



CITY OF PATASKALA

RESOLUTION 2018-053

Passed November 5, 2018

A RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO AN EMPLOYMENT AGREEMENT WITH JAMES M. NICHOLSON TO CONTINUE SERVING AS FINANCE DIRECTOR

WHEREAS, on June 20, 2012, the Mayor of the City of Pataskala appointed James M. Nicholson to serve as its Finance Director, pursuant to Section 6.02 of the Charter of the City of Pataskala. This appointment became effective upon approval by Council; and

WHEREAS, contemporaneous with this appointment, the City of Pataskala entered into an employment agreement with Employee to serve as its Finance Director. Nothing in this agreement was meant to, nor was it interpreted to, supersede the City Charter governing the appointment, power, duties, term, and/or removal of the Finance Director. This agreement was meant to, and was interpreted to, supplement those provisions; and

WHEREAS, near the end of 2016, this appointment was evaluated and continued; and

WHEREAS, pursuant to the terms of the 2016 agreement, Mr. Nicholson's term "expires" on December 31, 2018; and

WHEREAS, as in year's past, Council for the City of Pataskala again evaluated Mr. Nicholson's performance and believes Mr. Nicholson has performed remarkably as Finance Director. Therefore, neither Council for the City of Pataskala nor the Mayor wants to initiate termination proceedings under Section 6.02 of the City Charter. Instead, they want to execute a new agreement and continue employing Mr. Nicholson as the City of Pataskala Finance Director.

NOW THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PATASKALA, COUNTY OF LICKING, STATE OF OHIO, A MAJORITY OF MEMBERS PRESENT CONCURRING THAT:

Section 1: The Mayor is hereby authorized and directed to enter into an employment agreement, in substantially the same form and content as the agreement attached hereto as Exhibit A and incorporated herein by reference, with James M. Nicholson to continue serving as Finance Director.

Section 2: It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council, and that any and all deliberations of this Council and any of its committees that resulted

in such formal action were in meetings open to the public, in compliance with all legal requirements of the laws of the State of Ohio.

Section 3: This Resolution shall take effect at the earliest time allowed by the Charter of the City of Pataskala.

ATTEST:


Kathy M. Hoskinson, Clerk of Council


Michael W. Compton, Mayor

APPROVED AS TO FORM:


Brian M. Zets, Law Director

EMPLOYMENT AGREEMENT

This Employment Agreement (“Agreement”) is made and entered into, by and between the City of Pataskala, Ohio, a Municipal Corporation (hereinafter referred to as “Employer”) and James M. Nicholson (hereinafter referred to as “Employee”) an individual who has the training and experience in local government finance management and both of whom agree as follows:

Section 1: Term of Agreement:

On June 20, 2012, the Mayor of the City of Pataskala appointed Employee to serve as its Finance Director, pursuant to Section 6.02 of the Charter of the City of Pataskala (hereinafter referred to as “City Charter”). This appointment became effective upon approval by Council. Contemporaneous with this appointment, the City of Pataskala entered into an employment agreement with Employee to serve as its Finance Director. Near the end of 2016, this appointment was evaluated and continued. At that time, the City and Employee agreed to continue employing Employee as Finance Director under the terms and conditions set forth in another Employment Agreement. Now that another two years have passed, the City again evaluated this appointment and Employee’s performance. The City believes Employee has performed remarkably and wants again to continue this appointment.

- (1) Unless terminated or otherwise ended as provided for herein, the term of this Agreement shall be four (4) years, commencing on January 1, 2019 and ending on December 31, 2022.
- (2) 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 to the provisions set forth in Section 6 of this Agreement,
- (3) Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employer to terminate the services of Employee at any time, pursuant to the procedures set forth in the City Charter and Section 6 of this Agreement.

Section 2: Duties and Authority:

The Finance Director is an exempt administrative employee whose duties shall consist of the duties set forth in Section 6.02 of the City Charter as well as any other duties as may be conferred or required by the general laws of Ohio, the City Charter, or by any future ordinance, resolution, or direction of Council: These duties include, but are not limited to:

- (1) The Director of Finance shall be the chief fiscal officer of the City, shall report to the Finance Committee Chair, and shall perform the powers, duties and functions now or hereafter given to City Auditors and Treasurers under the

general laws of Ohio to the extent those laws are not in conflict with this Charter.

- (2) The Director of Finance, in addition to the powers, duties and functions prescribed by the City Charter, shall have other powers, duties and functions as required by ordinance or resolution, or as directed by the Mayor.
- (3) The Director of Finance shall keep the financial records of the City, establish the accounting systems, financial records and reports used by the offices, departments, divisions, bureaus, boards and commissions of the City; assist the City Administrator in the preparation and submission of appropriation measures, estimates, budgets, capital programs and other financial matters; provide full and complete information concerning the financial affairs and status of the City as requested by the City Administrator, Mayor or Council; and provide full and complete information and assistance concerning the finances or accounting systems or records of any office, department, division, bureau, board or commission of the City as requested by the City Administrator.

Section 3: Compensation:

In year 1, Employer agrees to pay Employee an annual salary of \$107,740.00, payable in bi-weekly installments and in the manner defined in the Employee Handbook and Policy Manual for non-bargaining unit employees.

In year 2, Employer agrees to pay Employee an annual salary of \$110,972.00, payable in bi-weekly installments and in the manner defined in the Employee Handbook and Policy Manual for non-bargaining unit employees.

In year 3, Employer agrees to pay Employee an annual salary of \$114,301.00, payable in bi-weekly installments and in the manner defined in the Employee Handbook and Policy Manual for non-bargaining unit employees.

In year 4, Employer agrees to pay Employee an annual salary of \$117,730.00, payable in bi-weekly installments and in the manner defined in the Employee Handbook and Policy Manual for non-bargaining unit employees.

Section 4: Retirement:

The Employer shall pay the employer's share of Ohio Public Employees Retirement System (OPERS) contributions (currently 14.5% of earnable wages) per all applicable Ohio Revised Code sections. In addition, the Employer shall also 'pick-up and pay' (pay directly) one-half of the Employee's legally required contribution to OPERS (currently 10% of earnable wages). The OPERS 'pick-up' will continue so long as the Internal Revenue Service Code and OPERS allow it, and the

Employee is employed as the City's Finance Director. The City shall withhold Employee's portion of the contribution from Employee's bi-weekly payroll, and remit both of the aforementioned retirement contributions to OPERS on behalf of Employee.

Section 5: Other Benefits:

- (1) **Vacation Leave.** Employee shall be entitled to earn and use five (5) weeks/twenty-five (25) business days of paid vacation during each year of employment as Finance Director, with such vacation accrued in the same manner as other non-bargaining unit employees of the City. The Employee Handbook and Policy Manual shall govern all other terms and conditions related to vacation leave, not otherwise in conflict with this section.
- (2) **Personal Leave.** On January 1st of each year, Employee shall receive, and thereafter be able to use, two (2) personal days during each year of employment as City Administrator. All received, but unused, personal leave will not be carried forward year-to-year. Employee shall forfeit all unused personal leave each year
- (3) **Holidays.** Employee shall be entitled to receive and use paid annual holidays in the manner defined in the Employee Handbook and Policy Manual for non-bargaining unit employees.
- (4) **Sick Leave.** Employee shall be entitled to earn and use paid sick leave in the manner defined in the Employee Handbook and Policy Manual for non-bargaining unit employees.
- (5) **Military Leave.** Employee shall be entitled to military leave time pursuant to state law and in the manner defined in the Employee Handbook and Policy Manual.
- (6) **Expenses.** Employer agrees to reimburse Employee for all employment related and non-personal expenses incurred by Employee.
- (7) **Cellular Telephone.** Employer shall pay Employee a sum of Sixty-Five Dollars (\$65.00) per month for the purchase and use of cellular phone service. Any expenses in excess of that amount shall be the responsibility of Employee. Employee agrees to be accessible via telephone to the Mayor, City Council, and other City employees, as necessary, during and after regular work hours.
- (8) **Health, Medical, and Life Insurance.** Employee shall be entitled to participate in the health, medical, and life insurance plans offered by the City, under the same terms and conditions as Employer provides to all non-bargaining unit employees.

- (9) **Professional Dues and Membership.** Employer shall be responsible for the payment of Employee's membership in municipal associations/programs which require membership by the municipal corporation, and reimburse both expenses and tuition for attendance at the various conferences and training seminars related to these memberships, as approved by Employer. Professional development shall include attending various national or state conferences, seminars, and/or continuing education. Employee shall be limited to only one (1) out-of-state conference per calendar year. Any additional out-of-state conference(s), within the calendar year, must be approved by City Council in advance of such conference(s).

Section 6: Termination; Resignation; and Severance:

- (1) **Termination.** As set forth in Section 6.02 of the City Charter, Employee serves at the pleasure of the Mayor and the Council and may be removed or suspended without cause by the Mayor with the consent of the Council granted by a majority vote of its members, or by Council by a two-thirds (2/3) vote of its members without the consent of the Mayor.
- (2) **Severance Pay.** In the event the Employee is terminated by the City pursuant to Section 6.02(A) of the Charter before the expiration of the term of this Agreement and subject to the limitation set forth in subsection (3) below, Employer agrees to pay Employee, in one lump sum, an amount equal to a base of three (3) months aggregate salary and benefits plus a month for each year of service to be capped at six (6) months aggregate salary and benefits. "Three months aggregate salary and benefits" is defined as three (3) months of regular salary and earnings calculated at the rate of pay in effect upon termination and includes payout of all earned vacation, if any.
- (3) **Forfeiture of Severance Pay.** Employee forfeits, and will not receive, any Severance Pay if Employee is terminated for "just cause", which includes, but is not limited to, the following:
- a. Illegal behavior or action by Employee;
 - b. Theft or misappropriation of City property by Employee;
 - c. Any dishonest acts of Employee relating to the City;
 - d. Cause of a material injury to the City by Employee;
 - e. Misappropriation of municipal funds, breach of fiduciary duty or non-disclosure of conflict of interest; or
 - f. Conviction of a felony and for misfeasance, malfeasance, or nonfeasance in office, or in the willful or deliberate performance of a wrongful act.
- (4) **Resignation.** In the event Employee resigns for any reason, Employee shall:

- a. Provide a minimum thirty (30) days' notice, in writing, in advance of such resignation unless the parties mutually agree otherwise;
- b. Not receive any Severance Pay;
- c. Not be entitled to earn, or be compensated for, any City benefits after the effective date of his resignation unless the parties agree otherwise in writing;
- d. Be paid for all earned, but unused Vacation Leave and Sick Leave.

Section 7: Hours of Work:

Employee's position is considered to be a full-time Charter appointment. Employer recognizes the performance of duties expected of this position may require irregular work hours and/or flexibility in the work schedule on occasion and/or working more than 40 hours per week. Employee shall, as necessary, devote time outside normal working hours to perform the duties set forth in Section 6.02 of the City Charter. Employee shall be expected to attend Council meetings, Special meetings, City functions, or other events requiring the presence of the Finance Director, unless otherwise excused by the Mayor or a by a simple majority of council.

Section 8: Performance Evaluation:

Employer shall review and evaluate the performance of Employee at least once annually in advance of the adoption of the annual operating budget. This review and evaluation shall be in accordance with specific criteria developed by Employer and may be amended from time to time at the discretion of Employer. Employer shall provide Employee with a summary written statement of its findings and provide an adequate opportunity for Employee to discuss the evaluation with Employer.

Section 9: Outside Employment:

The employment provided for by this Agreement shall be Employee's exclusive source of employment.

Section 10: Indemnification:

Only through its insurance provider and in accordance with the terms and conditions set forth in the City's insurance policy, the City shall defend, save harmless, and indemnify Employee against any tort, professional liability claim, demand, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission in the lawful performance of his duties as "Finance

Director.” The City shall not defend, hold harmless, or indemnify Employee for finding for recovery in an audit report issued pursuant to R.C. 117.28.

Section 11: Liability Insurance and Bonding:

Employer will maintain liability insurance for the Finance Director and provide coverage for Employee in accordance with the terms and conditions set forth in the City’s insurance policy. Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

Section 12: Other Terms and Conditions of Employment:

- A. Employer, only upon written 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 Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City Charter or any other law.
- B. Background Evaluation - Employee acknowledges Employer has the right to perform a complete background evaluation/check of Employee's criminal and personnel history.

Section 13: Non-Disclosure and Confidential Information:

Employee agrees that he will not, at any time during or after the term of this Agreement, use for his own benefit, either directly or indirectly, or disclose or communicate in any manner to any individual, corporation or other entity any confidential information acquired by him during his employment regarding any actual or intended business activity, service, plan or strategy of the City.

Section 14: General Provisions:

- A. **Integration.** This Agreement sets forth and establishes the entire understanding between Employer and Employee relating to the employment of Employee by Employer. Any prior discussions or representations by or between the parties are rendered null and void by this Agreement.
- B. **Binding Effect.** This Agreement shall be binding on Employer and Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.

- C. **Amendment.** The parties, only by signed written agreement may amend any provision of this Agreement during the term of the Agreement. Such amendments shall be incorporated and made a part of this Agreement.

- 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 parties subsequent to the expungement or judicial modification of the invalid provision.

IN WITNESS WHEREOF the parties have executed this Agreement on the day last written below.

CITY OF PATASKALA, OHIO

JAMES M. NICHOLSON

By: _____
MAYOR OF CITY OF PATASKALA

Date: _____

Date: _____

Approved as to form:

Brian M. Zets, Esq.
Law Director

CERTIFICATE OF AVAILABLE FUNDS

I certify that the money required to meet this contract has hereby been lawfully appropriated for such purpose and is in the treasury or in the process of collection to the credit of this fund, free from any previous obligation or certification as required by Ohio Revised Code § 5705.01 to § 5705.47.

Date

Finance Director