



CITY of NOVI CITY COUNCIL

Agenda Item I
February 18, 2014

SUBJECT: Approval of Memorandum of Understanding between City of Novi and Interim City Manager Victor Cardenas

SUBMITTING DEPARTMENT: City Attorney

CITY MANAGER APPROVAL: 

BACKGROUND INFORMATION:

At its February 3, 2014 meeting, the City Council voted to appoint current Assistant City Manager Victor Cardenas as the Interim City Manager upon the departure of City Manager Clay J. Pearson, and directed that a Memorandum of Understanding be brought back at the February 18, 2014, meeting for consideration by Council.

Attached is the proposed Memorandum of Understanding, which has been prepared by the City Attorney's office using the Memorandum of Understanding from 2006 (when Clay Pearson was appointed Interim Manager) as a model.

Of particular note are the compensation provisions, which represent the "half way point" between Mr. Cardenas's current salary as Assistant City Manager and Mr. Pearson's salary as City Manager, as well as an increase in the monthly car allowance. The other terms and conditions of Mr. Cardenas's employment remain the same. The agreement is for 120 days. It can be extended if the process requires (i.e., if a City Manager has not been chosen by the expiration of this agreement), and it automatically ends upon the commencement of employment by a new City Manager.

It is also worth noting that as Interim City Manager Mr. Cardenas may make no permanent appointments to department heads, and may not discharge department heads, without the express approval of City Council, and may not discharge, suspend, or discipline any department head without similar approval.

RECOMMENDED ACTION: Approval of Memorandum of Understanding between City of Novi and Interim City Manager Victor Cardenas

	1	2	Y	N
Mayor Gatt				
Mayor Pro Tem Staudt				
Council Member Casey				
Council Member Fischer				

	1	2	Y	N
Council Member Markham				
Council Member Mutch				
Council Member Wrobel				

MEMORANDUM



TO: MAYOR AND CITY COUNCIL
FROM: VICTOR CARDENAS, ASSISTANT CITY MANAGER
SUBJECT: INTERIM CITY MANAGER EXPECTATIONS
DATE: FEBRUARY 13, 2014

The purpose of this memorandum is to outline the most significant tasks that I expect to focus on while I serve as the interim City Manager. I am honored to receive City Council's confidence to act in this capacity until the Council can identify someone to fill the Manager position on a full-time basis.

For a majority of Council, this is the first opportunity to make a personnel decision as all of the current Council appointees have had long and successful tenures with Novi. I understand and appreciate that this is no small task and one that will have lasting effects on this great City for years to come. I'm fortunate to serve on a leadership team with extremely competent and experienced department heads who are all leaders in their respective disciplines. I commit to providing the same level of service that the residents of Novi have grown accustomed to expect.

There are many projects that will require attention in the next 120 days, but I want to address a few of the more significant ones in this memorandum to make sure that I am in concert with the City Council on what is expected of City Administration these next few months:

1. PREPARATION AND RECOMMENDATION OF FISCAL YEAR 2014/15 ANNUAL BUDGET

The Annual Budget is one of the most important documents produced by the City annually. It outlines the policy initiatives, expectations, and goals of the community for the upcoming year. I expect that its preparation, fine-tuning, and delivery to the Council will take up a considerable amount of my time for the next few months. Our internal preliminary calendar has the budget being delivered to Council on April 1st (similar to years past), with the Council's budget meetings in May. I pledge to propose a balanced and sound budget for Council's consideration, using the Council's stated goals and prior projections as the basis upon which it will be built.

2. STAFF SUPPORT AND LABOR RELATIONS SUPPORT

We are nearing completion of our negotiations with the Paid-on-Call Fire group. I hope to bring forward for your consideration a comprehensive agreement that embodies all of the provisions outlined by Council and mirrors the previously ratified contracts of the City's other labor groups.

I also expect to spend some time on the details of the change, previously discussed with Council, in the timing of when the City pays its employees,—a compensation scheme more common for organizations of the City's size. That change currently is scheduled for August 1, 2014. I foresee a expending a great deal of energy to ensure that the change is implemented seamlessly.

3. SELECTION OF A NEW CITY MANAGER

I hope to assist the City Council as you identify the next City Manager. Novi is a world-class community that deserves a world-class City Manager, similar to the caliber of Clay Pearson. Realizing the significant time commitment needed for this position, and appreciating the responsibilities of raising a young family, I do not believe that I can devote the necessary time necessary to the position of City Manager on a permanent basis at this time. I will not be pursuing the full-time appointment as City Manager. In the interim, however, I will commit all the necessary time and energy to supporting the Council in identifying the future chief executive of this fine organization.

4. SUPPORT OF CITY COUNCIL POLICYMAKING

Our office will continue to provide the same high level of support and follow-up with respect to Council requests, correspondences, and agenda packets.

Again, thank you for this opportunity and I look forward to working with you closely during this short time as you work together to hire our next City Manager.

**MEMORANDUM OF UNDERSTANDING
FOR INTERIM CITY MANAGER SERVICES**

THIS AGREEMENT is made and entered into this ____ day of _____, 2014, by and between the City of Novi, a Michigan municipal corporation, hereinafter referred to as the "City," and Victor Cardenas, hereinafter referred to as the "Employee," both of whom understand as follows:

RECITALS:

The City's current City Manager has resigned effective 5:00 pm February 28, 2014.

The City intends to embark on an executive search process for a new City Manager, which process is expected to take at least 120 days from the date hereof.

In this interim period, beginning March 1, 2014, the City must secure the services of an experienced individual to fulfill the duties, functions, and responsibilities of the Charter position of City Manager.

Employee is currently the City's Assistant City Manager, and therefore is familiar with the duties, functions, and responsibilities of the City Manager's office, and with the City's Administrative Plan as described in Section 4.7 of the City Charter.

The City has requested that Employee serve, and Employee has agreed to serve, as Interim City Manager, subject to certain terms and conditions, including, but not limited to, length of appointment, compensation, and provisions for continued employment at the conclusion of Employee's appointment.

NOW, THEREFORE, the City and Employee set forth their understanding with regard to Employee's appointment and service as Interim City Manager:

Section 1. Duties

The City agrees that Employee act as Interim City Manager to perform the functions and duties specified in Section 4.7(a) the Charter of the City of Novi, and to perform such other legally permissible and proper duties and functions as the City Council shall from time to time assign, subject to the following:

A. Employee shall make no permanent appointment of Department heads without the express approval of City Council, although he may appoint Acting Department heads as and when necessary.

B. Employee shall not discharge, suspend, or discipline any Department head without express approval of City Council. Council shall make no requests for the discharge, suspension, or disciplining of Department heads during the term of this Memorandum.

Section 2. Term of Appointment

A. Employee is appointed Interim City Manager for a period of 120 days beginning March 1, 2014. However, nothing in this Memorandum shall prevent, limit, or otherwise interfere with the right of the City Council to terminate the appointment of Employee as Interim Manager at any time, with or without cause, subject only to the provisions of Section 3 below. This appointment will terminate automatically upon the commencement of employment by a new City Manager. If a new City Manager has not commenced employment at the end of 120 days from the effective date hereof, Employee's appointment will be automatically extended for an additional 30 days, and thereafter for subsequent 30-day intervals until a new City Manager is appointed or the appointment of Employee is terminated by the City pursuant to Section 3 below.

B. Nothing in this Memorandum shall prevent, limit, or otherwise interfere with the right of Employee to resign, at any time, from the appointment as Interim City Manager upon fifteen (15) days' notice to the City, in which event Employee shall return to the position of Assistant City Manager, upon the terms and conditions of such at will employment as existed on the date of entry into this Memorandum.

C. Employee agrees to remain an exclusive employee of City during the effective period of this Memorandum, and agrees not to accept other employment or to become employed by any other employer while this Memorandum is in effect, and to devote all of his time and energy and give his best attention exclusively to the business of the City.

Section 3. Termination of Appointment

Because Employee's appointment is an interim appointment only, Employee agrees that the provisions of Section 4.8 of the City Charter, relating to removal of the City Manager, shall not apply to this appointment. The parties agree that the following shall govern termination of Employee's appointment as Interim Manager.

A. Upon termination of the appointment by expiration of the time period set forth in Section I above, Employee shall return to the position of Assistant City Manager, upon the same terms and conditions of such employment as existed on the date of entry into this Memorandum, except as provided in Paragraph 4 below.

B. The City may, by Council resolution, terminate Employee's appointment as Interim Manager at any time before the expiration of the time period set forth in Section I above. Any performance reviews during the period of appointment shall be conducted in closed session. Upon termination of the appointment under this provision, Employee shall return to the position of Assistant City Manager, upon the terms and conditions of such employment as existed on the date of entry into this Memorandum, except as provided in Paragraph 4. Nothing in this Memorandum, however, shall affect or limit Employee's at will employment status as Assistant City Manager following termination of employment as Interim City Manager hereunder.

Section 4. Salary and Benefits

The City agrees to pay Employee for his services rendered pursuant to and during the effective period of this Memorandum compensation calculated upon a base salary of One Hundred and Thirteen Thousand Eight Hundred and Sixty-Four (\$113,864) Dollars, payable in installments at the same time as other general employees of the City are paid. Such salary shall be paid for the entire 120-day period covered by this Memorandum, and any automatic extension hereunder, regardless of the date of commencement of employment by a new City Manager. Upon expiration of the 120 days (or any automatic extension), Employee's base salary as Assistant City Manager shall return to the amount that it was on the date of entry into this Memorandum. Except as otherwise provided in this Memorandum, all other compensation and benefits during the effective dates of this Memorandum shall remain the same as currently enjoyed by Employee as Assistant City Manager.

Section 5. Scope of Work

Employee is expected to delegate some of the duties of Assistant City Manager to other Department heads based upon his determination of needs and priorities. Employee may, but is not required to, appoint an Acting Assistant City Manager.

Section 6. Automobile Allowance

Employee's monthly auto allowance during the entire 120-day period of this Memorandum, and any automatic extension hereunder, shall be \$600.00.

Section 7. General Expenses

The City recognizes that certain expenses of a non-personal and generally job-affiliated nature may be incurred by Employee, and the City hereby agrees to reimburse or to pay for such reasonable and necessary expenses.

Section 8. Indemnification

The City shall defend, hold harmless, and indemnify Employee against any tort, professional liability claim, demand, and/or any other legal action, lawsuit, and/or claim, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as Interim City Manager. The City shall have the authority to compromise and settle any such claim, action, and/or suit and to pay the amount of any settlement or Judgment rendered thereon.

Section 9. Bonding

The City shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

Section 10. Other Terms and Conditions of Employment

A. The City Council, in consultation with the Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time related to the

performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City Charter, City Ordinances, and/or any other law.

B. All provisions of the City Charter, City Ordinances, and all regulations, policies, and rules of the City relating to the vacation, sick leave, retirement and pension system contributions, deferred compensation, holidays, compensatory time, life insurance, dental insurance, optical reimbursement, medical and hospitalization insurance, and other fringe benefits and working conditions as they now exist or hereinafter may be amended shall also apply to Employee as they would to other department heads of the City, except as otherwise provided herein.

Section 11. Notices

Notices pursuant to this Agreement shall be given by first-class mailing with the United States Postal Service, postage prepaid, addressed as follows:

- (1) Mayor of the City of Novi, Clerk of the City of Novi, 45175 W. Ten Mile Road, Novi, Michigan 48375; and
- (2) Victor Cardenas, 21110 Laurelwood, Farmington, Michigan 48336.

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of first-class mailing of such written notice with the United States Postal Service.

Section 12. General Provisions

A. All provisions of the City of Novi Personnel Policies, as they now exist or hereafter may be amended, shall apply to Employee as they would to other non-union exempt employees of City, unless otherwise provided in this Agreement.

B. The text herein shall constitute the entire agreement between the parties.

C. This Agreement shall be binding upon and inure to the benefit of the heirs at law and personal representatives of Employee.

D. A waiver by the City of a breach of any provision of this Memorandum by Employee shall not operate or be construed as a waiver of any subsequent breach by Employee.

E. This Memorandum shall become effective March 1, 2014.

F. If any provision, or any portion thereof, contained in this Memorandum is held unconstitutional, invalid, or unenforceable, the remainder of this Memorandum, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

G. Employee agrees to submit appropriate documentation for expenses to be reimbursed pursuant to this Agreement.

IN WITNESS WHEREOF, the City of Novi has caused this Agreement to be signed and executed on its behalf by its Mayor and City Clerk pursuant to authorization of the Novi City Council, and Employee has signed and executed this Agreement, both in duplicate, the day and year first above written.

CITY OF NOVI

By: _____
Robert J. Gatt, Mayor

By: _____
Maryanne Cornelius, Clerk

VICTOR CARDENAS