

A G E N D A I T E M

BUSINESS OF THE CITY COUNCIL City of Des Moines, WA

SUBJECT: City Manager 2019-20 Performance
Review and Contract Amendment

ATTACHMENTS:

1. Contract Amendment #4
2. City Manager Contract

FOR AGENDA OF: January 23, 2020

DEPT. OF ORIGIN: Legislative

DATE SUBMITTED: January 16, 2020

CLEARANCES:

- Community Development ____
 Marina ____
 Parks, Recreation & Senior Services ____
 Public Works ____

CHIEF OPERATIONS OFFICER: _____

- Legal *TS*
 Finance *AA*
 Courts ____
 Police ____

APPROVED BY CITY MANAGER
FOR SUBMITTAL: *SMC*

Purpose and Recommendation

The purpose of this agenda item is for the City Council to review the 2019-20 performance of City Manager Michael Matthias and to consider an annual step increase as well as any additional contract amendment the Council deems appropriate.

Following the conclusion of the performance evaluation, if the Council finds that the City Manager has demonstrated a sustained exemplary performance, the Council can make the following motion:

Motion

Motion 1: "I move to approve a single step increase for the City Manager from M-49 C to M-49 D, effective February 1, 2020, and authorize the Mayor to sign contract amendment #4 substantially in the form as attached."

Background

The employment agreement dated October 28, 2016 between the City of Des Moines and the City Manager, Michael Matthias, calls for an annual step-increase in compensation contingent upon “demonstrated sustained exemplary performance, as determined by the City Council.” The City Manager is currently at a “Step C” and is eligible to move to a “Step D” on the same pay range.

Additionally, the contract provides for semi-annual performance evaluations of the City Manager. The only performance evaluation conducted of the City Manager in 2019 was completed in April.

The City Council discussed the City Manager’s performance in December and Councilmember’s have been provided the opportunity to complete a formal written performance evaluation. The final outcome will be discussed at the January 23, 2020 City Council meeting.

In order to align the City Manager’s existing contract with a “year-end evaluation,” the employment contract is proposed to be amended to change the dates of the annual performance evaluations from April and October to June and December.

The City Council may elect to propose additional amendments to the existing contract as well following the conclusion of the performance evaluation, to include employment benefits, severance options, or general contract provisions.

Financial Impact

The step increase from an M-49 C to M-49 D represents an increase of 5% (five percent) in annual compensation. There is no financial impact from moving the dates of the performance evaluations.

EMPLOYMENT AGREEMENT AMENDMENT #4

THIS AMENDMENT is entered into on this ___ day of January 2020, pursuant to the Employment Agreement entered into on the 28th day of October, 2016, between the **CITY OF DES MOINES, WASHINGTON** (hereinafter "City"), and **Michael Matthias**.

The parties herein agree that the Employment Agreement dated October 28th, 2016, and any subsequent amendments, shall remain in full force and effect, except for the amendment set forth as follows:

1) **SECTION 5(A)** of Employment Agreement dated October 28th, 2016, is hereby amended to read as follows:

~~The City Council shall review and evaluation the performance of the Employee quarterly for the first year of employment. After the first year, performance Performance evaluations will occur at least twice annually, in April June and October December of each year, unless otherwise mutually agreed by the City Council and the Employee. Said review and evaluation shall be in accordance with job performance criteria developed by the City Council, and in accordance with Des Moines Municipal Code 2.04.050.~~

Except as modified hereby, all other terms and conditions of the employment agreement dated October 28th, 2016, and any subsequent amendments shall remain in full force and effect.

IN WITNESS WHEREOF, and to signify agreement to the terms and conditions of this Amendment to the Employment Agreement, the parties have affixed their signatures on the dates indicated.

Dated this ___ day of January 2020.

Dated this ___ day of January 2020.

Mayor Matt Pina

Michael Matthias
City Manager

Approved as to Form:

Timothy A. George
City Attorney

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Employment Agreement
Between the City of Des Moines and Michael Matthias

This Employment Agreement (“Agreement”) is made and entered into by and between the City of Des Moines, Washington, a municipal corporation, hereinafter called “Employer” or “City Council,” and Michael Matthias, hereinafter called “Employee” or “City Manager.”

Section 1. Employment, Powers and Duties, and Term.

(A) The City Council hereby employs Michael Matthias as City Manager of the City of Des Moines, to perform on a full-time basis the functions and duties set forth in the Des Moines Municipal Code (DMMC), RCW 35A.13.080, and such other legally permissible and proper duties and functions as the City Council shall, from time to time, direct or assign. The City Council acknowledges the business principles and legal provisions under the Council-Manager form of government, and agrees to direct its concerns and requests for action to the City Manager. The City Manager recognizes that the City Council is the policy making body and agrees to respond promptly and equally to all members of the City Council regarding their concerns.

(B) The City Manager shall focus his professional time, ability, and attention to the City’s business during the term of this Agreement. The City Manager shall not spend time in teaching, consultation, or other non-Employer connected business activities that are competitive or in conflict with his duties as City Manager. In those cases where outside activities, for example, teaching, consulting or other business opportunities are not in conflict with his duties and are not competitive to the interests of the City, the City Manager will request the express prior written consent of the City Council. The City Council has the sole authority to approve or deny a request under this Section.

(C) Before entering upon the duties of his office, the City Manager shall take an oath for the faithful performance of his duties and shall execute and file with the City Clerk a bond in favor of the City in the amount required by law. The premium on such bond shall be paid by the City.

(D) The terms of this Agreement and appointment shall become effective upon date of signature and retroactive to August 20, 2016 and shall be for an indefinite term subject to RCW 35A.13.130 and Section 7 of this Agreement. The City Manager is an “at-will” employee serving at the pleasure of the Employer, acting through the City Council, and subject to summary dismissal without any right of notice or hearing. Except as provided in Section 7 below, the City may terminate the employment of the City Manager at any time, with or without cause, upon compliance with RCW 35A.13.130 and the provisions set forth in Section 7 of this Agreement.

(E) If City Manager determines to terminate this Agreement, he shall be required to give a minimum of sixty days’ advance written notice to the City Council

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prior to the effective date of his termination, unless a shorter period is acceptable to the City Council, and the City Manager shall not be eligible for severance compensation in the event of his voluntary resignation.

Section 2. Compensation.

(A) Employee shall receive an initial annual base salary at Step C of Range M-43 on the City's pay plan; the annual salary of Step C on range M-43 is \$153,900, which is the 2016 rate, retroactive to August 20, 2016. It is agreed Employee will be eligible to progress to an increased Step or Range immediately following his performance evaluation in April of 2017 and subject to the approval of the City Council and contingent upon satisfactory performance as determined by the City Council. If Employee receives an increase based on the April 2017 evaluation, that increase will be retroactive to February 20, 2017. Any subsequent step increases will be contingent upon demonstrated sustained exemplary performance, as determined by the City Council.

(B) City Manager shall receive general pay increases as otherwise provided to non-represented City employees, generally effective January 1st of each year subject to budget constraints. Likewise, the City Manager shall accept equivalent wage and benefit concessions, such as furloughs, as any that are implemented for non-represented employees. Cost of living adjustments and any such concessions will be administratively applied without the necessity of modifying this agreement.

Section 3. Employment Benefits.

(A) Except as otherwise provided in this Agreement, the City Manager is granted employment benefits in accordance with the Personnel Manual of the City, as presently constituted or as may be subsequently amended.

(B) The City shall provide medical, dental, and vision coverage with the same premium share percentage paid by Employee as non-represented employees. Employee agrees to elect a City-sponsored high deductible medical plan combined with a Health Reimbursement Arrangement as provided to non-represented employees. The City will provide the same fringe benefits provided to non-represented employees, such as basic term life insurance, long term disability insurance, and survivor life benefit insurance coverage provided to non-represented employees.

(C) Employee shall accrue vacation leave at the rate of sixteen (16) hours per month. Employee shall also be provided with a bank of eighty (80) hours of vacation and eighty (80) hours sick leave subtracted by the total number of hours currently in each vacation and sick leave bank respectively. The intent of this section is for Employee to have a total of eighty (80) hours of vacation leave and eighty (80) hours of sick leave in his bank as of August 20, 2016.

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(D) Employee may cash in up to eighty (80) hours of vacation each November to be paid on the first payday in December.

(E) The parties recognize that the City Manager must devote a great deal of time outside normal office hours on business for the City. The parties recognize that City Manager is exempt from the provisions relating to overtime payment and compensatory time under the Fair Labor Standards Act, and is therefore not entitled to formal accumulation of compensation time for hours worked in excess of the normal work day or work week. However, based on the recognition that the City Manager is required to attend meetings and perform duties outside normal working hours, an additional sixteen hours of vacation time shall be added to his vacation balance on a quarterly basis, rather than the eight hours per quarter that exempt employees generally receive.

(F) In lieu of participation in the Social Security System, Employee and Employer will make contributions to Social Security replacement retirement accounts, as provided to eligible non-represented employees pursuant to Sections 401(a) and 457 of the Internal Revenue Code.

(G) Employee is covered by the State of Washington PERS 2 retirement system. Employer shall contribute the Employer's share and Employee shall contribute the Employee's share of contributions to PERS 2 as established in state law. The parties acknowledge that the amount of the Employer contribution is subject to adjustment by the state legislature in the future and agree that said contribution shall be adjusted (either increased or decreased) accordingly.

(H) Recognizing the travel and telecommunications costs Employee will be incurring using his own vehicle and cellular phone in the performance of his duties, he will be paid a transportation and telecommunications allowance totaling \$500 per month, to be paid in two \$250 increments on his bi-monthly paycheck, subject to lawfully required withholdings. This section will be applied retroactively to August 20, 2016.

(I) The City Council fully supports Employee's professional development and Employer shall pay the fee for Employee's membership in the International City/county Management Association and the Washington City/County Management Association, and reasonable registration and expenses for other ongoing professional training, classes, licensing requirements or professional development conferences as provided in the City budget and consistent with City Policy.

Section 4. Residence.

Employee agrees to establish residence within the corporate boundaries of the City within six months of employment.

Section 5. Performance Evaluation.

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(A) The City Council shall review and evaluate the performance of the Employee quarterly for the first year of employment. After the first year, performance evaluations will occur at least twice annually, in April and October of each year, unless otherwise mutually agreed by the City Council and the Employee. Said review and evaluation shall be in accordance with job performance criteria developed by the City Council, and in accordance with Des Moines Municipal Code 2.04.050.

(B) The City Council shall define goals and performance objectives which they determine necessary for the proper operation of the City, and in the attainment of the Council's policy objectives, and shall further establish a relative priority among those various objectives.

Section 6. Indemnification.

As a condition of Employee's employment, Employer agrees that it shall defend, hold harmless and indemnify Employee against any tort, professional or personal liability claim, demand, or legal action of any kind or nature, whether groundless or otherwise, arising directly or indirectly out of an alleged act or omission occurring in the performance of Employee's duties. This indemnification and hold harmless shall continue after Employee's cessation of employment but only insofar as it relates back to claims, demands, suits, judgements and professional, personal and community liability arising either directly or indirectly out of his employment. The terms of this provision assume and are conditioned upon the Employee acting in a lawful manner and within the scope of his authority as City Manager and fully cooperating in the defense of any such claims and suits.

Section 7. Termination and Severance.

(A) In the event the Employee is terminated or requested by the Employer to resign for the convenience of the City of Des Moines, the Employer shall provide severance compensation in the amount of six (6) months of salary, cash equivalent of vested benefits and deferred compensation, based upon the salary and benefits in effect at the time of notice of termination or resignation, and the Employer shall extend and pay the Employer's share toward health coverage benefits for six (6) months. Employer shall additionally compensate Employee for all earned vacation and personnel leave balances in effect on the date of termination or resignation, with no further vacation or sick leave accrual. Said severance compensation shall be paid in monthly installments. The Employer shall be authorized to perform any deductions required by law. Any termination action taken by the Employer shall be subject to the notice period required by RCW 35A.13.130 and RCW 35A.13.140, or successor statutes. The Employer, in its sole discretion, may substitute advance notice of termination in addition to that required by statute for any or all of the six months' severance compensations listed above. Additionally, the Employer and Employee may, by mutual consent, arrange for a time-certain effective date of such termination, subject to the aforementioned notice period required by state law.

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(B) The parties expressly agree that the Severance in Section 7(A) is intended to assure that the City Manager receives pay and benefits at the same level as of the date of his termination for a period of six months following such date. Accordingly, if the City Manager becomes self-employed or obtains employment with an employer other than the City of Des Moines at any point within six months of his termination, the City Manager agrees to promptly report the situation to the City and understands that his severance pay shall be reduced in an amount equal to any income earned and benefits provided to City Manager through such employment opportunities.

(C) Failure of the Employer to correct a material breach of this Agreement after notice and a reasonable opportunity to comply will be considered a constructive discharge without cause and Employee will be entitled to severance compensation specified in this section.

(D) In the event the City Manager is terminated for “cause,” then Employer’s only obligation to the City Manager is to pay all compensation and benefits accrued but unpaid at the date of termination. For the purposes of this Agreement “cause” for termination shall include, but not be limited to, the commission of any one of the offenses calling for immediate discharge under Section 8(A)(1) of the Personnel Manual as presently constituted or as may be subsequently amended (including any change in section numbering).

Section 8. General Provisions.

(A) In addition to the rights and benefits detailed herein, the City Manager shall receive all benefits accruing to the department directors of the City of Des Moines, except where they are in conflict with the specific provisions of 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 executors of the parties.

(D) This Agreement shall become effective upon execution by Employee and adoption and approval by the City Council of the City of Des Moines.

(E) Any amendment, alteration, extension, or modification of this Agreement shall be in writing, signed by the parties hereto, approved in the affirmative vote of the City Council with the written consent of City Manager.

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

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IN WITNESS WHEREOF, and to signify agreement to the terms and conditions of this Agreement, the parties have affixed their signatures on the dates indicated.

Dated this 28th day of October, 2016.

Dated this 28th day of October, 2016.

CITY OF DES MOINES

EMPLOYEE

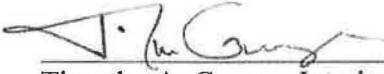


Matt Pina, Mayor
(At the direction of the City Council of the City of Des Moines taken at an open public meeting on October 27, 2016.)



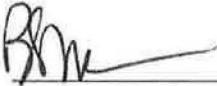
Michael Matthias, City Manager

Approved as to form:



Timothy A. George, Interim City Attorney

Attest:



Bonnie Wilkins, City Clerk