

AMENDED EMPLOYMENT AGREEMENT

THIS AMENDED EMPLOYMENT AGREEMENT (the "Agreement"), is entered into on this ~~2nd day of December 2020~~ 11th day of May 2022 by and between the City of Hildale (the "City") and Eric A. Duthie ("Employee" or the "Manager") (referred to sometimes herein collectively as the "Parties" or, individually as a "Party").

RECITALS

WHEREAS, the Hildale City Council (the "Council") desires to ~~appoint~~ continue to have Employee serve as the Hildale City Manager pursuant to Utah Code Section 10-3b-403 and Article 31-I of the Hildale City Code, which authorize the City to enter into agreements with city managers delineating terms and conditions of employment in addition to and consistent with those contained within the Utah Code and the Hildale City Code;

WHEREAS, the Council and the Manager believe that an amended employment agreement, when appropriately structured, can strengthen the Council-Manager relationship by enhancing the excellence and continuity of the management of the City for the benefit of its citizens;

WHEREAS, the Council and the Manager believe that ~~entering into an~~ this amendment to the employment agreement negotiated between the City and Employee will be mutually beneficial to all;

WHEREAS, the Employee desires to ~~accept the Council's appointment~~ continue service as the Hildale City Manager, subject to the terms, conditions, and provisions of this Agreement.

NOW, THEREFORE, the City and the Manager, for and in consideration of the terms, conditions and provisions hereinafter established have agreed, and do hereby agree as follows:

1. New Effective Date. The Parties intend and agree that the amended effective date of this Agreement should be ~~December 7, 2020~~ May 11, 2022 (the amended "Effective Date").

2. Employment. The Parties agree that Employee shall be employed in the official position of Hildale City Manager.

3. Termination. This Agreement shall ~~remain in effect for an initial term of three years from the Effective Date (the amended “Initial Term”)~~; commence and continue until terminated by the Employee or by the City, upon majority vote of the City Council ~~and for any additional term(s) expressly agreed upon in a writing signed by the Parties prior to the end of the Initial Term (“Additional Term”)~~; unless otherwise terminated in accordance with this Section 3. Notwithstanding the foregoing, Employee may terminate this Agreement at any time and for any reason by voluntarily resigning from City employment. ~~The Employee acknowledges the position of City Manager serves “at the will” of the City Council.~~ During the ~~Initial Term and any subsequent Additional Term~~, duration of this agreement the City may only terminate the employment relationship under the following circumstances:

- a. With cause as determined in the City’s discretion by a majority vote of the Council; “cause” being defined as:
 - i. Employee’s disqualifying disability within the meaning of the Americans with Disabilities Act;
 - ii. Employee’s act or omission that materially breaches Employee’s duty of care or loyalty;
 - iii. Employee’s gross misconduct, to include without limitation intentional insubordination to the Council’s lawful directives, or conduct that may reasonably be expected to inflict severe reputational harm upon the City;
 - iv. Employee’s conviction by a court of competent jurisdiction of a felony, or of any other criminal offense involving fraud, misrepresentation, theft, corruption, or moral turpitude.
- b. Without cause upon a majority vote of the Council, but not within six months after a municipal election, regular or special.

If at any time a Party determines to terminate the employment relationship, except in cases of Employee’s gross misconduct or death, the terminating Party shall give ~~thirty ninety~~ days’ prior written notice thereof to the other Party (the “Termination Notice”). If the termination is by the City with cause other than gross misconduct, or by Employee for the City’s material breach of its obligations under the Agreement, the other Party shall be given ~~thirty ninety~~ days within which to cure the cause for termination (the “Cure Period”). Unless Employee on his own part, or a majority of the Council on the City’s part, finds that the other Party has effectively cured the cause for termination, the termination shall become effective at the end of the Cure Period.

4. Severance. In the event that the City terminates the employment relationship without cause or Employee terminates the employment relationship for material breach, as provided in Section 3 of this Agreement, the City agrees to pay Employee, in addition to any other amounts that may be due Employee, a severance equal to ~~six~~ twelve months' salary ~~if termination occurs within one year from the date of appointment, or three months' salary if termination occurs at any time thereafter while this Agreement is in effect~~, payable in one lump sum within fourteen days after such termination becomes effective.

5. Duties. Employee agrees to diligently and faithfully fulfill the duties and functions prescribed by the Hildale City Code, as well as any other duties and functions that the City Council may assign, and such duties and functions as are customary or proper to the role of a City Manager. Employee shall perform these duties and functions in compliance with all applicable laws, regulations, ordinances, resolutions, policies, and procedures.

6. Performance Evaluations. The Council shall prepare and present to Employee for mutual approval, a performance plan that specifies benchmark areas of accomplishment annually and for any renewal years. Such plan, which shall be subject to annual review and change as deemed necessary by Council, with agreement of the Employee, shall be the basis for annual performance review.

The Council may review Employee's job performance once annually during each employment year. The reviews shall be conducted during the month of May of each year of the employment thereafter. If the Council fails to conduct an annual review by the end of May, Employee has the right to request the Council conduct a review. If Employee fails to request a review by the end of May, the Parties, by their action, will be deemed to have waived the review for that year of the Agreement.

7. Reassignment. In the event of Employee's change to a different position within the City, Employee shall remain subject to the provisions of this Agreement, including any modifications hereto.

8. Compensation. Beginning on the Effective Date of this Agreement, the City will pay Employee a salary of ~~\$75,000.00~~ \$89,000 per year, payable in accordance with the City's normal payroll practices. ~~After the first twelve months of this Agreement,~~ Employee's compensation will be subject to review and adjustment on an annual basis in the reasonable discretion of the City, and any change will be effective beginning with the first payroll period following notification of the change.

9. City Property. The City agrees to provide equipment and other resources to Employee as reasonably necessary to performing City Manager duties, including without limitation a vehicle for Employee's use while on City business, communication devices, and information technology hardware and software, which use shall be subject to all applicable City policies and procedures. All such City Property shall be returned by Employee to City upon termination of the employment relationship.

10. Personal Leave. As of the Effective Date, ~~the City will credit eighty hours to Employee's personal leave balance, to be used in accordance with the City's Personnel Policies. Thereafter,~~ Employee will continue to accrue personal leave at the rate specified in policy. ~~Administrative leave balances will be accounted for by the Employee and available for inquiry from the Mayor or City Council.~~

11. Benefits. During the term of this Agreement, Employee will be eligible to receive and participate in all employment benefits that the City offers to full-time employees, in accordance with the respective terms and conditions of said plans and programs. These benefits may be modified or eliminated at any time in the sole discretion of the City, without discrimination.

12. Expenses. Employee is authorized to incur ordinary and reasonable expenses in accordance with budgets and guidelines established by the City from time to time. The City will reimburse Employee for all such reasonable expenses, ~~which are not directly paid by the City credit card,~~ in accordance with its expense reimbursement policy in effect from time to time. In any event, Employee will submit a written expense report and evidence of such expenditures no later than thirty (30) days after incurring such expenses.

13. Residence. Employee agrees to establish a residence within ~~a reasonable response distance from~~ the City's geographical limits. ~~as soon as reasonably practicable.~~ The City shall directly pay rent for City Manager housing, retroactive to March 2022, for a recurring 12-month lease until the City establishes a residence for the City Manager.

~~**14. Moving Expenses.** The City agrees to pay Employee Three Thousand Dollars (\$3,000) toward his moving expenses for the relocation of the Employee's household to a new residence selected by the Employee, which shall be paid on the first regular payroll date following the Effective Date of this Agreement.~~

The following sections shall be renumbered in sequence, section 15 will be renumbered section 14 and so forth.

15. Working Hours. The Parties acknowledge that the proper performance of the City Manager's duties require flexibility in Employee's working hours and will also often require the performance of necessary services outside of the City's normal business hours which, as of the Effective Date, are Monday through Friday, ~~8:00 am~~ **9:00 am** to 5:00 pm.

Consequently, the Parties agree that Employee will regularly work a minimum of forty hours per week on a four-day schedule (Monday-Thursday, excluding holidays), subject to adjustment as the City may reasonably require. Employee may work remotely, if necessary, at Employee's discretion. During the City's normal business hours, Employee shall be reasonably available to receive and respond to phone calls and emails, including on days that Employee is not regularly scheduled to work.

16. Professional Development. The City hereby agrees to budget and pay for the costs, including travel and per-diem, of Employee's attendance at courses, meetings, seminars, and other events, as well as subscriptions and membership dues in professional associations, as necessary for Employee's continued professional development.

17. Outside opportunities. The employment provided for by this Agreement shall be Employee's primary employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to the City and the community, Employee may, at his discretion, elect to accept teaching, consulting, or other business opportunities insofar as they do not materially interfere with Employee's responsibilities under this Agreement.

18. Future Appropriations. This Agreement shall not be construed in any manner to bind the future legislative discretion of the City or its future budget appropriations. Where future appropriations are unavailable or insufficient to meet the obligations provided for herein, such circumstances shall constitute a termination without cause by the City.

19. Waiver of Rights. If in one or more instances, either Party fails to insist that the other Party perform any of the terms of this Agreement, such failure shall not be construed as a waiver by such party of any past, present, or future right granted under this Agreement, and the obligations of both parties under this Agreement shall continue in full force and effect.

20. Severability. Whenever possible, the provisions of this Agreement should be interpreted in such a manner as to be effective under applicable law. Nevertheless, if any clause or provision of this Agreement shall be adjudged invalid or

unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity of any other clause or provision which shall remain in full force and effect.

21. Governing Law. The laws of the State of Utah shall govern the interpretation, validity, and effect of this Agreement. Subject to Section 22 of this Agreement, venue for any action concerning the enforcement of this Agreement shall be in any court of competent jurisdiction located in the State of Utah, whether state or federal court, and the Parties each waive any objection to venue laid therein.

22. Arbitration. If there is a dispute hereunder which the Parties cannot resolve between themselves, the Parties agree to attempt to settle the dispute by nonbinding arbitration before commencement of litigation. The arbitration shall be held under the rules of the American Arbitration Association. The matter in dispute shall be submitted to an arbitrator mutually selected by the City and Employee. In the event that the Parties cannot agree upon the selection of an arbitrator within seven (7) days, then within three (3) days thereafter, they shall request the presiding judge of the Fifth District Court in and for Washington County, State of Utah, to appoint an independent arbitrator. If court is unable to appoint such arbitrator, the parties will request the United States District Court to appoint an arbitrator pursuant to the Employment Arbitration Rules, of the American Arbitration Association. The cost of any such arbitration shall be divided equally between the City and Employee. The results of the arbitration shall be non-binding on the parties, and any party shall be free to initiate litigation after the final decision of the arbitrator.

23. Attorney's Fees and Costs. In the event either party shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition in this Agreement, it is mutually agreed that the prevailing party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorney's fees, necessary witness fees and court costs to be determined by the court in such action.

24. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with regard to the matters contained herein and supersedes all prior agreements to the extent they are inconsistent. Any modification of this Agreement must be in writing and executed by both Parties.

25. Notices. All notices, requests, demands or consents required hereunder shall be in writing and shall be delivered (a) in person, (b) by courier or overnight service, (c) mailed by first class registered or certified mail, return receipt requested, or (d) by email transmission, as follows:

If to Employee:

Eric A. Duthie

~~246 West McLellan Road~~ P.O. Box 842478
~~Mesa, AZ 85201~~ Hildale, UT 84784

If to the City:

Hildale City Recorder
320 East Newel Avenue
P.O. Box 840490
Hildale, Utah 84784

The notice date will be deemed the date of delivery, if notice is delivered personally or by courier, one business day after sending, if by overnight service or email, or else three business days after sending, if notice is sent by first class mail. Either Party may permanently or temporarily change the address to which notices are to be sent by giving written notice to the other Party in the manner above provided.

26. Acknowledgment of Execution. Employee acknowledges that he or she has carefully read this Agreement, that he or she knows and understands its contents, that no promise or agreement not expressed in this Agreement has been made, that the Agreement is made without relying on any statement or representation by the City, and that he or she has signed this Agreement as his or her own free act.

Signed and executed on the date first specified above.

Eric A. Duthie

Donia Jessop, Mayor

ATTEST:

Athena Cawley, City Recorder