

**EMPLOYMENT AGREEMENT OF  
ROBERT R. GEHLER AS CITY ATTORNEY FOR  
THE CITY OF COMMERCE CITY, COLORADO**

THIS EMPLOYMENT AGREEMENT ("Agreement") is made and entered into as of April 13, 2015 ("Effective Date"), by and between Robert R. Gehler ("Mr. Gehler") and the City of Commerce City, Colorado ("Commerce City"). Mr. Gehler and Commerce City agree as follows:

**1. Employment.** Mr. Gehler is employed as City Attorney of Commerce City for an indefinite period as an employee at will subject to the terms and conditions of this Agreement.

**2. Duties.** Mr. Gehler is employed as City Attorney in a fulltime capacity and as such Mr. Gehler is the Chief Legal Officer of Commerce City with the duties and functions specified in the Charter of Commerce City and as legally specified and directed by the City Council.

**3. Compensation.** Commerce City agrees to pay Mr. Gehler an annual base salary of \$140,425.00 for the first year of this Agreement ("Annual Base Salary"). Thereafter, the Annual Base Salary of Mr. Gehler shall be subject to adjustment based upon pay for performance adjustments of Commerce City following an annual performance evaluation by the City Council. Payment of the Annual Base Salary under this Agreement shall be made in equal installments on a biweekly basis during the term of this Agreement.

**4. Performance Review.** The City Council shall review the performance of Mr. Gehler annually. The City Council shall advise and inform Mr. Gehler as to the City Council's opinion and expectations regarding his performance as City Attorney based upon specific objectives set out annually and aligned to City Council goals.

**5. Deferred Compensation.** Commerce City shall pay as deferred compensation an amount equal to the amount paid by Mr. Gehler to the 401 Deferred Compensation Plan of Commerce City, which currently is six percent (6%) of the annual base salary of Mr. Gehler. In addition, Mr. Gehler shall be entitled to participate in the 457 Deferred Compensation Plan of Commerce City which is a voluntary contribution plan subject to limitations of the Internal Revenue Service.

**6. Insurance Benefits.** Commerce City shall provide and pay that portion of the premiums for health, dental, vision, and term life insurance for Mr. Gehler and his dependents equal to that which is provided to all other fulltime, non-bargaining unit employees of Commerce City.

**7. Leave.** Mr. Gehler shall be entitled to 266 hours of General Leave each year. This General Leave shall be available to, and taken by, Mr. Gehler in accordance with Commerce City's published General Leave policies applicable to all non-bargaining unit employees. All leave accrued and carried over by Mr. Gehler as of the Effective Date, including 2014 leave, shall remain in effect and available to Mr. Gehler in accordance with Commerce City policy. General Leave shall constitute accrued compensation and, upon termination of this Agreement,

Mr. Gehler shall be entitled to payment for all accrued, but unused, General Leave in accordance with Commerce City's published General Leave policies applicable to all non-bargaining unit employees.

**8. Other Benefits.** Mr. Gehler shall be entitled to any other benefits that are provided by Commerce City to other fulltime executive employees. Commerce City will reimburse Mr. Gehler for expenses related to Commerce City business in accordance with the City's policies.

**9. Facilities.** Commerce City shall furnish office facilities and assistance for Mr. Gehler as Commerce City reasonably deems appropriate for the performance of Mr. Gehler's duties.

**10. Limitation on Professional Activities.** Mr. Gehler shall not engage in any non-City employment activities for compensation without the express written consent of the City Council. Notwithstanding the foregoing, Mr. Gehler may perform volunteer community services or *pro bono* legal services so long as such services must not create, or tend to create, a disqualifying conflict of interest, impair Mr. Gehler's ability to fully perform his duties for the City, or be contrary to the City's interests. The parties intend that Mr. Gehler'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 City Attorney for Commerce City. Commerce City shall pay Mr. Gehler's Colorado annual attorney registration fees, reasonable costs of continuing legal education registration and attendance, and reasonable costs of membership and participation in professional development activities considered consistent with his employment (including without limitation semi-annual conferences of the Colorado Municipal League and monthly meetings of the Metro City Attorneys Association).

**11. Termination.** This Agreement may be terminated only as follows:

a. This Agreement may be terminated only as follows:

1) Commerce City may terminate this Agreement with or without Cause, as defined below, upon the vote of the City Council to do so;

2) Mr. Gehler may terminate this Agreement, without notice, if Commerce City, the citizens of Commerce City, or the Colorado General Assembly acts to amend any provisions of the City Charter, City ordinances, or appropriate enabling legislation so as to materially alter the role, powers, duties, authority, or responsibilities of the City Attorney or the form of government of Commerce City;

3) Mr. Gehler may terminate this Agreement, without notice, by resigning the position of City Attorney following a City Council proposal that Mr. Gehler resign;

4) Mr. Gehler may terminate this Agreement owing to a breach of contract by Commerce City where Commerce City has failed to cure the alleged breach within thirty (30) days of written notice given by Mr. Gehler to Commerce City of the alleged breach;  
or

5) Mr. Gehler may voluntarily resign his position with Commerce City without a proposal to do so by the City Council by providing a minimum of forty-five (45) days written notice unless the parties otherwise agree.

b. For purposes of this Agreement, Cause shall be:

- 1) Conduct by Mr. Gehler which is fraudulent or dishonest;
- 2) Mr. Gehler'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. Gehler unfit or unable to perform his duties, as determined by the City Council.

c. If Commerce City intends to consider termination of Mr. Gehler's employment for Cause, Commerce City shall give Mr. Gehler written notification stating the matters constituting the basis for termination for Cause (the "Cause Notice"). If Mr. Gehler desires to question whether the matters stated in the Cause Notice are accurate or whether they constitute Cause, he shall have the right to do so by written notice (the "Appeal Notice") to the City Council given within ten (10) days after his receipt of the Cause Notice. If Commerce City and Mr. Gehler are unable to resolve the issue within fifteen (15) days after the Appeal Notice, such dispute shall be submitted to binding arbitration as provided in Section 17. If the arbitration decision determines Mr. Gehler's termination was not for Cause, Mr. Gehler shall be deemed to have been terminated without Cause effective the date of the Cause Notice.

**12. Arbitration.** Whenever any dispute arises under this Agreement, the parties agree that upon written demand of either party, such dispute shall be submitted to binding arbitration to the Legal Resolution Center, Westminster, Colorado or its successor pursuant to the rules and procedure as determined by the arbitrator. The arbitration hearing shall be held within thirty (30) days of appointment of the arbitrator unless otherwise agreed by both parties. Each party shall be entitled to one deposition. The Colorado Rules of Evidence shall not apply unless otherwise agreed by the parties, although the arbitrator shall have discretion to determine whether any proffered evidence is sufficiently reliable and probative to be admitted. The determination of the arbitrator shall be final and absolute. The decision of the arbitrator may be entered as a judgment in any court in the State of Colorado or elsewhere.

**13. Compliance with Law.** Commerce City and Mr. Gehler 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). 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 will be deemed a termination without Cause, unless such action is the result of a prior termination for Cause in accordance with this Agreement.

**14. Indemnification.** In conjunction with the liability insurance policy provided by Commerce City, Commerce City shall defend, save harmless and indemnify Mr. Gehler against

any and all losses, damages, judgments, interest, settlements, fines, court 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. Gehler 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. Gehler's duties as 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 conduct or intentional misconduct. Mr. Gehler may request Commerce City to provide independent legal representation acceptable to Mr. Gehler at Commerce City's expense and Commerce City shall not unreasonably withhold approval. Legal representation provided by Commerce City for Mr. Gehler 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.

**15. Notices.**

If to Commerce City:

Mayor  
City of Commerce City  
7887 E. 60<sup>th</sup> Avenue  
Commerce City, CO 80022

If to Mr. Gehler

Robert R. Gehler  
11878 Park East Road  
Aurora, CO 80010

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

**17. Binding Effect.** This Agreement shall be binding upon Commerce City and Mr. Gehler and, as applicable, upon their heirs, personal representatives, successors, and authorized assigns.

**18. 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.

**19. No Third-Party Beneficiary.** The parties expressly understand and agree 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. Gehler, and nothing contained in this Agreement shall give or allow any such claim or right of action by any third person to this Agreement. Commerce City and Mr. Gehler expressly intend that any person other than Commerce City or Mr. Gehler receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

**20. 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 parties' intent 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 expungment of the invalid provision.

IN WITNESS WHEREOF, as of the Effective Date, the City of Commerce City, Colorado has caused this Employment 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 Robert R. Gehler has affixed his signature to this Employment Agreement.

CITY OF COMMERCE CITY

ROBERT R. GEHLER

\_\_\_\_\_  
Sean Ford, Mayor

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Robert R. Gehler

ATTEST:

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Laura J. Bauer, City Clerk

Approved as to form:

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Robert D. Sheesley, Senior Assistant City Attorney