

Commission Letter #11-10  
Commission Meeting: 2/15/2010

RE: City Manager Employment Agreement

February 12, 2010

The Honorable Mayor  
and  
Members of City Commission

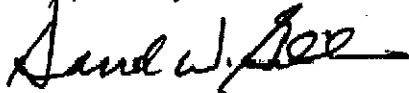
Attached is a proposed Employment Agreement with Donald E. Johnson for his services as City Manager. The Agreement is the result of meetings between Mr. Johnson and a subcommittee that originally consisted of Mayor Ellison, Commissioner Andrzejak and then-Commissioner Ginotti. Since December, Mayor Ellison and Commissioner Andrzejak have been negotiating with Mr. Johnson.

The proposed Agreement has been reviewed and approved as to form by labor counsel Howard Shifman and Human Resource Director Mary Jo DiPaolo. If the terms of the Agreement are acceptable to the Commission, the following resolution is recommended for approval:

Be it resolved, that the City Commission hereby approves the proposed Employment Agreement between the City and Donald E. Johnson.

Be it further resolved, that the Mayor and City Clerk are authorized to execute the proposed Agreement on behalf of the City.

Respectfully submitted,



David W. Gillam  
City Attorney

Attachment

cc: Donald E. Johnson, City Manager  
Melanie Halas, City Clerk  
Mary Jo DiPaolo, Human Resource Director

## **EMPLOYMENT AGREEMENT**

This Agreement is entered into this \_\_\_\_ day of February, 2010, by and between the CITY OF ROYAL OAK, a Michigan Municipal corporation with offices at 211 Williams Street, Royal Oak, Michigan 48068 (the "City") and DONALD E. JOHNSON, an individual whose current residence is 3051 Winifred, Wayne, Michigan 48184 ("Johnson").

Whereas, the City wishes to employ Johnson as its City Manager under the terms and conditions set forth herein; and

Whereas, Johnson wishes to be employed by the City as its City Manager under the terms and conditions set forth herein;

Therefore, in consideration of the mutual promises set forth herein, the City and Johnson agree as follows:

### **Section 1. Term**

This Agreement shall remain in full force and effect until terminated by either the City or Johnson as provided in Section 7. It is expressly understood between the parties that Johnson is an at-will employee, and subject to Johnson's ability to resign pursuant to Section 7(B), the duration of his employment is unspecified and rests solely in the discretion of the City.

### **Section 2. Duties and Authority**

The City agrees to employ Johnson as Interim City Manager effective February 16, 2009 and as City Manager effective July 20, 2009 to perform the functions and duties specified in the Charter of the City of Royal Oak, as amended, and all other legally permissible and proper duties and functions, subject to the general supervision and pursuant to the order, advice and direction of the City Commission.

### **Section 3. Compensation**

The City agrees to pay Johnson an annual salary of one hundred thirty thousand dollars (\$130,000.00), payable biweekly in equal installments, retroactive to the date of February 16, 2009. Johnson shall receive any subsequent wage modifications afforded to the Executive Department Head Group. The City Commission shall conduct an annual evaluation of Johnson's performance, subject to a process, form, criteria and format for the evaluation which shall be mutually agreed upon by the parties, upon which the Commission may give consideration to additional wage increases. This evaluation shall occur no later than August 31 of each year.

#### **Section 4. Benefits**

Except as otherwise stated in this Agreement, Johnson shall receive those benefits set forth in the Administrative Rules for Executive Department Heads, as may be amended, including (but not limited to) vacation, personal business days, sick leave, holidays, compensatory time, retirement, health insurance, dental insurance, and life insurance.

- A. Health Insurance. Johnson has chosen to have health insurance under one of the City's plans. As long as he chooses to continue to do so, he shall pay ten percent (10%) of the illustrative premium rate for the plan that he has selected on a monthly basis through payroll deduction.
- B. Memberships. The City agrees to pay the membership dues and fees to permit Johnson to be a member of the International City/County Management Association (ICMA), the Michigan Local Government Management Association (MLGMA) and, subject to budget limitations, other organizations as approved by the City Commission. The City agrees to pay the cost of Johnson's attendance at the annual ICMA conference.

#### **Section 5. Retirement**

- A. A contribution representing deferred compensation shall be made by the City to Johnson's annuity account with either ICMA-RC or Nationwide, at Johnson's option, in the amount of 1.5% of base pay, retroactive to the date of February 16, 2009.
- B. It is the intent of the parties that the Reciprocal Retirement Act is to be utilized to its fullest extent, as long as neither the City nor its Retirement System incurs any additional cost, and the City is not required to amend any existing ordinance or enact any new ordinance. Johnson may purchase up to three (3) additional years of service credit with the City for other full-time governmental service rendered while not employed by the City at the rate of two percent (2%) of the base salary set forth in this Agreement.

**Section 6. General Business Expenses**

The City recognizes that certain expenses of a non-personal, community, or job-affiliated nature may be incurred by Johnson, and agrees to reimburse Johnson or to pay those expenses. This shall include mileage reimbursement to Johnson for the use of his personal vehicle for City business, at the rate utilized by the City as of the date the vehicle is used. The Finance Director is hereby authorized to disburse such monies upon production of appropriate receipts, statements, or affidavits. Johnson shall have access to a City motor pool vehicle for travel on City business.

**Section 7. Termination**

For purposes of this Agreement, termination shall occur when either of the following takes place:

- A. A majority of the City Commission votes to terminate Johnson's contract at a duly authorized public meeting.

- B. Johnson submits a written letter of resignation to the City Commission, in care of the City Clerk. If Johnson wishes to terminate his employment in this manner, he shall provide a minimum of thirty (30) days written notice to the City.

**Section 8. Severance**

- A. If Johnson's contract is terminated pursuant to Section 7(A) for any reason other than criminal conduct or moral turpitude, he shall be entitled to severance pay for a period of up to one hundred and eighty (180) days at Johnson's rate of pay on the effective date of contract termination. The City shall pay such severance pay in biweekly installments until Johnson has received the severance pay described herein, or until Johnson secures and commences other employment, whichever occurs first. While Johnson is receiving severance pay, the City shall pay the cost to continue health insurance for Johnson and any eligible dependents, and life insurance for Johnson. Johnson shall also be compensated for all accrued sick leave and vacation leave pursuant to the Administrative Rules for Executive Department Heads in effect as of the date of termination. Johnson shall not accrue any additional service credit or receive any additional benefits for the period of time that he is receiving severance pay.
- B. If Johnson's employment is terminated pursuant to Section 7(A) for criminal conduct or moral turpitude, or if his employment is terminated pursuant to Section 7(B), he shall not be entitled to severance pay.

**Section 9. Hours of Work**

The parties recognize that Johnson must devote a great deal of time outside the normal office hours to City business, and to that end, Johnson shall be allowed to establish an appropriate work schedule.

#### **Section 10. Outside Activities**

The employment provided for by this Agreement shall be Johnson's sole employment. Recognizing that certain outside consulting or teaching opportunities can provide indirect benefits to the City and the community, Johnson may accept limited teaching, consulting, or other business opportunities with the prior approval of the City Commission, with the express understanding that such arrangements shall not interfere with nor constitute a conflict of interest with his responsibilities under this Agreement. Johnson's ownership of First Computer, Inc. and his limited role with that company has been disclosed and is hereby approved by the City Commission.

#### **Section 11. Moving and Relocation Expenses**

Johnson has offered to establish residence within the corporate boundaries of the City of Royal Oak within a reasonable period after the date of this Agreement, and thereafter to maintain residence within the corporate boundaries of the City. The City has agreed to accept that offer. In consideration for Johnson's offer, the City shall pay Johnson's actual and necessary moving expenses, including packing, moving, storage costs (if any), unpacking, and insurance charges. Johnson shall obtain three (3) estimates from reputable moving companies, and the City shall pay an amount equal to the lowest of the three estimates directly to the moving company selected by Johnson.

#### **Section 12. Indemnification**

To the fullest extent permitted by law, the City shall defend, hold harmless and indemnify Johnson against any tort, professional liability claim, demand, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Johnson's duties as City Manager, 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 wilful or wanton conduct. Johnson may request and the City shall not unreasonably refuse to provide independent legal representation at the City's expense in the event of conflict between Mr. Johnson's interests and those of the City. Legal representation provided by the City for Johnson shall extend until a final determination of the legal action, including any appeals brought by either party. The City shall indemnify Johnson against any and all losses, damages, judgments, interest, settlements, fines, court costs and other reasonable costs and expenses of legal proceedings, including attorney fees, and any other liabilities incurred by, imposed upon, or suffered by Johnson 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 duties. Any settlement of any claim must be made with prior approval of the City in order for indemnification, as provided in this Section, to be available. Johnson recognizes that the City shall have the right to compromise or settle any claim or suit, unless said compromise is of a personal nature to Johnson, in which case Johnson shall have veto authority over the compromise or settlement.

### **Section 13. General Provisions**

- A. Integration. This Agreement sets forth and establishes the entire understanding between the parties relating to Johnson's employment by the City as its City

Manager. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement.

- B. Amendment. The parties may, by written agreement, amend any provision of this Agreement. Such amendments shall be incorporated and made a part of the Agreement.
- C. Binding Effect. This Agreement shall be binding upon the City and Johnson, as well as their heirs, assigns, executors, personal representatives and successors in interest.
- 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 portion of this Agreement is held to be invalid by any court of competent jurisdiction, the remaining provisions shall be deemed to be in full force and effect.

**WITNESSES:**

**CITY OF ROYAL OAK**

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James B. Ellison, Mayor

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Melanie Halas, City Clerk

\_\_\_\_\_  
Donald E. Johnson

Approved as to form:

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David W. Gillam  
City Attorney