



### **ADDENDUM FOR THE CITY COUNCIL**

City Hall - Midwest City Council Chambers, 100 N. Midwest Boulevard

April 23, 2019 – 6:00 PM

D. **DISCUSSION ITEMS.**

- [11.](#) Discussion and Consideration of the appointment of Tim Lyon as City Manager effective June 13, 2019, and acceptance of the terms of the proposed employment contract between the City of Midwest City and Tim Lyon. (City Attorney - H. Poole)

### **ADDENDUM FOR THE MIDWEST CITY MUNICIPAL AUTHORITY**

City Hall - Midwest City Council Chambers, 100 N. Midwest Boulevard

April 23, 2019 – 6:01 PM

B. **CONSENT AGENDA.**

- [3.](#) Discussion and Consideration of the appointment of Tim Lyon as City Manager effective June 13, 2019, and acceptance of the terms of the proposed employment contract between the Midwest City Memorial Hospital Authority and Tim Lyon. (City Attorney - H. Poole)

### **ADDENDUM FOR THE MIDWEST CITY MEMORIAL HOSPITAL AUTHORITY**

City Hall - Midwest City Council Chambers, 100 N. Midwest Boulevard

April 23, 2019 – 6:02 PM

B. **CONSENT AGENDA.**

- [3.](#) Discussion and Consideration of the appointment of Tim Lyon as City Manager effective June 13, 2019, and acceptance of the terms of the proposed employment contract between the Midwest City Municipal Authority and Tim Lyon. (City Attorney - H. Poole)



**City Attorney**

100 N. Midwest Boulevard  
Midwest City, OK 73110  
hpoole@midwestcityok.org  
Office: 405.739.1203  
www.midwestcityok.org

TO: Mayor and City Council

FROM: Heather Poole, City Attorney

Date: April 23, 2019

Subject: Discussion and Consideration of the appointment of Tim Lyon as City Manager effective June 13, 2019, and acceptance of the terms of the proposed employment contract between the City of Midwest City and Tim Lyon.

On March 12, 2019 the Council accepted the current City Manager, Guy Henson's resignation agreement. The current City Manager's resignation is effective on June 12, 2019.

After posting the position on March 26, 2019 for internal candidates, the Council reviewed applications on April 9, 2019, and conducted interviews on April 16, 2019. The attached employment contract is based on discussions between Mr. Lyon and the Council with the assistance of Council's counsel, Ms. Kathy Terry.

Acceptance is at the discretion of the council.

Respectfully,

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Heather Poole, Esq., City Attorney

## **CITY MANAGER EMPLOYMENT CONTRACT**

This contract is entered into between the City of Midwest City, the Midwest City Municipal Authority, Midwest City Hospital Authority (collectively, "City") and Tim Lyon ("Manager") on April \_\_, 2019, after approval of same by the City Council on April \_\_, 2019. For and in consideration of the salary and additional benefits set forth herein, Manager agrees to act as the City Manager for the City, and to use his best efforts and loyalty to execute the duties imposed upon the City Manager by the City's Charter, state law and any additional duties as the City Council may from time to time require and assign. Manager shall also be serve as the general manager and administrator of all trusts of which the City is the sole beneficiary.

### **1. Term and Termination**

This Employment Agreement takes effect on June 13, 2019 and is for an indefinite term. The rights and duties of the parties hereto shall not commence until June 13, 2019. This Employment Agreement terminates automatically upon the death of Manager. The parties hereto may terminate this Employment Agreement at any time and for any reason, subject to the terms set forth herein below.

Manager may terminate this Employment Agreement by giving at least 30 days written notice to the City Council.

The City, and any councilmember seeking termination of this Employment Agreement ("requesting councilmember"), shall provide at least 30 days written notice to Manager that the requesting councilmember is seeking the termination of this Employment Agreement, provide the reasons therefor, and identify the date of the upcoming City Council meeting (at least 30 days after the date written notice is delivered to Manager) upon which the item will be placed on the agenda for discussion only. Manager shall have 20 days to provide a written response and/or objection to the requesting councilmember and to other members of the City Council. If Manager's response does not resolve the issues to the satisfaction of the requesting councilmember, Manager, the requesting councilmember and the Mayor (or the vice-Mayor, if the Mayor is the requesting councilmember) shall meet in person in an effort to resolve the issues raised by the requesting councilmember. If the matters are resolved to the satisfaction of those involved, no further action will be taken. If the matters are not resolved, the requesting councilmember shall request in writing that the matter and possible termination of this Employment Agreement be placed on the agenda for the next regularly scheduled City Council meeting to occur no earlier than 30 days after delivery of written notice to the Manager, as set forth above, but for discussion purposes only. After said City Council meeting, the requesting councilmember, or any other councilmember, may request the item be placed on the agenda for the next regularly scheduled City Council meeting for discussion and possible action. At said City Council meeting, this Employment Agreement may be terminated, effective immediately, upon the majority vote of the City Council.

### **2. Compensation and Other Benefits**

Effective June 13, 2019 and thereafter, for all compensation, benefits and/or leave accruals due to Manager hereunder, Manager's anniversary date shall be January 31.

- A. Base Salary and Step Increases: Beginning on June 13, 2019, City shall pay to Manager the Base Salary of \$166,650. The City Council and Mayor shall perform annual performance reviews of Manager. The Manager's performance shall be measured on a scale of 1-10 for all aspects of Manager's job duties and expectations. If Manager achieves an average of 5 or better on all aspects of the annual performance review, then Manager shall be entitled to a 2.9% step increase in his Base Salary, every year, effective January 31 of said year.

It is the parties' intention that said annual performance reviews will be conducted and completed prior to January 30<sup>th</sup> of said year. The annual performance reviews, completed and signed by the Mayor, shall be provided to Manager in writing upon completion. If the annual performance review is not completed by January 30, the parties shall use their best efforts to complete said review and soon as possible. If Manager achieves an average of 5 or better on all aspects of said performance review when completed, the 2.9% step increase in Base Salary shall be paid retroactively to January 31 of said year.

The first annual performance review shall be completed prior to January 30, 2020 and if Manager achieves an average of 5 or better on all aspects of the annual performance review, then Manager shall receive his first 2.9% step increase effective January 31, 2020. Assuming Manager achieves an average of 5 or better on all aspects of his annual performance reviews, Manager's Base Salary shall be subject to the following earned step increases, and continuing thereafter in the same manner, until this Employment Agreement is terminated:

Effective January 31, 2020	\$171,483
Effective January 31, 2021	\$176,456
Effective January 31, 2022	\$181,573
Effective January 31, 2023	\$186,839
Effective January 31, 2024	\$192,257

- B. Cost of Living Adjustments: Should the City Council approve any cost of living increases to the non-represented, full-time employees of the City, said increases shall also be applied to the then-Base Salary of Manager, and the step increases for which Manager is thereafter eligible.
- C. Holiday Pay, Vacation Leave, Sick Leave and other Leave: Manager shall be entitled to Holiday Pay consistent with the City's Policies and Procedure Manual, section 12.2, as applicable. Manager shall accrue Vacation Leave consistent with the City's Policies and Procedure Manual, section 12.3, as applicable. Manager shall accrue Sick Leave consistent with the City's Policies and Procedure Manual, sections 12.4 and 12.5, as applicable. The remaining leave provisions of the City's Policies and Procedure Manual shall not automatically apply. Rather, any additional leave for Manager shall be subject to the requirements of any

applicable local, state and federal laws, and/or subject to the sole discretion of the City Council and the terms herein.

- D. Personal Leave: Effective January 31 of each year, Manager shall accrue 10 days paid personal leave. Personal leave may be taken at the Manager's discretion, subject to the reasonable objection of the Mayor based on the needs of the City. Personal Leave shall not accrue and any Personal Leave not used prior to January 30 of each year shall not rollover. Personal Leave has no cash value and unused Personal Leave shall not be cashed out upon termination of this Employment Agreement.
- E. Accrual and Buy Back: To the extent not modified above, all other provisions of the City's Policies and Procedure Manual related to the City's buy back of leave from employees, or being able to retain accrued leave shall apply to Manager other than that any sell-back of accrued Sick Leave each year to reduce the accrued amount to 960 hours shall be paid at 50% of Manager's then applicable Base Salary and may be accomplished in any paycheck in December, as determined by Manager.
- F. Insurance: The City shall provide major medical health insurance to Manager under the same terms and conditions as insurance is provided to other full-time, non-represented City employees. The City shall provide to Manager, as the City's expense, long term disability insurance under the same terms and conditions offered under a group policy offered to other full-time, non-represented City employees.
- G. Retirement: Manager shall be eligible, at his sole discretion, to participate in the City's retirement program/plan, if any, and subject to the terms and conditions thereof.
- H. Car and Cell Phone Allowances: City shall pay Manager \$700/month car allowance and \$100/month cell phone allowance for use of Manager's cell phone and personal vehicle in the course and scope of his employment. In consideration hereof, it is expected that Manager shall drive his personal vehicle for work related duties within the State of Oklahoma and Manager shall not be entitled to any mileage reimbursement for work-related transportation in his personal vehicle. Manager shall maintain automobile liability insurance on his personal vehicle at all times and shall inform his insurance company that he uses his personal vehicle for work related duties.

### 3. Termination

Should this Employment Agreement terminate: (1) upon the death of Manager; (2) upon termination by the City Council (pursuant to Section 1 above) for any reason other than gross misconduct, including but not limited to, criminal acts, acts of moral turpitude and/or acts that damage the reputation of the City; or (3) upon resignation by Manager after notification by a requesting councilmember that termination is being sought (pursuant to Section 1 above) for

reasons other than gross misconduct, including but not limited to, criminal acts, acts of moral turpitude and/or acts that damage to the reputation of the City:

- A. Manager waives all rights to any public hearings, appeal board hearing or merit systems appeals, if any, to retain employment.
- B. City shall pay to Manager all accrued and unused Vacation Leave at 100% of Manager's then Base Salary and all accrued and unused Sick Leave at 50% of Manager's then Base Salary. Said payments shall be made in six equal monthly installments beginning on the first regular pay day following the effective date of the termination of this Employment Agreement.
- C. Manager shall immediately cease accrual of any and all leave or benefits, and shall cease participation in any retirement plan, if any. However, insurance benefits pursuant to section 2.F shall continue for six months following the effective date of the termination of this Employment Agreement, and shall thereafter terminate in accordance with terms of said plans and applicable law.
- D. Manager, upon execution of standard release of all claims against City, shall receive severance pay, if applicable, as set forth below. Severance pay shall be made in six equal monthly installments beginning on the first regular pay day following the effective date of the termination of this Employment Agreement or Manager's execution of a standard release of claims against City, whichever occurs later.
  - 1. If termination occurs between June 13 and July 12, 2019, City shall pay to Manager severance pay equal to two weeks' month's Base Salary.
  - 2. If termination occurs between July 13 and August 12, 2019, City shall pay to Manager severance pay equal to one month's Base Salary.
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  - 4. If termination occurs between September 13 and October 12, 2019, City shall pay to Manager severance pay equal to three months' Base Salary.
  - 5. If termination occurs between October 13 and November 12, 2019, City shall pay to Manager severance pay equal to four months' Base Salary.
  - 6. If termination occurs between November 13 and December 12, 2019, City shall pay to Manager severance pay equal to five months' Base Salary.
  - 7. If termination occurs between December 13, 2019 and January 30, 2020, City shall pay to Manager severance pay equal to six months' Base Salary.
  - 8. If termination occurs after January 30, 2020, City shall pay to Manager severance pay equal to one year's then Base Salary.
- E. If Manager voluntarily resigns or retires, or if Manager is terminated for gross misconduct, including but not limited to, criminal acts, acts of moral turpitude and/or acts that damage the reputation of the City, Manager shall be entitled to payment pursuant to subsections B-C above, and Manager still waives in rights to any hearing or administrative review as set forth in subsection A above. However,

Manager shall not be required to execute a release of all claims against the City, nor shall he be entitled to severance pay under subsection D above.

4. Indemnification

City shall defend Manager, subject to the Oklahoma constitution, the statutes of the State of Oklahoma and/or City Charter, as applicable, from and against all suits, claims or actions brought against Manager for acts or omissions alleged to be related or incidental to his duties as City Manager. City shall indemnify Manager, subject to the Oklahoma constitution, the statutes of the State of Oklahoma and/or City Charter, as applicable, from and against all suits, claims or actions brought against Manager for acts or omissions within the scope of his employment as City Manager.

5. Modification and Interpretation

This Employment Agreement shall not be modified except in writing signed by the parties hereto. This Employment Agreement has been negotiated by the parties and Manager has had the opportunity to consult with an attorney of his choosing. Thus, this Employment Agreement shall not be construed more favorably for the benefit of either party hereto.

CITY OF MIDWEST CITY

TIM LYON

\_\_\_\_\_  
Mayor Matthew D. Dukes II

\_\_\_\_\_

MIDWEST CITY MUNICIPAL  
AUTHORITY

MIDWEST CITY HOSPITAL  
AUTHORITY

\_\_\_\_\_  
Matthew D. Dukes II, Chairperson

\_\_\_\_\_  
Matthew D. Dukes II, Chairperson

ATTEST:

\_\_\_\_\_  
SARA HANCOCK, City Clerk

APPROVED as to form and legality this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
HEATHER POOLE, City Attorney



**City Attorney**

100 N. Midwest Boulevard  
Midwest City, OK 73110  
hpoole@midwestcityok.org  
Office: 405.739.1203  
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TO: Chairman and Trustees

FROM: Heather Poole, City Attorney

Date: April 23, 2019

Subject: Discussion and Consideration of the appointment of Tim Lyon as City Manager effective June 13, 2019, and acceptance of the terms of the proposed employment contract between the Midwest City Memorial Hospital Authority and Tim Lyon.

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Manager shall not be required to execute a release of all claims against the City, nor shall he be entitled to severance pay under subsection D above.

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CITY OF MIDWEST CITY

TIM LYON

\_\_\_\_\_  
Mayor Matthew D. Dukes II

\_\_\_\_\_

MIDWEST CITY MUNICIPAL  
AUTHORITY

MIDWEST CITY HOSPITAL  
AUTHORITY

\_\_\_\_\_  
Matthew D. Dukes II, Chairperson

\_\_\_\_\_  
Matthew D. Dukes II, Chairperson

ATTEST:

\_\_\_\_\_  
SARA HANCOCK, City Clerk

APPROVED as to form and legality this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
HEATHER POOLE, City Attorney



**City Attorney**

100 N. Midwest Boulevard  
Midwest City, OK 73110  
hpoole@midwestcityok.org  
Office: 405.739.1203  
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TO: Chairman and Trustees

FROM: Heather Poole, City Attorney

Date: April 23, 2019

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Effective January 31, 2024	\$192,257

- B. Cost of Living Adjustments: Should the City Council approve any cost of living increases to the non-represented, full-time employees of the City, said increases shall also be applied to the then-Base Salary of Manager, and the step increases for which Manager is thereafter eligible.
- C. Holiday Pay, Vacation Leave, Sick Leave and other Leave: Manager shall be entitled to Holiday Pay consistent with the City's Policies and Procedure Manual, section 12.2, as applicable. Manager shall accrue Vacation Leave consistent with the City's Policies and Procedure Manual, section 12.3, as applicable. Manager shall accrue Sick Leave consistent with the City's Policies and Procedure Manual, sections 12.4 and 12.5, as applicable. The remaining leave provisions of the City's Policies and Procedure Manual shall not automatically apply. Rather, any additional leave for Manager shall be subject to the requirements of any



applicable local, state and federal laws, and/or subject to the sole discretion of the City Council and the terms herein.

- D. Personal Leave: Effective January 31 of each year, Manager shall accrue 10 days paid personal leave. Personal leave may be taken at the Manager's discretion, subject to the reasonable objection of the Mayor based on the needs of the City. Personal Leave shall not accrue and any Personal Leave not used prior to January 30 of each year shall not rollover. Personal Leave has no cash value and unused Personal Leave shall not be cashed out upon termination of this Employment Agreement.
- E. Accrual and Buy Back: To the extent not modified above, all other provisions of the City's Policies and Procedure Manual related to the City's buy back of leave from employees, or being able to retain accrued leave shall apply to Manager other than that any sell-back of accrued Sick Leave each year to reduce the accrued amount to 960 hours shall be paid at 50% of Manager's then applicable Base Salary and may be accomplished in any paycheck in December, as determined by Manager.
- F. Insurance: The City shall provide major medical health insurance to Manager under the same terms and conditions as insurance is provided to other full-time, non-represented City employees. The City shall provide to Manager, as the City's expense, long term disability insurance under the same terms and conditions offered under a group policy offered to other full-time, non-represented City employees.
- G. Retirement: Manager shall be eligible, at his sole discretion, to participate in the City's retirement program/plan, if any, and subject to the terms and conditions thereof.
- H. Car and Cell Phone Allowances: City shall pay Manager \$700/month car allowance and \$100/month cell phone allowance for use of Manager's cell phone and personal vehicle in the course and scope of his employment. In consideration hereof, it is expected that Manager shall drive his personal vehicle for work related duties within the State of Oklahoma and Manager shall not be entitled to any mileage reimbursement for work-related transportation in his personal vehicle. Manager shall maintain automobile liability insurance on his personal vehicle at all times and shall inform his insurance company that he uses his personal vehicle for work related duties.

### 3. Termination

Should this Employment Agreement terminate: (1) upon the death of Manager; (2) upon termination by the City Council (pursuant to Section 1 above) for any reason other than gross misconduct, including but not limited to, criminal acts, acts of moral turpitude and/or acts that damage the reputation of the City; or (3) upon resignation by Manager after notification by a requesting councilmember that termination is being sought (pursuant to Section 1 above) for

reasons other than gross misconduct, including but not limited to, criminal acts, acts of moral turpitude and/or acts that damage to the reputation of the City:

- A. Manager waives all rights to any public hearings, appeal board hearing or merit systems appeals, if any, to retain employment.
- B. City shall pay to Manager all accrued and unused Vacation Leave at 100% of Manager's then Base Salary and all accrued and unused Sick Leave at 50% of Manager's then Base Salary. Said payments shall be made in six equal monthly installments beginning on the first regular pay day following the effective date of the termination of this Employment Agreement.
- C. Manager shall immediately cease accrual of any and all leave or benefits, and shall cease participation in any retirement plan, if any. However, insurance benefits pursuant to section 2.F shall continue for six months following the effective date of the termination of this Employment Agreement, and shall thereafter terminate in accordance with terms of said plans and applicable law.
- D. Manager, upon execution of standard release of all claims against City, shall receive severance pay, if applicable, as set forth below. Severance pay shall be made in six equal monthly installments beginning on the first regular pay day following the effective date of the termination of this Employment Agreement or Manager's execution of a standard release of claims against City, whichever occurs later.
  - 1. If termination occurs between June 13 and July 12, 2019, City shall pay to Manager severance pay equal to two weeks' month's Base Salary.
  - 2. If termination occurs between July 13 and August 12, 2019, City shall pay to Manager severance pay equal to one months' Base Salary.
  - 3. If termination occurs between August 13 and September 12, 2019, City shall pay to Manager severance pay equal to two months' Base Salary.
  - 4. If termination occurs between September 13 and October 12, 2019, City shall pay to Manager severance pay equal to three months' Base Salary.
  - 5. If termination occurs between October 13 and November 12, 2019, City shall pay to Manager severance pay equal to four months' Base Salary.
  - 6. If termination occurs between November 13 and December 12, 2019, City shall pay to Manager severance pay equal to five months' Base Salary.
  - 7. If termination occurs between December 13, 2019 and January 30, 2020, City shall pay to Manager severance pay equal to six months' Base Salary.
  - 8. If termination occurs after January 30, 2020, City shall pay to Manager severance pay equal to one year's then Base Salary.
- E. If Manager voluntarily resigns or retires, or if Manager is terminated for gross misconduct, including but not limited to, criminal acts, acts of moral turpitude and/or acts that damage the reputation of the City, Manager shall be entitled to payment pursuant to subsections B-C above, and Manager still waives in rights to any hearing or administrative review as set forth in subsection A above. However,

Manager shall not be required to execute a release of all claims against the City, nor shall he be entitled to severance pay under subsection D above.

4. Indemnification

City shall defend Manager, subject to the Oklahoma constitution, the statutes of the State of Oklahoma and/or City Charter, as applicable, from and against all suits, claims or actions brought against Manager for acts or omissions alleged to be related or incidental to his duties as City Manager. City shall indemnify Manager, subject to the Oklahoma constitution, the statutes of the State of Oklahoma and/or City Charter, as applicable, from and against all suits, claims or actions brought against Manager for acts or omissions within the scope of his employment as City Manager.

5. Modification and Interpretation

This Employment Agreement shall not be modified except in writing signed by the parties hereto. This Employment Agreement has been negotiated by the parties and Manager has had the opportunity to consult with an attorney of his choosing. Thus, this Employment Agreement shall not be construed more favorably for the benefit of either party hereto.

CITY OF MIDWEST CITY

TIM LYON

\_\_\_\_\_  
Mayor Matthew D. Dukes II

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MIDWEST CITY MUNICIPAL  
AUTHORITY

MIDWEST CITY HOSPITAL  
AUTHORITY

\_\_\_\_\_  
Matthew D. Dukes II, Chairperson

\_\_\_\_\_  
Matthew D. Dukes II, Chairperson

ATTEST:

\_\_\_\_\_  
SARA HANCOCK, City Clerk

APPROVED as to form and legality this \_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
HEATHER POOLE, City Attorney