



STAFF REPORT

DATE: December 5, 2023

CONSENT

AGENDA ITEM: Authorize Payments to Former City Administrator pursuant to City Administrator Employment Agreement
SUBMITTED BY: Sarah Sonsalla, City Attorney
REVIEWED BY: Clarissa Hadler, Finance Director
Karissa Goers, Administrative Services Director

ISSUES BEFORE COUNCIL:

Should the City Council authorize payment of Ms. Handt's severance in January of 2024 in two payments instead of a lump sum?

Should the City Council authorize payment of Ms. Handt's deferred compensation during the severance period?

BACKGROUND:

Issue 1:

Section 3 of Kristina Handt's Employment Agreement states that the City will pay Ms. Handt "a lump sum cash payment equal to six months aggregate salary..." It further states that the lump sum cash payment "shall be paid in accordance with Minnesota Statutes Section 465.722..." Minnesota Statutes Section 465.722, subdivision 2 states that "[s]everance pay must be paid in a manner mutually agreeable to the employee and the governing body of the local government unit over a period of not to exceed five years from retirement or termination of employment." Ms. Handt has requested that her severance pay be made to her by the City in two payments in January of 2024. Because this request involves payment of Ms. Handt's severance that is not in a lump sum, Minnesota Statutes Section 465.722, subdivision 2 requires agreement by Ms. Handt and the City Council.

Issue 2:

The Employment Agreement requires the City to pay Ms. Handt a lump sum cash payment equal to six months aggregate salary and "to continue to provide and pay for the benefits described in Section 10 for a period of six months..." The benefits described in Section 10 of Agreement include health, dental, and life insurance "along with other benefits as outlined in the City's Personnel Policy and Employee Handbook." Deferred compensation is not listed in Section 10 of the Agreement but is listed separately in Section 6 of the Agreement. Section 6 of the Agreement is silent on whether deferred compensation is to be paid throughout the six-month severance period. Ms. Handt has requested that the City pay its share of deferred compensation to her during the six month severance period.

Pursuant to Minnesota Statutes Section 465.22, subdivision 2, deferred compensation is not excluded from severance pay. Deferred compensation is also included as a benefit outlined in the City's Personnel Policy and Employee Handbook. Therefore, there is a strong argument that it should be paid by the City as a benefit during the severance period. Because the Agreement is not clear, the City Council needs to authorize payment of deferred compensation during the severance period.

PROPOSAL DETAILS/ANALYSIS:

The City is required to make the severance payment and pay Ms. Handt benefits for a period of six months from the date of the expiration of the Employment Agreement pursuant to Section 2 (A) of the Agreement.

FISCAL IMPACT:

Paying the severance by making payments is beneficial to the City from a cash flow perspective.

The deferred compensation is equal to two percent of Ms. Handt's annual salary. Therefore, six months of deferred compensation would be \$2022.45.

CITY COUNCIL ACTIONS PROPOSED:

The City Council authorize paying Ms. Handt's severance pay in two payments in January of 2024 instead of in a lump sum.

The City Council authorize paying Ms. Handt's deferred compensation during the six-month severance period.

If removed from the Consent Agenda, the language for motions for these actions are as follows:

“Move to authorize payment of Kristina Handt’s deferred compensation during the six-month severance period.”

“Move to authorize payment of Ms. Handt’s severance pay in two payments in January of 2024.”

ATTACHMENTS:

Employment Agreement

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this "Agreement"), made and entered into as of March 14, 2019, by and between the City of Lake Elmo, State of Minnesota, a municipal corporation, ("Employer") and Kristina Handt ("Employee").

WITNESSETH:

WHEREAS, Employer desires to employ the services of Employee as City Administrator of the City of Lake Elmo; and

WHEREAS, it is the desire of the City Council (the "Council"), to provide certain benefits, establish certain conditions of employment and to set working conditions of the Employee; and

WHEREAS, it is the desire of the Council to: (1) secure and retain the services of Employee and to provide inducement for Employee to remain in such employment; (2) to make possible full work productivity to assuring Employee's morale and peace of mind with respect to future security; (3) to act as a deterrent against malfeasance or dishonesty for personal gain on the part of Employee; and (4) to provide a just means for terminating Employee's services at such time as she may be unable to fully discharge her duties or when Employer may otherwise desire to terminate her employment; and

WHEREAS, Employee desires to accept employment as City Administrator of the City:

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, Employer and Employee agree as follows:

Section 1. Duties.

Employer agrees to employ Employee as City Administrator to perform the functions and duties specified in the City Code, and Minnesota Statutes Chapter 412, as amended, and to perform other legally permissible and proper duties and functions as the Council may from time to time assign to Employee.

Section 2. Term.

- A. The term of this Agreement is from March 28, 2019 to November 30, 2023 (the "Term"). For the convenience of Employer, Employee may hold over Employee's employment subsequent to the expiration of the Term until this Agreement is modified or superseded by a new employment agreement approved by Employee and the Council. During any holdover period, any such holding over shall also be subject to all other terms of this Agreement. If this contract is not renewed and Employee's employment is terminated as a result, Employee shall be entitled to Severance Pay as described in Section 3, paragraph A of this Agreement.

- B. Employee will serve at the will of the Council. Nothing in this Agreement prevents, limits or otherwise interferes with the right of the Council to terminate the services of Employee at any time, subject only to the provisions set forth in Section 3, paragraph A of this Agreement.
- C. Nothing in this Agreement prevents, limits or otherwise interferes with the right of the Employee to resign at any time, subject only to the provisions of Section 3, paragraph B of this Agreement.
- D. Employee agrees to remain in the exclusive employ of Employer and neither to accept other employment nor to become employed by any other employer during the term of Employee's employment.
- E. The term "employed" is not to be construed to include occasional teaching, writing, consulting or military reserve service performed on Employee's time off.

Section 3. Termination and Severance Pay.

- A. To the extent permitted by law, during the term of this Agreement, if the Employee is terminated by the Council and at that time Employee is willing and able to perform Employee's duties under this Agreement, then Employer agrees to pay Employee a lump sum cash payment equal to six months aggregate salary and to continue to provide and pay for the benefits described in Section 10 for a period of six months and in addition, Employee shall receive the cash equivalent of Employee's accumulated PTO pursuant to the City's Personnel Policy and Employee Handbook (collectively "Severance Pay"). If Employee is convicted of a crime involving theft or fraud as defined in Minnesota Statutes Chapter 169, as amended, or terminated for other conduct involving malfeasance or nonfeasance in office, gross misconduct, Employee's breach of any material obligations under this Agreement or any other agreement with Employer, Employee's willful or repeated failure or refusal to perform or observe Employee's duties, responsibilities and obligations to Employer, Employee's use of alcohol or drugs in a manner which affects the performance of the Employee's duties, responsibilities and obligations to Employer, or commission by Employee of any willful or intentional act which could reasonably be expected to injure the reputation of Employer or Employee, Employer shall have no obligation to pay Severance Pay. The lump sum cash payment included in Severance Pay shall be paid in accordance with Minnesota Statutes Section 465.722, if applicable.
- B. Employee will give Employer 45 days' notice in advance of resignation, unless the parties agree to waive this notice. In the event that Employee resigns, Employer shall have no obligation to pay Severance Pay.
- C. In the event of the death of Employee, this Agreement shall terminate. Employee's heirs shall be only paid Employee's earned salary and accrued PTO not paid; any unpaid expense reimbursements; and any benefits payable under any life insurance policy maintained by Employer for the benefit of Employee, subject to the terms and conditions of such policy.

Section 4. Availability for Duties.

Employer and Employee acknowledge that it is critical for Employee to be available to perform Employee's duties on behalf of Employer at Employer's principal place of business and other City job sites as necessary. Notwithstanding this requirement, Employee may work from home up to two days per month.

Section 5. Salary.

- A. Employer agrees to pay Employee for Employee's services rendered pursuant hereto an annual salary of \$146,000 payable in installments at the same time as other employees of the Employer are paid, effective as of March 28, 2019.
- B. Commencing on March 29, 2020, and on March 29th each year thereafter during the term of this Agreement, Employee's salary shall be automatically increased by three percent. Employee shall not be entitled to any other salary increases during the term of this Agreement.
- C. Employer shall not reduce the salary and/or benefits of the Employee unless the salary and/or benefits of all salaried, non-represented employees are reduced in the same manner and by the same percentage. If the Employee's salary and/or benefits are reduced in a different manner and/or by a greater percentage than those of other salaried, non-represented employees, the Employee has the option of deeming her employment terminated without cause and receiving severance compensation as defined in Section 3, paragraph A of this Agreement.

Section 6. Deferred Compensation.

Employer shall contribute an amount equal to two percent (2.00%) of the Employee's annual salary into an approved deferred compensation plan. Employee shall match the Employer's contribution. Said contributions shall be made by Employer and Employee each pay period.

Section 7. Performance Evaluation.

- A. The Council will strive to review and evaluate the performance of Employee annually. The review and evaluation will be in accordance with specific criteria developed jointly by Employer and Employee. The criteria may be modified as the Council may from time to time determine in consultation with the Employee.
- B. The Council and Employee will annually define in writing the goals and performance objectives they jointly determine necessary for the proper operation of the City and the attainment of the Council's policy objectives and will further establish a relative priority among those various goals and objectives. The goals and objectives will generally be attainable within the time limitations as specified and the annual operating and capital budgets and appropriations provided.

- C. In carrying out the provisions of this Section, Council and Employee mutually agree to abide by the provisions of applicable state and federal law.

Section 8. Outside Activities.

Employee must not spend more than 10 hours per week in teaching, counseling or other non-Employer, non-military reserve connected business without prior approval of the Council.

Section 9. PTO and Military Leave.

- A. Employee will accrue, and have credited to Employee's personal account, paid time off ("PTO") at the same rate and under the same conditions as other general employees of the Employer. Solely for the purposes of calculating PTO benefits, the Employee will be deemed to have completed her 5th year of employment as March 28, 2016.
- B. Employee shall be entitled to military reserve leave time pursuant to federal and state law and City policy.

Section 10. Dental, Health and Life Insurance.

Employer agrees to provide a benefits package that includes health, dental and life insurance along with other benefits as outlined in the City's Personnel Policy and Employee Handbook. Employee may use accumulated PTO for leave for Employee's self, and for any member of Employee's household regardless of marital status, for any of the events and circumstances stated in the Family and Medical Leave Act of 1993 (29 C.F.R. Part 825). Such leave shall be administered pursuant to the applicable language of the City's Personnel Policy and Employee Handbook.

Section 11. Dues, Subscriptions and Professional Development.

Employer will pay for Employee's dues and related membership costs to the League of Minnesota Cities, MCMA and ICMA. In addition, Employer will pay for Employee to attend the annual League of Minnesota Cities and MCMA conferences. Employer will also pay up to \$2000 towards the Employee's travel and registration expenses to allow the Employee to attend the annual ICMA conference, if the Employee chooses to do so. In addition, Employer will pay dues for one local service club, provided that routine attendance is made. Any other out of state travel must be approved in advance by the City Council. Other dues, subscriptions, or conference attendance deemed desirable for Employee's professional participation, growth and development may be paid if preapproved by the Council.

Section 12. Indemnification.

Employer will defend, hold harmless and indemnify Employee against any tort, professional liability claim or demand or other legal action arising out of an alleged act or omission occurring in the performance of Employee's duties as City Administrator. Employer will compromise and settle any claim or suit and pay the amount of any settlement, judgment or reasonable attorneys' fees rendered thereon consistent with Minnesota Statutes Section 466.07, as amended. Employer shall pay any costs and reasonable attorneys' fees incurred by the Employee to defend charges of a criminal nature brought against Employee that arose out of the reasonable and lawful performance of duties for the City as provided in Minnesota Statutes Section 465.76, as amended.

Section 13. Bonding.

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

Section 14. Other Terms and Conditions of Employment.

- A. The Council, in consultation with Employee, may fix such other terms and conditions of employment as it may determine from time to time relating to the performance of Employee, provided those terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City Code or any other law.
- B. Except as otherwise provided in this Agreement, all provisions of the City Code, and regulations and rules of the Employer relating to PTO, retirement and pension system contributions, holidays and other fringe benefits and working conditions as they now exist or hereafter may be amended, apply to Employee as they would to other employees of Employer.

Section 15. Notices

Notices pursuant to the agreement are given by deposit in the custody of the United States mail, postage prepaid, addressed as follows:

- A. EMPLOYER: City of Lake Elmo
Attn: City Clerk
3800 Laverne Avenue N.
Lake Elmo, MN 55042
- B. EMPLOYEE: Kristina Handt
1403 Brandlwood Road
White Bear Twp, MN
55110

Alternatively, notices required pursuant to this Agreement may be personally served in the


same manner as is applicable to process in a civil action. 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 United States mail.

Section 16. General Provisions.

- A. This Agreement constitutes the entire agreement between the parties and supersedes all prior written and oral agreements between the parties.
- B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee.
- C. This Agreement may be amended at any time by mutual consent of Employer and Employee.
- D. This Agreement may be executed in any number of counterparts.
- E. This Agreement shall be interpreted pursuant to Minnesota law.
- F. The rights of Employee hereunder are personal and may not be assigned or transferred unless consented thereto in writing by Employer.
- G. The invalidity of any portion of this Agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provisions.
- H. The failure of either party to complain of any default by the other party or to enforce any of such party's rights, no matter how long such failure may continue, will not constitute a waiver of the party's rights under this Agreement. No waiver of any provision of this Agreement shall constitute a waiver of any other provision or a waiver of the same provision at any later time.

IN WITNESS WHEREOF, the City of Lake Elmo by its City Council has caused this Agreement to be executed and delivered in its behalf by its Mayor and duly attested by its City Clerk, and Employee has executed this Agreement as of the day and year first above written.

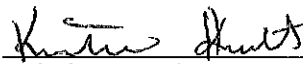
THE CITY OF LAKE ELMO, MINNESOTA
EMPLOYER

By 
Mike Pearson
Its: Mayor

Attest:


Julie Johnson, City Clerk

EMPLOYEE


Kristina Handt