



CITY OF HOBBS
COMMISSION STAFF SUMMARY FORM

MEETING DATE: October 6, 2014

SUBJECT: Approval of a Third Amended Employment Agreement with City Manager, J. J. Murphy

DEPT. OF ORIGIN: Mayor
DATE SUBMITTED: October 1, 2014
SUBMITTED BY: Michael H. Stone, City Attorney

Summary:

The City Commission desires to amend the employment contract with J. J. Murphy. The Third Amended Employment Agreement reflects modifications as a result of Mr. Murphy's annual evaluation. His salary will increase to \$173,349.00 consistent with the merit/COLA for all Hobbs employees. City Manager's PTO accumulation is increased from 18 hours per month to 20 hours per month. City Manager will be entitled to a newly established 401 (a) plan wherein the City will contribute up to five percent (5%) of his salary, based on merit.

Fiscal Impact:

An annual salary increase of 5%, consistent with the 3% merit and 2% COLA for all Hobbs' employees, increase in PTO accumulation from 18 to 20 hours per month and up to 5%, based on merit, in a 401 (a) plan

Reviewed by:
Finance Department

Attachments:

Third Amended Employment Agreement

Legal Review:

Approved As To Form:
City Attorney

Recommendation:

The Commission to approve the amendments.

Approved For Submittal By:

Department Director

City Manager

CITY CLERK'S USE ONLY
COMMISSION ACTION TAKEN

Resolution No. _____ Continued To: _____
Ordinance No. _____ Referred To: _____
Approved _____ Denied _____
Other _____ File No. _____

THIRD AMENDED EMPLOYMENT AGREEMENT

THIS THIRD AMENDED EMPLOYMENT AGREEMENT is entered into this _____ day of October, 2014, by and between **J. J. MURPHY**, hereinafter designated as "City Manager", and the **CITY OF HOBBS**, a New Mexico municipal corporation, acting by and through its duly authorized Mayor and City Commission, hereinafter referred to as "City".

WITNESSETH

WHEREAS, the City Manager desires to engage into employment with the City of Hobbs as the City Manager of the City; and

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

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

1. Employment: City hereby employs City Manager and City Manager hereby accepts such employment upon the terms and conditions hereinafter set forth.

2. Term: The City Manager's duties and responsibilities shall commence under the terms of this agreement on August 23, 2012 and shall continue in effect for five (5) years unless terminated by City Manager or City in the manner provided for herein below.

3. Authority and Duties: The City Manager shall perform all duties and shall have all powers and authority granted to the City Manager in Hobbs City Charter Section 6, Ordinances, Resolutions, Regulations and other official documents.

4. Work Responsibilities: Effective upon the commencement of this Agreement, City Manager shall devote the time necessary to the administration of the government of the City. In general, such time shall be a minimum of forty (40) hours per week. Such hours shall be scheduled as City Manager deems most conducive to the effective and efficient operation of City administration.

5. Employment Status: City Manager is a professional, managerial, and administrative employee exempt from the requirements of the Federal Fair Labor Standards Act.

City Manager

Mayor

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

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

- a. Salary in the amount of \$173,349.00 annually, paid in conjunction with the regular City of Hobbs pay cycle. All future raises shall be based on an annual performance evaluation and shall not exceed any COLA or merit raises for all City of Hobbs employees. Pursuant to paragraph 12. 4. herein, if City Manager's performance evaluation is satisfactory, he will be entitled to any increase in salary as all other City of Hobbs employees may be entitled without modifying this Third Amended Employment Agreement.
- b. City Manager shall accrue 20 hours per month of paid-time-off in lieu of annual leave or sick leave. City Manager shall also be entitled to the same holiday leave, and health, vision, dental insurance, or other benefits currently available to the general employees of the City.
- c. City shall provide City Manager with an automobile allowance in the amount of \$750.00 each month during his employment with the City. City Manager shall be responsible for paying for any required liability and comprehensive insurance for the vehicle operated by him and for the purchase, operation, rental, repair and periodic maintenance of his personal vehicle during the term of this agreement. City Manager shall furnish City with a copy of the declaration sheet issued by his automobile liability carrier evidencing the liability insurance coverage required by this subsection within fourteen (14) days of the date this agreement has been fully executed and approved by both parties.

City Manager shall not have access to the City fuel facility for purposes of obtaining fuel for City Manager's personal vehicle and shall not receive reimbursement or compensation based on mileage. The automobile allowance provided to City Manager during his employment with the City is intended to compensate the City Manager for both fuel consumption and mileage. If, however, the destination exceeds a 125-mile radius from Hobbs, the City Manager shall have the option of using a City-owned pool vehicle for the purposes of such business travel and the City shall supply

City Manager

Mayor

the fuel for the City vehicle used in such trips, or he may be reimbursed for actual gasoline expenses related to such extended travel.

- d. City agrees to budget and to pay for the subscriptions and professional dues for the I.C.M.A. for City Manager and other dues and subscriptions which are necessary for his continuation and full participation in national, state and local associations and organizations which advance City Manager's professional growth and which further the various goals and objectives of the City.
- e. City agrees to budget and to pay for the travel and subsistence expenses of City Manager for professional and official travel, meetings and occasions adequate to continue the professional development of City Manager. It is anticipated by the parties that these expenses shall include the Annual Conference of the International City Manager's Association, the Annual Conference of the New Mexico Municipal League, and such other national, regional, state and local governmental groups in which City Manager serves as a member and which the City Commission approves.
- f. City agrees to budget and to pay for the travel, subsistence and registration expenses of City Manager for such educational courses, institutes, and seminars that are necessary for his professional development and arise out of or are related to his duties performed on behalf of the City, which are approved in advance by the City Commission.
- g. City recognizes that certain expenses of a non-personal and generally job-affiliated nature are incurred by City Manager, and hereby agrees to reimburse or to pay said general expenses upon receipt of duly executed expense or petty cash vouchers, receipts, statements, subject to said business and job related expenses having been properly budgeted prior to their being incurred by City Manager, and further subject to City Manager's compliance with all audit procedures of the City used to verify City Manager's claimed general expenses.
- h. All payments of salary due to City Manager herein shall be subject to federal and state withholding taxes and such other sums, as City is required by law to withhold or deduct from City Manager's salary.
- i. City shall pay City Manager's reasonable moving expenses for his move to Hobbs from Pennsylvania. Initially, City shall pay up to \$7,500.00 for City Manager's move to Hobbs. Said initial moving expenses shall include City Manager's expenses in driving from Pennsylvania, hotels and meals

City Manager

Mayor

during travel, and interim housing. It is contemplated that City Manager's family will move to Hobbs after the 2012 fall school semester. City Manager shall obtain three quotes from nationally recognized moving companies and the City Shall pay said moving expenses from the low quote.

- j. Sections e, f, g, and h of paragraph 7 of this employment agreement are subject to the limits of the related line items in the annual budget approved by the City Commission.
- k. City shall provide PERA to City Manager as any other City of Hobbs employee. In addition, City shall adopt a qualified 401 (a) defined contribution plan offered through ICMA Retirement Corporation for City Manager in the form of a money purchase plan. Initial funding shall be from approximately \$14,000.00 which was collected and currently held by City on behalf of City Manager from his first year of service not being enrolled in PERA. The 401 (a) plan shall be established as an Employer paid plan with discretionary contributions by the Employer up to 5 percent of the Employee's annual compensation. The Employer's contributions shall be made on or before June 30th of each year during the term of this agreement, following an evaluation by City Commission. The Employee shall have no right to receive such contributions in cash. Employee shall have the right to contribute to the plan via the Employer in any amount that meets the requirements of the IRS Code. 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 determination as to how the funds are invested. An amended contract shall not need to be executed if Employer determines to fund City Manager's discretionary 401 (a) plan.
- l. City Manager shall be entitled to the same housing incentive as certified police officers as revised on March 26, 2013 and as attached herein as Exhibit "A" and incorporated herein.
- m. City Manager shall be entitled to Bereavement expenses, limited to travel expenses for his family if a significant illness or death occurs to an immediate family member, subject to a \$7,000.00 limit per year. Travel shall be limited to airfare and any car rental.

8. Insurance: The City shall insure City Manager through its comprehensive public liability insurance coverage against any tort or professional liability claim or

City Manager

Mayor

demand or other legal action, whether groundless or otherwise, arising out of any alleged act of omission occurring in the course and scope of the performance of City Manager's duties for City, with the exception of actions brought on behalf of the City. City shall pay for any attorney's fees, court costs or other litigation related expenses incurred in connection with the defense of the claim, demand or lawsuit.

9. Bonding: City shall bear the full cost of any fidelity or other bonds required of City Manager under any law or ordinance.

10. Termination:

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

b. Severance shall be paid to City Manager when employment is terminated. If City Manager is terminated, the City shall provide a minimum severance payment equal to one year salary at the current rate of pay. This severance shall be paid in a lump sum unless otherwise agreed to by City Manager and City.

City Manager shall also be compensated for all accrued Paid Time Off, all paid holidays and military leave. City agrees to make a contribution to City Manager's deferred compensation account on the value of this compensation calculated using the rate ordinarily contributed on regular compensation.

For a minimum period of one year following termination, City shall pay the cost to continue the following benefits at the most recent rate:

1. Health insurance for City Manager and all dependents;
2. Life Insurance;
3. Short-term and long-term disability;
4. Car allowance;
5. Any other available benefits.

By reasonable mutual agreement, City Manager shall be entitled to Severance in the event this Employment Agreement is not renewed by City after the initial five (5) years.

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

c. **Resignation:** In the event City Manager voluntarily resigns or retires from his position, City Manager shall give City thirty (30) days written notice in advance, unless the parties otherwise agree. City Manager shall not be entitled to the above Severance upon retirement or resignation unless all or a portion of the severance is specifically approved by City Commission at that time.

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

12. **Other Terms and Conditions of Employment:**

1. The City Commission, in consultation with City Manager, shall fix any such other reasonable terms and conditions of employment, as it may determine from time to time, relating to the performance of City Manager, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this agreement, the City Charter, the Municipal Code of City or any other law. Any amendment to this agreement shall only be effective when it is in writing and executed and approved by both parties hereto. This Employment Agreement may only be modified or amended through a written agreement signed by the City Manager and the Mayor of the City of Hobbs and approved at a public meeting by the City Commission.
2. All provisions, rules and regulations of the City of Hobbs relating to vacation and personal leave, retirement, pension system contributions, holidays, and other benefits and working conditions as they now exist or hereafter may be amended, also apply to City Manager as they would to other employees of the City, in addition to the benefits enumerated specifically for the benefit of City Manager, except as otherwise provided for herein.
3. City Manager shall be entitled to military reserve leave time pursuant to federal and state law and the City of Hobbs Personnel Policies. In the event City Manager's military reserve leave time is not sufficient to cover time City Manager is away on reserve duty, City Manager shall utilize his paid time off. Any time above military reserve leave time and paid time off shall be treated as leave without pay.

City Manager

Mayor

4. City, by and through its City Commission, shall conduct an annual performance evaluation for City Manager. The City Commission shall prepare a written evaluation and meet with City Manager on or before the first anniversary of this Employment Agreement and every year thereafter. If City Manager's performance evaluation is satisfactory, he will be entitled to any increase in salary as all other City of Hobbs employees may be entitled without modifying this Third Amended Employment Agreement.

13. General Provisions:

1. This employment contract represents the final and entire agreement and understanding between the parties and any representations, negotiations, offers, proposals, promises or agreements are intended by the parties to be integrated and merged herein and are to be superseded by this agreement.
2. This agreement shall be binding upon and inure to the benefit of the heirs at law and executors of City Manager.
3. If any provision, or any portion thereof, contained in this agreement is held unconstitutional, invalid or unenforceable by a court of competent jurisdiction, the remainder of this agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.
4. This agreement is intended to be governed by and construed in accordance with New Mexico law.

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

CITY OF HOBBS, NEW MEXICO
a municipal corporation

CITY MANAGER

SAM D. COBB, Mayor

J. J. MURPHY

City Manager

Mayor

ATTEST:

JAN FLETCHER, City Clerk

APPROVED AS TO FORM:

MICHAEL H. STONE, City Attorney

City Manager

Mayor