

EMPLOYMENT AGREEMENT

EFFECTIVE DATE: This Agreement is dated as of April 20, 2020 (the "Effective Date")

PARTIES: **EMPLOYER**

City of Bozeman
Bozeman City Commission
121 North Rouse Avenue
Bozeman, MT 59715

EMPLOYEE

Jeff Mihelich
302 North Meldrum Street, Unit 101
Fort Collins, CO 80521

RECITAL

The City has extended an offer of employment to Employee subject to the terms and conditions set forth in this Agreement. Employee accepts employment on the terms, covenants, and conditions set forth in this Agreement.

AGREEMENT

In consideration of the foregoing recitals and the covenants and promises contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the City and Employee agree as follows:

**ARTICLE I.
INTERPRETATION**

Unless a clear contrary intention appears, as used in this Agreement (a) the singular includes the plural and vice versa, (b) reference to any document means such document as amended from time to time, (c) "include" and "including" means including without limiting the generality of any description preceding such term, (d) the word "or"

is not exclusive, unless otherwise expressly stated, (e) the terms "hereof," "herein," "hereby," and derivative or similar words refer to this entire Agreement, and (f) headings are for convenience only and do not constitute a part of this Agreement.

**ARTICLE I.
DUTIES AND AUTHORITY**

The City agrees to employ Employee as City Manager to perform the functions and duties specified by Section 3.04 of the Bozeman City Charter, the Bozeman Municipal Code, state law and the City Manager's class specification and job description, and to perform other legally permissible and proper duties and functions as assigned by the City Commission.

**ARTICLE II.
FULL-TIME BEST EFFORTS.**

Employee recognizes he/she serves at the pleasure of the Bozeman City Commission and also that Employee must devote Employee's full professional time and attention to the performance of Employee's obligations under this Agreement, and must at all times faithfully, industriously and to the best of Employee's ability, experience and talent perform all of Employee's obligations under this Agreement. Until this Agreement is terminated, Employee shall not be employed or engaged by any other person or firm other than the City and, unless otherwise authorized in writing by the City Commission, shall not engage in any consulting, advising, or other similar work or business.

**ARTICLE III.
TERM, TERMINATION, REVIEW AND MODIFICATION.**

III.1 Term. The term of this Agreement shall begin on the Effective Date and continue for an indefinite period as set forth in Section 3.01 of the City Charter subject to the Probationary Period of Employment and Termination provisions set out below. Employee's first date of work under this Agreement shall be May 26, 2020.

III.2 Probationary Period of Employment. Notwithstanding Section 4.1, the Employee shall have a probationary period of employment beginning on the first day of employment and ending on the end of the day which is twelve (12) months from the first day of work for the City. During the probationary period of employment and subject to the procedural provisions of Section 3.01 of the City Charter, either the City or Employee may terminate Employee's employment at will on notice to the other for any reason or for no reason.

III.3 Termination. Notwithstanding Section 4.1:

- (a) This Agreement and the Employee's employment shall terminate immediately upon Employee's death.
- (b) This Agreement and the Employee's employment shall terminate immediately upon the he City ceasing to conduct its business.

- (c) This Agreement and the Employee's employment may be terminated pursuant to Section 3.02 of the City Charter.
- (d) Employee may terminate this Agreement upon 90 days' written notice to the City.
- (e) Employee may immediately terminate this Agreement if the City, citizens or City Commission acts to amend any provisions of the Bozeman Municipal Code and/or City Charter pertaining to the City Manager's role, powers, duties, authority, or responsibilities that substantially changes the City of Bozeman's form of government.
- (f) Upon termination of Employee's employment under this Agreement, the City shall have no further obligation to Employee except as specifically provided under this Agreement; provided, however, that:
 - (i) Termination of Employee's employment shall not affect Employee's right to receive accrued but unpaid salary through the date of termination;
 - (ii) Termination of Employee's employment shall not affect Employee's right to be paid for accrued but unpaid leave in accordance with state and federal law;
 - (iii) Employee shall be allowed to pay for continued health insurance as permitted by federal law.
- (g) Upon termination of Employee's employment under this Agreement, Employee shall return to the City all equipment and property, including without limitation, files, notes, records, proprietary information, electronic equipment, keys, credit cards, and the like, owned by the City and used by Employee.

III.4 Grounds for Termination. Notwithstanding the procedural requirements of Section 3.02 of the City Charter and independent of Section 4.3, Employee agrees reasonable job related grounds for removal of the Employee by the City Commission include failure to satisfactorily perform job duties, disruption of City operations, conduct which is prejudicial to the City or City Commission, or other legitimate business reasons including but not limited to:

- (a) Violation of the residency requirement as provided for in Section 7.3;
- (b) Conviction of or plea of guilty or no contest to a felony;
- (c) Conviction of or plea or guilty or no contest to a misdemeanor which:
 - (i) the act or failure to act occurs in the course and scope of the

Employees duties; (ii) negatively affects the credibility of the Employee to sufficiently discharge his/her duties.

- (d) Adjudication by a forum of competent jurisdiction that the Employee violated the City or State codes of ethics;
- (e) Repeated and protracted unexcused absences from the Employee's office or duties;
- (f) Knowingly falsifying records or documents or knowingly making false statements related to the City's activities or businesses;
- (g) Violation of any City policy regarding drugs or alcohol; or
- (h) Any wilful, grossly negligent, or negligent misapplication or misuse, direct or indirect, by Employee of public or other funds or other property, real, personal, or mixed owned by or entrusted to the City, any agency or corporation thereof, or the Employee in the Employee's official capacity.

III.5 Review and Modification. The parties agree to review this Agreement on or before December 31 every two years commencing in December of 2020. Should either party desire to modify this Agreement at any time, the party wishing to amend this Agreement shall serve written notice of proposed modifications in writing.

III.6 Severance. Except as otherwise stated herein, if Employee is terminated pursuant to this Article IV, the severance package will be as follows:

- A. Severance Pay.** Amount of severance pay is equal to twelve (12) months' pay. The amount shall be paid in a lump sum unless otherwise agreed to by the City and Employee.
- B. Retirement Contribution.** The City will make a contribution to the Employee's deferred compensation account in the amount of the Employee's salary as of the date of termination compensation calculated as defined in Section 7.4.

If Employee is terminated for any of the reasons in Section 4.4(b)-(h), or if Employee terminates employment pursuant to 4.3(d), Employee is not entitled to any severance pay under this section except required leave payouts.

**ARTICLE IV.
PERFORMANCE REVIEW AND WORK PLAN**

IV.1 Performance Review. The City shall annually review the performance of the Employee no later than December 1 of each year.

IV.2 Work Plan. Beginning on January 1, 2021 and each year thereafter, the City Manager shall work with the City Commission to develop for City Commission approval a Work Plan identifying specific goals, implementation strategies and major City projects and work assignments to implement, if adopted, the City's current Strategic Plan. The Work Plan should be approved by the City Commission on or before March 1 of each year. The City Manager shall be evaluated, in part, regarding the implementation of the Work Plan.

**ARTICLE V.
COMPENSATION**

V.1 Base Salary. The City shall pay Employee \$183,000.00 one hundred eighty three thousand dollars) per year (the "**Salary**"), payable in installments on a monthly basis. The base salary will increase by an additional Ten Thousand Dollars (\$10,000.00) effective May 26, 2021.

V.2 COLA. Commencing on January 1, 2022, the City agrees to annually increase said base salary of Employee by the December U.S. Consumer Price Index for All Urban Consumers for All Items.

V.3 Merit Wage Adjustments. The City Commission reserves the right to, but is not required to, make a merit based adjustments to the Base Salary. Any merit based adjustments must be approved by a vote of the City Commission.

**ARTICLE VI.
BENEFITS**

VI.1 Health Insurance. The Employee shall be entitled to participate in any plans, arrangements or distributions by the City pertaining to or in connection with any health, dental, and vision insurance which the City adopts for the employees of the City. The Employee will be subject to all of the rules of the City's plans providing insurance, including without limitation, rules regarding participation.

VI.2 Transportation Expenses. The City agrees to pay to the Employee, during the term of this Agreement, the sum of Five Hundred Dollars (\$500.00) per month as reimbursement for transportation related expenses. The amount shall be increased annually by 3% commencing on January 1, 2021 and continuing on each January 1 thereafter. The Employee is prohibited from using City vehicles or from seeking reimbursement for transportation expenses except as may be authorized in advance pursuant to Article VIII.

VI.3 Residency Requirement/Housing Allowance. The Employee agrees to maintain residence within the corporate boundaries of the City of Bozeman. The City agrees to pay Employee a housing supplement in the amount of two thousand dollars (\$2,000) per month.

VI.4 Retirement. The City will provide Employee the same retirement program through the Montana Public Employees Retirement Administration as is provided to other employees of the City. In addition, the City will contribute an amount equal to 18% of Employee's base salary as a monthly contribution to a Section 457 deferred compensation plan offered through the ICMA Retirement Corporation

VI.5 Leaves of Absence. Employee shall be entitled to accrue and utilize sick leave and vacation leave as set forth in the City's Employee Handbook.

A. Vacation Leave; Sick Leave. Employee shall accrue twenty-four (24) days of vacation leave each year and twelve (12) days of sick leave each year, subject to the qualifying periods and all policies other than accrual rates as set forth in the City's Employee Handbook. From calendar year to calendar year, the Employee is entitled to carry over up to three (3) times the annual vacation accrual. There will be no limit on the accrual of sick leave credits. Entitlement to and usage of other leave shall be in accordance with the City's Employee Handbook.

B. Administrative Leave. In addition, Employee shall be entitled to ten (10) administrative leave days available to the Employee upon the first day of work for the City. These administrative leave days must be used in whole-day increments. If the Employee does not use them by December 31, 2020 these administrative leave days will expire.

**ARTICLE VII.
BUSINESS EXPENSES**

VII.1 Business Expenses. In addition to the transportation expenses provided for in Section 7.2, the City shall reimburse Employee for any business-related expenses including transportation expenses as those may be related to travel outside of Gallatin County and incurred in the course of the Employee's official duties. Such expenses may only be reimbursed pursuant to City policy in the same manner as reimbursements for other employees. The Finance Director is authorized to disburse reimbursement upon receipt of duly executed expense or petty cash vouchers, receipts, statements, or personal affidavits reflecting such expenses.

VII.2 Relocation Expenses. City will reimburse employee for the following actual expenses incurred by Employee during two (2) moving trips: Employee's temporary move from Ft. Collins, CO to Bozeman to commence employment, and Employee's permanent relocation move from Ft. Collins to Bozeman. Receipts are required for reimbursement of all expenses.

A. Household goods move to Bozeman: City shall reimburse Employee for the actual cost of hiring a self-move moving vehicle or the actual cost of hiring a professional moving company. If a professional moving company is used, the actual cost to be reimbursed by the City shall be based on three (3) quotes.

B. Car relocation costs:

Employment Agreement between the City of Bozeman and Jeff Mihelich

1. Actual mileage for the one-time relocation to Bozeman of up to two (2) vehicles using the most direct route (copy of Mapquest or Google Maps route required for reimbursement) at IRS standard mileage rate; OR
 2. Actual fuel costs for the one-time relocation to Bozeman of up to two (2) vehicles using the most direct route (copy of Mapquest or Google Maps route required for reimbursement).
- C. Lodging costs: Actual costs for lodging along the most direct route as described in (b) above.
- D. Meals: Actual cost of meals, not including alcohol.
- E. House-hunting trip: In addition to the relocation costs described in this Section 8.2, the City will reimburse Employee for the actual costs incurred during one house-hunting trip for Employee. All such expenses require receipts for reimbursement.
1. Transportation costs: Coach class airfare or cost of using personal vehicle at the IRS standard mileage rate. If flying, cost of rental vehicle for up to two (2) days.
 2. Lodging for up to (2) nights.
 3. Meals for up to two (2) days, not including alcohol.

VII.3 Professional Development. In addition to the transportation expenses provided for in Section 7.2, the City agrees to budget for and pay for travel and subsistence expenses of Employee for short courses, institutes and seminars that are deemed by the Commission as necessary for the Employee's professional development and for the good of the City. This includes but is not limited to annual dues for membership in and attending the annual conferences of the International City/County Management Association (ICMA) and the regional chapter of ICMA, membership and conferences of the Montana League of Cities and Towns (MLCT), and at least one (1) additional professional conference of the Employee's choosing.

VII.4 Local Civic Clubs and Organizations. The City acknowledges the value of having Employee participate and be directly involved in local civic clubs or organizations. Accordingly, the City shall pay for the reasonable membership fees and/or dues to enable the Employee to become an active member in local civic clubs or organizations.

**ARTICLE VIII.
HOLDING OFFICE.**

Commission approval is needed before the Employee agrees to hold office in any professional, business, or civic organization.

**ARTICLE IX.
HOURS OF WORK**

The City recognizes that Employee must devote a great deal of time outside normal office hours on business for the City. To that end, Employee shall be allowed to establish an appropriate work schedule.

**ARTICLE X.
OUTSIDE ACTIVITIES**

The City recognizes that certain outside consulting or teaching opportunities provide indirect benefits to the City and the community. According, Employee may elect to accept limited teaching, consulting or other business opportunities with the understanding that such arrangements shall not constitute interference with nor a conflict of interest with Employee's responsibilities under this Agreement.

**ARTICLE XI.
INDEMNIFICATION**

Under Montana Code Annotated section 2-9-305, the City will indemnify, immunize and prove a defense to Employee if Employee is civilly sued for action taken within the scope of Employee's employment. Further, the City agrees that notwithstanding Section 4.3(f), this obligation shall continue beyond Employee's service to the City as long as litigation is pending. the City agrees to pay Employee's reasonable consulting fees and travel expenses when Employee serves as a witness, advisor, or consultant to the City regarding pending litigation.

**ARTICLE XII.
BONDING**

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

**ARTICLE XIII.
MISCELLANEOUS.**

XIII.1 Governing Law. This Agreement shall be governed by the laws of the State of Montana.

XIII.2 Severability. The invalidity of any provision of this Agreement or portion of a provision shall not affect the validity of any other provision of this Agreement or the remaining portion of the applicable provision.

XIII.3 Counterparts and Facsimile Signatures. This Agreement and any amendments to this Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one agreement. A facsimile or electronic signature to this Agreement and any amendments to this Agreement shall be deemed an original and binding upon the party against whom enforcement is sought.

XIII.4 Notices. All notices required or permitted under this Agreement shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified; (ii) when sent by confirmed facsimile or electronic mail if sent during normal business hours of the recipient, if not, then on the next business day; (iii) upon receipt, if sent by registered or certified mail or nationally recognized overnight courier. All notices shall be sent to the City or Employee at the address set forth on the first page of this Agreement, or at such other address as either party may designate by notice pursuant to this Section.

XIII.5 Entire Agreement. The terms of this Agreement express and constitute the entire agreement between the parties pertaining to the subject matter of this Agreement and supersede all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties. No supplement, modification, waiver or termination of this Agreement shall be binding, unless executed in writing by the party to be bound.


XIII.6 Assignment. This Agreement and all rights, entitlements, duties and obligations arising from it shall not be assignable in whole or in part by Employee except with the prior written consent of the City.


XIII.7 Public Document. This Agreement is a public document and shall be available for inspection by the public.

The parties have executed this Agreement effective as the Effective Date.

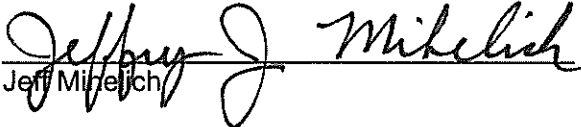
End of Agreement Except for Signatures

THE CITY:

DocuSigned by:

C55DC1A12ACD455...
Chris Mehl, Mayor

Attest: DocuSigned by:

039B784A08344D3...
Mike Maas, City Clerk

EMPLOYEE:


Jeff Mihelich