

CITY MANAGER EMPLOYMENT AGREEMENT

1. Employment:

This City Manager Employment Agreement (Agreement) is entered into by and between the CITY OF FAIRFIELD (City) and DAVID GASSAWAY (Manager) (collectively "Parties"). Under this Agreement, the City offers, and Manager accepts, employment as City Manager of the City.

2. Duties:

Manager shall perform those duties and have those responsibilities that are commonly assigned to a city manager of a city in California, and as may be further set forth in the City's Charter or Municipal Code. Manager shall perform such other legally permissible and proper duties and functions consistent with the office of City Manager, as the City Council shall from time to time assign.

3. Devotion to City Business:

Manager's position is full-time. Manager shall not engage in any business, educational, professional, charitable, or other activities that would conflict or materially interfere with performance of his/her City Manager duties, except as may be specifically authorized by the City Council.

4. Term:

Manager's employment will commence December 30, 2022, and shall continue until December 30, 2027, or the date of earlier termination in accordance with provisions in this Agreement. On June 30, 2027, and on each succeeding June 30th while this Agreement is in effect, this Agreement shall be automatically extended for one (1) additional year unless prior to that date the City Council notifies Manager of its intent not to extend the Agreement for one additional year. City's election not to extend this Agreement shall not entitle Manager to Severance pursuant to Section 6 of this Agreement.

5. City Council Commitments:

A. Except for the purpose of inquiry, the City Council and its members shall deal with all subordinate City employees, officers, contractors, and consultants solely through the Manager or the Manager's designee, and neither the City Council nor any member thereof shall give direction to any subordinate of the Manager, either publicly or privately.

B. No member of the City Council will order the appointment or removal of any person to any office or employment under the supervision and control of the Manager.

C. Neither the City Council nor any of its members shall interfere with the execution of the powers and duties of the Manager, as specified in the Municipal Code, this Agreement, or any other lawfully adopted and authorized document.

D. At the Manager's sole discretion, the City Council shall participate in an annual strategic planning meeting that utilizes a professional facilitator from outside the City organization. The City shall pay the cost of the professional facilitator in an amount not to exceed \$10,000, unless a greater amount is agreed to by the Parties. The strategic planning meeting shall be at a time and place mutually agreed to by the Parties.

6. Termination of Employment and this Agreement; General Release; Severance:

A. The City may terminate the Manager at any time by following the process defined in Chapter 2, Article II, Section 2.7 ("Section 2.7") of the Fairfield Municipal Code. The resolution required under Section 2.7 shall state if the termination is with or without cause. If City terminates Manager without Cause, as determined by the affirmative votes of a majority of the members of the City Council at a Regular Meeting of the City Council, and if Manager signs, delivers to the City Council, and does not revoke, the General Release Agreement ("Release Agreement") in the form attached hereto as Exhibit A, City shall pay Manager a lump sum benefit equal to six (6) months of his/her then Base Salary, and shall provide six (6) months of health (medical, dental, and vision) benefits continuing

under the benefit plans in which Manager and his/her dependents are then enrolled (the cash payment and continuing benefits, collectively "Severance").

B. If City terminates this Agreement (thereby terminating Manager's employment) with Cause, as determined by the affirmative votes of a majority of the members of the City Council at a Regular Meeting of the City Council, Manager shall not be entitled to any additional compensation or payment, including Severance, but shall be entitled only to accrued Base Salary and vacation pay, and any other accrued and unused benefit allowances according to their terms ("Accrued Salary and Benefits"). As used in this Agreement, Cause shall only mean any of the following:

1. Conviction of, or plea of guilty or nolo contendere to, any felony crime or misdemeanor crime of moral turpitude;
2. Proven failure of the Manager to observe or perform any of his duties and obligations, if that failure continues for a period of thirty (30) business days from the date of his receipt of notice from the City Council specifying the acts or omissions deemed to amount to that failure;
3. Conviction of any crime involving an "abuse of office or position," as that term is defined in Government Code Section 53243.4;
4. 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
5. Any grossly negligent action or inaction by 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.
6. Conviction of an infraction or traffic offense, entry of a civil judgment, or any administrative finding against Manager shall not constitute "Cause"

C. In no event may Manager be terminated within ninety (90) days before or after any municipal election for the selection or recall of one or more of the members of the City Council.

D. If, during the Term Manager dies, Manager's estate shall receive Accrued Salary and Benefits, but shall not be entitled to any additional compensation or payment, including Severance.

E. In the event Manager is permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, or mental incapacity for a period of three consecutive months beyond any provided sick leave, the City may terminate Manager's employment and this Agreement. Manager is entitled to receive any disability benefits provided to Series 100 employees as eligible.

F. Manager may resign from his employment at any time, upon giving forty-five (45) days written notice to the City Council.

7. Compensation and Annual Evaluation:

A. Manager's initial annual Base Salary shall be Two Hundred Twenty-Five Thousand Dollars and zero cents. (\$285,000.00). Said amount shall be payable in monthly or bi-weekly installments at the same time and in the same manner as other employees of the City are paid. Increases in Manager's Base Salary may be effective at any time in the sole discretion of the City Council.

B. City, by the City Council, and Manager may set mutually-agreed-upon objectives for each year under this Agreement. The City Council shall evaluate Manager's performance at least once a year during the months of November or December ("Annual Evaluation"). At the discretion of the Manager, the Parties agree to use a professional facilitator to assist in the conduct of the annual performance evaluation. The City shall pay the cost of the professional facilitator in an amount not to exceed \$10,000, or greater by mutual agreement, and the Manager shall procure the professional facilitator. Following the completion of the Annual Evaluation, the City Council may, in its sole discretion, grant Manager a Performance Bonus in any amount up to 5% of Manager's Annual Base Salary, as described in Section 7.A herein.

C. Whenever a cost of living adjustment or other non-merit based salary increase is provided to other Series 100 Executive Management employees, the City shall grant a similar cost of living adjustment to the City Manager's Base Salary.

D. Manager's Base Salary increases approved by the City Council from time to time pursuant to this Agreement shall not require an amendment to this Agreement to be effective. Such salary increase shall be set forth in a salary resolution approved by the City Council.

E. If the City reduces the Base Salary or any other financial benefit of the Manager in a percentage that is greater than the average reduction of all Series 100 Executive Managers, such action shall constitute a termination of this Agreement without Cause under Section 6.A. of this Agreement, and Manager shall be entitled to Severance.

8. Deferred Compensation:

As part of Manager's annual compensation, City agrees to provide Manager the same deferred compensation and fringe benefits provided to other Series 100 Executive Management employees.

9. Pension:

City agrees to continue enrollment of Manager as a member of the California Public Employees Retirement System (PERS) in the PERS plan selected by City in its sole discretion as a Classic Member as that term is defined by the City's agreement with PERS.

10. Health and Medical Benefits Insurance:

City shall provide Manager with the same health plans (medical, dental, and vision) which are provided to other Series 100 Executive Management employees, and shall pay that portion of the employee and dependent rate or premium as is determined by the City Council for all Series 100 Executive Management employees.

11. Life Insurance:

The City agrees to continue providing Manager term life insurance policy in the face amount provided to Manager in his role as Assistant City Manager by the standard carrier selected by the City. Manager shall designate the beneficiaries of the policy. Manager shall also be entitled to participate in any group life or disability insurance programs approved by the City Council for all employees.

12. Physical Examination:

Each calendar year, City may request Manager undertake an executive physical examination, performed by a qualified physician or medical facility of Manager's choice, with all expenses paid for by City.

13. Car Allowance:

Manager's duties require him to be available and to respond to the demands of City business at all times and outside of regular business hours, including weekends. City shall pay Manager Five Hundred Dollars (\$500.00) monthly in compensation for the use and maintenance of his personal vehicle on City business.

14. Equipment:

A. City shall provide Manager a cellular telephone for his use in conducting City business; provided, however, that it is expressly understood that the equipment may be subject to incidental personal use by Manager so long as it does not interfere with the equipment's primary business use.

B. City shall provide Manager a laptop computer for his use in conducting City business; provided, however, that it is expressly understood that the equipment may be subject to incidental personal use by Manager so long as it does not interfere with the equipment's primary business use.

15. Business and Professional Expenses and Development:

A. City recognizes that Manager may incur expenses of a non-personal, job-related nature that are reasonably necessary to Manager's service to City. City agrees to either pay such expenses in advance or to reimburse the expenses, so long as the expenses are incurred and submitted according to City's normal expense reimbursement procedures 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 pay the professional dues and subscriptions on behalf of Manager which are necessary for Manager's continuation or full participation in international, national, regional, state, or local associations and organizations necessary and desirable for Manager's continued professional participation, growth and advancement, or for the good of the City, in an amount up to Five Thousand Dollars (\$5,000.00) per year.

C. City agrees to pay Manager's travel and subsistence expenses for official travel, meetings, and occasions reasonably necessary to continue Manager's professional development, and for Manager's reasonable participation in necessary official and other functions for the City; including, but not limited to, national, regional, state, and local conferences, governmental groups and committees on which Manager serves as a member, and business related trips. Notwithstanding the above, the number of conferences or meetings City will pay for each year, and attendance at out-of-state conferences and meetings, shall be at the discretion of the City Council as set forth in the City's budget.

D. Annually, Manager shall participate in continuing education that includes but is not limited to organizational management. Such continuing education should come from courses offered from groups such as, but not limited to: the International City Management Association ("ICMA"), The Harvard Kennedy School Senior Executives in Local Government, and other accredited educational institutions. Training and development costs shall be paid for by the City.

16. Vacation and Sick Leave:

Manager shall accrue vacation, personal, and sick leave at the rate provided to him under his role as Assistant City Manager and provide Manager all vacation leave benefits provided to Series 100 Executive Management employees.

17. Abuse of Office or Position:

If Manager is convicted of a crime involving an abuse of his office or position, all of the following shall apply: (a) if Manager is provided with administrative leave pay pending an investigation, Manager shall be required to fully reimburse City such amounts paid; (b) if City pays for the criminal legal defense of Manager (which would be in its sole discretion, as it is generally not obligated to pay for a criminal defense), Manager shall be required to fully reimburse City such amounts paid; and (c) if this Agreement is terminated, any Severance Pay and Severance Benefits related to the termination that Manager may receive from City shall be fully reimbursed to City or shall be void if not yet paid to Manager. For purposes of this Section, abuse of office or position means either: (d) an abuse of public authority, including waste, fraud, and violation of the law under color of authority; or (e) a crime against public justice.

18. Enforcement of this Agreement:

The prevailing party in any action brought to enforce this Agreement or to resolve any dispute or controversy arising under its terms and conditions, shall be entitled to payment of his/her/its reasonable attorneys' fees and costs.

19. Communications Upon Manager's Separation:

In the event the City terminates the Manager without cause, or if Manager resigns and terminates this Agreement, the City and the Manager agree that no member of the City Council, the City Management staff, nor the Manager, shall make any written, oral or electronic statement to any member of the public, the press, or any city employee concerning the Manager's termination except in the form of a joint press release or statement, the content of which is mutually agreeable to the City and the Manager, or as otherwise allowed by law. The joint press release or statement shall not contain any text

or information that is disparaging to either party. Either party may verbally repeat the substance of the joint press release or statement in response to any inquiry. Information which is subject to disclosure under the Public Records Act may be repeated by either Party.

20. Indemnification:

Consistent with the California Government Code, City shall defend, hold harmless, and indemnify Manager using legal counsel of City's choosing, against expense or legal liability for acts or omissions by Manager occurring within the course and scope of Manager's employment under this Agreement. Legal representation, provided by City for City Manager, shall extend until a final determination of the issues including any and all losses, damages, judgments, interest, settlements, fines, court costs, and the reasonable costs and expenses of legal proceedings, including appeals, and including attorneys' fees, and expert witness fees and all other trial and appellate costs, and other liabilities incurred, imposed upon, or suffered by Manager in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened. In the event there is a conflict of interest between City and Manager such that independent counsel is required for Manager, Manager may engage his/her own legal counsel, in which event City shall indemnify Manager, including direct payment of all such reasonable costs related thereto.

21. Notices:

Any notices to be given hereunder by either party to the other in writing may be effected either by personal delivery, mail, or email. Mailed notices shall be addressed to the parties as set forth below, but each party may change his/her/its address by written notice given in accordance with this Section. Notices delivered personally or by email will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated and received as of three (3) calendar days following the date of mailing.

CITY: *City of Fairfield*
 Attention: Mayor
 1000 Webster Street
 Fairfield, CA 94533

MANAGER: *David Gassaway*
 [Address listed on file with Human Resources]

22. Conflict With City Charter or Municipal Code:

The City personnel ordinances, resolutions, rules and policies shall apply to Manager 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 California Government Code or the Fairfield Municipal Code, the California Government Code or the Municipal Code shall prevail over this Agreement. Notwithstanding the foregoing, any change made to the Municipal Code, or if a City Charter is adopted that fundamentally changes the City's form of government from the Council/Manager Form of Government, as that term is defined in California Government Code section 34851 to 34859, to any other form of local government as allowed under the laws and rules established by the State of California, shall constitute termination of this Agreement and Manager shall be subject to severance under Section 6.A.

23. Entire Agreement:

This Agreement represents the entire agreement between the parties and supersedes any and all other agreements, either oral or in writing, between the parties with respect to the employment of Manager by City, and contains all of the covenants and agreements between the parties with respect to that employment. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by either party, or by anyone acting on behalf of either party, which are not embodied herein, and that no other employment

agreement, statement, or promise not contained in this Agreement shall be valid or binding upon either party.

24. Modifications:

Any modifications to this Agreement shall be effective only if in writing and signed by both of the parties hereto.

25. Effect of Waiver:

The failure of either party to insist upon strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

26. Partial Invalidity:

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

(more)

27. Governing Law:

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

This Agreement is entered into this _____ day of December, 2022.

CITY OF FAIRFIELD

By: _____

Mayor



Manager

Attest:

Approved as to Form:

City Clerk

City Attorney

GENERAL RELEASE AGREEMENT

This General Release Agreement ("Release Agreement") is entered into by and between _____ ("Manager") and CITY OF _____ ("City"), in light of the following facts:

- A. Manager's employment with City concluded on _____.
 - B. Certain disputes have arisen between City and Manager.
 - C. City and Manager each deny any liability whatsoever to the other.
 - D. City and Manager wish to fully and finally resolve any and all disputes they may have with each other.
 - E. Manager is hereby informed that he/she has twenty-one (21) days from receipt of this Agreement to consider it. City hereby advises Manager to consult with his/her legal counsel before signing this Agreement.
 - F. Manager acknowledges that for a period of seven (7) days following the signing of this Agreement ("Revocation Period"), he/she may revoke the Agreement. This Agreement shall not become effective or enforceable until the day the Revocation Period has expired.
 - G. Manager acknowledges that the Salary Payment referenced in paragraph 1 of this Agreement represents all compensation, including salary, accrued benefit balances and reimbursed expenses, due and payable to him/her through the date of employment termination. Manager also acknowledges that City has made this Salary Payment without regard to whether he/she signs this Agreement. The Salary Payment does not constitute consideration for this Agreement.
1. Receipt of Salary Payment. Manager hereby acknowledges receipt of a check or checks for all compensation owing to him/her, including salary, accrued benefit balances and reimbursed expenses ("Salary Payment") from City.
 2. Severance. Within five (5) days following Manager's signing, delivering to the City, and not revoking this Agreement, City shall pay Manager the gross amount provided for in Section 6.A. of the attached Employment Agreement, less applicable deductions, and shall provide the months of medical benefits as provided in that same Section 6.A. Manager acknowledges that the Severance is in excess of all amounts due and owing him as a result of his employment by City.

3. General Release. In consideration of the Severance to be paid and provided to Manager, and other good and valuable consideration, Manager hereby releases and discharges City and its past and present City Council Members, employees, representatives and agents, from all rights, claims, causes of action, and damages, both known and unknown, in law or in equity, concerning and/or arising out of his/her employment by City which he/she now has, or ever had, including but not limited to any rights, claims, causes of action or damages arising under Title VII of the Civil Rights Act of 1964, the Vocational Rehabilitation Act of 1973, the Employee Retirement Income Security Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Older Workers Benefits Protection Act, the Family and Medical Leave Act of 1993, the Domestic Partners Act of 2003, the California Labor Code, the Private Attorneys General Act of 2004, the California Moore-Brown-Roberti Family Rights Act, the California Unruh Civil Rights Act, the California Fair Employment and Housing Act, any other federal, state, or local employment practice legislation, or any federal or state common law, including wrongful discharge, breach of express or implied contract, or breach of public policy.

Manager hereby waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of California. Manager understands and acknowledges the significance and consequences of this specific waiver of Section 1542. Section 1542 of the Civil Code of California states as follows:

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of City and its past and present City Council Members, employees, representatives and agents, Manager expressly acknowledges that this General Release is intended to include in its effect, without limitation, all claims which he/she does not know or suspect to exist in his/her favor.

Manager further acknowledges that he/she has read this General Release and that he/she understands that this is a general release, and that he/she intends to be legally bound by the same.

4. Fees and Costs. Manager and City agree that in the event of litigation relating to this Release Agreement, the prevailing party shall be entitled to recover his/her/its reasonable attorneys' fees and costs.

Dated _____, 20__

CITY OF _____

By: _____

Dated: _____, 20__

MANAGER

APPROVED AS TO FORM:

By: _____

Date: _____

ATTEST:

By: _____

City Clerk

Date: _____