

AMENDED AND RESTATED EMPLOYMENT AGREEMENT CITY OF FULLERTON CITY MANAGER

This AMENDED AND RESTATED EMPLOYMENT AGREEMENT ("Agreement") is made effective as of ~~September~~ October 15, 2020~~19~~ ("Effective Date") and is entered into by and between the CITY OF FULLERTON, a California municipal corporation ("City") and KENNETH A. DOMER ("Domer") an individual (sometimes collectively referred to herein as "the Parties").

RECITALS

WHEREAS, the City and Domer previously entered into an employment agreement for Domer to serve as City Manager of the City of Fullerton ("City Manager") beginning July 24, 2017 for a term of five years; and

WHEREAS, the City and Domer agreed to Amend and Restate the employment agreement on October 15, 2019; and

WHEREAS, the City desires to continue the employment of Domer as City Manager; and

WHEREAS, the City desires to provide certain benefits, establish certain conditions of employment and to set working conditions of City Manager; and

WHEREAS, the City desires to (1) secure and retain the services of Domer and to provide inducement for him to remain in such employment and (2) to make possible full work productivity by assuring Domer's morale and peace of mind with respect to future security; and

WHEREAS, the City desires to extend Domer's contract for an additional two (2) years beyond the initial five year term; and

WHEREAS, the Parties have agreed to terms and conditions of employment effective upon execution of this Agreement.

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

SECTION 1: Term and Notice of Non-Renewal

Subject to City's right to terminate Domer's employment at any time, as provided for in this Agreement, the Term of this Agreement shall be through July 25, 2024~~2~~. No later than eighteen months prior to the expiration of the Term, the City Council and Domer shall meet to discuss any renewal or extension of this Agreement. City's election not to extend or renew this Agreement shall not entitle Domer to severance pursuant to Section 9 of this Agreement.

SECTION 2: Duties and Authority

City agrees to employ Domer as City Manager to exercise the powers and authority and to perform the functions and duties specified in the Fullerton Municipal Code and all relevant resolutions, rules, regulations, procedures, applicable job description(s) and state codes, as they currently or may in the future exist. Domer shall exercise such power and authority and perform such other functions and duties, not inconsistent with this Agreement, as City, by its City Council, may legally assign.

SECTION 3: Compensation, Performance Objectives and Performance Evaluation.

- A. Base Salary. City agrees to pay Domer an annual base salary of \$225,000 (Two hundred twenty five thousand dollars) ("Base Salary"), subject to deductions and withholding of any and all sums required for federal or state income tax, pension contributions, and all other taxes, deductions or withholdings required by then current state, federal or local law, prorated and paid on the City's biweekly payroll cycle. City shall also deduct sums Domer is obligated to pay because of participation in plans or programs described in Section 4 of this Agreement.
- B. City, by its City Council, and Domer shall set mutually-agreed upon performance objectives for each year under this Agreement. Such performance objectives shall be agreed by the Parties as necessary for the proper operation of the City in the attainment of the City Council's policy objectives and shall further establish a relative priority among the agreed objectives. These objectives shall be reasonably attainable within the limitations of the City Council approved operating and capital budgets, authorized appropriations and staffing levels.
- C. City, by its City Council, shall conduct an evaluation of Domer's performance each June during the period in which this Agreement remains in effect. Such evaluation shall be shared and discussed with Domer in closed session as allowed under applicable law. Any public report of Domer's evaluation shall be made in accordance with an agreement by the Parties as to format and content.
- D. The Parties agree to reexamine Domer's Base Salary no less frequently and no later than each June during the period in which this Agreement remains in effect.
- ~~E. The City shall deposit to Domer's 457 Deferred Compensation account a lump sum payment in the amount of \$2,250 during the pay period that encompasses November 1, 2019. A second lump sum payment of \$2,250 shall be deposited to Domer's 457 Deferred Compensation account during the pay period that encompasses July 1, 2020.~~
- F.E. Following each June performance evaluation, Domer shall be eligible for a lump sum payment in an amount not to exceed 3% of Base Salary. Award of any such performance bonus shall be made by City Council resolution. Payment of such lump sum shall be made in the form agreed by the Parties in a manner that shall not be reportable to CalPERS as a part of "total compensation earnable" to the extent allowable under the law.

SECTION 4: Retirement and Health Benefits

- A. Retirement. The City's contract with CalPERS shall apply to Domer.
 - 1. Domer shall pay the CalPERS normal member contribution (as defined in §20677(a)(2) of the California Government Code.

2. In addition, Domer shall pay an additional 6.0% of salary to fund the CalPERS liability related to his salary by way of cost sharing of the City's employer rate. The greatest portion possible of the cost sharing contribution shall be paid to CalPERS, with the balance paid into a Section 115 trust established by the City.
 3. The City shall pay the 1959 Survivor Benefits premium for Domer.
 4. Domer shall be eligible for Credit for Unused Sick Leave, Cal. Gov. Code §20965, whereby he may receive additional service credit for the balance of his unused sick leave upon retirement from the City, converted per the terms of the City's contract amendment with CalPERS.
 5. Domer shall be subject to the provisions of the California Government Code §20037, whereby his final compensation shall be the highest annual average compensation during any consecutive 36-month period of employment.
- B. Medicare. Domer shall pay the designated employee contribution for Medicare in accordance with applicable law.
- C. Medical Insurance. In lieu of Domer's participation in the City's medical insurance plans, the City shall deposit \$125 per pay period into a retiree health savings account for Domer. If during the term of this Agreement, Domer elects to enroll in City sponsored medical coverage, he shall no longer be eligible for the retiree health savings account contribution. Domer's enrollment in City sponsored medical coverage shall be subject to the following terms:
1. Enrollment may only occur at the City's Open Enrollment or upon any qualifying event recognized by the City's health insurers.
 2. The City's premium contributions to plans selected by Domer shall be equivalent to premium contributions afforded to employees covered by the Executive Compensation Resolution.
 3. Domer's salary shall be reduced by the amount of any necessary payroll deduction for health insurance premiums in excess of the agreed City contribution on a before-tax basis.
- D. Dental and Vision Insurance. Domer may enroll in the City's dental and vision plans. The City's premium contributions to such plans shall be equivalent to premium contributions afforded to employees covered by the Executive Compensation Resolution.
- E. Retiree Health. In lieu of Domer's eligibility for a contribution to health insurance after retirement from the City, the City agrees to make contributions of \$125 each pay period that this Agreement is in effect into a retiree health savings account in a plan to be implemented by the City as soon as possible following the Effective Date of this Agreement.
- F. Life Insurance. Domer shall be eligible for group life insurance equal to his annual base salary up to the annual base salary maximum set in the group policy, which at the Effective Date of this Agreement is \$200,000. Domer is eligible to purchase voluntary City group term life insurance through payroll deduction. In addition, the City will reimburse Domer up to \$1,100 annually for the purchase of an ordinary life insurance policy.
- G. Long-Term Disability Insurance. The City shall pay 100% of the premium for Domer to be eligible for the City's long term disability insurance coverage.

- H. Consolidated Omnibus Budget Reconciliation Act Of 1985. In the event Domer is eligible to remain on a City health or dental insurance plan following separation from employment other than retirement, the City may pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) charge Domer for selected coverage the maximum rate permissible by law (presently 102% of the premium for an active employee).
- I. Medical Examination. Domer is eligible for reimbursement of up to \$750 per year for the cost associated with undergoing a comprehensive medical examination. This \$750 annual benefit shall be converted to a City contribution to Domer's 457 Deferred Contribution account payable in a lump sum each first pay period of the calendar year beginning January 2020. The amount shall be fully earned for any portion of a calendar year that Domer is employed as City Manager.

SECTION 5: Vehicle Use

Vehicle Use. Domer shall receive \$275 per pay period for the use of his personal vehicle on City business. Domer agrees that in exchange for such allowance, he shall be solely responsible for all costs related to purchase, maintenance, operation, upkeep, and insurance for his vehicle. Further, Domer agrees he shall use a personal vehicle for City business and shall have sole responsibility for ensuring that such a vehicle is available for all his business needs, except that in the event Domer is required to travel for City business, he may rent a vehicle, at the City expense, when travel is beyond 60 miles.

SECTION 6: Paid Leave

- A. Holidays. Domer shall be subject to the Holiday Leave Program as afforded to employees covered by the Executive Compensation Resolution in effect at the time of the observed holidayeligible for paid leave on City-recognized holidays.
- B. Vacation. During the term of the Agreement, Domer shall accrue vacation leave at the rate of 160 hours per year. Domer may accumulate credit up to 320 hours. Domer is encouraged to use at least 80 hours of vacation leave per year. If Domer is at his maximum accrual and unable to take vacation leave, 40 hours shall be converted to cash. In addition, Domer shall be permitted to convert up to 80 hours to cash each payroll year in accordance with the City's annual leave conversion program. Upon separation from employment, in the event Domer has an accrued balance of at least 80 hours of vacation leave, 50% of Domer's vacation accrual will be converted to a contribution to Domer's Retiree Health Savings Plan account.
- C. Sick Leave. The City shall provide an initial balance of 40 hours of sick leave upon the Effective Date of this Agreement. Thereafter, Domer shall earn and accumulate 3.69 hours of sick leave for each pay period he has worked at least one full regular workday or been on paid vacation. He may use such sick leave in accordance with rules applying to Executive employees.
- D. Bereavement Leave. Domer shall be eligible for bereavement leave of up to 27 hours in accordance with the rules applying to Executive employees.
- E. Executive Leave. Domer shall be entitled to 81 hours of paid Executive Leave per fiscal year. Such leave shall not accrue from year to year. Unused Executive Leave shall be lost

at the end of each fiscal year, and shall not be converted to any other form of compensation.

SECTION 7: General Business Expenses

- A. City recognizes that Domer may incur expenses of a non-personal, job related nature that are reasonably necessary to Domer's service as City Manager. City agrees to either pay such expenses in advance or to reimburse the expenses, so long as the expenses are incurred and submitted according City's regular reimbursement requirements or such other procedure as may be designated by the City Council. To be eligible for reimbursement, all expenses must be supported by documentation meeting City's normal requirements and must be submitted within time limits established by City.
- B. City agrees to budget and pay for professional dues, membership and subscriptions necessary for Domer's participation in such organizations as the Parties may agree to as necessary and appropriate.
- C. City agrees to pay the cost of a surety bond as required under the Fullerton Municipal Code.
- D. City agrees to budget and to reimburse or pay for reasonable costs for attendance and participation in meetings, institutes, training programs, conferences, conventions and similar gatherings that support leadership development and the advancement of Parties' mutually agreed upon goals, and which are related to Domer's duties or City's operations and held in the continental United States. For purposes of this paragraph, reasonable expenses are limited to the reasonable and actual cost of registration, coach-class airfare (where applicable), ground transportation and meals. Reasonable expenses will also include the reasonable and actual cost of lodging for meetings greater than 60 miles outside the City of Fullerton boundaries.
- E. The expenses to be budgeted and paid in Section 7, Paragraphs A, B, and C above, are exclusive of reasonable expenses related to events, participation in organizations , or attendance at events or meetings on behalf of the City as required by the City Council. City will separately budget and pay for membership and participation in community, civic or other organizations or events in which City requires Domer to participate.

SECTION 8: At-Will Employment Relationship

- A. Domer is appointed by, and serves at the pleasure of, the City Council. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of City to terminate this Agreement and the employment of Domer at any time, with or without Cause (as defined below). In the event the City Council decides to terminate this Agreement without Cause, Domer shall be given at least 30 days written notice prior to the effective date of the termination. However, City and Domer agree that termination without cause may not be exercised by the City during the final six months of the term of this Agreement or during any period commencing ninety (90) days prior to a City Council general election or recall election and ending ninety (90) days following certification of such City Council general election or recall election. In the event City elects to terminate this Agreement prior to the stated term, City shall pay Domer for all services through the effective date of termination and Domer shall have no right to any additional compensation or payment, except as

provided in Section 9, Severance and Benefit Payoff at Termination, and General Release Agreement, below.

- B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Domer to resign from his employment with City, subject only to Domer providing forty- five (45) calendar days' prior written notice to City of the effective date of his resignation. Upon the effective date of resignation, Domer forfeits all compensation and benefits owing for the remainder of the term of this Agreement, as well as any potential severance pay. The City acknowledges that Domer shall be eligible for payout of the cash value of accrued vacation leave at the time of separation.

SECTION 9: Severance and Benefit Payoff at Termination, and General Release Agreement

- A. From the Effective Date of this Agreement through December 31, 2020, if City terminates this Agreement (thereby terminating Domer's Employment) without Cause, as determined by the affirmative votes of a majority of the members of the City Council at a meeting of the City Council at any time other than those periods during which termination without Cause is precluded under Section 8, and if Domer signs, delivers to the City Council, and does not revoke, the General Release Agreement in the form attached hereto as Exhibit A, City shall pay Domer beginning on the effective date of termination a lump sum benefit in compliance with Government Code Section 53260 equal to six times the monthly value of his then applicable Base Salary and shall provide six (6) months of medical coverage as provided in Section 4 as long as Domer is already enrolled and receiving medical coverage through the City medical benefits plan at time of termination (collectively, "Severance"). The City acknowledges that Domer shall be eligible for payout of the cash value of accrued vacation leave at the time of separation.
- B. Effective January 1, 2021, if City terminates this Agreement (thereby terminating Domer's Employment) without Cause, as determined by the affirmative votes of a majority of the members of the City Council at a meeting of the City Council at any time other than those periods during which termination without Cause is precluded under Section 8, and if Domer signs, delivers to the City Council, and does not revoke, the General Release Agreement in the form attached hereto as Exhibit A, City shall pay Domer beginning on the effective date of termination a lump sum benefit equal to nine (9) times the monthly value of his then applicable Base Salary and shall provide nine (9) months of medical coverage as provided in Section 4 as long as Domer is already enrolled and receiving medical coverage through the City medical benefits plan at time of termination (collectively, "Severance"). The City acknowledges that Domer shall be eligible for payout of the cash value of accrued vacation leave at the time of separation.
- C. If City terminates this Agreement (thereby terminating Domer's Employment) with Cause, as determined by the affirmative votes of a majority of the members of the City Council at a meeting of the City Council, Domer shall not be entitled to any additional compensation or payment, including Severance, except that the City acknowledges that Domer shall be eligible for payout of the cash value of accrued vacation leave at the time of separation.. If the City Council intends to terminate with Cause, based on a reason or reasons set forth in subpart 5 or 6, immediately below, the Council shall first deliver to Domer a written Notice of Intent to Terminate, stating the reason or reasons for the proposed termination, and providing a thirty (30) day period for Domer to cure. If, in the City Council's

independent judgment, Domer cures the identified reason or reasons for Cause termination, Domer shall not be terminated therefor. As used in this Agreement, Cause shall mean any of the following:

1. Conviction of a felony;
 2. Conviction of a misdemeanor arising out of Domer's duties under this Agreement and involving a willful or intentional violation of law;
 3. Conviction of any crime involving an "abuse of office or position," as that term is defined in Government Code section 53243.4;
 4. Willful abandonment of duties;
 5. Repeated failure to carry out a directive or directives of the City Council made by the City Council as a body; and
 6. Any grossly negligent action or inaction by Domer 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 properly established rules or procedures of City.
- D. If Domer terminates this Agreement (thereby terminating Domer's employment), Domer shall not be entitled to any additional compensation or payment, including Severance. The City acknowledges that Domer shall be eligible for payout of the cash value of accrued vacation leave at the time of separation.

SECTION 10: Employee's Obligations and Hours of Work

Domer shall devote his full professional energies, interest, abilities and productive time to the performance of this Agreement and utilize his best efforts to promote City's interests. Domer's duties may involve expenditures of time in excess of the regularly established workday or in excess of a forty (40) hour workweek and may also include time outside normal office hours (including attendance at City Council meetings and various community meetings, forums or workshops). Domer's base salary includes compensation for all hours worked. Domer shall be classified as an exempt employee for purposes the Fair Labor Standards Act and shall not be entitled to any form of compensation for overtime. In recognition of the significant time Domer will need to devote outside normal office hours to business activities of City and the exempt, salaried nature of the employment, Domer is permitted to exercise a flexible work schedule. However, consistent with this flexibility and Domer's participation in activities out of the office, Domer will generally be expected to keep office hours at City Hall, during normal business hours.

SECTION 11: Confidentiality

- A. Domer acknowledges that in the course of his employment contemplated herein, Domer will be given or will have access to confidential and proprietary documents and information, relating to the City, its residents, businesses, employees, and customers ("Confidential Information"). Such Confidential Information may include, but is not limited to, all information given to or otherwise accessible to Domer that is not public information or would be exempt from public disclosure as confidential protected, exempt or privileged information. Domer shall hold the Confidential Information in trust for City's benefit, and

shall not disclose the Confidential Information to others without the express written consent of City.

- B. The obligations of City and Domer under this Section 11 shall survive the termination of this Agreement.

SECTION 12: Outside Activities

Domer shall not engage in any activity, consulting service or enterprise, for compensation or otherwise, which is actually or potentially in conflict with, incompatible with or inimical to, or which materially interferes with his duties and responsibilities to City. (Cal. Govt. Code §1125, et. seq.)

SECTION 13: Defense and Indemnification

In accordance with the provisions of California Government Code sections 995 and 995.2 as they currently exist or may hereafter be amended, City shall defend and indemnify Domer, using legal counsel of City's choosing, against any civil action or proceeding brought against Domer, in his official or individual capacity or both, on account of an act or omission in the scope of his employment as City Manager, unless such act or omission was due to actual fraud, corruption, or actual malice. In the event the City determines there is a conflict of interest between the Parties and Domer and independent counsel is required for Domer's defense, City shall select and pay the reasonable fees of such independent counsel for Domer's defense. Domer shall cooperate fully in the investigation and defense of any civil action or proceeding.

Domer acknowledges and agrees that City reserves its rights pursuant to Government Code section 825(a) not to pay any judgment, compromise, or settlement until it is established that the injury arose out of an act or omission occurring within the scope of his employment, and that City's agreement to defend and indemnify him does not constitute an agreement to pay any punitive damages awarded against him. In that regard, Domer acknowledges and agrees that pursuant to Government Code section 825(b), City may not make a determination whether or not to indemnify an employee for an award of punitive damages until such time as the award is made.

SECTION 14: Other Terms and Conditions of Employment

City may fix other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Domer, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement or applicable law.

SECTION 15: Notices

Notice pursuant to this Agreement shall be given by depositing written notification in the custody of the United States Postal Service, postage prepaid, addressed as follows:

(1) City:

City of Fullerton

c/o City Clerk
303 W. Commonwealth Ave
Fullerton, CA 92832

(2) Domer: on file

Alternatively, notice required pursuant to this Agreement may be personally served in the same manner as is applicable in civil judicial practice. Notice shall be deemed given as of the date of personal service or five days after the date of mailing.

SECTION 16: General Provisions

- A. Integration: This Agreement sets forth the final, complete and exclusive agreement between City and Domer relating to the employment of Domer by City. Any prior discussions or representations by or between the parties are merged into this Agreement or are otherwise rendered null and void. The Parties by mutual written agreement may amend any provision of this Agreement. Such amendments shall be incorporated and made a part of this Agreement. The foregoing notwithstanding, Domer acknowledges that, except as expressly provided in this Agreement his employment is subject to City's generally applicable rules and policies pertaining to employment matters, such as those addressing equal employment opportunity, sexual harassment and violence in the workplace, as they currently or may in the future exist, and his employment is, and will continue to be, at the will of the City Council.
- B. Binding Effect: This Agreement shall be binding on the City and Domer as well as their heirs, assigns, executors, personal representatives and successors in interest.
- C. Choice of Law: This Agreement shall be interpreted and construed pursuant to and in accordance with the laws of the State of California and all applicable City Ordinances, Policies and Resolutions.
- D. Severability: If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect. If any provision is held invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.
- E. Conflict with Municipal Code. The City personnel ordinances, resolutions, rules and policies shall apply to Domer in the same manner as applied to other management employees, provided, however, in the event of a conflict between the provisions of this Agreement and the Municipal Code, the City Municipal Code shall prevail over this Agreement.
- F. Domer's Independent Review: Domer acknowledges that he has had the opportunity and has conducted an independent review of the financial and legal effects of this Agreement. Domer acknowledges that he has made an independent judgment upon the financial and legal effects of this Agreement and has not relied upon any representation of City, its officers, agents or employees other than those expressly set forth in this Agreement. Domer acknowledges that he has been advised to obtain, and has availed himself of, legal advice with respect to the terms and provisions of this Agreement.

G. The prior employment agreement entered into between the City and Domer, including any amendments and revisions thereto, is amended in its entirety and restated in this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates reflected below each signature.

CITY OF FULLERTON

KENNETH A. DOMER

~~Jesus J. Silva~~ Jennifer Fitzgerald, Mayor

Kenneth A. Domer

Dated: _____

Dated: _____

Approved as to Form:

Richard D. Jones, City Attorney

Dated: _____

Attest:

Lucinda Williams, City Clerk

Dated: _____