

COTTONWOOD HEIGHTS

RESOLUTION NO. 2015-62

A RESOLUTION APPOINTING A DEPUTY CITY MANAGER AND RATIFYING AN EMPLOYMENT AGREEMENT

WHEREAS, on 13 October 2015, the municipal council (the "Council") of the city of Cottonwood Heights (the "City") met in regular session to consider approving and ratifying the appointment of Bryce K. Haderlie ("Mr. Haderlie") as the City's deputy manager under the City's council-manager form of government; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interest of the health, safety and welfare of the citizens of the City to act as aforesaid, based solely on Mr. Haderlie's abilities, integrity, prior experience relating to the duties of office (including, without limitation, abilities in public administration and executive leadership) and managerial capabilities; and

WHEREAS, consequently, the Council desires to approve and ratify (a) the appointment of Mr. Haderlie as the City's deputy manager effective 5 October 2015, and (b) the City's entry into an employment agreement (the "Agreement") with Mr. Haderlie in the form of the attached exhibit;

NOW, THEREFORE, BE IT RESOLVED that the Cottonwood Heights city council hereby approves and ratifies the appointment of Mr. Haderlie as the City's deputy manager effective 5 October 2015, with all of the powers, duties and responsibilities specified by statute and by ordinance; and

BE IT FURTHER RESOLVED by the Cottonwood Heights city council that the attached Agreement with Mr. Haderlie is hereby approved and ratified; that the City's mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of the City; and that all actions taken by any City officer or employee in connection with any prior negotiation, execution and delivery of the Agreement be, and hereby are, approved and ratified.

This Resolution, assigned no. 2015-62, shall take effect immediately upon passage as provided herein.

PASSED AND APPROVED this 13<sup>th</sup> day of October 2015.



*Linda W. Dunlavy*  
\_\_\_\_\_  
Linda W. Dunlavy, Recorder

COTTONWOOD HEIGHTS CITY COUNCIL

By *Kelvyn H. Cullimore, Jr.*  
\_\_\_\_\_  
Kelvyn H. Cullimore, Jr., Mayor

VOTING:

Kelvyn H. Cullimore, Jr.	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael L. Shelton	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael J. Peterson	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Tee W. Tyler	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

DEPOSITED in the office of the City Recorder this 13<sup>th</sup> day of October 2015.

RECORDED this 13 day of October 2015.

# Employment Agreement

**THIS EMPLOYMENT AGREEMENT** (this "*Agreement*") is made effective 22 September 2015 by **COTTONWOOD HEIGHTS**, a Utah municipality whose address is 1265 East Fort Union Blvd., Suite 250, Cottonwood Heights, UT 84047 ("*City*"), and **BRYCE K. HADERLIE**, an individual whose address is 7131 West 8170 South, West Jordan, UT 84081 ("*Employee*").

## RECITALS:

A. City is a municipality organized under the "council-manager" optional form of government described in UTAH CODE ANN. §10-3b-103(6).

B. In a city organized under the "council-manager" optional form of government, the city's governing body (the "*Council*") is required to appoint a municipal manager ("*Manager*") to act as City's chief executive officer with the powers and duties specified by statute and by city ordinance, including, without limitation, those specified in Chapter 2.40, COTTONWOOD HEIGHTS CODE OF ORDINANCES.

C. In consultation with the Council, City's Manager has determined that the performance of City's business will be enhanced if a deputy city manager is employed to carry out such job functions as Manager may assign from time to time.

D. Employee has significant expertise in local government, including serving as deputy manager in other municipalities, and submitted an application to serve as City's deputy manager.

E. Following an extensive selection process, Manager, in consultation with the Council, has indicated his desire to appoint Employee as City's deputy manager, subject to the parties' entry into a mutually-acceptable employment agreement.

F. Consequently, City desires to employ Employee, and Employee desires to be employed, as City's deputy manager on the terms and conditions specified in this Agreement.

G. This Agreement shall supersede any and all prior negotiations and agreements, oral and/or written, between the parties concerning Employee's employment by City as its deputy manager.

## AGREEMENT:

**NOW, THEREFORE**, in consideration of the premises, the mutual covenants and conditions hereinafter set forth, and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Duties.** City hereby employs Employee, and Employee hereby accepts such employment, to perform the functions and duties of City's deputy city manager as assigned from time to time by Manager (collectively, the "*Services*"). Employee shall devote his full time and attention to the performance of the Services in a professional manner in accordance with all legal requirements and professional standards, including, without limitation, the Code of Ethics (the

“Ethical Code”) of the International City/County Management Association (the “ICMA”), which Ethical Code shall furnish principles to govern Employee’s conduct as City’s deputy manager.

Employee shall observe and comply with the rules and regulations of City as adopted by the Council, either orally or in writing, respecting performance of Employee’s duties, with the requirements of City’s employee manual from time to time (the “Manual”), and shall timely and properly carry out and perform orders, directions and policies announced to Employee by Manager from time to time, either orally or in writing. Employee is not an hourly employee, and therefore shall be required to work as necessary to fully perform his responsibilities hereunder.

2. **Term of Employment.** Employee’s initial term of employment shall be from 5 October 2015 through 30 June 2016, subject to a probationary period from 5 October 2015-4 April 2016 (the “Probationary Period”). Thereafter, this Agreement automatically shall continue in effect for successive one-year (July 1st through June 30th) renewal periods. Notwithstanding the foregoing, however, Employee shall serve at the pleasure of Manager in consultation with the Council, and nothing in this Agreement shall prevent, limit or otherwise interfere with City’s right to terminate Employee’s employment at any time, with or without cause, subject to Employee’s right to severance as provided below. Similarly, nothing herein shall prevent, limit or otherwise interfere with Employee’s right to resign at any time from the position of City’s deputy manager as provided below. Subject to the foregoing, this Agreement shall continue in effect until it is terminated by City or by Employee as provided below.

3. **Services, Independent Activities.** Throughout the duration of this Agreement, Employee shall be actively involved in personally performing the Services on a full-time basis, devoting Employee’s time, attention and best efforts to City’s affairs as directed by Manager. Employee shall not be employed by any other person or entity while he is employed hereunder. Notwithstanding the foregoing, however, expending reasonable amounts of time for personal charitable or professional activities, or such outside business activities as may be pre-approved by Manager following Employee’s written request and full disclosure, shall not be deemed a breach of this Agreement if such activities do not materially interfere with the Services to be rendered to City hereunder. Employee shall not, without City’s express prior written consent (which consent may be withheld in City’s sole, subjective discretion), engage in any activity competitive with or adverse to City’s interests, whether alone in concert with others.

4. **Standards.** Employee shall perform Employee’s duties under this Agreement in accordance with (a) Manager’s directions; (b) all legal requirements, (c) the Ethical Code, and (d) such other standards as may, from time to time, be applicable during the term of this Agreement.

5. **Compensation and Benefits.** Conditioned on Employee’s proper and timely performance of the Services, City shall provide the following compensation and benefits to Employee:

(a) **Base Salary.** City shall pay Employee an annual base salary (the “Base Salary”). Through 30 June 2016, Employee’s Base Salary shall be the equivalent of One Hundred Sixteen Thousand Thirty-two and 47/100ths Dollars (\$116,032.47) annually. On 1 July 2016 and effective each July 1<sup>st</sup> thereafter, Employee’s Base Salary may be increased (but not decreased) as City deems appropriate in its sole, subjective discretion based on Manager’s evaluation, in consultation with the Council, of Employee’s performance. The Base Salary shall be paid to Employee in approximately equal installments in accordance with City’s payroll

practices from time to time. Appropriate deductions shall be made from each paycheck for withholding of federal and state income taxes and any other appropriate items. As an “exempt” salaried employee, Employee shall not be entitled to overtime pay.

(b) Bonuses. In addition to the Base Salary, City may, but shall not be obligated to, pay to Employee such incentive bonus(es) as City may from time to time determine in its sole, subjective discretion based on Manager’s evaluation of Employee’s performance.

(c) Automobile Allowance. Because Employee is required to be on-call 24 hours per day, seven days a week, City shall provide Employee a \$400 per month vehicle allowance for use of Employee’s private automobile in lieu of any duty to reimburse Employee for automobile mileage incurred in City-related travel. Alternatively, and in lieu of such vehicle allowance, Employee may choose instead to be reimbursed for miles traveled on City business (excluding commuting to and from Employee’s residence) at applicable rates and requirements of the Internal Revenue Code. Employee’s decision of whether to accept the monthly vehicle allowance or to instead accept mileage reimbursement at the IRS rate shall be made in advance for each full year of the term of this Agreement.

(d) Equipment. Because Employee is required to be on-call 24 hours per day, seven days a week, Employee shall be provided with the use of a City-owned “smart phone.” Employee also shall be provided with appropriate office furnishings and equipment, including computers (desktop or laptop), iPad or the like. Employee’s use of such City-provided “smart phone,” computers and the like shall be in accordance with applicable policies described in the Manual from time to time. In lieu of a City-provided “smart phone,” Employee may elect to instead receive a \$100/month “smart phone” allowance from City. Employee acknowledges that he has no expectation of privacy in connection with his use of City-owned communication devices such as “smart phones” and computers, or his use of Employee’s personal communication devices to conduct City business.

(e) Dues and Subscriptions. City shall pay Employee’s professional dues for membership in the ICMA, the Utah City Management Association (“UCMA”), and any local city-county management association. City also shall pay such other dues and subscriptions on behalf of Employee as are approved in City’s annual budget or as authorized separately from time to time by Manager in consultation with the Council.

(f) Professional Development. City shall pay for Employee’s travel and attendance at the ICMA’s annual conference, the UCMA annual conference, and the Utah League of Cities and Towns’ annual conference in accordance with the travel policies explained in the Manual and other policies adopted from time to time by the Council. City also shall pay for Employee’s attendance at other seminars, conferences and committee meetings as are approved in City’s annual budget or as are authorized separately from time to time by Manager.

(g) Retirement. Annually, City shall pay into one or more retirement accounts for Employee’s benefit on a basis at least equivalent (as a percentage of income) as City’s other full-time administrative/management employees. Such contribution shall not exceed the maximum permitted by federal law. Employee’s retirement payments shall be payable in installments at the same time as retirement benefits are paid for City’s other employees.

(h) Insurance. City shall provide Employee and his family with health, dental, disability, term life and other insurance coverage on the same basis as City's other full-time employees.

(i) Other Customary Benefits. Employee shall have the right to participate in and receive any other benefits or working conditions as are provided for City's other administrative/ management employees.

(j) FICA. City does not participate in the federal Social Security System. In lieu of FICA contributions, City employees are given a total of 12.4% of their pay, per pay period, that is invested in a retirement savings account of their choice. A portion of such contribution can also be used to fund a health savings account, if preferred by the employee.

6. **Holidays; Personal Time Off; Executive Leave**. Employee shall be entitled to the same paid holidays as City's other full-time employees. Employee also shall accrue personal time off ("*PTO*") in lieu of, *inter alia*, paid vacation and paid sick leave on the same basis as City's other full-time administrative/management employees in accordance with the Manual and other policies approved by the Council from time to time. Further, in recognition of Employee's attendance at meetings of the Council most Tuesday evenings, Employee shall be entitled to up to six days of "executive leave" each fiscal year (three days during the Probationary Period), which may be taken in increments of not more than two consecutive days and otherwise in accordance with policies approved by the Council from time to time. As explained in the Manual, unused executive leave is forfeited, and is not paid in connection with any termination of employment.

7. **Bonding**. City shall bear the full cost of any fidelity or other bonds covering Employee as required by statute or as desired by the Council.

8. **Expenses**. Employee may be reimbursed for Employee's reasonable business expenses in accordance with City's reimbursement policy from time to time.

9. **Termination by City**. Manager, in consultation with the Council, may terminate Employee's employment at any time, with or without cause.

(a) Termination For Cause. City may terminate Employee's employment hereunder "for cause," which shall be defined as proven malfeasance in office pursuant to Laws of Utah 1977, Chapter 48, or other applicable law, which malfeasance shall include (to the extent legally permissible), without limitation, the following:

(i) Misfeasance, malfeasance and/or non-feasance in performance of Employee's duties and responsibilities hereunder.

(ii) Conviction of a felony crime, whether or not upheld on appeal.

(iii) Gross neglect of duty, including inability or unwillingness to properly discharge responsibilities of office after fair warning and opportunity to cure.

(iv) Violation of any substantive City policy, rule or regulation which would subject any other full-time City employee to termination.

- (v) The commission of any fraudulent act against City's interest.
- (vi) The commission of any act which involves moral turpitude or which causes City disrepute or embarrassment.
- (vii) Material violation of the Ethical Code.

Upon City's determination of the existence of one or more of the above elements supporting termination of Employee's employment for cause, this Agreement shall be terminated upon written notice to Employee. In connection with such termination, City shall pay to Employee any accrued and unpaid salary and benefits earned (including unused accrued PTO in accordance with City's policies then in effect), but shall have no obligation to pay Employee severance pursuant to applicable law or this Agreement.

(b) Termination Without Cause. Any termination of Employee's employment for a reason other than those specified in section 9(a) above shall be deemed termination "without cause." Upon any termination without cause, City shall pay to Employee any accrued and unpaid salary and benefits (including unused accrued PTO in accordance with City's policies then in effect) and, for any termination without cause following the Probationary Period, also shall pay to Employee a lump sum severance payment equal to six months' salary and retirement contribution. In addition, City shall continue to pay the premium for Employee's COBRA health insurance coverage for six months following termination, but shall not be obligated to provide automobile or any other allowances or benefits available during Employee's employment hereunder. Severance pay ("*Severance*") shall not be construed as compensation for services performed. Such payment shall constitute full and complete payment and satisfaction of any claim that Employee may have or assert to have against City under this Agreement or otherwise.

10. **Termination by Employee.** Employee may terminate this Agreement at any time by delivering to Manager or, if none, the Council a written notice of termination at least 45 days prior to the effective date of the termination. If Employee voluntarily resigns, City shall pay to Employee all compensation and benefits due hereunder up to his final day of employment, including compensating Employee for unused accrued PTO in accordance with City's policies then in effect. City shall have no further financial obligation to Employee for Severance or any other payment pursuant to this Agreement or otherwise; provided, however, that this shall not impact Employee's vested interest, if any, in any City-sponsored retirement account.

11. **Termination Upon Employee's Death or Disability.** Upon Employee's death or disability, City's obligations under this Agreement shall terminate except for:

- (a) Transfer of ownership of retirement funds, if any, to Employee or his designated beneficiaries;
- (b) Payment to Employee or his designated beneficiaries for Employee's unused accrued PTO in accordance with City's policies then in effect; and
- (c) Processing and coordination of payment of all outstanding health, disability or life insurance benefits in accordance with City's insurance policies or plans.

For purposes of this Agreement, “*disability*” shall have the same meaning as in the disability policy maintained from time to time by City for its employees or, if no such policy exists, then as provided in federal social security laws, rules and regulations.

12. **Non-Funding.** The parties acknowledge that funds are not presently available for performance of this Agreement by City beyond 30 June 2016. City’s obligation for performance of this Agreement beyond that date is contingent upon funds being appropriated for payments due under this Agreement. In the event that no funds or insufficient funds are appropriated and budgeted in a current or any succeeding fiscal year, or if there is a reduction in appropriations of City, due to insufficient revenue, resulting in insufficient funds for payments due or about to become due under this Agreement, then this Agreement shall create no obligation on City as to such fiscal year (or any succeeding fiscal year), but instead shall terminate and become null and void on the first day of the fiscal year for which funds were not budgeted and appropriated, or, in the event of a reduction in appropriations, on the last day before the reduction becomes effective (except as to those portions of payments herein then agreed upon for which funds are appropriated and budgeted). Said termination shall not be construed as a breach of or default under this Agreement and said termination shall be without penalty, additional payments, or other charges to City of any kind whatsoever, and no right of action for damages or other relief shall accrue to the benefit of Employee or his successors or assigns as to this Agreement, or any portion thereof, which may so terminate and become null and void.

Notwithstanding the foregoing, however, upon any such non-funding, Employee may, at his option, elect to continue his employment hereunder without compensation until such time, if any, as funding becomes available, whereupon Employee’s compensation hereunder shall resume. If Employee elects not to continue his employment hereunder in connection with any such non-funding, then Employee shall be deemed to have been terminated without cause under section 9(b) above, whereupon City shall pay Severance to Employee.

13. **Indemnification.** To the extent permitted by law, City shall defend, save harmless and indemnify Employee from any and all claims, actions, damages, proceedings (in law or equity), fees (including reasonable attorney’s fees) and costs arising from, or in any way attributable to, Employee’s performance of his duties hereunder so long as Employee is reasonably acting within the scope of his employment.

14. **General Provisions.** The following provisions are also an integral part of this Agreement:

(a) **Binding Agreement.** This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.

(b) **Captions.** The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope or interpretation of any of the terms or provisions of this Agreement or the intent hereof.

(c) **Counterparts.** This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.

(d) Severability. The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable or invalid provision shall not affect the other provisions of this Agreement.

(e) Waiver of Breach. Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of or consent to any subsequent breach of this Agreement.

(f) Cumulative Remedies. The rights and remedies of the parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of any other right, remedy or priority allowed by law.

(g) Amendment. This Agreement may not be modified except by an instrument in writing signed by the parties hereto.

(h) Time of Essence. Time is the essence of this Agreement.

(i) Interpretation. This Agreement shall be interpreted, construed and enforced according to the substantive laws of the state of Utah. Both parties have had substantive input into the negotiation and drafting of this Agreement; consequently, this Agreement shall not be construed or interpreted more strictly against either party as the “drafter” of this Agreement.

(j) Attorneys' Fees. In the event any action or proceeding is brought by either party to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees, whether such sums are expended with or without suit, at trial, on appeal or in any bankruptcy or insolvency proceeding.

(k) Notice. Any notice or other communication required or permitted to be given hereunder shall be deemed to have been received (a) upon personal delivery or actual receipt thereof or (b) within two (2) days after such notice is deposited in the United States mail, postage prepaid and certified and addressed to the parties at their respective addresses set forth above or to such other address(es) as a party may specify to the other in writing at any time during the term of this Agreement.

(l) No Assignment. Employee's rights and duties herein are personal in nature, and therefore cannot be assigned or delegated to any third party without the Council's prior written consent.

**[Signature page follows]**

**DATED** effective the date first above written.

**CITY:**

**ATTEST:**

**COTTONWOOD HEIGHTS**, a Utah municipality

By: \_\_\_\_\_  
**Linda W. Dunlavy**, Recorder

By: \_\_\_\_\_  
**Kelvyn H. Cullimore, Jr.**, Mayor

**EMPLOYEE:**

\_\_\_\_\_  
**BRYCE K. HADERLIE**