

RESOLUTION NO. R18-34

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT FOR THE CHIEF ADMINISTRATIVE OFFICER POSITION BETWEEN THE CITY OF LAUREL AND MATTHEW R. LURKER, SR.

BE IT RESOLVED by the City Council of the City of Laurel, Montana:

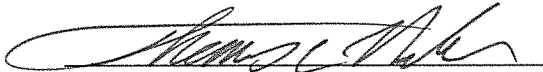
Section 1: Approval. The contract negotiated between the City's Mayor and Matthew R. Lurker, Sr. for the Chief Administrative Officer position is accepted and hereby approved. A copy is attached hereto for convenience.

Section 2: Execution. The Mayor and City Clerk-Treasurer of the City of Laurel are hereby given authority to accept and execute said agreement on behalf of the City.


Introduced at a meeting of the City Council on June 19, 2018, by Council Member McGee.

PASSED and ADOPTED by the City Council of the City of Laurel, Montana, this 19th day of June 2018.


CITY OF LAUREL


Thomas C. Nelson, Mayor

ATTEST:


Bethany Langve, Clerk-Treasurer

APPROVED AS TO FORM:


Sam Painter Civil City Attorney

EMPLOYMENT CONTRACT

Chief Administrative Officer

This employment contract is made and effective this 20th day of June, 2018 by and between the City of Laurel, Montana, hereinafter referred to as "City" and Matthew R. Lurker Sr., hereinafter referred to as the "Employee." When the term "parties" is utilized in this contract, the term means the "City and Employee," jointly. In consideration of their mutual promises set forth herein, the parties hereby agree as follows:

- 1 **Employment.** City hereby employs Employee in accordance with Article III, Section 3 of the City's Charter and Employee hereby accepts such employment, upon the terms and conditions set forth in this written contract of employment. The parties intend to create a written contract of employment in accordance with MCA §39-2-912(2) and therefore agree that this contract and the City's Job Description attached hereto constitutes the entire agreement between the parties and that no oral promises, representations or warranties have been made or are an enforceable part of this contract.
 - 1.1 Employee shall serve as the City's Chief Administrative Officer "CAO." The City has classified the position as an Exempt/Non-Union Position as contained in the Job Description attached hereto and incorporated herein. Employee shall commence employment under this Contract upon approval by the City Council.
 - 1.2 Employee shall perform the essential duties and responsibilities contained in the attached Job Description and shall report directly to the City's Mayor.
 - 1.3 The CAO shall not be reassigned from the position of City CAO to another position without the CAO's prior express written consent.
- 2 **Salary.** City shall compensate Employee, as an Exempt Non-Union Salary Employee as follows:
 - 2.1 City shall pay Employee for services rendered pursuant hereto an annual salary in the sum of \$73,000 payable in equal installments at the same time as other employees of the City are paid. Employee shall serve a six-month (180 calendar day) probation period. Upon successful completion of the probation period, Employee's annual salary shall increase to \$78,000 for the Exempt Position. Employee thereafter is eligible for an annual increase on the anniversary of the Employee's start date of this Contract. Employee's annual increase shall be calculated at 1.5% of the then current salary of the Employee.
 - 2.2 Expenses: City recognizes that certain expenses of a non-personal and generally job-affiliated nature are incurred by Employee, and hereby agrees to reimburse or to pay reasonable expenses and the City Clerk, upon approval by the Mayor, is hereby authorized to disburse such monies upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits.

2.3 Taxes: All payments made to and on behalf of Employee under this contract are subject to withholding of any required federal, state or local income and employment taxes.

3 **Term.**

3.1 The term of this contract shall be for four (4) years commencing the date the City Council approves the contract. The City Council may extend or renew the contract as desired.

3.2 Nothing in this contract shall prevent, limit or otherwise interfere with the authority of the Mayor to terminate the services of Employee at any time, subject only to the provisions set forth in Section 7, Paragraphs 7.1 through 7.5, of this contract.

3.3 Nothing in this contract shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from the position with City, subject only to the provision set forth in Section 7, Paragraphs 7.4 and 7.6 of this contract.

3.4 Employee agrees to remain in the exclusive employ of City and to not accept any other employment or to become employed by any other employer unless termination is affected as hereinafter provided. The term "employ and/or employed" shall not be construed to include occasional teaching, writing, consulting or military (Reserve, National Guard, or Auxiliary) service performed on Employee's time off. Provided that, with the prior written consent of the Mayor, Employee may continue outside professional employment (i.e. family business) which shall not in any way interfere with the performance of the city CAO's duties.

4 **Suspension.** The Mayor may suspend the Employee in accordance with the City's Personnel Policy Manual at any time during the term of this contract. Notice of suspension shall be made by the Mayor, in writing, identifying the start and end dates of suspension and reason for suspension.

5 **Benefits.** The City shall provide Employee the following benefits:

5.1 The City shall provide Employee the same benefits provided its other non-union exempt employees under the City's Personnel Policy Manual, as amended, and as required by applicable state and federal law.

6 **Representations and Warranties.** Employee represents that he/she shall attain and maintain the standard of personal and professional conduct required by City; the résumé and/or employment application furnished to City are true and accurate in all respects, are not misleading, and do not omit the provision of any material information; that the education and experience of Employee is as stated in the resume and/or application; that Employee is in good health; that Employee knows of no present condition which now or in the future may adversely affect his/her health or his/her ability to perform his/her job; and that Employee has fully disclosed to City all facts which are material to City's decision to employ the Employee.

7 **Termination of Employment.**

- 7.1 This contract and Employee's employment immediately terminate upon Employee's death or finding or determination of a disability that prevents the Employee from performing the essential duties and responsibilities of the City's CAO.
- 7.2 If the Mayor terminates Employee without cause and Employee is willing and able to perform his/her duties under this contract then City shall pay Employee a severance payment equivalent to four (4) calendar months of Employee's then current salary. Employee shall also be compensated for all accrued and remaining vacation leave, computed on an hourly basis determined by dividing the Employee's then current annual salary by 2080 hours, and in accordance with the City's Personnel Policy Manual. City shall comply with all IRS rules and regulations governing severance pay and tax withholding requirements.
- However, if Employee is terminated "for cause" or voluntarily resigns his/her employment the City has no obligation to pay the severance payment provided in this paragraph. Employee shall receive payment for any remaining vacation balance as described in this paragraph. For cause means any legitimate business reason, or as otherwise defined by Montana law.
- 7.3 During the effective date of this contract, if City involuntarily reduces Employee's salary or otherwise refuses to comply with any provision of this contract that benefits Employee, he/she, at his/her option, may elect to be considered terminated without cause entitling him/her to the severance payment provision contained in paragraph 7.2.
- 7.4 If Employee resigns following a formal suggestion by the Mayor that he/she resign for no cause, Employee, may at his/her option, elect to be considered terminated at the date of such suggestion entitling him/her to the severance payment provision contained in paragraph 7.2.
- 7.5 If City's Mayor terminates Employee without cause at any time during the six (6) calendar months subsequent to the seating and swearing-in of a newly elected Mayor while Employee is willing and able to perform his duties under this contract, Employer shall pay the severance sum provided in paragraph 7.2 above.
- 7.6 If Employee voluntarily resigns his/her position with City he/she must provide the City with thirty (30) calendar days advance notice, unless the parties otherwise agree in writing.
- 7.7 If Employee's termination results from death or disability, City's final compensation to Employee is limited to payment for services rendered to date and payment for any accrued and remaining vacation leave in accordance with Section V of the City's Personnel Policy Manual
- 7.8 If Employee's termination results from cause, Employer's final compensation to Employee is limited to payment for services rendered to date in accordance with Section V of the City's Personnel Policy Manual, and payment for any accrued and remaining vacation leave calculated at the then current salary.

- 7.9 Conditioned upon the City fulfilling its obligations to pay the Severance Amount, the Severance Benefits and the Current Obligations, upon a Unilateral Severance, the CAO waives and releases the CAO's rights to continued employment with the City and the parties waive and release the right to a hearing on the issue of good cause. In the event of a Unilateral Severance, the parties agree not to make disparaging comments or statements about each other.
- 8 **Confidentiality.** Employee acknowledges that during his/her course of employment he/she might obtain and gather confidential information regarding the City's operations or employees. Employee further acknowledges that all confidential information is the City's property and in no event shall Employee disclose such information to any person or entity unless disclosure is requested by the City or required by law.
- 9 **Performance Evaluation.** The Mayor shall review and evaluate the performance of Employee at least once annually. The review and evaluation shall be in accordance with specific criteria developed jointly by the Mayor and Employee. Criteria may be added or deleted as the Mayor may from time to time determine necessary and proper, in consultation with the Employee. Each year, on a date agreed between the Employee and the Mayor, Employee shall provide the Mayor a self-evaluation based upon mutually agreed upon goals and performance objectives. The Mayor shall personally review the evaluation with the Employee and provide Employee an adequate opportunity to discuss the evaluation with the Mayor.
- 9.1 In the event the Mayor determines that the evaluation instrument, format and/or procedure are to be modified, and such modifications would require new or different performance expectations, then the Employee shall be provided a reasonable period of time to demonstrate such expected performance before being evaluated.
- 9.2 Unless the Employee expressly requests otherwise in writing, except to the extent prohibited by or in material conflict with Applicable Laws and Authorities, the evaluation of the Employee shall at all times be conducted in a meeting with the Mayor and shall be considered private to the maximum and full extent permitted by law. Nothing herein shall prohibit the Mayor or the Employee from sharing the content of the Employee's evaluation with their respective legal counsel.
- 10 **Professional Development.** City shall budget and pay for the travel and subsistence expenses of Employee for short courses, institutes, certifications, and seminars that are necessary for his/her professional development for the good of the City, if funding is available. The City desires Employee join and participate in local organizations including, but not limited to, the local Rotary Club, Laurel Chamber of Commerce, Montana League of Cities and Towns, Great Open Spaces City Management Association, and the International City/County Management Association. City shall pay Employee's membership dues and annual conference fees to encourage such membership and attendance.

- 11 **Bonding.** City shall bear the full cost of any fidelity or other bonds required of the Employee under its Charter or any applicable law or ordinance.
- 12 **Other Terms and Conditions of Employment.** The Mayor, in consultation with the Employee, shall fix other terms and conditions of employment, as they may determine necessary from time to time, relating to the performance of Employee provided such terms and conditions are not inconsistent with or in conflict with the provisions of this contract, the City's Charter, Ordinances or any other applicable law.
- 13 **Indemnification.** City shall defend, save harmless and indemnify Employee against any tort, professional liability claim or demand or other legal action, costs and attorney's fees incurred in any legal proceedings, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties. City may compromise and settle any such claim or suit and will pay the amount of any settlement or judgment rendered thereon. The obligations of City under this section shall not apply if:
 - 13.1 The conduct of Employee complained of constitutes oppression, fraud or malice, or for any reason does not arise out of the course and scope of Employee's employment; or,
 - 13.2 The conduct of Employee complained of constitutes a criminal offense as defined under Montana law; or,
 - 13.3 Employee compromised or settled the claim without the consent of City; or,
 - 13.4 Employee fails or refuses to cooperate reasonably in the defense of the case.
- 14 **Availability.** Employee acknowledges that the CAO must be available by either cell or telephone after work hours in cases of emergency. Employee shall provide the Mayor and appropriate department heads his/her contact information for after hour emergency notifications. The City does not require the CAO to be on-call, simply available by telephone if an emergency should arise for purposes of notification.
- 15 **Miscellaneous.** This contract contains the entire agreement and supersedes all prior agreements and understandings, oral or written, with respect to the subject matter hereof. This contract may be changed only by an agreement in writing signed by the party against whom any waiver, change, amendment or modification is sought. This contract shall be construed and enforced in accordance with the City's Charter, Ordinances and applicable laws of the State of Montana.
- 16 **Personal Contract.** The obligations and duties of the Employee hereunder shall be personal and not assignable to any person or entity, although the contract is binding and shall inure to the benefit of Employee's heirs and executors at law.
- 17 **Notices.** Notices pursuant to this agreement shall be given in writing by deposit in the custody of the United States Postal Services, certified postage prepaid, addressed as follows:

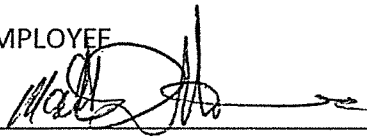
- If to CITY: Office of the Mayor, P.O. Box 10, Laurel, MT 59044; and
- If to CAO: Matthew R. Lurker Sr., 4005 Pine Cove Rd., Billings, MT 59106

Notice shall be deemed delivered and received as of three business days after the date of deposit of such written notice in the course of transmission in the United States Postal Service. Either party may, from time to time by written notice to the other party, designate a different address for notice purposes.

18 **Renegotiation.** The Parties may commence negotiation of a subsequent employment contract six (6) months prior to the expiration of this employment contract.

IN WITNESS WHEREOF, the parties hereto have executed this Contract the day and year first above written. This contract is contingent upon its approval via Resolution of the City Council.

EMPLOYEE



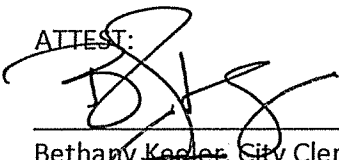
Matthew R. Lurker Sr.

CITY OF LAUREL



Tom C. Nelson, Mayor

ATTEST:



Bethany Keeler, City Clerk-Treasurer
Langre
BL 6/18/18