

**EMPLOYMENT AGREEMENT OF MATTHEW R. HADER AS INTERIM CITY
ATTORNEY FOR THE CITY OF COMMERCE CITY, COLORADO**

THIS INTERIM EMPLOYMENT AGREEMENT (“Agreement”) is made and entered into this November 1, 2020 by and between Matthew R. Hader (“Mr. Hader”) and the City of Commerce City, Colorado, acting through its City Council (“Commerce City”). Mr. Hader and Commerce City agree as follows:

1. Employment. Effective November 19, 2021, upon the separation of the current City Attorney, Mr. Hader will be employed as Interim City Attorney of Commerce City for an indefinite period, not to exceed six (6) months unless extended by mutual agreement of the parties, as an employee at will, subject to the terms and conditions of this Agreement. The parties expressly intend that Mr. Hader’s appointment is in a temporary and interim capacity to enable the City Council to recruit and appoint a permanent City Attorney.

2. Duties. Mr. Hader is employed as Interim City Attorney in a fulltime capacity and as such Mr. Hader is the interim chief legal officer of Commerce City with the duties and functions specified in the Charter of Commerce City for the City Attorney.

3. Compensation. Commerce City agrees to pay Mr. Hader an annual base salary of \$192,000.00 while Mr. Hader is serving as Interim City Attorney. Payment of the annual base salary shall be paid in equal installments on a bi-weekly basis during the term of this Agreement except the first and last installments shall be prorated based on a start and end dates of Mr. Hader’s appointment.

4. Benefits. During his appointment, Mr. Hader shall continue to receive all benefits he received or that were available to him in his position as Deputy City Attorney, including without limitation his deferred compensation, leave benefits, participation in Commerce City’s 457 Deferred Compensation Plan, and health, dental, vision, and term life insurance generally available to Commerce City employees.

5. Facilities. Commerce City shall furnish office facilities, office technology, and assistance for Mr. Hader as Commerce City deems appropriate.

6. Limitation on Professional Activities. Mr. Hader shall not engage in any non-City employment activities for compensation without the express written consent of the City Council. It is the intent of the parties that Mr. Hader’s employment agreement is for fulltime employment. Participation in professional organizations and voluntary programs are encouraged provided they are consistent with the responsibilities of the Interim City Attorney for Commerce City. Commerce City shall pay for Mr. Hader’s professional development activities considered consistent with his employment, including licensure fees, continuing legal education, and professional dues (i.e.g, organizational and association dues).

7. Application for Permanent City Attorney Position. Mr. Hader shall have the right, in his sole discretion, to apply for the permanent position of City Attorney for Commerce City.

8. Limitation on Termination; Reversion to Deputy City Attorney Position. Unless Mr. Hader voluntarily resigns his employment with Commerce City, if for any reason Mr. Hader no longer serves in the position of Interim City Attorney or does not succeed to the position of City Attorney for Commerce City, Mr. Hader shall return to his prior position held with Commerce City as Deputy City

Attorney with his salary and benefits to be equal to the salary and benefits he held at the time he became Interim City Attorney, plus any equity increase that would have applied following the 2021 pay year and a 4.00% salary increase in lieu of a merit increase for the 2021-2022 evaluation period effective upon his return to his prior position, and will no longer be entitled to any compensation or benefits under this Agreement, unless otherwise negotiated by Commerce City and Mr. Hader.

9. Resignation. If Mr. Hader voluntarily resigns his appointment as Interim City Attorney with Commerce City, Mr. Hader shall provide a minimum of thirty (30) days written notice, unless otherwise negotiated by Commerce City and Mr. Hader. Upon the effective date of resignation, Mr. Hader shall be entitled to no further compensation or benefits under this Agreement except as provided in Section 8.

10. Termination.

- a. The City Council shall not terminate Mr. Hader’s employment with Commerce City.
- b. The City Council may terminate Mr. Hader’s appointment as Interim City Attorney with or without Cause, as defined below, prior to the expiration of this Agreement.
- c. If Commerce City intends to consider termination of Mr. Hader’s appointment as Interim City Attorney for Cause, Commerce City shall give Mr. Hader written notification stating the matters constituting the basis for such action (“Cause Notice”) at least eleven (11) days before it may consider termination. If Mr. Hader desires to dispute whether the matters stated in the Cause Notice are accurate or whether they constitute Cause, he shall have the right to do so by submitting written basis for such dispute to the City Council given within ten (10) days after the provision of the Cause Notice.
- d. For purposes of this Agreement, Cause shall be:
 - (1) Conduct by Mr. Hader which is fraudulent or dishonest;
 - (2) Mr. Hader’s conviction of a felony or crime involving moral turpitude under any federal or state law;
 - (3) Gross negligence or malfeasance in office; or
 - (4) Excessive use of alcohol or drugs which renders Mr. Hader unfit or unable to perform his duties, as determined by his supervisor.

11. Severance.

a. Commerce City shall pay Severance, as defined below, to Mr. Hader if either: (1) Mr. Hader’s appointment as Interim City Attorney is terminated by the City Council without Cause; or (2) within three (3) months of his return to the position of Deputy City Attorney, Mr. Hader’s employment is terminated without Cause, Mr. Hader is demoted without Cause, or the position of Deputy City Attorney is eliminated, provided severance shall not be payable if either: (1) the termination or demotion is for Cause; (2) Mr. Hader resigns his appointment or position; (3) Mr. Hader succeeds to the position of City Attorney or another position with Commerce City; or (4) another person is appointed to the position of City Attorney and Mr. Hader returns to his prior position.

b. Severance shall be:

- (1) Three (3) months' Annual Base Salary at Mr. Hader's then current rate of Annual Base Salary (including the salary established by this Agreement);
- (2) If Mr. Hader's employment is terminated: (A) compensation for all accrued paid holidays and unused, accrued General Leave in accordance with the City's Employee Policies; and (B) premiums necessary for Mr. Hader to maintain family health and dental insurance coverage through COBRA or other applicable laws or regulations providing for continuation coverage for three (3) months.

c. Severance shall be paid monthly unless otherwise agreed to by Commerce City and Mr. Hader, and shall be reduced by all taxes and other withholdings required by law, and by any additional salary earned by Mr. Hader from primary employment during the period of severance.

12. Compliance with Law. Commerce City and Mr. Hader intend to comply with the provisions of Article X, Section 20 of the Constitution of the State of Colorado including, in particular, subsection 4(b). Commerce City and Mr. Hader agree that this Agreement is subject to an annual appropriation by the City Council and that the failure to make such appropriation will be deemed a removal of Mr. Hader from the position of Interim City Attorney subject to Section 8.

13. Indemnification. In addition to any requirement of Federal, State, or local law, Commerce City shall defend, save harmless, and indemnify Mr. Hader against any and all claims, losses, damages, judgments, interest, settlements, fines, courts costs, and other reasonable costs and expenses of legal proceedings including attorney's fees and any other liabilities incurred by, imposed upon or suffered by Mr. Hader in connection with or resulting from any claim, action, suit or proceeding, actual or threatened, arising out of an alleged act or omission in the performance of Mr. Hader's duties as Interim City Attorney or resulting from the exercise of judgment or discretion in connection with the performance of duties or responsibilities on behalf of Commerce City unless the act or omission involves willful or wanton misconduct. Mr. Hader may request Commerce City to provide independent legal representation at Commerce City's expense and Commerce City shall not unreasonably withhold approval. Legal representation provided by Commerce City for Mr. Hader shall extend until a final determination of the legal action, including any appeals brought by either party. Any settlement of any claim must be made with prior approval of Commerce City in order for indemnification as provided in this section to be available.

14. Survival. Sections 8, 10, 11, 12, and 13 shall survive termination of this Agreement.

15. Entire Agreement. This Agreement constitutes the entire agreement of the parties as to the subject matter hereof and may not be changed orally but only by written agreement signed by both parties for any waiver, change, modification or extension.

16. Binding Effect. This Agreement shall be binding upon Commerce City and Mr. Hader and, as applicable, to their heirs, personal representatives, successors and authorized assigns.

17. Assignment. The rights and obligations of this Agreement are personal in nature and shall not be assigned or otherwise conveyed without the prior written consent of both parties.

18. No Third-Party Beneficiary. Commerce City and Mr. Hader expressly intend that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to Commerce City and Mr. Hader, and nothing contained in this Agreement shall give or allow any such claim or right of action by any person other than Commerce City and Mr. Hader. Commerce City and Mr. Hader expressly intend that any person other than Commerce City or Mr. Hader receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

19. Severability. The validity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. If any provision of this Agreement is held to be invalid, the parties shall negotiate and diligently seek to reach agreement regarding the intent of the parties concerning any such invalid provision. Accordingly, if any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.

IN WITNESS WHEREOF, the City of Commerce City, Colorado has caused this Agreement to be signed by its Mayor, attested by its City Clerk and impressed with its corporate seal, all as duly authorized by its City Council, and Matthew R. Hader has affixed his signature to this Agreement.

COMMERCE CITY:

Benjamin A. Huseman, Mayor

ATTEST:

Dylan A. Gibson, City Clerk

APPROVED AS TO FORM:

Robert Sheesley, City Attorney

MATTHEW R. HADER:
