



Amendment 2 to Employment Agreement

THIS SECOND AMENDMENT TO EMPLOYMENT AGREEMENT (the “*Amendment*”) is made and entered into effective as of December 2, 2019 (the “*Amendment Effective Date*”), by and between The City of Minot, ND, a municipal corporation (the “*City*”) and Thomas Barry (“*Barry*”) (each a “Party” and collectively “the Parties”).

Whereas, the City and Barry entered into that certain Employment Agreement (the “*Agreement*”) dated November 1, 2016, and

Whereas, the Parties first amended the Agreement via the First Amendment to the Agreement on December 4, 2018, and

Whereas, the Parties desire to now amend Sections 2 and 18 of the Agreement in the manner reflected herein, and

Whereas, the City Council of the City of Minot has approved the Second Amendment of the Agreement in the manner reflected herein,

Now Therefore, in consideration of the mutual covenants and conditions herein, the Parties, intending to be legally bound, hereby agree as follows, effective as of the Second Amendment Effective Date first written above:

1. **Term.** Section 2 of the Agreement is hereby deleted and replaced in its entirety with the following:
 2. **TERM.** The term of this Agreement shall commence December 12, 2016 and, unless earlier terminated as provided hereafter, shall terminate on August 11, 2025. This Agreement shall automatically be renewed on its anniversary date of August 11, 2025 for a five (5) year term and thereafter on its term anniversary date for successive five (5) year terms unless written notice that the Agreement shall terminate is given by the City at least 365 calendar days before the term expiration date. In the event the Agreement is not renewed, all terms and conditions shall remain in full force and effect until the expiration of the term of the Agreement and Barry shall be compensated under paragraph 18 as though the City had terminated this Agreement prematurely, except that he shall not be entitled to termination pay under clause (d) of paragraph 18 (or otherwise).
2. **Early Termination By City.** Section 18 of the Agreement in its entirety is hereby deleted and replaced with the following:
 18. **EARLY TERMINATION BY CITY.** If the City elects to terminate this agreement before the time it would otherwise terminate in the absence of such election:
 - (a) it shall observe its financial obligations under this agreement up to the date of termination; and

- (b): it shall pay Barry up to 300 hours of his total accrued unused annual leave and up to 240 hours of his accrued unused sick leave at Barry’s then current rate of pay in lump sum or in a continuation of salary on the existing biweekly basis, at Barry’s option; and
- (c): it shall pay Barry such expenses as he may have already incurred for which he is entitled to be reimbursed, but which have not yet been reimbursed at the time of such termination; and
- (d): it shall pay Barry a sum equal to twelve (12) months’ salary at Barry’s then current rate of pay ("termination pay") in lump sum or in a continuation of salary on the existing biweekly basis, at Barry’s option.

The payment provided for in Section 18d shall be in lieu of all other claims under this Agreement, including any breach of contract claim, provided that, however, if and only if the reason for such premature termination is the commission or attempted commission by Barry of an illegal act for his own personal financial gain at the expense of the City or Barry was convicted of a felonious act in the course of his employment, then the City shall have no financial obligation to Barry beyond that provided in clauses (a), (b), and (c) of this section, that is, it shall not be obligated to pay termination pay to him. For purposes of this paragraph, "termination" shall include such acts by the City as would constitute constructive termination.

- 3. **Contract Extension Incentive.** On August 11, 2020, the City agrees to increase Barry’s base pay by three percent (3%) as an incentive to continue employment with the City.
- 4. **Counterparts.** This Amendment may be executed in one or more facsimile, electronic or original counterparts, each of which shall be deemed an original and both of which together shall constitute the same instrument.
- 5. **Ratification.** All terms and provisions of the Agreement and prior Amendments not amended hereby, either expressly or by necessary implication, shall remain in full force and effect. From and after the date of this Amendment, all references to the term “*Agreement*” in this Amendment or the original Agreement and prior Amendments shall include the terms contained in this Amendment.

IN WITNESS WHEREOF, the Parties hereto have executed this Second Amendment to the Employment Agreement effective as of the Amendment Effective Date.

EMPLOYEE

CITY OF MINOT

By: _____
Tom Barry, City Manager

By: _____
Shaun Sipma, Mayor

Attest: _____
Kelly Matalka, City Clerk