

SECOND AMENDED AND RESTATED EMPLOYMENT AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2012, by and between the CITY OF LAS VEGAS, State of Nevada, a municipal corporation, (hereinafter the "City") and Elizabeth N. Fretwell (hereinafter the "Employee"), both of whom agree as follows:

W I T N E S S E T H:

WHEREAS, the City desires to employ the services of Employee as City Manager of the City of Las Vegas, Nevada as provided by the City Charter of Las Vegas; and

WHEREAS, it is the desire of the Mayor and City Council to provide certain benefits, establish certain conditions of employment and to set working conditions of employee; and

WHEREAS, it is the desire of the Mayor and City Council to (1) secure and retain the services of Employee and to provide inducement for her to remain in such employment (2) to make possible full work productivity by assuring Employee's morale and peace of mind with respect to future security and (3) to provide a just means for terminating Employee's services at such time as she may be fully unable to discharge her duties due to age or disability, or when the City may otherwise desire to terminate her employ; and

WHEREAS, Employee desires to accept employment as City Manager of the City of Las Vegas, Nevada.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

SECTION 1: DUTIES

The City hereby agrees to employ Employee as City Manager of the City of Las Vegas, Nevada to perform all functions and duties imposed upon her by the Las Vegas City Charter and by the Las Vegas Municipal Code, and to perform other legally permissible and proper duties and functions as the Mayor and City Council shall from time to time assign.

SECTION 2: TERM

A. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Mayor and City Council to terminate the services of Employee at any time, subject only to the provisions set forth in Section 3, paragraphs A and B of this Agreement.

B. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of Employee to resign at any time from her position with the City, subject only to the provision set forth in Section 3, paragraph C of this Agreement.

C. Employee agrees to remain in the exclusive employ of the City for a term beginning January 23, 2009 and ending September 30, 2016. During this period, Employee agrees neither to accept other employment nor to become employed by any other employer until said termination date, unless said termination date is affected as hereinafter provided.

D. In the event written notice is not given by either party to this Agreement to the other ninety (90) days prior to the termination date as hereinabove provided, this Agreement shall be extended on the same terms and

conditions as herein provided, all for an additional period of three years. Said Agreement shall continue thereafter for three-year periods unless either party hereto gives ninety (90) days written notice to the other party that the party does not wish to extend this Agreement for an additional three-year term.

SECTION 3: TERMINATION AND SEVERANCE PAY

Termination may occur for cause or without cause.

Termination for cause shall mean termination of employment because of (i) conviction by a court of competent jurisdiction of misappropriation or embezzlement of City of Las Vegas property or funds; (ii) conviction of any felony; or (iii) intentional breach of this Agreement.

In the event Employee is terminated without cause by the Mayor and City Council during such time that Employee is willing and able to perform her duties under this Agreement then in that event, the City agrees to pay Employee a lump sum payment equal to twelve (12) months' aggregate salary and benefits or the employee may elect to receive at her then current base rate of compensation in addition to all accrued sick, holiday, executive benefits and annual leave in the form of salary continuation payable on the normal payroll schedule followed by City for that severance period. This payment is intended to include a PERS contribution equal to one year's salary. Additionally, for a minimum of one year City shall pay the costs of health insurance for the employee and dependents; including domestic partner.

For the purposes of continuation of benefits under the Consolidated Omnibus Budget Reconciliation Act (COBRA), the one year of health insurance coverage shall apply to the eighteen month maximum continuation period.

In the event of the demise of the employee, City agrees to provide health insurance benefits for employee's dependents (i.e. domestic partner) for up to one year; or to the end of the employee's COBRA continuation period, whichever is less, the amount of which is not to exceed the City's responsibility under stop-loss coverage consistent with the City of Las Vegas group health insurance and shall not be less than the City's responsibility under stop loss coverage as of the effective date of this agreement.

Additionally, City agrees to provide life insurance coverage, in an amount equal to the coverage offered to other City employees in the Executive classification under City's group policy in effect at the time of separation, for a period of up to one year.

For purposes of this Agreement, termination shall occur when:

A majority of the governing body votes to terminate Employee at a duly authorized public meeting;

If the City of Las Vegas, citizens or legislature amends any provisions of the charter, code or enabling legislation diminishing the role, powers, duties, authority, responsibilities of the City Manager's position, including governmental consolidation that diminishes the role of the City Manager, Employee shall have the right to declare that such amendments constitute termination;

If the Employee resigns following an offer to accept resignation, whether formal or informal, by the Employer as a representative of the majority of the governing body that the employee resign, then the Employee may declare a termination as of the date of the suggestion.

In the event the City at any time during the term of the Agreement reduces the salary or other financial benefits of Employee in a greater percentage than an applicable across-the-board reduction for all employees of the City, or in the event the City refuses, following written notice to comply with any other provision benefitting Employee herein, or Employee resigns following a suggestion, whether formal or informal, by the Mayor and City Council that she resign, then, in that event, Employee may, at her option, be deemed to be "terminated" at the date of such reduction or such refusal to comply within the meaning and content of the herein severance pay provision.

In the event Employee voluntarily resigns her position with the City before expiration of the aforesaid term of her employment, then Employee shall give the City 60 days advance written notice, unless the parties otherwise agree.

SECTION 4: DISABILITY

If Employee is permanently disabled or is otherwise unable to perform her duties because of sickness, accident, injury, mental incapacity or health for a period of sixty (60) working days beyond any accrued sick leave, the City shall have the option of terminating this Agreement, subject to the severance pay requirements of Section 3, paragraph A. However, Employee shall be

compensated for any accrued sick leave, vacation, holidays and other accrued benefits.

SECTION 5: SALARY

The City agrees to pay Employee for her services rendered pursuant thereto an annual base salary of One Hundred Eighty Thousand and No/100ths Dollars (\$180,000.00), payable in installments at the same time as other employees of the City are paid.

In addition, the City agrees to increase said base salary and/or other benefits of Employee in such amounts and to such extent as the Mayor and City Council may determine that it is desirable to do so on the basis of performance of Employee.

SECTION 6: HOURS OF WORK

It is recognized, that Employee must devote a great deal of time outside the normal office hours to business of the City and to that end, Employee shall be allowed to establish an appropriate work schedule.

SECTION 7: ANNUAL PERFORMANCE

Employee shall be given an initial performance evaluation six months from the beginning of this contract. Thereafter she will be given an annual (yearly) performance evaluation and shall be eligible for a salary and/or bonus increase at that time. Such evaluation shall be based on written performance standards to be jointly developed by the City and Employee. Employee shall be eligible for merit and bonus adjustments resulting from the review.

SECTION 8: BENEFIT PLAN

In addition to the salary set forth in Section 4, Employee shall be provided the standard compensation and benefit plan available to current appointive and executive employees. In addition, Employee will be provided a contribution of 50% of the allowable IRS contribution, not to exceed Ten Thousand and No/100ths Dollars (\$10,000.00) per year in the City's 457 Deferred Compensation Program. In addition to all other leave time, Employee shall be allowed five (5) paid administrative days, annually.

SECTION 9: RETIREMENT

Employee will be eligible for participation in the Nevada Public Employees Retirement System (PERS) as part of the Employee Benefit and Executive Compensation Plan. In addition to those benefits, Employee shall have an additional six months PERS credit purchased for her after completion of each year of service.

SECTION 10: DISABILITY, HEALTH AND LIFE INSURANCE

The City agrees to provide and maintain uninterrupted disability, health and life insurance as afforded to other executive and administrative employees of the City.

SECTION 11: DUES AND SUBSCRIPTIONS

The City agrees to budget and to pay for the professional dues and subscriptions of Employee necessary for her participation in national, regional, state and local associations and organizations necessary and desirable for her professional participation, growth and advancement, and for the good of the City.

**SECTION 12: PROFESSIONAL DEVELOPMENT AND OTHER
RELATED EXPENSES**

- A. The City hereby agrees to budget and pay the travel and subsistence expenses of Employee for professional and official travel, meetings and occasions necessary for professional development of Employee, but not limited to the Annual Conference of the International City Management Association, the State League of Municipalities, the State Municipal Manager's Association and such other national, regional state, and local governmental groups and committees thereof which Employee serves as a member.
- B. The City also agrees to budget and to pay for the travel and subsistence expenses of Employee for short courses, institutes and seminars that are necessary for her professional development and for the good of the City.
- C. Employer recognizes that certain expenses of a non-personal nature but job related nature are incurred by Employee and agrees to reimburse or to pay said general expenses. The Finance Director is authorized to disburse such monies upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits.

SECTION 13: CIVIC CLUB MEMBERSHIP

The City recognizes the desirability of representation in and before local, civic and other organizations, and Employee is authorized to become a member of such civic clubs or organizations, for which the City shall pay all expenses. Employee shall report to the City on each membership that she has taken out at the City's expense.

SECTION 14: INDEMNIFICATION

The City shall defend, save harmless and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise arising out of an alleged act or omission occurring in the performance of Employee's duties as the City Manager, or resulting from the judgment or discretion in connection with the performance of program duties or responsibilities unless the act or omission involved willful or wanton conduct. The Employee may request and the Employer may not unreasonably refuse to provide independent legal representation at the Employer's expense and the Employer may not unreasonably withhold approval. Further, Employer agrees to pay all reasonable litigation expenses of employee throughout the pendency of any litigation to which the Employee is a party, witness or advisor. Such expense payments shall continue beyond the Employee's service to the Employer as long as litigation is pending. The City will compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon as limited in this Section. The City shall not so defend, save harmless or indemnify Employee for any act arising outside the scope of her duties. The City will also

provide for legal representation of Employee for any complaint filed before the Nevada State Ethics Commission for allegations related to conduct within the scope of employees authorizing or conduct consistent with advice received from the City Attorney.

SECTION 15: BONDING

The City shall bear the full cost of any fidelity or other bonds required of Employee under any law or ordinance.

SECTION 16: OTHER TERMS AND CONDITIONS OF EMPLOYMENT

- A. The Mayor and City Council, in consultation with the City Manager, shall fix any such other terms and conditions of employment, as it may determine 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 Agreement, the City charter or any other law.
- B. All provisions of the City Charter and Las Vegas Municipal Code, and regulations and rules of the City relating to vacation and sick leave, retirement and pension system contributions, holidays and other fringe benefits and working conditions as they now exist or hereafter may be amended, also shall apply to Employee as they would to other employees of the City, in addition to said benefits including the executive compensation plan enumerated specifically for the benefit of Employee except as herein provided.

- C. Employee will be entitled to carry over all benefits accrued as Deputy City Manager.

SECTION 17: NO REDUCTION OF BENEFITS

The City shall not, at any time during the term of this Agreement, reduce the salary compensation or other financial benefits of Employee, except to the degree of such a reduction across-the-board for all employees of the City.

SECTION 18: NOTICES

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

The CITY:

The Mayor of the City of Las Vegas
400 Stewart Avenue, 10th Floor
Las Vegas, NV 89101

The EMPLOYEE:

Elizabeth N. Fretwell
7960 W. Rosada Way
Las Vegas, NV 89149

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

SECTION 19: **GENERAL PROVISIONS**

- A. Governing Law/Jurisdiction: The laws of the State of Nevada shall govern this Agreement and the jurisdiction for any and all litigation relevant to this Agreement shall be the County of Clark, State of Nevada.
- B. Attorneys Fees and Costs: The prevailing party to any action in litigation relevant to the enforcement of the terms and conditions of this Agreement shall be entitled to its reasonable attorney's fees and costs associated with the same.
- C. The text herein shall constitute the entire Agreement between the parties.
- D. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee.
- E. This Agreement shall become effective commencing January 23, 2009.
- F. If any provisions, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

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

CITY OF LAS VEGAS

By: _____
CAROLYN G. GOODMAN, Mayor
"City"

ATTEST:

BEVERLY BRIDGES, City Clerk MMC



ELIZABETH N. FRETWELL
"Employee"

APPROVED AS TO FORM:

 9/25/12

BRADFORD R. JERBIC Date