

**PROVIDENCE CITY COUNCIL
WORKSHOP AGENDA - AMENDED
July 22, 2019 6:30 PM**

Providence City Office Building, 164 North Gateway Drive, Providence UT

The Providence City Council will consider one item of business.

- The Council will consider for adoption a Resolution 025-2019, a resolution awarding a bid for the Uptown Park Sports Lighting project.

The Providence City Council will hold a workshop to discuss proposed code amendments creating a city manager position. The Council will also discuss an employment agreement and duties matrix. Anyone interested is invited to attend. This workshop will be held in the main floor class room.

Proposed amendments to the following Providence City Code sections:

- 1-6-4:B. Mayor in Six-Member Council
- 1-6-6: Council in Six-Member Council
- 1-7-1: Creating Offices; Filling Vacancies
- 1-7-9: Supervision
- 1-12 City Manager

Agenda posted by S Bankhead the 18 day of July 2019.

Amended agenda posted by S Bankhead the 20 day of July 2019.



Skarlet Bankhead
City Recorder

If you are disabled and/or need assistance to attend council meeting, please call 752-9441 before 5:00 p.m. on the day of the meeting.

Pursuant to Utah Code 52-4-207 Electronic Meetings – Authorization – Requirements the following notice is hereby given:

- Providence City Ordinance Modification 015-2006, adopted 11/14/2006, allows City Council member(s) to attend by teleconference.
- The anchor location for this meeting is: Providence City Office Building, 164 North Gateway Drive, Providence, UT.
- Member(s) will be connected to the electronic meeting by teleconference.

The Providence City Council will consider one item of business.

- The Council will consider for adoption a Resolution 025-2019, a resolution awarding a bid for the Uptown Park Sports Lighting project.

Resolution 025-2019

A RESOLUTION AWARDING THE BID FOR THE PROVIDENCE CITY UPTOWN PARK SPORTS LIGHTING PROJECT.

WHEREAS UCA § 10-7-717 Purpose of resolutions, states, "Unless otherwise required by law, the governing body may exercise all administrative powers by resolution . . ."

WHEREAS Providence City desires to provide for the health, safety, and welfare, and promote the prosperity, peace and good order, comfort, convenience, and aesthetics of the City and its present and future inhabitants and businesses.

WHEREAS Providence City desires to improve the Uptown Park (100 East 100 North) sports lighting:

- Providence City solicited bids in accordance with the Providence City Procurement Policy 5.3 Formal Bids and Proposals to Purchase Exceeding \$25,000.
- The invitation to bid was published in the Herald Journal on July 3, 5, and 6, 2019.
- This is a RAPZ funded project. The City was awarded RAPZ allocations as follows: Population 2013 – 2018: \$71,000; 2017 Uptown Park: \$130,000; 2018 Uptown Park: \$30,000; 2019 Uptown Park: \$40,000; for a total of \$271,000. To date the City has spent \$179,594.86 toward the project, leaving a balance of \$91,405.14.
- Providence City received one bid:
 - BCM, Inc. \$68,421.00
- Providence City staff has reviewed the bids and recommend awarding the bid to BCM, Inc.

THEREFORE be it resolved by the Providence City Council:

- The bid for the Providence City Uptown Park Sports Lighting Project shall be awarded to BCM, Inc. for the amount of \$68,421.00
- The Mayor, Public Works Director and City Recorder are hereby authorized to execute the associated contract documents.
- This resolution shall become effective immediately upon passage.

Passed by vote of the Providence City Council this 22 day of July 2019.

Council Vote:

Allen, Kirk	() Yes	() No	() Excused	() Abstained	() Absent
Eck, Kristina	() Yes	() No	() Excused	() Abstained	() Absent
Fresz, Brent	() Yes	() No	() Excused	() Abstained	() Absent
Giles, Dennis	() Yes	() No	() Excused	() Abstained	() Absent
Sneddon, Roy	() Yes	() No	() Excused	() Abstained	() Absent

Providence City

John Drew, Mayor

Attest:

Skarlet Bankhead, City Recorder

ARTICLE 5 – BASIS OF BID

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

Item No.	Description	Unit	Estimated Quantity	Bid Unit Price	Bid Price
1	Mobilization	L.S.	1	10,263.15	10,263.15
2	Demolition	L.S.	1	13,721.00	13,721.00
2	Install Sports Lighting	L.S.	1	39,620.85	39,620.85
3	Surface & Landscape Restoration	L.S.	1	4,816	4,816
					\$68,421.00

TOTAL BASE BID (words): SIXTY EIGHT THOUSAND FOUR HUNDRED TWENTY ONE DOLLARS

Bidder acknowledges that (1) each Bid Unit Price includes an amount considered by Bidder to be adequate to cover Contractor's overhead and profit for each separately identified item, and (2) estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all unit price Bid items will be based on actual quantities, determined as provided in the Contract Documents. Owner reserves the right to increase and/or decrease quantities at stated unit price and/or eliminate bid items by up to 100% without adjustment to other bid items.

ARTICLE 6 – TIME OF COMPLETION

- 6.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.
- 6.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

ARTICLE 7 – ATTACHMENTS TO THIS BID

- 7.01 The following documents are submitted with and made a condition of this Bid:
- A. Required Bid security;
 - B. Evidence of authority to do business in the state of the Project; or a written covenant to obtain such license within the time for acceptance of Bids;
 - C. Contractor's License No.: 11234341-5501 [or] Evidence of Bidder's ability to obtain a State Contractor's License and a covenant by Bidder to obtain said license within the time for acceptance of Bids;

ARTICLE 8 – DEFINED TERMS

- 8.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

ARTICLE 9 – BID SUBMITTAL

BIDDER: *[Indicate correct name of bidding entity]*

BCM, Inc.

By:
[Signature]

[Signature]

[Printed name]

BRANDON C. MARTENSON

(If Bidder is a corporation, a limited liability company, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:
[Signature]

[Signature]

[Printed name]

BRANDON C. MARTENSON

Title:

PRES.

Submittal Date:

7/17/19

Address for giving notices:

110 N. 400 E.

PROVIDENCE UT 84332

Telephone Number:

435 757 6500

Fax Number:

Contact Name and e-mail
address:

MORTCORP@gmail.com (BRANDON)

Bidder's License No.:

11234341 - 5501

(where applicable)

END OF DOCUMENT

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The Providence City Council will hold a workshop to discuss proposed code amendments creating a city manager position. The Council will also discuss an employment agreement and duties matrix. Anyone interested is invited to attend. This workshop will be held in the main floor class room.

Proposed amendments to the following Providence City Code sections:

- 1-6-4:B. Mayor in Six-Member Council
- 1-6-6: Council in Six-Member Council
- 1-7-1: Creating Offices; Filling Vacancies
- 1-7-9: Supervision
- 1-12 City Manager

CURRENT CITY CODE

1-6-4 Mayor In Six-Member Council

- A. The mayor in a six-member council is a nonvoting member of the council, except as follows:
1. On each matter for which there is a tie vote of the other council members present at a council meeting; or
 2. When the council is voting on:
 - a. Whether to appoint or dismiss a municipal manager; or
 - b. An ordinance that enlarges or restricts the mayor's powers, duties, or functions.
- B. The Mayor:
1. Is the chair of the council and presides at all council meetings;
 2. Exercises ceremonial functions for the city;
 3. May not veto an ordinance, tax levy, or appropriation passed by the council;
 4. Except as modified by ordinance under UCA 10-3b-303(2), has the powers and duties described in UCA 10-3b-104; and
 5. May, within budget constraints, appoint one or more administrative assistants to the mayor.

1-6-6 Council In Six-Member Council

The council is the legislative body of the municipality. The council exercises the legislative powers and performs the legislative duties and function of the municipality; and other duties in accordance v UCA 10-3b-105.

1-7-1 Creating Offices; Filing Vacancies

- A. **Offices Created By Council:** The City Council may create any office deemed necessary for the government of the City and provide for filling vacancies in elective and appointive offices.
- B. **Mayor to Appoint and Fill Vacancies:** The Mayor, with the advice and consent of the City Council, may appoint and fill vacancies in all offices provided for by law or ordinance.
- C. **Continuation in Office:** All appointed officers shall continue in office until their successors are appointed and qualified.

(1998 Code)

1-7-9 Supervision

The Mayor shall supervise the official conduct of all officers of the City and investigate or cause to be investigated and present any complaint to the City Council, together with the results of the investigation, at the next regular meeting of the City Council after the complaint is received by him.

(1977 Code 3-623)

Chapter 1-12 City Manager (Repealed)

ORDINANCE DRAFT

Proposed Ordinance Changes

Chapter 6, 1-6-4B, The Mayor:

This is deleted:

- ~~4. Except as modified by ordinance under UCA 10-3b-303(2), has the powers and duties described in UCA 10-3b-104; and~~
- ~~5. May, within budget constraints, appoint one or more administrative assistants to the mayor.~~

This is added:

4. Performs all duties prescribed by law, resolution or ordinance;
5. Ensures that all the laws, ordinances and resolutions are faithfully executed and observed;
6. Reports to the city council the condition of the city and recommend for city council consideration any measures that the mayor considers to be in the best interests of the city;
7. When necessary, calls on the residents of the city over the age of twenty one (21) years to assist in enforcing the laws of the state and ordinances of the city;
8. Appoints, with the advice and consent of the city council, persons to fill vacancies on commissions or committees of the city, unless otherwise delegated to the city manager by ordinance;
9. Signs all city ordinances and resolutions, and the mayor is further hereby authorized to sign his name officially for and in behalf of the city to all deeds, bonds, bills, notes, contracts, leases and other writings to which the city is a party, when so directed by the city council.

Proposed Ordinance Changes

Chapter 6, 1-6-6, Council in A Six-Member Council

This section is added:

The Council May:

1. Pass all ordinances and rules and make all regulations not repugnant to law necessary for carrying into effect or discharging all powers and duties conferred by this chapter, and as are necessary and proper to provide for the safety and preserve the health, and promote the prosperity, improve the morals, peace and good order, comfort, and convenience of the city and its inhabitants, and for the protection of property in the city.
2. Adopt rules and regulations, not inconsistent with statute, for the efficient administration, organization, operation, conduct, and business of the municipality;
3. Prescribe by resolution additional duties, powers, and responsibilities for any elected or appointed municipal official, unless prohibited by statute;
4. Require by ordinance that any or all appointed officers reside in the municipality;
5. Create any office that the council considers necessary for the government of the municipality;
6. Provide for filling a vacancy in an elective or appointive office;
7. Perform any function specifically provided for by statute or necessarily implied by law;
8. Enforce obedience to the ordinances with fines or penalties in accordance with UCA 10-3-703.
9. Exercise any executive or administrative power and perform or supervise the performance of any executive or administrative duty or function that has not been given to the Mayor as set forth in UCA 10-3b-303.

Proposed Ordinance Changes

Chapter 7, 1-7-1 Creating Offices; Filling Vacancies:

This section is deleted:

~~B. Mayor to Appoint and Fill Vacancies: The Mayor, with the advice and consent of the City Council, may appoint and fill vacancies in all offices provided for by law or ordinance.~~

This moves up and becomes B:

C. Continuation in Office

Proposed Ordinance Changes

Chapter 7, 1-7-9 Supervision:

This section is deleted:

~~1-7-9 SUPERVISION: The Mayor shall supervise the official conduct of all officers of the City and investigate or cause to be investigated and present any complaint to the City Council, together with the results of the investigation, at the next regular meeting of the City Council after the complaint is received by him. (1977 Code 3-623)~~

Proposed Ordinance Changes

Chapter 12, City Manager

These sections are deleted:

~~SECTION 1. Title 1 Chapter 12 City Manager is repealed.~~

~~SECTION 2.~~

These sections are added:

- 1-12-1: Appointment
- 1-12-2 Term of Office
- 1-12-3 Residency
- 1-12-4 Compensation
- 1-12-5 Powers and Duties
- 1-12-6 Acting City Manager
- 1-12-7 Removal From Office
- 1-12-8 Employment Agreement
- 1-12-9 Resignation
- 1-12-10 Other Employment

There is hereby created in and for the city the office of city manager. The city manager shall be appointed by the governing body (city council) and shall serve at its pleasure.

1-12-1 APPOINTMENT:

The city manager shall be appointed by the city council (herein defined as the mayor and city council). The city council shall approve the employment contract entered into with the city manager and the mayor shall sign the approved employment contract on behalf of the city.

1-12-2 TERM OF OFFICE:

The city manager shall serve at the pleasure of the governing body. Except as otherwise provided and/or subject to the provisions of contract, any person serving as manager of the municipality under this article may be removed with or without cause by a majority vote of the governing body.

1-12-3 RESIDENCY:

Residency in the city at the time of appointment of a city manager shall not be required as a condition of appointment.

1-12-4 COMPENSATION:

The city manager shall receive such compensation as the city council shall, from time to time, determine. In addition, the city manager shall be reimbursed for all actual and necessary expenses incurred in the performance of official duties.

1-12-5 POWERS AND DUTIES:

Under the direction and control of the city council, the city manager shall be responsible for the efficient management of all administrative affairs of the city. In addition to the general powers as chief administrative officer, the city manager shall have the following powers, duties and obligations:

- (a) Enforcement: The city manager shall faithfully execute and enforce all applicable laws, ordinances, rules and regulations, and see that all franchises, leases, permits, contracts, licenses and privileges granted by the municipality are observed.
- (b) Authority For Employees: It shall be the duty of the city manager, and the city manager shall have the authority, to control, order and give directions to all heads of departments and to subordinate officers and employees of the city through their respective department heads.
- (c) Power Of Appointment And Removal: It shall be the duty of the city manager to appoint, remove, promote and demote any and all officers and employees of the city, subject to all applicable personnel ordinances, rules and regulations, except for the positions of city recorder, city treasurer, city attorney, city engineer, justice court judge and city department heads, which shall only be appointed, demoted or removed with the advice and consent of the city council.
- (d) Direct And Supervise Administration: It shall be the duty of the city manager to direct and supervise the administration of all departments, offices and agencies of the city, except as otherwise provided by law.
- (e) Administrative Reorganization Of Offices: It shall be the duty and responsibility of the city manager to conduct studies and implement such administrative reorganization of offices, positions or units under the city manager's direction as may be indicated in the interest of efficient, effective and economical conduct of the city's business.
- (f) Implement And Recommend Policies And Programs: The city manager shall carry out the policies and programs established by the city council. The city manager shall submit to the city council plans and programs relating to the development and needs of the city.
- (g) Policy Proposals: To propose plans and programs concerning the development, operation and needs of the city and submit such plans to the governing body to be approved and developed as policy.
- (h) Ordinances: The city manager shall recommend to the city council for adoption such measures and ordinances necessary for the efficient management of administrative affairs.
- (i) Council Meetings: It shall be the duty of the city manager to attend all meetings of the city council, unless excused therefrom by the mayor or the city council, and to take part in the discussions and to recommend matters for adoption by the city council, but without the right to vote.
- (j) Financial Reports: It shall be the duty of the city manager to keep the city council fully advised at all times as to the financial condition and needs of the city. The city manager shall prepare and submit monthly financial reports to the city council for their information and review.
- (k) Budget: The city manager shall prepare and submit the proposed annual budget and capital improvements program to the city council for their approval and in accordance with all state laws and regulations. The city manager shall serve as the city budget officer.
- (l) Expenditure Control And Purchasing: It shall be the duty of the city manager to manage all expenditures in accordance with state law and the city purchasing policy.
- (m) Investigations And Complaints: It shall be the duty of the city manager to make investigations into the affairs of the city, or any department or division thereof, and also any contract for the proper performance of any obligations of the city. Further, it shall be the duty of the city manager to investigate all complaints in relation to matters concerning the administration of the city government. The city manager shall examine and inspect the

books, records and official papers of any office, department, agency, board or commission of the city and make investigations and require reports from all personnel.

- (n) Property: To keep or cause to be kept a current inventory showing all real and personal property of the city and its location. The city manager shall be responsible for the care and custody of all such property, including equipment, buildings, parks and all other city property which is not by law assigned to some other officer or body for care and control.
- (o) Emergencies: The city manager shall notify the city council of any emergency that may arise in the city.
- (p) Additional Duties: It shall be the duty of the city manager to perform such other duties and exercise such other powers as may lawfully be delegated to the city manager from time to time by ordinance or resolution or other official action of the city council.

1-12-6 ACTING CITY MANAGER:

The city manager shall appoint, with the approval of the city council, an acting city manager to serve in the absence or temporary incapacity of the city manager. The acting city manager shall have all the powers and duties of the city manager, but shall consult with the mayor regarding decisions of major impact on the city. The mayor shall act as city manager in the event of absence or temporary incapacity of both the city manager and the acting city manager.

1-12-7 REMOVAL FROM OFFICE:

The removal of the city manager shall be effected only by a majority vote of the city council convened in a regular city council meeting, except that the city manager shall not be removed from office during, or within a period of, ninety (90) days after the date newly elected officials take office after a municipal election. The purpose of this provision is to allow any newly elected member of the city council to directly observe the actions and ability of the city manager to perform the duties described herein. After the expiration of the ninety (90) day period, the city manager may be removed from office. The city council may, without any particular showing of cause, remove the city manager from office. The city council's action shall be final.

1-12-8 EMPLOYMENT AGREEMENT:

Nothing in this chapter shall be construed as a limitation on the power or authority of the city council to enter into any supplemental agreement with the city manager delineating additional terms and conditions of employment not inconsistent with any provisions of this chapter.

1-12-9 RESIGNATION

Before voluntarily resigning from the position of city manager, the city manager shall give the city council at least thirty (30) days notice in writing of his or her intent to resign.

1-12-10 OTHER EMPLOYMENT

The city manager shall not accept any outside employment in addition to employment by the city without prior annual written approval of the city council.



Leaders at the Core of Better Communities

Sample Ordinance for Establishing a Manager's Position

Note: Adoption of the council-manager form of government by ordinance generally should be considered as a temporary arrangement pending adoption by referendum of a home-rule charter or the provisions of an optional state law. Some provisions of this suggested ordinance may need to be changed to reflect local custom, state law, or city charter.

AN ORDINANCE CREATING THE OFFICE OF CITY MANAGER IN THE CITY OF _____ AND PROVIDING FOR HIS/HER POWERS AND DUTIES.

BE IT ORDAINED by the city council of _____:

Section 1. Creation of Office. The office of city manager is hereby created.

Section 2. Appointment of City Manager. The city manager shall be appointed by majority vote of the city council for an indefinite term. The manager shall be chosen by the council solely on the basis of executive and administrative qualifications with special reference to actual experience in or knowledge of accepted practice in respect to the duties of the office hereinafter set forth. At the time of this appointment, the appointee need not be a resident of the city or state, but during the manager's tenure of office, shall reside within the city. No council member shall receive such appointment during the term for which the council member shall have been elected nor within one year after the expiration of the council member's term.

Section 3. Removal of the City Manager. The city council may remove the city manager at any time by a majority vote of its members. If requested, a public hearing shall be granted by the council within 30 days following notice of removal. During the interim, the council may suspend the manager from duty, but shall continue the manager's salary and, if the removal becomes final, shall pay said salary for six calendar months following final removal date.

Section 4. Power and Duties of the City Manager (As described for council-manager government in the *Model City Charter*, 8th ed.). The city manager shall be the chief executive officer of the city, responsible to the council for the management of all city affairs placed in the manager's charge by or under this charter. The city manager shall:

- (1) Appoint and suspend or remove all city employees and appointive administrative officers provided for by or under this charter, except as otherwise provided by law, this charter or personnel rules adopted pursuant to this charter. The city manager may authorize any administrative officer subject to the manager's direction and supervision to exercise these powers with respect to subordinates in that officer's department, office or agency;
- (2) Direct and supervise the administration of all departments, offices and agencies of the city, except as otherwise provided by this charter or by law;
- (3) Attend all city council meetings. The city manager shall have the right to take part in discussion but shall not vote;
- (4) See that all laws, provisions of this charter and acts of the city council, subject to enforcement by the city manager or by officers subject to the manager's direction and supervision, are faithfully executed;
- (5) Prepare and submit the annual budget and capital program to the city council, and implement the final budget approved by council to achieve the goals of the city;
- (6) Submit to the city council and make available to the public a complete report on the finances and administrative activities of the city as of the end of each fiscal year;
- (7) Make such other reports as the city council may require concerning operations;
- (8) Keep the city council fully advised as to the financial condition and future needs of the city;

- (9) Make recommendations to the city council concerning the affairs of the city and facilitate the work of the city council in developing policy;
- (10) Provide staff support services for the mayor and council members;
- (11) Assist the council to develop long term goals for the city and strategies to implement these goals;
- (12) Encourage and provide staff support for regional and intergovernmental cooperation;
- (13) Promote partnerships among council, staff, and citizens in developing public policy and building a sense of community; and
- (14) Perform such other duties as are specified in this charter or may be required by the city council.

Section 5. Council Not to Interfere with Appointments or Removals. Neither the council nor any of its members shall direct or request the appointment of any person to, or removal from, office by the city manager or any of the manager's subordinates, or in any manner take part in the appointment or removal of officers and employees in the administrative services of the city. Except for the purpose of inquiry, the council and its members shall deal with the administration solely through the city manager and neither the council nor any member thereof shall give orders to any subordinates of the city manager, either publicly or privately.

Section 6. Emergencies. In case of accident, disaster, or other circumstance creating a public emergency, the city manager may award contracts and make purchases for the purpose of meeting said emergency; but the manager shall file promptly with council a certificate showing such emergency and the necessity for such action, together with an itemized account of all expenditures.

Section 7. Bond. The city manager shall furnish a surety bond to be approved by the council, said bond to be conditioned on the faithful performance of all the manager's duties. The premium of the bond shall be paid by the city.

Section 8. Compensation. The city manager shall receive such compensation as the council shall fix from time to time by ordinance or resolution.

Section 9. Vacancy. Any vacancy in the office of the city manager shall be filled within 60 days after the effective date of such vacancy.

Section 10. Saving Clause. If any section, sub-section, or sentence, clause, or phrase of this ordinance is for any reason held invalid, such decision or decisions shall not affect the validity of the remaining portions of this ordinance. All ordinances of the city prescribing the duties of heads of departments shall remain in full force and effect except in so far as they conflict with the provisions of this ordinance in which case the provisions of this ordinance shall govern.

ARTICLE A. CITY MANAGER

1-6A-1: CREATED:

Pursuant to Utah Code Annotated section 10-3-830, the City hereby establishes a manager form of government, and hereby creates the Office of City Manager. (Ord. 875, 2-6-1996)

1-6A-2: APPOINTMENT:

The appointment of the person to be known as "City Manager" shall be made by the Governing Body. The Governing Body shall direct the manner in which a formal agreement of employment with the appointee shall be negotiated, including any special terms and conditions of employment. Once a formal employment agreement has been approved by the City Council, the Mayor shall sign the agreement on behalf of the City. (Ord. 875, 2-6-1996)

1-6A-3: TERM; REMOVAL:

The City Manager shall serve at the pleasure of the Governing Body, except that the Governing Body may employ the Manager for a term not to exceed three (3) years. The term of employment may be renewed at any time. Any person appointed to serve as City Manager of the City under this article may be removed, with or without cause, by a majority vote of the Governing Body¹. (Ord. 875, 2-6-1996; amd. 2001 Code)

1-6A-4: POWERS AND DUTIES:

Pursuant to the authority outlined in Utah Code Annotated section 10-3b-303, the powers, duties, authorities and obligations of the City Manager are as follows:

- A. The administrative powers, authority and duties are vested in the City Manager.
- B. The City Manager shall be the Chief Administrative Officer of the City to whom all employees of the City shall report. The City Manager shall be responsible to the Governing Body for the administration of all City affairs placed in the City Manager's charge.
- C. The City Manager, with the advice and consent of the Governing Body, shall appoint (subject to the exceptions on appointment outlined in section 1-6A-6 of this article) and when deemed necessary, she/he may discipline, suspend or terminate all City personnel. The City Manager may authorize any administrative official who is subject to the City Manager's direction and supervision to exercise these powers with respect to subordinates in that official's department, office or agency.

- D. The City Manager shall attend meetings of the City Council, with the right to take part in discussion, but not to vote; the City Manager shall also recommend to the City Council for adoption such measures as the Manager may deem necessary or expedient. (Ord. 13-02, 2-5-2013, eff. 2-5-2013)
- E. 1. The City Manager shall prepare and submit the annual budget and capital improvements program to the City Council; the City Manager shall also keep the City Council advised as to the financial condition and needs of the City.
2. The City Manager shall cause to be published a notice or link to the notice required by Utah Code section 10-6-114 on the home page of the website of the City, beginning at least seven (7) days before the day of the public hearing and until the public hearing takes place. (Ord. 17-15, 6-20-2017, eff. 6-20-2017)
- F. The City Manager shall notify the Governing Body of any emergency existing in any department under the Manager's supervision and report a proposed resolution thereof.
- G. The City Manager shall perform such other duties as may be required of the Manager by this Code or by the City Council through ordinance or resolution.
- H. The City Manager, with the advice and consent of the Governing Body, may designate an assistant who shall exercise the powers and perform the duties of the City Manager during the Manager's temporary absence.
- I. The City Manager shall carry out the policies and programs established by the City Council.
- J. The City Manager may, at any reasonable time, examine and inspect the books, papers, records or documents of the City or of any officer, employee or agent of the City.
- K. The City Manager shall execute contracts and agreements on behalf of the City, provided said contracts or agreements are in furtherance of matters approved in the budget or as otherwise authorized by the Governing Body.
- L. The City Manager shall perform the City Manager's responsibilities in accordance with the City's Personnel and Policy Manual and shall promulgate policies and procedures for the efficient operation of the City. (Ord. 13-02, 2-5-2013, eff. 2-5-2013)

1-6A-5: LEGISLATIVE POWERS, OFFICIAL POSITION NOT DELEGATED:

- A. Role Of City Council: The City Council shall pass all resolutions, ordinances, appropriate funds, adopt an annual budget, set all mill levies or taxes, and perform all duties that may be required of it by law.

- B. Role Of Mayor: Pursuant to the authority outlined in Utah Code Annotated sections 10-3b-104 and 10-3b-302, as amended, the legislative and judicial powers of the Mayor, his position as Chairman of the Governing Body, and any ex officio position that he holds, are reserved to his office. (Ord. 13-02, 2-5-2013, eff. 2-5-2013)

1-6A-6: DEPARTMENT HEADS AND APPOINTIVE OFFICERS; POWER LIMITED:

The City Manager, after consultation with the Governing Body, shall have appointive, disciplinary and discharge powers over all department heads and appointive officials, subject to the following limitations:

- A. The Offices of City Recorder and City Treasurer shall be appointed by the Mayor, with the advice and consent of the Governing Body, pursuant to Utah Code Annotated section 10-3-916.
- B. The Offices of Police Chief and Fire Chief shall be appointed by the Mayor, with the advice and consent of the Governing Body. The Police Chief and Fire Chief shall be under the direction, control and supervision of the City Manager. (Ord. 13-02, 2-5-2013, eff. 2-5-2013)

Proposed Ordinance Changes

Chapter 6, 1-6-4B, The Mayor:

This is deleted:

- ~~4. Except as modified by ordinance under UCA 10-3b-303(2), has the powers and duties described in UCA 10-3b-104; and~~
- ~~5. May, within budget constraints, appoint one or more administrative assistants to the mayor.~~

This is added:

4. Performs all duties prescribed by law, resolution or ordinance;
5. Ensures that all the laws, ordinances and resolutions are faithfully executed and observed;
6. Reports to the city council the condition of the city and recommend for city council consideration any measures that the mayor considers to be in the best interests of the city;
7. When necessary, calls on the residents of the city over the age of twenty one (21) years to assist in enforcing the laws of the state and ordinances of the city;
8. Appoints, with the advice and consent of the city council, persons to fill vacancies on commissions or committees of the city, unless otherwise delegated to the city manager by ordinance;
9. Signs all city ordinances and resolutions, and the mayor is further hereby authorized to sign his name officially for and in behalf of the city to all deeds, bonds, bills, notes, contracts, leases and other writings to which the city is a party, when so directed by the city council.

Proposed Ordinance Changes

Chapter 6, 1-6-6, Council in A Six-Member Council

This section is added:

The Council May:

1. Pass all ordinances and rules and make all regulations not repugnant to law necessary for carrying into effect or discharging all powers and duties conferred by this chapter, and as are necessary and proper to provide for the safety and preserve the health, and promote the prosperity, improve the morals, peace and good order, comfort, and convenience of the city and its inhabitants, and for the protection of property in the city.
2. Adopt rules and regulations, not inconsistent with statute, for the efficient administration, organization, operation, conduct, and business of the municipality;
3. Prescribe by resolution additional duties, powers, and responsibilities for any elected or appointed municipal official, unless prohibited by statute;
4. Require by ordinance that any or all appointed officers reside in the municipality;
5. Create any office that the council considers necessary for the government of the municipality;
6. Provide for filling a vacancy in an elective or appointive office;
7. Perform any function specifically provided for by statute or necessarily implied by law;
8. Enforce obedience to the ordinances with fines or penalties in accordance with UCA 10-3-703.
9. Exercise any executive or administrative power and perform or supervise the performance of any executive or administrative duty or function that has not been given to the Mayor as set forth in UCA 10-3b-303.

Proposed Ordinance Changes

Chapter 7, 1-7-1 Creating Offices; Filling Vacancies:

This section is deleted:

~~B. Mayor to Appoint and Fill Vacancies: The Mayor, with the advice and consent of the City Council, may appoint and fill vacancies in all offices provided for by law or ordinance.~~

This moves up and becomes B:

C. Continuation in Office

Proposed Ordinance Changes

Chapter 7, 1-7-9 Supervision:

This section is deleted:

~~1-7-9 SUPERVISION: The Mayor shall supervise the official conduct of all officers of the City and investigate or cause to be investigated and present any complaint to the City Council, together with the results of the investigation, at the next regular meeting of the City Council after the complaint is received by him. (1977 Code 3-623)~~

DRAFT

Proposed Ordinance Changes

Chapter 12, City Manager

These sections are deleted:

~~SECTION 1. Title 1 Chapter 12 City Manager is repealed.~~

~~SECTION 2.~~

These sections are added:

- 1-12-1: Appointment
- 1-12-2 Term of Office
- 1-12-3 Residency
- 1-12-4 Compensation
- 1-12-5 Powers and Duties
- 1-12-6 Acting City Manager
- 1-12-7 Removal From Office
- 1-12-8 Employment Agreement
- 1-12-9 Resignation
- 1-12-10 Other Employment

There is hereby created in and for the city the office of city manager. The city manager shall be appointed by the governing body (city council) and shall serve at its pleasure.

1-12-1 APPOINTMENT:

The city manager shall be appointed by the city council (herein defined as the mayor and city council). The city council shall approve the employment contract entered into with the city manager and the mayor shall sign the approved employment contract on behalf of the city.

1-12-2 TERM OF OFFICE:

The city manager shall serve at the pleasure of the governing body. Except as otherwise provided and/or subject to the provisions of contract, any person serving as manager of the municipality under this article may be removed with or without cause by a majority vote of the governing body.

1-12-3 RESIDENCY:

Residency in the city at the time of appointment of a city manager shall not be required as a condition of appointment.

1-12-4 COMPENSATION:

The city manager shall receive such compensation as the city council shall, from time to time, determine. In addition, the city manager shall be reimbursed for all actual and necessary expenses incurred in the performance of official duties.

1-12-5 POWERS AND DUTIES:

Under the direction and control of the city council, the city manager shall be responsible for the efficient management of all administrative affairs of the city. In addition to the general powers as chief administrative officer, the city manager shall have the following powers, duties and obligations:

- (a) **Enforcement:** The city manager shall faithfully execute and enforce all applicable laws, ordinances, rules and regulations, and see that all franchises, leases, permits, contracts, licenses and privileges granted by the municipality are observed.
- (b) **Authority For Employees:** It shall be the duty of the city manager, and the city manager shall have the authority, to control, order and give directions to all heads of departments and to subordinate officers and employees of the city through their respective department heads.
- (c) **Power Of Appointment And Removal:** It shall be the duty of the city manager to appoint, remove, promote and demote any and all officers and employees of the city, subject to all applicable personnel ordinances, rules and regulations, except for the positions of city recorder, city treasurer, city attorney, city engineer, justice court judge and city department heads, which shall only be appointed, demoted or removed with the advice and consent of the city council.
- (d) **Direct And Supervise Administration:** It shall be the duty of the city manager to direct and supervise the administration of all departments, offices and agencies of the city, except as otherwise provided by law.
- (e) **Administrative Reorganization Of Offices:** It shall be the duty and responsibility of the city manager to conduct studies and implement such administrative reorganization of offices, positions or units under the city manager's direction as may be indicated in the interest of efficient, effective and economical conduct of the city's business.
- (f) **Implement And Recommend Policies And Programs:** The city manager shall carry out the policies and programs established by the city council. The city manager shall submit to the city council plans and programs relating to the development and needs of the city.
- (g) **Policy Proposals:** To propose plans and programs concerning the development, operation and needs of the city and submit such plans to the governing body to be approved and developed as policy.
- (h) **Ordinances:** The city manager shall recommend to the city council for adoption such measures and ordinances necessary for the efficient management of administrative affairs.
- (i) **Council Meetings:** It shall be the duty of the city manager to attend all meetings of the city council, unless excused therefrom by the mayor or the city council, and to take part in the discussions and to recommend matters for adoption by the city council, but without the right to vote.
- (j) **Financial Reports:** It shall be the duty of the city manager to keep the city council fully advised at all times as to the financial condition and needs of the city. The city manager shall prepare and submit monthly financial reports to the city council for their information and review.
- (k) **Budget:** The city manager shall prepare and submit the proposed annual budget and capital improvements program to the city council for their approval and in accordance with all state laws and regulations. The city manager shall serve as the city budget officer.
- (l) **Expenditure Control And Purchasing:** It shall be the duty of the city manager to manage all expenditures in accordance with state law and the city purchasing policy.
- (m) **Investigations And Complaints:** It shall be the duty of the city manager to make investigations into the affairs of the city, or any department or division thereof, and also any contract for the proper performance of any obligations of the city. Further, it shall be the duty of the city manager to investigate all complaints in relation to matters concerning the administration of the city government. The city manager shall examine and inspect the

books, records and official papers of any office, department, agency, board or commission of the city and make investigations and require reports from all personnel.

- (n) Property: To keep or cause to be kept a current inventory showing all real and personal property of the city and its location. The city manager shall be responsible for the care and custody of all such property, including equipment, buildings, parks and all other city property which is not by law assigned to some other officer or body for care and control.
- (o) Emergencies: The city manager shall notify the city council of any emergency that may arise in the city.
- (p) Additional Duties: It shall be the duty of the city manager to perform such other duties and exercise such other powers as may lawfully be delegated to the city manager from time to time by ordinance or resolution or other official action of the city council.

1-12-6 ACTING CITY MANAGER:

The city manager shall appoint, with the approval of the city council, an acting city manager to serve in the absence or temporary incapacity of the city manager. The acting city manager shall have all the powers and duties of the city manager, but shall consult with the mayor regarding decisions of major impact on the city. The mayor shall act as city manager in the event of absence or temporary incapacity of both the city manager and the acting city manager.

1-12-7 REMOVAL FROM OFFICE:

The removal of the city manager shall be effected only by a majority vote of the city council convened in a regular city council meeting, except that the city manager shall not be removed from office during, or within a period of, ninety (90) days after the date newly elected officials take office after a municipal election. The purpose of this provision is to allow any newly elected member of the city council to directly observe the actions and ability of the city manager to perform the duties described herein. After the expiration of the ninety (90) day period, the city manager may be removed from office. The city council may, without any particular showing of cause, remove the city manager from office. The city council's action shall be final.

1-12-8 EMPLOYMENT AGREEMENT:

Nothing in this chapter shall be construed as a limitation on the power or authority of the city council to enter into any supplemental agreement with the city manager delineating additional terms and conditions of employment not inconsistent with any provisions of this chapter.

1-12-9 RESIGNATION

Before voluntarily resigning from the position of city manager, the city manager shall give the city council at least thirty (30) days notice in writing of his or her intent to resign.

1-12-10 OTHER EMPLOYMENT

The city manager shall not accept any outside employment in addition to employment by the city without prior annual written approval of the city council.

EMPLOYMENT AGREEMENT



Employment Agreement

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ICMA



Leaders at the Core of Better Communities

ICMA advances professional local government worldwide. Its mission is to create excellence in local governance by developing and advancing professional management of local government. ICMA, the International City/County Management Association, provides member support; publications, data, and information; peer and results-oriented assistance; and training and professional development to more than 9,000 city, town, and county experts and other individuals and organizations throughout the world. The management decisions made by ICMA's members affect 185 million individuals living in thousands of communities, from small villages and towns to large metropolitan areas.

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Introduction

This Agreement, made and entered into this [date], by and between the [local government] of [state], [town/city/county] a municipal corporation, (hereinafter called "Employer") and [name], (hereinafter called "Employee") an individual who has the education, train-

ing and experience in local government management and who, as a member of the International City/County Management Association (ICMA), is subject to the ICMA Code of Ethics, both of whom agree as follows:

Section 1: Term

Recommended Language

A. This agreement shall remain in full force and effect from [date] until terminated by the Employer or Employee as provided in Section 9, 10 or 11 of this agreement.

Option 1

The term of this agreement shall be for an initial period of [#] years from [date] to [date]. This Agreement shall automatically be renewed on its anniversary date for a [#] year term unless notice that the Agreement shall terminate is given at least [#] months

(12 months recommended) before the expiration date. In the event the agreement is not renewed, all compensation, benefits and requirements of the agreement shall remain in effect until the expiration of the term of the Agreement unless Employee voluntarily resigns.

In the event that the Employee is terminated, as defined in Section 9 of this agreement, the Employee shall be entitled to all compensation including salary, accrued vacation and sick leave, car allowance paid in lump sum or in a continuation of salary on the existing [biweekly/monthly] basis, at the Employee's option, plus continuation of all benefits for the remainder of the term of this agreement.

Section 2: Duties and Authority

Recommended Language

A. Employer agrees to employ [name] as [title] to perform the functions and duties specified in [legal reference] of the [local government] charter and/or by ordinance (#) dated [legal reference] of the [local government] code and to perform other legally permissible and proper duties and functions without interference.

B. Employee is the chief executive officer of the Employer and shall faithfully perform the duties as prescribed in the job description as set forth in the Employer's charter and/or ordinances and as may be lawfully assigned by the Employer and shall comply with all lawful governing body directives, state and federal law, Employer policies, rules and ordinances as they exist or may hereafter be amended.

C. Specifically, it shall be the duty of the Employee to employ on behalf of the Employer all other employees of the organization consistent with the policies of the governing body and the ordinances and charter of the Employer.

D. It shall also be the duty of the Employee to direct, assign, reassign and evaluate all of the employees of the Employer consistent with policies, ordinances, charter, state and federal law.

E. It shall also be the duty of the Employee to organize, reorganize and arrange the staff of the Employer and to develop and establish internal regulations, rules and procedures which the Employee deems necessary for the efficient and effective operation of the Employer consistent with the lawful directives, policies, ordinances, state and federal law.

F. It shall also be the duty of the Employee to accept all resignations of employees of the Employer consistent with the policies, ordinances, state and federal law, except the Employee's resignation which must be accepted by the governing body.

G. The Employee shall perform the duties of (city, county or town) manager of the Employer with reasonable care, diligence, skill and expertise.

H. All duties assigned to the Employee by the governing body shall be appropriate to and consistent with the professional role and responsibility of the Employee.

I. The Employee cannot be reassigned from the position of (city, county or town) manager to another position without the Employee's express written consent.

J. The Employee or designee shall attend, and shall be permitted to attend, all meetings of the governing

body, both public and closed, with the exception of those closed meetings devoted to the subject of this Agreement, or any amendment thereto or the Employee's evaluation or otherwise consistent with state law.

K. The governing body, individually and collectively, shall refer in a timely manner all substantive criticisms, complaints and suggestions called to their attention to the Employee for study and/or appropriate action.

Section 3: Compensation

Recommended Language

A. Base Salary: Employer agrees to pay Employee an annual base salary of [\$ amount], payable in installments at the same time that the other management employees of the Employer are paid.

B. This agreement shall be automatically amended to reflect any salary adjustments that are provided or required by the Employer's compensation policies to include all salary adjustments on the same basis as applied to the executive classification of employees.

C. In addition, consideration shall be given on an annual basis to an increase in compensation.

Options for Section 3. C Compensation

Option 1

The Employer agrees to increase the compensation of the Employee dependent upon the results of the performance evaluation conducted under the provisions of Section 12 of this Agreement. Increased compensation can be in the form of a salary increase and/or performance incentive and/or an increase in benefits.

Option 2

The Employer agrees to increase the compensation of the Employee dependent upon the results of the performance evaluation conducted under the provisions of Section 12 of this Agreement in addition to providing a fixed annual increase in the Employee's salary

based on an agreed upon economic indicator, such as the Consumer Price Index.

Option 3

The Employer agrees to increase the compensation by [%] each year.

Option 4

The Employer agrees to increase the compensation each year by at least the average across the board increase granted to other employees of the Employer.

D. At any time during the term of the Agreement, Employer may, in its discretion, review and adjust the salary of the Employee, but in no event shall the Employee be paid less than the salary set forth in Section 3.A. of the Agreement except by mutual written agreement between Employee and Employer. Such adjustments, if any, shall be made pursuant to a lawful governing body action. In such event, Employer and Employee agree to provide their best efforts and reasonable cooperation to execute a new agreement incorporating the adjusted salary.

E. Except as otherwise provided in this Agreement, the Employee shall be entitled, at a minimum, to the highest level of benefits enjoyed by and/or available to other employees, department heads or general employees of the Employer as provided by the Employer's policies, Charter, ordinances, or personnel rules and regulations or other practices.

Section 4: Health, Disability and Life Insurance Benefits

Recommended Language

A. The Employer agrees to provide and to pay the premiums for health, hospitalization, surgical, vision, dental and comprehensive medical insurance for the Employee and his/her dependents, at a minimum, equal to that which is provided to all other employees of the [local government]. In the event no such plan exists, Employer agrees to provide coverage for the Employee and dependents in a manner mutually agreed upon by Employer and Employee.

B. The Employer agrees to put into force and to make required premium payments for short term and long term disability coverage for the Employee.

C. The Employee may elect to submit once per calendar year to a complete physical examination, including a cardio-vascular examination, by a qualified physician selected by the Employee, the cost of which shall be paid by the Employer.

D. The Employer shall pay the amount of premium due for term life insurance in the amount of three (3) times the Employee's annual base salary, including all increases in the base salary during the life of this agreement. The Employee shall name the beneficiary of the life insurance policy.

Option 1

A. The Employer agrees to provide for full health, hospitalization, surgical, vision, dental and comprehensive medical insurance for the Employee and his/her dependents on an equivalent basis to that which is provided to all other employees of the [local government]. and Employer shall pay all premiums for the Employee and the Employee's dependents. In the event no such plan exists, Employer agrees to provide full coverage for the

Employee and dependents in a manner mutually agreed upon by Employer and Employee.

B. The Employer agrees to put into force and to make required premium payments for short term and long term disability coverage for the Employee.

C. The Employee may elect to submit once per calendar year to a complete physical examination, including a cardio-vascular examination, by a qualified physician selected by the Employee, the cost of which shall be paid by the Employer.

D. The Employer shall pay the amount of premium due for term life insurance in the face amount of three (3) times the Employee's annual base salary, including all increases in the base salary during the life of this agreement. If such coverage is not available through the Employer's insurance carrier or the Employee elects to obtain coverage through a different insurance carrier, the Employer shall reimburse the Employee for the cost of the premiums in an amount equal to the same value as that provided by the Employer's insurance carrier. The Employee shall own the life insurance policy and the life insurance policy shall be in the name of the Employee and the Employee shall have the right to name the beneficiary of the life insurance policy.

Option 2

E. The Employer shall provide business travel insurance for the Employee while the Employee is traveling on the Employer's business, and the Employee shall name the beneficiary thereof. Should the Employee die while on travel for the Employer, the Employer shall cover the full cost of retrieving and transporting the Employee's remains back to the custody of the Employee's family.

Section 5: Vacation, Sick, and Military Leave

Recommended Language

A. Upon commencing employment, the Employee shall be credited with [#] accrued sick leave hours and [#] accrued vacation leave hours. In addition, beginning the first day of employment, Employee shall accrue sick leave and vacation leave on an annual basis, at a minimum, at the highest rate provided or

available to any other employees, under the same rules and provisions applicable to other employees.

Option 1

Beginning the first day of employment, Employee shall accrue sick leave and vacation leave on an annual basis equivalent to the number of years served in the profession.

B. Upon commencing employment, the Employee shall have access to a bank of 180 sick days to be used in the case of serious medical conditions. This leave can only be used to provide coverage during the waiting period between the onset of illness or disability and the point at which short or long term disability coverage takes effect and may be renewed after each occurrence.

C. The Employee is entitled to accrue all unused leave, without limit, and in the event the Employee's employment is terminated, either voluntarily or

involuntarily, the Employee shall be compensated for all accrued vacation time, all paid holidays, executive leave, and other benefits to date.

D. The Employee shall be entitled to military reserve leave time pursuant to state law and [local government] policy.

Option 2

E. The Employee shall annually be credited with five (5) days of executive leave.

Section 6: Automobile

Recommended Language

The Employee's duties require exclusive and unrestricted use of an automobile to be mutually agreed upon and provided to the Employee at the Employer's cost, subject to approval by Employer which shall not be withheld without good cause. It shall be mutually agreed upon whether the vehicle is purchased by the Employer, provided under lease to the Employer or to the Employee, or provided through a monthly allowance.

Option 1—Monthly Vehicle Allowance

The Employer agrees to pay to the Employee, during the term of this Agreement and in addition to other salary and benefits herein provided, the sum of [dollar amount] per year, payable monthly, as a vehicle allowance to be used to purchase, lease, or own, operate and maintain a vehicle. The monthly allowance shall be increased annually by [% or \$] amount. The

Employee shall be responsible for paying for liability, property damage, and comprehensive insurance coverage upon such vehicle and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of said vehicle. The Employer shall reimburse the Employee at the IRS standard mileage rate for any business use of the vehicle beyond the greater [local government] area. For purposes of this Section, use of the car within the greater [local government] area is defined as travel to locations within a _____ mile (recommended one hundred (100) mile) radius of the local government limits.)

Option 2—Employer Provided Vehicle

The Employer shall be responsible for paying for liability, property damage, and comprehensive insurance, and for the purchase (or lease), operation, maintenance, repair, and regular replacement of a full-size automobile.

Section 7: Retirement

Recommended Language

The Employer agrees to enroll the Employee into the applicable state or local retirement system and to make all the appropriate contributions on the Employee's behalf.

In addition to the Employer's payment to the state or local retirement system (as applicable) referenced above, Employer agrees to execute and keep in force all neces-

sary agreements provided by ICMA Retirement Corporation [ICMA-RC] or any other Section 457 deferred compensation plan for Employee's [continued] participation in said supplementary retirement plan. In addition to the base salary paid by the Employer to Employee, Employer agrees to pay an amount equal to [percentage of Employee's base salary, fixed dollar amount of [\$] , or maximum dollar amount permissible under Federal and state law into the designated plan on the Employee's

behalf, in equal proportionate amount each pay period. The Employer and Employee shall fully disclose to each other the financial impact of any amendment to the terms of Employee's retirement benefit.

In lieu of making a contribution to a Section 457 deferred compensation plan, the dollar value of this contribution may be used, at the Employee's option, to purchase previous service from another qualified plan.

Option 1

Recognizing that effective service with the community is based in part on the stability provided through a long-term relationship, the Employer shall provide a retirement annuity, as directed by the Employee, at a rate of [dollar amount], payable at the completion of each quarter of the fiscal year. This annuity serves as a retirement contribution and does not require further action of the Employer.

Option 2

The Employer shall adopt a qualified 401(a) defined contribution plan offered through ICMA Retirement Corporation for the Employee in the form of a money purchase plan to which the Employer shall contribute [%] of com-

pensation annually. The 401(a) plan shall be established as an employer paid plan with non-discretionary contributions by the Employer and the Employee shall have no right to receive such contributions in cash. The 401(a) plan shall be established under a written plan document that meets the requirements of the IRS Code and such document is hereby incorporated herein by reference. The funds for the 401(a) plan shall be invested in such investment vehicles as are allowable under the IRS Code and the Employee shall make the sole determination as to how the funds are invested.

Option 2 A: The Employee shall be required to contribute [%] of base salary or [dollar amount] annually on a pre-tax basis as a condition of participation.

Option3

The Employer shall adopt a qualified 401(a) profit-sharing plan offered through ICMA Retirement Corporation for the Employee in the form of a money purchase plan to which the Employer shall contribute [%] of all performance bonuses annually.

Option 3 A: The Employee shall be required to contribute [%] of base salary or [dollar amount] annually on a pre-tax basis as a condition of participation.

Section 8: General Business Expenses

Recommended Language

A. Employer agrees to budget and pay for professional dues, including but not limited to the International City/County Management Association, and subscriptions of the Employee necessary for continuation and full participation in national, regional, state, and local associations, and organizations necessary and desirable for the Employee's continued professional participation, growth, and advancement, and for the good of the Employer.

B. Employer agrees to budget and 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 for Employer, including but not limited to the ICMA Annual Conference, the state league of municipalities, and such other national, regional, state, and local governmental groups and committees in which Employee serves as a member.

C. Employer also agrees to budget and pay for travel and subsistence expenses of Employee for short courses, institutes, and seminars that are necessary for the Employee's professional development and for the good of the Employer.

D. Employer recognizes that certain expenses of a non-personal but job related nature are incurred by Employee, and agrees to reimburse or to pay said general expenses. Such expenses may include meals where Employer business is being discussed or conducted and participation in social events of various organizations when representing the Employer. Such expenditures are subject to annual budget constraints as well as state and Employer ethics and purchasing policies. The finance director is authorized to disburse such moneys upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits.

E. The Employer acknowledges the value of having Employee participate and be directly involved in local civic clubs or organizations. Accordingly, Employer

shall pay for the reasonable membership fees and/or dues to enable the Employee to become an active member in local civic clubs or organizations.

F. Recognizing the importance of constant communication and maximum productivity, Employer shall provide Employee, for business and personal use, a laptop computer, software, internet connection at Employee's permanent residence, mobile phone/personal digital assistant and/or tablet computer for business and

personal use, and pager for business and personal use required for the Employee to perform their duties and to maintain communication with Employer's staff and officials as well as other individuals who are doing business with Employer. Upon termination of Employee's employment, the equipment described herein shall become the property of the Employee and at the discretion of the Employee any mobile phone number shall be transferred to the Employee.

Section 9: Termination

Recommended Language

A. For the purpose of this agreement, termination shall occur when:

1. The majority of the governing body votes to terminate the Employee in accordance with (cite applicable local law) at a properly posted and duly authorized public meeting.
2. If the Employer, citizens or legislature acts to amend any provisions of the [charter, code, enabling legislation] pertaining to the role, powers, duties, authority, responsibilities of the Employee's position that substantially changes the form of government, the Employee shall have the right to declare that such amendments constitute termination.
3. If the Employer reduces the base salary, compensation or any other financial benefit of the Employee, unless it is applied in no greater percentage than the average reduction of all department heads, such action shall constitute a breach of this agreement and will be regarded as a termination.

4. If the Employee resigns following an offer to accept resignation, whether formal or informal, by the Employer as representative of the majority of the governing body that the Employee resign, then the Employee may declare a termination as of the date of the suggestion.

5. Breach of contract declared by either party with a 30 day cure period for either Employee or Employer. Written notice of a breach of contract shall be provided in accordance with the provisions of Section 20.

Option 1

A. In the event the Employee is terminated by the Employer during the six (6) months immediately following the seating and swearing-in of one or more new governing body members, and during such time that Employee is willing and able to perform his duties under this Agreement, then, Employer agrees to pay Severance in accordance with Section 10 plus salary and benefits in accordance with Section 10 for any portion of the six months not worked.

Section 10: Severance

Severance shall be paid to the Employee when employment is terminated as defined in Section 9.

A. If the Employee is terminated, the Employer shall provide a minimum severance payment equal to twelve (12) months salary at the then current rate of pay. This severance shall be paid in a lump sum or in a continuation of salary on the existing [biweekly/monthly] basis, at the Employee's option,

B. The Employee shall also be compensated for all sick leave, vacation leave, and all paid holidays.

The Employer agrees to make a contribution to the Employee's deferred compensation account on the value of this compensation calculated using the then current annual salary of Employee at the date of termination divided by two thousand and eighty (2080) hours. If the amount of the contribution under this Section exceeds the limit under the Code for a contribution to the Deferred Compensation plan, the remainder shall be paid to the Employee in a lump sum as taxable compensation.

C. For a minimum period of one year following termination, the Employer shall pay the cost to continue the following benefits:

1. Health insurance for the employee and all dependents as provided in Section 4A, after which time, Employee will be provided access to health insurance pursuant to the Consolidated Omnibus Budget Reconciliation Act ("COBRA").
2. Life insurance as provided in Section 4D
3. Short-term and long-term disability as provided in Section 4B
4. Car allowance or payment of lease, or provide option to buy Employer's vehicle at depreciated value
5. Out placement services should the employee desire

them in an amount not to exceed [\$10,000 to \$15,000 recommended], and

6. Any other available benefits.

D. If the Employee is terminated because of a felony conviction, then the Employer is not obligated to pay severance under this section.

E. The termination and severance of Employee shall be in accordance with the "Separation Agreement" agreed to by Employer and Employee. A template for such agreement is provided by ICMA, and is incorporated herein by reference.

**Provisions for severance and severance related benefits may be governed by state and/or local law. Before entering into negotiations, both parties should be knowledgeable about relevant legal provisions.*

Section 11: Resignation

In the event that the Employee voluntarily resigns his/her position with the Employer, the Employer shall

provide a minimum of 30 days notice unless Employer and Employee agree otherwise.

Section 12: Performance Evaluation

A. Employer shall annually review the performance of the Employee in [month] subject to a process, form, criteria, and format for the evaluation which shall be mutually agreed upon by the Employer and Employee.

The annual evaluation process, at a minimum, shall include the opportunity for both parties to: (1) conduct a formulary session where the governing body and the Employee meet first to discuss goals and objectives of both the past twelve (12) month performance period as well as the upcoming twelve (12) month performance period, (2) following that formulary discussion, prepare a written evaluation of goals and objectives for the past and upcoming year, (3) next meet and discuss the written evaluation of these goals and objectives, and (4) present a written summary of the evaluation results to the Employee. The final written evaluation should be completed and delivered to the Employee within 30 days of the initial formulary evaluation meeting.

B. Unless the Employee expressly requests otherwise in writing, the evaluation of the Employee shall at all times be conducted in executive session of the governing body and shall be considered confidential to the extent permitted by law. Nothing herein shall prohibit the Employer or Employee from sharing the content of the Employee's evaluation with their respective legal counsel.

C. In the event the Employer deems the evaluation instrument, format and/or procedure is to be modified by the Employer and such modifications would require new or different performance expectations, then the Employee shall be provided a reasonable period of time to demonstrate such expected performance before being evaluated.

D. In the event the Employee is an ICMA Credentialed Manager, the multi-rater evaluation tool will be utilized at a minimum of every five years.

Section 13: Hours of Work

It is recognized that the Employee must devote a great deal of time outside the normal office hours on business for the Employer, and to that end Employee shall be allowed to establish an appropriate work schedule.

The schedule shall be appropriate to the needs of the Employer and shall allow Employee to faithfully perform his or her assigned duties and responsibilities.

Section 14: Ethical Commitments

Employee will at all times uphold the tenets of the ICMA Code of Ethics, a copy of which is attached hereto and incorporated herein. Specifically, Employee shall not endorse candidates, make financial contributions, sign or circulate petitions, or participate in fund-raising 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.

Employer shall support Employee in keeping these

commitments by refraining from any order, direction or request that would require Employee to violate the ICMA Code of Ethics. Specifically, neither the governing body nor any individual member thereof shall request Employee to endorse any candidate, make any financial contribution, sign or circulate any petition, or participate in any fund-raising activity for individuals seeking or holding elected office, nor to handle any matter of personnel on a basis other than fairness, impartiality and merit.

Section 15: Outside Activities

The employment provided for by this Agreement shall be the Employee's primary employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to the Employer and the community, the Employee may elect to accept limited

teaching, consulting or other business opportunities with the understanding that such arrangements must neither constitute interference with nor a conflict of interest with his or her responsibilities under this Agreement.

Section 16: Moving and Relocation Expenses

Recommended Language

Employee agrees to establish residence within the corporate boundaries of the local government, if required, within [number] months of employment, and thereafter to maintain residence within the corporate boundaries of the local government.

A. Employer shall pay directly for the expenses of moving Employee and his/her family and personal property from [location name] to [location name]. Said moving expenses include packing, moving, storage costs, unpacking, and insurance charges. The Employee shall provide evidence of actual moving expenses by securing quotations from three (3) companies. The Employee shall submit these quotes to the Employer who, in consultation with the Employee, shall select the moving company.

B. Employer shall reimburse Employee for actual lodging and meal expenses for his/her family in route from [location name] to [location name]. Mileage costs for moving two personal automobiles shall be reimbursed at the current IRS allowable rate of [cents amount] per mile.

C. Employer shall pay Employee an interim housing supplement of [dollar amount] per month for a period commencing [date], and shall continue for a maximum of [#] months, or until a home is purchased and closed on, within the corporate limits of the [local government name], whichever event occurs first.

D. Employer shall reimburse Employee for a total of [number] round trip air fares for Employee and his/her family [amount of total tickets] at any time during the first year of service to assist with house hunting and other facets of the transition and relocation process. The

Employee and his/her family may utilize and distribute the total [enter number] individual round trip tickets in any combination of individual members making the trips. The Employee shall be reimbursed for actual lodging and meal expenses incurred by Employee or his/her family members on any trips conducted prior to relocation, as detailed herein.

E. The Employee shall be reimbursed, or Employer may pay directly, for the expenses of packing and moving from temporary housing to permanent hous-

ing during the first year of this agreement. The cost of this move shall not exceed (dollar amount).

F. The Employer shall pay the Employee's tax liability on all Employer provided benefits for relocation and housing.

Option 1

The Employer shall pay a lump sum payment of [\$] to the Employee to cover relocation costs.

Section 17: Home Sale and Purchase Expenses

Recommended Language

A. Employee shall be reimbursed for the direct costs associated with the sale of Employee's existing personal residence, said reimbursement being limited to real estate agents' fees, and other closing costs that are directly associated with the sale of the house. Said reimbursement should not exceed the sum of [\$].

B. Employee shall be reimbursed for the costs incidental to buying or building a primary residence within the [local government], including real estate fees, title insurance, and other costs directly associated with the purchase or construction of the house, said reimbursement not to exceed the sum of [\$].

Option 1

Employer shall reimburse Employee for up to three discount points within thirty (30) days following purchase of a home within the corporate limits of [local government name], in an effort to minimize mortgage rate differentials.

Option 2

Employer shall provide Employee with a [fixed-interest, variable-interest, interest-only] loan to purchase a house. The amount of the loan shall not exceed \$_____. The loan shall be repaid in full to the Employer upon the occurrence of either of the following events: (i) the home, or the Employee's interest in the home, is sold, transferred, or conveyed, or (ii) the Employee's employment with the Employer, for any reason, is terminated. The Employer and Employee shall execute any and all documents necessary to document this transaction.

Option 3

Employer agrees to provide the Employee a loan for the purchase of a home in an amount not to exceed [dollar amount]. Employee shall pay Employer a monthly mortgage payment of [dollar amount] for interest, which is equal to the amount currently being paid in principle and interest for the current residence. Employee shall accrue equity at a rate of [%] per month.

Upon termination of employment with the Employer, Employee shall have a maximum of six months to sell the home while continuing to reside in it under the terms and conditions here. Should the home sell during the time period, Employer shall receive 100% of the proceeds minus the percentage of equity accrued by Employee as described above, and minus the amount of equity originally invested by Employee. Said accrued equity and original equity shall both be payable to Employee upon closing. Said original equity invested shall be calculated as an amount equal to the percentage of original purchase price, represented by the original equity investment by Employee, and adjusted to be the same percentage of equity in the current sale price of the home. All closing costs borne by the seller shall be split between Employer and Employee in a proportion equal to the equity share described above. Should the house fail to sell within the allotted six month time period, Employer has the option of allowing the previous arrangement to continue in place or to purchase equity, calculated as provided above, plus the original cost of all improvements made to the property.

Option 4

A. Employer shall provide a residence for Employee at no cost to Employee other than the monthly cost of all utilities and services. Should Employee choose to not accept the housing no additional housing incentive shall be provided to Employee.

B. Upon separation, voluntary or involuntary, Employee shall vacate the residence with six (6) months of date of separation.

Option 5

Employee shall place their current residence on the market and make every reasonable attempt to sell residence. If after six (6) months, Employee has not sold or agreed to sell their residence the Employer shall purchase the residence from Employee at ninety percent (90%) of current list price or appraised value whichever is less. Employer shall then place the residence on the market with all proceeds of any sale to Employer.

Section 18: Indemnification

Beyond that required under Federal, State or Local Law, Employer shall defend, save harmless and indemnify Employee against any obligation to pay money or perform or no perform action, including without limitation, any and all losses, damages, judgments, interests, settlements, penalties, fines, court costs and other reasonable costs and expenses of legal proceedings including attorneys fees, and any other liabilities arising from, related to, or connected with any tort, professional liability claim or demand or any other threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigation, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as [job title] 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. The Employee may request and the Employer shall not unreasonably refuse to provide independent legal representation at Employer's expense and Employer may not unreasonably withhold approval. Legal representation, provided by Employer for Employee, shall extend until a final determination of the legal action including any appeals brought by either party. The Employer shall indemnify Employee against any and all losses,

damages, judgments, interest, settlements, penalties, fines, court costs and other reasonable costs and expenses of legal proceedings including attorneys fees, and any other liabilities incurred by, imposed upon, or suffered by such Employee 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 or her duties. Any settlement of any claim must be made with prior approval of the Employer in order for indemnification, as provided in this Section, to be available.

Employee recognizes that Employer shall have the right to compromise and unless the Employee is a party to the suit which Employee shall have a veto authority over the settlement, settle any claim or suit; unless, said compromise or settlement is of a personal nature to Employee. Further, Employer agrees to pay all reasonable litigation expenses of Employee throughout the pendency of any litigation to which the Employee is a party, witness or advisor to the Employer. Such expense payments shall continue beyond Employee's service to the Employer as long as litigation is pending. Further, Employer agrees to pay Employee reasonable consulting fees and travel expenses when Employee serves as a witness, advisor or consultant to Employer regarding pending litigation.

Section 19: Bonding

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

Section 20: Other Terms and Conditions of Employment

A. The Employer, only upon agreement with Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the [local government] Charter, local ordinances or any other law.

B. Except as otherwise provided in this Agreement, the Employee shall be entitled, at a minimum, to the highest level of benefits that are enjoyed by or offered to other [appointed officials, appointed employees, department

heads or general employees] of the Employer as provided in the Charter; Code, Personnel Rules and Regulations or by practice.

Option 1—Appropriation

The Employer has appropriated, set aside and encumbered, and does hereby appropriate, set aside, and encumber, available and unappropriated funds of the municipality in an amount sufficient to fund and pay all financial obligations of the Employer pursuant to this Agreement, including but not limited to, the Severance and other benefits set forth in Section 10.

Section 21: Notices

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

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.

- (a) EMPLOYER: City of ()
address
city,state,zip
- (b) EMPLOYEE: name
address
city, state zip

Section 22: General Provisions

A. Integration. This Agreement sets forth and establishes the entire understanding between the Employer and the Employee relating to the employment of the Employee by the Employer. Any prior discussions or representations by or between the Employer and Employee are merged into and rendered null and void by this Agreement. The Employer and Employee by mutual written agreement may amend any provision of this agreement during the life of the agreement. Such amendments shall be incorporated and made a part of this agreement.

B. Binding Effect. This Agreement shall be binding on the Employer and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.

C. Effective Date. This Agreement shall become effective on _____, _____.

D. 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

Employer and Employee subsequent to the expungement or judicial modification of the invalid provision.

E. Precedence. In the event of any conflict between the terms, conditions and provisions of this Agreement and the provisions of Council's policies, or Employer's ordinance or Employer's rules and regulations, or any permissive state or federal law, then, unless otherwise prohibited by law, the terms of this Agreement shall take precedence over contrary provisions of Council's policies, or Employer's ordinances, or Employer's rules and regulations or any such permissive law during the term of this Agreement.

Name of Employer

By: _____
Governing Body Representative

Executed this the (number) day of (month), (year).

Employee

Signature: _____

Executed this the (number) day of (month),(year).

Appendix 1

SEPARATION OF EMPLOYMENT AND GENERAL RELEASE

This Separation of Employment and General Release Agreement ("Agreement") is made by and between the [local government] ("Employer") and _____ ("Employee").

WHEREAS, Employer has employed Employee as its _____; however, the parties wish

to enter into a voluntary agreement to terminate their employment relationship and to resolve any actual or potential claims that either party may have against the other by reason of Employee's employment or termination thereof.

WHEREAS, The parties desire to set forth the terms and conditions governing Employee's separation of employment and to provide for the settlement and release of any and all disputes or controversies that have arisen, or which may hereafter arise, between Employer and Employee, including without limitation, any and all claims arising out of or in any way related to Employee's employment with or separation from the Employer.

NOW THEREFORE, in consideration of the mutual covenants herein contained and the mutual benefits to be derived therefrom, the sufficiency of which consideration is hereby acknowledged by the undersigned, Employer and Employee agree and state:

1. TERMINATION OF EMPLOYMENT. Upon their mutual agreement, Employee's employment _____ shall terminate on _____, 20____, which shall be Employee's final date of employment.

2. NO ADMISSION OF LIABILITY. This Agreement is not an admission by Employee or Employer of any wrongful conduct whatsoever. Both parties deny and disclaim any liability to or wrongful conduct against the other or any third party.

3. PAYMENT AND BENEFITS. Employee shall receive his/her regular paycheck for the pay period ending _____, 20____ on or before _____, 20____. Employee shall receive on or before _____, 20____ an additional payment to compensate for his accumulated leaves (vacation and floating holidays) and comp time, subject to customary payroll deductions.

As consideration for this Agreement and the release contained within, and in full and complete satisfaction

of all obligations due and owing Employee, Employer shall:

a. Pay Employee an amount equal to _____ (____) months of his current salary, subject to customary payroll deductions—to include Employee's portion of health, dental and vision insurance premiums for _____ (____) months.

b. Continue, and pay for, Employer's current health, dental and vision insurance coverages for _____ (____) months, ending on _____, 20____.

[C. INCLUDE ANY OTHER CONSIDERATION, SUCH AS AGREEING NOT TO CONTEST UNEMPLOYMENT, ALLOWING THE EMPLOYEE TO PURCHASE HIS WORK LAPTOP, ETC.]

3. SURRENDER AND VACATION OF EMPLOYER'S PROPERTY. Upon execution of this Agreement, Employee shall deliver all Employer's property in his/her possession and further, shall vacate Employer's property.

4. RELEASE AND WAIVER OF CLAIMS. In consideration of the benefits to be provided to Employee pursuant to this Agreement, Employee—including his heirs and assigns—hereby irrevocably and unconditionally releases, acquits and discharges Employer and each of its past, present and future elected officials, department heads, officers, employees, agents, representatives and attorneys from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorneys' fees and costs actually incurred), of any nature whatsoever, whether known or unknown, arising out of any act, omission, or event from the beginning of time up to the execution of this Agreement. Employee specifically acknowledges and agrees that he is releasing and giving up any right that he may now have under federal or state law or political subdivision thereof and any claims that he may now have or could have asserted against Employer.

Employee specifically agrees to release all claims that against Employer under many different laws, including but not limited to: *the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, and Executive Order 11141, which prohibit age discrimination in employment*; Title VII of the Civil Rights Act of 1964, Section 1981 of the Civil Rights Act

of 1866, and Executive Order 11246, which prohibit discrimination based on race, color, national origin, religion, or sex; the Americans with Disabilities Act and Sections 503 and 504 of the Rehabilitation Act of 1973, which prohibit discrimination based on disability; any other federal, state, or local laws prohibiting employment or wage discrimination; the Fair Labor Standards Act of 1938 and state laws that regulate wage and hour matters; the Family and Medical Leave Act of 1993; the Employee Retirement Income Security Act of 1974; any federal, state, or local laws providing workers' compensation benefits, prohibiting retaliatory or wrongful discharge, otherwise restricting an employer's right to terminate employees, or otherwise regulating employment; claims for breach of contract, promissory estoppel, defamation, slander, or libel; claims for termination pay, severance, or other benefits; and any other federal, state, or local tort or contract claim. Employee expressly waives all rights that he might have under any law that is intended to protect him from waiving unknown claims.

Employer hereby irrevocably and unconditionally releases, acquits and discharges Employee from any and all from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorneys' fees and costs actually incurred), of any nature whatsoever, whether known or unknown, arising out of any act, omission, or event from the beginning of time up to the execution of this Agreement.

5. REFERENCES AND NON-DISPARAGEMENT. If it is necessary for Employer to provide a reference to a prospective employer, Employee agrees that he will direct the prospective employer to contact _____. Additionally, Employee and the elected officials agree that they shall not disparage or make negative comments about each other; provided that this Section shall not apply to comments made to any other governmental entity or as required by law.

6. REPRESENTATIONS AND WARRANTIES. The undersigned parties hereby represent and warrant the following to the other:

a. Employee represents and warrants that: he/she is legally and mentally competent to sign this Agreement; he/she is the sole owner of any claims against the Employer; he/she has the requisite capacity and authority to make this Agreement, and no portion of any existing or potential claims has

been sold, assigned or pledged to any third party; and he/she presently possesses the exclusive right to receive all of the consideration paid in exchange for this Agreement.

b. Employee represents and warrants that he/she has not and will not file any complaints, charges or lawsuits against Employer or any of its past, present and future elected officials, department heads, officers, employees, agents, representatives or attorneys with any governmental agency or any court, including without limitation, any claim or matter of any nature whatsoever related to or arising out of his employment with or separation of his/her employment, except Employee expressly reserves the right to file a claim for unemployment benefits. Employee further agrees to indemnify and hold Employer harmless from any and all loss, costs, damages or expenses, including reasonable attorney fees incurred by Employer, arising out of any claim concerning the separation of employment that may hereafter be made by the Employee or any other party.

c. Employer represents and warrants that it has not and will not file any complaints, charges or lawsuits against Employee with any governmental agency or any court, including without limitation, any claim or matter of any nature whatsoever relating to or arising out of Employee's employment with Employer or the separation of his employment from Employer. Employer further agrees to indemnify and hold the Employee harmless from any and all loss, costs, damages or expenses, including reasonable attorney fees incurred by Employee, arising out of any claim arising from the separation of his employment that may hereafter be made by Employer or any other party.

d. Each party is fully aware of the contents of this Agreement and of its legal effect and understands that it should obtain legal advice regarding this Agreement as they deem appropriate. The parties hereto and each of them, have carefully read this Agreement and know the contents thereof, and they signed the same freely and voluntarily.

e. This Agreement sets forth the entire agreement between the parties and supersedes any and all prior agreements or understandings between the parties pertaining to the subject matter herein. No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision of this Agreement or

of any succeeding breach of the same provision. No delay in acting with regard to any breach of any provision of this Agreement shall be construed to be a waiver of such breach. If any provision in this Agreement is found to be unenforceable, all other provisions will remain fully enforceable.

f. No promise or inducement has been made or offered, except as herein expressly set forth, and this Agreement is executed without reliance upon any statement or representation by any of the released parties or their representatives.

g. The language of all parts of this Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either party.

h. This Agreement and any amendments hereto may be executed in multiple counterparts by the parties. Each counterpart shall be deemed an origi-

nal, but all counterparts together shall constitute one and the same instrument

7. JURISDICTION. This Agreement shall be governed by the laws of the State of _____, and the _____ County District Court shall have exclusive jurisdiction of any disputes arising under this Agreement.

8. BINDING EFFECT. This Agreement shall be binding upon and shall accrue to the benefit of the parties hereto, their respective personal representatives, successors in interest and assigns.

9. REVIEW & REVOCATION. The parties acknowledge that Employee may revoke his/her acceptance and execution of this Agreement at any time within seven (7) days of the date of his/her execution of it. Any revocation shall be in writing and shall be effective upon timely receipt by the Employer's Attorney.

If the revocation is submitted by mail, the revocation must be postmarked before the expiration of the seven (7)-day revocation period, and must be sent by overnight mail or other method so that it is received at the above address no later than the next business day immediately following the expiration of the seven (7)-day period. Further, Employee represents that, before accepting and executing this Agreement, he/she was given a review period of twenty-one (21) days in which to consider it. Employee further represents that he/she: (a) took advantage of as much of this period as required to consider this Agreement before signing it; (b)

carefully read the Agreement and the Release included herein; (c) fully understands it; and (d) is entering into it voluntarily. Employee represents that Employer encouraged him/her to discuss this Agreement with an attorney of choice before signing it. This Agreement shall not become effective or enforceable until the seven-day revocation period has expired without Employee having revoked acceptance of it.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the respective dates set forth below and each hereby acknowledge receipt of an executed copy of this Agreement.

On behalf of the Employer of

_____, _____:

Employer

Date

Attested by:

Employer's Representative

Date

On behalf of Employee:

Date

INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION



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Suite 500
Washington, DC 20002-4201
202.289.ICMA (4262)
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 linkedin.com/company/icma
 icma.org/kn



AGREEMENT

THIS AGREEMENT made and entered into shall be and effective as of the 1st day of July, 2019, by and between **SOUTH OGDEN CITY, STATE OF UTAH**, Municipal Corporation of Utah, called "The City", and **MATTHEW J. DIXON**, called "Manager".

WITNESSETH

WHEREAS, the City desires to continue the employment of Matthew J. Dixon as City Manager of South Ogden City as provided by Ordinance No. 875; and,

WHEREAS, it is the desire of the City Council of South Ogden City as the governing body of the City, called "Council", to provide certain benefits and establish certain conditions of employment; and,

WHEREAS, it is the desire of the Council to:

- (1) Secure and retain the services of the Manager and to provide inducement for him to remain in such employment,
- (2) To make possible full work productivity by assuring the Manager's morale and peace of mind regarding future security; and,
- (3) To Provide a just means for terminating the Manager's services when he might be unable, fully, to discharge his duties or when the City may otherwise desire to terminate his employment, and

WHEREAS, the Manager desires to accept employment as City Manager of said City,

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

SECTION 1. DUTIES. The City agrees to employ MATTHEW J. DIXON as City Manager ("Manager") of said City, to perform the functions and duties specified in said Ordinance No. 875, and to perform other legally permissible and proper duties and functions as the Council has assigned and may, from time to time assign. The Manager shall serve as chief administrative officer of the City and shall oversee the day to day operations of all City departments. The Manager shall advise the Mayor and Council on matters of policy, procedure and business affecting the City.

SECTION 2. TERM. The term of employment under this agreement shall be for a period, of thirty-six (36) months said term to run from July 1, 2019 through June 30, 2022. Absent any subsequent modification by the parties to the contrary, the term of this agreement will be determined by subsequent negotiation of the

parties. Otherwise, this Agreement may be terminated as set out at Section 4, below.

SECTION 3. PERFORMANCE EVALUATION. The Mayor and Council shall, at least annually, review and evaluate the performance of the Manager based on goals and objectives developed in writing and presented to and agreed upon by the Manager. Said review and evaluation shall be conducted under criteria developed jointly by the City and the Manager as set out, and as may otherwise be agreed, in writing, by the parties. The governing body shall provide the Manager with an adequate opportunity to read, review, and discuss his evaluation with the Council.

SECTION 4. TERMINATION AND SEVERANCE PAY. The Governing Body of the City may at its pleasure, and by majority vote, remove the Manager from office. Except in removal for proven malfeasance in office, the Council shall cause the Manager, upon his removal, to be paid any unpaid balance of his salary due to the date of his removal together with his salary and benefits at the same rate for the next six calendar months following the date of his removal or as otherwise provided below.

The amount of aggregate salary and benefits payable at termination as defined in this Section shall increase by one (1) month for each year of service rendered by the Manager, after completion of the third (3rd) year of employment with the city, to a maximum of twelve (12) months aggregate salary and benefits, including applicable contributions to URS and 401(k), including up to 50% of accrued sick leave not to exceed 480 hours, payable at termination.

Anything to the contrary notwithstanding, the Manager shall give the city not less than 30 days advance notice in the case of his resignation.

SECTION 5. DISABILITY TERMINATION. If the Manager is permanently disabled or otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or other reasons for a period of three successive weeks beyond any accrued sick leave, or for twenty working days over a thirty working day period, the City shall, consistent with the then applicable provisions of federal and state law (by way of example but not limitation, the Americans with Disabilities Act and/or any similar state statutes) have the option, but not the obligation, to terminate this Agreement, subject to the severance requirements set out above.

SECTION 6. SALARY. The City agrees to pay the Manager for his services an annual base salary of \$128,197 and as it may, from time to time, be adjusted by the Governing Body, which salary shall be payable in installments at the same time as other employees of the City are paid.

While the Manager is employed by the City, the parties, by mutual consent, may change the base salary or any other provision of this Agreement and the City may, when deemed appropriate by the Mayor

and Council, compensate the Manager above the terms of this Agreement for extraordinary and/or special services rendered.

SECTION 7. FRINGE BENEFITS. All provisions of the City's Personnel Policies and all other lawful rules and regulations relating to vacation, sick leave, retirement, pension system contributions, holidays, health and life insurance, executive leave, and other fringe benefits and working conditions as they now exist or may be amended or adopted, shall also apply to the Manager as they would to employees of the City including, but not limited to, the following:

- (a) Allowance For Use of Private Automobile. City will pay to Manager an automobile allowance per month as presently constituted, for use of the Manager's private automobile as presently provided. This amount shall be additional to, and to be included with Manager's annual salary
- (b) Vacation. Manager shall be credited 200 hours of vacation leave annually or as otherwise provided to all other department heads.
- (c) Sick Leave. The Manager shall accrue sick leave annually as otherwise provided to all other department heads as though manager had 10 years of tenure.
- (d) 401(k) Salary Match. The City agrees it will provide a "dollar for dollar match" into the then active and applicable 401(k) plan of the Manager up to an amount not to exceed three percent (3%) of Manager's total annual salary.
- (e) Phone Allowance. The manager shall be paid a telephone allowance of \$150 per month under the same terms and conditions as other department heads receiving a telephone allowance.

Notwithstanding any provisions of this section or this Agreement to the contrary, nothing in the City's Personnel Policies or any other lawful rules or regulations of the City shall modify or change the Manager's professional status or standing under the Fair Labor Standards Act, or similar legislation or rule.

SECTION 8. PROFESSIONAL STATUS. The manager is an educated and trained professional and consistent with the requirements of the position of City Manager, his working hours will vary. The Manager must devote much time outside of normal office hours attending the business of the City and, to that end, the Manager shall be allowed to schedule his time as he deems appropriate to accommodate the varying demands of such job-required activities as evening meetings, council meetings, legislative lobbying activities, and necessary weekend and holiday work.

SECTION 9. DUES AND SUBSCRIPTIONS. The City agrees to budget and pay for the professional dues and subscriptions of the Manager as the City may

deem appropriate for his continuation and full participation in associations and organizations necessary and desirable for his continued professional participation, growth and advancement and for the good of the City.

SECTION 10. PROFESSIONAL DEVELOPMENT AND GENERAL EXPENSES. The City agrees, as it deems appropriate, to budget and pay for the costs of travel, lodging, miscellaneous and subsistence expenses of the Manager for professional and official travel. In addition to the foregoing, Manager is authorized to receive advance pay or reimbursement, at his discretion, for travel, lodging and subsistence expenses in order for a family member to accompany him on not more than one professional development trip per year within the continental United States.

SECTION 11. OUTSIDE EMPLOYMENT. Manager agrees to devote the time and attention necessary to perform his duties in a satisfactory manner and shall not, during the term of this Agreement, seek or perform outside consulting work without the express written approval of the Mayor.

SECTION 12. INDEMNIFICATION. The City shall defend, save harmless, and indemnify Manager against any tort, professional liability claim, or other legal action or claim arising out of an alleged act or omission in performing the Manager's duties as City Manager. The City shall provide necessary insurance to cover the Manager, including errors and omissions coverage as may reasonably be required to give full effect to this indemnification covenant.

SECTION 13. BONDING. The City shall pay the cost of a fidelity bond or other bonds required of the Manager as may those requirements may be established by applicable law or as may deemed advisable by the Manager or the City to obtain to protect the parties hereto.

SECTION 14. OTHER TERMS AND CONDITIONS OF EMPLOYMENT. The Council, in consultation with the Manager may fix any such other terms and conditions of employment as it may, from time to time, determine; provided such terms and conditions are not in conflict with the City Manager Ordinance or state or other applicable law.

No Reduction of Benefits. The City shall not during the term of the Agreement reduce the salary, compensation, or other financial benefits of the Manager, except to the degree of such a reduction across-the-board for all employees of the City.

SECTION 15. NOTICES. Notices under this Agreement shall be given by deposit in the U.S. Mail, postage prepaid, and certified, return receipt requested, addressed as follows:

The City:

South Ogden City Mayor and Council

3950 South Adams Ave.
South Ogden, Utah 84403

and

The Manager:

Matthew J. Dixon
2008 N. 3900 W.
Plain City, Utah 84404

SECTION 16. ENTIRE AGREEMENT. The terms as set out constitute the entire agreement between the parties and any changes hereto shall be reduced to writing and agreed upon by both parties. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, and assigns of the parties. This Agreement shall become effective immediately upon signing by both parties and the terms shall be effective as of July 1, 2019.

If any provision or portion of this Agreement is or becomes invalid or unenforceable, then the remainder of the Agreement or portion shall be deemed severable and shall not be affected and remain in full force and effect.

IN WITNESS WHEREOF, SOUTH OGDEN CITY has caused this Agreement to be signed and executed in its behalf by its Mayor and duly attested by its City Recorder, and the Manager has signed and executed this Agreement, both in duplicate the day and year first above written.

DATED this 18th day of June, 2019

SOUTH OGDEN, a municipal corporation

by: _____
Russ Porter, Mayor

Attest:

Leesa Kapetanov, CMC
City Recorder

DATED this 18th day of June, 2019

Matthew J. Dixon, City Manager

DUTIES MATRIX

DRAFT



DELEGATION OF AUTHORITY

The Mayor is the Chief Executive Officer of the City of Santaquin and ultimately holds all executive authority to exercise the administrative affairs of the city. To assist the Mayor, an administrative staff, including a City Manager and Functional Area Directors, have been employed to assist the Mayor. These individuals are given certain administrative authority at the discretion of the Mayor in this document known as a "Delegation of Authority".

The purpose of this Delegation of Authority is to specify the level at which decision making authority is held for Santaquin City Administrative activities. It provides for implementation of clear, manageable, and efficient procedures for re-delegating authorities, facilitating management control over delegations of authority and assuring that authority is delegated to the lowest practical level for use by all Santaquin City officials.

This Delegation of Authority is effective as of the date of the Mayor's signature. The Mayor reserves the right to alter this document at any point by re-issuing and signing an updated version of this document. An updated version of this document will supersede all previous versions making them null and void.

The following chart outlines those items identified in the Santaquin City Employee Personnel Policies and Procedures Handbook as "Powers and Duties of the Mayor, or designee." It does not include items from Utah State Code or Santaquin City Code. For each item identified with an "X" in the "Director's" column, advice and/or superseding authority may be exercised by the Manager or the Mayor. For each item identified with an "X" in the "Manager's" column, advice and/or superseding authority may be exercised by the Mayor.

	Mayor	Manager	Director
Policy Implementation			
Final interpreter of Employee Handbook	X		
Recruitment and Hiring			
Job Description drafting and approval		Approving	Drafting
Determination if internal promotion fulfills the needs of a new or vacant position			X
Submission of applications			X
Selection of applicants to interview			X
Selection and approval of applicant for employment			X
Employment Status, Classification, and Probation			
Consideration of part-time/benefited		Approval	Recommend
Pre-approval of volunteers			X
Extension of probation beyond the initial probationary period			X
Determined length of corrective action plan			X
Performance Evaluations			
Perform evaluation on the City Manager and Assist with the evaluation of the Functional Area Director			X
Employee Reduction in Force Policy			
Determination that an employee reduction in force is necessary due to budgetary restrictions, reduction in workload, or reorganization	X		
Employee Records			
Retention and maintenance of personnel files on each employee			Administrative Services Director
Be present for employees to review their own files			Administrative Services Director

Compensation			
Determination and change of employees' work hours			X
Review with employees any discrepancies in payroll deductions			X
Conduct a study of salary levels at least every 3 years and recommend adjustments			Administrative Services Director
Recommend a selective salary adjustment in order to mitigate inequity, as part of a promotion, reassignment or reclassification, etc., and submit written documentation supporting the recommendation to the City Council			X
Pre-approve the payment of over-time			X
Reserves the right to schedule use of compensatory time and should limit accumulated hours to 50% of the maximum accrual allowed			X
Pre-authorization of employees working over-time as deemed necessary			X
Designate departments that will have on-call status			X
Leaves			
Determine date for one-time payment of unused vacation leave hours	X		
Designation of observed holiday to Friday or Monday if the holiday falls on a Saturday or a Sunday	X		
Require employee to produce a certificate from the attending physician if sick leave is in excess of 3 consecutive working days, or if abuse of sick leave is			X

indicated			
Assign administrative leave with pay under certain circumstances		X	X
Authorize an employee charged with a job related felony, after judicial review, may be placed on administrative leave without pay	X		
Receive written request from eligible employees interested in leave without pay		X	
Give written approval to employee for leave without pay		X	
Employee Benefits			
Receive written request for education assistance		X	
Make final determination for education assistance with input from the Functional Area Director and availability of funds		X	
Code of Conduct			
Receive report if an employee has an outside interest which could be affected by any Santaquin City plan or activity			X
Receive written notification from employees, in the form of a sworn disclosure statement, of any secondary or outside employment, or before starting any secondary or outside employment, or if the employee has an interest in an entity that does business with Santaquin City			X
Pre-approve secondary employment			X
Give written approval to compensate personal use of the city's computer		X	

equipment for work performed			
May view/review all data stored on, and software developed on, Santaquin City owned computer equipment			X
May revoke cell phone privileges at any time			X
Authorize in advance the use of city vehicles for personal business			X
Approve use of body armor and firearms for Public Safety employees			X
Approve the safe use of a personal tool or piece of equipment in the performance of a City duty on a voluntary, non-paid basis			X
Harassment, Discrimination, and Retaliation			
Receive notice from the Functional Area Director, about City employees in a non-spousal romantic, dating, and/or sexual relationship with another City employee		X	
Coordinate investigations of all complaints with the City Attorney and the involved Functional Area Director		X	
Responsible for moving the investigation forward, ensuring adequate documentation, and making recommendations		X	
Responsible for accepting, modifying, or rejecting recommendations and, when appropriate, initiating disciplinary action	X		
Have access to investigative files that an investigation has determined to be unfounded	X		

• Receive appeals about conclusions to the investigations	X		
Employee Discipline			
• May suspend an employee from work with or without pay for up to 30 days (240 hours)	X		
• May demote an employee to a lower grade position with or without a reduction in pay	X		
• May transfer an employee to another position within a department or to another position in a different department within the City	X		
• May, with the City Attorney, terminate a full-time employee	X		
• Conduct a pre-disciplinary hearing for the purpose of allowing the employee to respond to the charges and present information the employee believes is relevant to the decision	X		
• Make a decision as to the disciplinary action to be taken, if any, and the employee shall be notified in writing within five working days after the hearing	X		
• Receive a written request of grievance from an employee who is not satisfied with the response of the Functional Area Director within 10 business days of receipt of the Functional Area Director's response. Shall then respond to the employee's grievance in writing, detailing your decision, within 10 business days of receipt of the grievance. This decision is final and not appealable		X	

Purchasing			
May, at your discretion, require approval of all purchases by an individual employee or department of less than \$100 if in your discretion there is concern regarding proper and prudent spending of public monies			X
Sign and approve purchase orders, properly completed and identified with the appropriate general ledger number, for purchases from \$500 to \$15,000	Mayor to \$15000	Manager to \$7500	Directors to \$2500
Travel Policy			
Approve, in advance, written requests for travel by the employee on a travel form			X
Pre-approve plans that require flying		X	
Risk Management Philosophy			
Establish, with the City insurance carriers and the City Risk Committee, risk management programs to protect the health, safety, and welfare of City employees and public; prevent financial losses and reduce insurance premiums; conduct the affairs of the department to reduce insurance premiums and to reduce the potential for claims and lawsuits against the City. Each Functional Area Director is responsible to implement these programs			Risk Manager – Susan Farnsworth
Processing Risk-Related Incidents			
Receive notice from an employee who becomes aware of any occurrence			Risk Manager – Susan Farnsworth

which may give rise to a lawsuit, who receives a notice of claim, or is sued because of an incident related to his employment			
Be notified by the City Recorder upon receipt of notice of an incident if the incident involves an actual or potential claim against the City		X	
Advise the Risk Manager to conduct additional investigation into an incident		X	
With recommendation of the City Attorney and consent of the City Council, may choose to settle any claims, the disposition of lawsuits, the imposing of penalties on departments or employees at fault, or any other issues that in your opinion affect the rights or liabilities of the City	X		

Kirk Hunsaker
Santaquin City Mayor

Date

Attest

Susan B. Farnsworth
Santaquin City Recorder

EMAILS

Subject: City Manager Ordinance

Date: Tuesday, July 2, 2019 at 21:20:37 Mountain Daylight Time

From: Bryce Haderlie

To: John Drew

CC: Matt Dixon, Ben Reeves, David Zook

Dear Mayor Drew,

I want to thank Matt, Ben and David for contributing to this response that I believe gives a comprehensive answer to your question.

In short, it is our understanding that Utah State Law no longer allows for a Council-Manager form of government except for those cities (Orem, West Valley, Brian Head and a few others) which are grandfathered under the old law. In 2008 the legislature rewrote the state code (see Utah Code 10-3b-101) regarding forms of government. In this process the state repealed the Optional Forms of Municipal Government Act and in doing so eliminated the council-manager form of government.

Today there are only three types of municipal governments in Utah (unless a city wants to do its own charter): 1) council-mayor, 2) five-member council, and 3) six-member council. Cities that were operating under the council-manager form were grandfathered and will remain such until voters in these cities vote to go to one of the 3 options above OR until the legislature changes the forms again. It's my understanding that Providence has a 6-member council form of government, and as such, the City Manager's position would be created by ordinance. As the Mayor and Council work together to create an ordinance, specific duties and responsibilities will be delegated to the Manager. As such, the statement in the ICMA document does not apply in Utah.

Regarding the suggestion of a "trial period", there are impacts to consider. It would very likely dampen the pool of potential candidates for the position as well as weaken the position through the continual threat of revocation. It is a fact that a manager "works at the pleasure" of the Mayor and Council and can be cut at any time with a supermajority vote of the council pursuant to the terms outlined in their contract or the ordinance. Some communities do advertise a position as an "Interim" so that the candidates understand that it is not permanent but this again limits the candidates to individuals who aren't committed to a long term relationship.

Ben Reeves shared that his position in Santaquin developed in this way, *"In our code, I have certain responsibilities and the Mayor has other responsibilities. However, wherever the Mayor has responsibilities, it typically states 'Mayor; or designee'. Upon taking my office, I went through our code and employee hand book and identified everywhere it used the word 'designee.' I then created a matrix with those responsibilities listed out on the left and columns across the top included 'Mayor', 'Manager', 'Department Head' and 'Supervisor'. The Mayor and I met where he check marked what responsibilities he wanted to keep and which he wanted to delegate and to whom. We then took that spreadsheet and put it into a 'Delegation of Authority' letter, which the Mayor signed and clearly defined everyone's roles and responsibilities. If at anytime the Mayor wants to retract authority or further delegate authority, he can do so by issuing an updated/modified letter. Long story short...the Council outlined their authority in ordinance format (e.g. personnel, budget, etc.) and the Mayor outlined executive authority. Everyone is happy and we all get along."*

While a referendum vote on any ordinance (even the creation of a City Manager position) is a possibility, it is not necessary and probably not wise. The elected leaders of the city are the people's

representatives and should retain the authority to hire and fire staff. Opening up personnel actions to public opinion changes a staff position into a political position which will hamper the ability for any manager to perform their duties effectively. Ultimately, the authority rests with the elected officials to outline the duties of the position and when that individual can be terminated.

Knowing how seriously we as city managers take our jobs, this position gives opportunity to have an individual educated and familiar with federal, state, municipal laws, best practices and correct management principles support you 24/7/365 by managing the city staff and ongoing decisions that need to be made while elected officials direct the work through policy, budget and the duties that you assign by ordinance. Much like a private corporation hires a professional manager or administrator that is directed by a board of directors (you as Mayor and City Council), it provides continuity and specialized leadership. We wish you and the City Council all the best as you consider this important decision. Please let us know if there is anything else that we can do to help you as you move forward.

Sincerely,
Bryce K. Haderlie
UCMA President
Assistant City Manager/
Administrative Services Director
Midvale City

Subject: RE: City Manager
Date: Saturday, July 6, 2019 at 11:26:28 Mountain Daylight Time
From: Ben Reeves
To: John Drew
Attachments: Delegation of Authority.docx, WHY_CANT_WE_ALL_JUST_GET_ALONG5-09.pdf

Mayor Drew,

Thank you for your email. Pursuant to your request, I am attaching our most recently issued delegation of authority letter issued by the mayor. Please note that it only addresses executive authorities, which are the purview of the Mayor. Legislative vs. Executive authorities are outlined in City Code and State Statute.

This document has proved to be very successful for my Mayor/Manager relationships. Everyone knows their roles and their authorities...and everyone is confident that they will be supported in their decision making to the extent that they are empowered to act in said capacity. In the event that something falls apart, the mayor can easily retract said authority unto himself. On the other hand, if everything is running smoothly with great trust, then the mayor can delegate additional authorities, as desired. In my experience, once one of my mayors has issued such a letter, he/she has never needed to reissue a new letter. Roles and expectations are clearly established which is the basis for trust and respect.

David Church, legal counsel for the Utah League of Cities and Towns, often likes to joke "City Staff... please remember that you are staff...you have not been elected to anything. City Council Members... please remember that you have been elected to be part of a decision making legislative body...you are not the Mayor. ...and Mayors...please remember that you are the Chair of the Council and Chief Executive of the City entrusted to lead and guide...you are not God. If everyone remembers your roles you will all get along." Though he would say this in jest, he did write an excellent article on this same subject which I am attaching for your review as well.

I wish you only the best of luck with this decision. I am confident that you will not regret hiring a city manager. A great city manager will make his/her mayor and council shine. They will help you to be successful and put their elected leaders on the front of any success. During times of trouble, they will actively work to protect the elected leaders, often falling on their own swords to do so. City Managers are a very tight knit group in the State of Utah. We are here to support each other as well. So, when you do hire one...please support them as they engage in the Utah City/County Management Association (UCMA)...and, if possible, the International City/County Management Association (ICMA).

Best wishes!
Ben Reeves, UCMA Board – Past President

Benjamin A. Reeves, ICMA-CM
Santaquin City Manager
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breeves@santaquin.org
(801) 754-3211 Office
(801) 420-3052 Cell

WHY CAN'T WE ALL JUST GET ALONG?

By David L. Church

One disturbing theme of local government is the internal conflict among elected and appointed local government officials. There always seems to be one or two cities with ongoing spats. These conflicts very often appear to an outsider to involve little substance. They often become fodder for the press, and always result in embarrassment to those involved and, by association, to everyone else involved in local government. Very often these disputes are about who's in charge and the proper roles of officials and their duties.

This is about my experience with some of the causes of these disputes and potential ways to avoid them in the future. Neither the causes of the disputes nor the means of avoidance are intended to be the last word on the issue. The examples that I cite are not intended to refer to anyone or any city particularly. If you recognize yourself, your city, or one of your fellow local officials in any of my descriptions, you are mistaken. The facts and names have been changed to protect the guilty.

The most common cause of conflict is misunderstanding the form government that the city or town is operating under. Too many people run for an office without understanding the office they seek. The form and structure of local government are set first by state law and second by local ordinance and policy. The state law establishes the basic form of government for all cities and towns.¹ There are three basic forms of government. They are known as the council-mayor form of government, the six-member council form of government and the five-

¹ See Utah Code section 10-3b-101 et seq.

member council form of government. Prior to May 4, 2008 there was also a form of government known as the council-manager optional form of government. That form is no longer available under state law but the cities and towns that had previously adopted that form continue to operate under it. The state law also allows voters in all cities and towns to change forms government to any of the three approved forms.² Within six-member council and five-member council forms of government there is the flexibility to adopt local rules and procedures.³

Not everyone elected to an office of mayor has the same powers. The power and duties of mayor in the six and five member council forms of government is very different from the mayor in the council-mayor form of government under state law, and even within the various six and five member council forms of government there will be differences between mayors in different cities and towns depending on local ordinances. Mayors elected in a city operating under the council-mayor forms of government are the heads of an executive branch of government.⁴ The executive branch is separate, independent, and equal to the legislative branch. These mayors are powerful people. A mayor in a city operating under the old council-manager optional form is a figure head mayor only.⁵ The mayor is a member of the council and does not have any executive or administrative powers. An appointed city manager holds the executive and administrative powers. Mayors in cities and towns that are operating under the six and five member council forms of government fall somewhere between these extremes. They can be either kings or pawns depending on local ordinances. The state law makes these mayors both

² See Utah Code section 10-3b-501 et seq.

³ See Utah Code section 10-3b-303(1)(b) and section 10-3b-403(1)(b)

⁴ Utah Code section 10-3b-201, 202

⁵ See former Utah Code section 10-3-1223 now repealed

members of the legislative body⁶ and chief executives,⁷ but the law also allows cities and towns to delegate, by ordinance, some or all of the Mayor's executive powers to managers and administrators or even to themselves.⁸ The ordinances changing the mayor's power in the five and six- member council forms of government require either a unanimous vote of the council or the consent of the mayor and a majority vote of the council.⁹

If you are a mayor or council member you have a duty to understand the system of government you are operating in and live with the limitations. Disputes are created when elected officials begin to assume authority that they do not have. There are many examples of this including mayors who refuse to carry out policies with which they disagree; council members who try to direct employees in their day to day duties; mayors trying to be the city managers; and council members who try to act like they are mayors.

The solution to these types of conflicts is simple-- learn your position and duties and accept them. If you want to be a mayor, run for mayor. If you think that your form of government is inefficient, take the appropriate steps to change it. These steps will be either taking your proposal to the people or, where appropriate, taking your proposal to the city or town council and see if yours is a majority view.

Another source of conflict is council members who don't work and play well with others.

⁶ See Utah Code sections 10-3b-301 and 10-3b-401

⁷ See Utah Code section 10-3b-104

⁸ Utah Code section 10-3b-303 and 10-3b-403

⁹ Utah Code section 10-3b-303(2) and 10-3b-403(2)

It is my opinion and experience that there are two broad classes of people who run for local office—those that want to be involved and those that want to be in charge. If you get too many of the latter and not enough of the former trouble can occur.

A council member is a member of a committee. He or she has a vote as an individual, but only has power when part of a majority of the group. There will be times when a council member's view prevails and times when the view does not prevail. It is frustrating to believe you are right and not be able to get your way. Personality conflicts can and will arise as council members work together over time. These do not need to become petty public fights. Council members must learn to win without gloating and lose with dignity.

There is no excuse for being rude to each other in public meetings. There is no excuse to being rude to the public. One solution to these types of conflicts is to insist that the chair of the meetings be a strong chair. This requires that council members allow the chair to keep order and that the chair be willing to assume the role of referee and not participant when it appears that the meeting is getting out of control.

Another cause of disagreement, related to the above, involves getting things on council meeting agendas. There have been many fights start over refusals to put things on the agenda or over having things reappear on agendas that the council does not want to discuss. The solution to this is for the council to adopt rules prior to any dispute arising, and live by the rules.¹⁰ In the absence of rules the chair is going to control the agenda. If you don't take the time to adopt rules of procedure, you have no right to complain about how the chair runs the agenda.

¹⁰ Utah Code section 10-3-606 give councils the authority to adopt rules of procedure not inconsistent with state law.

Misuse of the Municipal Officers and Employees Ethics Act¹¹ also results in some ugly scenes. Using a public charge of conflict of interest to try to persuade a fellow council member either to vote your way, or to keep the council member from voting is inappropriate. If you care about an issue so much that you are willing to publicly accuse a fellow council member of misconduct to win, then perhaps you have a conflict of interest as well. Real ethics violations and conflicts of interest should be taken care of in the manner provided for in the act.¹² A complaint should be made to the mayor or city manager and an investigation should be undertaken. In this way the person accused has the opportunity to be heard before being pilloried in the public and press.

These are only a few of the sources of conflicts that I have observed and my recommended solutions. There are many others. The following are some general aphorisms that may help avoid and solve these conflicts that I have discussed and other that may arise.

1. All elected officials are worthy of respect, even the ones dumb enough to disagree with you.
2. It is unfair to expect members of the public to know what you know or understand what you tell them.
3. Your job description does not include the phrase "take full credit, no blame."
4. Win graciously.
5. Accept your losses, and move on.
6. Enjoy correcting your own mistakes as much as you do others'.
7. Praise in public and reprimand in private.

¹¹ Utah Code sections 10-3-1301 et seq.

¹² Utah Code section 10-3-1311

8. Do your own job first.

9. Always assume others are acting in good faith.

I guarantee that if you follow the above rules your life as a city or town official will be less stressful.