

ORDINANCE NO. O-2024-0010

AN ORDINANCE OF THE OREM CITY COUNCIL APPROVING AND ADOPTING A CONTRACT BETWEEN THE CITY AND CITY MANAGER BRENN BYBEE AND APPROVING THE COMPENSATION FOR THE CITY MANAGER'S SERVICES

WHEREAS Brenn Bybee has been serving as the Orem City Manager since June 13, 2023, and served as the Interim City Manager from December 25, 2022, to June 13, 2023; and

WHEREAS Brenn Bybee also served as the Orem Assistant City Manager from February 13, 2014 to December 25, 2022; and

WHEREAS the City Council desires to continue to employ Brenn Bybee as the City Manager of Orem; and

WHEREAS it is customary for cities to enter into a formal written agreement with the manager to set out the terms and conditions of employment; and

WHEREAS the City Council desires to secure and retain the services of Brenn Bybee as the Orem City Manager and to provide inducement for him to remain in such employment; and

WHEREAS the City Council also desires to set forth the compensation that Brenn Bybee shall receive for his services as City Manager; and

WHEREAS the City Council held a public hearing on April 23, 2024 to consider the proposed employment agreement between the City and Brenn Bybee including the provisions of the agreement related to compensation; and

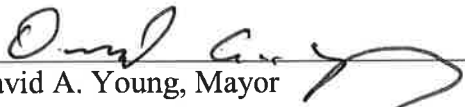
WHEREAS the City Council finds that it is in the best interest of the City to enter into an employment agreement with Brenn Bybee to serve as City Manager of the City of Orem.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OREM, UTAH as follows:

1. The City Council hereby approves the proposed employment agreement between the City and Brenn Bybee, including the provisions relating to compensation, as shown in Exhibit "A" which is attached hereto and by reference is made a part hereof.
2. The City Council hereby authorizes the Mayor to execute the employment agreement on behalf of the City.
3. If any portion of this ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

4. This ordinance shall become effective immediately after a summary of this ordinance has been published or posted as required by law.

PASSED and APPROVED this 23rd day of April, 2024.


David A. Young, Mayor

ATTEST:


Teresa McKittrick, City Recorder

COUNCILMEMBER	AYE	NAY	ABSTAIN
Mayor David A. Young	☒	☐	☐
Jeff Lambson	☒	☐	☐
Jenn Gale	☒	☐	☐
Tom Macdonald	☒	☐	☐
LaNae Millett	☒	☐	☐
Chris Killpack	☒	☐	☐
David Spencer	☒	☐	☐



Exhibit “A”

Employment Agreement

THIS AGREEMENT is made by and between the City of Orem, a municipal corporation of the State of Utah, ("the City") and Brenn Bybee ("City Manager") this ____th of April, 2024.

WITNESSETH

WHEREAS, Brenn Bybee has been serving as the Orem City Manager since June 13, 2023, and served as the Interim City Manager from December 25, 2022 to June 13, 2023; and

WHEREAS Brenn Bybee also served as the Orem Assistant City Manager from February 13, 2014 to December 25, 2022; and

WHEREAS, the City desires to continue to employ the services of Brenn Bybee as the City Manager of Orem; and

WHEREAS it is customary for cities to enter into a formal written agreement with the city manager setting out the terms and conditions of employment; and

WHEREAS, it is the desire of the Orem City Council to provide certain benefits and establish conditions of employment for the City Manager; and

WHEREAS, it is the desire of the City Council to:

1. Secure and retain services of Brenn Bybee as the Orem City Manager and provide inducement for him to remain in such employment.
2. To make possible full work productivity by assuring the City Manager's morale and peace of mind with respect to future security; and,
3. To provide a just means for terminating the City Manager's services at such time as he might be unable, fully, to discharge his duties or when the City may otherwise desire to terminate his employment; and

WHEREAS, the City Manager desires to enter into an employment agreement to serve as the City Manager of the City;

NOW THEREFORE, in consideration of the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SECTION 1. DUTIES. The City hereby agrees to employ Brenn Bybee as City Manager of the City of Orem. Brenn Bybee shall perform the functions and duties of the office of City Manager and such other legally permissible and proper duties and functions as the City Council may, from time to time, assign. The City Manager shall serve as manager of the City and shall be responsible for overseeing the day-to-day operations of all City Departments. The City Manager shall advise the City Council on matters of policy, procedure and business affecting the City.

SECTION 2. TERM.

- A. The City Manager shall serve at the pleasure of the City Council and nothing herein shall be taken to imply or suggest a term of office or guaranteed tenure. This agreement continues for an indefinite term, until termination by notice as provided herein.
- B. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the City Manager to resign at any time from his position with the City. City Manager agrees to give thirty-days (30) advance notice of such intended resignation to the City Council. In the event of such resignation, no severance pay, as set forth in Section 4, below, shall be due and owing from the City except that the City Manager shall be entitled to severance pay as described in Section 4 if the City Manager's resignation is made within sixty (60) days of the occurrence of one or more of the following:
 - (1) The reduction of the salary or other financial benefits of the City Manager in a greater percentage than applicable across-the-board reductions for all City employees;
 - (2) The refusal of the City, following a thirty (30) day written notice, to comply with any provision of this Agreement; or
 - (3) The City Manager receives a suggestion, whether formal or informal, by a majority of the members of the City Council that the City Manager resign.
- C. The City Manager agrees to remain in the exclusive employ of the City, while employed by the City. The term "employed" however, shall not be construed to prohibit City Manager from undertaking teaching, writing, speaking, consulting or other business involvement, as long as it is on the City Manager's time off, even if outside compensation is provided. Such services are expressly allowed provided that in no case shall any activity be allowed to interfere with the City Manager's duties and obligations to the City and shall not present a conflict of interest with the City.
- D. This agreement shall become effective immediately upon formal approval of the City Council and execution by the Mayor and shall remain in force until such time as modified by mutual consent of the City Council and City Manager or unless terminated as hereinafter provided.

SECTION 3. PERFORMANCE EVALUATION. The City Council shall review and evaluate the performance of the City Manager annually. Said review and evaluation shall be conducted in accordance with criteria developed jointly by the City Council and the City Manager. The City Council shall provide the City Manager with an adequate opportunity to read, review, and discuss the evaluation with the City Council.

SECTION 4. TERMINATION AND SEVERANCE PAY. The City Council may at its pleasure, and by majority vote, remove the City Manager from office. Except in the case of removal for proven malfeasance in office, the City Council shall cause the City Manager, upon his removal, to be paid any unpaid balances of his salary and benefits accrued up to the date of

his removal together with his salary and benefits for a period of six (6) months starting from the date of termination.

SECTION 6. SALARY. The City agrees to pay the City Manager for his services an initial annual base salary of \$200,000 paid in installments at the same pay period schedule as other City employees. For subsequent years, within sixty (60) days of the anniversary date of this contract, the City Council will conduct an annual evaluation of the City Manager's performance. Based on a positive annual performance evaluation review of the City Manager, the City Council may award up to 5% in pay for performance incentive pay which will be determined by the City Council. The City Council may increase the salary at an incremental rate per fiscal year and may award performance incentive pay in excess of 5% if the City Council deems it appropriate. In addition to the pay for performance incentive pay described herein, the City Manager shall also receive the same cost of living or market based increase that is given to City employees generally beginning with the 2025-2026 fiscal year and each year thereafter.

At any time while the City Manager is employed by the City, the parties may change the terms of the base salary or any other provision of the Agreement and the City may, when deemed appropriate by the City Council, compensate the City Manager above the terms of this Agreement for extraordinary and/or special services rendered.

SECTION 7. FRINGE BENEFITS. Except as otherwise provided in this Agreement, all provisions of the City's Personnel Policies and Procedures Manual and other lawful rules and regulations relating to the vacation, sick leave, retirement, pension system contribution, holidays, health and life insurance, executive leave, and other fringe benefits and working conditions as they now exist or hereafter may be amended or adopted, shall also apply to the City Manager as they would to employees of the City. The following additional benefits shall also be provided to the City Manager:

- A. **Use of City Vehicles.** The parties acknowledge that the City currently provides a car allowance to Executive Staff members in the amount of Five Hundred Dollars per month. In lieu of receiving this monthly vehicle allowance, the City shall provide a vehicle for use by the City Manager and the City shall pay for all maintenance and fuel expenses for the use of such vehicle within the State of Utah.
- B. **Retirement Contribution.**
 - (1) The City shall provide an additional retirement contribution to the City Manager's retirement accounts (457 and/or 401k) in an amount equal to a percentage of the City Manager's annual salary which percentage shall be calculated as the average of the minimum Public Safety Tier 1 Other Division B Utah Retirement System (URS) rate (currently 37.97%) and the Firefighters' Tier 1 Division B URS gross rate (currently 34.11%), minus the Public Employees Tier 1 Noncontributory Local Government URS rate (currently 17.97%). Based on this formula, the contribution to the City Manager's retirement accounts for the 2024 fiscal year would be 18.07% of the City Manager's salary. The actual percentage to be paid each fiscal year shall be adjusted each fiscal year to conform with the percentages for each of the categories described above as established by URS.

(2) In addition to the above, the City shall also make the regular Public Employees Tier 1 Noncontributory Local Government URS contribution on behalf of the City Manager, as currently required by State law. This amount shall be applied to the Utah Retirement System. The City Manager will be given first opportunity to opt out of the Utah Retirement System in the event that it becomes an option; in the event the City Manager elects to opt out of the Utah Retirement System, the City Manager shall be entitled to receive the same contribution that would have been made by the City to the Utah Retirement System on the City Manager's behalf and to have such amount deposited into any other qualified retirement fund as directed by the City Manager.

- C. Relocation Reimbursement – The City recognizes that it would be beneficial for the City Manager to live in Orem. As an inducement for the City Manager to relocate to Orem, the City agrees to provide a one-time relocation payment of \$10,000 to the City Manager upon the City Manager's entering into a purchase contract for a house within the boundaries of the City for use as the City Manager's primary residence. The City Manager shall repay the relocation payment to the City if the City Manager does not maintain his primary residence within the City boundaries for at least three years or for the duration of his employment as City Manager, whichever is less.

SECTION 8. PROFESSIONAL STATUS. It is recognized that the City Manager is an educated and trained professional and as such, consistent with the nature of the requirements of the position of City Manager, his working hours will vary. It is understood that the City Manager must devote a great deal of time outside of normal office hours attending to the business of the City. The City Manager shall generally keep normal office hours to facilitate the business of the City, but shall, on a day to day basis, be allowed to schedule his time as he deems appropriate to accommodate the varying demands of such job required activities and evening meetings, council meetings, legislative lobbying activities, and necessary weekend and holiday work.

SECTION 9. EQUIPMENT, DUES AND SUBSCRIPTIONS. The City agrees to provide equipment for the use of the City Manager to perform his duties. Such equipment includes but is not limited to a laptop computer and any other equipment necessary to carry out essential job functions. Upon City Manager's resignation or termination, such property shall be retained by the City, except that the City Manager shall have the same opportunity to purchase his laptop and other equipment on the same terms and conditions as are given to other employees.. The City agrees to budget and pay for the professional dues and subscriptions of the City Manager as he may deem appropriate for his continuation and full participation in associations and organizations necessary and desirable for his continued professional participation, growth and advancement, for the good of the City.

SECTION 10. PROFESSIONAL DEVELOPMENT AND GENERAL EXPENSES. The City hereby agrees, as it deems appropriate, to budget and pay for the cost of travel, lodging and subsistence expenses of the City Manager for professional and official travel. The City Manager and partner shall be allowed at a minimum, to attend the annual national ICMA Conference, and

yearly to attend the annual State of Utah City Manager conferences, and the Utah League of Cities and Towns Conferences.

SECTION 11. INDEMNIFICATION. The City shall defend, save harmless, and indemnify the City Manager against any tort, professional liability claim, or other legal action or claim arising out of an alleged act or omission occurring in the performance of duties as City Manager. The City Manager will indemnify the City from any and all such claims that arise from any willful misconduct and/or grossly negligent action. The City shall provide necessary insurance to cover the City Manager, including errors and omissions coverage, as are required to give full effect to this indemnification covenant.

SECTION 12. BONDING. The City shall pay the cost of a fidelity bond or other bonds required of the City Manager as those requirements may be established by applicable law or as may be deemed advisable by the City Manager or the City to obtain to protect the parties hereto.

SECTION 13. OTHER TERMS AND CONDITIONS OF EMPLOYMENT. The City Council, in consultation with the City Manager, may fix any such other terms and conditions of employment as it may, from time to time, determine, provided such terms and conditions are not in conflict with the City's Ordinances governing the City Manager's duties or state or other applicable law.

SECTION 14. NOTICES. Notices pursuant to this Agreement shall be given by deposit in the U.S. Mail, postage prepaid, and certified, return receipt requested, addressed as follows:

The City:

The City of Orem
56 N State
Orem, Utah 84057

And

The City Manager:

Brenn Bybee
259 S. Twin River Loop
Alpine, UT 84004

SECTION 15. ENTIRE AGREEMENT. The terms as herein set out constitute the entire agreement between the parties and any changes hereto shall be reduced to writing and agreed upon by both parties. This Agreement shall become effective immediately upon signing by both parties and terms hereof shall be effective as of April 28, 2024.

If any provision or portion of this Agreement is or becomes invalid or unenforceable, then the remainder of the Agreement or portion thereof shall be deemed severable and shall not be affected and remain in full force and effect.

IN WITNESS WHEREOF, the City of Orem, has caused this Agreement to be signed and executed in its behalf by its Mayor, and duly attested by its City Recorder, and the City Manager has signed and executed this Agreement, both in duplicate as of the day and year first above written.

DATED this _____ day of April, 2024.

CITY OF OREM, a municipal corporation

David A. Young, Mayor

Attest:

Teresa McKittrick, City Recorder

Brenn Bybee, City Manager