



**CITY OF NOVI CITY COUNCIL
NOVEMBER 8, 2022**

SUBJECT: Approval of a Memorandum of Understanding between Interim City Manager Victor Cardenas and City of Novi.

SUBMITTING DEPARTMENT: Human Resources

BACKGROUND INFORMATION:

At its October 24, 2022, meeting, City Council voted to appoint current Assistant City Manager Victor Cardenas as the Interim City Manager upon the departure of City Manager Pete Auger and directed that a Memorandum of Understanding be brought back at the November 8, 2022, meeting for consideration by Council.

Attached is the proposed Memorandum of Understanding (MOU), which has been prepared by the City Attorney's office using the Memorandum of Understanding from 2014 when Mr. Cardenas was previously appointed interim manager. Of particular note are the compensation provisions, representing the "halfway point" between Mr. Cardenas's current salary as Assistant City Manager and Mr. Auger's salary as City Manager. The other terms and conditions of Mr. Cardenas's employment remain the same. The agreement is for 120 days. It can be extended if the process requires (i.e., if a City Manager has not been chosen by the expiration of this agreement), and it automatically ends upon the commencement of employment by a new City Manager. It is also worth noting that as Interim City Manager, Mr. Cardenas may make no permanent appointments to department heads, may not discharge department heads without the express approval of City Council, and may not discharge, suspend, or discipline any department head without similar approval.

RECOMMENDED ACTION: Approval of a Memorandum of Understanding between Interim City Manager Victor Cardenas and City of Novi.

**MEMORANDUM OF UNDERSTANDING
FOR INTERIM CITY MANAGER SERVICES**

THIS AGREEMENT is made and entered into this 14th day of November, 2022, by and between the City of Novi, a Michigan municipal corporation, hereinafter referred to as the "City," and Victor Cardenas, hereinafter referred to as the "Employee," both of whom understand as follows:

RECITALS:

The City's current City Manager has resigned effective 5:00 pm November 30, 2022.

The City intends to embark on an executive search process for a new City Manager, which process is expected to take at least 120 days from the date hereof.

In this interim period, beginning December 1, 2022, the City must secure the services of an experienced individual to fulfill the duties, functions, and responsibilities of the Charter position of City Manager.

Employee is currently the City's Assistant City Manager, and therefore is familiar with the duties, functions, and responsibilities of the City Manager's office, and with the City's Administrative Plan as described in Section 4.7 of the City Charter.

The City has requested that Employee serve, and Employee has agreed to serve, as Interim City Manager, subject to certain terms and conditions, including, but not limited to, length of appointment, compensation, and provisions for continued employment at the conclusion of Employee's appointment.

NOW, THEREFORE, the City and Employee set forth their understanding with regard to Employee's appointment and service as Interim City Manager:

Section 1. Duties

The City agrees that Employee act as Interim City Manager to perform the functions and duties specified in Section 4.7(a) the Charter of the City of Novi, and to perform such other legally permissible and proper duties and functions as the City Council shall from time to time assign, subject to the following:

A. Employee shall make no permanent appointment of Department heads without the express approval of City Council, although he may appoint Acting Department heads as and when necessary.

B. Employee shall not discharge, suspend, or discipline any Department head without express approval of City Council. Council shall make no requests for the discharge, suspension, or disciplining of Department heads during the term of this Memorandum.

Section 2. Term of Appointment

A. Employee is appointed Interim City Manager for a period of 120 days beginning December 1, 2022. However, nothing in this Memorandum shall prevent, limit, or otherwise interfere with the right of the City Council to terminate the appointment of Employee as Interim Manager at any time, with or without cause, subject only to the provisions of Section 3 below. This appointment will terminate automatically upon the commencement of employment by a new City Manager. If a new City Manager has not commenced employment at the end of 120 days from the effective date hereof, Employee's appointment will be automatically extended for an additional 30 days, and thereafter for subsequent 30-day intervals until a new City Manager is appointed or the appointment of Employee is terminated by the City pursuant to Section 3 below.

B. Nothing in this Memorandum shall prevent, limit, or otherwise interfere with the right of Employee to resign, at any time, from the appointment as Interim City Manager upon fifteen (15) days' notice to the City, in which event Employee shall return to the position of Assistant City Manager, upon the terms and conditions of such at will employment as existed on the date of entry into this Memorandum.

C. Employee agrees to remain an exclusive employee of City during the effective period of this Memorandum, and agrees not to accept other employment or to become employed by any other employer while this Memorandum is in effect, and to devote all of his time and energy and give his best attention exclusively to the business of the City.

Section 3. Termination of Appointment

Because Employee's appointment is an interim appointment only, Employee agrees that the provisions of Section 4.8 of the City Charter, relating to removal of the City Manager, shall not apply to this appointment. The parties agree that the following shall govern termination of Employee's appointment as Interim Manager.

A. Upon termination of the appointment by expiration of the time period set forth in Section I above, Employee shall return to the position of Assistant City Manager, upon the same terms and conditions of such employment as existed on the date of entry into this Memorandum, except as provided in Paragraph 4 below. This Section 3.A will be null and void and of no force or effect if Employee applies for the City Manager position and is hired for such position.

B. The City may, by Council resolution, terminate Employee's appointment as Interim Manager at any time before the expiration of the time period set forth in Section I above. Any performance reviews during the period of appointment shall be conducted in closed session. Upon termination of the appointment under this provision, Employee shall return to the position of Assistant City Manager, upon the terms and conditions of such employment as existed on the date of entry into this Memorandum, except as provided in Paragraph 4. Nothing in this Memorandum, however, shall affect or limit Employee's at will employment status as Assistant City Manager following termination of employment as Interim City Manager hereunder.

Section 4. Salary and Benefits

The City agrees to pay Employee for his services rendered pursuant to and during the effective period of this Memorandum compensation calculated upon a base salary of One Hundred Fifty-Six Thousand Three Hundred One (\$156,301) Dollars, payable in installments at the same time as other general employees of the City are paid. Such salary shall be paid for the entire 120-day period covered by this Memorandum, and any automatic extension hereunder, regardless of the date of commencement of employment by a new City Manager. Upon expiration of the 120 days (or any automatic extension), Employee's base salary as Assistant City Manager shall return to the amount that it was on the date of entry into this Memorandum. Except as otherwise provided in this Memorandum, all other compensation and benefits during the effective dates of this Memorandum shall remain the same as currently enjoyed by Employee as Assistant City Manager.

Section 5. Scope of Work

Employee is expected to delegate some of the duties of Assistant City Manager to other Department heads based upon his determination of needs and priorities. Employee may, but is not required to, appoint an Acting Assistant City Manager.

Section 6. Automobile Allowance

Employee's monthly auto allowance during the entire 120-day period of this Memorandum, and any automatic extension hereunder, shall be \$700.

Section 7. General Expenses

The City recognizes that certain expenses of a non-personal and generally job-affiliated nature may be incurred by Employee, and the City hereby agrees to reimburse or to pay for such reasonable and necessary expenses.

Section 8. Indemnification

The City shall defend, hold harmless, and indemnify Employee against any tort, professional liability claim, demand, and/or any other legal action, lawsuit, and/or claim, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as Interim City Manager. The City shall have the authority to compromise and settle any such claim, action, and/or suit and to pay the amount of any settlement or Judgment rendered thereon.

Section 9. Bonding

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

Section 10. Other Terms and Conditions of Employment

A. The City Council, in consultation with the Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time related 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, City Ordinances, and/or any other law.

B. All provisions of the City Charter, City Ordinances, and all regulations, policies, and rules of the City relating to the vacation, sick leave, retirement and pension system contributions, deferred compensation, holidays, compensatory time, life insurance, dental insurance, optical reimbursement, medical and hospitalization insurance, and other fringe benefits and working conditions as they now exist or hereinafter may be amended shall also apply to Employee as they would to other department heads of the City, except as otherwise provided herein.

Section 11. Notices

Notices pursuant to this Agreement shall be given by first-class mailing with the United States Postal Service, postage prepaid, addressed as follows:

(1) Mayor of the City of Novi, Clerk of the City of Novi, 45175 W. Ten Mile Road, Novi, Michigan 48375; and

(2) Victor Cardenas, [REDACTED]

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of first-class mailing of such written notice with the United States Postal Service.

Section 12. General Provisions

A. All provisions of the City of Novi Personnel Policies, as they now exist or hereafter may be amended, shall apply to Employee as they would to other non-union exempt employees of City, unless otherwise provided in this Agreement.

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

C. This Agreement shall be binding upon and inure to the benefit of the heirs at law and personal representatives of Employee.

D. A waiver by the City of a breach of any provision of this Memorandum by Employee shall not operate or be construed as a waiver of any subsequent breach by Employee.

E. This Memorandum shall become effective December 1, 2022.

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

G. Employee agrees to submit appropriate documentation for expenses to be reimbursed pursuant to this Agreement.

IN WITNESS WHEREOF, the City of Novi has caused this Agreement to be signed and executed on its behalf by its Mayor and City Clerk pursuant to authorization of the Novi City Council, and Employee has signed and executed this Agreement, both in duplicate, the day and year first above written.

CITY OF NOVI

By: _____
Robert J. Gatt, Mayor

By: _____
Cortney Hanson, Clerk

VICTOR CARDENAS