TOWNSHIP OF LOWER MERION

ADMINISTRATIVE AND HUMAN RESOURCES COMMITTEE

Wednesday, January 22, 2020
7:55 PM (Approximately)

Chairperson: Rick Churchill
Vice Chairperson: Gilda Kramer

AGENDA

1. **APPROVAL OF EXTENSION OF THE TOWNSHIP MANAGER'S EMPLOYMENT AGREEMENT**

AGENDA ITEM INFORMATION

ITEM: APPROVAL OF EXTENSION OF THE TOWNSHIP MANAGER'S EMPLOYMENT AGREEMENT

Consider for recommendation to the Board of Commissioners approval of an extension of the Township Manager's July 18, 2018 Employment Agreement except for wages, in accordance with Article XV, Section 1502 of the First Class Township Code pending negotiation of new employment agreement provisions.

PUBLIC COMMENT

ATTACHMENTS:

Description	Type
Issue Briefing - Extension of Employment Agreement	Issue Briefing
07-18-2018 Employment Agreement	Backup Material

TOWNSHIP OF LOWER MERION
Administrative and Human Resources Committee

Issue Briefing

Topic: Extension of Township Manager Employment Agreement terms pending development of a new agreement.

Prepared By: **Daniel S. Bernheim, Board President**

Date: January 17, 2020

I. **Action To Be Considered By The Board:** Approve extension of the Township Manager's July 18, 2018 Employment Agreement except for wages, in accordance with Article XV, Section 1502 of the First Class Township Code pending negotiation of new employment agreement provisions.

II. **Why This Issue Requires Board Consideration:** Approval of employment agreement terms requires Board of Commissioners approval.

III. **Current Policy Or Practice (If Applicable):** It has been past practice to extend the Township Manager Agreement terms pending development of a new agreement.

IV. **Other Relevant Background Information:** Municipal manager employment agreements in accord with Pennsylvania law may not extend past the reorganization date of the governing body following a municipal election. The Township Manager Employment Agreement dated July 18, 2020 therefore expired on January 6, 2020. The Township Manager Employment Agreement has terms and conditions that benefit and protect the Township and the Township Manager and should be extended pending development and approval of a new agreement.

V. **Impact On Township Finances:** There is no impact on Township finances at this time. The wage provisions of the Agreement are not extended and the 2020 Township Manager salary is yet to be determined by the Board of Commissioners.

VI. **Recommendation:** Recommend the Board approve extension of the Township Manager Employment Agreement terms except for wages pending development of a new Township Manager Employment Agreement which extension will be retroactive to January 6, 2020.

EMPLOYMENT AGREEMENT

THIS AGREEMENT, made and entered into this 18th day of July, 2018, by and between the Township Board of Commissioners of Lower Merion, Pennsylvania, a municipal corporation, (hereinafter the "Board") and Ernie B. McNeely, (hereinafter "McNeely") both of whom agree as follows:

WITNESSETH

WHEREAS, the Board desires to employ the services of McNeely as Township Manager of the Township of Lower Merion, Pennsylvania, as provided for in the First Class Township Code and Code of the Township of Lower Merion; and

WHEREAS, it is the desire of the Board to provide certain benefits, to establish certain conditions of employment and to set forth working conditions of McNeely; and

WHEREAS, McNeely desires to be employed as Township Manager of Lower Merion Township.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties intending to be legally bound agree as follows:

Section 1. Duties of the Township Manager.

A. The Board hereby agrees to employ McNeely as Township Manager of the Township of Lower Merion to perform the functions and duties specified in the First Class Township Code and Code of the Township of Lower Merion, and to perform other legally permissible and proper duties and functions as the Board shall from time-to-time assign, subject to this Agreement.

B. McNeely shall faithfully serve the Township, shall use his best efforts to promote the Township's interests and, recognizing that this is a full-time position, shall not, without the consent of the Board, have any active business interests beyond the business of the Township with the exception of personal investments in securities or property, assuming that such investments do not involve any material time commitment or create any conflicts of interest between McNeely and the Township.

Section 2. Term.

A. The term of this agreement shall extend from January 2, 2018 to and including January 6, 2020. It is expressly understood, however, that McNeely's employment is at will.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of McNeely to voluntarily resign at any time from his position and employment with the Township. In the event McNeely voluntarily resigns as Township Manager, McNeely shall

provide the Board not less than forty-five (45) days advance written notice, unless the parties agree otherwise.

Section 3. Termination and Severance Pay.

A. In the event that the Township terminates McNeely for cause, this Agreement and the rights and obligations of the parties hereunder, cease. "Cause" is defined and hereby limited for the purposes of this Agreement to the following: (1) willful misconduct and/or neglect of duty, (2) felony or misdemeanor conviction of any crime involving moral turpitude, (3) dishonesty in the conduct of the Township's affairs, or (4) any other act of similar or greater seriousness.

B. In the event the Board terminates McNeely without cause during the term of this Agreement the Board agrees to continue to pay McNeely his base salary for a period of four (4) months following the effective date of termination.

C. If McNeely voluntarily resigns, retires, or his contract of employment is not renewed or he is terminated for cause, he will not be eligible for any severance pay.

D. Should McNeely be permanently disabled or otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or health for a period of six (6) successive weeks beyond any accrued or eligible paid leave, including short-term disability, the Board shall have the right to terminate this Agreement. Such termination shall be deemed to be without cause. This would not negatively impact McNeely's eligibility for any long-term disability or other retirement-related benefits that McNeely might otherwise be eligible to receive. In the event of a dispute with respect to McNeely's fitness and ability to perform the functions of his position, McNeely agrees to submit to, and the parties agree to be bound by, the determination of an Independent Medical Examination to be scheduled by the Township.

E. Contemporaneously with the delivery of the severance pay herein above set out, McNeely agrees to execute and deliver to the Board a release, releasing the Board of all claims that McNeely may have against the Township or the Board.

Section 4. Base Salary.

A. The Board agrees to pay McNeely for his services rendered pursuant hereto as Township Manager an annual base salary of $193,353 for calendar year 2018 and a rate to be determined for calendar year 2019 through to January 6, 2020. Payment is prorated during the term of this agreement, payable in installments at the same time as other management employees of the Township of Lower Merion are paid.

B. As provided for in Section 10, upon receipt of McNeely's performance evaluation, the Board agrees to review McNeely's performance and base pay and, without any commitment for any modification thereof, to evaluate whether any adjustment thereto is, in the Board's exclusive discretion, appropriate.

Section 5. Retirement Benefits.

A. McNeely shall be covered and governed by the terms of the same defined benefit retirement pension plan as is provided to all other qualified non-uniformed Township employees.

Section 6. Fringe Benefits.

A. McNeely shall be entitled to the fringe benefits during the term of this agreement set forth on Exhibit "A" attached hereto.

Section 7. Automobile Allowance.

A. The Board shall provide McNeely with an automobile allowance of Four Hundred Dollars ($400.00) per month paid along with McNeely's regular base pay installments.

Section 8. Other Benefits.

A. All provisions of the Code of the Township and the rules, regulations and policies of the Township relating to fringe benefits and working conditions for all management employees as they now exist or hereafter may be amended, shall apply to McNeely as they would to all other management employees of the Township.

Section 9. General Expenses.

A. The Board recognizes that certain expenses of a non-personal and job-affiliated nature are incurred by McNeely, including participation and attendance in civic and other local organization functions and activities, and hereby agrees to reimburse or pay said general expenses.

B. The Board shall bear the full cost of any fidelity or other bonds required of McNeely as the Township Manager under any law or ordinance.

Section 10. Performance Evaluation.

A. McNeely shall provide the Board with a written performance self-evaluation no later than February 1st of each year. The Board shall review and evaluate the written performance self-evaluation in accordance with specific criteria developed jointly by the Board and McNeely and the Board shall promptly thereafter share its analysis with McNeely.

B. Annually, the Board and McNeely shall jointly define such goals and performance objectives that they determine necessary for the proper operation of the Township of Lower Merion, and in the attainment of the Board's policy objectives. The Board and McNeely shall further

establish a relative priority among those various goals and objectives, which shall generally be attainable within the time limitations as specified, and within the annual operating budget and capital budget and appropriations provided.

Section 11. Indemnification.

A. The Board shall defend, save harmless, and indemnify McNeely against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of McNeely's duties as Township Manager, excluding willful and intentional acts by McNeely taken outside of his authority and/or the Township's best interests. The Board may, in its exclusive judgment, compromise, settle or litigate any such claim or suit and promptly pay or satisfy the amount of any such settlement or judgment rendered thereon. Said indemnification shall extend beyond termination of employment, and the otherwise expiration of this Agreement, to provide full and complete protection to McNeely by the Township of Lower Merion, as described herein, for any acts undertaken or committed in his capacity as Township Manager, regardless of whether the notice of filing of a lawsuit for such tort, claim, demand, or other legal action occurs during or following McNeely's employment with the Township.

Section 12. General Provisions.

A. The foregoing constitutes the entire agreement of the parties hereto with respect to the subject matter of this Agreement and McNeely acknowledges that he has not been induced by any oral or other written representations or promises other than those herein expressed. No modification hereof shall be binding upon the parties unless the same is approved by the Board, made in writing and signed by the parties hereto.

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

C. This Agreement shall become effective upon execution by McNeely and adoption and approval by the Board of Commissioners of the Township of Lower Merion.

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

E. Governing Law. This Agreement shall be interpreted in accordance with the internal laws of the Commonwealth of Pennsylvania conflict of laws provisions notwithstanding.

F. Waivers and Amendments. No waiver of any term, provision or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further and continuing waiver of any such term, provision or condition of this Agreement. No amendment to any provision of this Agreement shall be effective unless in writing and signed by each party hereto.

IN WITNESS THEREOF, the Board of Commissioners of the Township of Lower Merion has caused this Agreement to be signed and executed in its behalf by its Board President and Vice President, and McNeely has signed and executed this Agreement, both in duplicate, the day and year first written above.

TOWNSHIP OF LOWER MERION
BOARD OF COMMISSIONERS

By: _____
Board President: Daniel S. Bernheim

_____
Board Vice President: C. Brian McGuire

ATTEST:

_____
Township Secretary: Jody L. Kelley

APPROVED AS TO FORM

_____
Township Solicitor: Gilbert P. High, Jr.

By: _____
Ernie B. McNeely

EMPLOYMENT AGREEMENT
EXHIBIT "A"
ERNIE B. MCNEELY

HOLIDAYS AND LEAVES OF ABSENCE

LEGAL HOLIDAYS	9 days: New Year's Day, Martin Luther King Day (3rd Monday in January); Presidents' Day; Good Friday; Memorial Day; July 4th; Labor Day; Thanksgiving Day; Christmas Day
PERSONAL HOLIDAYS	4 days per calendar year
VACATION LEAVE	4 weeks (20 days) per year
SICK LEAVE 1st year of service 1 year but < 5 years of service 5 years and over	 Up to 30 days 30 days/year* 60 days/year* Includes Short Term Bank (10 days), Medical Permission time (3 days) and Long Term Bank (balance); what is not used is lost per calendar year. There is no carryover.

OTHER LEAVE WITH PAY

Medical Permission Leave – Can use up to three (3) sick leave days per year for medical appointments for either the employee or dependent(s), including dentist visits, hospital/lab tests, etc.; attendance at home or medical facility with an ill or injured dependent. "Dependent" is a member of the employee's immediate family including spouse, child, parent, brother, sister and/or grandparent. Eligible after 3-month sick leave waiting period.

Jury Duty – Receive base pay; jury fees returned to the Township.

Military Leave – The Township will provide 15 calendar days of paid military leave in accordance with federal and state law. The Township will allow up to 5 unpaid days for reserve duty for those employees that do not work the normal Monday to Friday work schedule.

Bereavement Leave - Three (3) work days for death in immediate family. One (1) extra bereavement day granted if employee travels over 200 miles one way to attend funeral. Two (2) work days total for a mother/father-in-law (not an ex-in-law) and one (1) work day for aunt/uncle of blood relation.

RETIREMENT BENEFITS

SOCIAL SECURITY (FICA and Medicare)	Yes
NORMAL RETIREMENT AGE under applicable pension plan	Non Police Mgmt – age 60
EMPLOYEES DEFINED BENEFIT PENSION PLAN Defined benefit pension plan which provides a pension based on earnings and years of Plan service. Employees are enrolled upon hiring and are vested in their accrued benefit when they have earned 5 years of vesting credit or when they attain their normal retirement age, if earlier. Participation is mandatory for any employee hired on or after January 1, 2007.	<u>Employee Contributions</u>: Employees contribute 5.0% of salary <u>Pension Formula</u>: 1.4% x FAS x credited years of service up to 35 years
457 DEFFERED COMPENSATION PLAN After 3 months of service a participant can contribute up to the IRS maximum.	

HEALTHCARE:
You have 31 days to notify Human Resources (HR) if you have a change in status including but not limited to a change in marital status, birth of a child, or loss of spouse's coverage. If you do not notify HR within this 31-day period, you will not be able to make changes to your benefits until the next open enrolment period.

WAITING PERIOD FOR TOWNSHIP-PAID COVERAGE Single and dependent coverage:	1st of month after hire date
PRIMARY HEALTH CARE INSURANCE Independence Administrators plan through Pennsylvania Municipal Health Insurance Cooperative (PMHIC). Independence Administrators Preferred Pharmacy Manager is Future Scripts. Choice of:	
Closed Panel PPO (HMO-Like) $15	$15 primary care physician copay/$30 specialist copay* *See plan overview for additional plan details.

High Deductible Health Plan (HDHP) with Health Savings Account (HSA)	Preferred providers - $2,000 person deductible/$4,000 family deductible. The maximum deductible for an individual within a family for Preferred providers is $2,600. After in-network deductible is satisfied, all eligible expenses are covered at 100%. Non-Preferred providers - $4,000 person deductible/$8,000 family deductible. After out-of-network deductible is satisfied, all eligible expenses are covered at 80%. The Township will contribute 75% of the deductible into an HSA ($1,500 for individual/$3,000 for family). The HSA is administered by American Fidelity. Employees can make additional contributions to the HSA up to the annual limit. *See plan overview for additional plan details.

EMPLOYEE HEALTHCARE CONTRIBUTION

Closed Panel PPO (HMO-Like) $15 - 7.5% of total annual premium for core medical/prescription, dental and vision.

High Deductible Health Plan (HDHP) - 5% of total annual premium for core medical/prescription, dental and vision.

Premium is paid through a payroll healthcare deduction on a bi-monthly basis and may be subject to a 10% rolling cap.

DENTAL PLAN UNITED CONCORDIA COMPANIES INC. (UCCI)	
Class I: Diagnostic/Preventive services	100%
Class II: Basic Services (fillings, etc.)	80%
Class III: Major services (inlays, crowns, bridges, etc.)	80%
Maximum lifetime payment per dependent (ortho only)	$1,800
Annual Program Maximum (per person)	$2,500

VISION PLAN

VISION BENEFITS OF AMERICA (VBA)

Adults: Exam, lenses & frames every twelve (12) months
Dependents up to 19: Exam and lenses every year, frames every twelve (12) months

-OR- *(in lieu of all other benefits for the benefit period)*

Adults: Contact lenses every twelve (12) months
Dependents up to 19: Contact lenses every year

Frame coverage of $60. Lens coverage will include solid or gradient lens tints, ultra violet (UV) protective coating and premium two (2) year scratch protection.

When visiting a non-participating doctor, reimbursement is as follows:

Vision exam	$35	Trifocal lenses	$60	Single lenses	$30
Lenticular lenses	$80	Bifocal lenses	$40	Frames	$40

-OR- (in lieu of all benefits listed above):
Elective contact lenses (in lieu of glasses) - $200
Medically-necessary contact lenses - $250

HEARING AIDS

The Township will reimburse a maximum of $300 once every thirty-six (36) months towards hearing aid devices for employee and their spouse.

WRAP-AROUND PLAN"

Requires that all dependent members of the same family be insured by a single insurer (e.g., for married Township employees, if one spouse chooses a plan, the other spouse must be covered by that same plan). Additionally, once the plan is selected, this provision requires the employees to select that plan level's coverage with the lower cost to the Township (e.g., require the employees to choose "employee/spouse" rather than two "single" plans, if less expensive).

LIFE INSURANCE – (TOWNSHIP PAID)	
Waiting period	1st of month after date of hire
Employees – 1.5 times annual salary includes Accidental Death & Dismemberment coverage in the same amount as life insurance. Coverage levels reduced beginning age 65.	1.5 times annual salary
Retirees - Amount of coverage	$12,500
Supplemental Life Insurance – Employees are eligible to purchase additional group term life insurance for themselves and their dependents. All premium and plan costs other than internal Township administrative costs will be paid by the participants.	

SHORT-TERM DISABILITY – (TOWNSHIP PAID/SELF-FUNDED)

Provides a percentage of base pay based upon years of completed service after all available leave is exhausted. Eligibility begins on the 21st day of disability and continues until the employee returns to work, becomes eligible for LTD benefits or reaches the 180th day of a disability, whichever comes first.

Less than 1 yr:	0%
1 - 4 years:	50%
5 - 9 years:	60%
10 - 14 years:	70%
15 - 19 years:	80%
20+ years:	90%

LONG-TERM DISABILITY – (TOWNSHIP PAID)	
Provides 60% of base pay beginning on the 181st day of disability until the employee reaches age 65 or is able to return to work. (See plan document for details.)	
Waiting period	1st of month after date of hire

FLEXIBLE SPENDING ACCOUNTS Medical/Dental Expense Flexible Spending Account (FSA) – Employees in the Closed Panel PPO (HMO-Like) Plan can set aside **pre-tax dollars** to pay for their out-of-pocket medical care expenses for employee and their dependents. Employee saves federal, FICA and state taxes on their medical care expenses. The 2018 maximum yearly contribution for the Medical/Dental Expense Reimbursement Plan is $2,650. (In accordance with IRS regulations, employees in the HDHP plan are not eligible for the FSA as you cannot be enrolled in both an HSA and FSA at the same time.) Dependent/Child Care Assistance Reimbursement Plan - Employees can set aside **pre-tax dollars** to reimburse oneself for eligible dependent care expenses such as day care or elder care. Employee saves federal and FICA taxes on their dependent care expenses. The 2018 maximum yearly contribution for the Dependent/Child Care Assistance Reimbursement Plan is $5,000.	
Waiting Period	1st of month after hire date
EDUCATIONAL REIMBURSEMENT	
Reimbursement level	100%
Maximum reimbursement per year	$1,600 (with a grade B or higher and must serve 1-year employment obligation)

RIDEECO VOUCHERS

The Township's RideECO Plan is a tax-free fringe benefit plan established under Internal Revenue Code ("IRC) §132(f), as expanded by the Transportation Equity Act of the 21st Century. All employees are eligible to participate in the Plan. The Plan allows eligible employees to set aside part of their salary on a tax-free basis to pay for certain work-related transit pass expenses. The 2018 maximum salary deduction allowed is $260 per month.

RideECO is accepted by SEPTA, DART First State, NJ Transit, PATCO, and Amtrak. It is also accepted by central Pennsylvania transit agencies, including CAT, Red Rose, rabbittransit, LT, and BARTA. In addition, commuters may use RideECO vouchers on vRide, a vanpool provider.

OTHER OPTIONAL BENEFITS

- Direct Deposit of paycheck
- Employee Assistance Program (EAP) – 5 face-to-face visits with Health Advocate
- ConnectCare3 – Program offering free healthcare help to assist in finding the best doctors, research treatment options, coordinate care between physicians and treatment facilities, etc.
- Value-Added Member Wellness Programs offered through health coverage providers.