

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
JUNE 3, 2014 AGENDA**

Subject:	Type:	Submitted By:
EMPLOYMENT AGREEMENT	◆ RESOLUTION ORDINANCE RECEIVE/FILE	RITA M. RAMIREZ ASST. CITY ADMINISTRATOR/ DIR. COMMUNITY SERVICES

SYNOPSIS

A resolution has been prepared to approve an employment agreement with Kevin Pokorny for the position of Director of Administrative Services.

FISCAL IMPACT

Funding is available in the FY14 General Fund budget to facilitate the transition of Kevin into the position of Director of Administrative Services.

RECOMMENDATION

Approval.

BACKGROUND

On May 6, 2014 the City Council accepted a plan that when implemented would improve organizational shortcomings and ensure efficiency within the current resources available. As a part of that plan, the position of Director of Administrative Services was created. Subsequently, Kevin Pokorny, who is currently serving as a Police Captain for the City, was determined to be a suitable candidate for this employment assignment.

An employment agreement has been drafted which will allow the City to appoint Pokorny to the civilian management position of Director of Administrative Services, initially on a temporary basis while on leave of absence from the Police Department and subsequently on a regular basis.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, APPROVING AN EMPLOYMENT AGREEMENT WITH KEVIN L. POKORNY FOR THE POSITION OF DIRECTOR OF ADMINISTRATIVE SERVICES.

WHEREAS, in an effort to improve organizational shortcomings and ensure efficiency within the current resources available, the City Council of the City of La Vista has determined that a reorganization plan shall be implemented; and

WHEREAS, the reorganization plan calls for the creation of the position of Director of Administrative Services; and

WHEREAS, Kevin L. Pokorny is currently employed by the City in the position of Police Captain; and

WHEREAS, the City desires to assign Kevin L. Pokorny to the position of Director of Administrative Services.

NOW, THEREFORE, BE IT RESOLVED, that the Mayor and City Council of La Vista, Nebraska do hereby approve an employment agreement with Kevin L. Pokorny for the position of Director of Administrative Services and authorize the Mayor to sign said agreement.

PASSED AND APPROVED THIS 3RD DAY OF JUNE 2014.

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Pamela A. Buethe, CMC
City Clerk

AGREEMENT

This Agreement is made and entered into, by and between the City of La Vista, Nebraska, a city of the first class (the "City"), and Kevin L. Pokorny ("Employee" or "Pokorny"), as of the last date of signature below.

WHEREAS, Pokorny is presently employed as a police officer, holding the rank of Captain, in the City's Police Department ("Police Department"), and

WHEREAS, the City desires to appoint Pokorny to a civilian management position as the City's Director of Administrative Services, initially on a temporary basis while on leave of absence from the Police Department and subsequently on a regular basis, and the City desires to induce Pokorny to accept such civilian employment assignment, and Pokorny is willing to accept such civilian employment assignment on the terms stated in this Agreement.

NOW, THEREFORE, the City and Pokorny agree as follows:

1. Employment Assignments.

- (A) Temporary Assignment and Leave of Absence from Police Department. The City agrees to assign Pokorny to, and Pokorny agrees to be employed in, the civilian management position of Director of Administrative Services of the City initially on a temporary basis while on leave of absence from the Police Department. Such civilian management assignment shall commence on START DATE, 2014, and shall continue through March 31, 2017 ("Temporary Assignment and Leave Period"), unless sooner terminated pursuant to or as allowed by this Agreement. In order to facilitate such assignment, Pokorny hereby requests a leave of absence from the Police Department from START DATE, 2014, until March 31, 2017. With the approval of the City's Chief of Police, which has already been granted, the City Administrator of the City hereby grants Pokorny such leave of absence. Such leave of absence shall be with salary, but such salary shall not be charged to the Police Department budget. The City Administrator of the City shall notify the La Vista Civil Service Commission that Pokorny has been granted such leave of absence.

- (B) Regular Assignment as Director of Administrative Services. The parties presently expect that after March 31, 2017, Pokorny will be assigned to and will continue in uninterrupted employment of the City in the position of Director of Administrative Services of the City, on a regular, non-temporary basis.
- (C) Employment Relationship; Disciplinary or Other Job Action During and After the Temporary Assignment and Leave Period. Beginning on START DATE, 2014, the rules, procedures and processes set forth in the Civil Service Act, in the civil service provisions of the La Vista Municipal Code, and in the Rules and Regulations of the La Vista Civil Service Commission, all of which apply to full-time police officers of the City, shall not apply respecting Pokorny's employment by the City, and Pokorny hereby waives the application of such civil service rules, procedures and processes. In lieu of such civil service rules, procedures and processes, the rules, procedures and processes that shall govern and apply to and respecting Pokorny's employment by the City beginning on START DATE, 2014, and continuing thereafter, shall be, except as otherwise modified by this Agreement, the rules, procedures and processes that apply to other civilian employees of the City, as such rules, procedures and processes are set forth in the City's Personnel Manual (as from time to time amended by the City). Consistent with the foregoing, but not in limitation thereof, the disciplinary rules, procedures and processes that shall apply to Pokorny in the position of City's Director of Administrative Services shall be those set forth in the City's Personnel Manual (presently, Sections 9.1 through 9.7 of the Personnel Manual, but as from time to time hereafter amended by the City), and review of any disciplinary action imposed on Pokorny by the City Administrator after START DATE, 2014, shall be by appeal to the City's Personnel Board pursuant to the City's Personnel Manual (as from time to time amended by the City) and not by appeal to or review by the La Vista Civil Service Commission.
- (D) Pokorny's Future Resignation as a Police Officer. If Pokorny remains employed by the City as of the end of the Temporary Assignment and Leave Period on March 31, 2017, and if Pokorny has not tendered his resignation as a full-time police officer and member of the Police Department prior to that date, and proceeds in continuous, uninterrupted employment of the City as Director of Administrative Services beyond that date, then Pokorny automatically shall be considered to have resigned from his employment as a

police officer and member of the Police Department effective at 4:30 p.m. local time on March 31, 2017, and such resignation shall be automatically deemed to have been accepted by the City.

2. Time, Efforts and Duties. While serving as Director of Administrative Services, both during and after the Temporary Assignment and Leave Period, Pokorny shall diligently and conscientiously devote his full and exclusive employment time and attention, and his best efforts and energies, to the performance of his duties to the City as Director of Administrative Services, except as may be otherwise allowed by paragraph 4 of this Agreement. The duties of Pokorny as Director of Administrative Services of the City shall include the duties set forth in the position (job) description for the position of Director of Administrative Services, as from time to time amended by the City, as well as such other and additional duties as may from time to time be assigned to Pokorny by the City Administrator or by the City Administrator's delegate.

3. Compensation and Employee Benefits.

- (A) Salary. While Pokorny is serving as Director of Administrative Services during the Temporary Assignment and Leave Period, and thereafter (assuming Pokorny remains employed by the City as Director of Administrative Services after the Temporary Assignment and Leave Period ends on March 31, 2017), the City from time to time shall fix and set Pokorny's rate of salary compensation by ordinance, but such salary shall not be less than the salary amount Pokorny would have received had Pokorny continued serving as a Captain in the Police Department. While Pokorny is serving as Director of Administrative Services, the City shall pay Pokorny his salary in approximately equal bi-weekly installments, on the same pay days and in the same manner as other director-level employees of the City.

- (B) Sick Leave and Vacation Leave. Upon assuming the Director of Administrative Services duties effective on START DATE, 2014, Pokorny shall retain any accrued but unused sick leave and vacation leave he had accrued as a Police Department employee. Thereafter, however, Pokorny's entitlement to earn and use sick leave and vacation leave, and other types of paid leave, shall be as set forth in Sections 8.1 and 8.3 [but not including Subsection 8.1(2)] of the City's Personnel Manual, as presently written or as hereafter amended by the City from time to time.

(C) Retirement. While and so long as Pokorny continues to serve as Director of Administrative Services:

- (1) During the Temporary Assignment and Leave Period. During the Temporary Assignment and Leave Period, Pokorny shall continue to participate in the retirement plan of the City for police officers within the Police Department ("Police Plan"), and Pokorny's contributions and the City's contributions to the Police Plan shall continue as if Pokorny were performing his normal duties as Captain in the Police Department.
- (2) After the Temporary Assignment and Leave Period. After the Temporary Assignment and Leave Period ends on March 31, 2017, and if and as Pokorny continues thereafter in the employment of the City in the position of Director of Administrative Services on a regular, non-temporary basis, Pokorny's participation in and all contributions to the Police Plan shall cease. In lieu thereof, Pokorny, effective April 1, 2017, will become a participant in the retirement plan for civilian employees of the City ("Civilian Plan"), and Pokorny and the City shall contribute to such Civilian Plan as required and as limited by the terms of the Civilian Plan respecting other civilian employees of the City. Assuming Pokorny remains employed by the City as Director of Administrative Services after the Temporary Assignment and Leave Period ends on March 31, 2017:
 - (a) Pokorny's account(s) in the Police Plan as of the end of the Temporary Assignment and Leave Period on March 31, 2017, will remain subject to and in the Police Plan, and a new account or accounts will be established for Pokorny under the Civilian Plan as of April 1, 2017. The end of the Temporary Assignment and Leave Period and Pokorny's continuation thereafter in the employment of the City in the position of Director of Administrative Services on a regular, non-temporary basis shall not constitute a termination, separation or severance of or from service or employment of Pokorny with the City, or otherwise a distributable event under the Police Plan. On retirement or other termination of employment from the City, Pokorny would be eligible for distributions from both the Police Plan and the Civilian Plan.

- (b) If Pokorny moves from the Police Plan to the Civilian Plan mid-year, contributions to the Police Plan for that year will be based on Pokorny's compensation for the pre-move portion of the year and contributions to the Civilian Plan will be based on Pokorny's compensation for the post-move portion of the year.
- (c) Vesting of Pokorny in any contributions by the City to the Civilian Plan will be based on all years of service by Pokorny for the City, including service in the Police Department. Pokorny, with more than seven total years of service to the City, thus would be 100% vested in contributions by the City to the Civilian Plan.
- (d) Present contribution rates for the City and employees under the Police Plan are 6.5 percent of wage compensation (7 percent beginning October 1, 2015), but only 6 percent under the Civilian Plan. Whenever, under the terms of the applicable plan documents after Pokorny has begun to participate in the Civilian Plan rather than the Police Plan, the rate of City contributions to the Civilian Plan is less than the rate of contributions by the City to the Police Plan, then if Pokorny elects to contribute the dollar amount of such contribution difference (or a portion thereof) to the City's separate 457 plan, the City will increase Pokorny's salary compensation by the amount of such contribution difference (or the portion thereof that Pokorny elects to contribute under the 457 plan) so that Pokorny may elect to defer or contribute such amount under the City's 457 plan.

(D) Other Benefits and Terms and Conditions of Employment. Except as provided otherwise in this Agreement, Pokorny's other employee benefits, and other terms and conditions of employment, while he remains employed by the City as Director of Administrative Services during and after the Temporary Assignment and Leave Period, shall be the same as those uniformly provided by the City to civilian management employees of the City at the director level, as the City may establish and from time to time modify, amend or terminate such benefits, related benefit plans, and other terms and conditions of employment.

4. Police Activities by Pokorny. Whenever, during or after the Temporary Assignment and Leave Period, Pokorny is not working as a full-time police officer member of the Police Department, the City may allow Pokorny to spend limited and minor amounts of his time engaged in police work in the Police Department, on a part-time basis and with sufficient annual training to retain police officer certification. To the extent that the City allows such part-time police work, the City will pay no additional compensation to Pokorny for such part-time police work. Whether, and the extent to which, the City will permit such part-time police work by Pokorny, however, if any, will be subject to the approval of the City Administrator and the Chief of Police, as well as to the approval or consent of any collective bargaining representative of the full-time police officers of the Police Department. If Pokorny engages in any such part-time police work, Pokorny for himself, his heirs and his other beneficiary(ies) agrees:
 - (A) Police officer "line of duty" death benefits under Neb. Rev. Stat. § 16-1010 shall not apply to Pokorny, his surviving spouse, or his minor children unless Pokorny dies in the line of duty while actually functioning as a police officer for the City or his death is caused by or is the result of injuries received by him in the line of duty while actually functioning as a police officer for the City; and
 - (B) Police officer "line of duty" disability benefits under Neb. Rev. Stat. §§ 16-1011 and 16-1012 shall not apply to Pokorny unless Pokorny's disability (as defined in such statutes) is caused by or is the result of injuries received by him in the line of duty while actually functioning as a police officer for the City.
5. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Nebraska.
6. Entire Contract. This Agreement constitutes the entire understanding and agreement between the City and Pokorny with regard to the subject hereof. There are no other agreements, conditions or representations, oral or written, express or implied, with regard thereto. This Agreement may be amended only by a writing signed by both parties.
7. Binding Effect. This Agreement shall not be effective until it has been approved by the Mayor and Council of the City, and signed by the Mayor of the City and by

Pokorny. The provisions of this Agreement thereafter shall be binding upon and inure to the benefit of both parties and their respective heirs, successors and assigns.

IN WITNESS WHEREOF, the City and Pokorny have signed this Agreement, to be effective as of the last date of signature below.

CITY OF LA VISTA, NEBRASKA,
a city of the first class,

By: _____
Mayor

Date: _____

Attest: _____
City Clerk

EMPLOYEE:

Kevin L. Pokorny

Date: _____