**CITY OF CORONA**

# SECOND AMENDMENT TO EMPLOYMENT AGREEMENT FOR NON-REPRESENTED EMPLOYEE (CITY MANAGER)

## 1. PARTIES AND DATE.

This Second Amendment to the Employment Agreement for Non-Represented Employee ("Second Amendment") is made and entered into this 14th day of November, 2017 by and between the CITY OF CORONA ("City") and DARRELL TALBERT. City and Employee may sometimes individually be referred to as "Party" and collectively as "Parties" throughout this Second Amendment.

## 2. RECITALS.

2.1 Agreement. City and Employee entered into that Employment Agreement for Non-Represented Employee dated on or about December 17, 2014, whereby City agreed to employ Employee and Employee agreed to accept employment as City Manager effective April 18, 2015 ("Agreement").

2.2 First Amendment. City and Employee entered into that First Amendment to the Agreement dated on or about June 3, 2015 to incorporate a new provision for executive leave by incorporating by reference the Compensation and Benefits Resolution for Non-Represented Executive Group Employees of the City of Corona, approved by the City Council as Resolution No. 2015-019 on June 3, 2015, and to provide a one-time payment provided to all CGEA, CSA, Executive Group and Management/Confidential Group employees.

2.3 Second Amendment. City and Employee desire to amend the Agreement for the second time to: (i) reduce certain benefits and other provisions by incorporating by reference the Compensation and Benefits Resolution for Non-Represented Executive Group Employees of the City of Corona, approved by the City Council as Resolution No. 2017-131 on December 20, 2017; and (ii) in exchange for not increasing the base salary of Employee by two percent (2%), which base salary increase is being provided to all CGEA, CSA, Executive Group and Management/Confidential Group employees, to remove the cap on accumulated annual leave provided for in the Executive Group Employee Resolution, to increase the term of the Agreement, and to amend the termination without cause provision to allow Employee to elect to receive an annual leave allocation in lieu of a Severance Payment.

## 3. TERMS.

3.1 Term. Section 3.2.1 of the Agreement is hereby amended in its entirety to read as follows:

> "3.2.1 Term. This Agreement shall become effective on November 14, 2017 and shall continue for twenty-four (24) months thereafter through November 13, 2019 ("Initial Term"); provided, however that at the expiration of the first month of the Initial Term and any authorized Succeeding Term thereafter, as provided for herein, the Agreement shall be automatically extended for an additional one (1) month ("Succeeding Term") under the same terms and conditions, unless and until the City Council provides written notice to Employee prior to the expiration of any given month of its intent not to extend the Term of this Agreement for any additional months. Following such notice, the term of this Agreement shall have twenty-three (23) months remaining and shall decrease accordingly thereafter. If the City Council elects not to extend the Term, as provided for herein, Employee shall have no right to the Severance Payment or Annual Leave Allocation provided for in Section 3.2.5 below."

3.2 No Tier I Longevity Pay. Section 3.3.3 is hereby added to the Agreement to read as follows:

> "3.3.3 No Tier I Longevity Pay. Employee is not entitled to the Tier I Longevity Pay provided for in Section 7.7(B) of the Executive Group Employee Resolution."

3.3 Leave & Other Benefits. Section 3.4.1 of the Agreement is hereby amended in its entirety to read as follows:

> "3.4.1 Leave & Other Benefits. Except as provided for herein, City shall provide Employee all of the existing benefit package established in the Compensation and Benefits Resolution for Non-Represented Executive Group Employees of the City of Corona, approved by the City Council as Resolution No. 2017-131 on December 20, 2017 ("Executive Group Employee Resolution"). The existing benefit package includes, but is not limited to, annual leave; provided, however, that the Maximum Accumulation provisions (currently, Section 6.6) shall not apply to Employee, executive leave, holidays, health insurance, PERS retirement, dental, optical and audio services coverage, longevity, Medicare contribution, deferred compensation (including retirement healthcare savings), life insurance, long term disability coverage and supplemental benefits."

3.4 Automobile Allowance. Section 3.4.3 of the Agreement is hereby amended in its entirety to read as follows:

> "3.4.3 Automobile. City shall pay Employee an automobile allowance for a personal vehicle required for City business. The automobile allowance shall be $480 per month and shall be payable in installments at the same time as other Non-Represented Executive Group employees are paid automobile allowances. Employee shall be responsible for the costs of operation, repair, maintenance, and liability, property damage and comprehensive insurance for such personal vehicle."

3.5 Annual Leave Allocation in Lieu of Severance Cash Payment. Sections 3.2.4, 3.2.5, 3.2.6, 3.2.7 and 3.2.8 of the Agreement are hereby deleted in their entirety and amended to read as follows:

> "3.2.4 Automatic Termination. This Agreement, and Employee's employment, shall automatically terminate and Employee shall not be entitled to any Severance Payment or Annual Leave Allocation, except for compensation for accrued and unused leave, upon the happening of any of the following events:
>
> (1) Upon mutual agreement in writing by both Parties to terminate this Agreement.
>
> (2) Upon thirty (30) days notice of resignation given to City by Employee.
>
> (3) Upon the death of Employee.
>
> (4) When Employee has been unable to perform all or substantially all of the essential functions of his/her position, with or without reasonable accommodation, due to illness or other disability for a period of three (3) months.
>
> (5) Upon the natural expiration of the Initial Term or any authorized Succeeding Term of this Agreement, as provided for herein.
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> 3.2.5 Termination Without Cause; Severance Cash Payment or Annual Leave Allocation. The City Council may terminate, with or without cause, this Agreement and Employee's employment as City Manager, at any time and without notice. In the event Employee is terminated without cause at such time as Employee is willing and able to perform his duties under this Agreement, other than under an Automatic Termination instance as provided for in

Section 3.2.4 above, the City agrees to pay Employee a maximum severance payment equal to the lesser of: (1) nine (9) months base salary, as described in Section 3.3 below; or (2) the unexpired Term of this Agreement as described in Section 3.2.1 above ("Severance Payment"). Notwithstanding the foregoing, in lieu of the Severance Payment, on or before November 13, 2020 Employee may elect to have posted to his annual leave account sixteen hundred (1,600) hours of annual leave to be used by Employee as provided for in the Executive Group Employee Resolution and this Agreement ("Annual Leave Allocation"); provided, however, in no event shall the value of the number of hours of annual leave allocated to Employee pursuant to the Annual Leave Allocation, when used as provided for in the Executive Group Employee Resolution and this Agreement, exceed the lesser of the following, in which case the number of hours allocated shall be reduced to comply with this maximum: (1) eighteen (18) months base salary, as described in Section 3.3 below; or (2) the unexpired Term of this Agreement, as described in Section 3.2.1 above, multiplied by Employee's monthly base salary, as described in Section 3.3 below. Whether the Severance Payment is provided or, if applicable, Employee elects the Annual Leave Allocation, Employee shall be required to fully comply with the terms of Section 3.2.6 below as a condition to receiving the Severance Payment or Annual Leave Allocation. If Employee fully complies with Section 3.2.6, the Severance Payment or, if applicable, the Annual Leave Allocation, shall be Employee's sole and exclusive remedy for termination without cause. If Employee fails to fully comply with Section 3.2.6, Employee understands, acknowledges and agrees that he shall have no remedy, in law or equity, for termination without cause. Upon termination, Employee shall also be entitled to compensation for accrued and unused annual leave, if elected by Employee, or to delay the date of retirement as provided for in the Executive Group Employee Resolution. If applicable, the Severance Payment and annual leave cash-out shall be paid by the City in one lump sum, less applicable deductions, on the date provided for in the release required pursuant to Section 3.2.6 below.

3.2.6 Termination Without Cause; Release. Notwithstanding Section 3.2.5 above or any other section or provision of this Agreement, the Severance Payment or Annual Leave Allocation shall be conditioned upon Employee executing a personnel form providing a release and waiver of any and all claims against City, it's officers, employees and agents, arising out of Employee's employment with City and the termination thereof, in a form required by the City Council and City Attorney in their sole and

absolute discretion.

3.2.7 Notice for Resignation. In the event Employee voluntarily resigns his position with City, then Employee shall give City thirty (30) days notice in advance, unless the Parties otherwise agree. Upon voluntary resignation, Employee shall be entitled to accrued annual benefits paid in one lump sum, but not to the Severance Payment or the Annual Leave Allocation described in Section 3.2.5 above.

3.2.8 Termination for Cause; Procedure. Except as provided in Subsection (6) below, in the event Employee is terminated for cause, City shall have no obligation to pay the Severance Payment or the Annual Leave Allocation described in Section 3.2.5 above.

(1) Upon termination for cause, the City shall deliver to Employee a written specification of the charges or other reasons upon which "cause" is alleged. For purposes of this Agreement, termination for "cause" shall be defined as follows:

(a) A willful breach of this Agreement;

(b) Neglect of duties required to be performed under this Agreement.

(c) Any acts of dishonesty, fraud, misrepresentation or other acts of moral turpitude.

(d) Refusal or failure to act in accordance with any directive or order of the City Council.

(2) Employee shall then have five (5) business days to challenge such termination for cause by delivery of a written response to such specifications. Within such five (5) day period, Employee may also demand a hearing upon the specifications. Failure to submit a written response or demand a hearing within the five (5) business day period shall constitute a waiver of such right, and the City Council's determination shall be final.

(3) If a hearing is demanded, such hearing shall be held before an independent hearing officer to be mutually agreed between the Parties, or if no agreement can be reached within ten (10) calendar days, the hearing officer shall be selected from a list provided by JAMS. The list shall consist of five (5) hearing officers who are experienced in public employee labor law issues.

Employee shall strike the first name from the list, and the Parties shall then take turns eliminating names from the list until one remains. The remaining name shall then be the selected hearing officer. The fees of the hearing officer shall be advanced, in full, by the City. The decision of the hearing officer shall be binding and without right of appeal.

(4) The issues to be determined in the hearing shall be whether the specification(s) alleged constitute "cause" pursuant to this Agreement and whether the specifications are supported by a preponderance of the evidence.

(5) The Parties acknowledge that a requested hearing for cause shall be held at the earliest possible date, and to that extent, they shall cooperate in selecting a date for the hearing which shall be no later than sixty (60) days following the City's notice of termination for cause.

(6) In the event the hearing officer concludes in favor of Employee that no cause exists, Employee's sole and exclusive remedy shall be the Severance Payment provided for under Section 3.2.5 above; provided, however, that Employee shall be required to fully comply with the terms of Section 3.2.6 above as a condition to receiving the Severance Payment. If Employee fully complies with Section 3.2.6, the Severance Payment shall be Employee's sole and exclusive remedy for termination without cause. If Employee fails to fully comply with Section 3.2.6, Employee understands, acknowledges and agrees that he shall have no remedy, in law or equity, for termination without cause. City shall be required only to change its records to reflect that Employee was terminated without cause. The Severance Payment, if required, shall be paid by the City in one lump sum, less applicable deductions, on the date provided for in the Separation Agreement required pursuant to Section 3.2.6 above. Under no circumstance shall Employee be entitled to reinstatement as a result of such hearing.

(7) If a written response is submitted, but no hearing is demanded, the City Council shall review its decision based upon Employee's written response. However, any determination by the City Council after reviewing such written response (where no hearing has been demanded) shall be final and without right of appeal."

3.6 Annual Leave – Cash-Out. Section 6.4 (Annual Leave – Cash-Out) of the Executive Group Employee Resolution shall be amended to include the following:

"Notwithstanding anything in Employee's Agreement or the Executive Group Employee Resolution to the contrary, if Employee is leaving his employment and retiring from the City for any reason, the following shall apply: (1) Employee's Annual Leave payments will be made at Employee's base salary, as described in Section 3.3 of Employee's Agreement, as of the last full-pay period prior to the date that the employee commences using such unused Annual Leave to delay the date of retirement; (2) Employee's base salary shall expressly not include any special compensation pay including, but not limited to, Automobile Allowance (Section 3.4.3 of this Agreement and Section 7.11 of the Executive Group Employee Resolution), Bilingual Pay (Section 7.8 of the Executive Group Employee Resolution) and Working Out of Class Pay (Section 7.10 of the Executive Group Employee Resolution); and (3) during such time that Employee is using his unused Annual Leave to delay his date of retirement, Employee shall not earn or accrue annual leave (Sections 5.2 and 6.2 of the Executive Group Employee Resolution) or executive leave hours (Section 6.12 of the Executive Group Employee Resolution) and shall not be entitled to the deferred compensation match or quarterly contribution to deferred compensation plan or Retirement Health Savings Account (Section 7.13 of the Executive Group Employee Resolution).

Notwithstanding anything in Employee's Agreement or the Executive Group Employee Resolution to the contrary, if Employee is voluntarily leaving his employment and retiring from the City, Employee is limited to using a maximum of Two Hundred and Forty (240) hours of Annual Leave to delay his date of retirement."

3.7 Continuing Effect of Agreement. Except as amended by this Second Amendment, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this Second Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Second Amendment.

3.8 Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Second Amendment.

3.9 Counterparts. This Second Amendment may be executed in duplicate originals, each of which is deemed to be an original, but when taken together shall constitute but one and the same instrument.

**[SIGNATURES ON FOLLOWING PAGE]**

**SIGNATURE PAGE FOR**

**SECOND AMENDMENT TO
EMPLOYMENT AGREEMENT
FOR
NON-REPRESENTED EMPLOYEE
(CITY MANAGER)**

IN WITNESS WHEREOF, the Parties have entered into this Second Amendment to Employment Agreement for Non-Represented Employee as of the 14th day of November, 2017.

**CITY OF CORONA**

By: Karen Spiegel

Karen Spiegel
Mayor

ATTEST:

Lisa Mobley
City Clerk

APPROVED AS TO FORM:

Dean Derleth
City Attorney

**EMPLOYEE**

By:

Darrell Talbert

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