

EMPLOYMENT AGREEMENT OF ROGER TINKLENBERG AS INTERIM CITY MANAGER FOR THE CITY OF COMMERCE CITY, COLORADO

THIS EMPLOYMENT AGREEMENT ("Agreement") is made and entered into the July 6, 2020 by and between Roger Tinklenberg ("Mr. Tinklenberg") and the City of Commerce City, Colorado ("Commerce City"). Mr. Tinklenberg and Commerce City agree as follows:

1. Employment. Effective July 6, 2020, Mr. Tinklenberg will be employed as Interim City Manager of Commerce City for an indefinite period as an employee at will, subject to the terms and conditions of this Agreement.

2. Duties. Mr. Tinklenberg is employed as Interim City Manager in a fulltime capacity and as such Mr. Tinklenberg is the interim chief administrative officer of Commerce City with the duties and functions specified in the Charter of Commerce City for the City Manager except the authority to hire, transfer, or discharge any department head or Deputy City Manager without approval of the City Council given by majority vote of the entire council in office when the vote is taken.

3. Compensation. Commerce City agrees to pay Mr. Tinklenberg an annual base salary of \$207,000.00 while Mr. Tinklenberg is serving as Interim City Manager. 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. Tinklenberg's appointment.

4. Benefits. While Mr. Tinklenberg is serving as Interim City Manager, Commerce City shall pay as deferred compensation an amount equal to the amount paid by Mr. Tinklenberg to Commerce City 401(a) Deferred Compensation Plan, up to 8% of Mr. Tinklenberg's salary, as permitted by the applicable plan, but Mr. Tinklenberg will not contribute to or receive an Commerce City match relating to the 401(a) plan in which he participates as the Deputy City Manager. Otherwise, Mr. Tinklenberg shall continue to receive all benefits he received or that were available to him in his position as Deputy City Manager, including without limitation his vehicle stipend, cell phone stipend, 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 and assistance for Mr. Tinklenberg as Commerce City deems appropriate.

6. Limitation on Professional Activities. Mr. Tinklenberg 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. Tinklenberg'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 Manager for Commerce City. Commerce City shall pay for Mr. Tinklenberg's membership fees in the International City Manager's Association and other memberships including professional development activities considered consistent with his employment.

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

8. Reversion to Deputy City Manager Position. Unless Mr. Tinklenberg resigns his employment with Commerce City, if Mr. Tinklenberg voluntarily resigns from, is removed by vote of a majority of the City Council from, or for any other reason no longer serves in the position of Interim City Manager or does not succeed to the position of City Manager for Commerce City, Mr. Tinklenberg shall return to his prior position held with Commerce City as Deputy City Manager with his salary and benefits to be equal to the salary and benefits he held at the time he became Interim City Manager and will no longer be entitled to any compensation or benefits under this Agreement, unless otherwise negotiated by Commerce City and Mr. Tinklenberg.

9. Resignation. If Mr. Tinklenberg voluntarily resigns his position as Interim City Manager with Commerce City, Mr. Tinklenberg shall provide a minimum of forty-five (45) days written notice, unless otherwise negotiated by Commerce City and Mr. Tinklenberg. Upon the effective date of resignation, Mr. Tinklenberg shall be entitled to no further compensation or benefits under this Agreement.

10. Compliance with Law. Commerce City and Mr. Tinklenberg 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. Tinklenberg 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. Tinklenberg from the position of Interim City Manager.

11. Indemnification. In conjunction with the liability insurance policy provided by Commerce City, Commerce City shall defend, save harmless, and indemnify Mr. Tinklenberg against any and all 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. Tinklenberg 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. Tinklenberg's duties as Interim City Manager 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 conduct or intentional misconduct. Mr. Tinklenberg 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. Tinklenberg 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.

12. 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.

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

14. 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.

15. No Third-Party Beneficiary. Commerce City and Mr. Tinklenberg 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. Tinklenberg, 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. Tinklenberg. Commerce City and Mr. Tinklenberg expressly intend that any person other than Commerce City or Mr. Tinklenberg receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

16. 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 Roger Tinklenberg has affixed his signature to this Agreement.

CITY OF COMMERCE CITY, COLORADO

Benjamin A. Huseman, Mayor

ATTEST

Dylan A. Gibson, Interim City Clerk

ROGER TINKLENBERG:
