

# Employment Agreement

## City Manager

This Employment Agreement (the "**Agreement**") is made and entered into as of 21st day of December, 2022, (the "**Effective Date**") by and between **A. Kim Haws** (the "**Employee**") and **The City of Morgantown**, a municipal corporation and political subdivision of the State of West Virginia (the "**City**"), upon the following terms and conditions:

WHEREAS, the City desires to employ the Employee on the terms and conditions set forth herein; and

WHEREAS, the Employee desires to be employed by the City on such terms and conditions; and

WHEREAS, this Agreement supersedes and replaces that certain "Employment Agreement" between the parties dated November 4, 2020;

NOW, THEREFORE, in consideration of the mutual covenants, promises, and obligations set forth herein, the parties agree as follows:

1. Term. Subject to Section 5 of this Agreement, the Employee's employment with City shall be at-will and may be terminated by either party at any time. The time during which Employee is employed with City is designated the "**Employment Term.**" The Employment Term will begin on the date 30 days from the **Effective Date**.

2. Position and Duties.

2.1 Position. During the Employment Term, the Employee shall serve as the City Manager of the City, reporting to the City Council. In such position, the Employee shall have such duties, authority, and responsibilities as are consistent with the Employee's position and as specified in Article III of the City Charter and otherwise provided by law.

2.2 Duties. During the Employment Term, the Employee will serve as City Manager and will perform all duties and meet all qualifications of the City Manager prescribed by the City Charter and applicable law under the direction of the City Council. Employee will meet the residency requirements for the City Manager by making the City his primary residence as evidenced by spending the majority of his time in the city and reflecting the City as primary residence on official documents including voter's registration, driver's license, and property taxes. Employee will perform the duties and conduct professional activities in adherence to the International City /County Management Association ("**ICMA**") Code of Ethics. Employee shall be paid for the performance of such duties as provided in Section 4 of this Agreement.

2.3 Working Time; Outside Employment. Employee shall devote his whole working time to the performance of the duties of his office, and while occupying such office shall not engage, directly or indirectly, or be actively interested in, any business which would be in conflict with the performance of his duties for the City. Employee may engage in activities outside the scope of his employment, such as teaching, consulting, and volunteer

services, upon prior approval of City Council, so long as such activities do not impede or interfere with the Employee's employment responsibilities as City Manager and do not create or result in a conflict of interest with the City or its activities.

2.4 Performance Evaluation. City Council, or a committee thereof, shall conduct a review of Employee's performance at least once each calendar year, according to procedures and criteria determined by agreement of Employee and the City Council. The review will include an evaluation of Employee's performance in accomplishing the goals and objectives City Council may establish, from time to time, which shall be generally attainable given the annual operating and capital budgets of City and other resources and time available to Employee. The review process will provide Employee an adequate opportunity to discuss the evaluation with City Council.

3. Place of Performance. The principal place of Employee's employment shall be the City's principal offices located on Spruce Street, Morgantown, West Virginia, provided that the Employee may be required to travel on City business during employment with the City.

4. Compensation.

4.1 Base Salary. The City shall pay the Employee an annual rate of base salary of One Hundred Fifty Thousand Dollars (\$150,000.00) in periodic installments in accordance with the City's customary payroll practices and applicable wage payment laws, but no less frequently than monthly. The Employee's base salary shall be reviewed at least annually by the City Council and may increase during the Employment Term. The Employee's annual base salary, as in effect from time to time, is hereinafter referred to as "**Base Salary**."

4.2 Employee Benefits.

(a) During the Employment Term, the Employee shall be entitled to participate in all employee benefit plans, practices, and programs maintained by the City, as in effect from time to time (collectively, "**Employee Benefit Plans**") to the extent consistent with applicable law and the terms of the applicable Employee Benefit Plans, except where different terms are established by this Agreement, in which case the terms of this Agreement shall control. The City reserves the right to amend or terminate any Employee Benefit Plans at any time in its sole discretion, subject to the terms of such Employee Benefit Plans and applicable law.

(b) City maintains a defined-benefit pension plan identified as The City of Morgantown Employees Retirement and Benefit Fund (the "**Fund**"). Employee may decline participation in the Fund and elect to participate in City's 401(a) defined contribution plan offered through the International City Manager's Association Retirement Corporation ("**ICMA-RC Plan**") upon the terms stated in the plan document, the terms of which are incorporated herein by reference. Should Employee elect to participate in the ICMA-RC Plan, the City will contribute an annual amount equal to 13.5% of Employee's annual salary, or the maximum allowable annual employer contribution permissible under applicable law as determined by the Internal Revenue Service or other authority responsible for such determination, whichever

amount is less, to Employee's account with the 401(a) plan, which funds are treated according to the vesting schedule and other governing documents of the ICMA-RC Plan.

4.3 Vacation; Paid Time Off. Employee will begin the Employment Term with 80 hours of paid vacation time, equivalent to 10 paid vacation days. During the Employment Term, the Employee shall be entitled to accrue 9.25 Paid Time Off hours per pay period; provided that, at such point as Employee's years of service with City would entitle him to more paid time off in accordance with the City's policies, as in effect from time to time, Employee shall be entitled to the paid time off allotted by those policies. Employee will otherwise accrue, use, and be paid for vacation time in accordance with the City's policies in effect from time to time, and all provisions of such policies providing for accrual limits, carryover of accrued time, transfer, forfeiture, and payment of vacation time shall apply. The Employee shall receive other paid time off in accordance with the City's policies for employees as such policies may exist from time to time and as required by applicable law.

4.4 Business Expenses. The Employee shall be entitled to reimbursement for all reasonable and necessary out-of-pocket business, entertainment, and travel expenses incurred by the Employee in connection with the performance of the Employee's duties hereunder in accordance with the City's expense reimbursement policies and procedures, and subject to the availability of funds appropriated by the City Council for such purposes. In addition to such reimbursement, Employee shall be entitled to the following:

(a) Vehicle. City will provide Employee with a vehicle allowance in the amount of \$500 per month to defray Employee's cost of the use of his personal vehicle in connection with his service as City Manager. Employee shall also be reimbursed for travel in excess of 50 miles related to his job duties, in accordance with City policies and procedures.

(b) Parking. City will provide Employee with parking at no cost to Employee in a parking lot or garage near Employee's regular place of business.

(c) Mobile phone. City will provide Employee with a City-owned mobile telephone including call, text, and data service sufficient to perform Employee's job duties, or, at City's option, will pay Employee the sum of \$60 per month – or such other amount as is established by City policy providing reimbursement to employees for work-related use of mobile devices – as reimbursement for Employee's maintenance of a mobile telephone with such services for use in Employee's job duties.

(d) Professional fees. City will pay the reasonable costs associated with maintaining Employee's professional licenses as follows:

(i) Membership in the International City Manager's Association

(e) Bonding. City will bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance during the Employment Term.

4.5 Indemnification. The City shall defend, indemnify, and hold the Employee harmless for acts and omissions in the Employee's capacity as an officer, director, or employee of the City in accordance with the West Virginia Governmental Tort Claims and Insurance Reform Act, codified at West Virginia Code Chapter 29, Article 12A, as it may be modified, amended, or succeeded; and City Code Article 109, entitled "Defense and Indemnification of Officers and Employees," as it may be modified, amended, or succeeded.

5. Termination of Employment. The Employment Term and the Employee's employment hereunder may be terminated by either the City or the Employee at any time and for any reason or for no reason at all, subject to the following: (i) in any suspension or removal of Employee, City will follow the requirements of Section 3.02 of the City Charter unless Employee waives such requirements in writing, and (ii) unless otherwise provided herein, either party shall be required to give the other party at least 30 days advance written notice of any termination of the Employee's employment. Upon termination of the Employee's employment during the Employment Term, the Employee shall be entitled to the compensation and benefits described in this Section 5 and shall have no additional rights to any compensation or any other benefits from the City or any of its affiliates.

5.1 For Cause, or Without Good Reason.

(a) The Employee's employment hereunder may be terminated by the City for Cause, or by the Employee without Good Reason and the Employee shall be entitled to receive:

(i) any accrued but unpaid Base Salary and accrued but unused vacation time, which shall be paid on the pay date immediately following the date of the Employee's termination in accordance with the City's customary payroll procedures;

(ii) reimbursement for unreimbursed business expenses properly incurred by the Employee, which shall be subject to and paid in accordance with the City's expense reimbursement policy; and

(iii) such employee benefits, if any, to which the Employee may be entitled under the City's Employee Benefit Plans as of the date of the Employee's termination; provided that, in no event shall the Employee be entitled to any payments in the nature of severance or termination payments except as specifically provided herein.

Items 5.1(a)(i) through 5.1(a)(iii) are referred to herein collectively as the "**Accrued Amounts.**"

(b) For purposes of this Agreement, "**Cause**" shall mean:

(i) the Employee's willful failure to perform his duties (other than any such failure resulting from incapacity due to physical or mental illness);

(ii) the Employee's willful failure to comply with any valid and legal directive of the City Council;

(iii) the Employee's willful engagement in dishonesty, illegal conduct, or gross misconduct, which is, in each case, materially injurious to the City or its affiliates;

(iv) the Employee's embezzlement, misappropriation, or fraud, whether or not related to the Employee's employment with the City;

(v) the Employee's conviction of or plea of guilty or nolo contendere to a crime that constitutes a felony or a crime that constitutes a misdemeanor involving moral turpitude;

(vi) the Employee's material violation of the City's written policies or codes of conduct, including written policies related to discrimination, harassment, performance of illegal or unethical activities, and ethical misconduct; or

(vii) the Employee's material breach of any material obligation under this Agreement or any other written agreement between the Employee and the City;

For purposes of this provision, none of the Employee's acts or failures to act shall be considered "willful" unless the Employee acts, or fails to act, in bad faith or without reasonable belief that the action or failure to act was in the best interests of the City. The Employee's actions, or failures to act, based upon authority given pursuant to a resolution duly adopted by the Board or upon the advice of counsel for the City shall be conclusively presumed to be in good faith and in the best interests of the City.

Except for a failure, breach, or refusal which, by its nature, cannot reasonably be expected to be cured, the Employee shall have ten (10) business days from the delivery of written notice by the City within which to cure any acts constituting Cause.

(c) For purposes of this Agreement, "**Good Reason**" shall mean the occurrence of any of the following, in each case during the Employment Term without the Employee's prior written consent:

(i) a reduction in the Employee's Base Salary;

(ii) any material breach by the City of any material provision of this Agreement or any material provision of any other agreement between the Employee and the City;

(iii) a material, adverse change in the Employee's title, authority, duties, or responsibilities (other than temporarily while the Employee is physically or mentally incapacitated or as required by applicable law); or

(iv) a material adverse change in the reporting structure applicable to the Employee.

To terminate employment for Good Reason, the Employee must provide written notice to the City of the existence of the circumstances providing grounds for termination for Good Reason within 10 days of the initial existence of such grounds and the City must have at least 10 days from the date on which such notice is provided to cure such circumstances. If the Employee does not terminate employment for Good Reason within 30 days after the first occurrence of the applicable grounds, then the Employee will be deemed to have waived the right to terminate for Good Reason with respect to such grounds.

5.2 Without Cause or for Good Reason. The Employment Term and the Employee's employment hereunder may be terminated by the Employee for Good Reason or by the City without Cause. In the event of such termination, the Employee shall be entitled to receive the Accrued Amounts, and, subject to the Employee's compliance with Section 6 of this Agreement and the agreements referenced therein and his execution, within twenty-one (21) days following receipt, of a release of claims in favor of the City, its affiliates and their respective officers and directors in a form provided by the City (the "**Release**") (such 21-day period, the "**Release Execution Period**"), and the Release becoming effective upon Employee's non-revocation of the Release seven (7) days after its execution, the Employee shall be entitled to receive the following:

(a) a lump sum payment equal to six (6) months of the Employee's Base Salary as of the date the Employee's termination occurs, which shall be paid within 30 days following the effective date of the Release;

or, at City's option,

equal installment payments payable in accordance with the City's normal payroll practices, the Employee's Base Salary as of the date the Employee's termination occurs, for a period of six (6) months following the date of the Employee's termination; and

(b) If the Employee timely and properly elects health continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("**COBRA**"), the City shall reimburse the Employee for the monthly COBRA premium paid by the Employee for himself and his dependents. Such reimbursement shall be paid to the Employee on the first business day of the month immediately following the month in which the Employee timely remits the premium payment. The Employee shall be eligible to receive such reimbursement until the earliest of: (A) the six-month anniversary of the date of the Employee's termination; (B) the date the Employee is no longer eligible to receive COBRA continuation coverage; or (C) the date on which the

Employee becomes eligible to receive substantially similar coverage from another employer or other source. Notwithstanding the foregoing, if the City's making payments under this Section 5.2(b) would violate the nondiscrimination rules applicable to non-grandfathered, insured group health plans under the Affordable Care Act (the "ACA"), or result in the imposition of penalties under the ACA and the related regulations and guidance promulgated thereunder, the parties agree to reform this Section 5.2(b) in a manner as is necessary to comply with the ACA.

### 5.3 Death or Disability.

(a) The Employee's employment hereunder shall terminate automatically upon the Employee's death during the Employment Term, and the City may terminate the Employee's employment on account of the Employee's Disability.

(b) If the Employee's employment is terminated during the Employment Term on account of the Employee's death or Disability, the Employee (or the Employee's estate and/or beneficiaries, as the case may be) shall be entitled to receive the Accrued Amounts. Notwithstanding any other provision contained herein, all payments made in connection with the Employee's Disability shall be provided in a manner which is consistent with federal and state law.

(c) For purposes of this Agreement, "**Disability**" shall mean the Employee's inability, due to physical or mental incapacity, to perform the essential functions of his job, for one hundred eighty (180) days out of any three hundred sixty-five (365) day period or one hundred twenty (120) consecutive days **OR** the Employee is entitled to receive long-term disability benefits under the City's long-term disability plan. Any question as to the existence of the Employee's Disability as to which the Employee and the City cannot agree shall be determined in writing by a qualified independent physician mutually acceptable to the Employee and the City. The determination of Disability made in writing to the City and the Employee shall be final and conclusive for all purposes of this Agreement.

5.4 Notice of Termination. Any termination of the Employee's employment hereunder by the City or by the Employee during the Employment Term (other than termination pursuant to Section 5.3(a) on account of the Employee's death) shall be communicated by written notice of termination ("**Notice of Termination**") to the other party hereto in accordance with Section 15. The Notice of Termination shall specify:

(a) the termination provision of this Agreement relied upon;

(b) to the extent applicable, the facts and circumstances claimed to provide a basis for termination of the Employee's employment under the provision so indicated; and

(c) the applicable date of termination, which shall be no less than thirty (30) days following the date on which the Notice of Termination is delivered if the City terminates the Employee's employment without Cause, or no less than sixty (60) days

following the date on which the Notice of Termination is delivered if the Employee terminates employment with or without Good Reason.

5.5 Resignation of All Other Positions. Upon termination of the Employee's employment hereunder for any reason, the Employee shall be deemed to have resigned from all positions that the Employee holds as an officer of the City or any of its affiliates.

6. Confidential Information and Restrictive Covenants. As a condition of the Employee's employment with the City, the Employee shall enter into and abide by the City's Confidentiality Agreement, if any, and shall maintain confidential all information of a proprietary or confidential nature received during or in connection with Employee's employment with City, including, without limiting the generality of the foregoing, information related to plans to acquire, transfer, or develop real estate; information regarding legal or equitable claims against the City; information related to protected utility infrastructure or law enforcement practices; information contained in or related to personnel matters of the City and its employees; and any other information or materials by their nature not publicly disclosed.

7. Governing Law, Jurisdiction, and Venue. This Agreement, for all purposes, shall be construed in accordance with the laws of the State of West Virginia, without regard to the conflicts of law principles thereof. Any action or proceeding by either of the parties to enforce this Agreement shall be brought only in a state or federal court located in the state of West Virginia. The parties hereby irrevocably submit to the exclusive jurisdiction of such courts and waive the defense of inconvenient forum to the maintenance of any such action or proceeding in such venue.

8. Entire Agreement. Unless specifically provided herein, this Agreement, together with applicable provisions of the City's Personnel Rules in effect from time to time and not addressed or modified by this Agreement, contains all of the understandings and representations between the Employee and the City pertaining to the subject matter hereof and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

9. Modification and Waiver. No provision of this Agreement may be amended or modified unless such amendment or modification is agreed to in writing and signed by the Employee and by the City Manager of the City, except that, should Employee be serving as Interim City Manager, such amendment or modification must be agreed to by the City Council, reduced to writing, and signed by Employee and an authorized representative of City Council. No waiver by either of the parties of any breach by the other party hereto of any condition or provision of this Agreement to be performed by the other party hereto shall be deemed a waiver of any similar or dissimilar provision or condition at the same or any prior or subsequent time.

10. Severability. Should any provisions of this Agreement be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof, and if such provision or provisions are not modified as provided above, this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had not been set forth herein.

11. Captions. Captions and headings of the sections and paragraphs of this Agreement are intended solely for convenience and no provision of this Agreement is to be construed by reference to the caption or heading of any section or paragraph.

12. Counterparts. This Agreement may be executed in separate counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

13. Section 409A.

13.1 General Compliance. This Agreement is intended to comply with Section 409A or an exemption thereunder and shall be construed and administered in accordance with such intent. Notwithstanding any other provision of this Agreement, payments provided under this Agreement may only be made upon an event and in a manner that complies with Section 409A or an applicable exemption. Any nonqualified deferred compensation payments under this Agreement that may be excluded from Section 409A either as separation pay due to an involuntary separation from service or as a short-term deferral shall be excluded from Section 409A to the maximum extent possible. For purposes of Section 409A, each installment payment provided under this Agreement shall be treated as a separate payment. Any payments to be made under this Agreement upon a termination of employment shall only be made upon a "separation from service" under Section 409A. Notwithstanding the foregoing, the City makes no representations that the payments and benefits provided under this Agreement comply with Section 409A, and in no event shall the City be liable for all or any portion of any taxes, penalties, interest, or other expenses that may be incurred by the Employee on account of non-compliance with Section 409A.

13.2 Specified Employees. Notwithstanding any other provision of this Agreement, if any payment or benefit provided to the Employee in connection with termination of employment is determined to constitute "nonqualified deferred compensation" within the meaning of Section 409A and the Employee is determined to be a "specified employee" as defined in Section 409A(a)(2)(b)(i), then such payment or benefit shall not be paid until the first payroll date to occur following the six-month anniversary of the date of the Employee's termination or, if earlier, on the Employee's death (the "**Specified Employee Payment Date**"). The aggregate of any payments that would otherwise have been paid before the Specified Employee Payment Date shall be paid to the Employee in a lump sum on the Specified Employee Payment Date and thereafter, any remaining payments shall be paid without delay in accordance with their original schedule.

13.3 Reimbursements. To the extent required by Section 409A, each reimbursement or in-kind benefit provided under this Agreement shall be provided in accordance with the following:

- (a) the amount of expenses eligible for reimbursement, or in-kind benefits provided, during each calendar year cannot affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other calendar year;

(b) any reimbursement of an eligible expense shall be paid to the Employee on or before the last day of the calendar year following the calendar year in which the expense was incurred; and

(c) any right to reimbursements or in-kind benefits under this Agreement shall not be subject to liquidation or exchange for another benefit.

14. Successors and Assigns. This Agreement is personal to the Employee and shall not be assigned by the Employee nor the City. Any purported assignment shall be null and void from the initial date of the purported assignment.

15. Notice. Notices and all other communications provided for in this Agreement shall be given in writing by personal delivery, electronic delivery, or by registered mail to the parties at the addresses set forth below (or such other addresses as specified by the parties by like notice):

If to the City:

The City of Morgantown  
c/o Human Resources Director  
389 Spruce Street  
Morgantown, WV 26505

If to the Employee:

A. Kim Haws  
2876 University Avenue #8  
Morgantown, WV 26505

16. Representations of the Employee. The Employee represents and warrants to the City that:

The Employee's acceptance of employment with the City and the performance of duties hereunder will not conflict with or result in a violation of, a breach of, or a default under any contract, agreement, or understanding to which he is a party or is otherwise bound.

The Employee's acceptance of employment with the City and the performance of duties hereunder will not violate any non-solicitation, non-competition, or other similar covenant or agreement of a prior employer or third-party.

17. Withholding. The City shall have the right to withhold from any amount payable hereunder any Federal, state, and local taxes in order for the City to satisfy any withholding tax obligation it may have under any applicable law or regulation. The City shall additionally have the right to withhold from any amount payable hereunder any amount authorized or required pursuant to a lawful court order, an agreement with Employee, or an agreement binding upon or for the benefit of Employee such as a retirement plan.

18. Survival. Upon the expiration or other termination of this Agreement, the respective rights and obligations of the parties hereto shall survive such expiration or other termination to the extent necessary to carry out the intentions of the parties under this Agreement.

19. Acknowledgement of Full Understanding. THE EMPLOYEE ACKNOWLEDGES AND AGREES THAT HE HAS FULLY READ, UNDERSTANDS, AND VOLUNTARILY ENTERS INTO THIS AGREEMENT. THE EMPLOYEE ACKNOWLEDGES AND AGREES THAT HE HAS HAD AN OPPORTUNITY TO ASK QUESTIONS AND CONSULT WITH AN ATTORNEY OF HIS CHOICE BEFORE SIGNING THIS AGREEMENT.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

The City Council of The City of Morgantown

By \_\_\_\_\_

Name: Jennifer Selin

Title: Mayor

EMPLOYEE

Signature: \_\_\_\_\_

A. Kim Haws