

# **EMPLOYMENT AGREEMENT**

**Between**

**City of Oregon City, Oregon**

**And**

**Anthony Joseph "Tony" Konkol III**

## **RECITAL:**

This Employment Agreement (hereinafter "Agreement") is made and entered on the day set out above the signatures below, by and between the City of Oregon City, an Oregon municipal corporation, (hereinafter "City") and Anthony Joseph "Tony" Konkol III, (hereinafter "City Manager" or "Manager") to set forth the terms and conditions established by these parties for the City's employment of City Manager.

## **IT IS AGREED:**

### **Section 1: Term**

The City Manager's date of hire as City Manager shall be the date this Agreement is signed by and on behalf of the parties following authorization by the Commission. City Manager shall remain in the employ of the City until the employment relationship ends in accordance with the terms of this Agreement. City Manager shall not accept employment in any other capacity while serving the City except as authorized in writing by the Mayor with prior approval of the City Commission.

This Agreement shall remain in full force in effect from City Manager's date of hire described in the preceding paragraph until terminated by the City or City Manager as hereinafter provided, and shall be indefinite without an expiration date.

The term of this Agreement shall be for an initial period from the date of hire of the City Manager through March 31, 2019. Following 2017, the term of this Agreement shall automatically be extended one (1) year each January 31st unless written notice that the Agreement shall terminate is given prior to January 20<sup>th</sup> (so that, for example, on January 31, 2018 the term shall be extended through March 31, 2020; and on January 31, 2019 the term shall be extended through March 31, 2021). In the event the Agreement is not renewed or extended, all compensation, benefits and requirements of the Agreement shall remain in effect until the expiration of the term of the Agreement unless Employee voluntarily resigns.

However, the City Commission may notify City Manager on or before January 20th of any year that the provision for the annual extension has been terminated. In that event, the automatic extension provision shall be of no further effect and the Employment Agreement shall expire at the end of the then existing term. City Manager may notify City at any time prior to January 20<sup>th</sup> that he does not desire the extension to continue, in which case the extension provision of this Agreement shall be of no further effect.

## **Section 2: Duties and Authority**

City employs Tony Konkol as its City Manager to exercise the executive, leadership and governmental discretion vested in the City Manager under, and to perform the functions and duties specified in, the City Charter and the Oregon City Municipal Code, and by any other applicable ordinances, resolutions, or policies of the City and to perform other legally permissible and proper duties and functions of City Manager as may be assigned him by the Mayor and City Commission. Manager accepts the Commission's appointment and employment as City Manager for the City of Oregon City.

The Mayor and City Commission shall adhere to the principal of noninterference in the City's administration as necessary to the orderly and efficient implementation of City Commission policy and to the proper discharge of duty by the City Manager, except as expressly described as a role of the Mayor and/or City Commission in the Oregon City Charter, an ordinance or resolution adopted by the Commission, or City policy adopted and/or approved by vote of the City Commission. The Mayor and City Commission agree to direct their concerns and communications to City staff through the City Manager. The City Manager shall respond promptly to all inquiries from the Commission whether made individually or collectively.

## **Section 3: Compensation**

Commencing on the hire date, the City shall pay City Manager for services rendered a salary of one hundred forty thousand dollars and four (\$140,004 (\$11,667 monthly)). The City Manager's salary will be adjusted periodically in accordance with the City's practices. The City Manager shall participate in PERS on the same terms as other management employees of the City.

The City Commission shall review the performance of the City Manager on a not less than annually and regularly in December of each year consistent with the protocols set out in Section 15, below. Based on such review, the Commission may adjust the City Manager's base salary (up or down), provide merit pay or any combination of merit pay and base salary adjustment for the successive contract term. Any adjustment shall be effective as of January 1 following the review described in Section 15 of this Agreement. Notwithstanding the requirements of Section 20(B) of this Agreement related to amendments, this merit based adjustment to Manager's base salary may occur without need of amendment of this Agreement.

The City shall pay City Manager in equal installments at the same time and in the same manner as other employees of the City. The City Manager's salary and benefit package may be adjusted to remain consistent with any cost in living adjustment and increase or decrease in benefits of

other full-time City management and non-represented employees consistent with the City's Fiscal Year and Pay Plan.

#### **Section 4: Deferred Compensation**

The City shall contribute, each pay period, an amount equal to 6.27% of Manager's salary into a Section 457 deferred compensation retirement plan selected by Manager. In addition, the City agrees to contribute 3% of the Employee's salary annually to a 401(a) retirement plan.

#### **Section 5: Health, Disability and Life Insurance Benefits**

The City shall pay a portion of the premiums for health, vision, and dental insurance benefits made available to City employees for the City Manager (and his dependents) equal to that provided other full-time City management and non-represented employees. The City Manager will pay the portion of any premium(s) required to be paid by other full-time City management and non-represented employees, and shall do so by payroll deduction.

The City will make premium payments for life, accidental death, dismemberment and long term disability insurance coverage for City Manager equivalent to the benefits provided to the City's management and non-represented employees. The City Manager shall have the right to choose the beneficiary on all such policies in accordance with policy terms and the procedures of the insurance providers.

#### **Section 6: Vacation and Sick Leave**

The City Manager shall accrue sick, vacation and other leaves at the same rate accorded other full-time City management and non-represented employees.

Consistent with City policy, Manager may accrue up to a maximum of three hundred and sixty (360) hours of vacation. In addition, Manager is entitled to City recognized holidays and to use Executive Leave in accordance with City policy. The Manager shall accrue unlimited sick leave. Unused sick leave has no cash value and may not be redeemed and shall not be otherwise paid except when used in accordance with the City's sick leave policies.

The Employee has the option to cash out up to ten days (80 hours) of vacation time per fiscal year at the Employee's hourly rate.

#### **Section 7: Retirement**

The City Manager will continue membership in the Public Employees Retirement System Plan and the Oregon Public Service Retirement Plan (OPSRP) and be responsible for retirement contributions paid in the same manner as other full-time City management employees.

## **Section 8: Automobile Allowance**

To compensate Employee for automobile expenses related to the duties of City Manager, City shall provide an allowance of \$350 per month. The automobile allowance is in lieu of standard mileage reimbursement for business related travel.

## **Section 9: Dues and Subscription**

The City will reimburse City Manager for professional dues and subscriptions appropriate for full participation in appropriate associations and organizations necessary and desirable for professional participation, growth and advancement, and to improve performance of duties as City Manager. City Manager shall account to the City Commission on each professional organization for which the City pays dues and subscription services as part of the budget process.

## **Section 10: Civic Involvement**

The City and Employee agree that it is necessary and desirable for Employee to be an active participant in the Oregon City community activities and civic organizations that compliment his position as City Manager and give him positive visibility in the community. City agree to pay for membership in one or more civic organizations; provided, however, the Commission, in its sole discretion, shall have the right to disapprove membership in any organization that would be in conflict with or could reasonably cause a conflict of interest with Employee's role as City Manager. City Manager shall account to the City Commission on each civic organization for which the City pays dues and subscription services as part of the budget process.

## **Section 11: Professional Development**

The City recognizes the importance of the Manager's professional development and, in that regard, the Manager may maintain membership in certain professional organizations and pursue continuing education in the areas important to his duties as City Manager. The City shall provide for the Manager's membership dues in the International City Managers Association, the Oregon City County Managers Association and the American Planning Association. Further, the City will provide funding of the Manager's registration and reasonable travel and related expenses to attend conferences and seminars appropriate to the duties of the City Manager. Such funding shall be considered as part of the City's annual budget process.

## **Section 12: Termination**

- A. Termination Without Cause. This Agreement may be terminated either by Oregon City or the City Manager for any reason whatsoever upon giving not less than sixty (60) days written notice to the other party. The parties recognize that the City Manager is a key member of the City's executive management team and should therefore provide the City Commission with the greatest amount of notice possible, as soon as possible, consistent with Section 15 below.

B. Termination For Cause. This Agreement may be terminated immediately in the sole discretion of the City Commission upon the occurrence of any of the following:

- (1) The City Manager willfully fails or refuses to comply with the policies, standards and regulations of the City or written expectations of the City Commission as may be established periodically;
- (2) The City Manager commits act(s) of fraud, dishonesty, misappropriation of funds, deception of the City Commission or other authority, or such other wrongdoing or misconduct which in the view of the City Commission, reflects poorly on the City Manager or the law enforcement functions of the City and which in the view of the City Commission compromises the City Manager's ability to act as City Manager;
- (3) City Manager fails or refuses to perform faithfully or diligently any of the duties provided for in this Agreement.
- (4) City may suspend Employee with full pay and benefits at any time during the term of this Agreement, but only if a majority of the Commission vote to suspend Employee pending an independent investigation into allegations defined in Section 12(B) above. Suspension discussion shall occur in executive session, to the extent permitted under Oregon public meeting laws. The action to suspend will be taken in public meeting, to the extent required by Oregon law. Employee shall be given written notice setting forth any allegations that could lead to suspension at least five (5) working days prior to such executive session and shall be given the opportunity to present defenses or provide a statement during executive session, but Employee shall not be allowed to be present during Commission deliberations that follow. During that five (5) day or more interim period before the matter can be heard by Commission, City may temporarily suspend Employee with pay. Nothing contained herein shall be construed to require a suspension before termination.
- (5) In the event the City Commission determines by action of the Commission that the term of this Agreement and City Manager's employment should be terminated "for cause" as defined in Section 12(B) above of this Agreement, City Manager shall not have recourse under mediation or arbitration procedures set forth in Section 20 (E) & (F) of this Agreement.

### Section 13: At Will Status; Financial Security Payment

The employment relationship between the City and the City Manager is employment "at will," the City Manager serves at the pleasure of the Mayor and the City Commission, and therefore the only expectations the City Manager may have concerning the terms of continued employment are those set out in this Agreement.

- A. Financial Security Benefit Upon Termination Without Cause. In recognition of the unique nature of City Manager's employment as the only City employee who serves at the pleasure of elected officials whose tenure in office is of uncertain and indefinite duration and whose duties may necessitate that City Manager act in the City's interest in a manner which proves to be unpopular or controversial, it is appropriate and commonplace for the terms of a City Manager Employment Agreement to include a fair measure of financial security in the event the City Commission should decide at any time for any reason that circumstances require a change of City Manager.

In the event City Manager is involuntarily terminated by the City prior to the expiration of the term of this Agreement or any successive term (when the City Manager is willing and able to perform his duties) for reasons other than those set out in subsection 12(B) of this Agreement, then in that event, the City will pay Employee base salary and health benefits continuation for City Manager and dependents enrolled in the City benefit plan for up to four (4) months commencing with the month following the City Manager's last month worked, provided however that such payments shall cease in the event City Manager becomes employed under terms which include substantially equivalent remuneration. Remuneration shall be deemed "substantially equivalent" if the base salary of the subsequent position is greater than ninety percent (90%) of the base salary the City Manager earned at the time City employment ended.

This four (4) month financial security benefit shall increase by one (1) month to five (5) months on the first anniversary of City Manager's employment as City Manager under the terms of this Agreement, shall increase to six (6) months on the second such anniversary of City Manager's employment under the terms of this Agreement, provided that City Manager remains continuously so employed.

- B. Involuntary Reduction of Salary Benefits. If the City reduces the salary or other financial benefits of City Manager in greater percentage than an applicable across the board reduction for all management and non-represented employees of Oregon City or if City Manager resigns at the request of the City Commission (for reasons other than those identified in paragraph 12(B) of this Agreement), then the City Manager may deem this Agreement to be involuntarily terminated without cause and he shall thereby be entitled to the financial security payments consistent with paragraph 13(A) of this Section.

- C. Leave Upon Termination. Upon any termination or resignation at the request of the City Commission the City Manager shall be entitled to a lump sum payment equivalent to all earned and unpaid vacation, executive leave and holiday accruals consistent with benefits accorded other management and non-represented employees of the City in addition to any financial security payments described in this Agreement to which the City Manager is otherwise entitled.
- D. Incapacitation. In the event City Manager is incapacitated or otherwise unable to perform his duties as City Manager, upon exhaustion of paid earned leave and other allowed time permitted by Oregon and federal law, the City may either suspend the Agreement until the City Manager is able to return to work or terminate this Agreement. In this event, severance shall not apply and other employment benefits shall be exclusive.

#### **Section 14: Resignation**

If the City Manager voluntarily resigns his position with the City before the expiration of this Agreement, City Manager shall give the Mayor and City Commission at least sixty (60) calendar days' written notice in advance and remain available to serve during this period. The City Commission, however, shall have the discretion to decide whether the City Manager will continue to serve as Manager during the notice period. Upon voluntary resignation at any time except as specified in sub-paragraph 13(B) of this Agreement related to involuntary reduction of salary, the City Manager shall not be entitled to any financial security payment or pay continuation amount, provided however that if notice is provided and the City Commission elects to cut short the notice and service period provided for in this Section, then Manager shall be paid from the effective date of the Commission action until his first day of subsequent employment unless the notice relates to a departure unrelated to acceptance of other employment in which case no additional compensation of any kind shall be due.

#### **Section 15: Performance Evaluation**

The City Commission shall review the performance of the City Manager in December of each year subject to a process, form, criteria and format to be determined by the Commission. The process at a minimum shall include the opportunity for the Manager to prepare a self-evaluation, the Commissioners submissions of written individual feedback and evaluation documentation, a 360 degree input process facilitated and documented by a person of the Commission's selection which includes feedback from staff and stakeholders with frequent interaction with the City Manager and knowledge of the City Manager's roles and responsibilities as determined and identified by the Mayor and Commission, a meeting to discuss the documentation, and a prepared summary of the evaluation results which shall be condensed following the meeting and retained as the "performance evaluation" for the evaluation period. The evaluation will be based on the Manager's essential job functions and any specific goals and objectives identified by the Manager and Commission periodically.

## **Section 16: Hours of Work**

The City Manager is expected to attend to the duties as the City's chief executive and administrative officer in order to faithfully discharge the responsibilities which the parties reasonably anticipate and generally will require the Manager to be present, working and available to City staff, the public and members of the Commission during established City hours of work, and appropriately available by phone as needed at other times.

It is recognized that the City Manager is a salaried employee who must devote a great deal of time outside the normal office hours on business for the City. The City Manager shall be allowed to establish an appropriate work schedule given the demands of each workweek. Accordingly, the City Manager may adjust his work schedule, including time he is in attendance in his office, provided that the City Manager work schedule is sufficient to attend to the functions of the City and satisfactorily fulfill the duties of City Manager. City Manager's compensation is fixed based on the parties' expectation that, on balance, City Manager's hours of work will exceed forty (40) per workweek.

## **Section 17: Outside Activities**

The employment provided for by this Agreement shall be the City Manager's sole employment. Notwithstanding the foregoing, it is recognized by the City that certain outside consulting or teaching opportunities may provide indirect benefits to the City, the City Manager may elect, after written approval from the City Commission, to accept limited teaching, consulting or other opportunities with the understanding that such arrangement(s) may not create interference with nor be a real or perceived conflict of interest with his responsibilities as City Manager.

## **Section 18: Bonding**

The City shall bear the full cost of any fidelity or other bonds required of the City Manager by law.

## **Section 19: Other Terms and Conditions of Employment**

Except as otherwise provided in this Agreement, the City Manager shall be entitled to a level of benefits not less than those enjoyed by other City management and non-represented employees.

## **Section 20: General Provisions**

- A. Professional Liability. The City shall defend, hold harmless and indemnify the City Manager from any and all demands, claims, suits, actions and legal proceedings brought against the City Manager in his individual capacity, or in his official capacity as agent and employee of the City, consistent with the terms of the Oregon Tort Claims Act (ORS 30.260 to 30.300).



- B. Amendment. Nothing shall restrict the ability of the City Manager and the City Commission to amend or adjust the terms of this Agreement. However, no amendment or adjustment shall be valid unless in writing and signed by both the City Manager and the Mayor and City Recorder as authorized by action of the City Commission.
- C. Severability. If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable and shall not be affected, and shall remain in full force and effect.
- D. Relationship to City Policies of General Application. The terms of this Agreement shall control over inconsistent terms and elements of personnel policies of the City of Oregon City. To the extent that this Agreement is not inconsistent therewith, Oregon City policies shall constitute terms and conditions governing the City Manager's employment.
- E. Mediation. Should any dispute arise between the parties regarding the terms of this Agreement or work or services covered thereby, such dispute shall be submitted to a mediator by either party prior to arbitration if either party elects arbitration. The parties shall exercise good faith efforts to select a mediator whose compensation shall be shared equally by both parties. Mediation will be conducted in the Portland metropolitan area, unless both parties agree otherwise. Both parties agree to exercise good faith efforts to resolve disputes covered by this section through this mediation process. If a party requests mediation and the other party fails to respond within ten (10) working days, or if the parties fail to agree on a mediator within ten (10) working days, a mediator shall be appointed by the presiding judge of the Clackamas County Circuit Court upon request of either party.
- F. Arbitration. In the event the parties have a dispute concerning the terms of this Agreement, the terms and conditions of the employment relationship, or the violation of any federal, state or local law relating to the employment relationship (and they have not otherwise resolved the matter through the mediation process set out in subsection 20(E) above), then the dispute shall be resolved by submitting it to binding arbitration.

Within thirty (30) calendar days of a notice by either party to the other requesting arbitration, the City and the City Manager shall select an arbitrator from a list of three (3) obtained from Arbitration Services of Portland, Inc. (ASP). The arbitrator shall for purposes of the arbitration proceedings apply the rules of mandatory arbitration as adopted by the ASP in effect at the time of the arbitration.

Within sixty (60) calendar days of the selection or appointment of the arbitrator, both the City and the City Manager shall concurrently submit to the arbitrator (supplying a copy to each other) a written statement of their respective legal and factual positions on the dispute. The arbitrator shall determine, after a hearing on the merits and within forty-five (45) calendar days after receipt of the statements, the determination of the dispute which determination shall be final and binding.

Each party shall bear equally the expense of the arbitrator and all other expenses of conducting the arbitration. Each party shall bear its own expenses for witnesses, depositions, other costs incurred and attorneys.

- G. Integration. This Agreement contains the entire Agreement between the parties and supersedes all prior written or oral discussions or agreements regarding the same subject.

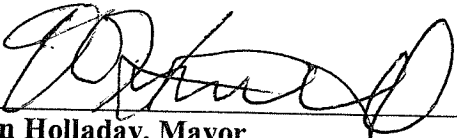
#### **Section 21: Conditions of Enforceability**

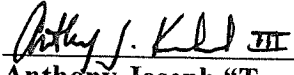
At the first Commission meeting during January of any year when any newly elected City Commissioner is sworn into and assumes Office as a City Commissioner, the City Commission shall receive a briefing on the terms and conditions fixed by this Agreement and the Commission shall approve and thereby ratify the terms of this Agreement, or in the alternative, the City Manager and the City Commission shall negotiate to resolve any differences identified at that time. The parties' intention is to afford every newly constituted City Commission the opportunity to review, become informed and agree to the terms of this Agreement.

The City Commission and the City Manager affirm by the execution of this Agreement that the City Manager is relying on the City Commission's commitment of financial security payments in the event a City Commission were to elect to end City Manager's employment without cause. Therefore, it is expressly understood by the parties that the City shall be estopped from asserting that the financial security obligations undertaken by the City Commission and described in this Agreement are not enforceable for any reason connected with a future change in the composition of the City Commission.

THEREFORE, THE CITY OF OREGON CITY BY AND THROUGH ITS MAYOR AND CITY COMMISSIONERS HAVE DETERMINED TO APPOINT ANTHONY J. KONKOL III AS CITY MANAGER AND EMPLOY HIM IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT, WHICH CITY MANAGER ACCEPTS, and accordingly, the City of Oregon City has caused this Agreement to be signed and executed on its behalf by the Mayor and duly attested by the City Recorder, and the City Manager has signed and executed this Agreement, both in duplicate, this 7<sup>th</sup> day of February, 2016.

**CITY OF OREGON CITY:**


  
\_\_\_\_\_  
Dan Holladay, Mayor

  
\_\_\_\_\_  
Anthony Joseph "Tony" Konkol III

ATTEST:

  
\_\_\_\_\_  
Kattie Riggs, City Recorder

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Akin Blitz, Attorney for Oregon City

