

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT is made and entered into as of the 4th day of December, 2007, by and between **FARMINGTON CITY**, a Utah municipal corporation, hereinafter referred to as the "City," and **MAX FORBUSH**, an individual, hereinafter referred to as "Forbush."

RECITALS:

WHEREAS, the City desires to continue to employ the services of Forbush as City Manager of Farmington City in accordance with the provisions of Title 2, Chapter 3 of the Farmington City Code; and

WHEREAS, the City desires to continue to provide certain benefits and to establish certain conditions of employment as provided herein; and

WHEREAS, Forbush desires to continue employment as the City Manager of Farmington City in accordance with the terms set forth herein.

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

1. **Purpose.** The purpose of this Agreement is to provide for the employment of Forbush as City Manager of the City in accordance with the provisions of Title 2, Chapter 3 of the Farmington City Code.
2. **Duties.** The City agrees to employ Forbush to perform and carry out the duties and functions of City Manager for the City as specified in the City's job description for such position and the City's ordinances, rules and regulations, and to perform such other legally permissible and proper duties and functions as the City shall from time to time assign. Forbush shall not have any legislative, judicial or policymaking authority. Forbush agrees that to the best of his ability and experience he will at all times loyally and conscientiously perform all of the duties and obligations required of him either expressly or implicitly by the terms of this Agreement. Forbush shall be subject to the general direction of the governing body of the City. For purposes of this Agreement, governing body shall consist of the Mayor and members of the City Council as more particularly described in Utah Code Ann. § 10-3-101, as amended.
3. **Term of Employment.** It is expressly acknowledged by the parties that Forbush is currently employed as the City Manager of Farmington City and that he has been performing such duties for the City for over twenty-five (25) years. It is the intent of the parties for Forbush to continue to perform such duties as the City Manager of Farmington City in accordance with the terms and conditions of this Employment Agreement. It is expressly understood and agreed that Forbush serves as an at-will employee of the City and that subject to the provisions set forth herein, he may be terminated at any time by the governing body with or without cause as more particularly

provided in Section 11 of this Agreement. It is further acknowledged and understood that the position of City Manager is a full-time position and that Forbush is an exempt employee under applicable provisions of the Fair Labor Standards Act.

4. Compensation.

a. The City shall pay Forbush for his services an annual base salary as determined mutually by the City and Forbush before July 1st of each year, payable in regular payroll installments at the same time as other employees of the City are paid. The City shall pay the required employer's contributions on Forbush's salary where required for Social Security and Medicare. Forbush shall be responsible to pay the employee's portion of any Social Security and Medicare taxes.

b. The City shall contribute equal to the percentage that is paid to the State Retirement System for regular City employees, plus 3% of Forbush's annual salary to a qualified 401(a) defined contribution plan in accordance with the provisions and subject to the conditions of such plan as adopted by the City to the extent Forbush is qualified to participate in such plan. The City shall also contribute 3% of Forbush's annual salary to a post-employment health care plan upon meeting eligibility requirements of the plan.

c. Forbush shall be entitled to all benefits and qualified leave provided for full-time City employees in accordance with the City Personnel Policies and Procedures, including, but not limited to, retirement, group health insurance coverage, vacation, sick leave, holidays, and other benefits and qualified leave as determined and normally provided by the City to its employees and Department Heads. Forbush is required to defer 5% of his pay and 5 days of annual leave contribution into a post-employment health care plan.

d. Salary and other benefits furnished to Forbush by the City may be reviewed and adjusted periodically by the City. Any changes to Forbush's salary shall be consistent with the City's compensation plan. Pursuant to the City's Personnel Policies and Procedures, the City reserves the right to unilaterally alter, amend, except or revoke any policy, practice, procedure or employee benefits as deemed necessary in the sole discretion of the City. Nothing herein shall be deemed to alter such right of the City to unilaterally alter, amend, except or revoke any policy, practice, procedure or employee benefit provided to Forbush and/or to amend or alter the City's compensation plan. This Agreement shall be automatically amended to reflect any salary adjustments approved by the governing body.

e. The City shall pay Forbush a car allowance in the amount of Two Hundred Fifty Dollars (\$250.00) per month during the term of this Agreement, in addition to other salary and benefits provided herein for the use of a personal vehicle furnished by Forbush on City business up to and including a radius of fifty (50) miles from Farmington City. When Forbush's personal vehicle is used for City business beyond the fifty (50) mile radius from the City, Forbush shall be entitled to collect the standard mileage reimbursement afforded full-time employees in accordance with City policy. Forbush agrees to furnish a suitable vehicle for his use in connection with his duties under this Agreement. The City shall not pay Forbush mileage, repairs, maintenance, or any other sums except as provided herein unless

otherwise approved in writing by the governing body. Forbush agrees to maintain adequate liability, property damage, and comprehensive insurance coverage on the vehicle. Forbush shall be subject to and shall comply with all City risk management rules, practices, and standards and City vehicle use policies and accident review procedures applicable to City employees when using his personal vehicle on City business. Forbush should follow defensive driving techniques as suggested by the City's insurance carrier. Forbush shall be responsible for paying any and all taxes which may be due on the monthly car allowance provided herein.

5. **Bonding.** The City shall pay the cost of any fidelity or other bonds required of Forbush under any law or ordinance.

6. **Office and Time Spent.** Forbush shall maintain an office in the Farmington City Hall or such other location as the City shall direct and shall spend such time in the performance of his duties for the City as is necessary or may reasonably be required from time to time by the governing body consistent with the discharge of his duties specified under this Agreement. Forbush shall be reasonably accessible during the City's business hours. Forbush shall not accept any outside employment in addition to employment with the City without the prior written approval of the governing body.

7. **Performance Evaluations.** Forbush shall be subject to annual employee performance evaluations in accordance with the City's Performance Evaluation System. In addition to formal evaluations, the Mayor and/or governing body may conduct informal evaluations from time to time.

8. **Professional Development.** The City agrees to budget for and to pay the professional dues, subscriptions, travel, courses, seminars and stipend expenses of Forbush for professional participation and travel adequate to continue his professional development. Such participation may be on City time and may include, but is not limited to, International City/County Management Association (ICMA), Utah League of Cities and Towns (ULCT), Utah City Manager's Association (UCMA), and the Urban Land Institute (ULI). Any such professional development and travel expenses provided for herein shall be subject to annual budget approval by the governing body.

9. **Other Terms and Conditions of Employment.** The governing body, in consultation with Forbush, shall fix any other terms and conditions of employment as it may determine from time to time, relating to the performance of Forbush, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement and the City Ordinances. All provisions of the City's ordinances, rules and regulations pertaining to City personnel, including the Personnel Policies and Procedures, shall apply to Forbush as they would to other employees of the City except as herein expressly modified.

10. **Termination.** As an at-will employee, Forbush shall serve at the pleasure of the governing body and may be terminated at any time with or without cause. Any such termination shall require a majority vote of the governing body in accordance with State law and City Ordinances, including, but not limited to, Utah Code Ann. § 10-3-101, as amended, which provides that the Mayor may vote in the appointment or dismissal of a city manager under Section 10-3-830.

11. **Severance Pay and COBRA.** In the event Forbush is terminated by the governing body of the City, other than for cause, Forbush shall be entitled to receive as severance pay, a lump sum payment equal to six (6) months salary at the current rate of pay less applicable taxes and other customary deductions. In the event of termination, other than for cause, Forbush shall be paid for accrued sick and vacation leave and the City shall make the appropriate contribution to Forbush's qualified 401(a) plan for the six (6) months salary to the extent permitted by the plan. In return for severance pay, Forbush agrees to be available for consultation and assistance during such period to the new City Manager or any other Council appointee. For purposes of this Agreement, for cause termination shall be defined as set forth or contemplated in the City's Personnel Policies and Procedures. Contemporaneously with the delivery of the severance pay hereinabove set out, Forbush agrees to execute and deliver to the City a written release releasing the City and its officers and employees of and from all claims that Forbush may have or claim against the City and its officers and employees for claims arising out of or in the course of such officer or employee's agency or employment with the City. In the event of termination, other than for cause, the City shall continue to pay for six (6) months group health and dental insurance coverage premiums for Forbush in the amount provided immediately prior to termination and in accordance with City policies and coverage plans in effect at the time. In any event, Forbush shall be afforded continued insurance coverage in accordance with the applicable terms and requirements of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). In the event Forbush is terminated without cause by the City during the six (6) months immediately following the seating and swearing-in of one or more new governing body members, and during such time Forbush is willing and able to perform his duties under this Agreement, then the City agrees to pay severance in accordance with this Section plus salary and benefits for any portion of the six (6) months not worked.

12. **Resignation.** Forbush shall have the right to resign at any time from his position with the City provided he gives the City thirty (30) days advance written notice. In the event of resignation, Forbush foregoes any right to severance pay as provided herein.

13. **Notices.** Notices pursuant to this Agreement shall be given by delivering personally or by mailing the same by certified mail, return receipt requested, postage prepaid in the United States Postal Service addressed as follows:

To the City: Farmington City
 Attn: Mayor
 130 North Main
 P.O. Box 160
 Farmington, UT 84025

To Forbush: Max Forbush
 73 South 100 West
 Farmington, UT 84025

Notice shall be deemed given as of the date of personal service or as of the date of mailing such written notice as provided herein.

14. **Entire Agreement.** This Agreement contains the entire agreement concerning the employment arrangements of Forbush and shall supercede any prior agreements, promises, inducements, representations or warranties made by either party pertaining to the employment of the City Manager.

15. **Binding Effect.** This Agreement shall be binding upon the parties hereto and their respective heirs, personal representatives, and successors in interest. Other than vested rights to benefits, Forbush's rights and interest arising under this Agreement are personal and may not be assigned.

16. **Severability.** If any provision, 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 and shall not be affected and shall remain in full force and effect.

17. **Indemnification.** The City agrees to defend and indemnify Forbush in any action brought against Forbush arising out of an act or omission occurring during the performance of Forbush's duties, within the scope of Forbush's employment, or under color of authority, in accordance with and subject to the provisions of the Utah Governmental Immunity Act, as set forth in Title 63, Chapter 30d, including, but not limited to, Section 63-30d-902, as amended.

18. **Amendment.** This Agreement shall not be amended except in writing signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first above written.

“CITY”

FARMINGTON CITY

ATTEST:

Margy L. Romax
City Recorder

By: Scott C. Harbertson
Mayor Scott C. Harbertson



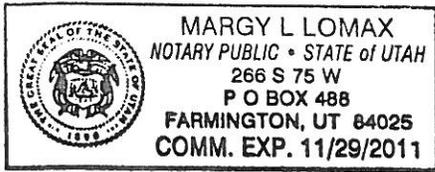
“FORBUSH”

By: Max Forbush
Max Forbush

CITY ACKNOWLEDGMENT

STATE OF UTAH)
 :SS.
COUNTY OF DAVIS)

On the 4th day of December, 2007, personally appeared before me Scott C. Harbertson, who being duly sworn, did say that he is the Mayor of **FARMINGTON CITY**, a municipal corporation of the State of Utah, and that the foregoing instrument was signed in behalf of the City by authority of its governing body and said Scott C. Harbertson acknowledged to me that the City executed the same.

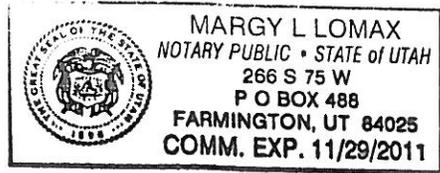


Margy L Lomax
Notary Public

FORBUSH ACKNOWLEDGMENT

STATE OF UTAH)
 :SS.
COUNTY OF DAVIS)

On the 6th day of December, 2007, personally appeared before me **MAX FORBUSH**, who being duly sworn, did say that he is the signer of the foregoing instrument, who duly acknowledged to me that he executed the same.



Margy L Lomax
Notary Public