

AGENDA
OURAY CITY COUNCIL SPECIAL MEETING
Virtual Meeting
October 6, 2020
1:15 pm

Join Zoom Meeting
<https://zoom.us/j/9349389230>

Meeting ID: 934 938 9230
Passcode: 491878

by phone:
+1 408 638 0968
+1 669 900 6833

- Electronic copies of the Council Packet are available on the City website at www.cityofouray.com. A hard copy of the Packet is also available at the Administrative Office for interested citizens.
- Action may be taken in open session on any agenda item
- Notice is hereby given that a majority or quorum of the Planning Commission, Community Development Committee, Beautification Committee, and/or Parks and Recreation Committee may be present at the above noticed City Council meeting to discuss any or all of the matters on the agenda below for Council consideration

1. CALL TO ORDER
2. ROLL CALL
3. ACTION ITEM
Consideration, Discussion, and Possible Approval of City Administrator Employment Agreement with Silas Clarke
4. ADJOURNMENT

320 6th Avenue
PO Box 468
Ouray, Colorado 81427



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EMPLOYMENT AGREEMENT

This Employment Agreement, is made and entered into this ____ day of____, by and between the **CITY OF OURAY**, a Colorado home rule municipality (City) and **SILAS B. CLARKE**, (Employee or City Administrator)

WHEREAS, pursuant to the City of Ouray Home Rule Charter, §5.1, City Council desires to appoint and employ the services of Employee for the office of City Administrator of the City of Ouray, Colorado; and,

WHEREAS, the City and Employee desire to provide for certain benefits, establish certain conditions of employment and set working conditions in this Agreement;

WHEREAS, Employee desires to accept the appointment to the office of city Administrator and be employed under the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the following mutual covenants and conditions the parties agree as follows:

1. Duties. The City herein hires Employee to the office of City Administrator and Employee agrees to perform the functions and duties of the office as specified in City of Ouray Home Rule Charter, § 5.1 and the 2017 job description, both of which are attached hereto as Exhibit A. The City Administrator agrees to perform any other legally permissible and proper duties and functions as the City Council of the City shall from time-to-time assign to the City Administrator. Employee shall abide by and uphold the laws set forth in the City Charter, the City of Ouray Municipal Code, Colorado state law, federal law, and any other applicable laws, ordinances, or regulations of the City or State of Colorado, that may be applicable.

2. Term. The City Administrator is an EMPLOYEE AT WILL. Nothing in this Employment Agreement shall prevent, limit, or otherwise interfere with the right of the City Council to terminate the services of the City Administrator at any time or with the right of the City Administrator to resign at any time from his position upon thirty (30) days prior written notice, subject only to the provisions as set forth in Paragraph 5 below.

3. Start Date. Employment as City Administrator shall begin no later than Tuesday, December 1, 2020 and Employee shall move to and reside within the City limits at that time.

4. Compensation. The City Administrator shall receive an annual base salary of One Hundred Ten Thousand Five Hundred and Eighty Dollars (\$110,580.00), payable at the same time as other employees of the City. The City Administrator shall receive any COLA increases, the same as other City employees. The process for any increase in annual salary is set forth in Paragraph 6 below.

5. Termination and Severance Pay. The City Administrator may be terminated by the City Council at any time, with or without cause. It is understood that in the event the City Administrator is terminated for cause, or because of his conviction of any illegal act involving personal gain to the City Administrator, or because of his conviction of any felonious act or due to any act of moral turpitude or dishonesty, the City shall have no obligation to pay any severance pay.

In the event of termination of the City Administrator by the City Council for any reason other than those enumerated above, including but not limited to non-appropriation of funds pursuant to Paragraph 18, the City Administrator shall be entitled to receive three (3) month's severance pay, which shall not include any benefits. This severance pay shall be for the three (3) months immediately following the City Administrator's last working day and shall be paid in one lump sum.

In the event the City Administrator resigns, the City Administrator shall not be entitled to any severance pay or to any other benefit provided under this Employment Agreement.

6. Performance Evaluation. The City Council shall, six (6) months from Start Date, or as soon thereafter as convenient, review and evaluate the performance of the City Administrator. Thereafter, the City Administrator's performance shall be reviewed and evaluated on an annual basis on the anniversary date of the first evaluation, or as soon thereafter as convenient. Following such review, the City may, at the sole discretion of the City Council, increase said salary and/or other benefits of the City Administrator in such amounts and to such extent as the City Council may determine that it is desirable to do so on the basis of a review of performance of the City Administrator. The first review and evaluation shall be based upon the criteria set forth in Exhibit A. Thereafter reviews and evaluations shall be in accordance with any criteria jointly developed by the parties.

7. Cell Phone. The City shall provide the City Administrator with a cell phone for use in the performance of his duties. The City Administrator shall be responsible for any income taxes that may be due as a result of receiving the cell phone as provided for herein. The cell phone may be used for personal use.

8. Vacation and Sick Time. The City Administrator shall receive and accrue sick leave time and vacation leave time during the term of his employment at the same rate as applicable to other City employees. The City Administrator will begin employment with

40 hours of vacation leave time and will accrue vacation leave time beginning at the rate of a ten (10) year employee as identified in the City's Personnel Handbook.

Upon termination of employment with the City, the City Administrator shall be paid for accrued paid time off in the same manner as provided for other City Employees by the City Personnel Policies and related policies.

9. Holidays. The City Administrator shall receive paid holidays during the term of his employment the same as applicable to other regular City employees.

10. Insurance. The City Administrator shall be entitled to receive the same health, dental, disability, life, and other insurance coverage as set forth under the terms of the group insurance coverages provided by the City to all employees. The City Administrator must meet all of the terms and conditions required by the individual carriers in order to receive said coverages.

11. Retirement. The City pays an amount equal to three percent (3%) of the City Administrator's base salary into the Colorado Retirement Association (CRA), matching the three percent (3%) contribution made by the City Administrator (such three percent contribution of the City Administrator being mandatory). Twenty percent (20%) of the City's contribution shall vest to the City Administrator for each full year of employment. Employee is eligible for this benefit after one year of employment

12. Other Terms and Conditions of Employment. The City Council shall fix such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the City Administrator, provided such terms and conditions are not inconsistent with the provisions of this Employment Agreement, the Colorado State Statutes, the Charter of the City or the Municipal Code of the City .

Except as otherwise provided herein, the City Administrator is subject to the provisions contained in the City's Personnel Regulations and entitled to all other benefits according to a full-time employee, as that term is defined in the Personnel Regulations.

The City Administrator shall receive no compensatory time for performing his duties hereunder as his position is key and exempt. It is recognized that the Employee is expected to devote substantial time outside normal office hours and in excess of forty (40) hours per week to City business.

13. Dues and Subscriptions. The City agrees to budget and pay for reasonable professional dues and subscriptions of the City Administrator necessary for his participation in national, regional, state, and local associations and organizations necessary and desirable for his continued professional participation, growth, and advancement, and which are for the good of the City. The City also agrees to budget and pay for necessary travel expenses for the City Administrator to adequately pursue official and other functions for the City. By way of example, such functions include, but are not limited to, meetings and conferences of the Colorado Municipal League and the International City/County Management Association.

14. Rental Assistance. At the request of the City Administrator, the City shall provide the City Administrator with rental assistance during the initial twelve (12) months of employment of \$500.00 per month, reimbursable and payable to the City Administrator upon satisfactory proof of expenditure, except as provided in Paragraph 15 below.

15. Housing Loan.

A. Loan. At the request of the City Administrator, the City shall provide to the City Administrator a housing loan. The housing loan shall be in the amount of up to Fifty Thousand Dollars (\$50,000) for the down payments on a purchase of real property to reside within the limits of the City. Employee shall not be entitled to rent assistance if a loan is approved.

B. City's Lien. Should the City Administrator accept a housing loan from the City, the City shall have, and is hereby granted, a lien against the residence purchased by the City Administrator (Residence) to secure payment of any amounts due to the City pursuant to this Employment Agreement (City's Lien). The City's Lien shall be superior to all other liens and encumbrances except the following: (i) real property ad valorem taxes and special assessment liens duly imposed by any Colorado governmental or political subdivision or special taxing district; (ii) liens given superior priority by operation of law; and (iii) the lien of any First Mortgage against the Residence. For purposes of this Employment Agreement, "First Mortgage" means a deed of trust or mortgage which is recorded senior to any other deeds of trust or liens against the Residence to secure a loan used to purchase the Residence made by a mortgagee. The City shall have the right to file and record in the land records of Ouray County such notices and other information necessary to constitute record notice and perfection of the City's Lien. Upon perfection of the City's Lien, the City shall have all of the rights that a mortgage holder may have against the Residence, including, without limitation, the right to judicially foreclose upon the Residence. The City shall be entitled to file such notices and other information necessary to preserve its rights, as a lienor, to cure and redeem in foreclosure of the Residence, as provided by C.R.S. § 38-38-101, et seq., and any other applicable law.

C. The housing loan shall be repaid by the City Administrator to the City as follows:

i. Thirty-Three percent (33%) of the principal amount of the loan shall be forgiven following the initial five (5) full years of employment with the City as the City Administrator, except if Employee is terminated for no cause during the initial five years, his loan shall be forgiven as if he had completed the full five years of employment and the repayment on the remainder of the housing loan shall be without interest.

ii. An additional Thirty-Three percent (33%) of the principal amount of the loan shall be forgiven following each two year (2) full year of employment with the City thereafter (following the initial five (5) full years of employment), so that the entire housing loan shall be forgiven, in accordance with this schedule, following nine (9) full years of

employment with the City within the position subject to this Employment Agreement.

iii. In the event the City Administrator's employment with the City is terminated, for any reason, prior to achieving nine (9) full years of employment with the City, then the amount of the housing loan not forgiven pursuant to the terms of sub-parts i and ii, above, shall become due and payable by the City Administrator to the City, with interest at the rate of four percent (4%) per annum, on the total amount due (the amount of the housing loan not forgiven) from the date the housing loan was paid by the City until payment in full is made by the City Administrator to the City. Such amount of principal and interest shall be due and payable in full by the City Administrator within six (6) months of such termination of employment.

iv. The City Administrator shall execute any and all documents necessary to document the housing loan as set forth herein, including, but not limited to, a promissory note and deed of trust. Said loan and deed of trust may be subordinated by the City to a single first mortgage, at the request of the City Administrator.

16. Moving Expenses. The City Administrator shall be reimbursed, or the City may pay directly, up to the sum of Eight Thousand Dollars (\$8,000) for expenses incurred by the City Administrator in moving his domicile in conjunction with his employment with the City. Said expenses shall include the costs of packing, moving, unpacking, storage, and insurance costs, and will be reimbursed upon satisfactory proof of expenditure so long as Employee commences work on or before December 1, 2020.

17. Constitutionality. The parties hereto do not intend this Employment Agreement to be a multiple fiscal year financial obligation within the meaning of Article X, Paragraph 20 of the Colorado Constitution, and this Employment Agreement shall be interpreted so as to avoid any such meaning.

18. Compliance with Article X, Paragraph 20 of the Colorado Constitution. It is the intent of the City and the City Administrator to comply with the provisions of Article X, Paragraph 20 of the Constitution of the State of Colorado, including in particular subparagraph 4(b). Therefore, the parties agree that this Employment Agreement is subject to an annual appropriation by the City Council and that the failure to make such appropriation, unless such action is the result of a termination for cause pursuant to Paragraph 4 hereof, will be deemed a termination without cause. The parties further agree and acknowledge that the City has established an adequate present cash reserve pledged irrevocable and held for future payments, if required, in an amount sufficient to pay any severance compensation required under Paragraph 6 of this Employment Agreement. To the extent additional amounts are required to fund any potential increase in such severance compensation in any future year, the failure to appropriate such additional reserve shall also be deemed a termination without cause.

19. Limitations on Professional Activities. The City Administrator shall not engage in any non-City Administrator employment activities for compensation without the express written consent of the City Council. It is the intent of the parties that this Employment

Agreement is for full-time employment. Participation in professional organizations and voluntary programs are encouraged provided they are consistent with the responsibilities of the City Administrator.

20. Indemnification. The City Administrator shall be defended and indemnified in his actions undertaken in his official capacity pursuant to all insurance coverages maintained by the City and pursuant to the terms of the Colorado Governmental Immunity Act. The City Administrator shall, however, not be indemnified for any act or omission that is willful and wanton as those terms are defined in the Colorado Governmental Immunity Act.

21. Entire Agreement. This Employment Agreement contains the entire agreement of the parties, and may be amended, waived, changed, modified, extended or rescinded only by a writing signed by the party against whom any such amendment, waiver, change, modification, extension or rescission is sought. In addition, this Employment Agreement shall be binding upon and inure to the benefit of the heirs, representatives, and assigns of the City Administrator.

22. Agreement Severable. If any provision or portion of this Employment Agreement is held to be unconstitutional, invalid, or unenforceable, the remainder of this Employment Agreement shall be deemed severable and shall remain in full force and effect.

23. Governing Law. This Employment Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. For the resolution of any dispute arising hereunder, venue shall be in the Courts of the County of Ouray, State of Colorado.

IN WITNESS WHEREOF, the parties have caused this Employment Agreement to be signed and executed on the day and year first above written.

CITY OF OURAY,

By: _____
Greg Nelson, Mayor

CITY ADMINISTRATOR

By: 
Silas Clarke

Attest:

By: _____
Melissa Drake, City Clerk