

## **EMPLOYMENT AGREEMENT**

This Employment Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Manzanita, Oregon, an Oregon municipal corporation (hereinafter referred to as "City") and John Kunkel (hereinafter referred to as "Interim City Manager").

The City and the Interim City Manager wish to enter into a written Agreement creating a professional employment relationship for a limited duration. In consideration of the covenants set out in this Agreement and for the consideration specified in this Agreement, the City and the Interim City Manager agree as follows:

### **SECTION I. EMPLOYMENT AND DUTIES.**

- A. The City agrees to employ the Interim City Manager and the Interim City Manager agrees to accept City employment for a limited duration.
- B. The City Council expects the Interim City Manager to adhere to the highest professional standards. His actions will always comply with those standards. He agrees to follow the Code of Ethics and Guidelines of the International City/County Management Association and the ethics rules, regulations, and laws of the State of Oregon.
- C. Pursuant to the authority of the City Charter, the Interim City Manager shall have general supervision of the administrative affairs of the city and general control over all nonelective officers and employees of the City and he shall perform such other duties as may be prescribed by the Council.
- D. The City Council meets annually to establish and review the City's goals and objectives. Decisions and actions generated as a result of the goal setting sessions supplement the annual budgetary process and serve as a guide in the formulation of the budget. The Interim City Manager will be responsible for pursuing the goals and objectives of the City Council and for providing quarterly reports to the City Council regarding the progress toward achieving the Council's goals and objectives.
- E. The Interim City Manager job description shall be the same as the City Manager job description attached to this Agreement and incorporated by this reference, subject to Chapter V, Section 22(9) of the City Charter.
- F. It is recognized that the Interim City Manager must devote time outside of normal office hours on business for the City. To that end, the Interim City Manager will be allowed to establish an appropriate work schedule.
- G. The City is currently operating under a state of emergency during the COVID-19 pandemic.

### **SECTION II. TERM.**

This Agreement will be effective as of the 19th day of October, 2020, and will continue until terminated as provided in this agreement, or March 31, 2021, whichever date occurs first.

- A. Nothing in this Agreement will prevent, limit, or otherwise interfere with the right of the City Council to terminate the services of the Interim City Manager at any time, subject only to the provisions set forth in this Agreement.
- B. Nothing in this Agreement will prevent, limit, or otherwise interfere with the right of the Interim City Manager to resign at any time, subject only to the provisions set forth in this Agreement.
- C. The Interim City Manager agrees to remain in the exclusive employ of the City during the term of this Agreement.

### **SECTION III. TERMINATION.**

- A. This Agreement may be terminated at any time by a majority of the City Council or by the Interim City Manager, for any reason whatsoever, upon thirty (30) calendar days written notice to the other Party.
- B. Termination for Cause. In the event of a for-cause termination, this Agreement shall not be deemed to waive statutory or constitutional rights or remedies otherwise available to the Interim City Manager. The Interim City Manager's employment with the City may be terminated immediately in the sole discretion of a majority of the City Council members upon the occurrence of any of the following events:
  - 1. The Interim City Manager fails, refuses, or is unable to comply with the written policies, standards, and regulations of the City that are in existence at the time, or fails, refuses, or is unable to comply with any then-current state or federal laws;
  - 2. Dishonesty in any form;
  - 3. The City Council, after a thorough investigation, has reasonable cause to believe the Interim City Manager has committed fraud, misappropriated City funds, goods, or services, or other acts of misconduct that cause injury to the City or affect the Interim City Manager's ability to perform his job; or
  - 4. The Interim City Manager fails to perform his duties as Interim City Manager faithfully and fully in accordance with the highest professional standards.

### **SECTION IV. RESIDENCY.**

The Interim City Manager will not be required to reside within the City limits during the term of this Agreement.

### **SECTION V. PERFORMANCE EVALUATION.**

A facilitated performance evaluation may be conducted if this agreement extends beyond March 31, 2021, at the discretion of the City Council.

#### **SECTION VI. SALARY AND BENEFITS.**

- A. Salary. Starting with the first day of employment and continuing throughout the term of this Agreement, the City will pay the Interim City Manager a monthly salary of \$7,000. The salary will be paid to the Interim City Manager at the same time as all City employees are paid. This salary may be adjusted from time to time, at the discretion of the City Council. The Interim City Manager will receive the same cost of living adjustments that the non-represented full time employees receive.
- B. Vacation. The Interim City Manager will not accrue vacation hours during the term of this Agreement.
- C. Sick Leave. The Interim City Manager will be credited with forty (40) hours of sick leave as of his first day of employment and will subsequently accrue sick leave at the rate of 8 hours per month throughout the term of this Agreement. In the event employment with the City is terminated, either voluntarily or otherwise, unused sick leave will be forfeited.
- D. Management Leave. The Interim City Manager will be credited with one-hundred-twenty-eight (128) hours of management leave as of his first day of employment. It is compensable only in the form of leave and any unused management leave will be forfeited at termination of employment.
- E. Except as otherwise provided in this Agreement and the Employee Handbook, the Interim City Manager will receive the same benefits as other employees of the City.

#### **SECTION VII. RETIREMENT AND INSURANCE.**

- A. Retirement. Due to the Interim City Manager's status, the City will not contribute into the Public Employees' Retirement System (PERS), on the Interim City Manager's behalf.
- B. Health Insurance. No health insurance will be provided.

#### **SECTION VIII. PROFESSIONAL DEVELOPMENT, COMMUNITY INVOLVEMENT, AND EXPENSE.**

- A. The City will pay for the Interim City Manager's membership in the Oregon City/County Management Association (OCCMA) and the International City/County Management Association (ICMA).
- B. The City recognizes that certain expenses will be incurred by the Interim City Manager on behalf of the City and agrees to reimburse or pay these expenses promptly if the

expenses are (i) incurred in the performance of Interim City Manager's duties (ii) evidenced by receipts or other documentation, and (iii) approved by the City Council.

#### **SECTION IX. BONDING.**

Pursuant to the City Charter, the Interim City Manager will "secure a bond for the City in an amount and with a surety approved by the Council." The City has provided for this Charter requirement through CityCounty Insurance Services' excess crime coverage. This insurance meets statutory bonding requirements.

#### **SECTION X. INDEMNIFICATION.**

To the extent permitted under Oregon law, including the Oregon Tort Claims Act (ORS 30.260 to 30.300), the City agrees that it will defend, hold harmless, and indemnify the Interim City Manager from all demands, claims, suits, actions, errors, or other omissions in legal proceedings brought against the Interim City Manager in his individual capacity, in his official capacity, or in his official capacity as agent or employee of the City, provided the incident arose while the Interim City Manager was acting within the scope of his employment and within the scope of this Agreement. If, in the good faith opinion of the Interim City Manager, a conflict exists regarding the defense of any such claim between the legal position of the City and the Interim City Manager, the Interim City Manager may engage counsel, in which event, the City shall indemnify the Interim City Manager for the cost of legal counsel. In no case will individual City Council members be considered personally liable for indemnifying Interim City Manager against demands, claims, suits, actions, and legal proceedings.

#### **SECTION XI. CONFIDENTIALITY.**

- A. The Interim City Manager recognizes that, through his employment with the City, he will have access to confidential information that needs to be protected from improper disclosure. The Interim City Manager agrees that he will not directly or indirectly use any confidential information except as necessary to perform the duties of the Interim City Manager, and will not directly or indirectly divulge such information to anyone outside the City organization without the City's prior written consent, unless required by court order or, if in the opinion of the City Attorney, by state law.
- B. The confidentiality provisions of this Agreement will remain in full force and effect for a period of six years after the termination of this Agreement.

#### **SECTION XII. GENERAL PROVISIONS.**

- A. Amendment. Nothing shall restrict the ability of the City and the Interim City Manager to amend the terms of this Agreement. Amendments will be valid only if they are made in writing and are signed by both the City and Interim City Manager.

- B. Severability. If any provision of this Agreement is held to be unconstitutional, invalid, or unenforceable, the remainder of this Agreement shall be deemed severable and shall remain in full force and effect.
- C. Choice of Law / Venue. This Agreement shall be governed by, construed, and interpreted in accordance with the laws of the State of Oregon without reference to principles of conflict of laws. In case of a lawsuit arising from this Agreement, for enforcement and/or damages for breach or violation, the parties agree that the venue shall be in Tillamook County Circuit Court, to the exclusion of all other courts in any other venue. The prevailing party in a lawsuit will be entitled to reasonable attorney's fees to be fixed by the trial court. If an appeal is taken from the decision of the trial court, the fees will include any additional sums fixed by the appellate court as reasonable attorney's fees in the appellate court, together with prevailing party costs and disbursements incurred therein.
- D. This Agreement was the result of negotiation by the parties and thus the parties agree that the rule of construction requiring that the Agreement will be construed against the drafter will not apply to the interpretation of this Agreement. Both parties acknowledge that they have read and understand the Agreement, enter into it voluntarily, and have had opportunity to have it reviewed by counsel of their choice.
- E. The failure of either party to enforce any provision of this Agreement will not be construed as a waiver or limitation of that party's right subsequently to enforce and compel strict compliance with every provision of this Agreement.
- F. Merger. This Agreement contains the entire Agreement between the parties and supersedes all prior written or oral discussions or agreements regarding the same subject.

\_\_\_\_\_  
 Mayor Michael Scott

\_\_\_\_\_  
 John Kunkel

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Date

APPROVED AS TO FORM:

\_\_\_\_\_  
 City Attorney