

RESIGNATION AGREEMENT

THIS RESIGNATION AGREEMENT is made and entered into effective as of the date of execution by all Parties, by and between Brian K. McBroom ("McBroom") and the City of Commerce City (the "City"). McBroom and the City are collectively referred to as "the Parties."

RECITALS

A. McBroom and the City entered into that "Employment Agreement of Brian K. McBroom as City Manager for the City of Commerce City, Colorado" (the "Employment Agreement") employing McBroom as the City Manager, effective April 16, 2012, which was subsequently amended by action of the City Council following annual evaluations.

B. McBroom desires to resign as the City Manager to seek new challenges and opportunities, without the request of the City Council that he do so.

C. The City desires to fulfill and confirm the terms and conditions of the "Employment Agreement" with McBroom by entering into this Resignation Agreement.

D. McBroom desires to enter into this Resignation Agreement (the "Agreement") consistent with the "Employment Agreement."

TERMS OF AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants as set forth below, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Severance Amount and Payment. In accordance with Sections 7 and 15 of the Employment Agreement, McBroom shall receive Severance which consists of the following:

(a) \$161,819.42, which is equal to nine (9) months of McBroom's current gross annual base salary, to be paid monthly, via nine (9) separate monthly payments, which amount shall be reduced by all taxes and withholdings required by law, and further reduced by any additional salary earned by McBroom during the nine (9) months following the effective date of McBroom's resignation, provided the City may pay this amount according to the City's regular payroll schedule in its discretion;

(b) Accrued but unused Annual Leave calculated as of McBroom's resignation, at the hourly rate of \$103.7304 paid within thirty (30) days McBroom's resignation, which amount shall be reduced by all taxes and withholdings required by law; and

(c) Payment, by reimbursement, of all premiums necessary for McBroom to maintain family health and dental insurance coverage through COBRA or other applicable laws or regulations providing for continuation coverage for nine (9) months following the date of McBroom's resignation, defined below. In accordance with Internal Revenue Service Publication 15-B, these payments shall not be reduced by payroll taxes.

2. Resignation; Availability of McBroom to the City. McBroom's resignation shall be effective as of the later of twenty-one (21) days following the City Council's approval of this

Resignation Agreement or date of McBroom's execution of this Resignation Agreement (which shall not be more than twenty-one (21) days after the City Council's approval of this Resignation Agreement, provided McBroom shall use General Leave for any period following his execution of this Resignation Agreement and the City Council may appoint an acting city manager at any time). McBroom agrees to be reasonably available to the City during the period in which McBroom is receiving Severance payments hereunder for consultation regarding circumstances that he may have specific knowledge otherwise unavailable to City staff as a result of his employment as City Manager.

3. Waiver, Release and Discharge by the City. In consideration of the mutual covenants and promises contained herein, the receipt and sufficiency of which are hereby acknowledged, the City and its current Mayor and Councilmembers hereby fully and forever release and discharge McBroom, in both his official and individual capacity, as well as his heirs, executors, administrators, personal representatives, agents, attorneys, successors and assigns, from any and all claims, demands, obligations, actions, damages, losses, expenses, legal expenses, attorneys' fees, compensations, rights and causes of action, liabilities for damage of any kind and nature whatsoever, resulting from or in any way arising or growing out of McBroom's employment or relationship with the City, to the date of execution of this Agreement, EXCEPT for the rights and obligations created by this Agreement.

4. Waiver, Release and Discharge by McBroom.

(a) McBroom acknowledges and agrees that by entering into this Agreement, he: (a) understands the language used in this Agreement and the Agreement's legal effect; (b) gives up the right to sue the City for damages under any claim or cause of action waivable under local, state, or federal law; (c) will receive compensation and consideration under this Agreement; (d) has been informed to consult with an attorney before signing this Agreement; (e) was given no less than twenty-one (21) days to consider whether to sign this Agreement; and (f) was given seven (7) days after signing this Agreement to revoke or cancel the Agreement for any reason (the "Revocation Period"). McBroom understands and agrees that any revocation of this Agreement by him must be in writing and served on the City Attorney on or before the seventh (7th) day following his signing of the Agreement. If McBroom does not revoke this Agreement within seven (7) calendar days after he signs it, this Agreement shall become final and binding and shall be irrevocable.

(b) McBroom knowingly and voluntarily waives, releases and discharges the Mayor and City Council, and the City and its employees, officers, officials and agents, from any and all claims, demands, or liabilities whatsoever, whether known or unknown to exist by McBroom, which McBroom ever had or may now have against the Mayor and City Council, and the City and its employees, officers, officials and agents, as to any claims, demands, or liabilities in connection with McBroom's relationship or employment with the City (including without limitation his Employment Agreement, as amended, and the City's Employee Policies), and the resignation of that employment, or pursuant to any federal, state or City employment or discrimination laws, regulations, or other requirements.

(c) McBroom further knowingly and voluntarily waives, releases and discharges the Mayor and City Council, and the City and its employees, officers, officials and agents from

any and all claims, demands, or liabilities, or rights whatsoever, whether known or unknown to exist by McBroom, which McBroom ever had or may now have, or may in the future have, against the Mayor and City Council, and the City and its employees, officers, officials and agents, arising under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 1983, the Civil Rights Act of 1991, the Employee Retirement Income Security Act of 1974, any applicable Colorado Act, the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, the Family and Medical Leave Act, as well as common law and other actions for claims, including, but not limited to, breach of contract, breach of good faith and fair dealing, breach of implied contract, and promissory estoppel, as such claims may relate to McBroom's present relationship or employment with the City. In the event that McBroom has filed any suit or complaint with any local, state, or federal agency or court against the Mayor and City Council, and the City and its employees, officers, officials and agents, McBroom shall indemnify and hold harmless the City from the imposition of any judgment or penalties against the Mayor and City Council, and the City and its employees, officers, officials and agents resulting from McBroom's filing of a suit or complaint.

(d) This release shall not affect McBroom's ability to enforce any of the rights and obligations created by this Agreement or to file for and be awarded unemployment compensation under applicable state law as provided herein.

5. Colorado (Open) Records Act. McBroom understands and agrees that under Colorado's Public (Open) Records Act, C.R.S. § 24-72-200.1, *et seq.* (the "Act"):

(a) Subject to certain exceptions in the Act, the City shall deny the right of public inspection to McBroom's personnel files to the extent required by law;

(b) This Agreement is a public record; and

(c) "Personnel files" exclude, among other things, "any amount paid or benefits provided incident to termination of employment."

6. Disclosure to Prospective Employers or Persons Inquiring Regarding McBroom's Employment. The City agrees to direct all inquiries by prospective employers or persons inquiring regarding McBroom's employment with the City to the City's **Director of Human Resources**. The verbal or written response (letter or e-mail) by the Human Resources Department will provide that McBroom was employed by the City as City Manager from April 16, 2012 through the date of his resignation; as Interim City Manager from November 15, 2011 through April 15, 2012; as Deputy City Manager from March 14, 2011 through November 14, 2011; as Acting Deputy City Manager from January 3, 2011 through March 13, 2011; and as Director of Community Development from February 11, 2008 through January 2, 2011; that McBroom was an employee in good standing throughout this period; and that McBroom voluntarily resigned as City Manager as of the date of his resignation.

7. Attorneys' Fees. The Parties understand and agree that each Party is responsible for their own attorneys' fees and costs related to this Agreement.

8. Authority and Nonassignment. The Parties to this Agreement expressly warrant that they have authority to enter into this Agreement, and further expressly warrant and represent that they have not sold, assigned, granted or transferred to any other person, corporate or natural, any claim, action, demand or cause of action encompassed by this Agreement.

9. Prosecution of Released Claims. This Agreement shall be deemed breached and a cause of action accrued thereon immediately upon the commencement or continuation of any action based upon any claim, demand, action or cause of action released by this Agreement. In any such action, this Agreement may be pleaded as a defense, or by way of counterclaim or crossclaim, and shall be admissible into evidence without any foundation testimony or authentication testimony whatsoever.

10. No Reliance on Other Parties' Representations. The Parties represent and agree that, in reaching this Agreement, no Party has relied upon any representation or statement made by the other not set forth herein.

11. Mistake or Modification. The Parties expressly understand and agree that the signing of this Agreement shall be forever binding, and no rescission, modification or release of the Parties from the terms of the Agreement will be made for mistakes or any other reasons.

12. Competency. The Parties represent that they are legally competent to execute this Agreement and accept full responsibility and assume the risk of any mistake of fact as to any damages, losses, or injuries, whether disclosed or undisclosed, sustained as a result of McBroom's employment, and separation from employment, any claim brought or which could have been brought, or any other matter between the Parties occurring up to the date of signing this Agreement.

13. Miscellaneous.

(a) Successors and Assigns. This Agreement shall be binding in all respects upon the successors and assigns of the Parties.

(b) Governing Law. This Agreement shall be governed by the laws of the State of Colorado. Venue for any action hereunder shall be in the District Court, County of Adams, State of Colorado, and the Parties waive any right to remove any action to any other court, whether state or federal.

(c) Counterparts. This Agreement may be executed in counterparts, all of which shall have full force and effect.

(d) Integration. This Agreement and its exhibits constitute the entire agreement of the Parties and a complete merger of all prior negotiations and agreements. This Agreement shall not be modified except in writing signed by the Parties or their authorized representatives.

(e) Headings. The headings of paragraphs herein are intended solely for the convenience of reference and shall not control the meaning or interpretation of any of the provisions of this Agreement.

(f) Gender and Number. Whenever applicable, the pronouns designating the feminine, masculine or neuter shall equally apply to the feminine, masculine and neuter genders; the singular shall include the plural and the plural shall include the singular.

(g) Subsequent Agreements. The Parties to this Agreement agree that, upon the reasonable request of any other Party, he or it shall execute, acknowledge and deliver any additional instruments or documents that may reasonably be required to carry out the intentions of this Agreement.

(h) Fees and Costs. In any action or proceeding by the City to enforce, interpret, or seek damages for violation of this Agreement in which the City substantially prevails, McBroom shall pay all attorneys' fees, litigation expenses, and court costs incurred by the City.

(i) Recitals. The Recitals in this Agreement are incorporated by this reference.

IN WITNESS WHEREOF, this Resignation Agreement has been executed on the date first above written, to be effective on such date.

CITY OF COMMERCE CITY, COLORADO

Benjamin A. Huseman, Mayor

Date:_____

ATTEST:

Dylan Gibson, CMC, Interim City Clerk

BRIAN K. MCBROOM

STATE OF COLORADO)
) ss.
COUNTY OF ADAMS)

The foregoing Agreement was subscribed and sworn to before this _____ day of _____, 2020 by Brian K. McBroom.

Witness my hand and official seal.

My commission expires: _____

Notary Public