



CITY COUNCIL ACTION FORM

Department	Presented by	Date
Administration	Drew Nelson - City Administrator	September 7, 2021

ITEM

Approval of Amended City Clerk Employment Agreement

BACKGROUND

At the City Council's regular meeting on August 17, 2021, the City Council discussed the annual Performance Evaluation of City Clerk Erin Kelley. Following the review, the City Council directed the City Attorney to revise the Clerk's Employment Agreement to reflect compensation changes to salary and retirement benefits. The changes include increasing the salary from \$75,000 to \$80,000 annually as well as increasing a retirement match from 3% to 5% in the City's 457 Deferred Compensation retirement plan.

FISCAL NOTE

Up to \$6,750, should the Clerk choose to increase their retirement match from 3% to 5%. This amount can be accommodated in the 2021 Annual Budget.

STAFF RECOMMENDATION

Per the direction of the City Council, staff recommends approval of the attached amended Employment Agreement with Erin Kelley in the position of City Clerk.

SUGGESTED MOTION

A City Councilmember should state, "I move to approve the amended Employment Agreement with City Clerk Erin Kelley," followed by a second and a roll call vote.

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement") is entered into and effective as of the 7th day of September, 2021, by and between the **CITY OF SALIDA, COLORADO**, a Colorado municipal corporation, hereinafter referred to as "City" and **ERIN KELLEY**, hereinafter referred to as "Kelley", together referred to as the "Parties."

WITNESSETH:

WHEREAS, City appointed Kelley to serve as City Clerk, which appointment began on June 16, 2020; and

WHEREAS, City continues its desire to employ the services of Kelley as City Clerk; and

WHEREAS, it is the desire of the Salida City Council, hereinafter called "City Council," to provide certain benefits, establish certain conditions of employment, and to set the working conditions of Kelley; and

WHEREAS, Kelley desires to continue employment as City Clerk of the City of Salida; and

WHEREAS, the Parties desire to express the employment relationship in written form;

NOW, THEREFORE, in consideration of the premises, and the mutual covenants and promises hereinafter set forth, the Parties agree as follows:

SECTION I DUTIES

The City hereby agrees to employ Kelley as City Clerk of the City of Salida to perform the functions and duties specified in the job description of the City Clerk and to perform other legally permissible and proper duties and functions as the City Council shall from time to time assign.

SECTION II TERM

(a) Without waiving any rights to renegotiate and/or terminate this Agreement, Kelley's term of appointment began on June 16, 2020, and continues indefinitely until terminated by the City or Kelley as provided for in Section III or IV of this Agreement.

(b) The City Clerk is an appointed City officer who serves at the pleasure of the City Council. Kelley may therefore be removed from office at any time, for any reason or for no reason (for convenience), upon a majority vote of the City Council, at which time this Agreement would terminate, subject only to the provisions set forth in Section III of this Agreement. The City Council and Kelley specifically agree that Kelley's employment with the City is "at will" notwithstanding any personnel or employment rule or policy of the City to the contrary.

(c) Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Kelley to resign at any time from her position with City, subject only to the provisions set forth in Section III of this Agreement.

SECTION III TERMINATION AND SEVERANCE COMPENSATION

(a) For the purposes of this Agreement, termination shall occur when:

- (1) a majority of the City Council votes to terminate Kelley at a duly authorized public meeting; or
- (2) the City Council, or the citizens by initiative, acts to amend any provisions of the Salida Municipal Code pertaining to the role, powers, duties, authority, responsibilities of Kelley's position that substantially changes the form of government, in which case the following shall apply: within ten (10) days following the effective date of such change in the form of government, Kelley must inform the City Council in writing of her election of one of the following two (2) options: (1) that she elects to accept such changes in the form of government and agrees to continue as the City Clerk (or equivalent title under such changed form of government), in which case no termination shall be deemed to have occurred and no Severance Compensation shall be paid; or (2) that she elects to consider the same a termination, in which case she shall leave the employ of the City and Severance Compensation shall be paid; or
- (3) the City Council reduces the base salary, compensation or any other financial benefit of Kelley, unless it is applied in no greater percentage than the average reduction of all City employees; or

(4) Kelley resigns.

(b) In the event that Kelley is terminated pursuant to Section III(a) and provided that Kelley is willing and able to perform her duties under this Agreement, the City shall pay to Kelley "Severance Compensation" in the form of a lump sum payment the amount of one (1) months' aggregate salary. In addition to the applicable Severance Compensation owed hereunder, Kelley shall be paid for all accrued, unused Personal Time Off (PTO) leave, and one (1) month's health insurance premiums under the insurance policy in force at the time of such termination.

(c) Notwithstanding anything herein to the contrary, the City Council may terminate Kelley upon a finding by the City Council of an Improper Action. For purposes of this paragraph, "Improper Action" shall mean (i) conduct by Kelley which is fraudulent or dishonest, or (ii) Kelley's conviction of a felony or crime involving moral turpitude under any federal or state law. In the event Kelley is terminated for Improper Action, the City shall have no obligation to pay any severance amount or any Severance Compensation. Any termination for Improper Action shall require five (5) days' notice to Kelley of the reasons for termination, an opportunity for a hearing before the City Council and a majority vote by the entire City Council.

(d) In the event Kelley voluntarily resigns her position with the City at any time during the term of this Agreement, then Kelley shall give the City at least two (2) weeks written notice in advance, unless the Parties otherwise agree. Voluntary resignation by Kelley will result in a loss of all Severance Compensation, if any, that would otherwise be due and owing to her by the City under this Agreement, unless otherwise determined by the City Council in its sole and absolute discretion.

SECTION IV DISABILITY

(a) If Kelley is permanently disabled or is otherwise unable to perform her duties because of sickness, accident, injury, mental incapacity or health for a period of four (4) successive weeks beyond any accrued sick leave, or for twenty (20) working days over a thirty (30) working day period, the City shall have the option to terminate this Agreement, subject to the payment of Severance Compensation set forth in paragraph (b) of Section III.

(b) As used herein, "permanently disabled or otherwise unable to perform her duties" shall be defined as: (1) if Kelley is receiving total permanent disability payments pursuant to any disability program under which she is covered, whether owned by the City or otherwise; or (2) in the absence of such disability program, if (a) Kelley's attending physician certifies that Kelley is unable to perform her duties as set forth herein for the City and that such condition is total and permanent; and (b) in the event that Kelley does not timely consult such attending physician and the City reasonably believes Kelley to be so disabled, the City may require such an examination from a properly qualified physician who shall conduct such examination(s) as is appropriate to determine whether or not Kelley is so totally and permanently disabled; and (c) such condition continues for the period stated in this Section IV.

SECTION V SALARY

(a) City agrees to adjust Kelley's pay for her services rendered hereunder at an annual rate of Eighty Thousand Dollars (\$80,000.00), which sum shall be payable in installments at the same times as other employees of the City are paid.

(b) In addition, City agrees to consider and adjust the base salary and other benefits to Kelley based upon the performance evaluation process described in Section VI of this Agreement; PROVIDED, HOWEVER, that said consideration and salary adjustment shall be solely within the discretion of the Mayor and City Council, and shall be merit based.

SECTION VI PERFORMANCE EVALUATION

(a) The Mayor and City Council shall review and evaluate the performance of Kelley at least annually, commencing in or around July of each year.

(b) All such reviews and evaluations shall be in accordance with specific criteria developed jointly by the Mayor, City Council and Kelley. The criteria may be added to or deleted from as the Mayor and City Council may from time to time determine, in consultation

with Kelley. The Mayor and City Council shall provide Kelley with an adequate opportunity for Kelley to discuss her evaluation with the Mayor and City Council.

(c) The Parties agree that the Mayor and City Council has the right, in its sole discretion, in addition to and not in replacement of the procedures set forth in this Section, to consider Kelley's performance in executive session in compliance with the Colorado Sunshine Law and the City Code.

SECTION VII HOURS OF WORK

It is recognized that this is a full-time position for which Kelley must devote a great deal of time outside normal office hours to business of the City and will necessarily be engaged in work during certain evening and weekend hours. As such, Kelley shall be entitled to arrange and organize her work schedule to best achieve her duties and responsibilities.

SECTION VIII AUTOMOBILE MILEAGE REIMBURSEMENT

Kelley shall be reimbursed at the then existing I.R.S. rate for mileage incurred using her personal automobile for all trips expended in the performance of her duties as City Clerk which require travel in excess of ten (10) miles in one direction from the corporate limits of the City.

SECTION IX PERSONAL TIME AND OTHER LEAVE

In all respects, Kelley shall be subject to, entitled to and governed by the general policies of the City identified in its Personnel Manual, as amended from time to time, regarding Personal Time Off ("PTO"), and other leaves, unless otherwise provided for herein, or otherwise required by law.

SECTION X BENEFITS AND PERSONNEL POLICIES

Except as otherwise provided herein, or otherwise required by law, Kelley shall enjoy the benefits of, be entitled to, and be subject to, all the general City policies for all full-time employees listed within the City personnel manual, as amended from time to time, regarding all benefits and policies, including, but not limited to, medical, dental and life insurance and long-term disability insurance. Notwithstanding the foregoing, the City shall match the equivalent of up to five percent (5%) of Kelley's salary to Kelley's 457 Plan if she chooses to enroll in such Plan, at such times as it makes such Plan contributions for City employees generally, and Kelley shall become immediately vested in the balance of her Plan account. Kelley shall receive a City-issued cell phone for her business use, under the same terms and conditions that such phones are provided to other City employees.

SECTION XI INDEMNIFICATION

Kelley shall enjoy the benefits of City employees provided in the City of Salida Personnel Policies and Procedures and in the Colorado Revised Statutes regarding tort, professional liability claims or demands, and any other legal actions, arising out of an alleged act or omission occurring in the performance of her duties as City Clerk.

SECTION XII GENERAL AND MISCELLANEOUS PROVISIONS

(a) **Binding Effect; Enforcement.** This Agreement shall be and become binding upon, and inure to the benefit of, the Parties hereto, their heirs and personal representatives. This Agreement shall be construed and interpreted according to the laws of the State of Colorado, and any action necessary to enforce, construe, or interpret the within shall be maintained in the District Court in and for Chaffee County, Colorado. Nothing in this Agreement shall prevent or preclude the Parties' mutual agreement to submit any dispute arising from this Agreement to mediation or arbitration.

(b) **Facilities and Equipment.** The City shall furnish office facilities, equipment and assistance for Kelley as the City deems appropriate for the performance of Kelley's duties.

(c) **Compliance with TABOR.** It is the intent of the City and Kelley to comply with the provisions of Article X, Section 20 of the Constitution of the State of Colorado, including in particular subsection 4(b), as approved by the voters on November 3, 1992. Therefore, the Parties agree that this Agreement is subject to an annual appropriation by the City Council and that the failure to make such appropriation, unless such action is the result of a prior termination for Improper Action under Section III(c) of this Agreement, will be deemed a termination within the meaning of Section III(a). The Parties further agree and acknowledge that the City has established and shall maintain an adequate present cash reserve held for future payments, if required, in an amount sufficient to pay any severance compensation required by this Agreement. It is the intent of this Section that the City shall be entitled to reasonable notice and a reasonable opportunity to cure any failure to appropriate sufficient funds prior to any determination that Kelley's employment is terminated.

(d) **Assignment.** The rights and obligations of the City under this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the City. Kelley shall not assign or otherwise convey any of her rights and obligations hereunder without the express written permission of the City Council.

(e) **Notices.** All notices provided for herein shall be in writing and shall be personally delivered or mailed by registered or certified United States mail, postage prepaid, return receipt requested, to the Parties at the addresses given below or at such other addresses that may be specified by written notice in accordance with this paragraph:

If to the City: Mayor, City of Salida
The Toubert Building
448 E. First Street, Suite 112
Salida, CO 81201

With a copy to: City Attorney Nina Williams
Wilson Williams LLP
15306 West 93rd Avenue
Arvada, CO 80007

If to Kelley: Erin Kelley
10010 Sioux Circle
Salida, CO 81201

(f) **Entire Agreement.** This instrument contains the entire agreement of the parties and it may not be changed orally, but only by written agreement signed by the party against whom enforcement of any waiver, change, modification, extension or discharge is sought. No action by one or more City Council members may amend, modify, alter, or change this Agreement unless approved by majority vote of the entire City Council.

(g) **Approval.** By execution of this Agreement, the City acknowledges that all required approvals have been obtained by the City Council so that this Agreement shall be fully effective and binding upon the parties hereto.

(h) **Multiple Counterparts; Electronic Signature.** This Agreement may be executed in any number of counterparts, each of which together shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument. The signatures required for execution may be transmitted by facsimile or electronically (scan and e-mail), and such facsimile or electronic signature shall be deemed a duplicate original, shall be effective upon receipt, may be admitted in evidence, and shall fully bind the party making such signature.

IN WITNESS WHEREOF, the parties have affixed their signatures as of the date and year first above written.

CITY OF SALIDA, COLORADO

ATTEST:

Sara Law, Deputy City Clerk

P.T. Wood, Mayor

Erin Kelley
