

CITY OF UNALASKA
UNALASKA, ALASKA
SPECIAL MEETING
WEDNESDAY, AUGUST 30, 2017, 6:00 PM
UNALASKA CITY HALL COUNCIL CHAMBERS
AGENDA

CALL TO ORDER
ROLL CALL
PLEDGE OF ALLEGIANCE
PUBLIC INPUT ON AGENDA ITEMS

1. **RESOLUTION 2017-56:** AUTHORIZING THE MAYOR TO SIGN AMENDMENT NO. 1 TO THE EMPLOYMENT AGREEMENT BETWEEN THE CITY OF UNALASKA AND DAVID A. MARTINSON.

COMMUNITY INPUT
ANNOUNCEMENTS
ADJOURNMENT

CITY OF UNALASKA
UNALASKA, ALASKA

RESOLUTION NO. 2017-56

A RESOLUTION OF THE UNALASKA CITY COUNCIL AUTHORIZING THE MAYOR TO SIGN AMENDMENT NO. 1 TO THE EMPLOYMENT AGREEMENT BETWEEN THE CITY OF UNALASKA AND DAVID A. MARTINSON.

WHEREAS, On September 22, 2015, the City Council of the City of Unalaska adopted Resolution 2015-63 approving an Employment Agreement between the City of Unalaska and David A. Martinson for Mr. Martinson to serve as the City Manager of the City of Unalaska and;

WHEREAS, the City Council of the City of Unalaska desires to formally offer Amendment No. 1 to the Employment Agreement for Mr. Martinson's consideration;

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT THE UNALASKA CITY COUNCIL authorizes the Mayor to sign Amendment No. 1 to the Employment Agreement between the City of Unalaska and David A. Martinson.

PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE UNALASKA CITY COUNCIL THIS 30th DAY OF AUGUST, 2017.

FRANK KELTY, MAYOR

ATTEST:

CAT HAZEN
CITY CLERK

MEMORANDUM

To: City Council Members, David Martinson City Manager,

From: Frank V Kelty, Mayor 

Date: August 28, 2017

RE: Consideration by the Unalaska City Council for Amendment No.1 to the Employment Agreement for the Unalaska City Manager

SUMMARY:

Mr. Martinson has been under contract since September 22nd 2015. In the last six to eight months the Council including the Mayor has had some major disagreements on various issues with Manager Martinson. This has led to hard feelings that have made the working relationship very uncomfortable for both Manager Martinson and Mayor and Council. This has led to the discussion tonight on proposed Amendment No. 1 to the employment agreement for City manager David Martinson.

PREVIOUS COUNCIL ACTION:

The Council approved a three year Employment Contract with Mr. Martinson on September 22nd, 2015.

BACKGROUND:

On Wednesday morning August 9th after another fairly contentious City Council meeting on August 8th; Mr. Martinson came to my office to pass on some information. After some discussion he stated Mayor, this marriage isn't working you should just go to the Council to see if they would terminate my contract without cause and I'll leave. Mr. Martinson sent me an email later that afternoon of August 9th laying out the his interpretation of the contract, 37 K severance, 4K in moving expenses and two airfares to Anchorage. He wrote if you and Council decide it is best, I will ask that my last day be November 1st 2017. That conversation and email on Wednesday led to the first Special Meeting being scheduled on Friday August 11th for the Council to review his employment agreement. Mr. Martinson, who was travelling, was invited to attend telephonically. He declined to do so. I would not have called for a Special Meeting unless the previous conversation and email on Wednesday had taken place.

The Council in executive session reviewed the employment agreement and was not willing to accept the Manager's offer due to the total cost of the compensation package and his final date of employment request. I was directed by Council to make a counter offer which I did on Saturday August 12th 2017. Mr. Martinson sent a counter proposal to me on Tuesday August 15th 2017. This had to be reviewed by Mayor and Council, since I was traveling that week and the next Council meeting was on Tuesday August 22nd 2017. I waited for that meeting to schedule another executive session to review his counter offer. The Council supported the majority of his

proposal but still had some issues that had to be ironed out. I responded to the City Manager with minor changes which I did on Wednesday August 23th, 2017. He made another counter offer on August 24th 2017 requesting two more changes. I reviewed the counteroffer with City Attorney Brooks Chandler, and agreed to support one of the two changes when bringing the agreement to the Council. I was not willing to support adding language suggesting the council asked the manager to resign. The city attorney suggested a minor language modification which stated the city manager agreed to resign. In my response back to Mr. Martinson I stated that this was the final offer. This is the Amendment No.1 to the City Manager Employment Agreement that is before you tonight, for discussion, possible amendments and action. At this time the final offer has not been accepted or rejected by the City Manager.

DISCUSSION:

The Council has been accused of trying to fire Mr. Martinson. That was not the case; he asked that Council terminate his employment agreement without cause so he could have the benefit package that is in his spelled out in his contract. Council has been working towards a fair negotiated resignation in good faith with Mr. Martinson. I believe the final offer is fair for both parties. I believe it is time to move forward to settle this issue; it doesn't do any good for all parties involved too continue drag this out.

COUNCIL ACTION:

The Council can approve the Amendment No 1. Amend Amendment No 1. Vote down Amendment No1. Or take no action.

MAYORS RECOMMENDATION:

I support the passage of Amendment No.1 as written.

MANAGERS COMMENTS:

ATTACHMENTS:

1. Amendment No.1 to the Employment Agreement for City Manager David Martinson.

MEMORANDUM

TO: UNALASKA CITY COUNCIL
THRU: MAYOR KELTY
CAT HAZEN, CITY CLERK
DAVID MARTINSON, CITY MANAGER



FROM: BROOKS CHANDLER, CITY ATTORNEY

DATE: AUGUST 28, 2017

RE: RESOLUTION 2017-56 OF THE UNALASKA CITY COUNCIL
AUTHORIZING THE MAYOR TO SIGN AMENDMENT NO. 1 TO THE
EMPLOYMENT AGREEMENT WITH DAVID MARTINSON

Summary: The existing employment agreement between the City and David Martinson is for a three year term expiring October 25, 2018. The Mayor and City Manager have been negotiating an amendment to the agreement and have reached the point at which the Mayor recommends he be formally authorized to sign a contract amendment which will represent a final offer to Mr. Martinson. Mr. Martinson will retain the option to sign or not to sign the amendment. As of the time this memorandum is being written it is not known if Mr. Martinson will sign Amendment No. 1.

Previous Actions: The Unalaska City Council adopted Resolution 2015-63 on September 22, 2015 approving the existing agreement.

Background: The termination clause of the existing employment contract has provisions allowing either party to terminate the agreement without cause. The city council can terminate the agreement without cause. The city manager can terminate the agreement for any reason. If the city council terminates the agreement without cause the manager is entitled to twelve weeks of salary plus accrued and unused personal leave, plus reimbursement of actual moving expenses for personal belongings (up to a maximum of \$4,000) and two one way plane fares to Anchorage. If the city manager terminates the agreement the city is entitled to ninety (90) days advance notice. Upon resignation, the manager is not entitled to any severance pay or reimbursement of moving expenses.

Discussion:

There is a difference of opinion between the Mayor and the City Manager as to the course of negotiations which this memorandum will not attempt to describe in detail. Because of this

difference of opinion the city manager prefers paragraph 2 of the Amendment (amending paragraph 14(B) of the agreement) read “**At the request of the City Council**, Employee has voluntarily resigned his employment effective September 29, 2017”. The Mayor prefers this sentence reads as it does in the proposed amendment before the city council: “**Employee has agreed to** voluntarily resign his position with Employer effective September 29, 2017”.

Neither the city nor the city manager should sign an agreement they do not feel is accurate. The “employee has agreed to” phrase was selected as an alternative to the language proposed by the city manager because this is a neutral phrase. It will accurately reflect what has occurred if the city manager does in fact sign Amendment No. 1. That an Employee and an Employer agreed to do something does not preclude either the Employer from claiming that the process that resulted in the agreement was initiated by the city manager or the Employee from claiming that the process that resulted in the agreement was initiated by the city council.

Agreement has been reached on all other terms. Under either version of the revised paragraph 14(B) the City’s obligations are identical:

1. Continue to employ the city manager until September 29 (4 weeks and two days from August 30).
2. Pay the city manager a lump sum of \$25,000. At a salary of \$165,000 per year; \$25,000 represents about 8 weeks of pay (\$385 dollars less by my calculation).
3. Pay the city manager a lump sum of \$4,000 for moving expenses (without requiring the city manager to document actual expenses prior to reimbursement).
4. Provide one plane fare to Anchorage.
5. Provide the city manager two weeks of free rent and utilities in current city housing.

Alternatives:

1. Support Resolution 2017-56 authorizing amendment of the Employment Agreement. If this action is taken and Mr. Martinson signs Amendment No. 1 the employment agreement is amended. If this action is taken and Mr. Martinson does not sign Amendment No. 1 the existing agreement remains in place and the applicable termination provisions will continue to apply.
2. Decline to authorize amendment of the Employment Agreement. If this action is taken the current agreement remains in place and the applicable termination provisions will continue to apply.

3. Make a motion to amend the proposed Amendment No. 1 to change the first sentence of amended paragraph 14(B) to read: “At the request of the City Council, Employee has voluntarily resigned his employment effective September 29, 2017”.

Financial Implications: The financial provisions are equivalent (although not identical) to what the city manager would be entitled to receive if he was terminated without cause effective August 30. The financial provisions are more favorable to the city manager (by about \$5,000) than if the city manager submitted his resignation with the required ninety days advance notice on August 30. Should the city hire an interim manager at a cost greater than the current manager salary there will be an additional expense for the city.

Legal: Council approval is required for the Mayor to sign the amendment. Council approval does not mean the city manager also must sign the amendment.

Recommendation: Under the circumstances I recommend the City Council vote on alternative 1 without amendment. I do not believe alternative 3 represents the council's belief as to what has taken place to date. As to whether alternative 1 is approved, the city attorney has no recommendation. Whether to adopt Resolution 2017-56 is a management decision for the City Council. It is possible this is a situation where the Mayor and City Council mistakenly believed the city manager wanted to quit at the end of October but still get severance pay as if he had been terminated and the city manager mistakenly believed the City Council's proposal reflected a council desire to terminate his employment rather than a response to his initial proposal when the true facts are: 1) the city manager did not want to have his contract terminated without cause effective November 1 so he could qualify for severance pay and obtain an additional 10 weeks salary; and 2) the city council would not have proposed the manager resign effective September 29 (in order to save city taxpayers money compared to what the council believed the manager wanted) unless the council thought the manager wanted to stop working for the city and receive severance pay (something he clearly is not entitled to under the contract). The phrase “what we have here is a failure to communicate” would then come to mind. If that is the situation a vote against the Resolution would allow both the city manager and the city council to reassess whether these past discussions were about money or if something else was driving the discussion. Preferably this would occur face to face in an executive session very soon. Once any past miscommunication was resolved (or not) any required change to the manager's employment agreement would again be placed before the city council for consideration.

Proposed Motion:

1. Move to adopt Resolution 2017-56.

City Manager Comments:

**AMENDMENT NO. 1 TO EMPLOYMENT AGREEMENT
CITY MANAGER**

THE AGREEMENT between the City of Unalaska, a municipal corporation of the State of Alaska, hereinafter referred to as "City", and David A. Martinson hereinafter referred to as "City Manager" or "Employee" dated September 22, 2015 is hereby amended as follows:

1. Section 7 of the Agreement is amended to read as follows:

Section 7 Housing.

Employer agrees to provide Employee with City Housing at the rental rate established by City policy, excluding utilities through September 30, 2017. Employer agrees to provide Employee with City Housing at no cost to Employee including no cost for utilities (water, sewer, electric, and heating fuel) from October 1, 2017 through October 15, 2017.

2. Section 14(B) of the Agreement is amended to read as follows:

B. Employee has agreed to voluntarily resign his position with Employer effective September 29, 2017. Employer has waived the three months advance notice requirement contained in the Agreement and has agreed to pay Employee any accrued and unused personal leave. In addition, Employer shall make the following payments to Employee:

- 1) Twenty-Five Thousand Dollars (less applicable withholdings) in severance pay payable not later than October 2, 2017.
- 2) Four Thousand Dollars for the cost of moving personal household items from Unalaska payable not later than October 2, 2017 in a lump sum.
- 3) One one-way air fare from Unalaska to Anchorage.

3. No other provisions in the Employment Agreement are altered by this amendment.

PASSED, APPROVED AND ADOPTED by the Mayor and City Council of the City of Unalaska, Alaska this ____ day of _____, 2017.

CITY OF UNALASKA

AMENDMENT NO. 1 to CITY MANAGER AGREEMENT
August 24, 2017

BY: _____
FRANK KELTY, MAYOR

ATTEST

EMPLOYEE

Catherine Hazen, City Clerk

BY: _____
DAVID A. MARTINSON