



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: October 3, 2016

SUBJECT: Approval of an Amended Employment Agreement with J. J. Murphy

DEPT. OF ORIGIN: Legal Department
DATE SUBMITTED: September 28, 2016
SUBMITTED BY: Michael Stone, City Attorney

Summary:

This matter is the consideration of a proposed Amended Employment Agreement with City Manager, J. J. Murphy ("Murphy"). The proposed agreement is attached. Murphy will continue to serve as City Manager until June 1, 2017, or at the time he resigns, if sooner than June 1, 2017. The new agreement contains the same basic salary and benefits. At the time of separation, he will transition to a Special Consultant to aid in the orderly transition of City Management to a new City Manager. At the time of separation, he will be paid a severance that will equal one year of his current salary, paid over a period of time until June 2, 2018. His City-provided health insurance will continue until he obtains new employment and is eligible for family coverage, or until June 1, 2018, whichever occurs first. Life insurance, short-term disability and his auto allowance will continue until he resigns or June 1, 2018, whichever occurs first.

Fiscal Impact:

The City will continue to pay Murphy his current salary/benefits until June 1, 2017 or at the time of his resignation, whichever occurs first. He will receive a severance equal to one year of his salary, paid over time until July 2, 2018. He will have continued family health insurance, life insurance, disability and auto allowance until June 2, 2018, or until he resigns, whichever occurs first.

Reviewed By: _____
Finance Department

Attachments:

Proposed Amended Employment Agreement

Legal Review:

Approved As To Form: *Michael Stone*
City Attorney

Recommendation:

The Commission vote to adopt or reject the Amended Employment Agreement

Approved For Submittal By:

Michael Stone

Department Director

City Manager

CITY CLERK'S USE ONLY
COMMISSION ACTION TAKEN

Resolution No. _____

Ordinance No. _____

Approved _____

Other _____

Continued To: _____

Referred To: _____

Denied _____

File No. _____

AMENDED EMPLOYMENT AGREEMENT

THIS AMENDED EMPLOYMENT AGREEMENT is entered into this ___ day of October, 2016, by and between J. J. MURPHY, hereinafter designated as "Murphy", and the CITY OF HOBBS, a New Mexico municipal corporation, acting by and through its duly authorized Mayor and City Commission, hereinafter referred to as "City".

WITNESSETH

WHEREAS, J.J. Murphy desires to continue employment with the City of Hobbs; and

WHEREAS, the City of Hobbs, acting by and through its duly authorized Mayor and City Commission, desires to continue to employ Murphy under the terms and conditions hereof;

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

1. Employment: City agrees to employ Murphy and Murphy hereby accepts such employment upon the terms and conditions hereinafter set forth.

2. Term: The term of employment under this Agreement shall begin on October 3, 2016 ("the Effective Date") and shall continue in effect until July 2, 2018 unless terminated in the manner laid out in paragraph 10, below.

3. Authority and Duties: Murphy shall perform all duties and shall have all powers and authority specified in Hobbs City Charter, Ordinances, Resolutions, Regulations and other official documents, in addition to other functions as prescribed by the City Commission.

4. Work Responsibilities: Murphy shall devote the time necessary to the administration of the government of the City. In general, while employed as City Manager, such time shall be a minimum of forty (40) hours per week, but Murphy recognizes that he must often devote significant time outside the normal office hours. Such hours shall be scheduled as Murphy deems most conducive to the effective and efficient operation of City administration.

5. Employment Status: Murphy is engaged in managerial and administrative duties, and thus is exempt from the requirements of the Fair Labor Standards Act.

J.J. Murphy

Mayor

6. Disability: If Murphy is permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or other health reasons for a period of eight (8) weeks beyond any accrued paid time off ("PTO") (unless a longer period is required by law), then City shall have the option to terminate this Agreement. In the event of termination under this provision, Murphy shall be entitled to the disability benefits presently in effect and payable to other employees of the City who may be disabled as defined herein.

7. Compensation: For all services rendered by Murphy under the terms of this agreement, compensation shall be paid to Murphy by City as follows:

a. Continuation of salary in the amount of \$180,377.60 annually, paid in conjunction with the regular City of Hobbs pay cycle. All future raises shall be based on an annual performance evaluation and shall not exceed any COLA or merit raises for all City of Hobbs employees. If Murphy's performance evaluation is satisfactory, he will be entitled to any increase in salary as all other City of Hobbs employees may be entitled without modifying this agreement.

b. Murphy shall accrue 20 hours per month of PTO in lieu of annual leave or sick leave. Murphy shall also be entitled to the same other leave and health, vision, dental insurance, or other benefits currently available to the general employees of the City.

c. City shall continue to provide Murphy with an automobile allowance in the amount of \$750.00 each month during his employment with the City. Murphy shall be responsible for paying for any required liability and comprehensive insurance for the vehicle operated by him and for the purchase, operation, rental, repair and periodic maintenance of his personal vehicle during the term of this agreement. Murphy shall furnish City with a copy of the declaration sheet issued by his automobile liability carrier evidencing the liability insurance coverage required by this subsection at the City's request.

Murphy shall not have access to the City fuel facility for purpose of obtaining fuel for his personal vehicle and shall not receive reimbursement or compensation based on mileage. The automobile allowance provided to Murphy during his employment with the City is intended to compensate him for both fuel consumption and mileage. If, however, the destination for a business trip exceeds a 125-mile radius from Hobbs, Murphy shall have the option of using a City-owned pool vehicle for the purposes of such business travel and the City shall supply the fuel for the City vehicle used in such trips, or he may be reimbursed for actual gasoline expenses related to such extended travel.

d. City agrees to budget and to pay for the subscriptions and professional dues for the I.C.M.A. for Murphy and other dues and subscriptions which are

J.J. Murphy

Mayor

necessary for his continuation and full participation in national, state and local associations and organizations which advance Murphy's professional growth and which further the various goals and objectives of the City.

e. City agrees to budget and to pay for the travel and subsistence expenses for Murphy's professional and official travel, meetings and occasions adequate to continue his professional development in his role as City Manager. It is anticipated by the parties that these expenses shall include the Annual Conference of the International City Manager's Association, the Annual Conference of the New Mexico Municipal League, and such other national, regional, state and local governmental groups in which City Manager serves as a member and which the Mayor approves.

f. City agrees to budget and to pay for the travel, subsistence and registration expenses of Murphy for such educational courses, institutes, and seminars that are necessary for his professional development and arise out of or are related to his duties performed on behalf of the City, which are approved in advance by the Mayor. Any expenses as defined in this paragraph and paid by the City for courses occurring after Murphy's last day of employment as City Manager, Murphy shall reimburse said expenses.

g. City recognizes that certain expenses of a generally job-affiliated nature are incurred by Murphy and hereby agrees to reimburse or to pay such expenses upon receipt of duly executed expense or petty cash vouchers, receipts, statements, subject to business and job related expenses having been properly budgeted prior to their being incurred by Murphy, and further subject to Murphy's compliance with all audit procedures of the City used to verify his claimed general expenses. As part of these reimbursements, City agrees to reimburse up to \$5,000 in legal fees, for purposes of this Agreement.

h. All payments of salary due to Murphy herein shall be subject to federal and state withholding taxes and such other sums, as City is required by law to withhold or deduct from Murphy's salary.

i. City shall provide PERA to Murphy as it does to any other City of Hobbs employee until July 2, 2018. Murphy shall maintain his previously established 401 (a) retirement plan and no additional contributions from the City shall be required.

j. Murphy shall be entitled to bereavement travel expenses, limited to airfare and car rental for himself and his family, if a significant illness or death occurs to an immediate family member, subject to a \$7,000.00 limit per year, as long as Murphy is employed as City Manager.

J.J. Murphy

Mayor

8. Indemnification, Insurance and Litigation Expenses: With respect to claims brought against the City and/or Murphy arising out of his work for the City, the parties agree as follows:

The City shall insure Murphy through its comprehensive public liability insurance coverage against any tort or professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of any alleged act of omission occurring in the course and scope of the performance of Murphy's duties for City, with the exception of actions brought on behalf of the City. City shall pay for any attorney's fees, court costs or other litigation related expenses incurred in connection with the defense of the claim, demand or lawsuit.

Beyond that required under Federal, State or Local Law, the City shall defend, save harmless and indemnify Murphy against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Murphy's work on behalf of the City or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act or omission involved willful or wanton conduct.

Legal representation provided by the City for Murphy shall extend until a final determination of the legal action including any appeals brought by either party. The City shall indemnify Murphy against any and all losses, damages, judgments, interest, settlements, fines, court costs and other reasonable costs and expenses of legal proceedings including attorney's fees, and any other liabilities incurred by or imposed on Murphy in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of his duties. Nothing in this Agreement is intended to alter or amend any of the rights or obligations found in the New Mexico Tort Claims Act and case-law interpreting same.

The City agrees to pay all reasonable litigation expenses of Murphy throughout the pendency of any litigation to which Murphy is a party, witness or advisor to the City; not matters between the parties. Such expense payments shall continue beyond Murphy's service to the City as long as litigation is still pending. In the event that the litigation continues after Murphy's service under this Agreement is complete, the City agrees to pay Murphy travel expenses when Murphy serves as a witness, advisor or consultant to the City regarding pending litigation. In the event Murphy is required to attend litigation related events in New Mexico, as a result of litigation not between the parties, and has to take time off at a new place of employment after his service to the City is complete, he shall be compensated his current hourly rate at up to eight (8) hours per day.

J.J. Murphy

Mayor

As additional consideration for this Agreement, the parties agree to release any claims that they may have against one another for events occurring prior to the Effective Date. Murphy agrees not to bring any claims against any employee, official or agent of the City for events that have arisen or occurred prior to the Effective Date of this Agreement. The City agrees not to bring any claims against Murphy for any events that have arisen or occurred prior to the Effective Date of this Agreement.

In the event either party incurs legal expenses to enforce any provision of this Agreement in a court of law, those expenses shall be borne by the party seeking enforcement during the pendency of any such action. However, the prevailing party in such a dispute will be entitled to recover legal expenses, including reasonable attorney's fees and costs, in addition to any other relief to which the prevailing party may be entitled.

9. Bonding: City shall bear the full cost of any fidelity or other bonds required of Murphy in his service to the City under any law or ordinance.

10. Termination:

a. It is expressly understood by the parties to this Agreement that Murphy continues his employment at the pleasure of the Hobbs City Commission. The City Commission may terminate his employment through a majority vote.

b. Transition services: As of June 1, 2017, or sooner if termination or resignation happens before that date, Murphy will transition to the position of Special Consultant to the Mayor/City Commission in order to aid in the orderly transition of City Management to a new City Manager. As Special Consultant, he will make every effort to continue to provide guidance on on-going personnel and city projects to the Mayor, any City Commissioner, and all staff.

c. Severance shall be paid to Murphy when he is separated from employment with the City, beginning at the time of separation. The City shall provide a minimum severance payment equal to one-year of salary at the current rate of pay. This severance shall be paid according to the bi-weekly pay schedule through at least July 2, 2018, with the pay adjusted if necessary to pay no more than the total severance amount until that date. If Murphy resigns as City Manager prior to, June 1, 2017, he will transition to Special Consultant thirty days after his resignation is submitted and his severance pay will be spread out so that the equivalent of one year of salary will be paid out biweekly through July 2, 2018.

After separation, Murphy shall also be compensated for all PTO accrued pursuant to paragraph 7b, above, as well as all paid holidays and military leave.

Until June 1, 2018, or for a minimum period of one year following separation from employment if he is terminated or resigns prior to June 1, 2017, City shall continue to pay for the following benefits:

1. Health insurance for Murphy and his dependents. This benefit shall cease at the time Murphy and his dependents are eligible for similar, in-network coverage, to ensure there is no lapse in coverage transitioning from City of Hobbs coverage to a new employer;
2. Life Insurance;
3. Short-term disability;
4. Car allowance; and
5. Any other available benefits, not including the benefits as set forth herein at paragraph 7. (d), (e), (f), (g), (j) and any gas allowance that may be allowable under 7. (c).

Murphy shall be entitled to use a City issued iPad and Laptop for purposes of communication during his time as Special Consultant. The City issued iPad and laptop shall be returned to City on or before July 2, 2018.

If Murphy is terminated because of a conviction of a felony, then City is not obligated to pay Severance under this section.

d. Resignation: In the event Murphy voluntarily resigns or retires from his position as City Manager prior to June 1, 2017, Murphy shall give City thirty (30) days written notice in advance, unless the parties otherwise agree.

11. No Reduction of Benefits: City shall not at any time during the term of this Agreement reduce the compensation, salary, or other benefits of Murphy, except to the degree of such a reduction across-the-board for all employees of the City.

12. Other Terms and Conditions of Employment:

a. The City Commission, in consultation with Murphy, shall fix any such other reasonable terms and conditions of employment, as it may determine from time to time, relating to the performance of Murphy, provided such terms and conditions are not inconsistent or in conflict with the provisions of this agreement,

J.J. Murphy

Mayor

the City Charter, the Municipal Code of City or any other law. Any amendment to this agreement shall only be effective when it is in writing and executed and approved by both parties hereto. This Employment Agreement may only be modified or amended through a written agreement signed by Murphy and the Mayor of the City of Hobbs and approved at a public meeting by the City Commission.

b. All provisions, rules and regulations of the City of Hobbs relating to retirement, pension system contributions, holidays, and other benefits and working conditions as they now exist or hereafter may be amended, also apply to Murphy as they would to other employees of the City, in addition to the benefits enumerated specifically for the benefit of City Manager, except as otherwise provided for herein.

c. Murphy shall be entitled to military reserve leave time pursuant to federal and state law and the City of Hobbs Personnel Policies. In the event Murphy's military reserve leave time is not sufficient to cover time Murphy is away on reserve duty, Murphy shall utilize his paid time off. Any time above military reserve leave time and paid time off shall be treated as leave without pay.

d. City, by and through its City Commission, shall conduct an annual performance evaluation for Murphy. If his performance evaluation is satisfactory, he will be entitled to any increase in salary as all other City of Hobbs employees may be entitled without modifying this Amended Employment Agreement.

13. General Provisions:

a. This employment contract represents the final and entire agreement and understanding between the parties and any representations, negotiations, offers, proposals, promises or agreements are intended by the parties to be integrated and merged herein and are to be superseded by this agreement.

b. This agreement shall be binding upon and inure to the benefit of the heirs at law and executors of J.J. Murphy.

c. If any provision, or any portion thereof, contained in this agreement is held unconstitutional, invalid or unenforceable by a court of competent jurisdiction, the remainder of this agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

d. This agreement is intended to be governed by and construed in accordance with New Mexico law.

J.J. Murphy

Mayor

IN WITNESS WHEREOF, the City of Hobbs has caused this agreement to be signed and executed in its behalf by its Mayor, and duly attested by its Clerk, and approved as to form by its City Attorney, and J.J. Murphy has signed and executed this agreement, the day and year first above written.

CITY OF HOBBS, NEW MEXICO
a municipal corporation

CITY MANAGER

SAM D. COBB, Mayor

J. J. MURPHY

ATTEST:

JAN FLETCHER, City Clerk

APPROVED AS TO FORM:

MICHAEL H. STONE, City Attorney

J.J. Murphy

Mayor