

**CITY MANAGER EMPLOYMENT AGREEMENT - AMENDED AND
RESTATED ~~2023~~2024**

This City Manager Employment Agreement – Amended and Restated ~~2023~~2024 (“Employment Agreement”), is made and entered into effective the ~~3rd~~1st day of January, ~~2023~~2024, by and between the City of Fruita, Colorado, a Colorado home-rule municipality, acting by and through its City Council, hereinafter called, “Employer” or “City,” as a party of the first part, and Michael Bennett, hereinafter called, “Employee,” as a party of the second part, (Employer/City and Employee referred to collectively herein as “Parties”).

WITNESSETH:

WHEREAS, at its regularly scheduled meeting on ~~January 3~~December 19, 2023, the City Council of the City of Fruita (“City Council”) conducted its annual formal review of Employee; and

WHEREAS, since Employee was hired by Employer in 2014, there have been several amendments to Employee’s employment agreement; and

WHEREAS, at its ~~January 3~~December 19, 2023, meeting, the City Council voted to continue Employee’s employment as City Manager with an increase in salary and severance pay, and to amend and restate the employment agreement to incorporate all changes into this Employment Agreement and to better organize the terms and conditions thereof.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties agree the Employee Agreement between Employer and Employee dated ~~February 2, 2016~~January 3, 2023 is hereby amended and replaced in its’ entirety to read as follows:

**SECTION 1
EMPLOYEE DUTIES**

Employer hereby agrees to employ Employee as City Manager of the City of Fruita subject to the conditions of this agreement and applicable provisions of the Fruita City Charter and the Fruita Municipal Code. Employee hereby agrees to faithfully perform the duties assigned to him by the Fruita City Charter, the Fruita Municipal Code, and any other legally permissible and proper duties which are compatible with Employee’s position as City Manager and as the City Council shall from time to time determine and assign.

**SECTION 2
TERMS OF EMPLOYMENT**

A. Pursuant to section 2.08.020 of the Fruita Municipal Code and Section 4.02 of the

Fruita City Charter, Employee's employment may be terminated at will and without cause by a majority vote of the entire City Council, subject only to the provision set forth in Section 3, paragraph (A), (B) and (C) of this Agreement.

- B. Employee agrees to remain in the exclusive employment of the Employer and to neither accept nor become employed by any other employer until Employee's employment hereunder is terminated. The term "exclusive employment" shall not be construed to preclude occasional teaching, writing or consulting by Employee for third parties during hours when Employee is not conducting work for Employer.
- C. Employee is an exempt employee under the Fair Labor Standards Act ("FLSA").
- D. Employee shall maintain residency within the City of Fruita for the duration of his employment with Employer.
- E. The term of this Agreement shall be open-ended, with Employee serving at the pleasure of the City Council. This Agreement shall be reviewed and renewed, amended or not renewed annually by the City Council subject to the formal performance evaluation as set forth in Section 5 of this Agreement.
- F. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Employee to resign at any time from his position with the Employer, subject only to the provisions set forth in Section 3, paragraph (F) of this Agreement.

SECTION 3 TERMINATION AND SEVERANCE PAY

- A. If Employee is terminated by the Employer for any reason other than conviction of a felony, as set forth in subparagraph (D) below, or voluntary resignation as described in subparagraph (F) below, Employer agrees to pay Employee a sum calculated as six (6) months aggregate compensation including the payment of all Employer benefits over said period. One additional month of compensation shall be added each year beginning on January 1, 2024, up to a maximum of twelve (12) months of compensation.
- B. Employee shall also be compensated for all earned vacation benefits accrued but unused as of the date of termination. Employer shall be entitled to withhold from said payments all amounts required to be withheld pursuant to the laws of the State of Colorado and the laws of the United States of America.
- C. In all cases it shall be the sole choice of Employee to accept a lump sum payment or to continue to be paid at regular intervals until compensation to which he is entitled pursuant to this Section 3 is exhausted.
- D. Notwithstanding the above, in the event Employee is terminated because of his conviction of a felony, the Employer shall have no obligation to pay any

compensation described in paragraphs A, B and C of this Section.

- E. In the event Employer at any time during the term of this Agreement reduces the salary or other financial benefits of Employee in a greater percentage than applicable across-the-board reductions for all employees of Employer (see Section 4 (C) below); or in the event Employer refuses, following written notice, to comply with any other provision benefitting Employee herein; or in the event Employer elects not to renew this agreement; or Employee resigns following a formal suggestion by the City Council that he resign; Employee may, at his option, be deemed to be “terminated” at the date of such reduction or such refusal to comply, or non-renewal or suggestion of resignation and the severance benefits described in paragraphs (A) and (B) of this Section 3 shall be payable to Employee.
- F. In the event Employee decides to voluntarily resign from his position with the Employer, then Employee shall give the Employer two (2) months written notice in advance, or such lesser amount of advance notice as may be otherwise mutually agreed to. Employee shall not be entitled to, nor shall he receive, severance pay in the event of voluntary resignation.

SECTION 4 SALARY AND BENEFITS

- A. Employer agrees to pay Employee for his service as City Manager an annual base salary of \$~~175,220.00~~189,237 payable at the same time and schedule as other full-time employees of the Employer are paid with a \$5,000 bonus for exceeding expectations. In addition, Employer agrees to increase said base salary and/or benefits upon completion of the annual formal review as specified in Section 5, paragraph (A) in such amount and to such extent as the City Council may determine is desirable on the basis of the formal performance evaluation and an annual salary review of comparable positions.
- B. Employee shall receive as additional compensation and benefits, those benefits described in the most recent edition of the City of Fruita Employee Handbook, or any personnel policies or procedures subsequently adopted by Employer for all of the City’s employees except as may be otherwise provided in this Employment Agreement.
- C. Employer shall not at any time during the term of this agreement reduce the salary, compensation, or other financial benefits of Employee, except to the degree of such a reduction across-the-board for all employees of the Employer, but in no event shall the Employee be paid less than the salary set forth in Section 4 (A), above, of this Agreement except by mutual written agreement between Employee and Employer. Such adjustments, if any, shall be made pursuant a majority vote of the entire City Council. In such event, Employer and Employee agree to provide their best efforts and reasonable cooperation to execute a new agreement incorporating the adjusted salary.

**SECTION 5
PERFORMANCE EVALUATION**

- A. Employee shall receive a formal annual performance evaluation pursuant to Section 4.03 of the Fruita City Charter. The formal performance evaluation shall occur in January of each year. The City Council may define such goals and performance objectives for Employee that it determines necessary for the proper operation of the City and shall further establish a relative priority among those various goals and objectives. The goals and objectives shall generally be attainable by Employee within the time limitations specified and within the available financial resources provided in the annual budget.

- B. In addition, Employee shall also receive an informal performance review by City Council in July of each year.

**SECTION 6
AUTOMOBILE STIPEND**

Employer shall pay Employee four hundred dollars (\$400) per month as an automobile allowance which shall be treated by Employee as additional income for income tax purposes. Employee shall maintain adequate personal automobile insurance during his employment which indicates Employee is the primary insurance carrier and file and keep a current copy of the insurance certificate with the Human Resource Director. Employee may utilize a City vehicle or receive the IRS mileage reimbursement rate as provided for all City employees for extended trips outside the Mesa County.

**SECTION 7
TIME OFF DURING NORMAL OFFICE HOURS**

Employee must devote a great deal of time to business of the Employer outside of regular office hours of the City; therefore, Employee will be allowed to take compensatory time off during said regular office hours as Employee deems appropriate.

**SECTION 8
VACATION AND SICK LEAVE**

Employee shall accrue vacation at the rate of fourteen (14) hours per month and shall accrue sick leave at the rate of eight (8) hours per month.

**SECTION 9
DISABILITY, HEALTH, AND LIFE INSURANCE**

Employer shall provide Employee with worker's compensation coverage and those insurance coverages which Employer provides to other City employees and to pay the premiums for Employee's coverage for the same on the same basis as premiums are provided to all employees of the Employer.

**SECTION 10
RETIREMENT FUNDING**

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Employer shall make monthly retirement contributions to the International City Management Association Retirement Corporation (ICMA RC) on Employee's behalf in the amount of ten percent (10%) of Employee's monthly base salary. This contribution is in lieu of any retirement contribution referred to in the City of Fruita Employee Handbook, or any subsequently adopted personnel policies and procedures.

**SECTION 11
DUES AND SUBSCRIPTIONS, PROFESSIONAL DEVELOPMENT AND
GENERAL BUSINESS EXPENSES**

- A. Employer agrees to budget and pay for professional dues and subscriptions for Employee, including ICMA membership, necessary for Employee's continuation and full participation in national, regional, state, and local associations, and organizations necessary and desirable for his continued professional development as a City Manager.
- B. Recognizing the importance of constant communication and maximum productivity, Employer shall provide Employee, at Employer's cost, for business and personal use, a laptop/tablet computer and mobile smart phone to perform his duties and maintain communication with Employer staff and officials as well as other individuals doing business with Employer. Upon termination of Employee's employment, at the discretion of the Employee, any mobile phone number shall be transferred to Employee.
- C. Within budget constraints, Employer hereby agrees to pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official functions for Employer, including but not limited to the ICMA Annual Conference, Colorado Municipal League, and such other national, regional, state, and local governmental groups and committees thereof which Employee serves as a member.

**SECTION 12
INDEMNIFICATION**

- A. Pursuant to the Colorado Governmental Immunity Act, the Employer shall be liable for the costs of defense, including reasonable attorney's fees, and the payment of all judgments and settlement of all claims against Employee where the claim arises out of injuries or damages alleged to have been sustained from the act or omission of Employee occurring during the performance of his duties as City Manager, and within the scope of his employment, except where such act or omission is willful and wanton, so long as Employee does not compromise or settle the claims without

consent or the Employer.

- B. Employer may indemnify Employee in any criminal proceeding against the costs of defense, including reasonable attorney's fees, and fines, if Employee acted in good faith and in a manner he reasonably believed to be in the best interests of the Employer, and had no reasonable cause to believe his conduct was unlawful. Determination of any action by a conviction, or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption that the Employee did not act in good faith and in a manner which he reasonably believed to be in the best interests of the Employer, and had no reasonable cause to believe his conduct was unlawful. Any indemnification under this Paragraph shall be made by Employer only as authorized in a specific case upon a determination that indemnification of the Employee is proper under the circumstances because he has met the applicable standards of conduct set forth herein. Such determination shall be made by the Council by a majority vote of a quorum consisting of Council members who were not parties to such proceeding or, if the quorum is not obtainable, or even if obtainable, if a quorum of disinterested Council members so directs, by independent legal counsel in a written opinion.

SECTION 13 BONDING

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

SECTION 13 GENERAL PROVISIONS

- A. The text herein shall constitute the entire agreement between the Parties with regard to Employee's employment by the City.
- B. This Employment Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee.
- C. To the extent not modified herein, the terms and conditions found in the most recent edition of the City of Fruita Employee Handbook, or any personnel policies or procedures subsequently adopted by Employer for all of the City's employees shall apply to Employee.
- D. If any provision, or any portion thereof, contained in this Employment Agreement is held unconstitutional, invalid or unenforceable, the remainder of this agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

IN WITNESS WHEREOF, the City of Fruita has caused this Employment Agreement to be signed and executed in its behalf by its Mayor, and duly attested by its City Clerk, and Employee has signed and executed this Agreement, both in duplicate, effective the day and year first above written.

EMPLOYEE:

THE CITY OF FRUITA:

Michael Bennett

By: _____
Joel Kincaid, Mayor

Attest: _____
Margaret Sell, City Clerk