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May 26, 2020

The Honorable Benjamin Huseman  
7887 E. 60<sup>th</sup> Avenue  
Commerce City CO 80022

Mayor Pro Tem Councilwoman Nicole Frank  
7887 E. 60<sup>th</sup> Avenue  
Commerce City CO 80022

Councilman Oscar Madera  
7887 E. 60<sup>th</sup> Avenue  
Commerce City CO 80022

Councilwoman Jennifer Allen  
7887 E. 60<sup>th</sup> Avenue  
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Councilwoman Susan Noble  
7887 E. 60<sup>th</sup> Avenue  
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Councilman Jose Guardiola  
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Councilman Craig Hurst  
7887 E. 60<sup>th</sup> Avenue  
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Councilwoman Meghan Grimes  
7887 E. 60<sup>th</sup> Avenue  
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Councilwoman Robyn Smith  
7887 E. 60<sup>th</sup> Avenue  
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Robert Sheesley  
Commerce City, City Attorney

7887 E. 60<sup>th</sup> Avenue  
Commerce City CO 80022

*Re: Brian McBroom*

To all:

Be advised, the law firm of Elkus & Sisson, P.C. has been retained by Mr. Brian McBroom regarding issues affecting his employment with the City of Commerce City. Please allow this letter to serve as Mr. McBroom's demand for resolution.

Mr. McBroom has been the City Manager for the City of Commerce City (hereinafter referred as the "City") since April, 2012. During that time, Mr. McBroom has been identified as a dependable and exceptional City Manager for the City; however, since the election of Mayor Benjamin Huseman, systematic efforts have been made by the Mayor to undermine and remove Mr. McBroom from his position as City Manager. These efforts, which will be detailed herein, are resulting in legal claims that my client will assert against the City should the demands within this letter not be accepted.

Beginning in January, 2020, Mayor Huseman began his campaign to oust Mr. McBroom from the City of Commerce City. On January 24, 2020, Mr. McBroom was advised that Mayor Huseman communicated with City Council members to figure a way to remove Mr. McBroom as City Manager. As the majority of City Council was not in agreement, Mayor Huseman was stifled in his efforts as evidenced by the fact that Mr. McBroom remained in his position as City Manager.<sup>1</sup> Unfortunately, Mr. McBroom was not spared by Mayor Huseman and his initial efforts to damage Mr. McBroom's reputation. On March 3, 2020, Mr. McBroom met with Sean Ford, the former Mayor for the City of Commerce City. During the March 3<sup>rd</sup> meeting, Mr. Ford shared that Mayor Huseman was orchestrating an executive session to garner support from council members to fire Mr. McBroom. In fact, Mr. Ford shared that Mayor Huseman was blind cc'ing Mr. Ford on emails to Mr. McBroom, which emails were very critical of the job Mr. McBroom was doing for the City.<sup>2</sup>

Mayor Huseman was not only defaming Mr. McBroom to former Mayor Sean Ford but Mr. Ford advised my client that Mayor Huseman was also taking his critiques about Mr. McBroom to business owners within the City of Commerce City. As Mayor Huseman is acutely aware, by critiquing Mr. McBroom to local business owners and those owners in turn began to "vocalize" Mayor Huseman's concerns about Brian McBroom to other City Council members this may serve as the catalyst in removing Mr. McBroom as City Manager. In short, Mayor Huseman's campaign

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<sup>1</sup> It must be noted that in order to discuss the termination of a Commerce City Manager the City Council must abide by the State of Colorado's Open Meeting Law, C.R.S. §24-6-402. On multiple occasions, Mayor Huseman had discussed with various City Council members the "need" to terminate Mr. McBroom. Those conversations did not occur in executive session which is a violation under of C.R.S. §24-6-402.

<sup>2</sup> Sharing personnel matters with individuals outside the City Council is a violation of Mr. McBroom's privacy rights. Moreover, there is no legitimate reason for Mayor Huseman to involve former Mayor Ford in Commerce City's dealings with Mr. McBroom.

in terminating Mr. McBroom was in “full swing” by negatively affecting my client’s good name and reputation within the very City he was managing.<sup>3</sup>

In addition to the aforementioned, is a history of other unprofessional conduct that was committed by Mayor Huseman towards Mr. McBroom. Such behavior is as follows:

- On January 26, 2019, during a brainstorming exercise at a city council retreat, Mayor Huseman (who was a Council person at the time) handed Mr. McBroom a posit-it note that said “Fire ED Director.”

- Spring, 2019, Mayor Huseman directed Mr. McBroom to go around Chief Nichols and speak to Commander Harold Chatman to obtain information about a City Council member’s minor child’s arrest and answer questions about the potential charges against the child.

- On February 10, 2020, Mayor Huseman asked Mr. McBroom for detailed updates of two personnel investigations, even though the charter forbids council involvement in personnel issues.

- On February 11, 2020, Mayor Huseman directed Mr. McBroom to create an Environmental Engineer position, though there was no council approval and no budget to do so.

- February 14, 2020, during an active officer involved shooting, Mayor Huseman directed Mr. McBroom to allow the Mayor to go to an active criminal investigation scene though the Mayor had no official role.

- On March 10, 2020, Craig Hurst advised Mr. McBroom that Mayor Huseman discussed complaints that the Mayor had about Mr. McBroom, specifically, Mr. McBroom’s overall performance which complaints were shared with several council members over drinks while the group was on a trip to Washington D.C.

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<sup>3</sup> Mayor Huseman’s conduct is also a violation of various City Council Policies. Under City Council Policy #CP-9: “[c]ouncil may conduct additional discussions of the performance of the City Manager, City Attorney, or Municipal Judge at any time and may do so in executive session in compliance with the Open Meetings Law.” Council Policy #CP-2(B)(2): “[n]o Council member, including the Mayor, without specific authorization from the Council, shall represent or give the perception he/she is representing the City (1) on issues that involve the general interests of the Council as a whole; (2) on issues that are matters of City policy, or (3) on issues in which the Council has been engaged or involved as an entire body.” Council Policy #CP-2(B)(5): “[c]ouncil members will be forthright and not deceptive in service for the City.” Council Policy #CP-2(G)(7): “[t]he Mayor will discuss with Council, City Manager and City Attorney work and the Mayor will caution Council members in chastising or criticizing staff in Council and Mayor will stay positive at all times in the conduct of Council public.”

- On May 9, 2020, Sean Ford contacted Mr. McBroom to advise him that Mayor Huseman was creating a “petition drive” to fire Mr. McBroom.
- On May 22, 2020, Sean Ford was contacted by Mayor Huseman to advise the Mayor as to how he could terminate Mr. McBroom.

Such actions by Mayor Huseman, and in turn the City of Commerce City, gives rise to various legal claims. First, Mr. McBroom has a slander claim. As Mayor Huseman is aware, by sullyng the good name and reputation of Mr. McBroom, he was furthering his own agenda in terminating Mr. McBroom from the City of Commerce City. The damage associated with Mr. McBroom’s early and premature departure will give rise to significant damages, which damages would include: (1) loss wages, (2) pain and suffering and (3) punitive damages. Additionally, Mr. McBroom has a professional business relationship with the City of Commerce City, which relationship is memorialized in an Employment Agreement. Mayor Huseman was aware of Mr. McBroom’s contract with the City. Based on the concerted efforts to undermine Mr. McBroom’s position and authority within the City, Mr. McBroom will have a claim for tortious interference with a contract.<sup>4</sup>

In light of the foregoing conduct, Mr. McBroom does not believe that he can continue to be successful as a City Manager under the current administration of Mayor Huseman. In order to resolve this matter and avoid protracted litigation against the City of Commerce City and Mayor Huseman in his official and individual capacity, Mr. McBroom seeks a settlement. To resolve this dispute, Mr. McBroom requires a severance package which would be his full annual salary. In addition, Mr. McBroom further requires the City to pay his medical and dental benefits for one (1) year. In exchange, Mr. McBroom will resign in good standing from the City of Commerce City. Such resignation will need to be coordinated with City Council and other staff members for the City to ensure a seamless transition. In regard to Mr. McBroom’s resignation, the City agrees to provide a reference letter and will agree not to disparage my client’s good name and reputation. The final terms and conditions of this settlement will need to be finalized in a written settlement agreement. Should these terms, as briefly outlined herein, be rejected – please allow this letter to serve as Mr. McBroom’s Notice to Sue under the Colorado Governmental Immunity Act, C.R.S. §24-10-101, et. Seq.

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<sup>4</sup> The fact that the contract may have been terminable at the will does not deprive the plaintiff of his or her claim for relief for tortious interference of a contract. *Watson v. Settlemyer*, 150 Colo. 326, 372 P.2d 453 (1962); *Bithell v. W. Care Corp.*, 762 P.2d 708 (Colo. App. 1988); *Zappa v. Seiver*, 706 P.2d 440 (Colo. App. 1985).

We appreciate your prompt and immediate attention to this matter and require a response within seven (7) days of receipt of this demand.

Sincerely,

ELKUS AND SISSON, P.C.

*/s/ Reid J. Elkus*