

**EMPLOYMENT AGREEMENT
CITY MANAGER**

THIS AGREEMENT is entered into as of the 24th day of August, 2015 (“Effective Date”), by and between the City of Redwood City, a Charter City, and Municipal Corporation of the State of California (“City”) and Melissa Stevenson Diaz (“Employee”).

RECITALS

WHEREAS, the City is desirous of employing Employee as the City Manager of the City of Redwood City and Employee is desirous of serving as the City Manager of City and performing the services required thereof under the terms and conditions set forth herein.

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

1. DUTIES.

- A. City hereby appoints Employee as City Manager and Employee hereby accepts the appointment and employment for an indefinite term commencing October 12, 2015. Employee shall be employed as City Manager of the City and shall perform those duties of City Manager as specified in City’s Charter, Municipal Code and regulations or statutes as well as such other lawful duties assigned to Employee by the City Council.
- B. The City Council desires that Employee remain in the exclusive employ of the City and to neither accept other employment nor to become employed by any other employer. The term “employ” shall not be construed to include occasional teaching or writing, or as may be agreed to by the City Council in writing.
- C. Employee shall not engage in any activity which is or may become a prohibited conflict of interest, prohibited contract, or which may create an incompatibility of office as defined under California law. Employee shall not, during the term of this Agreement, individually, as a partner, joint venturer, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of the City of Redwood City except for stock ownership in any company whose capital stock is publicly held and regularly traded, without prior approval of the City. For and during the term of this Agreement, Employee further agrees, except for a personal residence or residential property acquired or held for future use as a personal residence, not to invest in any other real estate property improvements within the corporate limits of the City of Redwood City without the prior consent of the City Council.

2. TERM.

The term of this Agreement shall be from the Effective Date and shall remain in effect until terminated by either party in accordance with this Agreement.

3. COMPENSATION & BENEFITS

- A. Employee shall be paid two hundred and forty-eight thousand dollars (\$248,000) per year, payable in installments at the same time other City executive management employees are paid. Hereafter, the City Council may adjust Employee's salary by resolution.
- B. The City Council shall conduct an annual evaluation each year and may also conduct quarterly evaluations. The evaluation process shall address goals and objectives set for the past twelve-month period and establish goals and objectives for the upcoming 12-month period. The City Council shall provide Employee with its written comments, if any, during its annual evaluation of Employee, and may discuss its evaluation with Employee. At the time of the evaluation, the City Council will consider performance-based salary adjustments. The City Council shall also provide an informal mid-year performance review of the Employee after her first six months of employment
- C. Employee shall be entitled to the benefits specified in City of Redwood City Executive Management Summary of Benefits (Dated January 2014), as it may be amended from time to time, and which is attached hereto as **Exhibit A** and incorporated herein by reference. In addition, Employee shall receive an initial vacation bank of eighty (80) hours, and an initial sick leave bank of forty (40) hours. Vacation accrual will be at the rate granted to executive management employees with twenty-four (24) years of service. Vacation shall not be accumulated in excess of two (2) years of accrued vacation leave computed to the 31st of December, except upon written authorization of the City Council.
- D. The City Council agrees to budget for and pay the professional dues, subscriptions, courses, institutes, seminars and travel expenses of Employee for participation in professional activities required by law or authorized by City Council. This includes the International City/County Management Association (ICMA), League of California Cities, and Urban Land Institute. To the extent provided for in the City's annual budget, the City Council encourages Employee to attain positions of leadership in national, state, regional and local associations and organizations relevant to Employee's profession. Subject to budgetary limitations imposed by the City Council, the City Council agrees to pay for travel and subsistence expenses necessary to discharge Employee's official duties for such associations and organizations.
- E. Subject to the Brown Act (Cal. Gov't Code Section 54950, and following), Employee and City agree that no later than Employee's first year anniversary of employment with City, they will discuss potential relocation and housing assistance so that Employee may move to Redwood City.

4. RESIGNATION & TERMINATION

- A. At any time, Employee may resign from employment as City Manager upon thirty (30) days written notice to the City Council.

- B. Subject to Section 21 of the City Charter, Employee serves at the pleasure of the City Council and nothing herein shall prevent, limit, or otherwise interfere with the right of City to terminate the services of Employee with or without cause with thirty (30) days written notice to Employee.
- C. If Employee is terminated by the City Council while still willing and able to perform the duties of City Manager, the City agrees to pay Employee nine (9) months of Severance Pay, as limited by California Government Code Sections 53260 and 53261.
- D. For the purpose of this Agreement, Severance Pay shall include monthly salary and 401(a) contributions. Severance Pay shall be paid in a lump sum payment to Employee. In addition, Severance Pay shall include continued Health Benefits. Health Benefits means health, dental, and vision benefits. Health Benefits shall continue a maximum of nine (9) months or until the employee finds other employment, whichever occurs first. Health Benefits shall be provided Employee to the same extent and at the same cost to Employee in effect on the Employee's termination date from City employment. For the purposes of this Agreement, contemporaneously with the delivery of the Severance Pay set forth herein, Employee agrees to execute and deliver to City a release agreement approved by City and approved as to form by the City Attorney waiving and releasing City and its officials and employees from any and all claims that Employee may have against City and its officials and employees acknowledging that any such payments under this provision release City from any further obligations under this agreement.
- E. Alternatively and in lieu of a lump sum Severance Pay as described in Section 4D, Employee may elect in writing to receive nine (9) months' notice of the City Council's intent to terminate Employee's employment relationship with the City. In this case, City shall retain Employee in an employment relationship with City in a capacity to be mutually agreed upon for the entire period of nine months. During the nine (9) month period of employment, Employee shall receive the same salary and benefits as in Section 4D of this Agreement payable in installments at the same time as other City executive management employees are paid. At the time the parties agree upon the capacity in which Employee will be employed, the parties may discuss and agree upon whether other benefits may be continued and/or are otherwise required by law and/or to the extent such benefits are compliant with California Government Code Section 53260 and 53261. Prior to commencing employment with City in a newly defined capacity as set forth herein, Employee shall execute and deliver to City a release agreement approved by City and approved as to form by the City Attorney waiving and releasing City and City officials and employees from any and all claims that Employee may have against City and its officers and employees and acknowledging that payments under this provision release City from any further obligations under this Agreement.
- F. This Agreement does not provide for a specific term of service and limits Severance Pay to nine (9) months. In an abundance of caution, in the event a term is inferred by a Court or is later specified and Severance Pay or other cash settlement is proposed to exceed the nine (9) month limit agreed herein, this Agreement provides as required by the California Government Code Sections 53260 and 53261, the following: If for any

reason this Agreement is terminated and the City provides a cash settlement, the maximum cash settlement that Employee may receive is an amount equal to the monthly salary of employee multiplied by the number of months left on the unexpired term and that even if the unexpired term is greater than eighteen (18) months, the maximum cash settlement shall be no greater than an amount equal to the monthly salary of the Employee multiplied by eighteen (18). Further, such cash settlement shall not include any noncash items except health benefits which may be provided only to the extent as set forth in California Government Code Section 53261, or as otherwise required by law.

- G. Notwithstanding the foregoing, the City shall not be obligated to pay, and shall not pay, any amounts or continue any benefits, other than as required by law, if Employee is terminated because of a crime of moral turpitude or a violation of statute or law constituting misconduct in office or abuse of office or position, or if the Council determines that Employee has engaged in conduct that would harm the reputation of City. Further, City shall not be obligated to pay, and shall not pay, any amounts or continue any benefits, other than those required by law, in the event Employee voluntarily resigns without affirmative action by City to terminate Employee's employment or to initiate termination proceedings. However, the City Council's request that Employee resign shall result in an obligation to pay Employee Severance Pay.
- H. In the event the City Council at any time during the course of this Agreement reduces the salary or other financial benefits of all other management employees and, at the same time, reduces the salary or other financial benefits of Employee by a percentage greater than the average percentage reduction applicable to the other management employees, or in the event the City Council refuses, following written notice, to comply with any material provision herein benefiting Employee, Employee may, at her option, be deemed "terminated" at the date of such reduction or such refusal to comply, and shall be entitled to Severance Pay.
- I. Consideration of Employee's termination by the City Council may not occur within ninety (90) days after a General Municipal Election or Special Election wherein a new member or members are elected to the City Council.
- J. The City Council's decision to terminate Employee's employment shall be made in closed session and disclosed according to law.

5. INDEMNIFICATION

- A. City shall defend, save harmless, and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as City Manager. City may compromise and settle any such claim or suit and the amount of any settlement or judgment rendered thereon. Said indemnification shall extend beyond termination of employment, and the expiration of this Agreement, to provide full and complete protection to Employee as described herein, for any acts undertaken or committed in Employee's capacity as City Manager, regardless of whether the notice

of filing of a lawsuit for such tort, claim, demand, or other legal action occurs during or following Employee's employment with City as City Manager. Notwithstanding the foregoing, such indemnification shall be limited as set forth below.

- B. For the purposes of this Agreement, "abuse of office or position" shall be defined as in California Government Code Section 53243.4.
- C. Notwithstanding any other provision in this Agreement and in accordance with California Government Code Sections 3511.1, 3511.2, 53243, 53243.1 and 53243.2, the following limitations apply to City's obligations to Employee:
 - i) In the event Employee is placed on paid leave pending an investigation, Employee shall reimburse such pay to City if she is subsequently convicted of a crime that constitutes "abuse of office or position."
 - ii) In the event City pays for Employee's legal criminal defense, she shall fully reimburse such funds to the City if she is subsequently convicted of a crime that constitutes "abuse of office or position."
 - iii) If this contract is terminated, any cash settlement related to the termination that Employee may receive from City must be full reimbursed to City if she is subsequently convicted of a crime that constitutes "abuse of office or position."

6. NOTICES.

Any notices required by this Agreement shall be in writing and either given in person or by first class mail with postage prepaid and addressed as follows:

TO CITY: Mayor
City of Redwood City
1017 Middlefield Rd.
Redwood City, CA 94063

TO EMPLOYEE: Melissa Stevenson Diaz
[City to use last address in personnel file]

7. ATTORNEY'S FEES.

In the event of any mediation, arbitration or litigation to enforce any of the provisions of this Agreement, each party shall bear its own attorney's fees and costs.

8. ENTIRE AGREEMENT.

This Agreement is the final expression of the complete agreement of the parties with respect to the matters specified herein and supersedes all prior oral or written understandings. Except as prescribed herein, this Agreement cannot be modified except by written mutual agreement signed by the parties.

9. ASSIGNMENT.

This Agreement is not assignable by either City or Employee.

10. SEVERABILITY.

In the event that any provision of this Agreement is finally held or determined to be illegal or void by a court having jurisdiction over the parties, the remainder of the Agreement shall remain in full force and effect unless the parts found to be void are wholly inseparable from the remaining portion of the Agreement.

11. MISCELLANEOUS.

Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment or exhibits hereto.

The signatures of the parties below indicate that each has read and understood the Agreement and will abide by the terms stated herein.

This Agreement has been executed by the parties on the dates noted below.

EMPLOYEE:


MELISSA STEVENSON DIAZ

Dated: 8/24/15

CITY OF REDWOOD CITY:


JEFFREY GEE, MAYOR

Dated: 9/1/15

ATTEST:


SILIVA VONDERLINDEN, CITY CLERK

Dated: 09/01/15

APPROVED AS TO FORM:


PAMELA THOMPSON, CITY ATTORNEY

Dated: 9/1/15