

City of Scottsbluff, Nebraska

Monday, November 21, 2022

Regular Meeting

Item Reports3

Council to discuss and consider action on approval of City Manager Employment Agreement and authorize the Mayor to sign the Agreement.

Staff Contact: City Council

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (“Agreement”) made on November ____, 2022, by and between the City of Scottsbluff, Nebraska, a political subdivision of the State of Nebraska, hereinafter referred to as “City” and Kevin E. Spencer, hereinafter referred to as “Spencer”.

Spencer is currently employed in the office of Police Chief for the City. For several months prior to the date of this Agreement, Spencer has also acted as Interim City Manager for the City. The City has now offered to employ Spencer in the office of City Manager as well as continuing to be employed in the office of Police Chief. Spencer has accepted the offer to be employed in the office of City Manager and continue in the office of Police Chief. This Agreement sets forth the terms and conditions of his employment with the City.

1. Duties:

The City agrees to employ Spencer as City Manager of the City as well as continuing his employment as Police Chief. Along with being the Police Chief, Spencer will 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. Spencer agrees to discharge the duties of City Manager and Police Chief 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. City Manager Term.

A. As City Manager, Spencer 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 Spencer as City Manager 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 Spencer to resign at any time from his position as City Manager with the City subject only to the provisions set forth in paragraph 3. of this Agreement.

C. Spencer agrees to remain in the exclusive employ of the City until termination or resignation as provided in paragraph 3. of this Agreement. Spencer shall not use any confidential information obtained through his position as City Manager or Police Chief for personal gain. Both parties acknowledge that exclusive employment shall mean that Spencer 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 Spencer’s time off. It is further understood that any activity of this nature outside of the workplace cannot represent a conflict of interest.

D. Spencer's job performance as City Manager shall be evaluated on a bi-annual basis for the first year of employment, and evaluated annually in the second year of employment and thereafter. At the first bi-annual evaluation, Spencer agrees to provide a plan for the restructure and succession in the office of Police Chief. In addition at the first annual evaluation, the City and Spencer both agree to re-evaluate holding both offices by a single person and whether it is in the City's best interest to continue.

3. Police Chief Term.

Spencer's employment in the office of Police Chief shall continue to be governed by the Civil Service Act and the Scottsbluff Municipal Code beginning at § 6-2-76 et.al. and shall be considered separate from the office of City Manager for discipline or termination.

4. 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 Spencer as City Manager 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 Spencer tenders his resignation as City Manager, he agrees to give sixty (60) days advance written notice.

C. The parties acknowledge that the Ordinances of the City provide that the City Manger 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 Spencer any guaranty of continued employment as City Manager.

D. All actions of Spencer as Police Chief, dealing with an accusation and discipline, shall be dealt with under the process and procedures set forth in the Scottsbluff Municipal Code.

5. Compensation.

A. The initial salary will be One Hundred Forty Thousand Dollars (\$140,000.00) 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 annually review Spencer'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 Spencer'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 Spencer, at a minimum. Any increase to Spencer will be effective on the date determined by the City. Spencer will be considered an exempt employee for overtime pay.

6. Automobile.

In addition to the compensation, Spencer shall continue to have the use of a Police Vehicle, as the Police Chief.

7. Telephone.

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

8. Professional Development.

The City agrees to support Spencer in regional and national professional organizations and activities. The City agrees to pay annual dues and pre-approved conference expenses for organizations in which he chooses to participate.

9. Expenses and Bond.

The City shall reimburse Spencer 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 Spencer as it provides to other City employees, including health insurance and disability insurance. In regard to retirement, the City agrees to a nine percent (9%) retirement match for Spencer's retirement account.

11. 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 Spencer, 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 Spencer as they would to other employees of the City.

12. 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 Spencer.

C. This Agreement and all amendments, alterations, or additions shall be in writing, shall be approved by the Mayor and City Council and Spencer, 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.

[SIGNATURE PAGE FOR EMPLOYMENT AGREEMENT]

CITY OF SCOTTSBLUFF, NEBRASKA

By _____
Jeanne McKerrigan, Mayor

ATTEST:

City Clerk

Kevin E. Spencer