



**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: IC

Title:

Recommendation to approve a Resolution Authorizing and Directing the Mayor to Execute and the City Clerk to Attest to the Execution of a Certain Employment Agreement with Heather McGuire as City Administrator

Presenter:

Jennifer McMahon, Director of Human Resources

Meeting: City Council

Date: June 21, 2021

Proposed Cost: \$212,469.71

Budgeted Amount: \$277,112.80

Not Budgeted:

**Executive Summary** *(if not budgeted please explain):*

At the February 27, 2021, City Council retreat, Council gave staff direction to accept a proposal from GovHR to begin a recruitment for City Administrator due to the May 15, 2021, retirement of Mark Koenen. GovHR posted the position in March and April. GovHR screened 13 candidates, the elected official advisement team of Mayor Vitek, Alderman Bancroft and Alderman Stellato interviewed GovHR’s seven recommended candidates, and the department directors and City Council interviewed two finalists. Mayor Vitek recommends the appointment of Heather McGuire with a start date of Monday, July 26, 2021.

GovHR, HR Director McMahon, and City Attorney Peppers finalized the offer and employment agreement with Heather McGuire. Included in the agenda packet is a resolution authorizing the Mayor and City Clerk to approve an Employment Agreement between the City of St. Charles and Heather McGuire for the position of City Administrator. The employment agreement has a term that coincides with the Mayor’s current term of office.

Note that the proposed cost of \$212,469.71 includes all compensation, benefits, and tax liability (e.g. FICA) for a start date of July 26, 2021, through the end of the fiscal year. The budgeted amount reflects a full 12 months.

**Attachments** *(please list):*

- A Resolution Authorizing the Execution of an Employment Agreement between the City of St. Charles and Heather McGuire for the position of City Administrator
- Employment Agreement Between the City of St. Charles and Heather McGuire

**Recommendation/Suggested Action** *(briefly explain):*

Recommendation to approve a resolution authorizing the execution of an employment agreement between the City of St. Charles and Heather McGuire for the position of City Administrator, effective July 26, 2021

**City of St. Charles, Illinois  
Resolution No. 2021 - \_\_\_\_**

**Resolution a Resolution Authorizing and Directing the Mayor to Execute  
and the City Clerk to Attest to the Execution of a Certain Employment  
Agreement with Heather McGuire as City Administrator**

**Presented and Passed by the  
City Council on June 21, 2021**

BE IT RESOLVED by the CITY COUNCIL OF THE CITY OF ST. CHARLES,  
KANE AND DU PAGE COUNTIES, ILLINOIS as follows:

Section 1: That the Mayor is hereby authorized and directed to execute on behalf of the City of St. Charles that certain Employment Agreement with Heather McGuire, in substantially the form attached hereto and incorporated herein as Exhibit "A," by and on behalf of the CITY OF ST. CHARLES.

Section 2: That, on behalf of the City of St. Charles, the City Clerk is hereby authorized and directed to attest the Mayor's execution of said Employment Agreement.

Section 3: That this Resolution shall be in full force and effect from and after its adoption and approval as provided by law.

PRESENTED to the City Council of the City of St. Charles, Illinois, this 21<sup>st</sup> day of June, 2021.

PASSED by the City Council of the City of St. Charles, Illinois, this 21<sup>st</sup> day of June, 2021.

APPROVED by the Mayor of the City of St. Charles, Illinois, this 21<sup>st</sup> day of June, 2021.

\_\_\_\_\_  
Lora Vitek, Mayor

ATTEST:

\_\_\_\_\_  
Nancy Garrison, City Clerk

COUNCIL VOTE:

Ayes:

Nays:

Absent:

Abstain:

**EMPLOYMENT AGREEMENT**

This Agreement (the “*Agreement*”) is made and entered into by and between the CITY OF ST. CHARLES, STATE OF ILLINOIS, a municipal corporation (the “*Employer*”), and HEATHER M. McGUIRE (the “*Employee*”), this \_\_\_\_ day of June, 2021; the Employer and the Employee are sometimes hereinafter collectively referred to as the Parties.

**SECTION 1. DUTIES**

The Parties agree that the Employee is to be employed and appointed as City Administrator of the City of St. Charles (“*City*”) to serve at the pleasure of the Mayor and City Council, subject to the terms and conditions of the St. Charles Municipal Code (the “*Code*”) and this Agreement. The Employee shall perform the functions and duties specified in Section 2.10.125 of the Code as the same may be amended, from time to time, by the Mayor and City Council and any other ordinances, resolutions, rules and regulations, policies of the City and professional codes of ethics in effect as of the effective date of this Agreement, and those hereafter adopted or instituted by the City as the case may be, pertaining to the duties and responsibilities of the City Administrator and to perform such other legally permissible and proper duties and functions as the Mayor and/or Council may, from time to time, assign. The Employee shall attend such meetings and make such written and oral reports and recommendations as the Mayor and the City Council may require. She shall report directly to and follow such directions as the Mayor and/or Council shall provide.

**SECTION II. TERM**

- A. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employer to terminate the services of the Employee at any time, subject only to the provisions of Section 2.12.031 of the Code and in a manner consistent with Section III, Paragraphs A, and B, of this Agreement. Absent such termination, this Agreement shall be in full force from the date of acceptance by the Mayor and City Council and execution by the Mayor, attested by the City Clerk, and signed by the Employee, and shall remain in effect, unless terminated by operation of law, through the end of such Mayor’s term of office, *i.e.*, through the latter of the first Monday in May, 2025, or the date the Mayor elected to office in April, 2025 assumes office.
- B. The Parties hereby agree that the Employee shall be employed for an additional thirty (30) days beyond the term of this Agreement as specified in Section II.A. above. In the event the Employer and the Employee do not, prior to the expiration of said additional thirty (30) day period, agree on terms of a new Employment Agreement for an additional period of at least twelve (12) months, then this Employment Agreement shall terminate and the Employer shall have no further financial obligation to the Employee other than those benefits provided under the provisions of the Employer’s Code, ordinances, rules, regulations and policies of the Employer as further described in Section X. In the event a new Agreement is negotiated and signed after this Agreement has expired, but prior to the expiration of the thirty (30) day period referenced above, the Employee’s employment shall

continue upon the terms and conditions of this Agreement until a new Agreement is entered into or said thirty (30) days has passed.

- C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from the position of City Administrator with the Employer, subject only to the provisions set forth in Section III.A.2. of this Agreement.
- D. Subject to the Employee's right to resign as provided in Section II.C. above, the Employee agrees to remain in the employ of the Employer, as provided for in Section II.A. above, and shall not accept other employment nor become employed by any other employer until this Agreement is terminated in accordance with its terms.

The covenant contained in this Subsection II.D. shall not be deemed to preclude the Employee from occasionally teaching, writing, consulting, or military reserve service when performed on the Employee's time off.

### SECTION III. TERMINATION AND SEVERANCE PAY

#### A. Termination

1. Notwithstanding any provision in this Agreement to the contrary, the City shall have the absolute right, by a majority vote of the corporate authorities of the City, to terminate the services of the Employee with or without cause at any time and for any reason whatsoever, and without any due process hearing that might be required by law or otherwise, subject only to subparagraph B of this Section III. In the event that the Employer no longer wishes to retain the professional services of the Employee, a written and dated notification of termination shall be provided to the Employee.
2. The Employee may terminate this Agreement at any time. In the event the Employee voluntarily resigns her position with the Employer before this Agreement is otherwise terminated as herein provided, the Employee shall give the Employer not less than sixty (60) days advance written notice, unless the Parties otherwise agree. Upon the effective date of the Employee's resignation, the Employee shall be entitled only to such benefits as may have been previously accrued pursuant to this Agreement, together with those benefits which are consistent with the provisions of the Employer's City Code, ordinances, policies, rules and regulations. Specifically, the Employee shall not receive any portion of the Severance Pay as herein otherwise described.
3. Notwithstanding the provisions contained in subparagraphs 1 and 2 above, the City, by a majority vote of the corporate authorities of the City, shall have the right to terminate the Employee should the Employee abandon her position. The term "abandon" shall, for purposes of this subparagraph, mean actions by the Employee evidencing her voluntary, intentional relinquishment of the position. The term "abandon" shall not mean the Employee's:

- Inability to perform the duties and responsibilities of her position due to illness or injury;
- Refusal to take any action or perform any duty or responsibility of her position due to her good faith belief that doing so would violate a legal, moral or ethical obligation; and
- Unauthorized or unexecuted absence from City Hall, unless such absence exceeds three (3) consecutive days.

In addition, this subparagraph is not intended to authorize the termination of the Employee due to personality conflict or differences in management style or philosophy.

In the event of a termination of the Employee pursuant to this subparagraph 3, the City shall not be obliged to pay the Severance Pay nor to provide the Severance Benefits, as hereinafter provided for below.

4. Notwithstanding the provisions contained in subparagraphs 1 and 2 above, the corporate authorities of the City shall have the right to terminate the Employee should any complaint of malfeasance, misfeasance or any complaint of sexual harassment filed against the Employee during the term of this agreement be substantiated by a court having jurisdiction or the City Ethics Officer.
5. Upon the termination of the Employee's employment with the City, regardless of cause therefor, the Employee shall promptly surrender to the City all property provided to her by the City for use in relation to her employment.

#### B. Severance Pay

1. As used herein, the term "Severance Pay" shall mean and be deemed to include the Employee's aggregate salary (less legally required deductions and other customary set-offs), together with a continuation of all employment benefits then available to exempt employees per the City's Personnel Policy Manual and this Agreement, including, without limitation, Sick Leave Accrual, Vacation Leave Accrual, Holidays, Personal Leave, Health Insurance (provided at the Employee's then current rate of contribution), Dental Insurance (provided at the Employee's then current rate of contribution), life insurance, pension contributions (Illinois Municipal Retirement Fund), and the Employee's retirement savings plan. Severance Pay shall not be deemed to include any vehicle allowance, or phone stipend, if applicable.
2. In the event that the Employer terminates the Employee pursuant to Section III.A.1., the Employer shall be obligated to pay to the Employee the Severance Pay. The Severance Pay shall be equal to payment of salary and benefits defined in

Section III.B.1. above for a period of twenty (20) weeks, subject to the limitations otherwise set forth in this Agreement. The maximum amount of Severance Pay which may be paid to the Employee will be equal to twenty (20) weeks of her compensation and benefits as defined by, and limited to, the definition of Severance Pay set forth above. The rate of compensation and benefits comprising the Severance Pay shall be the rate of compensation and benefits in effect as of the effective date of the Employee's termination. The payment of Severance Pay shall commence immediately upon termination or the expiration of this Agreement and shall be paid in bi-weekly payments in the same manner as pertains to all other exempt employees in the City.

3. Should the Employee secure other employment during the period during which the Employee is entitled to receive Severance Pay, the Employee shall be obligated to immediately notify the Employer of such employment and the amount of compensation and benefits being received by the Employee in the Employee's new position. Subject to the following limitations, the Employee's right to receive Severance Pay, and the Employer's obligation to make Severance Pay payments, shall cease as of the date on which the Employee's new employment is to commence, provided that the Employee shall be employed at a rate of compensation and benefits which, in the aggregate, are equal to or exceed the Employee's rate of compensation and benefits as of the date of the Employee's termination or the expiration of this Agreement. Should that date fall within any payment period applicable to the payment of the Severance Pay, such payment shall be prorated proportionately. The Severance Pay provisions contained herein are intended to provide the Employee with sufficient economic security during the time within which she is seeking alternative employment.
4. Notwithstanding the foregoing, should the Employee obtain employment at levels of compensation and benefits lower than those being paid to the Employee at the time of the Employee's termination or the expiration of this Agreement, then the Employer shall continue to be obligated to pay to the Employee a portion of the Severance pay equal to the difference between the Employee's Severance Pay (the aggregate of both the Employee's rate of compensation and benefits) and the lower level of aggregate compensation and benefits being paid to the Employee in the Employee's new position.
5. However, and notwithstanding the foregoing, the Employer shall not be obligated to provide the Employee with Severance Pay if the Employee's employment is terminated for any of the following reasons:
  - a. Should the Employee be convicted of, or plead guilty to, any illegal act involving personal gain to the Employee related to her duties as City Administrator; or
  - b. Should the Employee be convicted of, or plead guilty to, any felonious act; or

- c. Should the Employee engage in any misconduct involving moral turpitude; or
  - d. Should the Employee engage in gross misconduct; or
  - e. Should the Employee engage in gross negligence.
6. Before making any final determination that the Employee is ineligible for Severance Pay for any of the reasons set forth above, the Employer shall notify the Employee of the fact that her termination is under consideration and as to which one or more of the five specific grounds herein identified, if any, are relied upon by the Employer as justification for the non-payment of the Severance Pay. The Employee shall be afforded a reasonable opportunity to be heard in a closed session meeting of the City Council to the extent permitted or required by law.
7. In the event the Employee shall be indicted or arrested for (i) any felony or (ii) charged with any misdemeanor violation of any federal or state criminal law or statute which, in the opinion of a majority of the corporate authorities of the City, would reflect unfavorably upon said City, or in any way interfere with her ability to discharge the duties of her employment, then the City may request and, upon such a request, the Employee shall accept a leave of absence without pay pending a final determination of the criminal charges brought against said Employee. Should the Employee be cleared of all wrongdoing in connection therewith, she shall be restored to her position and all amounts of back pay withheld shall be promptly paid to her. Should the Employee plead or be found guilty of any such felony violation, or should any such violation be dismissed or otherwise compromised in consideration for testimony or other evidence, she shall forfeit her position as the City Administrator of the City, together with any right or privilege attendant thereto, including any back pay which may have been withheld subsequent to her indictment or arrest.
8. The Employee shall not be due any Severance Pay in the event that the Employee terminates employment pursuant to Section III.A.2, 3 and 4.

#### SECTION IV. SALARY

The Employee is currently employed by the Employer in the capacity of City Administrator at a salary of Two Hundred Twenty Thousand Dollars (\$220,000.00) and is further provided with benefits as outlined in City policy. The Employee's annual salary review shall be made at the same time as similar consideration is given to other non-union employees generally and the salary shall be increased in the same manner and at least in the same proportion to that provided to other exempt City employees. The Employee's next salary review will be on or about May 1, 2022.

#### SECTION V. RESIDENCY

It is hereby acknowledged that the Employee currently resides in Plainfield, Illinois. In compliance with the requirements of the Code, the Employee shall establish residency within the corporate limits of the City, within one (1) year of the appointment of Employee pursuant to this Agreement and the City agrees to reimburse the Employee up to, but not to exceed, Ten Thousand Dollars (\$10,000.00) for documented (receipts) and reasonable packing and moving expenses. Throughout the Employee's employment with the Employer, the Employee shall thereafter maintain a residence within the corporate limits of the City.

#### SECTION VI. PERFORMANCE EVALUATION

- A. Annually, the Mayor (with City Council and Employee input) shall define goals and performance objectives for the Employee that are determined necessary for the proper operation of the City of St. Charles and the attainment of the City Council's policy objectives and shall further establish a prioritization among those various goals and objectives.
- B. In effecting the provisions of this Section, the Employer and the Employee mutually agree to abide by the requirements of all applicable laws.

#### SECTION VII. HOURS OF WORK

It is recognized that the Employee must devote a great deal of time outside of the City's normal business hours. With that in mind, the Employer agrees that the Employee will be allowed to take reasonable time off during normal business hours, provided that such time off does not interfere with the performance of her duties.

#### SECTION VIII. VEHICLE ALLOWANCE

The Employer agrees to pay the Employee a vehicle allowance to compensate the Employee for the business use of her personal vehicle. Such car allowance shall be \$600 per month, paid twice per month. The Employer may increase the vehicle allowance in such amounts and to such extent as the Employer may determine appropriate as part of the Employee's annual review. The Employee shall be responsible for paying for liability, property damage, and comprehensive insurance coverage upon such vehicle (minimum liability coverage of \$100,000 bodily injury per person, \$300,000 bodily injury per occurrence, \$100,000 property damage and \$300,000 bodily injury and property damage liability combined single limit), and a copy of paid insurance premiums shall be provided to the City Clerk. The Employee shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair and regular replacement of said vehicle. The Employee shall maintain the motor vehicle in good repair and suitable appearance. The Employee understands and acknowledges that such stipend may be taxable to the Employee for purposes of federal and State of Illinois income taxes, and other tax liability and expressly agrees to be solely responsible for payment of any such taxes without continuation on the part of the City.

#### SECTION IX. OTHER BENEFITS

In addition to the elements of the Employee compensation identified in this Agreement, the Employee shall be entitled to all other benefits provided under the provisions of the Employer's Code, ordinances, rules, regulations and policies of the Employer, including, but not limited to, medical insurance, dental insurance, life insurance, vacation and sick leave, retirement and pension system contributions, holidays and other fringe benefits, and working conditions as they now exist or as the same may hereafter be amended to the extent such benefits may apply to all other exempt employees of the Employer, with the following exceptions:

1. The Employer agrees to provide the Employee four (4) weeks paid vacation time, with five (5) days deposited in the Employee's vacation bank upon the date of this Agreement and thereafter accrues after the initial four (4) weeks of employment, pursuant to City policy.
2. The Employer agrees to provide (a) five (5) days of up-front sick leave, to be deposited in the Employee's sick leave bank upon the date of this Agreement, and thereafter accrues pursuant to City Policy, and (b) a one-time award of four hundred eighty (480) hours deposited into Employee's sick leave bank in the event of a serious Employee health condition.

#### SECTION X. INDEMNIFICATION

The Employer shall indemnify, defend and save harmless the Employee from and 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 within the scope of the Employee's performance of her duties as City Administrator. The Employer will pay the amount of any settlement or judgment rendered thereon, together with any costs of defense, including reasonable attorneys' fees and costs. The City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon. This covenant to indemnify, defend and hold harmless shall not apply to acts outside the scope of the Employee's employment nor to conduct which is intentional, malicious, or as may otherwise be prohibited by law.

#### SECTION XI. BONDING

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

#### SECTION XII. COMMUNICATION

The Employee's duties require the Employee to communicate with persons from locations and at times when the Employee is not present in the City's offices and to have access to the internet from locations away from the City offices. The City shall provide the Employee with a stipend or, alternatively, a cellular telephone for business use and occasional personal use consistent with the provisions of the City's Personnel Manual on the City's cellular telephone plan and a computer tablet (Surface or similar) to conduct City business.

#### SECTION XIII. EMPLOYEE'S EXPENSES

The City shall annually appropriate and budget an amount of money for the purpose of defraying the hereinafter itemized expenses of the Employee as the City Administrator. The amount so appropriated and budgeted shall be left to the sound discretion of the Mayor and City Council. The amount to be appropriated and budgeted shall include, but not by way of limitation, allocations for the following expenses:

- A. Professional dues and subscription expenses for the ICMA, ILCMA, IML, Metro Managers and other subscriptions of the Employee necessary and desirable for her continued professional education, growth and advancement and for the good of the City.
- B. Professional registration fees and costs to maintain the Employee's law license with the State of Illinois.
- C. Consistent with state law and the City Travel and Reimbursement Policy, travel and subsistence expenses including, but not by way of limitation, traveling expenses, registration fees, lodging, meals and other business expenses so as to enable the Employee to attend Federal, State, regional or local seminars, conferences, short courses or institutes reasonably necessary for her professional development or for the conduct of the official business for the CITY as approved by the Mayor and City Council.

#### SECTION XIV. CONFIDENTIALITY

The Employee shall hold in a fiduciary capacity for the benefit of the City all information, knowledge or data of the City, its business, and its operations, obtained by the Employee during her employment, which is not subject to disclosure under the provisions of the Illinois Freedom of Information Act (5 ILCS 140/1-11 *et seq.*) and which is not generally known to the public. The Employee shall not disclose or make use of, for her own benefit, for the benefit of another or for the benefits of any entity any confidential information, knowledge or data of the City, its business or its operations which is not subject to disclosure under the provisions of the Illinois Freedom of Information Act (5 ILCS 140/1-11 *et seq.*) and which is not generally known to the public.

#### SECTION XV. OTHER TERMS AND CONDITIONS OF EMPLOYMENT

The Employer shall fix any other terms and conditions of employment relating to the employment or performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of the Code or this Agreement. The City's Personnel Manual shall be applicable to the employment of the Employee, except to the extent that it is in conflict with a provision of this Agreement, in which case the specific provision of this Agreement shall control.

SECTION XVI. NO REDUCTION OF BENEFITS

The Employer shall not at any time during the term of this Agreement reduce the Employee's salary or other benefits provided to the Employee pursuant to this Agreement or the Code, ordinances, rules or regulations of the Employer. Notwithstanding the foregoing, the Employer may reduce the Employee's salary only in the same manner and proportionally to the same extent as provided by the Employer in any across-the-board reduction imposed on all other employees.

SECTION XVII. GENERAL PROVISIONS

- A. Modification. No modification or waiver of this Agreement or of any covenant, condition or provision of this Agreement shall be valid, unless in writing and duly executed by the Parties.
- B. Severability. All terms, conditions and provisions of this Agreement are severable and in the event any of them shall be held to be unenforceable, this Agreement shall be interpreted as if such term, condition or provision were not contained in the Agreement.
- C. Choice of Law. This Agreement is made and entered into in the State of Illinois, and the law of the State of Illinois shall govern the Agreement's validity and interpretation and Parties' performance of their respective duties and obligations under the Agreement.
- D. Entire Agreement. This written Agreement embodies the whole agreement between the Parties and there are no inducements, promises, terms, conditions, or obligations made or offered by either the Employer or the Employee, other than those contained in this Agreement.
- E. Assignability. The Employee acknowledges that the services to be rendered by her are unique and personal. Accordingly, the Employee may not assign any of her rights or delegate any of her duties or obligations under this Agreement. This Agreement shall be binding upon and inure to the benefit of any successor governmental legal entity or successor elected City officials which may assume and perform the duties of the City and/or the elected officials thereof.
- F. Notices. All notices hereunder shall be in writing and must be served either personally or by registered or certified mail to:

- 1. The City at:  
  
Mayor  
City of St. Charles  
2 East Main Street  
St. Charles, Illinois 60174

2. The Employee at:

Heather M. McGuire



3. To such other person or place which either party hereto by its prior written notice shall designate for notice to it from the other party hereto.

G. Counterparts. This Agreement is executed in multiple counterparts, each of which shall be deemed to be and shall constitute one and the same instrument.

IN WITNESS WHEREOF, the City of St. Charles has caused this Agreement to be signed and executed on its behalf by its Mayor, and duly attested by its City Clerk, and the Employee has signed and executed this Agreement in duplicate, as of the date set forth below.

\_\_\_\_\_  
LORA A. VITEK, Mayor

\_\_\_\_\_  
HEATHER M. MCGUIRE, City Administrator

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Nancy Garrison, City Clerk

Dated: \_\_\_\_\_