

RESOLUTION 2019-006

PASSED: JANUARY 14, 2019

**APPROVING AN EMPLOYMENT AGREEMENT FOR THE CITY
MANAGER. FOR THE CITY OF DEKALB, ILLINOIS.**

WHEREAS, the City Council of the City of DeKalb is a home rule municipality with the power and authority conferred thereupon by virtue of the Illinois Constitution, the City Code of Ordinances, the Illinois Municipal Code, and the provisions of Article 5 of the Illinois Municipal Code pertaining to the Council-Manager form of government which has been previously adopted; and,

WHEREAS, the City Council wishes to engage the services of F. William Nicklas as the City Manager, and wishes to approve of an employment agreement providing for the same;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF DEKALB, ILLINOIS:

SECTION 1: The City Council of the City of DeKalb hereby approves of that certain Employment Agreement attached hereto as Exhibit A, subject to such minor revisions as shall be acceptable to the Mayor.

SECTION 2: That the City Clerk of the City of DeKalb, Illinois be authorized and directed to attest the Mayor's Signature and shall be effective thereupon.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, at a Regular meeting thereof held on the 14th day of January 2019 and approved by me as Mayor on the same day. Passed by an 8-0 roll call vote. Aye: Jacobson, Finucane, Stupegia, Fagan, Noreiko, Verbic, Faivre, Smith. Nay: None.

ATTEST:


LYNN A. FAZEKAS, City Clerk


JERRY SMITH, Mayor



EMPLOYMENT AGREEMENT
CITY MANAGER
CITY OF DEKALB

This Agreement is entered into as of the 18th day of December, 2018, by and between the City of DeKalb, State of Illinois, a municipal corporation, (hereinafter either "Employer" or "City"), and Floyd William Nicklas, Jr., (hereinafter "Employee"), both who agree as follows:

WITNESSETH:

WHEREAS, the City desires to employ the services of Mr. Nicklas as City Manager of the City of DeKalb; and

WHEREAS, the City of DeKalb is a home rule municipality with home rule powers pursuant to Article 7, Section 6 of the Illinois Constitution, which utilizes the Council-Manager form of government pursuant to Article 5 of the Illinois Municipal Code; and

WHEREAS, the City of DeKalb wishes to enter into an employment agreement with Mr. Nicklas for an indefinite term; and

WHEREAS, it is the desire of the City Council of the City of DeKalb hereinafter referred to as the "Council," to provide certain benefits, to establish certain conditions of employment, and to set working conditions of said Employee; and

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

SECTION 1: DUTIES AND APPOINTMENT

Employer hereby employs Employee as City Manager of said Employer to perform functions and duties specified in the Ordinances of the City of DeKalb and the statutes of the State of Illinois, and to perform other legally permissible and proper duties and functions as the City Council (hereinafter the "Council") shall from time to time assign. By and through approval of this Agreement, the City does hereby accept the appointment of Employee as City Manager and does consent to such appointment.

SECTION 2: TERM

A. Subject to the provisions of this Agreement, Employee agrees to remain in the exclusive employ of Employer from January 1, 2019 until this Agreement is later terminated by either party.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employer to terminate the services of Employee at any time, subject only to the provisions set forth herein.

C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from his position with Employer, subject only to the provisions set forth herein.

SECTION 3: SALARY

Commencing and effective January 1, 2019, Employer agrees to pay Employee for his services rendered pursuant hereto an annual base salary of \$150,000.00, payable in installments at the same time as the other management employees of the City are paid. Employer agrees to conduct periodic, not less than annual reviews of Employee's performance based upon mutually acceptable metrics and review methodology, and to consider periodic cost of living or merit-based pay adjustments, either as a component of the Employer's annual budget process or as a component of the periodic performance review process.

SECTION 4: TERMINATION

A. Employer may terminate this Agreement on the provision of notice to Employee, for convenience or for cause. Removal from the appointed position of City Manager shall be performed in accordance with applicable laws. For purposes of this Agreement, "cause" shall mean Employee's termination for a) engaging in a substantial and unjustified breach of the Agreement; b) a conviction of a felony or misdemeanor crime involving deception or fraud; c) being grossly insubordinate; d) commencing competing employment (being employment which, in the Employer's judgment, renders the Employee unable to perform his duties under this Agreement, or any other outside employment without the express prior written consent of the Employer); e) engaging in a willful violation of the City of DeKalb Municipal Code. For purposes of this definition, no act, or failure to act by Employee shall be deemed "willful" unless performed or omitted by the Employee not in good faith and without the reasonable belief that such action or omission was in the best interest of the City.

B. In the event of a termination by Employer, the Employee shall be compensated for all accrued vacation time, all paid holidays, sick leave and other accrued benefits to date, in accordance with the then-current provisions of Chapter 3 of the City of DeKalb Municipal Code. Any leave that is unused and in excess of the maximum accrual limits contemplated by Chapter 3 shall be deemed forfeited by the Employee. Employee shall also be entitled to continuation of benefits as may be provided by then-current law.

C. Other than the payout of accumulated paid time off as provided in Section 4(B) above, this agreement does not provide for the payment of any specified severance upon termination by Employer. However, upon any termination, Employee shall retain any claims which Employee may have against Employer with respect to a termination which Employee believes is unlawful, and this Agreement shall not operate as a waiver of such claims unless Employee shall at that time execute a separate, written agreement providing for a contemporaneous waiver.

SECTION 5: VOLUNTARY RESIGNATION

Employee shall give Employer not less than thirty (30) days' written notice of any voluntary resignation where practicable. In such case, Employee shall be entitled to a payout of accumulated vacation/sick days in accordance with the then-current provisions of Chapter 3, but shall not be entitled to any severance pay.

SECTION 6: HOURS OF WORK

The Parties acknowledge that under current provisions of City Code, Chapter 3 employees are not entitled to accrue or be compensated for compensatory time. Employee acknowledges that his position is classified as a position exempt from accumulation of overtime pay under the Fair Labor Standards Act. Employee shall dedicate his entire focus and attention to the work of the City of DeKalb. Employee shall not engage in outside employment.

SECTION 7: RESIDENCY

A. Employee agrees to establish residence and domicile within the corporate boundaries of the City of DeKalb within twelve (12) months of employment and thereafter maintain residence within the corporate boundaries. In the event Employee endeavors in good faith to comply with such requirement but is unable to establish residency within the time frame set forth herein, the Mayor of the City of DeKalb shall have the right to approve an extension under such terms and conditions as the parties may mutually agree, which approval shall not be unreasonably withheld and which shall not require an amendment of this Agreement.

SECTION 8: AUTOMOBILE

Employee is required to be on call for twenty-four (24) hour service and is required to provide his own transportation for City business. Employer shall grant to the Employee a car allowance of Two Hundred Fifty Dollars (\$250.00) per month at all times during his tenure as City Manager. Employee shall provide, maintain and insure his own vehicle. Said vehicle allowance shall be payable at the same time as Employee's salary is paid.

SECTION 9: VACATION AND SICK LEAVE

A. Employee shall be entitled to vacation, sick leave, paid holidays and floating holidays, along with such other forms of leave as shall be permitted under the then-applicable provisions of Chapter 3. For purposes of vacation leave accruals, Employee shall be afforded credit for his previous eleven (11) years of experience working for the City of DeKalb as of his start date.

SECTION 10: HEALTH AND LIFE INSURANCE

A. Employer agrees to provide hospitalization, surgical and comprehensive medical and dental insurance for Employee and his dependents and to pay the premiums thereon in a format equal to that which is provided all other employees of Employer pursuant to Chapter 3 of the City of DeKalb Municipal Code. To the extent that the City now, or in the future, determines to require its employees to contribute some or all of the cost of said insurance benefits, the Employee agrees to contribute the same amount (expressed either as a percentage of the total cost, or as a set dollar

amount, as the case may be) as is required by all other Chapter 3 employees of the City. Employer also agrees to provide life insurance benefits to Employee on the same terms as afforded to other Chapter 3 employees of the City.

B. Employer may require Employee to submit once per calendar year to a complete physical examination by a qualified physician, the cost of which shall be paid by the Employer. Such exam may include a stress test, heart evaluation and blood work.

SECTION 11: RETIREMENT AND DEFERRED COMPENSATION

Employer agrees to enroll the Employee in the IMRF and shall make all appropriate contributions on Employee's behalf, for both the Employer and Employee share required.

SECTION 12: PROFESSIONAL DEVELOPMENT, DUES AND SUBSCRIPTIONS

Employer agrees to review any Employee requests for funding for membership in professional organizations, attendance at conferences, travel expenses, dues associated with participation in civic organizations, or other similar professional development or civic memberships or expenses as a component of its annual budget review.

SECTION 13: INDEMNIFICATION

In addition to that required under state and local law, and unless caused by the willful act or omission of Employee, Employer shall defend, hold 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 occurring in the performance of Employee's duties or resulting from the exercise of reasonable discretion and judgment in connection with the performance of the duties and responsibilities required by Employer hereunder. Employer shall indemnify and hold Employee harmless from and against any and all losses, damages, claims, judgments, settlements, liabilities, fines, costs, including reasonable attorneys' fees and court costs, suffered or incurred by Employee in connection with or resulting from any claim, action, suit, proceeding, actual or threatened arising out of or relating to the performance of Employee's duties. Any settlement of any claim shall be made with prior written approval of Employer, provided however, if Employee is named as a party to any lawsuit, Employee's written consent shall be required for the compromise or settlement of claims against Employee.

SECTION 14: BONDING

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

SECTION 15: OTHER TERMS AND CONDITIONS OF EMPLOYMENT

A. The Council, in consultation with the 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, or the City of DeKalb Municipal Code.

B. All provisions of the City, charter and code, regulations and rules of the Employer relating to vacation, sick leave, retirement and pension system contributions, holidays, and other benefits and working conditions as they now exist or hereafter may be amended, also shall apply to Employee as they would to other Chapter 3 employees of Employer, in addition to said benefits enumerated specifically for the benefit of Employee, except as herein provided.

SECTION 16: NOTICES

Notices pursuant to this Agreement shall be given by personal service or by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

EMPLOYER: City of DeKalb, Illinois
 200 S. Fourth Street
 DeKalb, Illinois 60115
 Attention: Mayor

EMPLOYEE: (City to utilize most current address in Employee's personnel file).

Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

SECTION 17: GENERAL PROVISIONS

A. The text herein shall constitute the entire agreement between the parties.

B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee.

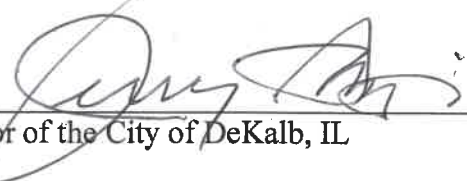
C. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

D. Except as specifically modified herein, all provisions of the City of DeKalb Personnel Manual and all other employee regulations shall apply to the employment of Employee herein.

E. This Agreement may not be changed orally. All modifications of this Agreement must be in writing and must be signed by each party hereto.

F. References herein to Chapter 3, the City's Personnel Manual or the City's Benefits Handbook shall be deemed to refer to the then-current policy or statement of benefits applicable to or afforded to non-bargaining unit employees of the City of DeKalb. References to Chapter 3 employees shall be read to refer to non-bargaining unit employees of the City of DeKalb.

IN WITNESS WHEREOF, the City of DeKalb, Illinois has caused this Agreement to be signed and executed in its behalf by its City Mayor, and duly attested by its City Clerk, and the Employee has signed and executed this Agreement, both in duplicate, the day and year first above written.



Mayor of the City of DeKalb, IL

ATTEST:



City Clerk
(Seal)





Employee