shall fix any such other terms and conditions of employment as it may determine from time to time, relating to the performance of Johnson, provided such terms and conditions are not inconsistent with or in conflict with provisions of this Agreement or of applicable law. Except to the extent otherwise provided, the regulations and rules of the City relating to employment and employment benefits as they now exist or hereinafter may be amended shall apply to Johnson as they would to other employees of the City.

11. General Provisions.

- A. This Agreement outlines the entire agreement between the parties.
- B. This Agreement shall be binding upon the parties and shall inure to the benefit of the personal representative and heirs of Johnson.
- C. This Agreement and all amendments, alterations, or additions shall be in writing, shall be approved by the Mayor and City Council and Johnson, shall be filed with the City Clerk, and an executed copy furnished to each of the parties.
- D. This Agreement shall be construed according to the laws of the State of Nebraska.
- E. If any of the provisions or any portion hereof, contained in this Agreement is held to be unconstitutional, invalid or unenforceable, the remainder of the Agreement or portion thereof, shall be deemed severable, and shall be affected and shall remain in full force and effect.

CITY OF SCOTTSBLUFF, NEBRASKA

By _____
Mayor

ATTEST:

City Clerk

Nathan Johnson