

CITY OF SAN LEANDRO

AGREEMENT FOR EMPLOYMENT OF CITY MANAGER

This Employment Agreement ("Agreement") is made and entered into this ____ day of _____, 2012, by and between the City of San Leandro (the "City"), a charter city, and Chris Zapata ("Manager").

RECITALS

WHEREAS, the City desires to employ, as an "at-will" employee, the services of Chris Zapata ("Manager") as City Manager for the City of San Leandro ("City") in accordance with applicable provisions of the San Leandro City Charter, Municipal Code and the terms of this Agreement; and

WHEREAS, Manager desires to be employed as the at-will City Manager for the City in accordance with applicable provisions of the City Charter, Municipal Code and the terms of this Agreement; and

WHEREAS, it is the desire of the City Council to provide certain compensation and benefits; and establish certain conditions of employment for the position of City Manager through this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

TERMS

1. Appointment of City Manager:

The City Council hereby appoints Manager to the position of City Manager in and for the City of San Leandro California. Manager hereby accepts such appointment under the terms and conditions of this Agreement.

2. Term of Agreement:

This Agreement will become effective on January 30, 2012. The Agreement will expire on January 30, 2015, unless extended or terminated as provided herein. The parties to this Agreement may terminate this Agreement pursuant to the provisions of Section 6.

3. At-Will Employment:

Manager is an "at-will" employee who shall serve at the pleasure of the City Council. Accordingly, the City Council may terminate Manager's employment under this Agreement at

any time, with or without cause. This provision may not be altered except by a written instrument executed by Manager, and formally approved by the City Council, which specifically references this Agreement and Section.

4. Duties and Responsibilities:

a. Manager shall commence his duties no later than January 30, 2012. Manager shall not receive any compensation and benefits until he has commenced his duties as the full-time City Manager for the City.

b. Manager shall serve as the City Manager of the City in accordance with the powers, duties and responsibilities set forth in the Charter of the City of San Leandro, Municipal Code and California law. Manager shall perform the functions and duties specified under the laws of the State of California; the City's Charter, Municipal Code; the Ordinances and Resolutions of the City; and such other duties and functions as the City Council may from time to time assign.

c. Manager agrees to devote his productive time, ability and attention to the City's business. For the duration of this Agreement, Manager shall not hold secondary employment, and shall be employed exclusively by the City, subject to any exceptions approved in writing by the City Council.

d. Manager shall be responsible to the City Council for the proper administration of all affairs of the City. Manager shall administer and enforce policies established by the City Council, and promulgate rules and regulations as necessary to implement City Council policies.

5. Hours of Work

Manager shall be an exempt employee under FLSA and shall not receive overtime or extra compensation for work performed outside normal business/office hours. Manager is appointed to manage the City's business with twenty four hour and seven day a week responsibility and is expected to devote necessary time outside normal office hours to the business of the City. Thus, Manager's schedule of work each day and week may vary in response to the requirements of the work to be performed, however, Manager is expected to spend sufficient hours at San Leandro City Hall to perform his duties.

6. Termination of Employment and Severance:

a. Manager may terminate this Agreement and his employment with the City with or without cause, by giving the City forty-five (45) days written notice in advance of termination. During the notice period, all the rights and obligations of the parties under this Agreement shall remain in full force and effect.

b. The City Council may terminate this Agreement and Manager's

employment with the City with or without cause at any time. For purposes of this Agreement, the phrases "for cause" or "with cause" only relate to Manager's potential entitlement to severance, and do not alter his at-will status. Further, pursuant to Government Code Section 53243.2, regardless of the term of this Agreement, if this Agreement is terminated, any cash settlement related to the termination that Manager may receive from City shall be fully reimbursed to the City if Manager is convicted of a crime involving an abuse of his or her office or position.

c. In the event City terminates Manager's employment without cause, the Manager shall be entitled to severance pay of a lump sum payment equal to six (6) months base salary and benefits, as described in Section 7 of this Agreement. Said payment of severance pay shall be conditioned upon Manager signing a waiver and release agreement forever releasing and waiving any and all claims in a form acceptable to the City. Manager shall receive the severance payment in a lump sum payment minus all applicable deductions fifteen (15) business days after execution of the waiver and release agreement. Manager shall not receive any severance payments if such a waiver and release agreement is not executed by the parties.

d. Manager shall receive payment for all accrued unused vacation at the time of his separation from employment.

e. If Manager is terminated "for cause," the City shall not owe any severance under this Agreement. The determination about whether Manager is terminated "for cause" shall be made in the complete discretion of the City. A termination "for cause" may include, but shall not be limited to, the following:

- (i) Violation of administrative policies and procedures;
- (ii) Failure to properly perform assigned duties;
- (iii) Theft of City property;
- (iv) Insubordination;
- (v) Conviction of a felony;
- (vi) Conviction of a misdemeanor relating to Manager's fitness to perform assigned duties;
- (vii) Conviction of a crime involving an abuse of office or position, as defined in Government Code Section 53243.4;
- (viii) Unauthorized absence from employment;
- (ix) Improper use of City funds;
- (x) Unauthorized use of City property;
- (xi) Willful misconduct or malfeasance;
- (xii) Any act of moral turpitude or dishonesty; and
- (xiii) Other failure of good behavior either during or outside of employment such that the Manager's conduct causes discredit to the City.

f. Removal of Manager by the City shall be effected only by a majority vote of the whole City Council as then constituted, convened in a regular Council meeting. However,

pursuant to section 400 of the City Charter, Manager shall not be removed from the position of City Manager without cause during or within a period of ninety (90) days succeeding any regular or special municipal election held in the City at which election a member of the City Council is elected; the purpose of this provision is to allow any newly elected member of the City Council or a reorganized City Council to observe the actions and ability of Manager in the performance of the powers and duties as City Manager.

7. Compensation and Benefits

a. Manager shall be paid an annual base salary of two hundred and twenty-three thousand dollars (\$223,000.00). The City Council may review Manager's performance and salary throughout the term of this Agreement pursuant to the provisions of Section 13 of this Agreement. City Council may consider adjusting Manager's salary annually. Notwithstanding, Manager has agreed to voluntarily forego a salary adjustment (increase) during the first three (3) years of the employment with the City.

b. In addition to the compensation provided above, the City agrees to provide the following to Manager in consideration for the services provided pursuant to this Agreement:

- (i) Except as otherwise provided for in this Agreement, the City shall provide Manager the same benefits as provided to management employees and as they may be amended from time to time. Benefits for Manager include, but are not limited to, twenty-five (25) days of annual vacation leave, twelve (12) days of annual sick leave, management incentive pay of 120 hours per calendar year paid equally at each pay period, holidays, health insurance, dental insurance, life insurance, management development allowance and retirement benefits and payments, as more particularly set forth in this Agreement.
- (ii) Manager shall be eligible for CalPERS retirement benefits upon the same terms as those benefits are provided for City employees covered by the Local Miscellaneous Members group classification for purposes of CalPERS. The Manager shall pay 100% of the employee seven percent (7%) share of CalPERS benefits for employees covered by the Local Miscellaneous group classification.
- (iii) Within fifteen (15) days of the effective date of this Agreement, City shall pay Manager a one-time lump sum payment of sixteen thousand five hundred dollars (\$16,500) for relocation and moving expenses, temporary housing expenses, and other travel and relocation related expenses incurred in connection with Manager's relocation to the City of San Leandro. In the event that Manager's employment with the City is terminated, with or without cause, prior to end of the three year term of this Agreement, Manager

will reimburse the City in the following amounts:

- Within the first year - Manager will reimburse the City the full amount (\$16,500);
- Within the second year - Manager will reimburse the City 50% of the amount (\$8,250); and
- Within the third year - Manager will reimburse City 25% (\$4,125).

8. Automobile

Manager will not receive a monthly automobile allowance. Manager shall be entitled to receive mileage reimbursement at the IRS approved rate for any job related travel outside of City limits in accordance with the City's mileage reimbursement policy.

9. General Business Expenses and Outside Professional Activities

a. The City agrees to budget and pay for professional dues and subscriptions reasonably necessary to ensure Manager's participation in such programs that enhance Manager's standing and the City's reputation, including national, regional, state and local associations and organizations. These organizations will include, but are not limited to the International City Management Association (ICMA) and the League of California Cities.

b. The City agrees to budget and pay for reasonable travel and subsistence expenses of Manager for official travel and meetings, including but not limited to the ICMA Annual Conference and the League of California Cities meetings and conferences.

c. City acknowledges the value of having Manager participate and be directly involved in local civic clubs and organizations on behalf of the City. Accordingly, City shall budget and pay reasonable membership fees and dues to enable Manager to become an active member.

d. Except as otherwise provided for in this Agreement, Manager is entitled to reimbursement for all sums necessarily and reasonably incurred and paid by him in the performance of his duties. Manager shall execute and submit an expense reimbursement form with appropriate supporting documentation to the City for any such claims, as required by City's laws or policies.

10. Indemnification

The City shall defend, hold harmless and indemnify Manager against any tort, civil rights, personnel, discrimination, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act of omission occurring in the performance of Manager's duties in accordance with the provisions of California Government Code section 825. The City shall provide a defense in accordance with Government Code section 995. The City may decline to defend and/or indemnify Manager only as permitted by the California Government Code. The City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment therefrom.

11 Notices

Notices pursuant to this Agreement shall be in writing and served by mailing via the United States Postal Service, first class postage prepaid, addressed as follows:

- a. The City:
Mayor and City Council
City of San Leandro
Civic Center
835 East 14th Street
San Leandro, California 94577
- b. Manager:
Chris Zapata

San Leandro, CA

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial process. Notice shall be deemed given as of the date of personal service or as of the date of mailing of such written notice, postage prepaid, with the United States Postal Service.

12. Bonding

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

13. Performance Evaluations

The City Council shall review and evaluate the performance of Manager at least once every year. At the time of each evaluation, performance goals shall be discussed that will be used to assist in the evaluation of Manager's performance in the future. Manager will timely place on the City Council agenda each year or as otherwise directed by the City Council, a "closed session" for the purpose of his performance evaluation.

14. Miscellaneous:

a. The text herein shall constitute the entire agreement between the parties. This Agreement may not be modified, except by written agreement executed by both parties.

b. 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, shall not be affected, and shall remain in full force and effect.

c. This Agreement shall be governed by the laws of the State of California.

d. The parties agree that any ambiguity in this Agreement shall not be construed or interpreted against, or in favor of, either party.

e. This Agreement may be executed in counterparts containing original signatures.

IN WITNESS WHEREOF, the City has caused this Agreement to be signed and executed in its behalf by its Mayor and duly attested by its City Clerk, and Manager has signed and executed this Agreement, on the day and year written below.

MANAGER

DATED: 1/4/12

Chris Zapata
MANAGER

CITY

DATED: _____

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

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