



**CITY OF NOVI CITY COUNCIL
OCTOBER 10, 2022**

SUBJECT: Approval of amendment to City Manager employment agreement.

SUBMITTING DEPARTMENT: City Clerk

BACKGROUND INFORMATION:

Attached are proposed revisions to the employment agreement for the City Manager considered by City Council at its September 26, 2022, meeting. The changes include a 30-day consultation period in which the City can request assistance with transition to a successor Manager and a revised date for eligibility for retirement health care benefits.

RECOMMENDED ACTION: Approval of amendments to City Manager employment agreement.

CITY MANAGER EMPLOYMENT AGREEMENT (2022)

THIS AGREEMENT is made and entered into this 26th day of September, 2022, by and between the City of Novi, a Michigan municipal corporation, hereinafter referred to as the “Employer,” and Peter E. Auger, hereinafter referred to as the “Employee,” both of whom understand as follows:

RECITALS:

Employer desires to retain and continue the services of Employee as City Manager of the City of Novi, and to establish certain terms of compensation and benefits, conditions of employment, and working conditions for Employee; and

Employee desires to continue employment as the City Manager of the City of Novi subject to such terms and conditions.

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

Section 1. Duties

Employer agrees to employ Employee as City Manager of the City of Novi to perform the functions and duties specified in Section 4.7 of the Charter of the City of Novi and to perform such other legally permissible and proper duties and functions as the City Council shall from time to time assign.

Section 2. Term

A. Employee is appointed and employed as City Manager for the City of Novi, with the effective date of his employment as City Manager under this Agreement for all purposes being and remaining September 16, 2014, the date of his original appointment as City Manager. The appointment, as required by Section 4.7 of the Charter, is for an indefinite period of time. However, nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City Council to terminate the services of Employee at any time, with or without cause, subject only to the provisions of the City Charter, including Section 4.8 thereof, and the provisions set forth in Section 3, Paragraph A, of this Agreement.

B. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of Employee to resign at any time, from his position with Employer, subject only to the provisions set forth in Section 3, Paragraph B, of this Agreement.

C. Employee agrees to remain an exclusive employee of Employer, and agrees not to accept other employment or to become employed by any other employer while this Agreement is in effect. The term “employed” shall not be construed to include occasional teaching, writing, consulting, or military reserve service performed on Employee’s time off, subject to Section 8 of this Agreement.

Section 3. Termination and Severance Pay

Termination of Employee by Employer shall be in accordance with Section 4.8 of the City Charter. If the Employer reduces the base salary, compensation, or 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.

A. In the event that Employee is terminated by the City Council, and during such time Employee is willing and able to perform his duties under this Agreement, then Employer agrees to pay Employee six (6) months salary as severance pay. Notwithstanding the foregoing, in the event Employee is terminated because of his (i) conviction of any felony; (ii) conviction of a misdemeanor that would reflect negatively on the City (such as, but not limited to, an offense involving drug or alcohol abuse or sexual misconduct); (iii) conviction of any illegal act involving personal gain to him or affecting the performance of his duties under this Agreement; (iv) willful misrepresentation to the City, either in connection signing this Agreement or the performance of his duties; (v) willful misconduct or insubordination; (vi) breach of this Agreement; (vii) violation of the City Charter or ordinances or regulations adopted by the City Council; or (viii) permanent disability such that he becomes unable to perform his duties, then Employer shall have no obligation to pay for aggregate severance pay designated in this paragraph. Employee shall also be compensated for all accrued vacation time and personal business time, and other accrued benefits pursuant to the City's employee benefits policy in existence at the time this Agreement is terminated.

B. In the event Employee voluntarily resigns from his position with Employer, Employee shall give Employer sixty (60) days advance written notice, unless the parties agree otherwise. In the event Employee voluntarily resigns from his position, he shall not be entitled to the severance pay described in Paragraph A, above, but shall be compensated for all accrued vacation time and personal business time, and other accrued benefits pursuant to the City's employee benefits policy in existence at the time this Agreement is terminated.

Section 4. Disability

Employer agrees to provide a short and long term disability plan established for non-union employees in accordance with the City's employee benefits policy.

Section 5. Salary and Benefits

Employer agrees to pay Employee for his services rendered pursuant to this Agreement an annual base salary of One Hundred Seventy-One Thousand One Hundred Eighty-Four Dollars and Five Cents (\$171,184.05) Dollars, payable in installments at the same time as other general employees of the City are paid. The City agrees to review this base salary and/or other benefits of Employee at the same time as the Employee's performance evaluation provided for in Section 6 of this Agreement.

A. Employee is currently enrolled in an ICMA-RC defined contribution plan. In addition to the base salary paid by Employer to Employee, Employer shall pay an amount equal to 10% of such base salary into said ICMA-RC Plan on Employee's behalf, in equal proportionate

amounts each pay period and to execute all necessary agreements provided by the ICMA-RC for Employer's participation in the Plan. Contributions made to the ICMA-RC as deferred compensation by, or on behalf of, Employee shall be the sole property of the Employee at the time of withdrawal or distribution of these funds in accordance with the agreement between the City and the ICMA-RC and this Agreement. Employer shall make no contributions to the City's retirement system (Municipal Employees Retirement System/MERS) on behalf of Employee. Employee shall execute any and all forms, if any, necessary for withdrawal/nonparticipation from the MERS system. In the event that Employer is, for any reason, unable to pay the amount set forth herein into Employee's existing ICMA-RC plan, the parties agree that they will jointly and mutually agree on an alternate retirement contribution mechanism that will provide the same benefit to Employee while not materially increasing the cost to Employer.

B. Employer agrees to provide and to pay the premiums for health, hospitalization, surgical, vision, dental, and comprehensive medical insurance for Employee and his dependents equal to that which is provided to all other administrative officer employees of the City. Employer agrees to put into force and to make required premium payments for long term disability coverage for Employee.

C. In lieu of retiree health care benefits available under the City's employee benefits policy (receipt of which Employee waives), Employer shall contribute an additional 1% of Employees base salary into the ICMA-RC Plan referred to in Paragraph A of this Section 5, in equal proportionate amounts each pay period. Notwithstanding the foregoing, if Employee remains employed as City Manager as of November 15, 2022, he shall be qualified to receive, for himself only, the retiree health care benefits available under the City's employee benefits policy and in accordance with the terms and conditions thereof. As of November 15, 2022, the additional payments referred to in the first sentence of this sub-paragraph C shall cease.

D. Upon execution of this employment agreement, Employee shall be able to accrue sick time as currently provided for administrative officer employees and vacation time of five (5) weeks on an annual basis. Employee may accrue the maximum amount of vacation time permitted to be accrued for administrative officer employees, and vacation time accrued in excess of the maximum allowed shall be paid annually to Employee by February 1 and shall not be forfeited. All existing accrued hours of leave of all types shall remain in force. In the event Employee's employment is terminated, either voluntarily or involuntarily, Employee shall be compensated for the percentage of all accrued personal business time, accrued vacation time, and other accrued benefits pursuant to the City's administrative employee benefits policy in existence at the time this Agreement is terminated.

E. Employer shall pay the amount of premium due for term life insurance in the amount of \$200,000. Employee shall name the beneficiary of the life insurance policy.

F. For one month following Employee's voluntary resignation or retirement from his employment, Employee agrees to serve as a consultant to the City, upon its request, for purposes of assisting in the transition to his successor or for other purposes determined by the City. Employee shall receive an amount equal to his salary for one month as compensation for such services.

Section 6. Performance Evaluation

Employer shall annually review the performance of the Employee subject to a process, form, criteria, and format for the evaluation that shall be mutually agreed upon by Employer and Employee. The evaluation process shall be scheduled between Employee and the Mayor by May 1 of each year. Salary or other benefit improvements resulting from the evaluation shall in any case become effective July 1 of each year. Employee and Employer are committed to and will provide feedback and interim reports and/or evaluation reports in such form as are mutually agreeable throughout the year, as a means of communicating and improving the performance of the organization without the need or expectation for additional compensation improvements.

Section 7. Hours of Work

It is recognized that Employee must devote a substantial amount of time outside the normal office hours to business of Employer, and to that end Employee shall be allowed to take compensatory time off, as he shall reasonably deem appropriate, during said normal office hours.

Section 8. Outside Activities

The employment provided for by this Agreement shall be Employee's sole 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, or professional consulting, with the understanding that such arrangements shall not interfere with nor create a conflict of interest with his or her responsibilities under this Agreement.

Section 9. Automobile

Employer agrees to pay to Employee, during the term of this Agreement and in addition to other salary and benefits herein provided, the sum of \$8,400 per year, payable monthly (\$700 per month), as a vehicle allowance to be used to purchase, lease, own, operate, and maintain a motor vehicle. 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.

Section 10. Dues and Subscriptions

Employer agrees to budget and to pay for the professional dues and subscriptions of Employee that are reasonably necessary for his continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for his continued professional participation, growth, and advancement and for the good of Employer.

Section 11. Professional Development

Employer agrees to budget for and to pay the travel, subsistence, educational, and registration expenses for Employee attendance at one (1) national (not international) convention, seminar, conference, and/or meeting outside the State of Michigan per year, such as the annual

IMCA or National League of Cities meeting, and for an appropriate number of conventions, seminars, conferences and meetings within the State of Michigan per year as the Employer deems necessary for training, updates, and/or professional development. In the event that Employee desires to attend more than one (1) out-of-state convention, conference, seminar, and/or meeting per year, Employee shall obtain the approval of the City Council. Nothing in this Section shall authorize payment for any international travel or related expenses. If Employee desires to attend an international convention, seminar, conference, or meeting at Employer's expense, City Council approval is required.

Section 12. General Expenses

Employer recognizes that certain expenses of a non-personal and generally job-affiliated nature may be incurred by Employee, and Employer hereby agrees to reimburse or to pay for such reasonable and necessary expenses.

Section 13. Indemnification

Employer shall defend, hold harmless, and indemnify Employee against any tort, professional liability claim, demand, and/or any other legal action, lawsuit, and/or claim, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as City Manager. Employer shall have the authority to compromise and settle any such claim, action, and/or suit and to pay the amount of any settlement or Judgment rendered thereon.

Section 14. Bonding

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

Section 15. Other Terms and Conditions of Employment

A. The City Council, in consultation with the Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time related to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City Charter, City Ordinances, and/or any other law.

B. All provisions of the City Charter, City Ordinances, and all regulations, policies, and rules of the Employer relating to the vacation, sick leave, retirement and pension system contributions, deferred compensation, life insurance, dental insurance, optical reimbursement, medical and hospitalization insurance, and other fringe benefits and working conditions as they now exist or hereinafter may be amended shall also apply to Employee as they would to other department heads of the City, except as otherwise provided herein. Employer reserves the right to alter, modify, or terminate any or all of its benefits, specifically including insurance plans, provided to non-union employees during the term of this Agreement and Employee may not rely on any specific coverage or term of such plans or benefits being maintained by the Employer solely for Employee's benefit. Changes to the benefits provided to non-union employees after the date of this Agreement shall also apply to Employee.

Section 16. Notices

Notices pursuant to this Agreement shall be given by first-class mailing with the United States Postal Service, postage prepaid, addressed as follows:

- (1) Mayor of the City of Novi, Clerk of the City of Novi, 45175 W. Ten Mile Road, Novi, MI 48375; and
- (2) Peter E. Auger, 41748 Brownstone Dr. Novi, MI 48377.

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

Section 17. General Provisions

A. All provisions of the City of Novi Personnel Policies, as they now exist or hereafter may be amended, shall apply to Employee as they would to other non-union exempt employees of Employer, unless otherwise provided in this Agreement.

B. The text herein shall constitute the entire agreement between the parties.

C. This Agreement shall be binding upon and inure to the benefit of the heirs at law and personal representatives of Employee.

D. A waiver by Employer of a breach of any provision of this Agreement by Employee shall not operate or be construed as a waiver of any subsequent breach by Employee.

E. This Agreement shall be effective as of July 1, 2022, and supersedes any previous employment agreements.

F. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

G. Employee agrees to submit appropriate documentation for expenses to be reimbursed pursuant to this Agreement.

IN WITNESS WHEREOF, the City of Novi has caused this Agreement to be signed and executed on its behalf by its Mayor and City Clerk pursuant to authorization of the Novi City Council, and Employee has signed and executed this Agreement, both in duplicate, the day and year first above written.

[signatures next page]

CITY OF NOVI

By: _____
ROBERT J. GATT, MAYOR

BY: _____
CORTNEY HANSON, CLERK

PETER E. AUGER, CITY MANAGER