

# ATTACHMENT 1

## **AGREEMENT FOR EMPLOYMENT CITY MANAGER**

THIS AGREEMENT is made and entered into this 2nd day of May, 2017, effective May 2, 2017, by and between the City of Lake Forest, a California general law municipal corporation of the State of California, hereinafter referred to as "City" and Debra D. Rose, hereinafter referred to as "City Manager."

### **RECITALS**

WHEREAS, the City Council of the City of Lake Forest appointed Debra D. Rose as Interim City Manager of the City of Lake Forest; and

WHEREAS, the City desires to employ the services of Debra D. Rose as City Manager of the City of Lake Forest as provided by the Lake Forest Municipal Code and State law; and

WHEREAS, it is the desire of the City Council of the City of Lake Forest to provide certain benefits, and establish certain conditions of employment of City Manager; and

WHEREAS, Debra D. Rose desires to accept employment as the City Manager of the City of Lake Forest, and to accept the provisions of this Employment Agreement.

NOW, THEREFORE, in consideration of the respective and mutual covenants hereinafter contained and made, and subject to all the terms and conditions hereof, City and City Manager agree as follows:

### **Section 1: Appointment and Duties**

A. The City Council of the City of Lake Forest hereby appoints Debra D. Rose as City Manager of the City of Lake Forest to perform those functions and duties specified in the Lake Forest Municipal Code, and the Government Code of the State of California, and to perform such other legally permissible and proper duties and functions as the City Council shall from time to time assign.

B. City Manager agrees to remain in the exclusive employ of City until this agreement is terminated by City or City Manager as provided herein. The term "employed" shall not be construed to include teaching, writing, consulting, or pursuing other vocational interests performed outside of normal business hours which may occasionally pay a stipend or wage, and which do not interfere with

the performance of the duties of City Manager or constitute a conflict of interest under applicable law.

## **Section 2: Compensation**

A. Effective May 2, 2017, the City shall pay City Manager an annual Base Salary of two hundred thirty thousand dollars (\$230,000) in installments at the same time as other executive management employees (department heads) of City are paid.

B. City, from time to time, may increase City Manager's Base Salary by written amendment to this Agreement.

C. City Manager shall be provided use of a City vehicle, which shall be available to City Manager for both business and personal use subject to federal rules on the taxation of such personal use. City shall pay City Manager a cell phone allowance of one hundred dollars (\$100) per month.

D. City shall provide City Manager with three hundred thousand dollars (\$300,000) of life insurance, the policy for which to be selected, paid, and maintained by City for the term of this Agreement. City Manager shall have the sole right to name the beneficiary or beneficiaries of said policy.

E. City Manager shall be entitled to the same holidays, sick leave, executive leave and buyback, annual physical, and long-term disability benefits, insurance benefits including, but not limited to, life, health, vision, and dental coverages, and vacation buy-back as provided other executive management employees (department heads) within the City's employ in effect as of the date of this Agreement and as they may be changed or amended from time to time by City. City Manager shall be entitled to receive a vacation leave cap of 300 hours.

F. City shall maintain City Manager's enrollment in the Public Employee Retirement System of the State of California, and shall pay, in addition to City's share of said plan, the Employee Contribution in the same percentage (if any) as is paid for other executive management employees.

G. Except as otherwise set forth in this Agreement, in addition to the benefits specified in subparagraphs A through E herein above, City Manager shall receive any and all employee benefits otherwise accorded City's executive management employees (department heads) who are miscellaneous members of the California Public Employees Retirement System, and as those benefits may be changed from time to time.

H. City shall include all benefits to City Manager due hereunder during any fiscal year of City in its annual budget for such year and to make the necessary annual appropriations for all such benefits.

### **Section 3: Term; Notice of Termination; and Severance**

A. Term and Extension. The term of this Agreement shall be from May 2, 2017 through May 2, 2020 (three years), unless extended or terminated as provided herein. On May 2, 2018, and on each succeeding May 2 while this Agreement is in effect, this Agreement shall be automatically extended for one additional year (i.e., in 2018 the Term of this Agreement shall be extended until May 2, 2021, in 2019 the Term of this Agreement shall be extended until May 2, 2022, and so on) unless prior to such date by a majority vote of the entire City Council in attendance at any lawfully called meeting, the City Council declares its intention not to extend this Agreement for one additional year.<sup>1</sup> Any such decision by the City Council not to extend the Term by one additional year shall not constitute a termination for purposes of Paragraph C of this Section.

B. Notice of Termination. City Manager serves at the pleasure of the City Council and City reserves the right to terminate City Manager and this Agreement upon the vote of a majority of the entire City Council. In such event, the term extension set forth in Paragraph A above shall not apply. In any event, City shall provide City Manager with not less than thirty (30) days' notice of its decision to terminate this Agreement, and as provided by the provisions of the Ralph M. Brown Act, California Government Code Section 54950 et seq. Due to the important nature of City Manager's duties to the City, if City Manager terminates this Agreement, City Manager must provide the City Council with at least thirty (30) days' prior written notice to the date she ceases to perform her duties and responsibilities under this Agreement and the provisions of the City's Municipal Code. However, during the ninety (90) day period immediately preceding or following the date of a regular or special municipal election, City shall take no action, whether immediate or prospective, to remove, suspend, terminate, request the resignation of, or reduce the Base Salary and benefits of City Manager. City acknowledges that this period is longer than that specified in the Lake Forest Municipal Code, but provides said period nevertheless as an additional inducement for City Manager to enter into this Agreement.

C. Termination without Cause. In the event City Manager is terminated other than for cause or disability by a majority vote of the entire City Council in attendance at any lawfully called meeting, City shall provide City Manager with severance pay equal to six (6) months Base Salary and six months of medical

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<sup>1</sup> For purposes of this Agreement, the "entire" City Council for purposes of determining a "majority" shall be based upon those seats which are filled at the time a decision is made. For example, if all five seats are filled, a majority of the "entire" City Council is three. If four seats are filled, a majority is still three. If only three seats are filled, a majority is two.

and other health related insurance coverage("Severance"). City Manager's Severance shall increase by one additional month of Base Salary and medical and other health related insurance coverage for every five (5) years of service, up to the maximum permitted under State law. City Manager shall be compensated for any unused leave, holidays, and other benefits then accrued, in accordance with City policy in effect at the time, and in accordance with applicable law. Should City Manager die before receiving all Severance provided for under this agreement, such payment shall be paid and provided to City Manager's heirs, administrators, representatives, or executors as provided by law. To be eligible for Severance, City Manager must sign a general waiver and release of all claims arising out of her employment with and termination from City. This section is intended to comply with Government Code sections 53260 and 53261, as amended, and in no event shall City Manager be entitled to severance benefits greater than provided for therein. In addition, if City Manager were convicted of a crime involving an abuse of her office or position, City Manager would be required to fully reimburse the City for any severance benefits provided or any other cash settlement related to her termination, in accordance with Government Code section 53243.2. This Agreement in no way affects City Manager's rights to continue health insurance coverage as required under COBRA for City Manager and City Manager's eligible dependents.

D. Termination for Cause. City Manager will not be entitled to severance if her employment is terminated by the City Council at any time for cause. Cause for termination shall be defined for purposes of this Agreement as: (i) conviction of, or plea of guilty or nolo contendere to, any crime or offense (other than minor traffic violations or similar offenses) which is likely to have a material adverse impact on the City or on the City Manager's reputation; (ii) proven failure of the City Manager to observe or perform any of her duties and obligations, if that failure continues for a period of thirty (30) business days from the date of her receipt of notice from the City Council specifying the acts or omissions deemed to amount to that failure; (iii) Conviction of any crime involving an "abuse of office or position," as that term is defined in Government Code Section 53243.4; (iv) repeated failure to carry out a directive or directives of the City Council made by the City Council as a body at a Brown Act-compliant meeting; and (v) any grossly negligent action or inaction by City Manager that materially and adversely: (a) impedes or disrupts the operations of City or its organizational units; (b) is detrimental to employees or public safety; or (c) violates City's properly-established rules or procedures. Conviction for purposes of this Agreement includes a judgment entered after a trial, plea of guilty or plea of nolo contendere.

E. Constructive Termination. If at any time during the term of this Agreement, City reduces the salary or other financial benefits of City Manager in an average (mean) percentage greater than that of other executive management employees (department heads) within City's employ, or in the event City refuses, following written notice, to comply with any provision benefiting Manager herein, or City



Manager resigns following a request that he resign made by a majority of the entire City Council in attendance at a lawfully called meeting, then City Manager shall be deemed to be "terminated" as of the date of such reduction, refusal, or request within the meaning and context of Section 3.C herein.

F. Termination Based on Disability. In the event City Manager is permanently disabled or is otherwise unable to perform her duties because of sickness, accident, injury, mental incapacity, or health reasons for a period of three consecutive months beyond any provided sick leave, the City may terminate this Agreement upon passage of those three consecutive months. Upon termination of the Agreement for the reasons stated in this paragraph, City shall provide City Manager Severance as provided in Section 3.C. The amount of Severance shall be reduced by an amount equal to any disability insurance proceeds then being received by City Manager from any policy provided by City.

G. Abuse of Office. Pursuant to Government Code section 53243, et seq., if City Manager is convicted of a crime involving an abuse of her office or position, as defined below, all of the following shall apply upon final conviction: (1) if City Manager is provided with administrative leave pay pending an investigation, City Manager shall be required to fully reimburse such amounts paid and (2) if City, in its discretion, pays for the criminal legal defense of City Manager, City Manager shall be required to fully reimburse such amounts paid. For purposes of this Section, 'abuse of office or position' means either: (1) an abuse of public authority, including waste, fraud, and violation of the law under color of authority as those crimes are specifically defined under specific provision of California statute, or (2) a crime against public justice, including a crime described in Title 7 commencing with section 92 of the Penal Code or as specifically defined under separate provision of California statute

#### **Section 4: Professional Development**

City agrees to pay for the professional dues, subscriptions, and other costs of City Manager deemed necessary for her participation in national, state, regional, and local associations and organizations and in meetings, conferences, and training related thereto, including, but not limited to, the International City/County Management Association, the California City Management Foundation, the League of California Cities, and the Orange County City Managers' Association, which are considered mutually desirable for her continued professional participation and growth and are for the good of City. City Manager's attendance at the annual conference of the International City/County Management Association shall be subject to the annual budgetary approval of the City Council.

#### **Section 5: General Expenses**

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

## **Section 6: Indemnification**

City agrees to defend, hold harmless, and indemnify City Manager against any tort, professional liability claims or demand, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring within the scope and course of the performance of City Manager's duties, in accordance with applicable State law.

## **Section 7: Performance Review**

City Council agrees to provide, prepare, and participate in reviews of City Manager's performance. The objective of such review shall be to maintain an optimal working relationship and a mutual understanding and agreement on duties, responsibilities, and priorities between City Manager and the City Council. The City Council shall conduct such review at least annually at a City Council meeting or meetings beginning in April and concluding no later than June 30 of each year. The parties shall work in good faith to timely provide each other the relevant background information, evaluation criteria and feedback necessary for the performance evaluation and to complete the performance evaluation process within the timeframes set forth herein.

## **Section 8: Bonding Requirements**

City shall bear full cost of the fidelity bond required of the City Manager under the Lake Forest Municipal Code or State law.

## **Section 9: Other Terms and Conditions**

A. The rights and obligations of the respective parties hereto under this Agreement shall inure to the benefit and shall be binding upon heirs, legal representatives, successors and assigns of the parties hereto; provided, however, that this Agreement shall not be assignable by either party without prior written consent of the other party. Any attempted assignment is void.

B. No provision of this Agreement may be modified, waived, or discharged unless such waiver, modification, or discharge is agreed to in writing by City and City Manager. No waiver by either party at any time or the breach of, or lack of compliance with, any conditions or provisions of this Agreement shall be deemed a waiver of other provisions or conditions hereof.

C. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof

and contains all of the covenants and agreements between the parties with respect to said subject matter in any manner whatsoever. Any modification of this Agreement will be effective only if it is in writing and signed by both City Manager and the Mayor, as authorized by the City Council.

D. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of California. Any action to interpret or enforce terms of this Agreement shall be held exclusively in the state court in Orange County, California. City Manager expressly waives any right to remove any such action from Orange County otherwise permitted by the California Code of Civil Procedure section 394.

### **Section 10: Severability**

If any provision of this Agreement is found to be invalid or unenforceable by any court, the remaining provisions hereof shall remain in effect unless such partial invalidity or unenforceability would defeat an essential business purpose of this Agreement.

### **Section 11: Notices**

A. Notices pursuant to this Agreement shall be given by personal service or deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

(1) City of Lake Forest  
25550 Commercentre Drive, Suite 100  
Lake Forest, California 92630

(2) Manager, Debra D. Rose  
25550 Commercentre Drive, Suite 100  
Lake Forest, California 92630

B. Notices also may be personally served in the same manner as is applicable to civil judicial practice.

C. 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 by the United States Postal Service.

D. Either party hereto may change its respective address of record by providing written notice thereof in accordance with this Section.



[SIGNATURES ON PAGE 8]

**IN WITNESS WHEREOF**, the parties have executed this Agreement the date and year first above written.


CITY OF LAKE FOREST

  
\_\_\_\_\_  
Scott Voigts  
Mayor

CITY MANAGER

  
\_\_\_\_\_  
Debra D. Rose  
City Manager

ATTEST:

  
\_\_\_\_\_  
Stephanie D. Smith, MMC  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Best Best & Krieger LLP  
City Attorney