



EMPLOYMENT AGREEMENT

THIS AGREEMENT is entered into as of February 25, 2020, and will be effective the 6th day of April 2020, between the City Council of and on behalf of the City of Fontana (hereinafter referred to as the "City" or the "City Council") and (hereinafter referred to as the "City Manager" or the "Employee"). The above-named parties hereby mutually agree and promise as follows:

I. Employment and Term. The City hereby employs the Employee as City Manager for the City of Fontana. Unless otherwise extended by mutual agreement of the parties or terminated as provided herein, the term of this Agreement shall be for five (5) years, commencing on, April 6, 2020, and ending on, April 5, 2025, unless sooner terminated or extended by the City Council as set forth in the Agreement.

Employee shall devote such time, interest, and effort to the performance of his duties as may be reasonably necessary to fulfill the above requirements. Employee agrees to perform such services to the best of his ability, in an efficient and competent manner consistent with the standards of the profession. Without limiting the generality of the foregoing, Employee understands and agrees that this position is an exempt, salaried, full-time position with regular required office hours when City Hall is open to the public for business and additional nights and weekend hours when required and/or in the best interests of the City.

In the event that the City Council determines that the Employee is not to be reemployed upon expiration of this Agreement, he shall be given written notice thereof by the City at least one (1) year in advance of the expiration of the term of this agreement. Should the City fail to give notice at least one (1) year prior to the end date of this Agreement, the Agreement shall be extended one (1) day at a time, so that there will always be one (1) year remaining on the term of this agreement until such notice is given.

II. SALARY/CALPERS RETIREMENT. Employee's base annual salary shall be \$297,675. The City Council shall annually assess Employee's performance and salary. Any additional agreed salary increase must be expressly memorialized in a subsequent written and executed Amendment.

Employee shall be enrolled in the City's retirement plan pursuant to its contract with the State of California Public Employees Retirement System (CalPERS). The appropriate retirement formula that will be applied to the Employee is determined by CalPERS.

The City will pay the Employee's cost of the 1959 Survivor's Benefit.

III. DUTIES. Employee shall perform the duties of City Manager as prescribed by Section 2-66, *et. seq.*, of the Fontana Municipal Code. In addition to the powers and duties set forth in the Code, the City Manager shall have such powers and duties which are delegated to him by the City Council. The City Manager shall execute all powers and duties in accordance with the policies adopted by the City Council and the State of California Government Code.

IV. CITY MANAGER AND COUNCIL RESPONSIBILITIES.

The City Manager shall be the Chief Executive Officer of the City and the Executive Director of the Fontana Successor Agency, Housing Authority, and Fontana Fire Protection District. As such, the City Manager shall have the responsibility for implementing City Council policy, whereas the City Council shall retain the responsibility for formulating and adopting said policy. The City Manager shall provide the City Council with regular informational updates on significant matters, as well as notice prior to implementation of significant changes to staff or matters of fiscal impact.

V. PERSONNEL MATTERS.

The City Manager shall have the additional responsibility of organizing, reorganizing, and arranging the staff of the City in such a way that in his judgment best serves the City. The City Manager shall have such responsibility in all personnel matters, including selection, assignment and transfer of employees in accordance with the Personnel Rules of the City. City Council Members, individually and collectively, will promptly refer all criticisms, complaints and suggestions called to their attention to the City Manager for study and recommendation. The City Manager shall promptly review such matters and report back to the Council within a reasonable time. The City Manager shall consult with Council Members, individually or collectively, on any personnel matter when requested to do so by one or more Council Members, subject to the requirements of the Ralph M. Brown Act, Government Code Section 54950, et seq. The City Manager shall comply with all applicable provisions of the Fontana Municipal Code with respect to the recruitment, selection and compensation of all department heads.

VI. OTHER DUTIES.

The City Manager (or his designee) shall: (1) review all policies proposed to the City Council and make appropriate recommendations to the Council; (2) periodically evaluate employees as provided for by California law and City policy; (3) advise the Council of possible sources of funds that might be available to implement present or contemplated City programs or services; (4) maintain and improve his professional competence by available means, including subscription to and reading of appropriate periodicals, and joining and participating in appropriate professional associations and their activities; (5) establish and maintain an appropriate community relations program; and (6) serve as a liaison between the Council and as its designated representative with respect to all employer-employee matters, and make recommendations to the Council concerning those matters. Notwithstanding that a designee of the City Manager may perform said duties, the City Manager shall be the person ultimately responsible to the Council for the proper implementation of the duties and responsibilities described herein.

VII. OUTSIDE PROFESSIONAL ACTIVITIES.

Employee, with prior approval of the City Council, may undertake outside professional activities for compensation, including consulting, teaching, training, speaking and writing provided they do not interfere with Employee's normal duties and are done only during non- business hours, personal leave or holiday time of Employee and are not done with any existing vendors or contractors of the City. Under no circumstances shall such outside activities create a conflict of interest with the duties of the City Manager and the interests of the City.

VIII. EVALUATION.

Employee shall meet with the City Council in closed session annually, on or around each anniversary date of the Agreement, to review the Employee's performance and to discuss the City Council's evaluation of said performance and to determine whether

Employee's salary will be adjusted. The evaluation will also set forth mutually defined goals to be achieved by the Employee in the subsequent year. The Employee will be provided an opportunity to discuss his evaluation with the City Council. The Employee shall be eligible, if warranted in the City Council's sole discretion, to receive a salary increase at the conclusion of such evaluation. Any agreed salary increase must be expressly memorialized in a subsequent written and executed Amendment to this Agreement. Failure to conduct an evaluation shall not prohibit the City Council from otherwise terminating this Agreement in accordance with its terms.

The performance review and evaluation process set forth herein is intended to provide review and feedback to Employee so as to facilitate a more effective management of the City. Nothing herein shall be deemed to alter or change the employment status of Employee, nor shall this Section be construed as requiring "cause" to terminate this Agreement or the services of Employee hereunder.

IX. TERMINATION.

Except as otherwise provided the contract will remain in effect unless or until modified by mutual agreement between the Mayor and City Council and the Employee. Except as otherwise provided herein, termination of this Agreement shall be in accordance with sections 2-111, 2-112, 2-113, 2-114 and 2-115 of the Fontana Municipal Code. The employee shall serve at the will and pleasure of the City Council and may be removed from office (terminated) at any time for any reason or no reason. Nothing in this Agreement shall prevent the City Council from terminating this Agreement and the services of the Employee at its sole discretion.

A. This Agreement shall automatically terminate upon Employee's death, retirement, or permanent incapacity.

B. Noticed Termination without Cause

Termination pursuant to this subsection B may only be done upon a majority vote (three or more votes) of the City Council. In the event Employee is terminated by the City during the term of this Agreement, during which time Employee is willing and able to perform his duties under this Agreement, the City Council agrees to provide Employee notice in writing twelve (12) months prior to the date this Agreement and the employment of the Employee are to be terminated.

In the alternative, in lieu of the above described notice, the City may, following provision of notice of termination, immediately release the employee from his employment with the City by providing the Employee with:

- (1) Six (6) month's salary (including prorated longevity);
- (2) Six (6) additional months of obligation paying the difference between the Employee's current and new salary if Employee gains other employment or Employee's whole salary if not re-employed in that time frame;
- (3) Continuation of all existing health benefits currently offered Employee through the City's 125 plan, for the lesser of twelve (12) months or until Employee finds other employment, whichever occurs first.

(The salary and benefits shall be referred to collectively as "Severance Pay.") However, should there be less than twelve (12) months remaining on the unexpired term of this Agreement, including any extension, the Severance Pay shall instead be equal to the number of months left on the unexpired term of the Agreement.

The above described Severance Pay is in express consideration for the Employee's waiver, which is acknowledged by his signature to this Agreement, of his rights to reasons for his removal, a thirty (30) day prior notice, and a hearing as set forth in the above referenced City Code sections. Employee shall also be obligated to execute a severance agreement with full releases in exchange for the proposed Severance Pay.

C. Termination for Cause

Termination pursuant to this subsection C may be done pursuant to a simple majority (three votes) of the City Council. In the event that the Employee has been terminated for cause, the Employee shall not be entitled to any Severance Pay. "Cause" shall be defined as (a) A willful and material breach of the terms and conditions of this agreement; (b) Flagrant or repeated neglect of duties after being notified in writing by the City Attorney of such neglect; (c) An act involving illegal personal gain in the performance of duties under the terms of this agreement; (d) Conviction of a crime, whether a misdemeanor or felony, for an illegal activity performed while acting in the capacity of City Manager; (e) Refusal or failure to act in accordance with any lawful directive or order of the City Council given during the course of a duly noticed meeting.

Such determination shall be made following the hearing (if requested, as required under 2-112) described in sections 2-112 and 2-114 of the Fontana City Code, except that the hearing shall be before a neutral hearing officer mutually selected from a list supplied by the State Mediation and Conciliation Service, and the issue at the hearing shall be limited solely to whether or not City's "for cause" termination was arbitrary and capricious, entitling Employee to Severance Pay. Under no circumstances shall the Employee be entitled to reinstatement to the position of City Manager as a result of such hearing. Any hearing officer selected must be able to and shall hear the matter within thirty (30) days of the Employee's receipt of the notice of termination and shall render a decision within fifteen (15) days of the close of the hearing.

Following the hearing, the hearing officer shall submit his/her findings and decision to the City Council, which shall be final and binding.

D. Resignation

The Employee may terminate this Agreement upon written notice to the City Council and shall endeavor to give forty-five (45) days prior notice. The City shall have the option, in its complete discretion, to terminate the Employee any time prior to the end of such notice period, provided the City pays the Employee all compensation due and owing through the last day actually worked, plus an amount equal to the base salary the Employee would have earned through the remainder of the notice period. Thereafter, all the City's obligations under this Agreement shall cease.

E. Other Benefits

In addition, Employee shall be provided all the fringe benefits which are proportionate to those provided to Mgmt./Confidential Unit employees. These benefits may be adjusted by the City for the Mgmt./Confidential Unit from time to time and the amounts shall be adjusted proportionately based on any adjustments in City contributions.

F. Limitation on Termination

In no event shall Employee be terminated within ninety (90) days before or ninety (90) days after any City municipal election, including but not limited to an election for the selection or recall of one or more of the members of the City Council.

X. FRINGE BENEFITS.

City shall pay to or on behalf of Employee for 125 Cafeteria Plan Fringe Benefits an amount five percent (5%) above provided to the City Department Heads. In addition, Employee shall be enrolled in the City's retirement plan pursuant to its contract with the State of California Public Employees Retirement System (CalPERS). The appropriate retirement formula that will be applied to the Employee is determined by CalPERS.

XI. TRANSPORTATION.

City shall provide Employee an all-electric vehicle, which qualifies for a carpool lane sticker (provided one can be obtained) and, if necessary, a transponder for toll lanes for his use while conducting official City business and commuting to and from work. Said vehicle purchase shall be made in accordance with City policy. Said vehicle shall not be operated by persons other than the Employee. The City shall be responsible for providing liability insurance (bodily injury and property damage) for the Employee's use of said vehicle. Employee may use the vehicle for incidental personal purposes. In addition to those restrictions listed above, Employee agrees to abide by any additional restrictions on the use of said vehicle imposed by the insurer. The City shall also provide for maintenance, repair, and replacement costs of said automobile, in accordance with City policy.

XII. ANNUAL LEAVE

These leave accruals are in addition to recognized City holidays. Employee shall accrue Personal Leave each year during the term of this Agreement at the same rate as City's Mgmt./Confidential group employees (beginning at 2 - 4 years; 9.23 hours per pay period). Employee shall begin his employment with an annual leave balance of 240 hours. Employee shall be entitled to cash out up to fifty percent (50%) of accrued, but unused, personal leave in accordance with the City's policies pertaining to other City employees. There is no restriction on the number of hours that can be carried forward between fiscal years.

Employee shall begin his employment with an Administrative Leave balance of 80 hours and shall accrue eighty (80) hours of Administrative Leave per each subsequent year during the term of this Agreement. Unused Administrative Leave shall be cashed out on June 30th of each year. The annual amount of Administrative Leave accrued by the City Manager shall be adjusted to be the same number of days accrued by City Department Heads without the need for a written modification of this Agreement.

XIII. DEFERRED COMPENSATION.

City shall contribute twenty-eight thousand dollars (\$28,000) per year on Employee's behalf into a qualified 401(a) and/or 457(b) plan established by the City. Such payment shall be made to Employee's account at the beginning of the second full pay period in January 2021, and annually thereafter during the term of Employee's employment as City Manager, unless City elects, to pay this directly to Employee as current salary.

XIV. LONGEVITY PAY.

Employee shall be eligible to receive Longevity Pay consistent with the rates for Mgmt./Confidential Unit employees hired post July 1, 1990 with continuous service of 10

years or more at \$2,250; 15 years or more at \$2,750; 20 years or more at \$3,250 and 25 years or more at \$3,750 based upon the Employee's anniversary date (date of initial hire into a regular full-time position) of April 6, 2020. Longevity will be paid annually in December and will cease upon termination of employment.

XV. LIFE INSURANCE.

The City shall provide for life insurance for the benefit of the Employee's beneficiaries in an amount of three (3) times his annual salary, not to exceed one million dollars.

XVI. GENERAL PROVISIONS.

A. This Agreement supersedes any and all other agreements, either oral or written, between the parties hereto with respect to the employment of Employee by the City and contains all of the covenants and agreements between the parties with respect to the employment of Employee by the City.

B. Each party agrees and acknowledges that no representations, inducements, promises or agreements orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein and that any agreement, statement, or promise not contained in this Agreement shall not be valid or binding on either party.

C. Except as set forth in Section XII, any modifications of this Agreement will be effective only if made in writing and signed by both the Employee and the City.

D. If any provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void or unenforceable, the remaining provision shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

E. The provisions of California Government Code section 53243 to 53243.4, as those sections now or hereafter exist, are hereby incorporated by reference into this Agreement.

IN WITNESS WHEREOF, the CITY OF FONTANA has caused this Agreement to be signed and duly executed by the City and the Employee has signed and executed this Agreement as of the day and year first above written.

CITY OF FONTANA

EMPLOYEE