

AMENDMENT TO EMPLOYMENT AGREEMENT

This AMENDMENT TO EMPLOYMENT AGREEMENT, is made and entered into this 19th day of December, 2023, by and between the CITY OF DICKINSON, a North Dakota municipal corporation, and DUSTIN D. DASSINGER.

WHEREAS, Section 3(A) of the Employment Agreement contains a provision regarding the compensation due to Dassinger for the services to be performed pursuant to the Employment Agreement:

Section 3. Compensation and Annual Review.

- A. The City shall pay Dassinger for his services as the Administrator an annual base salary of \$150,000.00 payable in equal installments pursuant to City policy and may increase it from time to time as herein provided. In the event Dassinger scores an overall rating of "Good – 4.0" on the annual review by the Commission and the annual 360 peer review to be completed in September, Dassinger shall be given a raise of no less than two (2) percent for every year of this Contract. At any time, the Commission may agree to increase the base salary and/or other benefits received by Dassinger as the Administrator in such amounts and to such extent as the Commission may determine to be desirable in its sole discretion.

WHEREAS, the parties desire to amend the compensation due to Dassinger for services to be performed pursuant to the Employment Agreement;

NOW, THEREFORE, the parties hereto stipulate and agree as follows:

1. Section 3(A) of the Employment Agreement is hereby amended to state as follows:

Section 3. Compensation and Annual Review.

- A. The City shall pay Dassinger for his services as the Administrator an annual base salary of \$159,000.00 payable in equal installments pursuant to City policy and may increase it from time to time as herein provided. In the event Dassinger scores an overall rating of "Good – 4.0" on the annual review by the Commission and the annual 360 peer review to be completed in September, Dassinger shall be given a raise of no less than two (2) percent for every year of this Contract. At any time, the Commission may agree to increase the base salary and/or other benefits received by Dassinger as the Administrator in such amounts and to such extent as the Commission may determine to be desirable in its sole discretion.
2. As amended by this Amendment, the EMPLOYMENT AGREEMENT is hereby ratified and confirmed and shall continue in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first written above.

CITY OF DICKINSON

By: 

Scott Decker, President
Board of City Commissioners

By: 

Dustin D. Dassinger

**CITY ADMINISTRATOR EMPLOYMENT AGREEMENT
BETWEEN**

DUSTIN D. DASSINGER

AND

THE CITY OF DICKINSON, ND

THIS EMPLOYMENT AGREEMENT hereinafter called this "Agreement", is made and entered into as of the 16th day of September, 2022 by and between the Board of City Commissioners, hereinafter referred to as the "Commission", of the City of Dickinson, a political subdivision of the State of North Dakota, hereinafter referred to as "Employer and/or City", and Dustin D. Dassinger, hereinafter referred to as "Dassinger".

W-I-T-N-E-S-S

WHEREAS, the Commission desires to employ the services of Dassinger, as City Administrator of the City, hereinafter referred to as the "Administrator", pursuant to the terms of the Dickinson City Charter, hereinafter referred to as the "Charter", the Dickinson City Code of Ordinances, hereinafter referred to as the "City Code", and all statutes, laws and constitutional provisions applicable to the position of Administrator; and

WHEREAS, it is the desire of the Commission to provide certain benefits and establish certain conditions of employment for Dassinger as the Administrator in accordance with this Agreement; and

WHEREAS, it is the desire of the Commission to secure and retain the services of Dassinger as the Administrator and to provide inducement for him to remain in such employment; and

WHEREAS, Dassinger desires to accept employment as the Administrator in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

Section 1. Employment.

- A. The Commission hereby hires and appoints Dassinger as the Administrator, under the terms established herein, to perform the duties and functions specified in the Charter, the City Code, and all statutes, laws, constitutional provisions and other City ordinances, regulations, resolutions and policies applicable to the position of Administrator, and to perform such other legally permissible and proper duties and functions as the Commission shall assign from time to time.

- B. The Commission's employment of Dassinger as the Administrator shall be for a term of five years commencing on October 1, 2022 and ending on September 30, 2027. This Agreement may be terminated by the Parties as provided herein. The Commission and Dassinger acknowledge they may enter into discussions regarding the renewal of this Agreement prior to or upon the expiration of this Agreement. Dassinger acknowledges there is no guarantee of renewal.
- C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Commission to terminate the services of Dassinger as Administrator at any time, subject only to the provisions set forth in Section 11 of this Agreement.
- D. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Dassinger to resign at any time from his position as the Administrator, subject only to the provisions set forth in Section 12 of this Agreement.

Section 2. Duties and Obligations.

- A. As the Administrator, Dassinger, shall have the duties, responsibilities and powers of said office under the Charter, the City Code, and all statutes, laws, constitutional provisions and other City ordinances, regulations, resolutions and policies applicable to the position of Administrator.
- B. Dassinger, as the Administrator, shall remain in the exclusive employ of the Commission and shall devote all such time, attention, knowledge and skills necessary to faithfully perform his duties and responsibilities, and to exercise his powers under this Agreement. He may, however, engage in educational and professional activities and other employment activities upon receipt of approval by the Commission, provided that such activities shall not interfere with his primary obligation to the Commission and City as the Administrator. Dassinger shall dedicate no less than an average of forty (40) hours per week in the performance of his duties as Administrator hereunder, which shall include hours of approved leave taken.
- C. In the event Dassinger shall serve on any appointed or elected board of any professional organization or serve on any committees related to his professional activities, in the event any monies are paid, or gifts received, by Dassinger related to such service, such money or property shall be paid over to or delivered to the City, unless otherwise provided by the Commission. Notwithstanding the foregoing, Dassinger shall at all times adhere to any applicable conflict of interest requirements under applicable City Code, City policies, or state law.

Section 3. Compensation and Annual Review.

- A. The City shall pay Dassinger for his services as the Administrator an annual base salary of \$150,000.00 payable in equal installments pursuant to City policy and may increase it from time to time as herein provided. In the event Dassinger scores an overall rating of "Good –

4.0" on the annual review by the Commission and the annual 360 peer review to be completed in September, Dassinger shall be given a raise of no less than two (2) percent for every year of this Contract. At any time, the Commission may agree to increase the base salary and/or other benefits received by Dassinger as the Administrator in such amounts and to such extent as the Commission may determine to be desirable in its sole discretion.

- B. At least annually, the Commission shall review and evaluate the performance of Dassinger as Administrator. Said reviews and evaluations shall assess Dassinger's performance of all duties and responsibilities, and his exercise of all powers for which he is responsible under this Agreement during the immediately preceding twelve-month period. Said reviews and evaluations shall also include a "360" review by the Executive Team and any other city employees as determined necessary by the Commission. Further, the chairperson of the Commission shall provide to Dassinger a summary written statement of the findings of the Commission within 60 days following the review and evaluation. Failure by the Commission to conduct such a review and evaluation in any given year or years shall not be considered a breach of this Agreement. In addition to the annual review, the Commission reserves the right to conduct additional reviews and evaluations should it deem it necessary.
- C. Annually, the Commission and the Administrator shall jointly define such goals and performance objectives that they may determine necessary for the proper operation of the City and for the attainment of the Commission's policy objectives and shall further establish a relative priority among those various goals and objectives and said objectives and goals shall be reduced to writing. Objectives and goals hereunder shall generally be attainable within the time limitations specified and shall take in to account the City's annual operating budget and capital budget and appropriations provided thereunder.

Section 4. Retirement.

Dassinger shall remain enrolled in the Dickinson Police Pension Plan as allowed by the Dickinson Municipal Code. The City will contribute on behalf of Dassinger to the Police Pension Plan in accordance with the Dickinson Municipal Code and other City and state laws.

Section 5. Leave and Other Benefits.

- A. Annual/Vacation Leave: Dassinger shall accrue annual/vacation leave at a rate of approximately 7.39 hours per pay period based on 26 pay periods, resulting in 160 hours annually, with a maximum of 240 hours per City policy.
- B. Other leave and benefits. Except as may be otherwise limited under the terms of this Agreement, Dassinger as the Administrator shall be entitled to earn, use, accrue and be compensated for annual leave, sick leave, holiday leave and other benefits as are generally granted to other employees of the City.

Section 6. Insurance.

- A. The Commission shall provide term life insurance as is generally provided to other employees of the City.
- B. The Commission shall provide Dassinger with medical and dental insurance on the same terms and conditions as are available to all other employees of the City.

Section 7. No Reduction of Benefits.

The Commission shall not at any time during the term of this Agreement reduce the salary, compensation or other financial benefits of Dassinger as the Administrator, except and to the degree and extent such reduction is also imposed across-the-Commission for all employees of the City.

Section 8. Dues and Association Memberships.

- A. The Commission agrees to pay for the professional dues and subscriptions of Dassinger necessary for his participation in the International City/County Management Association and Great Open Spaces City/County Management Association. If Dassinger does not possess his accreditation for the International City/County Management Association ("ICMA") upon execution of this Agreement, he will be required to obtain such accreditation within two years of execution of this Agreement. The City will pay for the cost of such accreditation. The City also agrees to pay his dues and expenses to participate in other regional and local organizations (such as Rotary and the Chamber of Commerce) that it feels the City would benefit from his participation in. If Dassinger is unable to complete his accreditation within two years of execution of this Agreement, Dassinger must inform the Commission so that an additional extension may be granted if deemed necessary by the Commission.
- B. The Parties agree that it is necessary for Dassinger as the Administrator and beneficial to the City for Dassinger as the Administrator to attend professional conferences and training sessions associated with counties and City administration. The Commission agrees that he shall be permitted to attend one national professional association conference, one regional professional association conference, and one in-state conference of his choosing during each calendar year. The Commission further agrees that the City shall pay the travel and lodging expenses incurred in his attendance at such conferences, together with per diem for subsistence, but only in accordance with applicable City policies. Dassinger may request and the Commission in its sole discretion may approve Dassinger to attend additional conferences if the Commission determines it is in the City's best interest.

Section 9. Residence.

Dassinger shall be a full-time resident of Stark County during his employment under this Agreement.

Section 10. Termination and Severance Pay.

- A. Termination Without Cause. The Commission may, at any time whatsoever, terminate the employment of Dassinger as Administrator, without cause, by an affirmative vote of not less than five (5) members of the Commission. If such event should occur, Dassinger will be given written notice of the decision of the Commission. Upon such termination, Dassinger will be entitled to: 1) a severance payment equal to six (6) calendar months base salary; 2) a lump sum payment at his then-hourly rate of base salary as Administrator for all annual leave hours accumulated by him but unused as of the date of termination, not to exceed the maximum accrual provided in the City's Personnel Policies Manual applicable to all other employees of the Commission (currently 240 hours); 3) a lump sum payment at his then-hourly rate of base salary as Administrator for one-quarter of the sick leave hours accumulated by him but unused as of the date of termination, subject to the limitations and maximum accrual provided in the City's Personnel Policies Manual applicable to all other employees of the Commission; and 4) continuation of the employer portion of the Administrator's health insurance under Section 9, if continuation of health insurance is elected by Dassinger, at City expense for a period of six (6) calendar months following the date of termination in accordance with, and within the limitations of, COBRA and the rates applicable thereunder.
- B. Termination for Cause. The Commission may also, for cause, terminate the employment of Dassinger as the Administrator at any time whatsoever, by affirmative vote, of not less than three (3) members of the City Commission. Dassinger shall be entitled to a hearing if, within five (5) business days of termination for just cause, he so requests in writing to the City Attorney. In the event Dassinger's employment as Administrator is terminated for cause, the City shall be under no obligation to pay severance pay described under subsection A(1) or the continuation of health insurance described under subsection A(4) hereof. The term "for cause" shall be deemed to include: dereliction of essential duties, gross negligence in the handling of City affairs; willful violation of the provisions of law; willful disregard of a direct and lawful order, demand, or policy of the Commission; conduct unbecoming a public employee; illegal or habitual drug abuse; arrest; conviction of a felony; conviction of any crime involving moral turpitude or relating to official duties; or violation of the North Dakota Ethics Code. For the purpose of this subsection, if Dassinger pleads guilty or nolo contendere or is found guilty of a felony, he shall be deemed to have been convicted, notwithstanding a suspension of sentence or a withholding of adjudication.
- C. Should Dassinger become permanently disabled or otherwise unable effectively to perform his duties and responsibilities, and/or to exercise his powers as Administrator as provided in this Agreement because of sickness, accident, injury, mental incapacity or health for a period of four (4) successive weeks, the Commission shall have the right to terminate this Agreement in accordance with provisions of subsection A hereof. Notwithstanding the foregoing the City agrees to comply in all respects with all federal or state laws in compliance with family medical leave and disability requests.

Section 11. Resignation.

- A. In the event Dassinger voluntarily resigns his position as Administrator, he hereby agrees to give the City not less than sixty (60) days' written notice prior to effective date of any voluntary resignation, unless the Parties agree otherwise.
- B. In the event Dassinger voluntarily resigns his position as Administrator, the City shall be under no obligation to pay severance pay described under Section 10 subsection A(1), pay for the continuation of health insurance described under Section 10 subsection A(4) or the offer of continued employment with the City as outlined in Section 10 subsection A(1).

Section 12. Suspension

The Commission shall have the authority to suspend Dassinger as Administrator with full pay and benefits pending investigation and a final employment decision made by the Commission, but only if a majority of the Commission members and the Administrator agree; or in the alternative, after a public hearing, if a majority of the Commission members votes to suspend the Administrator for just cause; provided, however, that Dassinger shall have been given written notice setting forth any charges giving rise to just cause at least 7 days prior to such hearing.

Section 13. Indemnification

To the extent required and otherwise allowed by North Dakota law, and as otherwise may be limited or prohibited by applicable law, and without waiving the sovereign immunity of the Commission or the City, the Commission agrees that the City shall defend, hold harmless and indemnify Dassinger against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission committed by him within the scope of his employment hereunder as Administrator, provided that he timely reports the same to the Commission and cooperates fully and honestly in the City's defense thereof. The Commission may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon, subject to reimbursement by Dassinger if required by law. Said indemnification shall extend beyond termination of employment and expiration of this Agreement to provide full and complete protection to Dassinger by the City for any acts or omissions committed within the scope of his employment hereunder as Administrator, regardless of whether the notice or filing of a lawsuit for such tort, claim, demand, or other legal action occurs during or following his employment with the City. The provisions of this section shall not apply to any claim, demand, suit or cause brought or asserted against Dassinger for his acts or omissions committed while acting outside the course and scope of his employment under this Agreement or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, property or civil rights.

Section 14. Entire Agreement

The text of this document shall constitute the entire Agreement between the Parties, except as may be amended in writing by the parties hereto. All provisions contained in this Agreement are subject to and conditioned upon compliance with the Charter, the City Code, and all statutes, laws, constitutional provisions and other City ordinances, regulations, resolutions and policies.

The Charter, the City Code, and all such statutes, laws, constitutional provisions and other City ordinances, regulations, resolutions and policies shall take precedence over any part or portion of this Agreement, any other provisions of this Agreement to the contrary notwithstanding.

Section 15. No Assignment

Dassinger hereby recognizes and acknowledges that the services to be rendered by him under this Agreement are unique and personal. Accordingly, Dassinger may not assign any of the rights or delegate any of the duties or obligations provided for in this Agreement.

Section 16. No Modification or Waiver of Breach

No modification or waiver of this Agreement or of any covenant, condition, or provision herein contained shall be valid unless in writing and duly executed by both the City of Dickinson and Dassinger. The waiver of a breach of any provision of this Agreement by the City of Dickinson or Dassinger shall not operate or be construed as a waiver of any subsequent breach.

Section 17. Succession

This Agreement shall inure to the benefit of and be binding upon the City of Dickinson and Dassinger, and their successors in interest of any kind whatsoever.

Section 18. Governing Law

This Agreement shall be governed by the laws of the State of North Dakota, and any question arising hereunder shall be construed or determined according to such law.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to have been executed on behalf of each as of the date and year first above-written.

ADMINISTRATOR:


Dustin D. Dassinger

THE CITY OF DICKINSON:

By: 
Scott Decker
President of the City Commission