

# **EMPLOYMENT AGREEMENT**

**between**

**CITY OF SAN LEANDRO AND JEFFREY KAY**

**(effective \_\_\_\_\_)**

## **1. PARTIES AND EFFECTIVE DATE.**

The parties to this Agreement are the City of San Leandro ("City") and Jeffrey Kay ("Manager"), and the effective date of this Agreement is \_\_\_\_\_.

## **2. PURPOSE.**

The purpose of this Agreement is to provide for the employment of Manager as City Manager of City.

## **3. DUTIES.**

- a. City agrees to employ Manager as City Manager of the City of San Leandro to perform the functions and duties specified in the City Charter, the Municipal Code, ordinances, administrative regulations, administrative directives and resolutions of City, and to perform other legally permissible and proper duties and functions as the City Council may from time to time assign.
- b. Manager shall perform his duties to the best of his ability in accordance with the highest professional and ethical standards applicable to the profession. Manager shall comply with all general rules and regulations established by City.

**4. TERM.**

- a. The term of this Agreement shall commence on \_\_\_\_\_, and will continue for three years until \_\_\_\_\_ or until terminated by either party in accordance with the provisions set forth in Paragraph 8 or until terminated by the event of the death or permanent disability of Manager.
- b. Manager agrees to remain in the exclusive employment of City during the term of this Agreement and not to be otherwise employed during the term of this Agreement. The term “employed,” however, shall not be construed to include occasional teaching, writing, speaking or consulting performed on personal time off.

**5. HOURS OF WORK.**

Manager shall be an exempt employee under the Fair Labor Standards Act (FLSA) and shall not receive overtime or extra compensation for work performed outside of normal City business/office hours. Manager is appointed to manage the City’s business with twenty-four hour and seven days 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. City shall provide Manager, at City’s cost and expense and Manager’s sole discretion to use or accept, any and all equipment, communication devices including a smartphone and tablet, and other implements

reasonably necessary for Manager to carry out his duties in accordance with this Section.

**6. DISABILITY.**

The City shall have the option to terminate this Agreement without further payment of compensation and benefits under Paragraph 7, or severance payment under Paragraph 8(c) if Manager is deceased, permanently disabled, or incapacitated, for a period of two (2) successive weeks beyond any accrued sick leave, or for twenty (20) working days over a thirty (30) working day period. In exercising the option to terminate this Agreement, the City shall comply with all applicable provisions of state and federal disability and medical leave laws.

**7. COMPENSATION AND BENEFITS.**

- a. Salary. City agrees to pay Manager for his services rendered pursuant hereto as City Manager the annual sum of Two Hundred Fifty-Five Thousand Dollars (\$255,000.00). Beginning January 1, 2019 and each January 1 thereafter for the duration of the Term, Manager shall be entitled to a salary increase equal to the lesser of 3% or the salary increase provided to members of the San Leandro City Employees' Association under its current Memorandum of Understanding (MOU) with the City Council. This annual salary shall be payable in installments at the same time as other employees of the City are paid.
- b. Vacation Leave. Manager shall accrue vacation leave, vacation buy-out, and vacation time carry-over in accordance with the San Leandro Management Organization (SLMO) MOU as it may be amended from time

to time. Manager's current vacation leave balance shall carry forward from when he occupied the position of Assistant City Manager and Interim City Manager. The Manager shall continue to accrue vacation leave at his current rate of 18.75 days per year and the accrual shall continue to be adjusted based on years of service, consistent with the SLMO MOU.

- c. Management Incentive Pay. Manager shall receive management incentive pay at the rate of 120 hours per calendar year as provided to Department Heads pursuant to the SLMO MOU.
- d. Other Leave and Fringe Benefits. Manager shall be entitled to receive, access, or use other employee benefits as provided to employees who are members of SLMO, which currently includes:
  - i. Holiday Leave: 12 paid holidays, plus two (2) floating holidays.
  - ii. Sick Leave: 12 days per year.
  - iii. Health Insurance: The City currently contributes a maximum of \$1,823.76/month toward eligible plans.
  - iv. Dental: The City currently contributes a maximum of \$128.40/month toward a PPO dental plan.
  - v. Life Insurance: \$50,000 Life & AD&D, and 40% long-term disability insurance with an option to purchase increased coverage.
  - vi. Other benefits: Voluntary deferred compensation plan, vision care and short-term disability insurance and all other benefits provided to employees who are members of SLMO shall be made available to Manager.

- e. Retirement. Manager shall be eligible to participate in the PERS programs offered to “Miscellaneous” non-safety employees who are “classic members” and are in Tier One. Effective upon execution by the City Council in accordance with relevant State laws, regulations, and PERS rules, initially Manager shall pay the full employee contribution rate equal to 8% of his salary to PERS plus a contribution to the employer contribution rate of 2%, for a total of 10% of salary. Effective July 1, 2019, Manager shall pay the full employee contribution rate equal to 8% of his salary to PERS plus a contribution to the employer contribution rate of 3%, for a total of 11% of salary.
- f. Automobile Allowance. The City shall provide Manager with a monthly automobile allowance of Four Hundred Dollars (\$400) to reimburse Manager for use of his personal automobile for City business. The City shall reimburse Manager at the current standard IRS rates for trips of over 100 miles taken in his personal automobile for City business.
- g. Professional Memberships. The City shall budget under the City Manager’s Department the cost of reasonable fees and memberships in professional organizations for Manager, as well as the registration fees and travel and subsistence costs for professional and official meetings, conferences, and functions.
- h. Internal Revenue Code Compliance. All provisions of this Section 7 are subject to the provisions and limitations of the Internal Revenue Code and its related regulations as amended from time to time. No requirement of

any provision of this Section 7 shall be effective if it would violate any provision of the Internal Revenue Code or its related regulations, and the inability of the City to effectuate such requirements shall not constitute a breach of this Agreement.

## **8. RESIGNATION AND TERMINATION.**

- a. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Manager to resign at any time from his position as City Manager with City. Manager may terminate this Agreement by submitting written notice of his resignation to City. Manager shall give City two months' written notice of his intention to resign. If Manager resigns his employment with the City, he shall not be entitled to any severance pay nor continued compensation and benefits, except as otherwise required under state or federal law.
- b. Manager serves at the pleasure of City and nothing herein shall be taken to prevent, limit, or otherwise interfere with the right of City to terminate the services of Manager, with or without cause, and with or without prior notice. There is no express or implied promise made to Manager for any form of continued employment. This Agreement is the sole and exclusive basis for an employment relationship between Manager and City. Manager expressly waives any claim or right under contrary law. It is expressly understood that termination may occur upon a majority vote of

the City Council, provided that the provisions of San Leandro City Charter Section 400 are followed.

- c. In the event the City terminates Manager's employment without cause, or the City Council decides to not extend the term of the Agreement without providing two months written notice, Manager shall receive a severance payment of six months' salary. There is no express or implied promise made to Manager for any form of continued employment as the City Manager.
- d. Notwithstanding Paragraph 8(c) above, the City shall not be obligated to pay any compensation, benefits, or severance under the provisions of this Agreement if Manager is terminated with cause, including, without limitation, because of a conviction, plea bargain, nolo contendere, or adverse District Attorney, State Attorney General, Grand Jury, or Fair Political Practices Commission determination involving any felony, intentional tort, crime of moral turpitude, or violation of statute or law constituting forfeiture of office, misconduct in office, misuse of public funds, or conflict of interest, or if a majority of the City Council determines or finds that Manager committed willful misconduct or malfeasance, was insubordinate, failed to properly perform assigned duties, improperly used City funds or City property, or other failure of good behavior during or outside of employment such that the Manager's conduct caused discredit to the City. During the proceedings which may be necessary for City to

confirm the cause for termination hereunder, the City may place Manager on administrative leave.

**9. OWNERSHIP OF RECORDS; RETENTION OF RECORDS.**

All reports, notes, plans, documents, records, computer data, communications, and other material or certified copies of same prepared by Manager in the course and scope of his duties under this Agreement shall become the property of the City. Manager shall make such documents available for review and/or audit by City and its representatives at all reasonable times during the term of this Agreement and for at least four (4) years from the date of expiration or termination of this Agreement.

**10. PERFORMANCE EVALUATION.**

City shall evaluate Manager's performance annually during May and also prior to any renewal or extension of this Agreement. As part of each evaluation, the City Council and Manager will set goals and objectives for Manager's performance for the following year.

**11. CONFLICT OF INTEREST PROHIBITION.**

- a. Manager shall not engage in any activity which is, or may become, a conflict of interest, prohibited contract, or which may create an incompatibility of office as defined under California law. Manager shall complete annual disclosure forms required by law.
- b. It is further understood and agreed that because of the duties of the City Manager within and on behalf of the City and its citizenry, Manager shall not, during the term of this Agreement, individually, as a partner, joint venturer, officer, or shareholder, invest or participate in any business



venture conducting business within the corporate limits of the City, except for stock ownership in any company whose capital stock is publicly held and regularly traded, without prior written consent of the City Council. For and during the term of this Agreement, Manager further agrees, except for a personal residence used as his personal residence, not to invest in any other real estate or property improvements within the corporate limits of the City without the prior written consent of the City Council.

**12. 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 or 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 California 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.

**13. NON-LIABILITY OF OFFICIALS AND EMPLOYEES.**

No official, employee, attorney, or agent of City shall be personally liable for any term, condition, breach, default, or liability under this Agreement.

**14. WAIVER.**

The waiver by either party of any term or condition of this Agreement or any breach of this Agreement shall not constitute a continuing waiver or a waiver of any

subsequent breach of either the same or a different provision of this Agreement.

**15. OTHER TERMS AND CONDITIONS OF EMPLOYMENT.**

The City Council, by resolution, shall fix any other terms and conditions of employment, as it may determine from time to time, relating to the performance of Manager, provided such terms and conditions are not inconsistent with provisions of this Agreement or law.

**16. GENERAL EXPENSE.**

City recognizes and agrees to pay the job-related expenses incurred by Manager in the course of his duties as approved by the City Council.

**17. NOTICES.**

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid. Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial proceedings. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service to the addresses set out below or as subsequently communicated by one party to the other in writing:

To City:                      City Council  
                                    City of San Leandro  
                                    835 E. 14<sup>th</sup> Street  
                                    San Leandro, CA 94577

To Manager:                Jeffrey Kay  
                                    [Address on file with Human Resources Department]

**18. ATTORNEY'S FEES.**

In the event of any mediation, arbitration or litigation to enforce any of the provisions of this Agreement, each party shall bear his or its own attorney's fees and

costs.

**19. FINAL AGREEMENT.**

This Agreement is the final expression of the complete agreement of the parties with respect to the matters specified herein and supersedes all prior oral or written agreements, contract, or understandings. Except as prescribed herein, this Agreement cannot be modified except by written mutual agreement signed by the parties.

**20. ASSIGNMENT.**

This Agreement is not assignable by either City or Manager.

**21. SEVERABILITY.**

In the event that any provision of this Agreement is finally held or determined to be illegal or void by a court having jurisdiction over the parties, the remainder of the Agreement shall remain in full force and effect unless the parts found to be void are wholly inseparable from the remaining portion of the Agreement.

**22. TIME IS OF THE ESSENCE.**

Time is of the essence in the performance of this Agreement.

**23. INTERPRETATION.**

This Agreement shall be interpreted as though prepared by both parties.

\* \* SIGNATURES ON FOLLOWING PAGE \* \*

**CITY OF SAN LEANDRO**

By: \_\_\_\_\_  
Pauline Russo Cutter, Mayor

Dated: \_\_\_\_\_

**MANAGER:**

By: \_\_\_\_\_  
Jeffrey Kay

Dated: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Richard D. Pio Roda,  
City Attorney

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