

City of Scottsbluff, Nebraska

Monday, December 21, 2020

Regular Meeting

Item Reports5

Council to discuss, consider and take action on the Employment Agreement with Dustin Rief as City Manager and authorize the Mayor to sign the Agreement.

Staff Contact: Rick Kuckkahn, Interim City Manager

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (“Agreement”) made and entered on this 21st day of December, 2020, by and between the City of Scottsbluff, Nebraska, a political subdivision of the State of Nebraska, hereinafter referred to as “City” and Dustin J. Rief, hereinafter referred to as “Rief.”

The City has offered Rief the job of City Manager of Scottsbluff, Nebraska effective December 21, 2020 and Rief has accepted. This Agreement sets forth the terms and conditions of his employment with the City.

1. Duties:

The City Agrees to employ Rief 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. Rief 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. City Code 6-2-35 requires residence inside corporate limits, exception will be made to Rief to live within 2 miles of the corporate boundary.

2. Term.

A. Rief 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 Rief 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. Rief agrees to remain in the exclusive employ of the City until termination or resignation as provided in paragraph 3. of this Agreement. Rief 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 Rief 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 Rief’s time off. It is further understood that any activity of this nature outside of the workplace cannot represent a conflict of interest.

D. Rief’s job performance shall be evaluated on a bi-annual basis for the first year of employment, annually in the second year of employment and thereafter.

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 Rief 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 Rief tenders his resignation, he agrees to give forty-five (45) 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 Rief any guaranty of continued employment. To induce Rief 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 Rief's employment by the City is terminated. All sums payable to Rief pursuant to this Agreement are compensation for services rendered before payment is made or agreed to be made. Prior to receipt thereof, and as consideration for such payments and benefits, Rief shall execute and deliver to the City a general release of the City and its Council Members, officers, agents and employees for all act and actions while Rief was City Manager. At the start of employment, the City agrees to pay Rief on the City's regular pay days, six (6) months' severance increasing by one (1) month for each year of service limiting out at twelve (12) months' severance in the case of termination for other than Just Cause or resignation. This severance shall include City-paid family health, dental, vision, retirement, life and long-term disability, vehicle and cell phone allowance for the duration of the severance.

D. Upon resignation, Rief will be available for assistance to the City as needed. Rief will also cooperate as needed with the City's legal counsel on the prosecution of or defense of lawsuits where the testimony of Rief is necessary.

E. At any time during the term of this Agreement, the City may in its discretion review and adjust the salary of Rief, but in no event shall Rief be paid less than the salary set for in paragraph 4.A. of this Agreement, except by mutual written agreement between Rief and the City. Such adjustments, if any shall be made pursuant to a lawful governing body action. In such event, the City and Rief agree to provide their best efforts and reasonable cooperation to execute a new agreement incorporating the adjusted salary.

F. If the City refuses, following written notice, to comply with any provisions of this Agreement benefiting Rief or Rief resigns following a formal suggestion by the City that he resign, then Rief may, at his option, be deemed to be "terminated" on the effective date of Rief's resignation and Rief shall also be entitled to receive the termination benefits set forth in paragraph 3.C.

G. Rief shall be compensated for all accrued vacation, sick leave, and all paid holidays at the time of termination/resignation. At Rief's discretion, he may choose to have this paid out as a lump sum or may choose to have the monies allocated to a deferred compensation account of his choosing. If the amount of the contribution exceeds the limit under the Internal Revenue Code for contribution to the deferred compensation plan, the remainder shall be paid to Rief in a lump sum as taxable compensation.

4. Compensation.

A. The initial salary will be One Hundred and Fifty Thousand Dollars (\$150,000.00) 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 Rief's job performance on a bi-annual basis for the first year of employment and annually thereafter. Rief's compensation and other benefits will be adjusted with a five percent (5%) introductory and merit increase that is equal to the standards stated for all other City employees upon each satisfactory performance review, as referenced in Section 4 of the City's Personnel Manual. Increases will be implemented on Rief's start date anniversary, unless otherwise agreed upon. Rief understands he is considered an exempt employee for overtime pay.

C. Provided, an increase of compensation to other City employees based on COLA, will also be given to Rief, at a minimum.

5. Automobile.

In addition to the compensation, Rief shall receive Three Hundred and Fifty Dollars (\$350.00) per month as a monthly reimbursement allowance for the use of his personal automobile while in the performance of his duties. Rief shall bear all maintenance, insurance, and other expenses in connection with the operation of his automobile.

6. Telephone.

The City shall reimburse Rief One Hundred Dollars (\$100.00) per month for cellular telephone for City business.

7. Moving Allowance.

The City shall pay Rief Fifteen Thousand Dollars (\$15,000.00) for moving expenses.

Upon signed agreement, the City will pay 50% of these expenses to Rief up front in an installment of Seven Thousand Five Hundred Dollars (\$7,500) and on February 1, 2021 will pay Rief the second installment of Seven Thousand Five Hundred Dollars (\$7,500)..

8. Professional Development.

A. The City agrees to budget and pay the travel and subsistence expenses of Rief for professional and official travel, meetings and occasions adequate to continue the professional development of Rief and to adequately pursue necessary official and other committees thereof which Rief serves as a member. Rief shall use good judgment in his outside activities so he will not neglect his primary duties to the City.

B. The City will budget and pay the professional dues and subscriptions for Rief which are necessary for Rief's continued participation in national, regional, state and local associations necessary and desirable for Rief's continued professional participation, growth and advancement.

C. The City recognizes the desirability of representation in and before local civic and other organizations. Rief is authorized to become a member of such civic clubs or organizations as deemed appropriate by him at the City's expense.

9. Expenses and Bond.

The City shall reimburse Rief 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.

10. Employment Benefits.

The City agrees to provide such employment benefits to Rief as it provides to other City employees, including health insurance, dental insurance, vision insurance, disability insurance, holidays, personal leave, bereavement leave, and funeral leave..

11. Vacation.

The City will provide Rief with twenty (20) days of vacation per year (earned at a rate of 6.15 hours per pay period). The City will grant ten (10) of the vacation days upfront at the start of Rief's employment. Rief will carry over accrued vacation at the ten (10) year level of the personnel policy of two hundred forty (240) hours.

12. Retirement Plan.

At the start of employment with the City, Rief will contribute three percent (3%) of his gross pay and the City will match the three percent (3%) contribution. Rief will be considered vested at the start of employment. The City will contribute an additional six percent (6%) of Rief's pay toward a deferred compensation plan of Rief's choosing. Rief may make voluntary contributions to the deferred compensation plan however, it is not a requirement.

13. Group Life Insurance.

The City will provide Rief with life insurance in the amount of one (1) times Rief's current base salary.

14. Sick Leave.

The City will provide Rief with twelve (12) days of sick leave per year (earned at a rate of 3.69 hours per pay period) and will begin earning at start of employment. The City will grant ten (10) sick leave days upfront at the start of Rief's employment

15. Hours of Work.

It is understood that the position of City Manager requires attendance at evening meetings and occasionally at weekend meetings. It is understood by Rief that additional compensation and compensatory time shall not be allowed for such additional expenditures of time. It is further understood that Rief may absent himself from the office to a reasonable extent in consideration of extraordinary time expenditures for evening and weekend meetings at other normal working hours.

16. Other Terms and Conditions.

The Mayor and City Council shall fix any other terms and conditions of employment as it may determine from time to time, relating to the performance of Rief, 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 Rief as they would to other employees of the City.

17. 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 Rief.
- C. This Agreement and all amendments, alterations, or additions shall be in writing, shall be approved by the Mayor and City Council and Rief, 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.
- F. In the event of any conflict between the terms, conditions and provisions of this Agreement and the provisions of the City's policies, or City's ordinance or the City's rules and regulations, or any permissive state or federal law, then, unless otherwise prohibited by law, the

terms of this Agreement must take precedence over contrary provisions of the City's policies, ordinances, rules and regulations or any such permissive law during the term of this Agreement.

18. Ethical Commitments.

Rief will at all times uphold the tenets of the International City/County Management Association ("ICMA") Code of Ethics. Specifically, Rief shall not endorse candidates, make financial contributions, sign or circulate petitions, or participate in fundraising activities for individuals seeking or holding elected office, nor seek or accept any personal enrichment or profit derived from confidential information or misuse of public time. The City shall support Rief in keeping these commitments by refraining from any order, direction or request that would require Rief to violate the ICMA Code of Ethics. Specially, neither the City Council nor any individual member of the City Council shall request Rief to endorse any candidate, make any financial contribution, sign or circulate any petition, or participate in any fundraising activity for individuals seeking or holding elected office, nor to handle any matter of personnel on a basis other than fairness, impartiality and merit. Rief's refusal to comply with a directive that violates the ICMA Code of Ethics shall in no event serve as a cause of Termination.

[SIGNATURE PAGE WILL FOLLOW]

[SIGNATURE PAGE FOR EMPLOYMENT AGREEMENT]

CITY OF SCOTTSBLUFF, NEBRASKA

By _____
Mayor

ATTEST:

City Clerk