

CITY MANAGER EMPLOYMENT AGREEMENT

THIS AGREEMENT, made this 17th day of October, 2023, effective October 23, 2023, by and between the CITY OF EVANS (“Employer”), and CODY SIMS (“Employee”).

The parties agree as follows:

1. **TERM AND POSITION.** For a period of two years from the date of this Agreement, unless extended by mutual agreement of the parties, Employer agrees to employ Employee as its City Manager. Employee agrees to serve as City Manager in accordance with the attached position description. The City Manager shall be a full-time employee and may not engage in other business and employment activities, without the advance approval of a majority of the entire City Council. Employee shall perform the functions and duties specified under the City’s Charter and shall perform such other legal and proper duties and functions as the Employer shall assign. It is the intent of the Parties that the Manager’s employment is full-time employment. Participation in professional organizations and volunteer programs are encouraged provided they are consistent with the responsibilities of the City Manager for the City.

2. **SALARY.** Employer shall pay Employee a salary of \$207,000.00 per year with a starting date on October 23, 2023, which shall be payable in installments of pay periods at the same times as other employees of the City are paid. Employee shall be given an annual salary and performance evaluation, after which the Employer agrees to consider the base salary and other benefits to Employee based upon the performance evaluation.

3. **BENEFITS.** Employer shall continue to provide Employee the same holidays, group medical, dental, life insurance, and disability as provided to all other employees. Employer will continue to contribute three percent (3%) of Employee’s gross income into the 457 Plan and Employer will continue to contribute three percent (3%) of the Employee’s gross income to the 401k plan and in addition, continue to match Employee’s contributions up to the maximum of four percent (4%) in the 401k plan, not to exceed the maximum permitted by the I.R.S.

4. **VACATION/HEALTH LEAVE.** Employee shall continue to accrue vacation and health leave in the manner and at the rates indicated in the City of Evans Employee Handbook. In accordance with such policies, Employee shall not be entitled to a cash payment for unused health leave at the end of his employment.

5. **CAR ALLOWANCE.** Employee shall continue to be paid an allowance of \$210.00 per pay period for use of his personal automobile for Employer business in the Colorado Front Range area. If Employee uses his own automobile for Employer business outside the Colorado Front Range area, the Employer shall reimburse Employee for the business use of his personal automobile on a per mile basis permitted by the I.R.S. and at a rate equal to what Employer reimburses all other employees for business use of a personal automobile.

6. **CELLULAR PHONE.** Employee shall continue to receive a City issued “smart” cellular phone and paid monthly cellular and data service to be used for City business.

7. BUSINESS EXPENSES/PROFESSIONAL DUES AND TUITION. Employee shall be reimbursed for normal business expenses and professional dues related to Employee's continued professional development in the field of City Management/Administration, but shall be limited to the amount budgeted annually by City Council. Employer agrees to budget and pay reasonable travel and subsistence expenses to Employee to enable him to attend annual conferences, including but not limited to, the International City Management Association and the annual Colorado Municipal League conference. In addition, subject to annual appropriation by the City Council, Employee shall be entitled to reimbursement, in accordance with the City of Evans Employee Handbook, in an amount not to exceed \$2,000 during any calendar year for tuition paid by Employee to institutions of higher education for curriculum or courses reasonably related to Employee's fulfillment of his duties described in the attached position description.

8. HOURS OF WORK. It is understood that the position of City Manager requires attendance at meetings and events outside normal business hours, including but not limited to evening meetings and occasionally a weekend meeting. It is understood by Employee that additional compensation and compensatory time shall not be permitted for such additional expenditures of time for the reason that Employee will be in an exempt position under the Fair Labor Standards Act (FLSA).

9. TERMINATION BENEFITS. Employee shall hold office at the pleasure of the majority of the City Council, be an "employee at will," and may be terminated at any time with or without cause, even in the event that Employee becomes totally and permanently disabled. In the event that Employee is terminated by the Employer during such time that Employee is willing and able to perform the duties of City Manager and such termination is not for cause, then in that event, Employer agrees to pay Employee a continuation of his normal salary at the last current rate for a period of nine (9) months or until he obtains other employment, whichever occurs first, to be paid out in installments during normal pay periods and not as a lump sum, from the date of termination to include the medical and dental insurance benefit at the election level as of the date of termination, but no other benefits. In the event of voluntary resignation by Employee, Employee shall not be entitled to such termination benefits unless specifically agreed to by City Council at the time of Employee's resignation. In the event Employee voluntarily resigns his position with the City at any time during the term of this Agreement, Employee shall give the Employer at least one month written notice in advance. The Parties further agree and acknowledge that the City has established and shall maintain an adequate present cash reserve held for future payments if required in an amount sufficient to pay any termination benefits required by this Agreement. For the purpose of COBRA and the notification requirements, the last day of employment shall be the actual last day of employment and shall not include the extended period of any termination benefits.

In the event, however, that Employee is terminated for cause, the City shall have no obligation for termination benefits as provided above. As used herein, "cause" shall mean:

- (a) Conduct by Employee that is fraudulent or dishonest,
- (b) Employee's conviction of a felony or crime involving moral turpitude under any federal or state law, or

(c) Failure by Employee in a material way to fulfill or comply with his obligations under this Employment Agreement. By way of example and not by limitation, should Employee not comply with the residency requirement set forth in paragraph 11 of this Agreement and in the Home Rule Charter or neglect his duties provided for herein and in the attached position description, Employee shall be deemed to be terminated with cause and the termination benefits shall not apply.

10. ANNUAL EVALUATION. Each year, a majority of the members of the City Council shall evaluate the job performance of the Employee. As with the evaluation of other City employees, the evaluation is intended to provide Employee with an opportunity to meet with a majority of the members of the City Council or a committee appointed by a majority of the City Council to discuss his job requirements, areas of strength and weakness, and direction for improvement of his performance. Employer will use reasonable efforts to conduct Employee's evaluation during October or November of each year.

11. RESIDENCY. The Parties acknowledge that pursuant to the City's Home Rule Charter, Employee is obligated to continue to reside in the City.

12. VENUE. This Agreement shall be construed and interpreted according to the laws of the State of Colorado and any action necessary to enforce, construe, or interpret this Agreement shall be maintained in the County of Weld, State of Colorado.

IN WITNESS WHEREOF, Employer has caused this Agreement to be signed and executed on its behalf by Mark Clark, Mayor, and Employee has signed this Agreement the day of and year first written above.

ATTEST:

Julie Kamka, City Clerk

EMPLOYER:

By: _____
Mark Clark, Mayor

EMPLOYEE:

Cody Sims