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## LATE MATERIAL

MEETING DATE 12/20/18  
ITEM # 20

To: Carson City Board of Supervisors  
Cc: Nancy Paulson, Interim City Manager  
From: Dan Yu, Chief Deputy District Attorney  
Date: December 19, 2018  
Re: Proposed Draft Employment Agreement for City Manager

This memorandum is intended to assist the Board of Supervisors in its hiring decision by providing some general information regarding the draft employment agreement to appoint Nancy Paulson, currently acting as the Interim City Manager, as City Manager for a definite term to be established by the contract.

At the last meeting of the Board on December 6, 2018, the District Attorney's Office was directed to assist in the preparation of a draft employment agreement for the Board's review and consideration. For the Board's reference, the proposed draft agreement being submitted on the record for review and consideration began as a rough draft provided to me by Ms. Paulson, which incorporated her preferred terms of employment. Based on my understanding, that rough draft had been pieced together by integrating various provisions of Ms. Paulson's interim agreement and the previous City Manager's agreement.

The proposed draft employment agreement for the Board's review at its December 20, 2018 meeting represents a significant overhaul of the initial rough draft. The initial draft has been significantly reorganized and much of the language has been revised to reflect the parties' intent as well to protect the best interest of the City while concurrently satisfying most of Ms. Paulson's concerns. Importantly, the revised language clarifies the scope of her duties as City Manager and more clearly establishes that while the contract governs various aspects of the employment relationship, Ms. Paulson's employment is at-will and the Board retains discretionary authority to terminate employment, at any time and with or without cause except that eligibility for severance pay would be conditioned on the nature of her separation from employment. Furthermore, the proposed draft agreement eliminated the requirement – previously included in the last City Manager's employment agreement as well as Ms. Paulson's interim agreement - that the City Manager execute a "Voluntary Separation Agreement, Waiver and Release" releasing the City from any legal claims. As counsel to the Board, it is my opinion

that it would be difficult, if not impossible, to require Ms. Paulson to execute such a release if she were to resign. Because the nature of her employment is at-will, she is as free to resign as the Board is to terminate. Accordingly, the City could not, for example, refuse to accept her resignation and require continued employment if she were unwilling to sign the waiver. In my opinion, such a waiver is more appropriately confined to circumstances where an employment dispute arises and the parties reach settlement to resolve pending allegations. Therefore, elimination of this waiver requirement removes what I view to be a mostly superfluous attachment to the employment agreement.

Although there may be additional revisions to be made before finalization and execution, overall I am comfortable with the current version of the agreement in terms of clarity, legality and enforceability. Certain terms of the agreement, primarily related to salary and other employment benefits, are items that the Board in its role as the employer must agree to as a matter of policy. These items include:

1. **Initial Term and Renewal**: At the direction of the Board at its last meeting, the proposed initial term is for two years. However, this may be further modified. In reviewing the terms of some other contracts in neighboring jurisdictions, it is my opinion as legal counsel that two years is a fair term and does not disadvantage the City. I did, however, replace Ms. Paulson's initial proposal of automatic 2-year renewals with a provision affording a month-to-month employment status upon expiration of the initial term with all existing benefits, duties and rights of the parties intact if, for some reason, a new contract is not executed. In essence, this provision functions as a form of evergreen clause which, in my view, would protect both the City and Ms. Paulson during any time a new contract is under consideration but terms have not been agreed upon.

2. **Starting Base Salary**: The proposed starting base salary is \$177,683.00, subject to merit increases based on performance in accordance with the City's adopted Resolution for unclassified employees. This is the same amount Ms. Paulson is currently making as the Interim City Manager. By way of comparison, annual salaries for the equivalent position gathered from a sampling of sister counties and cities range anywhere from approximately \$172,000 (Douglas County, 2017) to \$260,000 (Clark County, 2018). Although Douglas County affords a slightly lower base salary, it should be noted that Carson City has experienced significant growth over recent years and, importantly, functions uniquely as a consolidated municipality which incurs duties and obligations as both a county and a city.<sup>1</sup> The following information may be helpful:

The City's current salary range for the City Manager position is: \$144,754.12 - \$186,112.45.  
The City's current salary range for the Deputy City Manager is: \$108,432.66 - \$173,491.63.  
The City's current salary range for department directors is: \$100,956.21 - \$161,529.74.

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<sup>1</sup> In my opinion, the proposed starting salary for Ms. Paulson is fair and reasonable for the City, but I emphasize that neither I nor the District Attorney's Office advocates for or against any particular monetary amount or other financial benefit.

3. **Insurance Subsidies**: As written and as proposed by Ms. Paulson, the draft agreement entitles Ms. Paulson to insurance subsidies in the same manner and amounts any other unclassified employee would be entitled to in the event of retirement after 20 years of employment with the City. The key distinction for Ms. Paulson is that she would be eligible regardless of retirement, resignation or termination. As of the date of this memorandum, I have been made aware that Ms. Paulson may be willing to modify this provision such that in the event of separation other than retirement, Ms. Paulson may elect to remain on the City's insurance and pay 100% of any premium for herself, her spouse and any eligible dependent until the date she retires under Nevada PERS, at which time she will be eligible to receive the health insurance benefits for retirees with 20 or more years of service as described in the Unclassified Resolution in effect at the time of separation. **In its current draft form, the agreement contains an inconsistency between the general insurance subsidy provisions and the provision governing subsidies in the event of termination by death. This was an inadvertent oversight and will be corrected in the final draft.**

4. **Severance**: In its current draft form, the agreement would entitle Ms. Paulson to severance pay equal to 3 months' salary if she is terminated, unless she is terminated for misappropriation or embezzlement; conviction of any gross misdemeanor involving violence or moral turpitude; conviction of a felony; or a willful refusal to carry out her duties as City Manager. Ms. Paulson proposes a revision to the draft agreement to reflect that if she is not terminated for one of these reasons, the City will pay 100 percent of health insurance premiums for her, her spouse and any dependent for a period of 6 months after the date of termination. Additionally, she proposes an increase in severance pay from 3 months to 6 months' salary. By way of comparison, other jurisdictions appear to provide severance pay ranging from 5 months to 12 months of base salary as severance. The majority of jurisdictions that I have reviewed, based on information provided by the Carson City Human Resources Department, offer either 6 or 12 months' pay as severance.

5. **Automobile Allowance**: Ms. Paulson has proposed an auto allowance of \$3,900 per year. This amount appears to be lower than what most other jurisdictions appear to pay.

6. **Misc. Benefits**: As currently drafted, all other benefits would be consistent with the terms of the City's adopted Resolution for unclassified employees, as may be amended from time to time.

At the direction of the Board, the District Attorney's Office can modify any provision of the draft agreement to reflect the parties' intent, along with any necessary conforming changes, before finalization.