

EMPLOYMENT AGREEMENT

Lee Zarzecki, City Attorney
CITY OF COMMERCE CITY, COLORADO

CONTENTS

EMPLOYMENT AGREEMENT	1
ARTICLE I: Term, Duties, and Authority	
Section 1.01. Term	2
Section 1.02. Duties and Authority.....	2
ARTICLE II: Compensation and Benefits	
Section 2.01. Compensation	3
Section 2.02. Insurance Benefits	3
Section 2.03. General Leave	3
Section 2.04. Automobile	3
Section 2.05. Retirement	4
Section 2.06. General Business Expenses.....	4
ARTICLE III: General Work Conditions	
Section 3.01. Performance Evaluation.....	4
Section 3.02. Hours of Work.....	5
Section 3.03. Outside Activities	5
ARTICLE IV: Employment Separation	
Section 4.01. Resignation	5
Section 4.02. Termination	5
Section 4.03. Severance	6
ARTICLE V: General Covenants	
Section 5.01. Indemnification	6
Section 5.02. Bonding	6
Section 5.03. Other Terms and Conditions of Employment	7
Section 5.04. General Provisions	7
Section 5.05. Notices	7

ARTICLE I: TERM, DUTIES, AND AUTHORITY

Section 1.01: Term

This Employment Agreement appoints Lee M. Zarzecki to the position of City Attorney with the City of Commerce City, Colorado ("City"), and shall remain in full force and effect from February 15, 2023 until terminated by either the City of Commerce City ("Employer") or Lee Zarzecki ("Employee") as provided in Article IV of this Agreement.

Section 1.02: Duties and Authority

- A. Employer agrees to employ Lee Zarzecki as the City Attorney to perform the functions and duties specified in the City's job description and the City Charter, and City ordinance to perform other legally permissible and proper duties and functions as assigned by Employer, subject to any limitations set forth in this Section. Employer shall not reassign Employee to another position in the absence of Employee's express written consent to such assignment. Employer shall not unreasonably interfere with Employee's performance of Employee's duties.
- B. Employee shall be hired by the City Council and faithfully perform Employee's lawfully prescribed and assigned duties with reasonable care, diligence, skill, and expertise in compliance with all applicable, lawful governing body directives; state, local, and federal laws; and Employer policies, rules, City Charter, and City ordinances as they exist or may hereafter be amended.
- C. Except as may be provided otherwise by applicable law or regulation, Employee shall have the ultimate supervisory and managerial authority and responsibility to hire, direct, assign, reassign, evaluate, change the terms and conditions of employment, and terminate the employment of all staff in the City Attorney's Office consistent with City policies, City ordinances and the City Charter, which authority may be delegated by Employee to such other employees as Employee deems appropriate.
- D. Except as may be provided otherwise by applicable law, regulation, or Employer's agreement with any other person, Employee shall have the authority to establish regulations, rules, and procedures for the City Attorney's Office which the Employee deems necessary for the efficient and effective operation of the Employer.
- E. Employee shall attend and be permitted to attend, whether personally or through a designee of Employee's choosing, all meetings of Employer's governing body, both public and in executive session, with the exception of those executive sessions devoted to the subject of this Agreement, or any amendment thereto, unless otherwise provided by applicable law, regulation, or Employer's agreement with the Employee or any other person.
- F. City Council agrees to promptly communicate and provide Employee a reasonable opportunity to cure all substantive criticisms, complaints, and suggestions with respect to Employee's performance of services pursuant to this Employment Agreement.
- G. Except as may be provided otherwise by applicable law, regulation, or this Agreement, Employee shall carry out Employer's lawful policy directives, goals, and objectives, as communicated to Employee by Employer's governing body, while presenting information and recommendations that allow for fully informed policy decisions that both address immediate needs and anticipate future conditions.

Section 1.03: Ethical Commitments

The Employer expects the Employee to adhere to the highest professional standards. The Employee's actions will always comply with those standards. The Employee agrees to follow the ethics rules, regulations, and laws of Commerce City, the State of Colorado, and federal

law. The Employee shall not endorse candidates, make financial contributions, sign or circulate petitions, or participate in fundraising activities for individuals seeking or holding elected office, nor seek or accept any personal enrichment or profit derived from confidential information or misuse of public time. Employer shall support Employee in keeping these commitments by refraining from any order, direction, or request that would require Employee to violate the Ethics Code. Neither the governing body nor any individual member thereof shall request Employee to endorse any candidate, make any financial contribution, sign or circulate any petition, or participate in any fundraising activity for individuals seeking or holding elected office, nor to handle any matter of personnel on a basis other than fairness, impartiality, and merit.

ARTICLE II: COMPENSATION AND BENEFITS

Section 2.01: Compensation

- A. Base Salary: Employer agrees to pay Employee an annual base salary of \$242,000 payable in installments every 2 weeks at the same time that the other management employees of the Employer are paid.
- B. This Agreement shall be automatically amended to reflect any salary adjustments that are provided or required by the Employer's compensation policies to include all salary adjustments on the same basis as applied to the executive classification of employees and in accordance with Section 3.01, below.
- C. In addition, consideration shall be given on an annual basis to an increase in compensation in a time frame that is in accordance with Section 3.01 below.
- D. At any time during the term of the Agreement, Employer may, in its discretion, review and adjust the salary of the Employee. However, in no event shall the Employee be paid less than the salary set forth in Section 2.01.A. of this Employment Agreement except by separate mutual written agreement between Employee and Employer. Such adjustments, if any, shall be made pursuant to a lawful governing body action. In such event, Employer and Employee agree to provide their best efforts and reasonable cooperation to execute a new agreement incorporating the adjusted salary. If Employee's salary is proposed to be lower than the salary set forth in Section 2.01, Employee shall have the ability to trigger the severance provision in Section 4.03, below.

Section 2.02: Insurance Benefits

- A. The Employer agrees to provide and to pay the premiums for health, hospitalization, surgical, vision, dental, and comprehensive medical insurance for the Employee, at a minimum, equal to that which is provided to all other employees of the City. Employee is responsible to pay the same employee premium contribution as other employees of the City.
- B. The Employer agrees to put into force and to make required premium payments for short-term and long-term disability coverage for the Employee.
- C. Employee shall be entitled, at a minimum, to the highest level of benefits enjoyed by and/or available to other employees, department heads, or general employees of the Employer as provided by the Employer's policies, City Charter, City ordinances, or City personnel rules and regulations.

Section 2.03: General Leave

Upon the effective date of Employee's employment, the Employee shall be credited with 116 General Leave hours. Employee shall be credited an additional 116 General Leave hours after six (6) months of employment. At the beginning of each benefit year (calendar year) beginning in 2025, Employee shall be provided 232 hours of General Leave. Employee shall be provided the same carryover and cash out provisions as the Executive Level rate outlined in

City policy.

Section 2.04: Automobile

The Employer agrees to pay to the Employee, during the term of this Agreement and in addition to other salary and benefits herein provided, the sum of \$350 per month, payable monthly, as a vehicle allowance to be used to purchase, lease, or own, operate, and maintain a vehicle. The Employee shall be responsible for paying for legally required insurance coverage upon such vehicle and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of said vehicle.

Section 2.05: Retirement

The Employer shall enroll the Employee in the City's 401(a) retirement plan at the Executive Leadership level with a mandatory 8% contribution from the Employee and a matching 8% contribution from the Employer. Employee will fully vest in the City's retirement system two (2) years after the effective date of this Employment Agreement..

In addition to the Employer's payment to the 401(a) retirement plan referenced above, Employer agrees to execute, and keep in force, all necessary agreements provided by a Section 457(b) deferred compensation plan for Employee's voluntary participation in such supplemental retirement plan. If Employee voluntarily chooses to participate in the city's 457(b) deferred compensation plan, Employer will match the Employee contribution at 50% of the Employee's contribution up to a maximum amount of 2%.

Section 2.06: General Business Expenses

- A. Employer agrees to budget and pay for professional dues, continuing legal education credits, and subscriptions of the Employee necessary for continuation and full participation in national, regional, state, and local associations, and organizations necessary and desirable for the Employee's continued professional participation, growth, and advancement, and for the good of the Employer.
- B. Employer agrees to budget and pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions to adequately continue the professional development of Employee and to pursue necessary official functions for Employer.
- C. Employer shall not require Employee to use General Leave when participating in professional development activities.
- D. The Employer acknowledges the value of having Employee participate and be directly involved in local civic clubs or organizations. Accordingly, Employer shall pay for the reasonable membership fees and/or dues to enable the Employee to become an active member in local civic clubs or organizations.
- E. Recognizing the importance of constant communication and maximum productivity, Employer shall provide Employee, for business use, a laptop computer, software, mobile phone or a mobile phone stipend of \$136 per month, and/or tablet computer required for the Employee to perform their duties and to maintain communication with Employer's staff and officials, as well as other individuals who are doing business with Employer. Upon termination of Employee's employment, the equipment described herein shall remain the property of the Employer and at the discretion of the Employer any mobile phone number may be transferred to the Employee.

ARTICLE III: GENERAL WORK CONDITIONS

Section 3.01: Performance Evaluation

- A. Each December, Employer shall annually review the performance of the Employee, subject to a

process, form, criteria, and format for the evaluation, which shall be mutually agreed upon by the Employer and Employee.

- a) Employer will meet with Employee within the first sixty (60) days of employment to agree upon initial evaluation criteria.
- B. The annual evaluation process, at a minimum, must include the opportunity for both parties to:
 - a. conduct a session where the Employer and the Employee meet to discuss goals and objectives of both the previous twelve (12) month performance period, as well as the upcoming twelve (12) month performance period;
 - b. discuss Employer's written evaluation of goals and objectives for the previous and upcoming year to the Employee; and
 - c. make annual base salary or other total compensation adjustments as agreed up by Employer and Employee.
- C. The final written evaluation and salary adjustment shall be completed and delivered to the Employee within 30 days of the delivery of the initial written evaluation.
- D. Unless the Employee expressly requests otherwise in writing, Employee's performance evaluation shall at all times be conducted in executive session of the City and shall be considered confidential to the extent permitted by law. Nothing herein shall prohibit the Employer or Employee from sharing the content of the Employee's evaluation with their respective legal counsel.

Section 3.02: Hours of Work

It is recognized that the Employee must devote a great deal of time outside normal office hours on business for the Employer. As such, Employer intends that reasonable time off be permitted to Employee, such as is customary for exempt employees, so long as the time off does not interfere with the normal conduct of the office of the City Attorney. When appropriate, Employee may occasionally work remotely but continue to be available to Employer during hours of work.

Section 3.03: Outside Activities

The employment provided for by this Employment Agreement shall be the Employee's primary employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to the Employer and the community, the Employee may elect to accept limited teaching, consulting or other business opportunities with the understanding that such arrangements must neither constitute or appear to constitute or cause interference with nor a conflict of interest with their responsibilities under this Agreement.

ARTICLE IV: EMPLOYMENT SEPARATION

Section 4.01: Employee Resignation

Employee may voluntarily terminate this Agreement by providing a minimum of 30 days' notice of Employee's voluntary resignation, subject to any applicable requirements set forth by state or local law.

Section 4.02: Employee Termination

- A. For the purpose of this Agreement, termination without cause shall occur when:
 - a. The majority of the City Council votes to terminate the Employee in accordance with City Charter at a properly posted and duly authorized public meeting.
 - b. If the Employer, community, or City Council acts to amend any provisions of the City Charter pertaining to the role, powers, duties, authority, or responsibilities of the Employee's position that substantially changes the form of government, the Employee shall have the right to declare that such amendments constitute termination.
 - c. If the Employer reduces Employee's base salary, compensation, or any other financial

benefit of the Employee, unless it is applied in no greater percentage than the average reduction of all department heads, such action shall constitute a breach of this Employment Agreement and Employee can choose to invoke the Severance provision in Section 4.03, below.

- d. If the Employee resigns following an offer to accept resignation, whether formal or informal, by the majority of the City Council, then the Employee may declare a termination as of the date of the resignation.
 - e. A breach of contract, declared by either party, is not cured within thirty (30) days of written notice describing the conduct that constitutes a breach. Written notice of a breach of contract shall be provided in accordance with the provisions of Section 5.03.
- B. For the purposes of this Agreement, termination for cause shall occur when the majority of the City Council votes to terminate the Employee for one or more of the following reasons:
- a. Failure to meet written performance standards set forth by City Council,
 - b. Intentional conduct by the Employee that is fraudulent or dishonest,
 - c. Employee's conviction of a felony crime involving moral turpitude under any state or federal law,
 - d. Employee's gross negligence or malfeasance;
 - e. Excess use of alcohol or drugs which renders Employee unable or unfit to perform the duties of the job; or
 - f. A sustained policy violation that substantially impedes the Employee's ability to effectively lead the organization.
- C. Employee's refusal to comply with a directive that violates professional ethics shall in no event serve as cause for termination.

Section 4.03: Severance

Severance shall be paid to the Employee when employment is terminated under Section 4.02.

- A. The Employee shall be compensated with payment equal to six (6) months of Employee's current base pay.
- B. The Employee shall be compensated for all unused General Leave.
- C. If the Employee is terminated for cause as defined in Section 4.02 above, then Employee is not eligible for severance.
- D. The termination and severance of Employee must be paid as taxable income.

ARTICLE V: GENERAL COVENANTS

Section 5.01: Indemnification

To the maximum extent permitted by law, the Employer must defend, save harmless, and indemnify the Employee from and against any costs, fines, judgments, fees, expenses, damages, suits, claims, demands, actions, or awards, including but not limited to Employee's reasonable attorney's fees incurred in such action and in enforcing this indemnification provision, incurred in connection with any tort, statutory, constitutional, professional liability, or other cause of action, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as City Attorney, even if said claim is brought/filed following Employee's separation from employment or based upon Employee's own alleged negligence or misconduct, provided that at the time of the alleged act or omission, the Employee was then acting within the scope of his duties. Under these circumstances only, the Employer (and/or its insurer) must pay the amount of any settlement or judgment rendered thereon, and further, the Employer (and/or its insurer) may compromise and settle any such claim or suit and pay the amount of any

settlement or judgment rendered thereon without recourse to the Employee. In connection with those claims or suits involving the Employee in his professional capacity, the Employer must defend the Employee and/or must retain and pay for an attorney to represent the Employee (including all fees and costs) in connection with any such suit, claim, complaint, mediation, arbitration, or similar actions. This Section shall survive the termination of this Agreement.

Section 5.02: Bonding

Employer shall bear the full cost of any bonds that Employee is required to obtain by any law or ordinance.

Section 5.03: Other Terms and Conditions of Employment

The Employer, only upon agreement with Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Employment Agreement, the City Charter, City policy, local ordinances, or any other law.

Section 5.04: General Provisions

- A. **Integration.** This Agreement sets forth and establishes the entire understanding between the Employer and the Employee relating to the employment of the Employee by the Employer. Any prior discussions or representations by or between the Employer and Employee are merged into and rendered null and void by this Employment Agreement. This Employment Agreement may be amended by an express written amendment signed by the Employer and Employee. Such amendments must be stored with, and made a part of, this Employment Agreement.
- B. **Effective Date.** This Employment Agreement shall become effective on February 15, 2024, and shall remain in effect until terminated.
- C. **Severability.** The invalidity or partial invalidity of any portion of this Employment Agreement will not affect the validity of any other provision. In the event that any provision of this Employment Agreement is held to be invalid, the remaining provisions are deemed to be in full force and effect as if they have been executed by both Employer and Employee subsequent to the expungement or judicial modification of the invalid provision.
- D. **Precedence.** In the event of any conflict between the terms, conditions, and provisions of this Employment Agreement and the provisions of Employer's policies, or Employer's ordinance or Employer's rules and regulations, or any permissive state or federal law, then, unless otherwise prohibited by law, the terms of this Employment Agreement must take precedence over contrary provisions of Employer's policies, ordinances, rules, and regulations or any such permissive law during the term of this Employment Agreement.

Section 5.05: Notices

All notices and requests pursuant to this Employment Agreement must be sent as follows:

- A. EMPLOYER: City of Commerce City, City Council, 7887 E 60th Avenue, Commerce City, CO 80022.
- B. EMPLOYEE: Lee Zarzecki, 2865 Hudson Street, Denver, CO 80207.
Notice must be deemed given as of the date of personal service, Federal Express, certified mail or as the date of deposit of such written notice in the course of transmission in the United States Postal Service.

THIS AGREEMENT has been executed as of February 15, 2024:

By: _____
Lee M. Zarzecki, Employee

By: _____
Mayor Steve Douglas, City of Commerce City

Approved as to legal form: _____
Corey Hoffmann, Hoffmann, Parker, Wilson & Carberry, P.C.