



**City of New Buffalo
224 W. Buffalo Street
New Buffalo MI 49117
SPECIAL COUNCIL MEETING AGENDA
March 31, 2021 4:30 PM**

Join Zoom Meeting

<https://us02web.zoom.us/j/87645118079?pwd=Y0RqOVBYQjF6WDILVEFhZTNEMmtRQT09>

1. Call to Order
2. Roll Call
3. Approval of agenda
4. Public Comment
5. New Business
 - a. Approval of City Manager Contract
6. Council Comments
7. Adjournment

CITY MANAGER EMPLOYMENT AGREEMENT

THIS CITY MANAGER EMPLOYMENT AGREEMENT (hereinafter “Agreement”) is entered into by and between the City of New Buffalo (hereinafter the “City”), a Michigan municipal corporation established and operated pursuant to the Michigan Home Rule City Act, Act 279 of the Public Acts of 1909 (hereinafter “Act 279”), being MCL 117.1 et seq., as amended, and DARWIN WATSON (hereinafter “Watson”).

WHEREAS, pursuant to Sections 4.2 and 4.3 of the City Charter of the City of New Buffalo (hereinafter the “Charter”), the City Council of the City of New Buffalo (“Council”) has the responsibility to appoint and retain a City Manager to perform certain duties as set forth in Sections 4.2 and 4.3 of the Charter; and

WHEREAS, the Council wishes to appoint and retain Watson as City Manager, and Watson wishes to be appointed and retained in the capacity upon and consistent with the terms and conditions hereinafter set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing promises and the respective undertakings set forth below, the City and Watson, intending to be legally bound, agree as follows:

1.0 Employment. Effective April 1, 2021, the City shall employ Watson, and Watson shall accept such employment and perform services as City Manager for the City upon the terms and conditions set forth in this Agreement and Sections 4.2 and 4.3 of the Charter. Watson shall be employed at the pleasure of a majority of the Council subject to Section 4.2 of the Charter. Watson’s employment status under Section 4.2 of the Charter shall not be affected or modified in any way by any City ordinances, policies, procedures, or policy statements in existence on the Commencement Date or adopted or issued by the City at any time after the Commencement Date.

2.0 Term. This Agreement shall commence on the Commencement Date and shall continue in full force and effect for 3 years, until April 1, 2024, unless earlier terminated in accordance with Section 4.2 of the Charter or Subsection 12 of this Agreement. If neither party informs the other at least 60 days prior to the expiration of this Agreement that it wishes to renegotiate the terms of Watson’s employment or to otherwise not renew this Agreement, the Agreement shall renew automatically for additional 1-year terms.

3.0 Position and Duties.

3.1 Duties of City Manager. Watson shall perform all such duties and responsibilities as described in Section 4.3 of the Charter, this Agreement and such additional duties as the Council shall assign or direct from time to time. Watson shall report to the Council regarding all aspects of the performance of his duties and responsibilities required under this Agreement.

3.2 Performance of Duties and Responsibilities. Watson agrees that all duties and functions of the City Manager shall be performed in a diligent, responsible, and equitable manner in accordance with the City Charter, the City Code, and policies and resolutions established by the Council. Watson shall at all times serve the City and Council faithfully and to the best of his ability. Except during vacation periods and reasonable periods of absence due to sickness, personal injury or other disability, Watson shall devote his full working time, attention and efforts to the business of the City and Council during the entire time of his employment as City Manager. While Watson is employed by the City, Watson shall work exclusively for the City and shall not seek or accept other employment or work as a consultant with or engage in or render services to any other state or municipal government, governmental agency or business organization of any kind, except that Watson may participate in professional organizations, charitable or volunteer activities, provided such activities do not interfere with the performance of Watson's duties and responsibilities under this Agreement.

3.3 Conflicts of Interest. Watson understands and agrees that he shall not have an interest ("Outside Interest") in any of the City's suppliers, vendors, consultants or any other entities or businesses that provide goods or services ("Providers") to the City. An "Outside Interest" includes, but is not limited to, Watson's or any member of Watson's family having any ownership, interest in or relationship or employment with any Provider or receiving compensation of any kind from any Provider. Watson shall not seek or accept gifts, gratuities, meals, tickets for sports or other events, or entertainment of any kind from any Provider. Watson shall also comply with all applicable ordinances of the City's Code of General Ordinances governing ethics and City business affairs or transactions.

3.4 Professional Status. The parties acknowledge and agree that Watson is being employed in a bona fide executive and professional capacity which will require him to spend more than forty (40) hours per week in the performance of his duties and functions. Watson agrees to work all those hours necessary to allow him to reasonably and professionally perform the functions and duties required of him.

4.0 Compensation and Evaluation.

4.1 The Council agrees to pay Watson a base salary of \$85,000 per year that shall be paid in bi-weekly increments. Council shall not reduce Mr. Watson's base salary while this Agreement remains in effect. If Watson's regular evaluation conducted pursuant to this Agreement indicates his performance is acceptable, Watson's base salary shall increase as follows:

- a. As of January 1, 2022, the annual base salary shall be \$87,000.
- b. As of January 1, 2023, the annual base salary shall be \$92,000.
- c. As of January 1, 2024, the annual base salary shall be \$95,000.
- d. As of January 1 in each year thereafter, the annual base salary shall increase by 3%.

4.2 The City Council shall regularly evaluate Watson's performance under this Agreement. The first such evaluation shall be not later than October 1, 2021. Subsequent evaluations shall occur by not later than December 1 of each subsequent year. The City Council shall consult with Watson regarding the evaluation form and procedure. To the extent permitted by law, if Watson requests that the evaluation be conducted in a closed session, the City Council shall do so.

5.0 Employee Benefits. Watson shall be entitled to the same benefits upon the same terms as provided other full-time City administrative officers in accordance with City personnel policies. Currently, those benefits include participation in the Michigan Employees' Retirement System plan and participation in the City's medical insurance plan. Watson shall be entitled to paid and unpaid vacation, personal, and sick time on the same basis as provided to other full-time City administrative officers. To the extent a City Vehicle is available while on Watson is on duty, Watson shall be permitted to use such vehicle. No take-home vehicle is contemplated by this Agreement.

6.0 Professional Development. Watson agrees to maintain his professional memberships and continue participation in any national, state, and local organizations such as the Michigan Municipal League ("MML") and the International City/County Management Association ("ICMA"). Watson may attend regional, local, and national meetings of professional associations in the normal course of his employment duties as City Manager, with reasonable expenses of to be borne by the City, including his MML and ICMA dues. Watson agrees that he shall not be reimbursed attendance and membership costs in an amount in excess of the annual budget appropriation fixed by the Council for such activities and dues.

7.0 Other Expenses. The City shall reimburse Watson for all reasonable and necessary out-of-pocket business, travel, and other expenses incurred by him in the performance of his duties and responsibilities hereunder, provided that reimbursement for such expenses are submitted in compliance with the City's policies and procedures for expense verification and documentation.

8.0. Severance Pay. If the City Council terminates Watson's employment as City Manager without cause, the City shall pay to Watson severance pay equal to 1 month of his salary.

9.0 Post-Termination Obligations of Employee.

9.1 City Property and Materials. Upon termination of employment with City, regardless of the reason or absence of reason for termination or which party initiated termination, Watson agrees that he shall promptly deliver to the City any and all City records and any and all City property in his possession or control, including without limitation, personnel files and documents, manuals, books, blank forms, documents, letters, memoranda, notes, notebooks, reports, printouts, computer hardware and software (including desk top, laptop, notebook computers and any PDA devices), computer disks, memory stick or data storage devices, computer tapes, source codes, data, tables or calculations and all copies thereof, documents that in whole or in part contain any confidential information of the City or its employees and all copies thereof, and all keys, access cards, access codes of any type, computer user names and

passwords, credit cards, personal computers, telephones and other electronic equipment belonging to the City.

9.2 Cooperation. Following termination of Watson's employment with City, regardless of the reason or absence of reason for termination or which party-initiated termination, Watson agrees that he shall, upon reasonable request of the Council, cooperate with the Council in connection with the transition of his duties and responsibilities for the City. Watson shall consult with Council regarding business matters that Watson was directly and/or indirectly involved with while employed by the City and shall be reasonably available, with or without subpoena, to be interviewed, meet and confer with the City or any of its attorneys or advisors, review documents or things, give depositions, testify, or engage in other reasonable activities in connection with any litigation or investigation, with respect to matters that Watson then has or may have knowledge of by virtue of employment with or services to the City or any related entity.

10.0 Remedies and Dispute Resolution.

10.1 Remedies. Watson acknowledges and that it would be extremely difficult or impossible to fully compensate the City for monetary damages resulting from any breach of the provisions of Section 9.0 of this Agreement. Accordingly, in the event of any actual or threatened breach of the provisions of Section 9.0, the City shall, in addition to any other remedies it may have under this Agreement, be entitled an immediate injunction without prior notice to Watson and further injunctive and other equitable relief to enforce the provisions of Section 9.0. In the event the City files a court action or suit to enforce the provisions of Section 9.0 of this Agreement, Watson agrees to fully reimburse City for all costs, fees, and reasonable attorney fees incurred by the City in any court action to enforce Section 9.0.

10.2 Dispute Resolution. Except for court actions seeking injunctive relief as described in Paragraph 10.1 above, Watson and the City understand and agree to any and all civil actions, complaints, claims disputes or controversies brought by Watson against the City or its Council or individual Council members, or the City's officers, attorneys, employees or agents arising out of or relating to Watson's employment with, and/or termination of or layoff from employment with the City, including, but not limited to, claims of or under Michigan tort or contract law, breach of contract, common law, all Federal and Michigan employment statutes, wrongful termination in violation of public policy, retaliatory discharge, the Michigan Elliott-Larsen Civil Rights Act or Persons With Disabilities Civil Rights Act, Michigan Wage and Fringe Benefits Act, Michigan Whistleblower's Protection Act, the Federal Age Discrimination in Employment Act, Fair Labor Standards Act, Family and Medical Leave Act, the Rehabilitation Act of 1972, Americans With Disabilities Act, federal civil rights statutes under 42 U.S.C. §§ 1981 and 1983, the Constitutions of the United States or State of Michigan, and federal civil rights statutes under Title VII of the Civil Rights Act of 1964, as amended, including the Civil Rights Act of 1991 **must be filed in a court of competent jurisdiction within One Hundred Eighty (180) calendar days of the date of any occurrence(s) giving rise to the civil actions, complaints, claims disputes or controversies.**

11.0 Successors and Assigns. This Agreement is binding on and inures to the benefit of Watson and Watson's heirs, legal representatives and permitted assigns, and on the City's successors and permitted assigns. No rights or obligations of Watson under this Agreement may be assigned, pledged, disposed of or transferred by Watson to any other person or entity without the prior written consent of the City.

12.0 Separate Representation. Watson hereby acknowledges that he has had the opportunity to seek and receive independent advice from counsel of his own selection in connection with this Agreement and has not relied to any extent on the representations or advice of any appointed or elected officer, employee or attorney of the City in deciding whether to enter into this Agreement.

13.0 Governing Law. All matters relating to the interpretation, construction, application, validity and enforcement of this Agreement shall be governed by the laws of the State of Michigan without giving effect to any choice or conflict of law provisions or rules, whether of the State of Michigan or any other jurisdiction.

14.0 Tax Withholding. The City shall withhold from any amounts payable under this Agreement such federal, state and local income and employment taxes as the City shall determine are required to be withheld pursuant to any applicable law or regulation.

15.0 Counterparts. This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument.

16.0 Entire Agreement. This Agreement contains the entire understanding of the parties hereto with respect to the employment of Watson by the City and the provisions of this Agreement. This Agreement supersedes and completely nullifies any prior discussions, negotiations or agreements that in any way concern or relate to the City's employment of Watson and the subject matter of this Agreement.

17.0 Amendments and Waivers. No provision of this Agreement may be altered, amended, modified, waived or discharged in any way whatsoever, except by dated written agreement executed by both Watson and the City. No delay or failure of either party to insist, in any one or more instances, upon performance of any of the terms and conditions of this Agreement or to exercise any rights or remedies hereunder shall constitute a waiver or a relinquishment of such rights or remedies or any other rights or remedies hereunder.

18.0 Severability; Survival. In the event that any portion of this Agreement is held to be invalid or unenforceable for any reason, it is hereby agreed that such invalidity or unenforceability shall not affect the other portions of this Agreement and that the remaining covenants, terms and conditions or portions hereof shall remain in full force and effect, and any court of competent jurisdiction may so modify the objectionable provision(s) as to make it valid, reasonable and enforceable. The obligations and rights of the parties hereunder that by their terms continue beyond the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

The Parties have signed this Agreement as of the date first above written.

CITY OF NEW BUFFALO

DARWIN WATSON

By: _____
John Humphrey, Mayor

By: _____
Darwin Watson

By: _____
Ann M. Fidler, Clerk

Date: _____

Date: _____