



Board of Aldermen Request for Action

MEETING DATE: 6/18/2024

DEPARTMENT: Public Works

AGENDA ITEM: Resolution 1369, approving a part-time employment agreement with Robert Lemley.

REQUESTED BOARD ACTION:

Motion to approve Resolution 1369, authorizing and directing the Mayor to enter into a part-time employment agreement with Robert Lemley.

SUMMARY:

After 26 years of service to the City of Smithville as the City's Utilities Superintendent, Robert (Bob) Lemley is retiring August 2, 2024.

For many years the City has been fortunate to have several Class A Licensed Operators at the water production plant. Due to several factors over the last few months, retirements, health and other family issues, we have a need for a Class A operator. Recruitment efforts have not been successful to date but efforts will continue.

We currently have five operators and are cross training operations staff to run the plant however it takes significant time to obtain the Class A license required by the Missouri Department of Natural Resources.

Bob has agreed to work part time to ensure continuity of the operations and training of staff. He has held a Class A license for over 15 years.

PREVIOUS ACTION:

None

POLICY OBJECTIVE:

Continuity of operations

FINANCIAL CONSIDERATIONS:

Funding is available in the utilities personnel budget due to staffing vacancies.

ATTACHMENTS:

- | | |
|--|--|
| <input type="checkbox"/> Ordinance | <input checked="" type="checkbox"/> Contract |
| <input checked="" type="checkbox"/> Resolution | <input type="checkbox"/> Plans |
| <input type="checkbox"/> Staff Report | <input type="checkbox"/> Minutes |
| <input type="checkbox"/> Other: | |

RESOLUTION 1369

RESOLUTION OF THE CITY OF SMITHVILLE MISSOURI APPROVING THE PART-TIME EMPLOYMENT AGREEMENT WITH ROBERT LEMLEY

I. RECITALS AND FINDINGS

WHEREAS, Robert Lemley has served as the Chief Water Treatment Plant Operator for the City of Smithville Missouri; and

WHEREAS, Robert Lemley has given the City notice that he has decided to retire from Full-time employment.

WHEREAS, the City has expressed a desire to continue to use the services of Robert Lemley on a part-time basis to continue the work previously done by him and to aid the City in the transition.

WHEREAS, the City and Robert Lemley have negotiated an Employment Agreement by which he may continue on a part-time basis working for the City. Said Employment Agreement is attached hereto as Exhibit 1.

II. RESOLUTION

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF SMITHVILLE, MISSOURI:

THAT the Mayor is authorized to sign the employment Agreement with Robert Lemley in the form of Exhibit 1 attached hereto.

PASSED AND ADOPTED by the Board of Aldermen and **APPROVED** by the Mayor of the City of Smithville, Missouri, the 18th day of June, 2024.

Damien Boley, Mayor

Linda Drummond, City Clerk

EXHIBIT 1

EMPLOYMENT CONFIDENTIALITY - AGREEMENT

This Agreement is effective on the 5th day of August 2024, (Effective Date) between the City of Smithville, Missouri (hereinafter called "City" or "Employer"), and Robert Lemley: (hereinafter called Employee), pursuant to these terms and conditions:

RECITALS

Whereas, the Employee has served as the Chief Water Treatment Plant Operator for the City of Smithville Missouri; and

Whereas, the Employee has decided to retire from full-time employment.

Whereas, the City has expressed a desire to continue to use the services of the Employee on a part time basis to continue the work previously done by the Employee and to aid the City in the transition to successor employee(s) and to continue as the Chief Plant Operator.

The City and Employee wish to memorialize their understanding regarding their working arrangement.

NOW, THEREFORE, in consideration of the mutual promises, terms, covenants and conditions set forth herein and the performance of each, it is hereby agreed as follows:

AGREEMENTS

1.1 EMPLOYMENT AND DUTIES. The Employee shall maintain his Class A water production license with the MODNR and be listed as the Chief Plant Operator and will report to, and provide the services assigned by the Mayor, City Administrator, Public Works Director or their designee. The employee hereby accepts this employment upon the conditions herein contained and agrees to devote such Employee's best efforts to promote and further the needs of the City. Said duties shall include the following:

- Oversee and supervision of Water Treatment Plant Operations
- Monitoring compliance
- Scheduling staff
- Training Staff
- Oversight, monitor, and coordination of plant operations and construction improvements
- DNR compliance reporting.
- Fill in for operators as necessary.
- All work necessary for the proper operation and maintenance of the water

plant, towers, raw water pump station to ensure safe drinking water.

1.2. The Employee shall faithfully adhere to, execute and fulfill all policies established by the City.

1.3. The Employee shall not, during the term of employment hereunder, engage in any other transaction with the City for compensation or be engaged as an individual, owner, officer, agent or employee in any business that is providing services to the City or attempting to contract with or provide services to the City. The Employee will not solicit the City's business for any other entity. The foregoing limitation shall not be construed as prohibiting Employee from providing services to other employers made known to the City, if in the City's sole discretion, such other employment does not interfere with Employee's duties and responsibilities hereunder. If in the City's sole discretion any such other employment does interfere with Employee's duties and/or responsibilities hereunder, Employer may give Notice to Employee that any such other employment activity must not be commenced or if active must be terminated. However, the foregoing limitation shall not be construed as prohibiting Employee from making personal investments in such form or manner as will neither require Employee's services in the operation or affairs of the companies or enterprises in which such investments are made nor violate the terms of any other portion of this agreement.

1.4 The Employee hereby represents and warrants to the City that the execution of this Agreement by Employee and City's employment of Employee and the performance of Employee's duties hereunder will not violate or constitute a breach of any agreement with any other person or entity. Employee agrees to indemnify the City for any claim, (including, but a lot limited to, attorneys fees and expenses of investigation, and litigation) by any third party that such third party may now have or may hereinafter have against the City based upon or arising out of any non-competition agreement, breach of fiduciary duty, convention or secrets agreement between Employee and such third party.

2.0 COMPENSATION. For services rendered by Employee, the City shall compensate Employee as follows:

2.1 This agreement shall not change any compensation to which the Employee was entitled as a full-time employee prior to the effective date of this agreement.

2.2 After the Effective Date, Employee will perform the services as set forth above under paragraph 1.1 on a part-time basis at the rate of pay of One Hundred Dollars (\$100.00) per hour. It is anticipated that the typical schedule will be Monday through Friday of approximately Four (4) hours per day overlapping each shift for supervision and guidance, with no holidays or weekends. It is anticipated that employee will generally work an average of Twenty (20) hours per week, with a minimum of 10 hours and maximum of 30 hours, but this time may be adjusted by the mutual agreement of the parties. The Employee will report his hours through Time

Force (clock in - clock out) and the City will compensate the Employee every two weeks in accordance with its current payroll policy. In no case will the hours exceed 1500 hours per year. The Schedule shall be flexible because of the need of filling in for a shift. City will withhold from Employees wages as required by State and Federal Law in conformity with the Employee's W-4 on file with the City.

2.3. *Benefits and Other Compensation.* Pursuant to this agreement the Employee shall not be entitled to receive any additional benefits and compensation unless such benefits and compensation are provided to all part-time Employees. Employee acknowledges he has received information from the City on how to continue his health, dental and eye insurance (if applicable - at his own expense) after leaving full-time employment. After the effective date of this agreement the Employee acknowledges that he will not receive any other Benefits or Other Compensation other than as set forth herein.

3.1 CONFIDENTIALITY. Employee and the City anticipate that while employed by the City, Employee may come into contact with, produce, and/or learn confidential information concerning the City's business, including but not limited to its method of doing business, trade secrets, patents, data, vendor information, other employee information and information concerning residents. The Employee shall be employed and have access to such information under the conditions that such confidential and/or proprietary information remain confidential and the property of the City.

3.2. All information of a tangible or intangible nature disclosed to Employee, learned and/or produced by Employee individually and/or jointly with others during his employment shall be considered confidential and the property of the City.

3.3. All rights in and title to confidential information, related materials, samples, products, data or processes disclosed to Employee, learned and/or produced by Employee individually and/or jointly with others during his employment shall remain and/or vest in the City. All inventions, information, related materials, samples, products, data and/or processes produced and/or developed by the Employee during his employment shall be considered work for hire and shall be the property of the City.

3.4. Neither the execution of this Agreement nor the furnishing of any information hereunder shall be construed as granting, either expressly or by implication, any license under any copyright, trade secret, patent or other proprietary right now or hereafter owned or controlled by the City, nor any right to use the information made available to and/or produced by the Employee individually and/or jointly with others.

3.5. Each invention, discovery, improvement of and/or addition to the City's existing computer code, property, data, product and/or confidential information whether made individually by Employee during the course of employment and/or with others shall be the property of the City.

3.6. Employee shall not, without the prior written consent of the City, disclose or provide access to the City's confidential information to any third party for any purpose, nor reproduce in any media the confidential information disclosed to Employee, learned and/or produced by Employee individually and/or jointly with others during Employee's employment.

3.7. The obligation of Employee to protect confidential information shall not apply to information which:

- (A) Is or becomes publicly known through no wrongful act of Employee; or
- (B) Becomes rightfully known to Employee without confidential restrictions from a source other than the City and/or any of its employees; or
- (C) Is approved by the City for disclosure without restriction in a written document which is signed by a duly authorized officer of the City; or
- (D) Employee can show written records that such information was rightfully in Employee's possession before any employment with the City.

3.8. The Employee further agrees that any confidential information disclosed to Employee, learned and/or produced by Employee individually and/or jointly with others during his employment and all copies thereof shall not be taken from the City's place of business without the written approval of the City and any material allowed to be removed with such written permission shall be returned at the direction of the City, but in no event later than five (5) days after Employee is no longer employed by the City.

3.9. The obligation of Employee to hold the confidential information in confidence shall survive the termination (for any reason) of Employee's employment.

3.10. The Employee agrees to cooperate with the City and to execute any document reasonably necessary to give effect to this agreement.

4.1 TERM: This Agreement will continue until terminated in any one of the following ways.

4.2 By the Employee upon Thirty (30) days' notice.

4.3 By the City, it is understood that the employment relationship is At Will and may be terminated by the City with or without "Cause" and with or without notice. Under this Agreement, there is no contractual right to employment for a definite period of time.

5.1 RETURN OF CITY PROPERTY. After the Effective Date the Employee may be provided certain equipment and/or materials with which to provide the services anticipated by this agreement. It is understood that this equipment will include a phone and possibly a computer. It is understood that such provided material and equipment shall remain the Property of the City. Upon the termination of this Agreement or upon the request by the City, Employee will return to the City all City property including any equipment and data lists and other property delivered to or compiled by Employee by or on behalf of the City, the City's Representatives, or Vendors thereof which pertain to the business of the City shall be and remain the property of the City and the subject at all times to discretion and control thereof. Likewise, all correspondence, reports, records, samples, reports, data, charts, advertising materials and other similar data pertaining to the business, activities or future plans of the City which is collected by Employee shall be delivered promptly to be City without request.

6.1 BOND. The City shall have the option to procure at its expense a fiduciary Bond on Employee regarding the services provided by the Employee to the City pursuant to this agreement. Employee agrees to cooperate in that process and to provide any information or complete any forms needed for such a Bond.

7.1 INDEMNIFICATION. To the extent permitted by applicable law, City shall defend, save harmless and indemnify Employee against any tort, professional liability claim(s) or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as under this Agreement, unless the act or omission involved intentional, willful or wanton conduct or criminal action. Legal representation, provided by City for Employee, shall extend until a final determination of the legal action including any appeals. The City shall indemnify Employee, to the extent permitted by law, against any and all losses, damages, judgments, interest, settlements, fines, court costs and other reasonable costs and expenses of legal proceedings including attorney's fees, and any other liabilities incurred by, imposed upon, or suffered by Employee in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of Employee's duties and occurring within the course and scope of his employment unless the act or omission involved intentional, willful or wanton conduct or criminal action.

7.2 EMPLOYEE recognizes that City shall have the absolute right to compromise any and all claims.

7.3 To the extent permitted by applicable law, Employer agrees to pay all reasonable litigation expenses of Employee throughout the pendency of any litigation to which the Employee is a party, witness, or advisor to the Employer, resulting from the exercise of judgment or discretion in connection with the performance, unless such act involved willful or wanton conduct or criminal action. Such expense payments shall continue beyond Employee's service to the City as long as the litigation is pending. Further, if no longer employed by City, City agrees to pay Employee reasonable consulting

fees and travel expenses when Employee serves as a witness, advisor or consultant to City regarding pending litigation.

8.0 APPLICABLE LAW, JURISDICTION AND VENUE. The terms of this Agreement are subject to and shall be interpreted and enforced pursuant to the laws of the State of Missouri. Any action in regard to the content or arising out of the terms and conditions shall be instituted and litigated in the courts of the State of Missouri, County of Clay and in no other. The parties submit to the jurisdiction of the courts of the State of Missouri and to venue in Clay County.

9.1 NOTICES. Any Notice as set forth herein must be served by Federal Express or similar overnight delivery service or by certified mail, return receipt requested, addressed to the party and shall be deemed given as of the deposit in the U. S. Mails or with overnight delivery service. Notice to the City shall be sent to the City Administrator, City of Smithville Missouri 107 W. Main Street Smithville, MO 64089. Notice to Employee shall be sent to the home address of the Employee on file with the City. Either party may designate such other Person and/or delivery address from time to time by written Notice. Alternatively, notice 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.

10. GENERAL PROVISIONS.

10.1 Integration. This Agreement and the Municipal Code of the City of Smithville, Missouri, sets forth and establishes the entire understanding between the City and the Employee relating to the employment of the Employee by the City. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The parties by mutual written agreement may amend any provision of this Agreement during the life of the Agreement. Such amendments shall be incorporated and made a part of this Agreement.

10.2 Condition Precedent: This Agreement/Contract shall be null and void and of no effect unless and until the City has by Ordinance or Resolution passed by the City Board of Alderpersons, obtained the authority to enter into this Employment Agreement Contract.

10.2_Binding Effect. This Agreement shall be binding on the Employer and the Employee as well as his heirs, assigns, executors, personal representatives and successors in interest.

10.3 Effective Date. This Agreement shall become effective after the Condition Precedent as set forth in paragraph 10.2 has been satisfied and all parties have executed this Agreement

10.4 Severability. The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

10.5 Contract Language: The language of this Agreement reflects negotiations between Employee and the City, each of whom have had the opportunity to modify the text. In the event of litigation or other dispute concerning the language of this Agreement, general rules construing ambiguities against the drafter shall not apply. It is agreed that if more than one copy of this document may be executed and that the original filed with the City Clerk shall be deemed to be the controlling original.

10.6 Entire Agreement: This Agreement sets forth the entire Agreement and understanding between the parties as to the subject matter of this Agreement, and supersedes, cancels, and merges all Agreements, negotiations, commitments, writings, and discussions between them as to the subject prior to the date of the execution of this Agreement. No modifications to this Agreement shall be binding on either party unless such modifications are in writing and signed by both parties.

IN WITNESS WHEREOF, the parties herein have executed this Agreement as of the date first written above.

THE CITY OF SMITHVILLE

By: _____
Damien Boley, Mayor

EMPLOYEE

By: _____
Robert Lemley