

EMPLOYMENT AGREEMENT OF ROBERT D. SHEESLEY AS CITY ATTORNEY FOR THE CITY OF COMMERCE CITY, COLORADO

THIS EMPLOYMENT AGREEMENT ("Agreement") is made and entered into as of August 22, 2016 ("Effective Date"), by and between Robert D. Sheesley ("Mr. Sheesley") and the City of Commerce City, Colorado ("Commerce City"). Mr. Sheesley and Commerce City agree as follows:

1. Employment. As of the Effective Date, Mr. Sheesley 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. Sheesley is employed as City Attorney in a fulltime capacity and as such Mr. Sheesley 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. Sheesley an annual base salary of \$155,000.00 ("Annual Base Salary") while serving as City Attorney, subject to adjustment 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 except the first and last installment shall be prorated based on the actual start date, which shall be the Effective Date, and the date on which Mr. Sheesley ceases to be City Attorney.

4. Performance Review. The City Council shall review the performance of Mr. Sheesley annually. The City Council shall advise and inform Mr. Sheesley 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 continue to pay as deferred compensation an amount equal to the amount paid by Mr. Sheesley to the 401 Deferred Compensation Plan of Commerce City up to a maximum of eight percent (8%) of the annual base salary. In addition, Mr. Sheesley 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 continue to provide and pay that portion of the premiums for health, dental, vision, and term life insurance for Mr. Sheesley and his dependents equal to that which is provided to all other fulltime, non-bargaining unit employees of Commerce City.

7. Leave. Mr. Sheesley shall be entitled to 266 hours of General Leave each year commencing 2016, provided that for the calendar year 2016 the annual leave taken by Mr. Sheesley as of the Effective Date of this Agreement shall be subtracted from the annual leave authorized for 2016. This General Leave shall be available to, and taken by, Mr. Sheesley in accordance with Commerce City's published General Leave policies applicable to all non-

bargaining unit employees for employees with the maximum years of service. General Leave shall constitute accrued compensation and, upon termination of this Agreement pursuant to Section 12, Mr. Sheesley 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. Sheesley shall continue to be entitled to any other benefits that are provided by Commerce City to other fulltime executive employees. Commerce City will reimburse Mr. Sheesley for expenses related to Commerce City business in accordance with the City's policies (excluding mileage expenses).

9. Vehicle Allowance. Mr. Sheesley shall be provided a vehicle allowance of \$350.00 per month.

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

11. Limitation on Professional Activities. Mr. Sheesley shall not engage in any non-City employment activities for compensation without the express written consent of the City Council. Notwithstanding the foregoing, Mr. Sheesley may perform volunteer community services, *pro bono* legal services, and engage in compensated teaching, writing, speaking, or consulting activities on Mr. Sheesley's own time so long as such services must not create, or tend to create, a disqualifying conflict of interest, impair Mr. Sheesley's ability to fully perform his duties for the City, or be contrary to the City's interests. The parties intend that Mr. Sheesley'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. Sheesley'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).

12. 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 majority vote of the City Council to do so at a duly authorized public meeting;

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

4) Mr. Sheesley 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. Sheesley to Commerce City of the alleged breach; or

5) Mr. Sheesley may voluntarily resign his position as City Attorney without a proposal to do so.

13. Severance.

a. Commerce City shall pay Severance, as defined below, to Mr. Sheesley if and when Mr. Sheesley's employment as City Attorney is terminated, except in the case that either: (1) Mr. Sheesley's employment as City Attorney is terminated for Cause, as hereinafter defined; or (2) Mr. Sheesley resigns the position of City Attorney without the City Council's proposal or request that he do so.

b. Severance shall be:

1) Three (3) months' Annual Base Salary at Mr. Sheesley's then-current rate of Annual Base Salary;

2) Compensation for all accrued paid holidays and unused, accrued General Leave;

3) All premiums necessary for Mr. Sheesley to maintain family health and dental insurance coverage through COBRA or other applicable laws or regulations providing for continuation coverage for three (3) months following the termination of his employment; and

4) Waiver of any claim by Commerce City to reimbursement of any tuition reimbursement benefit provided to Mr. Sheesley during his employment in any capacity with Commerce City.

c. Severance shall be paid monthly unless otherwise agreed to by Commerce City and Mr. Sheesley, and shall be reduced by all taxes and other withholdings required by law, and by any additional salary earned by Mr. Sheesley during the three (3) months following termination of employment.

d. For purposes of this Agreement, Cause shall be: (1) conduct by Mr. Sheesley which is fraudulent or dishonest; (2) Mr. Sheesley'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. Sheesley unfit or unable to perform his duties, as determined by the City Council.

e. If Commerce City intends to consider termination of Mr. Sheesley's employment for Cause, Commerce City shall give Mr. Sheesley written notification stating the matters

constituting the basis for termination for Cause (“Cause Notice”). If Mr. Sheesley 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 (“Appeal Notice”) to the City Council given within ten (10) days after his receipt of the Cause Notice.

f. If the City Council offers to permit Mr. Sheesley to resign in lieu of being terminated for Cause with or without written notice, such resignation, if it occurs, will constitute a termination without Cause under this Agreement and Mr. Sheesley shall be entitled to Severance.

14. Resignation. If Mr. Sheesley voluntarily resigns his position as City Attorney without a proposal to do so by Commerce City, Mr. Sheesley shall provide a minimum of forty-five (45) days written notice unless the parties otherwise agree. Upon the effective date of resignation, Mr. Sheesley shall be entitled to no further compensation or benefits under this Agreement.

15. Compliance with Law. Commerce City and Mr. Sheesley 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.

16. Indemnification. In conjunction with the liability insurance policy provided by Commerce City, Commerce City shall defend, save harmless and indemnify Mr. Sheesley 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. Sheesley 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. Sheesley’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. Sheesley may request Commerce City to provide independent legal representation acceptable to Mr. Sheesley at Commerce City’s expense and Commerce City shall not unreasonably withhold approval. Legal representation provided by Commerce City for Mr. Sheesley 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.

17. Notices.

If to Commerce City:

Mayor
City of Commerce City
7887 E. 60th Avenue
Commerce City, CO 80022

If to Mr. Sheesley

Robert D. Sheesley
7887 E. 60th Avenue
Commerce City, CO 80022

18. 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.

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

20. 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.

21. 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. Sheesley, 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. Sheesley expressly intend that any person other than Commerce City or Mr. Sheesley receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

22. 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 expungement 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 D. Sheesley has affixed his signature to this Employment Agreement.

CITY OF COMMERCE CITY

ROBERT D. SHEESLEY

Sean Ford, Mayor

Robert D. Sheesley

ATTEST:

Laura J. Bauer, MMC, City Clerk

Approved as to form:

Corey Y. Hoffmann, Special Counsel