



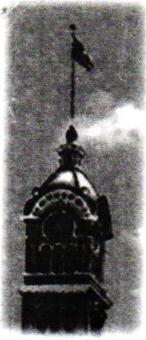
CITY OF MERRILL
COMMITTEE OF THE WHOLE
AGENDA • MONDAY AUGUST 6, 2018

Regular Meeting

City Hall Council Chambers

5:00 PM

- I. Call to Order
- II. Public Comment Period
- III. Closed Session(s):
 1. The Committee of the Whole may convene in closed session pursuant to Wisconsin State Statutes 19.85(1)(c) to consider employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility, to conduct a performance evaluation of City Administrator.
- IV. Open Session:
 1. The Committee of the Whole may reconvene in open session for possible action(s) on closed session issue(s).
- V. Adjournment



CITY OF MERRILL

Office of the City Attorney

Thomas N. Hayden, City Attorney

1004 East First Street • Merrill, Wisconsin • 54452

Phone (715) 539-3510 • FAX (715) 536-0514

e-mail: tom.hayden@ci.merrill.wi.us

**MERRILL
WISCONSIN**

City of Parks

M E M O R A N D U M

DATE: April 24, 2012
TO: City Clerk Heideman
CC: Finance Director Unertl
FROM: Thomas N. Hayden, City Attorney
RE: Employment Agreement between the City of Merrill and City Administrator Dave Johnson

Bill:

Attached is the original Employment Agreement between the City of Merrill and Dave Johnson, the new City Administrator. An original copy was given to Dave Johnson today also.

Pease file this original contract in the appropriate place.

Thank you

"Focusing on the Future"

An equal opportunity/affirmative action employer.

Attachment: City Adm Employment Agreement (3502 : Closed session for administrator performance evaluation)

CITY OF MERRILL EMPLOYMENT AGREEMENT – CITY ADMINISTRATOR

This agreement for employment of a City Administrator is entered into this 24th day of April, 2012 by and between the CITY OF MERRILL (hereinafter “EMPLOYER”) and David B. Johnson (hereinafter “EMPLOYEE”).

COMMENCEMENT DATE

This full-time employment agreement shall commence no later than May 14, 2012 and is subject to termination as set forth in ARTICLE IX. Employee will be paid on pro-rated daily basis for City of Merrill work beginning April 24, 2012.

ARTICLE I DUTIES AND RESPONSIBILITIES OF EMPLOYEE

The EMPLOYEE shall have those duties and responsibilities as set forth in the City Ordinances and the job description (attached) enacted or established by the City of Merrill relative to the position of City Administrator. The Administrator, subject to the limitations defined in ordinances and resolutions to be adopted by the City of Merrill, from time to time, and the laws of the State of Wisconsin, shall be the Administrator of the City, responsible to the Mayor and the Common Council for proper administration of the business affairs of the City, the Statutes of the State of Wisconsin, the ordinances of the City of Merrill, and the resolutions and directives of the Mayor and Common Council.

The EMPLOYEE shall be subject to all provisions set forth in the Personnel Policy for the City of Merrill that are not in conflict with terms of this agreement.

ARTICLE II SALARY

The annual salary of the Employee pursuant to this Employment Agreement shall be \$86,346.92 per year (Current Administrative Grade 14 Step Mid-D-E) effective the commencement date through October 24th, 2012 with merit increase to Step E. Salary payments shall be made to the EMPLOYEE at the same time periods as are in effect for other non-represented employees of the City of Merrill. The annual salary for future years shall be determined annually with the salary to be effective January 1 through December 31 of the applicable calendar year. Future annual salary shall be based on performance reviews and merit steps within assigned compensation Grade, which take into consideration adherence to goals and objectives established by the Mayor and Common Council.

**ARTICLE III
HOURS OF WORK**

It is recognized that EMPLOYEE shall devote substantial time outside normal office hours and in excess of forty (40) hours per week to City business. Employee shall not be eligible for overtime pay or compensatory time off. EMPLOYEE shall exercise reasonable discretion in taking time off during regular business hours when appropriate, as long as his work is performed in a timely and appropriate manner and designated City staff are informed of when the EMPLOYEE will next be available.

**ARTICLE IV
HEALTH AND LIFE INSURANCE**

The EMPLOYER agrees to provide a health insurance plan and a life insurance plan for the EMPLOYEE. The health insurance and life insurance plans shall have the same benefits as are currently in effect for other non-represented employees of the City of Merrill.

**ARTICLE V
RETIREMENT BENEFITS**

The EMPLOYEE will be enrolled in the Wisconsin Retirement System, which serves as the City's pension program. The EMPLOYER will pay Employer-Required Contributions. Employees in General classification are required by Wisconsin Statutes to contribute the Employee-Required Contributions.

**ARTICLE VI
VACATIONS**

The EMPLOYEE shall earn and receive vacation in accordance with the same benefits as currently in effect for other non-represented employees of the City of Merrill, except that EMPLOYEE shall be credited in the amount of 80 hours of vacation beginning on the commencement date of this agreement and then accruing monthly based upon 80 hours of vacation. After the 1st year of service, monthly vacation accrual will be based upon 120 hours per year. Beginning with 14th year of service, monthly vacation accrual will be based upon 160 hours per year. EMPLOYEE shall receive additional vacation time in accordance with the same benefits as currently in effect for other non-represented employees of the City of Merrill.

Yr 1 80 hrs 4/24/12
Yr 2 120 hrs accrue → Yr 13
Yr 14 160 hrs

~ 2 ~

Attachment: City Adm Employment Agreement (3502 : Closed session for administrator

**ARTICLE VII
HOLIDAYS, PERSONAL LEAVE, SICK LEAVE AND FUNERAL LEAVE**

The EMPLOYEE shall receive holidays, personal leave, sick leave and funeral leave in accordance with the same benefits as currently in effect for other non-represented employees of the City of Merrill.

**ARTICLE VIII
MILEAGE REIMBURSEMENT**

If available, the City pool car should be utilized for City business. In the event it is not available, the EMPLOYEE shall have a privately owned motor vehicle available for duties associated with this agreement and shall be reimbursed for the use of a private motor vehicle utilized in the course of his employment on a per mile basis at the IRS approved mileage reimbursement rates and documented per City personnel policies. All reimbursements shall be payable on a monthly basis.

**ARTICLE IX
CELLULAR TELEPHONE**

The City shall provide the EMPLOYEE with a "smartphone" or PDA device similar to those provided for some other City Department Heads to conduct City business. Personal use of the telephone shall conform to City policy.

**ARTICLE X
PROFESSIONAL FEES**

The EMPLOYER shall be responsible for the payment of EMPLOYEE'S costs of maintaining membership in the Wisconsin City/County Management Association, (WCMA), and the International City/County Management Association, (ICMA). The EMPLOYEE may attend annual conferences of the WCMA and the ICMA whenever sufficient funds are available and if authorized by the Mayor and Common Council.

**ARTICLE XI
APPOINTMENT, EMPLOYEE TERMINATION**

The Administrator shall be appointed on the basis of merit with due regard to training, experience, administrative ability and general fitness for the office, by a majority vote of the Common Council. The Administrator shall be appointed for an indefinite term.

Because the EMPLOYEE is an "at will employee", the Administrator may be discharged or terminated at any time without reason and without cause by a majority vote of the Common Council.

If termination is without cause, the EMPLOYEE shall receive written notice of termination. In such a termination without cause, the EMPLOYEE shall receive six months salary and health insurance coverage as severance compensation OR six months of termination notice with no severance compensation OR any combination of severance compensation and termination notice providing six months of financial protection, as determined by the Common Council. If EMPLOYER chooses to provide severance compensation, it shall be paid at the EMPLOYEE'S current salary payable at the time of normal City pay periods and shall be deemed a consulting fee. This consulting fee and services associated therewith shall cease upon the earlier of either the EMPLOYEE becoming re-employed or at the end of the aforementioned six-month period of notice and/or severance compensation. The EMPLOYEE agrees not to file for Unemployment Compensation benefits until after aforesaid six month period has expired.

If termination is for cause, defined as malfeasance, misfeasance, or willful misconduct in office, the EMPLOYEE shall be terminated immediately upon written notice and is not entitled to severance compensation.

The parties agree that the EMPLOYEE may terminate this agreement by giving the EMPLOYER a minimum of 30-calendar days written notice prior to the EMPLOYEE'S final day of employment. The EMPLOYEE'S final day of employment shall be defined as the last day of actual work in service to the EMPLOYER.

**ARTICLE XII
MOVING EXPENSES**

The EMPLOYEE shall be reimbursed, or the City of Merrill shall pay directly, for the actual personal household moving expenses to move to Merrill in an amount not to exceed \$6,500. The EMPLOYEE shall provide evidence of actual expenses by securing quotations from at least two moving companies. It is further understood that the EMPLOYEE may utilize a portion of the maximum \$6,500 moving expense allowance to pay for temporary housing expenses of the EMPLOYEE during the period of the commencement of this agreement and the time of moving the EMPLOYEE'S family and household to the City of Merrill.

**ARTICLE XIII
DURATION**

This Agreement shall be effective immediately and shall remain in full force and effect for an indefinite period. This agreement may be modified in writing at any time subject to approval by both the EMPLOYER and the EMPLOYEE. Termination of this agreement shall be in accordance with Article XI and the salary shall be determined annually in accordance with Article II.

Attachment: City Adm Employment Agreement (3502 : Closed session for administrator

**ARTICLE XIV
RESIDENCY**

The Administrator shall establish residence within the corporate limits of the City within 90 days of employment.

**ARTICLE XV
PERFORMANCE EVALUATION**

A review of the EMPLOYEE'S performance shall be conducted every six months during the first two years of employment and then at least once annually thereafter on or around the anniversary date of employment by the Common Council according to procedures and criteria determined by the EMPLOYER and the Personnel and Finance Committee. The review shall include an evaluation of the EMPLOYEE'S Performance in accomplishing such goals and objectives as the Mayor and Common Council may establish, from time to time, which shall be generally attainable given the annual operating and capital budgets of the City and the other resources and time available to the EMPLOYEE. The review process shall provide to the EMPLOYEE an adequate opportunity to discuss the evaluation with the Common Council.

**ARTICLE XVI
OUTSIDE EMPLOYMENT**

The employment provided by this Agreement shall be the EMPLOYEE's sole employment, except that EMPLOYEE may engage in activities outside the employment, such as teaching and consulting, provided that such activities do not impede or interfere with the EMPLOYEE'S employment responsibilities hereunder, do not result in a conflict of interest and are approved by the Common Council after consultation with the EMPLOYEE.

**ARTICLE XVII
INDEMNIFICATION**

EMPLOYER shall defend, save harmless and indemnify the EMPLOYEE against any tort, professional liability claim or other demand or legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of the EMPLOYEE'S duties as Administrator, provided that such alleged act or omission does not constitute intentional conduct. The EMPLOYER will pay the amount of any settlement or judgment resulting from such a claim against the EMPLOYEE to the extent permitted by law.

The indemnification provided by this Article, notwithstanding any provision to the contrary herein, shall not be construed as a waiver or release by the EMPLOYER of any coverage, payment or benefit otherwise due in respect to any policy of insurance or other source of indemnity owned by or available to the EMPLOYER in respect to acts or omissions of the

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EMPLOYEE, the EMPLOYER, any of its officers or agents. In addition, the indemnification provided for in the Article shall not constitute a waiver, or affect in any manner, any immunity from suit or liability or limitation in an award of damages otherwise available to the EMPLOYER by virtue of any statute or common law.

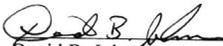
**ARTICLE XVIII
SEVERABILITY**

If any Article or section of this Agreement, or any amendment thereof should be held invalid by operation of law or by any tribunal of competent jurisdiction or if compliance with or enforcement of any provision herein should be restrained by such tribunal, then the remainder of this Agreement and any amendment thereof shall not be affected thereby.

Dated for reference purposes this 29 day of April, 2012

EMPLOYEE

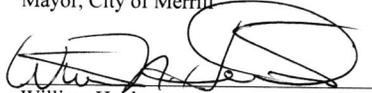
CITY OF MERRILL, EMPLOYER



David B. Johnson
City Administrator



William R. Bialecki,
Mayor, City of Merrill



William Heideman,
City Clerk, City of Merrill

Attachment: City Adm Employment Agreement (3502 : Closed session for administrator

CITY OF MERRILL
CITY ADMINISTRATOR

GENERAL NATURE OF POSITION

This is a highly responsible position providing professional services to support the Mayor and Common Council of the City of Merrill.

Under the policy guidance and supervision of eight-member Council and Mayor, the Administrator serves as the Chief Administrative Officer to direct and coordinate work of professional consultants; directly supervise departments of finance/technology, office of city attorney, water and sewage utilities, enrichment center, maintenance supervisor, and transit; supervise work of police, fire, parks and recreation, airport, and library departments; and coordinate operations with elected officials consisting of the City Clerk, Street Commissioner, and Municipal Court Judge.

The Administrator provides research, analysis, and guidance in areas of finance, personnel operations, economic development, redevelopment, land use, and other policy areas as requested by the Mayor or Common Council.

The Administrator facilitates effective relations between elected and appointed officials, citizens, employees, and professional service providers.

The Administrator assures that all laws and ordinances are faithfully executed.

ESSENTIAL DUTIES AND RESPONSIBILITIES

1. Mayor and Common Council

- a. Attends all meetings of the Common Council and provides support for their work as requested including prepares reports, analyses, options, and recommendations on policies and operational matters both directly and in coordination with other city personnel.
- b. Coordinates the implementation of all actions taken by the Common Council.
- c. Initiates short- and long-range financial, strategic, and work implementation plans for Mayor and Common Council consideration; implements plans to meet goals as directed; reports progress regularly and recommends changes, if needed.
- d. Keeps abreast of changes in state and federal funding and laws having an impact on the City and brings concerns to the attention of the Common Council.

Attachment: City Adm Employment Agreement (3502 : Closed session for administrator

2. **Other Boards, Committees and Commissions**
 - a. Attends meetings of the Personnel and Finance Committee. Attends other City committees, boards and commissions as necessary to meet needs of the City.
 - b. Attends meetings of other governmental agencies and civic groups on behalf of the City as directed by the Mayor and Council.
3. **Economic Development**
 - a. Promotes the economic well-being and growth of the City through public and private sector cooperation.
 - b. Provides leadership for the City's economic development team related to use of economic development loans, Tax Incremental Financing (TIF), development agreements, grant writing, and other economic development tools.
 - c. Coordinates business/industrial development and job retention activities.
 - d. Develops and maintains positive working relationships with State of Wisconsin, Lincoln County, and regional economic development agencies/organizations, as well as the Merrill Area Chamber of Commerce.
 - e. Provides oversight for Community Development housing and economic development loan programs.
4. **Finance**
 - a. Coordinates the development of the Annual Budget.
 - 1) Reviews budget requests submitted by each department and makes recommendations to the Mayor and/or Common Council.
 - 2) Organizes annual budget process and directs production of operating, capital improvements, enterprise, and other budgets for Common Council review and approval.
 - 3) Analyzes and prepares reports on the fiscal impact of proposals and alternative funding sources as directed by the Mayor and/or Common Council.
 - b. Manages the implementation of the approved Annual Budget and all of its funds.
 - 1) With Finance Director assistance monitors the expenditures of public funds per approved policies and procedures.

c. Seeks out alternative funding sources including appropriate grants, public-private partnerships, and fee systems to broaden and supplement city tax revenues.

5. **City Personnel**

- a. Provides leadership to promote productivity and good employee relationships within and among all departments.
- b. Evaluates and recommends the appointment, promotion, supervision, and termination of Departments Heads to the Personnel and Finance Committee and/or other appropriate committees, commissions, and boards.
- c. Directly supervise departments of finance/technology, office of city attorney, water and sewage utilities, enrichment center, maintenance supervisor, and transit; supervise work of police, fire, parks and recreation, airport, and library departments; and coordinate operations with elected officials consisting of the City Clerk, Street Commissioner, and Municipal Court Judge.
- d. Promotes service quality, efficiency, and organizational improvement in all departments, agencies, and offices of the City.
 - 1) With the Mayor, Common Council, and appropriate committees, commissions, and boards, develops performance goals for departments and, at least annually, evaluates the performance of all department heads appointed by the Common Council.
 - 2) Encourages professional development and training to improve job-related knowledge and skills.
 - 3) Advises department heads in the recruitment, training, management, and evaluation of employees.
 - 4) Reviews grievances and provides recommendations to the Personnel and Finance Committee.
- e. Participates in negotiations with collective bargaining units under the direction of the Personnel and Finance Committee and brings tentative agreements to the Common Council for ratification.

6. **Legal Matters**

- a. Consults with the City Attorney regarding legal matters as necessary before recommending action to the Common Council.

7. **Citizen and Media Relations**

- a. Monitors service request/complaint responses by appropriate department.
- b. Act as public information officer for the City, with the responsibility of assuring that the news media and community are kept informed about the operations of the City and that all open meeting rules and regulations are followed.

8. **Other Duties as may be assigned by Mayor and Common Council**

- a. Other duties and related work as may be necessary and assigned to fulfill the responsibilities of this position and the needs of the City.

DESIRED MINIMUM QUALIFICATIONS

Education and Experience

- 1. Graduation from an accredited four-year college or university with a degree in public administration, business, political science, urban affairs or a closely related field; a Masters Degree in public administration or business administration preferred.
- 2. Five years of progressive experience as a municipal administrator or manager.
- 3. Demonstrated leadership skills.
- 4. Experience in development collaborative teams in a public environment.
- 5. Experience in economic development, redevelopment, and land use to promote vision of the City.

Necessary Knowledge, Skills and Abilities:

- 1. Comprehensive knowledge, experience, and skill in planning and administering municipal budgets as well as planning, directing and administering municipal programs.
- 2. Working knowledge of personnel and human resources, risk management, public works, public safety, and economic development.
- 3. Ability to establish and maintain effective working relationships with employees, city officials and the public; efficiently and effectively administer municipal government with a variety of departmental structures; ability to provide leadership skills; and carry out assigned projects.
- 4. Ability to maintain composure and professionalism while dealing with multiple tasks with a high level of responsibility and within the public domain.

5. Ability to analyze complex issues, to prepare concise written reports, and to develop and consider the implications of alternative courses of action.
6. Ability to effectively communicate orally in large and small group settings.
7. Proficiency with commonly used office applications; e.g. Microsoft Office programs.

Residency:

Residency within the corporate limits of the city is required.

This job description does not constitute an employment agreement between the employer and employee and is subject to change by the employer as the needs of the employer and requirements of the job change.



City of Merrill

Kathy Unertl, Finance Director

1004 East 1st Street • Merrill, Wisconsin • 54452

Phone: 715.536.5594 • Fax: 715.539.2668

e-mail: Kathy.Unertl@ci.merrill.wi.us

Date: July 31st, 2018

To: Mayor Derek Woellner
Alderpersons

From: Kathy Unertl, Finance Director/City Comptroller

RE: **Fiscal Note – Article XI of City Administrator Employment Contract**

There is an April 24th, 2012 Employment Agreement between the City of Merrill and City Administrator David Johnson. Article XI of that agreement details the City's fiscal obligation for potential termination without cause.

The attached spreadsheet details projected City of Merrill fiscal obligations using conceptual August 17th end of employment. **Preliminary total wages and benefits are projected at over \$140,000*.**

*In addition, there could be future Wisconsin Unemployment Insurance charges to the City of Merrill.

ARTICLE XI

Because the EMPLOYEE is an "at will employee", the Administrator may be discharged or terminated at any time without reason and without cause by a majority vote of the Common Council.

If termination is without cause, the EMPLOYEE shall receive written notice of termination. In such a termination without cause, the EMPLOYEE shall receive six months salary and health insurance coverage as severance compensation OR six months of termination notice with no severance compensation OR any combination of severance compensation and termination notice providing six months of financial protection, as determined by the Common Council. If EMPLOYER chooses to provide severance compensation, it shall be paid at the EMPLOYEE'S current salary payable at the time of normal City pay periods and shall be deemed a consulting fee. This consulting fee and services associated therewith shall cease upon the earlier of either the EMPLOYEE becoming re-employed or at the end of the aforementioned six-month period of notice and/or severance compensation. The EMPLOYEE agrees not to file for Unemployment Compensation benefits until after aforesaid six month period has expired.

If termination is for cause, defined as malfeasance, misfeasance, or willful misconduct in office, the EMPLOYEE shall be terminated immediately upon written notice and is not entitled to severance compensation.

The parties agree that the EMPLOYEE may terminate this agreement by giving the EMPLOYER a minimum of 30-calendar days written notice prior to the EMPLOYEE'S final day of employment. The EMPLOYEE'S final day of employment shall be defined as the last day of actual work in service to the EMPLOYER.

ARTICLE XII MOVING EXPENSES

The EMPLOYEE shall be reimbursed, or the City of Merrill shall pay directly, for the actual personal household moving expenses to move to Merrill in an amount not to exceed \$6,500. The EMPLOYEE shall provide evidence of actual expenses by securing quotations from at least two moving companies. It is further understood that the EMPLOYEE may utilize a portion of the maximum \$6,500 moving expense allowance to pay for temporary housing expenses of the EMPLOYEE during the period of the commencement of this agreement and the time of moving the EMPLOYEE'S family and household to the City of Merrill.

ARTICLE XIII DURATION

This Agreement shall be effective immediately and shall remain in full force and effect for an indefinite period. This agreement may be modified in writing at any time subject to approval by both the EMPLOYER and the EMPLOYEE. Termination of this agreement shall be in accordance with Article XI and the salary shall be determined annually in accordance with Article II.

City of Merrill - Section XI Employment Contract
 City Administrator David Johnson

This fiscal analysis uses August 17th, 2018 as potential employment ending date for illustration purposes. There are three pay periods in December. The 2019 amounts include 1.0% wage adjustment and preliminary health insurance estimate.

		Potential Severance Compensation							
		Aug-18	Sep-18	Oct-18	Nov-18	Dec-18	Jan-19	Feb-19	Total
		1/2 Month							Six Month
		Paid 9/7th							
Wages			\$8,993.60	\$8,993.60	\$8,993.60	\$13,490.40	\$9,083.54	\$9,083.54	\$58,638.28
SS/Medicare	7.65%		\$688.01	\$688.01	\$688.01	\$1,032.02	\$694.89	\$694.89	\$4,485.83
WRS - Retirement	6.70%		\$602.57	\$602.57	\$602.57	\$903.86	\$594.97	\$594.97	\$3,901.51
	In 2019 6.55%								
Health Ins.	Family	N/A	\$1,543.53	\$1,543.53	\$1,543.53	\$1,543.53	\$1,679.01	\$1,679.01	\$9,532.14
Life Ins.		N/A	\$137.94	\$137.94	\$137.94	\$137.94	\$137.94	\$137.94	\$827.64
Total			\$11,965.65	\$11,965.65	\$11,965.65	\$17,107.74	\$12,190.35	\$12,190.35	\$77,385.40

Potential Final Employment Pay-Out - Unexpended Leave

Vacation/Personal Holiday	\$24,058.94
SS/Medicare 7.65%	\$1,840.51
Total for Vacation/Personal Holiday	\$25,899.45
Sick Leave - Conversion to City Group Health Insurance If not converted, potential additional \$2,814 for SS/Medicare	\$36,786.96
Total Projected Potential Severance and Leave Payouts	\$140,071.81

PRELIMINARY POTENTIAL EMPLOYMENT PAY-OUTS

Employee: David Johnson
 Hire Date: 04/24/12
 Potential Ending Date: Dependent upon Council action - fiscal based upon 8/19/2018
 Final Payout Date: Upon WRS Retirement Notice - likely March 2019

VACATION

Balance as of 01/01/18	358.16		
Accrued - 2018	120.00		
Accrued - 2019 (Jan./Feb.)	20.00		
Taken:	<u>113.00</u>		
Balance @ \$56.77	385.16	\$	21,865.53

PERSONAL HOLIDAY

Balance as of 01/01/18	37.97		
Accrued - 2018	16.00		
Accrued - 2019 (Jan./Feb.)	2.67		
Taken:	<u>18.00</u>		
Balance @ \$56.77	38.64	\$	2,193.40

SICK LEAVE

Balance as of 01/01/2018	536.00		
Accrued - 2018	96.00		
Accrued - 2019 (Jan./Feb.)	16.00		
Taken:	<u>-</u>		
Balance @ \$56.77	648.00	\$	36,786.96

FINAL PAYOUT

(no retirement benefit on final payout)

Vacation		\$	21,865.53	
Personal Holiday		\$	2,193.40	
TOTAL		\$	24,058.94	
SICK LEAVE (max 1,300 hrs)	648.00	\$	36,786.96	Projected conversion to Group Health
GRAND TOTAL		\$	60,845.90	

Attachment: City Adm Preliminary Fiscal Note (3502 : Closed session for administrator performance evaluation)