

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT made and entered into this ____ day of April 2017, by and between the CITY OF LITTLETON ("the City"), STATE OF COLORADO, a home rule municipality, hereinafter called the "City," and Stephen M. Kemp, hereinafter called "Employee." The City and Employee may collectively be referred to in this Employment Agreement as "the parties."

WITNESSETH:

WHEREAS, Employee has agreed to accept employment as the City Attorney for the City upon the conditions contained herein; and

WHEREAS, it is the desire of the City to hire Employee as the City Attorney and provide certain benefits, establish certain conditions of employment and set certain expectations of Employee; and,

WHEREAS, Employee desires to obtain employment with the City and to work as the City Attorney for the City, subject to the benefits, conditions of employment and conditions described herein.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained herein, the parties agree as follows:

1.0 Employment, Duties and Licensure in Colorado.

1.1 The City hereby agrees to employ Employee, and Employee hereby accepts employment as City Attorney for the City. Employee shall perform the functions and duties specified in Article IX of the Charter of the City and perform such other legal and proper duties and functions as the City Council shall assign.

1.2 Employee shall supervise the staff of the City Attorney's Office, as may be authorized by the City Council. All employees of the City Attorney's Office shall be employed by Employee in accordance with the provisions of Article IX of the Charter of the City.

1.3 Employee's responsibilities also include, without limitation, providing prosecution services in the Littleton Municipal Court as requested and/or supervise the City's contract prosecutor. It is understood that at present, the City contracts with an outside firm to act as Municipal Court prosecutor, with a full time City employee serving as the prosecutor's support staff.

1.4 The parties agree that the terms of this Employment Agreement do not supersede the provisions of the Charter of the City, and to the extent they do conflict with the Charter, the Charter shall prevail. The parties also agree that to the extent this Employment Agreement is in conflict with the provisions of the Littleton City Code or Personnel Policies, the Employment Agreement shall prevail.

1.5 The parties understand and agree that Employee will need to become licensed to practice law in the State of Colorado. Employee shall take all necessary and required steps to become licensed in Colorado, and the City shall be responsible for the costs of the same. It is further understood that Employee will commence work for the City prior to becoming admitted to practice law in Colorado, and during such interim period prior to bar admission, shall be supervised by a licensed Colorado attorney, in this case, the current Acting City Attorney. Certain terms and conditions of employment, such as compensation and severance, shall be modified, as set forth below, upon Employee's becoming licensed to practice law in Colorado.

2.0 Term and Severance Pay.

2.1 THE EMPLOYEE ACKNOWLEDGES THAT THE CITY ATTORNEY SHALL SERVE AT THE PLEASURE OF THE CITY COUNCIL AND SUCH EMPLOYMENT SHALL BE AT-WILL AND CAN BE TERMINATED BY EITHER PARTY AT ANY TIME FOR ANY REASON, subject to the provisions of Section 2.5. Provisions contained in the Littleton Personnel Policies and Procedures relating to job performance, termination of employment for cause, or hearings relating to any disciplinary action shall not apply to Employee.

2.2 The term of this Employment Agreement shall commence on July 1, 2017 and shall continue for an indefinite period.

2.3 Nothing in this Employment Agreement shall prevent, limit or otherwise interfere with Employee's right to resign. In the event Employee wishes to resign his position with the City and remain in good standing, Employee shall give the City thirty (30) days written notice in advance, unless the parties otherwise agree. In the event Employee voluntarily resigns, he shall not be entitled to severance benefits described in Section 2.5 of this Employment Agreement, unless the parties otherwise agree.

2.4 Employee agrees not to become employed by any other employer during his appointment as City Attorney. Notwithstanding the foregoing, the term "employed" shall not be construed to include occasional teaching, writing, consulting work or other related activities performed by Employee outside of work. Such consulting or other non-City connected business shall not constitute a conflict of any nature with Employee's work as City Attorney. The City Council shall be the sole judge of such conflicts and its determination shall be final.

2.5 In the event the City decides to exercise its right to terminate the employment of Employee, offers Employee to resign in lieu of a termination of employment, or lays off Employee, or in the event City Council fails to appropriate funds for Employee's position, Employee shall be paid a lump sum cash severance equal to three (3) months of Employee's base pay. Upon written confirmation of Employee's becoming licensed to practice law in Colorado, the provision on severance shall be automatically amended to be equal to six (6) months of Employee's base pay as severance, as that base pay is amended upon licensure pursuant to Section 3.1 below. Employee shall also be entitled to a payment for any benefits which any full-time management City employees would be entitled to upon termination of employment pursuant to City policy.

3.0 Salary.

3.1 City initially agrees to pay the Employee for his services as City Attorney an annual base salary of \$165,000, payable in installments at the same time and manner as other management level full-time City employees. Upon written confirmation of Employee's becoming licensed to practice law in Colorado, the annual base salary shall be automatically amended to \$184,800, also payable in installments at the same time and manner as other management level full-time City employees.

3.2 The City Council agrees to consider increases to Employee's annual base salary and/or other benefits in such amounts and to such extent as they, in their sole discretion, may determine to be desirable on the basis of a salary review of Employee. Such review may occur contemporaneously with Employee's performance review. Employee will neither be guaranteed nor limited by any salary increases given to other City employees.

4.0 Hours of Work.

It is recognized and understood that Employee must devote additional time outside normal office hours to City business and to otherwise fulfill his duties as City Attorney.

5.0 Benefits.

In addition to the base salary described in Section 3.1 of this Employment Agreement, Employee shall receive such other benefits as follows:

- a. Health, dental and other insurance on the same terms and conditions as other management level full-time City employees;
- b. Life, supplemental life, accidental death, long-term disability", short-term disability and dismemberment insurance on the same terms and conditions as other management level full-time City employees;
- c. Vacation, sick, holiday and any other leave permitted by the City of Littleton on the same terms and conditions as other management level full-time City employees;
- d. Statutory benefits such as Social Security and Medicare as other management level full-time City employees;
- e. Participation in the City's defined contribution plan and/or any other retirement plans made available, on the same terms and conditions as other management level fulltime City employees; and,
- f. Such other and further benefits as may be provided to other management level fulltime City employees, from time to time.

The benefits provided to the City Attorney under this Agreement shall not be reduced or eliminated unless the City Council reduces such benefits for all similarly situated employees of the City.

6.0 Dues and Subscriptions and Professional Development.

6.1 The City agrees to budget for state required professional dues, such as those dues required by the Colorado Bar Association, which are required to practice law in Colorado, and includes, without limitation, dues for membership in the International Municipal Lawyers Association. The City also agrees to review and consider requests by Employee for approval of additional educational and CLE's in annual budget requests by Employee, inclusive of any travel for professional development. The City also agrees to review and consider requests by Employee for approval to attend professional and official meetings wherein Employee is representing the City, as requested by Employee in the annual budget requests, such as the Colorado Municipal League and Colorado Municipal League Attorneys conferences. However, the decision of whether to approve and budget for any such requests is left to the sole discretion of the City Council.

7.0 Expenses.

Employee may be required as a condition of employment to incur reasonable and necessary expenses in connection with his duties hereunder. Employee shall be reimbursed by the City in accordance with the City's expense reimbursement policy.

8.0 Indemnification.

City shall defend, save Employee harmless, and cover all reasonable costs and all damages related to any tort, professional liability claim, or demand 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, unless such actions are determined by a court to be willful and wanton, in which case Employee shall reimburse the City for reasonable costs and attorneys' fees incurred in his defense in accordance with C.R.S. § 24-10-110(1.5)(a) and the City would not be obligated to pay and costs of damages incurred by or determined to be the responsibility of the Employee.

9.0 Evaluation.

The City Council shall review and evaluate the performance of Employee annually for the purpose of evaluating Employee's performance and compensation. The City Council shall use best efforts to complete the evaluation no later than July 1 of each year. The City Council may also evaluate the Employee at any lesser interval, as they deem appropriate, within their sole discretion. Employee's compensation shall be evaluated in accordance with specific criteria developed by the City Council and Employee. The criteria may be added to or revised by the City Council periodically, in consultation with Employee.

10.0 Other Terms and Conditions of Employment.

The City Council, in consultation with Employee, may fix any such other terms and conditions of employment, as it may determine from time to time, relating to Employee's

performance, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Employment Agreement.

11.0 Compliance with Law.

It is the intent of the parties to comply with the provision 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 under Section 2.5.

12.0 General Provisions.

12.1 The text herein shall constitute the entire agreement between the parties. This Employment Agreement may be amended only in writing, executed and approved by both parties.

12.2 The rights and obligations of the City under this Employment Agreement shall inure to the benefit of and be binding upon the successors and assigns of the City. Employee shall not assign or otherwise convey any of his rights and obligations hereunder without the express written permission of the City.

12.3 If any provision, or any portion thereof, contained in this Employment Agreement is held to be unconstitutional, invalid, unenforceable or void, the remainder of this Employment Agreement, or any portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

12.4 The parties agree that this Agreement shall be interpreted in accordance with the laws of the State of Colorado.

12.5 Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Agreement.

12.6 Employee acknowledges that during the course of his employment with the City, Employee will obtain information which is confidential and/or privileged. Employee agrees to maintain all required confidentiality/privilege, including after his employment with the City were to end and will not divulge such information unless he is required by law to do so, and only after having advise the City of his belief of required disclosure and giving the City a reasonable opportunity, at least 3 business days if so available, to take action to prevent such disclosure.

12.7 Employee agrees that he may be provided equipment for official use by the City and that upon his separation Employee is required to return all City equipment provided to Employee during his tenure with the City prior to Employee being provided his final paycheck.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF the City of Littleton, Colorado has caused this Employment Agreement to be signed and executed on its behalf by its Mayor, and duly attested by its City Clerk, and Employee has signed and executed this Employment Agreement, both in duplicate, the date and year first above written.

CITY OF LITTLETON

Mayor

ATTEST:

City Clerk

The Employee hereby acknowledges and confirms the above provisions:

EMPLOYEE:

Stephen M. Kemp