

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this "Agreement") is made and entered into effective on March 1, 2024 by and between the City of Culver, an Oregon municipal corporation, whose address is PO Box 368, Culver, Oregon 97734 ("Employer"), and Donna McCormack, whose address is 4770 SW Wanker Lane, Culver, Oregon 97734 ("Employee")

RECITAL

Employer desires to employ and retain unique experience, abilities, and services of Employee, and Employee desires to be employed by Employer, subject to the terms and conditions contained in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained in this Agreement, and for other good and valuable consideration, the respect and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Employment

1.1 *Employment.* Subject to the terms and conditions contained in this Agreement, Employer will employ Employee and Employee will be employed by Employer. Employee will be employed as Employer's City Manager/City Recorder. Employee will be subject to the direction and control of the City Council (as defined below).

1.2 *Duties and Responsibilities.* Employee will be responsible for Employer's operational management, administration, and direction. Without otherwise limiting the generality of the immediately preceding sentence, Employee will have and perform the following duties and responsibilities for and on behalf of Employer (collectively, the "Services"): (a) the duties and responsibilities specified in Section 22 of the City of Culver Charter of 2008 (the "Charter"); (b) the duties and responsibilities specified in the City of Culver Governance Policies attached hereto as Exhibit A (the "Governance Policies"), including, without limitation, the timely preparation of the Annual Budget (c) to the extent not inconsistent with the duties and responsibilities specified in Section 22 of the Charter and/or those described in the Governance Policies, those duties and responsibilities customarily provided by a city administrator; and (d) any other duties and responsibilities that the Culver City Council (the "City Council") may direct or assign to Employee from time to time, including, without limitation, those duties and responsibilities set forth by City Council ordinances, resolutions, and/or adopted policies. Employee will perform the Services subject to and in accordance with this Agreement, the Charter (including, without limitation, Section 22 of the Charter), and the Governance Policies.

1.3 *Standards of Conduct.* Employee will (a) comply with any and all reasonable instructions, policies, directives, and/or rules that the City Council may establish from time to time; (b) not commit any fraudulent, dishonest, immoral, and/or other conduct which

may discredit, defame, and/or reflect adversely on Employer; (c) comply with any and all applicable federal, state, and local laws, regulations, ordinances, and resolutions, including, without limitation, the Charter; (d) perform the Services to the best of Employee's ability, diligently, in good faith, with the care and skill an ordinary prudent person in a like position would exercise under similar circumstances, and in a manner Employee reasonably believes to be in the best interests of Employer. Employee will not engage in any outside professional, business, and/or charitable activities that will materially interfere with Employee's performance of the Services, unless approved by the Counsel.

1.4 *Exempt Employee.* Employer and Employee hereby agree that Employee shall be an exempt employee per ORS 653.020(3) as Employee is a persona engaged in executive work who (a) performs predominately intellectual, managerial, or creative tasks; (b) exercises discretion and independent judgment; and (c) earns a salary and is paid on a salary basis.

1.4.1 Because this is a change from prior status as an hourly compensated employee, Employer will payout all accumulated overtime pay, compensatory time, accumulated vacation, and any other benefits exclusive to hourly city employees prior to the effective date of this agreement.

1.5 *Performance Evaluation.* The City Council (or designated city councilors) will review and evaluate Employee's performance at semi-annual intervals throughout each fiscal year. Performance evaluations are a two-way communication process designed to accomplish the following objectives: (a) maintain and improve job satisfaction by letting Employee know that the City Council is interested in Employee's job progress and professional development; (b) serve as a systematic guide to recognize needs for further training and progress planning; (c) ensure a factual, objective analysis of Employee's performance vs. job duties and responsibilities; (d) provide Employee an opportunity to discuss job problems or other job-related interests; and (e) provide a basis for coordinating the goals and objectives of Employee and Employer.

2. **Compensation, Benefits, and Indemnification.**

2.1 *Compensation.* In consideration of Employee's performance of the Services, Employer will pay Employee a monthly salary of SEVEN THOUSAND FIVE HUNDRED FIFTEEN AND 70/100 (\$7,515.70) (annualized at \$90,188.40), pro-rated as necessary. Employee's salary will be paid in periodic installments consistent with Employer's payroll practices.

2.2 *Cost of Living Adjustments and Performance Based Salary Increases.* Commencing on July 1, 2024, and continuing the same day of each following calendar year thereafter, Employee's salary will receive a cost-of-living adjustment based upon the consumer price index Employer uses from time to time for cost-of-living adjustments concerning Employer's employees; however, said adjustment shall not exceed four percent (4%) over the monthly salary payable during the immediately preceding fiscal year).

Commencing on July 1, 2024, and continuing the same day of each following calendar year thereafter, Employee may receive a two percent (2.0%) performance-based bonus (based on the monthly salary payable by Employer during the immediately preceding fiscal year) if the City Council (or designated City Councilors) determines that Employee has satisfactorily exceeded expectations of the Services in accordance with this Agreement.

2.2.1 Expectations shall be set at the beginning of the fiscal year, and an objectively reasonable rubric measuring performance shall be agreed to measure completion of expectations.

2.3 *Employee Benefits.* Subject to the terms and conditions contained in this Agreement, Employee will be entitled to receive or participate in the following benefits: (a) to the extent eligible, Employee will receive all the benefits that Employer may make available from time to time to its other regular full-time managerial employees, including, without limitation, any paid holidays, vacation time, sick leave, insurance (e.g. medical, dental, and life), medical reimbursement, and retirement plans; and (b) eighty (80) hours of Compensatory Time Off (“PAL”) per fiscal year (July 1-June 30 of the immediately following year), pro-rated as necessary. In no case shall Employees benefits be less than those paid to other City employees.

To receive the aforementioned benefits, Employee must meet any eligibility requirements imposed by applicable standards, policies, and regulations (including, without limitation, those contained in the Employee Handbook (as defined below)) and such benefits will be provided and must be used in accordance with and subject to such standards, policies, and regulations (including, without limitation, those contained in the Employee Handbook). Without otherwise limiting the generality of the immediately preceding sentence, any accrual of PAL shall not exceed 240 hours and any additional hours worked must be paid in cash. Any change to the Employee Handbook will not affect Employee’s benefits until the next contract negotiations when the parties can negotiate their inclusion into the contract.

Employee will provide reasonable advance notice to the City Council prior to Employee’s use of any leave (i.e., vacation, sick, and PAL) for planned absences exceeding one day. Employee will exercise their best efforts to schedule any leave during non-peak business days, weeks, months, or seasons.

Upon the termination of this Agreement (and Employee’s employment with Employer), any accrued but unused vacation time, and/or PAL benefits shall be paid to Employee.

2.4 *Professional Development Courses and Seminars.* Employer encourages Employee’s participation and/or attendance in courses, seminars, and conventions that will assist Employee’s professional growth and development, including, without limitation, courses, seminars, and conferences concerning Employee’s position. Employer will permit a reasonable amount of time for Employee to participate and/or attend such courses, seminars, and conferences. Employer will pay Employee’s reasonable and direct cost necessary for Employee’s travel, subsistence, and registration to participate in and/or attend such professional courses, seminars, and conferences. Travel will be at reasonable common carrier rates available and will not include first-class travel.

2.5 *Facilities and Bonding.* Employer will provide Employee with supplies and facilities reasonably required for Employee’s performance of the Services, as mutually and reasonably determined by Employer and Employee. Employer will pay the full cost of any fidelity or other bonds (or the insurance equivalent) required by Employee under any local law or ordinance.

2.6 *Expenses.* Employer will reimburse Employee for reasonable expenses incurred by Employee in connection with the performance of the Services upon Employee's compliance with the expense reimbursement instructions, policies, and/or rules that Employer may establish from time to time, which reimbursement policies include, without limitation, Employee providing Employer with actual receipts and verification of Employee's reasonable expenses. Without otherwise limiting the generality of the immediately preceding sentence, Employee will be reimbursed for authorized, and properly substantiated city-related business transportation (automobile) expenses at the then-current IRS standard mileage rate.

2.7 *Withholdings.* Payment of all compensation under this Agreement will be subject to all applicable federal, state, and local tax withholdings (and any other deductions and/or withholdings required by law and/or authorized by Employee).

2.8 *Indemnification.* To the extent required under ORS 30.285, as amended, Employer will defend, indemnify, and hold Employee harmless for, from, and against any and all claims, actions, proceedings, damages, liabilities, injuries, losses, and expenses of every kind, including, without limitation, attorney fees (collectively, "Damages"), resulting from or arising out of Employee's performance of the Services. Employer may litigate, compromise, and/or settle any Damages and pay the amount of any judgment, compromise, or settlement with or without Employee's consent. Employer, or its insurance company, will provide legal representation for Employee, suitable to Employee, concerning any damages that are brought against Employee that result from or arise out of Employee's performance of the Services. Employer's indemnification obligations under this Section will survive the termination of this Agreement but only insofar as Employer's indemnification relates back to Damages resulting from or arising out of Employee's performance of the Services. Notwithstanding anything contained in this Agreement to the contrary, Employer will have no obligation to indemnify Employee (and/or provide Employee any legal representation) if the Damages are the result of Employee's malfeasance or willful or wanton neglect of duty.

3. **Employee Representations, Warranties, and Covenants.** In addition to any other representations, warranties, and/or covenants made by Employee under this Agreement, Employee represents, warrants, and covenants to Employer as follows:

3.1 *No Conflicts.* The signing and delivery of this Agreement by Employee and the performance by Employee of all of Employee's obligations under this Agreement (including, without limitation, the Services) will not (a) breach any agreement to which Employee is a party, or give any person the right to accelerate any obligation of Employee; (b) violate any law, judgment, or order to which Employee is subject; and/or (c) require the consent authorization, or approval of any person, including, without limitation, any governmental body.

3.2 *At-Will Employment.* Notwithstanding anything contained in this Agreement to the contrary, Employee's employment relationship with Employer is at-will. Therefore, subject to the notice requirements contained in Section 4.2 of this Agreement, Employer may terminate Employee's employment relationship with Employer (and this Agreement) at any time, for any reason or no reason, with or without cause or prior notice.

Employee's Initials _____

3.3 *Employment Policies.* Employee will comply with any and all applicable Employer policies and procedures now existing and/or which may hereafter be adopted, revised, and/or amended from time to time, including without limitation, those policies and procedures contained in the Employee Handbook of the City of Culver, adopted September 17, 2012, as amended ("Employee Handbook").

3.4 *Confidential Information.* During the term of this Agreement, and at all times thereafter, Employee will maintain all Confidential Information (as defined below) in the strictest confidence and will not directly or indirectly use, communicate, and/or disclose any Confidential Information to any person without the mayor's prior written consent, except that Employee may (a) use Confidential Information to perform the Services to the extent necessary, and (b) communicate or disclose Confidential Information in accordance with a judicial or other governmental order as required by applicable law, but only if Employee promptly notifies the mayor of the order and complies with any applicable protective or similar order. Employee will (a) promptly notify the mayor of any unauthorized use, communication, and/or disclosure of any Confidential Information and/or any Employee breach of this Section; (b) assist Employer in every way to retrieve any Confidential Information that was used, communicated, and/or disclosed by Employee without the mayor's specific written authorization; and (c) exert Employee's best efforts to mitigate the harm caused by the unauthorized use, communication, and/or disclosure of any Confidential Information. Upon the earlier of Employer's request or the termination of this Agreement, Employee will immediately return to Employer any and all documents, instruments, and/or materials containing any Confidential Information accessed or received by Employee, together with all copies and summaries of such Confidential Information. Notwithstanding anything contained in this Agreement to the contrary, this Agreement does not operate to transfer any ownership or other rights in or to the Confidential Information to Employee or any other person. For purposes of this Agreement, the term "Confidential Information" means, without limitation, any and all documentation and/or information relating to or concerning Employer's future plans, business affairs, employment, legal, and/or litigation matters, and certain other confidential information that concern valuable, special, and/or unique aspects of Employer that need to be protected from improper disclosure, in whatever form (e.g., hard and electronic copies, etc.), that is received or assessed by Employee.

4. **Termination**

4.1 *Term of Agreement.* Subject to the terms and conditions contained in this Agreement, the term of this Agreement (and Employee's employment with Employer) will remain in full force and effect until June 30, 2026, unless sooner terminated as provided in

this Agreement. The term of this Agreement may be extended for one or more period of one year each upon the parties' mutual written agreement.

4.2 *Termination – Mutual Agreement and No Cause.* Notwithstanding anything contained in this Agreement to the contrary, this Agreement (and Employee's employment with Employer) may be terminated under any of the following circumstances: (a) at any time by the parties' mutual written agreement; (b) by Employer at any time, for any reason or no reason, with or without cause, by providing Employee ninety (90) days prior written notice; and (c) Employee at any time, for any reason or no reason, with or without cause, by providing the City Council ninety (90) days prior written notice:

4.2.1 If Employee gives the City Council ninety (90) days prior written notice of resignation, the Employer may accept Employee's resignation and pay out the remaining 90 days salary in lieu of Employee's continued employment during the ninety (90) day period;

4.2.2 If the Employer exercises the option to terminate Employee without cause, the Employer will pay a severance package pursuant to Section 4.4.

4.2.3 If the Employer terminates Employee for just cause the Employee is not entitled to pay beyond the termination date.

4.3 *Termination – Employer Immediate Termination for Cause.* Notwithstanding anything contained in this Agreement to the contrary, Employer may terminate this Agreement for cause (and Employee's employment with Employer) immediately upon notice to Employee upon the proof of any of the following events:

(a) Employee engages in any form of dishonesty or conduct involving moral turpitude related to Employee's employment relationship with Employer and/or that otherwise reflects adversely on the reputation or operations of Employer (including, without limitation, Employee's conviction (or pleading of *nolo contendere* or the equivalent) of a crime (e.g., any class of misdemeanor or felony as defined by applicable federal or state law);

(b) Employee fails to comply with any applicable federal, state, and/or local law, regulation, ordinance, standard, and/or policy;

(c) Repeated and/or continuous problems occur in connection with Employee's performance of the Services; and; and/or

(d) Employee breaches and/or otherwise fails to perform any Employee representation, warranty, covenants, and/or obligation contained in this Agreement.

The determination as to whether substantial grounds for a "just cause" termination exist under this Section will be within the sole discretion of the City Council.

4.4 *Severance Payment.* If Employer terminates Employee's employment under Section 4.2(b), Employer will pay Employee severance pay in an amount equal to six months' base salary then in effect, plus any Employer insurance and PERS contributions for such six-month period. The severance pay will be paid within thirty (30) days after the date of Employee's termination.

4.5 *Suspension.* Notwithstanding anything contained in this Agreement to the contrary, Employer may suspend Employee with full pay and benefits at any time during the term of this Agreement.

4.6 *Return of Employer Property.* Upon the earlier of Employer's request or the termination of this Agreement (and Employee's employment with Employer), Employee will immediately return to Employer any and all records, files, forms, materials, credit cards, phones, equipment, software supplies, Confidential Information, and any other materials furnished, used, or generated by Employee during the course of Employee's employment with Employer (and any and all copies of the foregoing), all of which Employee acknowledges and agrees is the sole property of Employer. If requested by the Employer, Employee will execute a written certification satisfactory to Employer to the effect that Employee has returned all such documents and material to Employer, including, without limitation, all Confidential Information.

4.7 *Employer Default.* No Employer act or omission will be considered a default under this Agreement unless and until Employer has received thirty (30) days' prior written notice from Employee specifying with reasonable particularity the nature of the alleged default Employee believes exist (the "Default Notice"). Commencing from Employer's receipt of the Default Notice, Employer will have thirty (30) days to cure or remedy the alleged default (the "Cure Period") before Employer will be deemed in default under this Agreement; provided, however, if the nature of the default is such that it can't be completely remedied or cured within the Cure Period, there will not be a default by Employer under this Agreement if Employer begins correction of the default within the Cure Period and thereafter proceeds with reasonable diligence to effect the remedy as soon as practicable.

5. Miscellaneous

5.1 *Severability.* Each provision contained in this Agreement will be treated as a separate and independent provision. The unenforceability of any one provision will in no way impair the enforceability of any other provision contained herein. Any reading of a provision causing unenforceability will yield to a construction permitting enforcement to the maximum extent permitted by applicable law.

5.2 *Assignment and Binding Effect.* Employee will not assign or delegate any of Employee's rights or obligation under this Agreement to any person without the prior written consent of Employer, which consent Employer may withhold in its sole discretion. Subject to the immediately preceding sentence, this Agreement will be binding on the parties and their respective heirs, personal representatives, successors, and permitted assigns, and will inure to their benefit. This Agreement may be amended only a written agreement signed by each party.

5.3 *Attorney Fees.* In case suit or action is instituted on account of this Agreement or any provision or provisions hereof, the prevailing party shall recover such sums as the court may adjudge reasonable as attorney's fees in such suit or action at trial and appellate levels. The parties agree that in the event of a dispute or impasse between the parties with regard to the system or terms of agreement, they shall seek to provide for binding arbitration of any dispute or impasse between the parties. Binding arbitration will be through the American Arbitration Association or a similar body and may be initiated at any time by any party to the agreement. Parties to the agreement must equally share arbitration.

5.4 *Governing Law; Venue.* This Agreement is governed by the laws of the State of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Agreement. Any action or proceeding arising out of this Agreement will be litigated in courts located in Jefferson County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Jefferson County, Oregon.

5.5 *Attachments and Further Assurances.* Any exhibits, schedules, instruments, documents, and/or other attachments referenced in this Agreement are part of this Agreement.

5.6 *Legal Representation.* Jered Reid has been employed by Employer to prepare this Agreement and such attorneys represent only Employer in this matter. Employee has thoroughly reviewed this Agreement (and any document referenced herein) with counsel of Employee's choosing or has knowingly waived the right to do so. The rule of construction that a written instrument is construed against the party preparing or drafting such instrument will specifically not be applicable in the interpretation of this Agreement and any documents executed and delivered pursuant to, or in connection with, this Agreement.

5.7 *Notices.* All notices or other communications required or permitted by this Agreement must be in writing, must be delivered to the parties at the addresses set forth above, or any other address that a party may designate by notice to the other party, and are considered delivered upon actual receipt if delivered personally, by fax, or by a nationally recognized overnight delivery service, or at the end of the third business day after the date of deposit if deposited in the United States mail, postage pre-paid, certified, return receipt requested. All notices to the Employer must be sent c/o the mayor.

5.8 *Waiver.* No provision of this Agreement may be modified, waived, or discharged unless such waiver, modification, or discharge is agreed to in writing by Employer and Employee. No waiver of either party at any time of the reach of, or lack of compliance with, any conditions or provisions of this Agreement will be deemed a waiver of other provisions or conditions hereof.

5.9 *Entire Agreement.* This Agreement contains the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and contains all of the terms and conditions of the parties' agreement and supersedes any other oral or written negotiations, discussions, representations, or agreements. Employee has not relied on any promises, statements, representations, or warranties except as set forth expressly in this Agreement.

5.10 *Person and Interpretation.* For purposes of this Agreement, the term "person" means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity. All pronouns contained herein, and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular, or plural, as the identity of the parties may require. The singular includes the plural, and the plural includes the singular. The word "or" is not exclusive. The words "include," "includes," and "including" are not limiting. The titles, captions, or headings of the sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

5.11 *Execution/Counterparts.* The parties may execute this Agreement in separate counterparts, each of which when executed and delivered will be an original, but all of which together will constitute one and the same instrument. Facsimile or email transmission of any signed original document will be the same as delivery of an original. At the request of either party, the parties will confirm facsimile or email transmitted signatures by signing and delivering an original document.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed and effective as of the date last written below.

EMPLOYER

EMPLOYEE

CITY OF CULVER
By: Bart Carpenter
Its Mayor

DONNA McCORMACK

Date

Date