



EMPLOYMENT AGREEMENT

This AGREEMENT (hereinafter referred to as "Agreement") is made and entered into between (hereinafter referred to as "Employee") and the CITY OF FONTANA (hereinafter referred to as the "City" or "Employer") as of **September 20, 2021**.

NOW, THEREFORE, the parties hereto agree as follows:

City Council

Acquanetta Warren
Mayor

Phillip Cothran, Jr
Mayor Pro-Tem

Peter Garcia
Council Member

John Roberts
Council Member

Jesse Sandoval
Council Member

1. Employment and Term. The City hereby agrees to employ Employee on an "at will" basis as its Interim Deputy City Manager, and Employee agrees and accepts at will employment upon the terms and conditions set forth herein. The term of this Agreement shall be for two (2) years, unless sooner terminated or extended by the parties as set forth in the agreement. Upon the end of this temporary appointment or the hiring of the Deputy City Manager, you will return to your current position as the Director of Information Technology and its terms and condition of employment.

In the event that the City Manager 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 six (6) months in advance of the expiration of the term of this Agreement. Should the City fail to give notice at least six (6) months notice prior to the end date of this Agreement, the Agreement shall be extended on the same terms for an additional period of one (1) year.

2. Duties and Obligations of Employee. Employee works "at will" for the City as its Interim Deputy City Manager (hereinafter referred to as "Position"). Employee hereby agrees to perform the duties of the Position as set forth in the City's Municipal Code, Rules, Regulations, and Policies, and to perform such other duties as assigned by the City Manager. It is expressly understood that the terms of this Agreement, including but not limited to those governing termination of employment, supersede any rights conferred by City Ordinance, Rule, Regulation or Policy.

3. Salary and Benefits.

A. Salary. Employee shall be compensated at the rate of **\$20,233.00 mo./\$242,796.00 annually**, which shall be payable in installments at the same time as other employees of the City are paid, pursuant to the procedures regularly established, and as they may be amended by the City. Employee shall receive a 1% base salary increase effective the pay period covering July 1, 2022.

The City shall annually assess Employee's performance and salary. The Employee shall be eligible, if warranted in the City Manager's sole discretion, to receive a salary increase at the conclusion of such annual assessment. Any agreed salary increase must be expressly memorialized in a subsequent written and executed Amendment.

B. 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 - \$2,250; 15 years or more - \$2,750; 20 years or more - \$3,250, and 25 years or more - \$3,750. This longevity payment will be

made in the month of December and will be based upon the Employee's anniversary date (date of initial hire into a regular full-time position) of May 31, 2016. Longevity will cease upon termination of employment.

C. *Automobile Allowance.* The City shall provide the Employee with a Six Hundred Dollar (\$600) monthly automobile allowance to cover all official travel within San Bernardino, Riverside, Orange, and Los Angeles Counties. Travel outside of these areas will be reimbursed at the rate paid per mile to other City employees, except in no case shall the mileage reimbursement for any one trip exceed the cost of round-trip coach airfare between the Ontario Airport and the destination.

Employee shall be responsible for providing all necessary liability insurance for the use of his personal vehicle for City business and shall provide proof of such insurance to the City upon request. Employee shall also be responsible for all maintenance, repair, and replacement costs associated with the use of his personal vehicle. Finally, Employee shall comply with all vehicle laws and City policies related to safe operation of a motor vehicle when operating his vehicle for a business-related purpose.

D. *Cell Phone Allowance.* The City shall provide the Employee with an eighty-five dollar (\$85.00) monthly cell phone allowance to cover the costs of using a mobile phone, based on the number of minutes projected to be needed for city-related work.

E. *Annual Leave Accrual & Cash Out.* Employee shall accrue personal leave in accordance with the leave accrual rate established for Mgmt./Confidential Unit employees. Employee shall agree to limit the number of personal leave hours which can be carried over from year to year to a maximum of one thousand (1,000) hours. Employee will cease to accrue personal leave time until they have reduced their personal leave below their ceiling. Employee may cash out up to 160 hours maximum, subject to the limits on accrued leave cash out time available. All accrued personal leave is payable upon separation from service.

F. *Administrative Leave.* Upon execution of this Agreement and each fiscal year thereafter, Employee will be allotted eighty (80) hours of Administrative Leave away from the office to be scheduled and used throughout the year. These days off do not accrue, are not subject to carry over, are not subject to any cash-out option, and will not be paid out upon separation of service.

G. *Bereavement Leave.* Employee shall be entitled to a maximum of up to three (3) in state and four (4) out of state bereavement days per occurrence to be utilized in the event of a death of Employee's spouse, child, brother, sister, parent, grandparent or other relative, subject to the approval of the City. The terms of the Bereavement Leave are governed by the City's internal policies as may be amended by the City from time to time.

H. *Holidays.* The following eleven (11) holidays shall be observed as paid holidays:

New Year's Day	Martin Luther King, Jr. Day	President's Day
Memorial Day	Independence Day	Labor Day
Veteran's Day	Thanksgiving Day	Day After Thanksgiving
Christmas Eve	Christmas Day	

Employee shall also be entitled to use three (3) optional "Floating Holidays" to be used as additional administrative leave days. Employee's leave account will receive credit for the two "Floating Holidays" on January 1st and credit for one "Floating Holiday" on November 1st. "Floating Holiday"

time not used by June 30th of each fiscal year will be forfeited. Holidays and "Floating Holidays" shall have the same hour equivalent as Employee's regular work schedule.

I. *Cafeteria Allotment.* Employee shall have a monthly Cafeteria Plan allotment that is equivalent to 31.4% greater than the Cafeteria allotments provided to the Mgmt/Confidential Unit employees of the City. The allotments are adjusted annually based on premium increases/decreases.

J. *PERS.* Employee shall be eligible for the "New Employee" PERS formula of 2.0% @ 62 and shall pay fifty percent of normal costs (currently 6.25%). This percentage is subject to change based upon CALPERS annual actuaries. The City shall pay the employer contribution. These City contributions are not salary increases but are retirement contributions made in accordance with Section 414(h)2 of the Internal Revenue Code.

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

K. *Fringe 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.

4. At-Will Employment Status, Termination of Agreement and Severance Pay.

A. *Nature of Employment.* Employee expressly agrees that the employment relationship created by this Agreement is "at will" and that Employee serves at the will and pleasure of the City Manager. Nothing in this Agreement, any Resolution, Statute, Ordinance, Rule, or Policy shall prevent, limit or otherwise interfere with the right of the City Manager to terminate the services of Employee at any time without cause or right of notice, *Skelly* conference, hearing, appeal or grievance. Employee waives any rights to the contrary, including but not limited to those set forth in Fontana Municipal Code Sections 20-31 and 20-32.

B. *By the Employee.* The Employee may terminate this Agreement upon written notice to the City Manager and shall endeavor to give two (2) weeks' prior notice. The City shall have the 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.

C. *By the City, Without Cause.* At any time, the City may terminate the Employee's employment for any reason without cause. In the event the City exercises its right under this provision to terminate employment without cause, the Employee will be entitled to one of the following three options, at the City's discretion: (1) nine (9) months' notice of termination of employment; or, (2) compensation due and owing through the last day actually worked, plus nine (9) months of the Employee's salary as of the time of the termination or an amount equivalent to the remainder of the term of this Agreement pursuant to the requirements of Government Code § 53260, whichever is less; or, (3) a combination of notice of termination of employment and salary in lieu of notice of termination of employment, not to exceed a total of nine (9) months or an amount equivalent to the remainder of the term of this Agreement pursuant to the requirements of Government Code § 53260, whichever is less.

Further, per Government Code sections 53243 to 53243.4, if Employee is convicted of a crime involving an abuse of his office or position, whether before or after release from employment, Employee shall fully reimburse the City for any severance pay, paid leave salary disbursed pending an investigation related to the crime, or legal criminal defense funds relevant to the crime.

D. *By the City, For Cause.* At any time, and without prior notice, the City may terminate Employee for Cause (as defined below). The City shall pay Employee all compensation then due and owing; thereafter, all of the City's obligations under this Agreement shall cease. Termination shall be for "cause" if Employee: (1) acts in bad faith and to the detriment of the City; (2) refuses or fails to act in accordance with any specific direction or order of the City; (3) exhibits in regard to his employment unfitness or unavailability for service, misconduct, dishonesty, habitual neglect, or incompetence; (4) is convicted of a crime involving dishonesty, breach of trust, or physical or emotional harm to any person; or (5) breaches any material term of this Agreement. Any dispute between the City Manager and Employee regarding whether the Employee's conduct constitutes cause for termination shall be resolved conclusively by the City Council, in its discretion, without right of appeal.

5. Amendments. This Agreement may not be amended or modified except by a writing signed by both parties. The failure of either party to insist on strict compliance with the terms or conditions of this Agreement by the other party shall not be deemed a waiver of that term or condition nor shall any waiver of any right or power at any one time be deemed a waiver of that right or power for all times.

6. Severability. If a court or arbitrator holds any provision of this Agreement to be invalid, unenforceable, or void, the remainder of this Agreement shall remain in full force and effect.

7. Attorneys' Fees. In any legal action, arbitration, or other proceeding brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

8. Governing Law. This Agreement shall be governed by and construed in accordance with the law of the State of California. Venue shall be appropriate in San Bernardino County Superior Court.

9. Interpretation. This Agreement shall be construed as a whole, according to its fair meaning, and not in favor of or against any party. The Agreement is integrated and whole and not reliant on any parole evidence for its terms. No presumption for or against validity or as to any interpretation based upon the identity of the drafter shall be applicable.

10. Conflict of Interest. The Employee agrees to abide with all applicable local State and Federal rules on conflicts of interest and receipt of gifts, including without limitation those rules found in the California Fair Political Practices Act and related regulations and those found in Government Code Sections 1090, *et seq.*

11. Acknowledgment. Employee acknowledges that he has read and understands this Agreement, that he is fully aware of its legal effect, and that he has entered into it freely and voluntarily and based on his own judgment and not on any representations or promises other than those contained in this Agreement.

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

CITY OF FONTANA

EMPLOYEE

