

COPY

DRAFT MINUTES

THE EXECUTIVE SESSION MEETING OF THE BOARD OF ALDERMEN
CITY OF BRANSON, MISSOURI
September 27, 2022

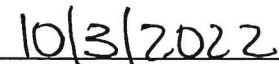
EXCERPT

PURSUANT TO 610.021.3 RSMo PERSONNEL:

Alderman Marshall moved to hire Cathy Stepp as the City Administrator with an annual salary of \$154,439.81 and authorize the Mayor to execute the contract as presented. Voting aye: Denham, Howden and LeBlanc. Nays: Fenton, Cooper and Rodriguez. Tie vote. Mayor Milton voted aye. Motion carried.



Lisa Westfall, City Clerk



Date

City Administrator Employment Agreement

This Employment Agreement ("Agreement") between the City of Branson ("City") through the City's Board of Aldermen and Catherine L. Stepp ("Employee"), who currently resides at 10202 Branson Landing Boulevard, Branson, Missouri 65616, is made effective on the 3rd day of October, 2022 through the signature of the City's Mayor (as authorized by vote of the Board of Alderman) and signature of Employee.

WHEREAS, in consideration for the compensation and other terms and conditions referenced in this Agreement, Employee agrees to be employed and act as the City Administrator for City, and to carry out to the best of Employee's ability all of the duties and responsibilities imposed on that office by City's Municipal Code ("Municipal Code"), and all other duties that may be directed by the Mayor and Board of Aldermen from time to time, as that may be required of that office.

WHEREAS, it is agreed that this Agreement shall be subject to all of the provisions of the Municipal Code, and all amendments thereto.

NOW, THEREFORE, in consideration of all of the above, and the other terms and conditions referenced in this Agreement, and conditioned on successful criminal and personal background checks of Employee being obtained by City, City and Employee agree that City has offered to Employee, and Employee has accepted, the following arrangement of employment with City:

1. **TERM:** This Agreement is for an indefinite term, subject to the terms of the Municipal Code and this Agreement, with Employee serving at the pleasure of the Mayor and Board of Aldermen.
2. **DUTIES:** Employee shall serve as the City Administrator, and shall exert all of Employee's working time and best efforts to the performance of the duties of City Administrator's duties. Employee shall be the chief executive officer to the Mayor and Board of Aldermen, and the head administrative officer of City. Employee shall be responsible to the Mayor and Board of Alderman for proper administration and management of the City government's business, officers, and employees, and shall have all of the powers, duties, and responsibilities provided for that office by the Municipal Code, and shall perform such other duties as may be required by the Board of Alderman not inconsistent with Missouri statutes, laws, or other directions. When requested to do so, Employee shall account to the Mayor and Board of Alderman for any actions taken by Employee and City staff, and shall be subject to the supervision, control, and direction of the Mayor and Board of Alderman.

It is understood between City and Employee that the role of City Administrator covers an eclectic range of issues and may require a great deal of time outside of normal office hours to deal with regular matters and unforeseen issues and emergencies. Employee is otherwise expected to, and shall represent City in a professional and competent manner.

Employee shall not have outside employment while employed by City under this Agreement. Any income earned by Employee from professional services after

becoming employed by City under this Agreement, including fees for speaking, teaching, or writing, shall be promptly turned over to City. Non-professional income shall not be included in this provision (Examples: garage sales; eBay auctions; and payments from previous employers, such as retirement benefits).

3. **COMPENSATION**: City shall provide Employee a starting regular salary and other compensation as described in Appendix A, attached hereto and incorporated herein by this reference. Said compensation may change from time to time. Employee shall receive cost of living increases along with other City employees. Raises outside of cost of living increases shall be decided by the Board of Alderman following a successful performance evaluation in the same manner provided to all City employees and implemented by way of an Addendum to this Agreement. City shall provide to Employee other benefits outside of Appendix A as provided generally to all City employees.

Employee shall be reimbursed for reasonable (not first-class or extravagant) expenses incurred in connection with Employee's employment with City under this Agreement, as approved by the Mayor and Board of Alderman. All other expenses of Employee directly or indirectly related to Employee's employment for City under this Agreement shall be borne by Employee as a condition of Employee's employment with City.

If Employee's active employment with City under this Agreement is terminated, all regular salary and other employment benefits for Employee shall accrue, and thereafter be paid to Employee in the normal course of City's business following City's standard payroll and other payment procedures, up to and including the date of such termination, unless specifically provided otherwise in this Agreement. Payments will be made with respect to each item of salary and other employment benefits after the amount due is determined; except that, in the event amounts are due or arguably due to City from Employee at the time of termination (whether due to Employee's misconduct or otherwise), City, in its discretion, shall have the right to withhold any and all such monies due or arguably due to City from Employee as an offset against any monies otherwise due from City to Employee at the time of such termination.

4. **RESIDENCY REQUIREMENT**: As provided in Municipal Code Section 2-136(a), during Employee's tenure in office under this Agreement, Employee shall reside in the City.
5. **BOND**: As provided in Municipal Code Section 2-136(c), unless otherwise covered by a blanket bond or insurance to the same extent, before entering into and performing the duties of City Administrator under this Agreement, Employee shall file with City a bond in the amount of Fifty Thousand and No/100 Dollars (\$50,000.00) approved by the Board of Aldermen, and conditioned upon faithful and honest performance of Employee's duties, and the rendering of full and proper account to City for funds and property that shall come into Employee's possession or control as the City Administrator for City. The Bond requirements provided in this Paragraph 5 may be amended by the Board of Aldermen at any time.

6. **INDEMNIFICATION**: To the extent permitted by law, the Board of Alderman agrees to defend, indemnify, and hold harmless Employee against any and all claims, demands, suits, actions, torts, or proceedings of any kind or nature arising out of the good faith performance by Employee of Employee's duties and responsibilities as City Administrator under this Agreement, and while otherwise carrying out the Board of Aldermen's directions, resolutions, and policies, as well as City's Ordinances, and Missouri statutes.
7. **PERFORMANCE EVALUATIONS**: The Mayor and Board of Alderman shall review and evaluate the job performance of Employee at least once annually at a point in time before the adoption of City's next following annual operating budget. The Mayor shall provide Employee with a written summary of the findings of such evaluations, and Employee, if Employee so desires, will be provided an opportunity to discuss those evaluation finding with the Board of Aldermen.
8. **TERMINATION**: Employment may be ended by Employee; by the Mayor, with the consent of a majority of the members of the Board of Aldermen; or by a two-thirds vote by the Board of Aldermen.
- a. **Caused by Employee action**: Employment under this Agreement may be terminated by City without any further payment accruing or thereafter becoming due from City to Employee under this Paragraph 8(a), upon the occurrence of any of the following:
- i. Employee's breach of any provision of this Agreement;
 - ii. A guilty plea, a no contest plea, suspended imposition of sentence, or a conviction of Employee to a felony charge, or to a misdemeanor charge involving dishonesty, illegal drugs, moral turpitude, drinking and driving, or unethical conduct, or testing positive (or a refusal to test) for illegal drugs under federal and/or Missouri law; and
 - iii. Except as may otherwise be protected by law, Employee becoming medically unfit to continue, or to return to active employment with City and perform the full range of essential job duties of Employee's City Administrator position under this Agreement.
- It is further understood and agreed that if at any time Employee is terminated or suspended and Employee requests an opportunity to be heard at a meeting of the Board of Aldermen regarding such termination or suspension, such meeting will be a legislative act of the Board of Aldermen and not an administrative one.
- b. **By Employee**: Employment under this Agreement may be terminated by Employee by Employee giving at least ninety (90) calendar days' advance written notice to City. If requested by City, Employee shall fully perform Employee's duties under this Agreement on and after the date of any notice of termination given under this Paragraph 8(b). However, in lieu of any part or all of said notice period, City may place Employee on paid leave of absence, and continue to pay Employee's regular salary to Employee, and to maintain Employee's other employment benefits for the applicable part or all of said notice period.

- c. **Otherwise by City:** It is recognized that City retains the right to terminate Employee's employment under this Agreement for reasons other than those set forth in Paragraph 8(a). However, in the event City chooses to terminate Employee's employment under this Paragraph 8(c), City shall give Employee a minimum of six (6) months' advance notice of such termination, or, in lieu of any part or all of said notice period, pay Employee cash severance equal to up to six (6) months' pay, calculated based on Employee's then regular salary, for that part of said notice period, which shall be accepted by Employee as full payment for all employment benefits which might otherwise have been due to Employee during that part of said notice period. If requested by City, Employee shall fully perform Employee's duties under this Agreement on and after the date of any notice of termination given under this Paragraph 8(c).
 - d. **Payment of Any Salary Continuation/Cash Severance Payment:** Any regular salary continuation or cash severance payments made under Paragraph 8(b) or Paragraph 8(c) of this Agreement shall be paid to Employee following City's regular payroll procedures (with usual payroll deductions and withholdings made). Any cash severance payment required and made under Paragraph 8(c) of this Agreement shall be paid to Employee within twenty-one (21) calendar days after Employee's last day of employment with City under this Agreement.
9. **MEDICAL FITNESS:** Whether Employee is medically fit to continue or return to active employment with City and perform the full range of essential job duties of Employee's City Administrator position under this Agreement shall be determined by Missouri licensed medical doctors of City and Employee. In lieu of any other potential remedy under this Agreement or applicable law, should a dispute arise between City's doctor(s) and Employee's doctor(s) regarding Employee's ability to perform the full range of said essential job duties, the dispute shall be referred to an independent Missouri licensed medical doctor selected by City's doctor(s) and Employee's doctor(s) for a determination that shall be final and binding on City and Employee. The fees and expenses of any such selected independent doctor(s) shall be borne equally by City and Employee.
10. **SUNDRY ITEMS:**
- a. **Vehicle/Mileage Reimbursement:** Employee's duties may require travel inside and outside Taney County, Missouri. City shall initially reimburse Employee for mileage driven in Employee's personal vehicle while on City business, with such recordkeeping of miles driven to be accurately recorded and reimbursed in accordance with Internal Revenue Service and City standards. Within a reasonable period of time, City shall provide a vehicle (not a permanently-assigned "take-home" vehicle) for Employee's use from time to time for City business, with City being responsible for paying for liability, property damage and comprehensive insurance, and for the purchase, operation, fuel, maintenance, repair and regular replacement of said vehicle as is budgetarily reasonable.

- b. **Cellular Telephone and Laptop Computer:** City and Employee acknowledge that Employee's duties require the use of, and Employee shall be provided with the exclusive use of, a cellular telephone and related cellular telephone service, and a City-owned laptop computer, tablet and/or other mobile computer device(s) with docking station and a 24-27" monitor, while Employee is actively employed with City under this Agreement. City shall be solely responsible for selecting, purchasing, maintaining, and replacing said cellular telephone and related cellular telephone service, and said laptop computer, tablet and/or other mobile computer device(s). When using said cellular telephone and related cellular telephone service, and said laptop computer, tablet and/or other mobile computer device(s), Employee commits to follow and comply with City's Internet and Social Media Usage Policy, and all amendments thereto.
- c. **Professional Memberships:** City and Employee acknowledge that Employee's duties are such that it is appropriate, and it is worthwhile for Employee to be a member of, and participate in, organizations deemed by City to support Employee's performance of Employee's duties for City under this Agreement. City will pay the annual dues and related expenses associated with such City-authorized memberships.

11. **RETURN OF CITY PROPERTY:** All books, records, files, forms, cellular telephones, laptop computers, reports, account, and/or other documents or property (physical or electronic) relating in any way to City's business or citizens, whether prepared by Employee, and whether used solely by Employee or anyone else ("City Property"), shall be deemed, and is hereby acknowledged by Employee to be, the exclusive property of City, and shall be immediately returned by Employee to City in a usable and acceptable state of repair on or before Employee's last day of active employment with City under this Agreement (no matter the reason or cause for Employee's termination from further employment with City), or upon City's request made at any time during Employee's employment with City under this Agreement. If Employee fails to return any City Property, or returns any City Property in an unusable or unacceptable state of repair under this Paragraph 11, Employee further understands and agrees to reimburse City for full replacement costs, minus any reasonable depreciation as determined by City, for said items within fourteen (14) calendar days after Employee's last day of active employment with City under this Agreement (no matter the reason or cause for Employee's termination from further employment with City), or upon City's request made at any time during Employee's employment with City under this Agreement.

12. **WAIVER:** Failure of City or Employee to enforce or insist upon the performance of any term, condition, or provision of this Agreement in any one or more instances shall not be deemed a waiver of such term, condition, or provision, unless such waiver is specifically discussed between City and Employee, and thereafter confirmed in writing, signed by both Employee and a legally authorized representative of City. If such a waiver is given, it shall apply only to the specific instance or situation for which it is given, and shall not be construed as being a general or absolute waiver of the term, condition, or provision in question.

13. **SEVERABILITY**: In case any one or more of the provisions of this Agreement shall for any reason be held by a reviewing court or other agreed adjudicative authority to be invalid, illegal or unenforceable in any respect:
- a. Such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and each such other provisions shall be construed as if such invalid, illegal, or unenforceable provisions had never been included; and
 - b. In lieu of such invalid, illegal or unenforceable provisions, there shall be automatically added as part of this Agreement by said reviewing court or other agreed adjudicative authority a provision as close in terms to the invalid, illegal or unenforceable provisions as possible to then make them legally valid and enforceable.
14. **AMENDMENT**: Except as may occur under Paragraph 13 of this Agreement, terms of this Agreement shall not be amended, supplemented, or altered, unless such amendment, supplement, or alteration is agreed to by City and Employee, and thereafter confirmed, in writing, signed by both Employee and a legally authorized representative of City.
15. **WRITTEN NOTICE**: Notices under this Agreement shall be provided by first class mail or hand delivery to the Mayor on behalf of City, or to Employee by hand delivery or by first class mail to Employee's residence address on record in City's Human Resources Department.
16. **APPLICABLE LAW AND VENUE**: This Agreement shall be construed in accordance with the laws of the state of Missouri, and any court actions filed to enforce the terms hereof shall be filed, and thereafter pursued only in the Circuit Court of Taney County, Missouri.
17. **EMPLOYEE'S RIGHT AND CAPACITY TO ENTER INTO THIS AGREEMENT**: Employee warrants that Employee has the unrestricted right and legal capacity to enter into and perform under this Agreement, and Employee confirms that Employee has neither made, nor will make, any contractual or other commitments that conflict with the performance of Employee's duties and obligations under this Agreement. Further, Employee warrants that Employee is able to fulfill all of the essential duties and requirements outlined in Appendix A attached hereto, with or without reasonable accommodation.
18. **NON-ASSIGNMENT**: Employee agrees that this is a personal service agreement, which is not assignable by Employee to any other individual or organization.
19. **ENTIRE AGREEMENT**: This Agreement, which includes Appendix A, supersedes and replaces any prior agreements, oral or in writing, between City and Employee. If any conflict exists between the prior customs or other conditions of hiring or employment between City and Employee regarding Employee's employment with City under this Agreement, this Agreement shall control.

COPY

(Signatures Following)

Approved as to Form

By: _____

Paul W. King, Attorney
Law Offices of Paul W. King, LLC
Special Employment Law Counsel for City

Date: _____

Missouri Bar No. 23228

City of Branson, Missouri

By: _____

Larry Milton
Mayor

Date: _____

By: _____

Lisa K. Westfall
Acting City Administrator/City Clerk

Date: _____

Catherine L. Stepp

Signature: _____

Date: _____

Appendix A

Base Salary:

One Hundred Fifty-Four Thousand Four Hundred Thirty-Nine and 81/100 Dollars (\$154,439.81) per year, payable in equal proportional installments at the same time and frequency as other management employees of City are paid, following City's standard payroll procedures. This compensation may change from time to time under provisions set forth in Paragraph 3 of the Agreement.

Additional Compensation and Benefits:

1. When appropriated in City's budget, Employee shall be eligible for an adjustment in compensation in the same manner and fashion as other regular full-time management employees of City, after a successful evaluation of Employee's performance under the Agreement.
2. When appropriated in City's budget, Employee shall also be eligible for an adjustment in compensation in the same manner and fashion as other regular full-time management employees of City for any cost of living adjustments.
3. On the effective date of the Agreement, Employee will be credited with one hundred and twenty (120) hours of paid Vacation Leave under City's Vacation Leave policy ("Vacation Policy"), which Employee will have available to request to schedule and take during Employee's first year of service to City under the Agreement by submitting and processing a Vacation Leave of Absence Request Form for pre-approval by the Mayor under City's Vacation Policy (*i.e.*, Employee will not have to wait until "after six (6) months of employment" (*see* Article 17 (Leaves of Absence), Section 2 (Vacation Leave) Paragraph B(6) of City's Human Resources Manual) to do so). Employee shall thereafter accrue and be provided use of one hundred and twenty (120) hours of paid Vacation Leave annually under the Agreement in the same manner as all other full-time management employees of City under City's Vacation Policy, not to include Fire Department employees. Such Vacation Leave amounts shall change in accordance with any future changes to City's Vacation Policy as described in City's Human Resources Manual.
4. On the effective date of this Agreement, Employee will be credited with ninety-six (96) hours of paid Sick Leave under City's Sick Leave policy ("Sick Leave Policy"). Employee shall thereafter accrue and be provided use of ninety-six (96) hours of Sick Time annually under the Agreement in the same manner as all other full-time management employees of City under City's Sick Leave Policy, not to include Fire Department employees. Such Sick Leave amounts shall change in accordance with any future changes to City's Sick Leave Policy as described in City's Human Resources Manual.
5. Employee shall be provided paid days away from work for holidays under the Agreement in the same manner as all other full-time management employees under City's Holiday Policy as described in City's Human Resources Manual.

6. City shall contribute to the Missouri Local Government Employees Retirement System (LAGERS) on behalf of Employee under the Agreement in the same manner as all other qualified non-probationary full-time management employees of City, not to include Police Department employees. Employee shall contribute to LAGERS by payroll deduction at the same percentage of pay as other City employees of Employee's status.
7. City shall provide Employee with medical and dental insurance coverages under the Agreement in the same manner as all other qualified full-time classified employees of City, to include, if Employee chooses, City contributions to Employee's Health Savings Account(s).

Accrual Balances Payable Upon Termination:

1. If the Agreement is terminated under the provisions of Paragraph 8(a) or Paragraph 8(b) during Employee's first year of service to City under the Agreement, Employee shall be obligated to repay to City all paid Vacation Time credited to Employee under Paragraphs 3 and 4 under the "Additional Compensation and Benefits" section of this Appendix A which was taken or used by Employee which was beyond what Employee would have otherwise normally earned under City's Vacation Policy, calculated to Employee's last day of active employment with City under the Agreement, which said amount due to City under this Paragraph 1 under the "Accrued Balances Payable Upon Termination" section of this Appendix A may be withheld by City as an offset against any monies otherwise due from City to Employee at or after Employee's last day of active employment with City under the Agreement (*see* Paragraph 3 and Paragraph 8(b) above of the Agreement).
2. Upon termination of Employee's employment under Paragraph 8(b) or Paragraph 8(c) of the Agreement, City shall pay Employee 100% of the remaining Vacation Time accrued as of the date of termination. Such payout will be made in accordance with provisions set forth in Paragraph 8(d) of the Agreement.
3. Upon termination of Employee's employment under Paragraph 8(b) or Paragraph 8(c) of the Agreement, City shall pay Employee 50% of the remaining Sick Leave accrued as of the date of termination. Such payout will be made in accordance with provisions set forth in Paragraph 8(d) of the Agreement.
4. Upon termination of Employee's employment under Paragraph 8(a) of the Agreement, City shall *not* pay Employee for any accrued Vacation Time or Sick Leave remaining as of the date of termination.
5. Upon termination of Employee's employment under Paragraph 8(a), Paragraph 8(b), or Paragraph 8(c) of the Agreement, Employee shall *not* receive any payout of unused holiday or floating holiday time.