

REQUEST FOR COUNCIL ACTION

SUBJECT: Approve Resolution 15- *178* , confirming the City Council's appointment of Mark R. Palesh as the City Manager; authorizing the Mayor to execute an Employment Agreement, and administered the Oath of Office

SUMMARY: Approve a Resolution confirming the appointment of a City Manager; approve an Employment Agreement between the City of West Jordan and Mark R. Palesh.

FISCAL IMPACT: The fiscal impact is the employee salary and benefits which are in the current Fiscal Year budget FY 2015-2016.

STAFF RECOMMENDATION:

None

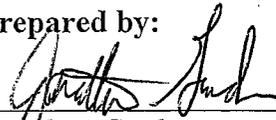
MOTION RECOMMENDED:

"I move to approve Resolution 15- *178* , confirming the appointment of Mark R. Palesh as City Manager; and authorizing the Mayor to execute an Employment Agreement between the City of West Jordan and Mark R. Palesh."

ROLL CALL VOTE REQUIRED:

✓

Prepared by:



Jonathan Gardner
Human Resource Manager

BACKGROUND DISCUSSION:

The City Council completed an extensive search for an individual to serve as City Manager for West Jordan. Wednesday, August 26, 2015, the City Council held a public meeting to interview the top four candidates. After conducting the hour-long public interview for each candidate, and then held one on one interviews with Councilmembers', the Council held a closed session to deliberate.

The City Council desires to appoint Mark R. Palesh as the City Manager, and approve the employment agreement between the City of West Jordan and Mark R. Palesh.

THE CITY OF WEST JORDAN, UTAH

A Municipal Corporation

RESOLUTION NO. 15-178

**CONFIRMING THE CITY COUNCIL'S APPOINTMENT
OF MARK R. PALESH AS THE CITY MANAGER AND
APPROVING AN EMPLOYMENT AGREEMENT**

WHEREAS, Utah State Code, Section 10-3b-103(6)(a)(iii), authorizes the City Council to appoint an individual to serve as City Manager; and

WHEREAS, the City Council desires to appoint an individual that possesses the abilities, integrity and prior experience relating to the duties of the office, including but not limited to abilities in public administration and executive leadership, and such managerial capabilities as in the opinion of the City Council befit him to provide professional direction to the executive department of the City; and

WHEREAS, the City Council desires to appoint Mark R. Palesh as the City Manager; and

WHEREAS, the City Council of the City of West Jordan has reviewed an Employment Agreement (hereinafter "Employment Agreement") between the City of West Jordan and Mark R. Palesh; and

WHEREAS, the City Council of the City of West Jordan desires that the Employment Agreement be executed by the Mayor; and

WHEREAS, the Mayor is authorized to execute this amendment pursuant to Utah Code Annotated §10-3-1223,

NOW, THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF WEST JORDAN, UTAH:

- Section 1. The City Council here by appoints Mark R. Palesh to serve as City Manager for the City of West Jordan, effective September 10, 2015.
- Section 2. The Mayor is hereby authorized and directed to execute an Employment Agreement between the City of West Jordan and City Manager Mark R. Palesh.
- Section 2. This Resolution shall take effect September 10, 2015.

Adopted by the City Council of West Jordan, Utah, this 9th day of September 2015.

KIM V. ROLFE
Mayor

ATTEST:

MELANIE S. BRIGGS, MMC
City Clerk

Voting by the City Council

"AYE"

"NAY"

- Council Member Jeff Haaga
- Council Member Judy Hansen
- Council Member Chris McConnehey
- Council Member Chad Nichols
- Council Member Sophie Rice
- Council Member Ben Southworth
- Mayor Kim V. Rolfe

**CITY OF WEST JORDAN
CITY MANAGER EMPLOYMENT AGREEMENT**

THIS EMPLOYMENT AGREEMENT (this "Agreement") is entered into this _____ day of _____, 2015, by and between the City of West Jordan, Utah, a municipal corporation ("City"), and Mark R. Palesh ("Employee"), an individual, for employment as city manager for the City of West Jordan. The City and Employee are sometimes referred to herein individually as Party and collectively as Parties.

RECITALS

WHEREAS, the City is a political subdivision and municipal corporation of the State of Utah; and

WHEREAS, Employee is an individual who has education, training and experience in municipal government management; and

WHEREAS, the City desires to appoint Employee as the city manager of the City of West Jordan, Utah; and

WHEREAS, Employee desires to be employed as the city manager of the City; and

WHEREAS, the Parties desire by this Agreement to provide for the terms and conditions of the employment and the benefits to be provided to Employee by the City.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the sufficiency and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

1. **EMPLOYMENT.** The City hereby employs Employee as City Manager to perform all functions and duties as required by and in accordance with state law, federal law, the West Jordan City Code, including Title 1, Chapter 7, other policies, rules and regulations adopted by the City and as amended from time to time, and to perform other legally permissible and proper duties and functions as City Manager.
2. **BEST EFFORTS.** Employee hereby agrees to perform such functions and duties on a full-time basis (i.e. working at least 40 hours per week), to the best of his ability, and in an efficient and competent manner.
3. **BEGINNING WORK DATE.** Employee shall report for work on September 10, 2015.
4. **TERM.** Subject to Paragraph 10 below, this Agreement shall become effective as of the Effective Date and shall remain in full force and effect through September 10, 2016. This

Agreement may be subject to a renewal or a successor agreement if agreeable to both Parties. Any renewal of this Agreement or any subsequent successor agreement shall be negotiated and approved prior to the termination date of this Agreement. The City's decision not to renew this Agreement shall constitute a termination of this Agreement and the severance terms of Paragraph 10 below shall apply.

5. **COMPENSATION.** The City agrees to pay Employee an annual salary of one hundred sixty thousand dollars (\$160,000.00). The annual salary is payable in installments at the same time that the other management employees of the City are paid.

6. **BENEFITS.** The City agrees to provide Employee with the benefits equal to those provided to other senior management employees of the City including, but not limited to, the following:

- a. Disability and Life Insurance;
- b. Medical insurance or medical cash out in lieu of health insurance up to two thousand four hundred dollars (\$2,400) annually;
- c. Vacation leave in accordance with state law and City policies;
- d. Executive leave. Employee shall receive eighty (80) hours of executive leave when Employee reports for duty on September 10, 2015. Thereafter, Employee shall receive eighty (80) hours of executive leave on January 1 of each year and eighty (80) hours of executive leave on July 1 of each year for a total annual executive leave of one hundred sixty (160) hours;
- e. Sick leave in accordance with state law and City policies;
- f. Automobile allowance up to five thousand five hundred ninety dollars (\$5,590) annually;
- g. Retirement and deferred compensation.

7. **RELOCATION EXPENSES.** As required by City Code, Employee agrees, within one hundred eighty (180) days of commencement of employment, to establish and maintain residency within the corporate limits of the City of West Jordan during the term of his employment with the City. The City shall reimburse Employee, upon presentation of receipts, for the direct costs of moving his household goods and for terminating his current apartment lease early. Such reimbursements shall not exceed six thousand dollars (\$6,000) without prior authorization of the City Council.

8. **PROFESSIONAL PARTICIPATION AND DEVELOPMENT.**

- a. The City shall pay for professional dues and subscriptions of Employee that are necessary for continuation and full participation in national, regional, state and local associations and organizations necessary and desirable for Employee's

continued professional participation and development and in the interest of the City.

- b. The City shall pay for travel and subsistence expenses of Employee for professional and official travel, meetings and occasions to adequately continue the professional development of Employee and to pursue necessary official functions of the City including, but not limited to, the ICMA Annual Conference, the Utah City Managers Association conferences, and such other national, regional, state, and local government groups and committees in which Employee serves as a member or resource.
- c. The costs of memberships and training/travel to be allowed by City Council shall be determined during the annual budget process at Council's sole discretion, and the actual costs shall not exceed the amount budgeted without prior authorization by the Council.

9. TERMINATION. Employee is an "at-will" employee and may be terminated at any time with or without cause by the City. For purposes of this Agreement, termination shall occur when a majority of the City's governing body votes to terminate the Employee at a duly authorized public meeting.

10. SEVERANCE. Upon termination by the City, except upon removal for proven malfeasance or malfeasance in office, Employee shall be paid the unpaid balance of his salary due to the date of removal, together with his salary and benefits at the same rate for the next six (6) calendar months following the date of his removal in accordance with WEST JORDAN CITY CODE § 1-7D-7. The Employee shall also be compensated for accrued sick leave, vacation time, earned but unpaid holidays, and executive leave in accordance with City policies applicable to other City employees. This severance, salary and leave compensation may be paid in a lump sum or over a six (6) month period, at the City Council's sole discretion.

11. INDEMNIFICATION. The City shall defend, hold harmless and indemnify the Employee against any action brought against him arising from an act or omission occurring during the performance of Employee's duties, within the scope of Employee's employment or under color of authority in accordance with and subject to all conditions set forth in the Utah Governmental Immunity Act, UTAH CODE ANN. §§ 63G-7-202 and 63G-7-902 (1953, as amended), West Jordan City Code § 3-2-3, and any other applicable provisions of federal, state and local law. To the extent The City's duty to defend, hold harmless and indemnify is invoked pursuant to this provision, the City shall have the exclusive right to compromise or settle any claim or suit and Employee shall not have a veto authority over any such settlement or compromise.

12. RESIGNATION. If Employee voluntarily resigns from his position with the CITY, the Employee shall provide a minimum of forty-five (45) days' written notice unless the Parties agree otherwise.

13. PERFORMANCE EVALUATIONS. The City shall review the performance of the Employee on an annual basis subject to a process, form, criteria, and format for the evaluation, which shall be mutually agreed upon by the City and Employee. The process, at a minimum, shall include the opportunity for both parties to: (a) prepare a written evaluation; (b) meet and discuss the evaluation; and (c) present a written summary of the evaluation results. The final written evaluation should be completed and delivered to the Employee within thirty (30) days after the evaluation meeting. The City may elect, at its sole discretion, to increase salary and benefits of Employee based on the annual evaluation.

14. BONDING. The City shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

15. NOTICES. Notice pursuant to this Agreement shall be given by depositing in the custody of the United States Postal Service, postage prepaid, addressed as follows:

CITY: Mayor of the City of West Jordan
8000 South Redwood Road
West Jordan, Utah 84088

EMPLOYEE: Mark R. Palesh
7328 S. Union Creek Way #2-M
Midvale, UT 84047

Alternatively, notice required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice in the course of transmission in the United States Postal Service.

16. WAIVER AND MODIFICATIONS. Neither the City nor the Employee may waive any of the terms or conditions of this Agreement or agree to any amendment or modification to this Agreement except by agreement between the City and Employee by writing executed in the same manner as this Agreement during the life of the Agreement. Such amendments shall be incorporated and made a part of this Agreement. No amendment or modification to this Agreement shall be binding unless in writing executed by both Parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof, nor shall any waiver constitute a continuing waiver unless otherwise expressly provided.

17. ENTIRE AGREEMENT. This Agreement sets forth and establishes the entire understanding between the City and the Employee relating to the employment of the Employee by the City. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement.

18. **BINDING AGREEMENT.** This Agreement shall be binding on the City and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.

19. **ATTORNEYS' FEES AND COSTS.** In the event that any litigation results from or arises out of this Agreement or the performance of any of the terms included herein (including, but not limited to, any formal or informal adjudicative proceedings or negotiations in connection with this Agreement), the City and the Employee agree to reimburse the prevailing party's reasonable attorney's fees and court costs as determined by the court, in addition to any other relief to which the prevailing party may be entitled.

20. **SEVERABILITY.** The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the in valid provision.

21. **GOVERNING LAW.** This Agreement and all matters pertaining hereto (including its interpretation, application, validity, performance, and breach), shall be governed, construed, and enforced in accordance with the laws of the State of Utah. The City and Employee herein agree to submit to the personal jurisdiction and venue of a court of subject matter jurisdiction located in Salt Lake County, State of Utah.

22. **EFFECTIVE DATE.** This Agreement shall become effective immediately upon execution by both parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the respective dates set forth below.

CITY OF WEST JORDAN

BY: _____
Mayor Kim V. Rolfe

Date: _____

EMPLOYEE

BY: _____
Mark R. Palesh

Date: _____