

ATTACHMENT A

RESOLUTION NO. 2018-63

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, APPOINTING (NEW CITY MANAGER'S NAME) CITY MANAGER EFFECTIVE SEPTEMBER 4, 2018 AND AUTHORIZING THE MAYOR TO EXECUTE THE EMPLOYMENT AGREEMENT BETWEEN THE CITY OF NEWPORT BEACH AND (NEW CITY MANAGER'S NAME)

WHEREAS, following the announcement of the retirement of City Manager Dave Kiff, the City Council conducted an open, transparent, and competitive national recruitment to fill the position;

WHEREAS, at the conclusion of the rigorous recruitment process, the City Council selected (new City Manager's name) to be the new City manager;

WHEREAS, the City of Newport Beach ("City") desires to enter into an Employment Agreement with (new City Manager's name), which is attached hereto as Exhibit "A" and incorporated herein by this reference;

WHEREAS, under the Employment Agreement, (new City Manager's name's) base annual salary shall be \$265,000 (Two Hundred Sixty-Five Thousand Dollars); and (new City Manager's name) shall receive other benefits including, but not limited to, cafeteria allowances, paid leaves, disability and life insurance, which are tied to the terms of the Key and Management Compensation Plan; and

WHEREAS, by adopting this resolution, the City Council intends to approve and authorize the Mayor to execute the attached Employment Agreement with (new City Manager's name).

NOW, THEREFORE, the City Council of the City of Newport Beach resolves as follows:

Section 1: The City Council hereby appoints (new City Manager's name) as the City Manager of the City of Newport Beach pursuant to City Charter Section 500. The effective date of the appointment of (new City Manager's name) as the City Manager shall be September 4, 2018. The City Council makes this appointment by a majority vote, and believes that (new City Manager's name) is the best qualified on the basis of his or her executive and administrative qualifications, with special reference to his or her experience in, and his or her knowledge of, accepted practice in respect to the duties of the office as set forth in the City Charter. The City Manager shall serve at the pleasure of the City Council.

Section 2: The City Council does hereby authorize the Mayor to execute the attached Employment Agreement between the City and (new City Manager's name).

Section 3: The recitals provided in this resolution are true and correct and are incorporated into the operative part of this resolution.

Section 4: If any section, subsection, sentence, clause or phrase of this resolution is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this resolution. The City Council hereby declares that it would have passed this resolution, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 5: The City Council finds the appointment of the City Manager, the execution of the Employment Agreement, and the adoption of this resolution is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Section 6: This resolution shall take effect immediately upon its adoption by the City Council, and the City Clerk shall certify the vote adopting the resolution.

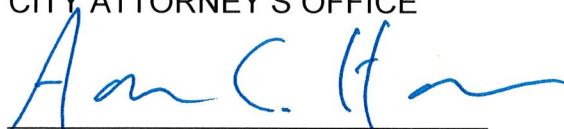
ADOPTED this 14th day of August, 2018.

Marshall "Duffy" Duffield
Mayor

ATTEST:

Leilani I. Brown
City Clerk

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



Aaron C. Harp
City Attorney

CITY OF NEWPORT BEACH

CITY MANAGER EMPLOYMENT AGREEMENT

This CITY MANAGER EMPLOYMENT AGREEMENT ("Agreement") is made effective as of September 4, 2018 ("Effective Date") and is entered into by and between the CITY OF NEWPORT BEACH, a California municipal corporation and Charter City ("Employer" or "City") and _____ ("Employee") an individual (sometimes collectively referred to herein as "the Parties").

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. Pursuant to Section 500 of the Charter of the City, the City Manager is to be appointed by the City Council. The Charter of the City further provides that "[i]n the selection of a City Manager the City Council shall screen all qualified applicants and other qualified persons known by the Council to be available. It shall appoint by a majority vote, the person that it believes to be best qualified on the basis of his or her executive and administrative qualifications, with special reference to his or her experience in, and his or her knowledge of, accepted practice in respect to the duties of the office as set forth in this Charter."
- C. Following an open recruitment and an extensive interviewing and screening process of numerous candidates, the City Council believes Employee to be the best qualified, on the basis of Employee's experience, to serve as the City's City Manager and to perform the duties of the City Manager set forth in Section 504 of the Charter of the City and section 2.08.040 of the City's Municipal Code ("NBMC").
- D. The City desires to employ Employee as City Manager and to enter into an Agreement with Employee upon the terms and conditions in this Agreement.

- E. Employee is willing to accept such employment on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, it is mutually agreed by and between the undersigned Parties as follows:

SECTION 1: Term and Notice of Non-Renewal

This Agreement shall become effective September 4, 2018 ("Effective Date"). Subject to the City's right to terminate Employee's employment at any time, as provided for in this Agreement, the term of this Agreement is two (2) years from the Effective Date, and shall automatically be extended for one additional twelve (12) month period on each annual anniversary of the Effective Date of the Agreement, unless City notifies Employee of its intent not to extend the Agreement at least six (6) months prior to expiration of the original Term or any subsequent automatic extension of the Term of this Agreement. City's election not to extend this Agreement shall not entitle Employee to Severance pursuant to Section 7 of this Agreement.

SECTION 2: Duties and Authority

Employer agrees to employ Employee as City Manager to exercise the powers and authority and to perform the functions and duties specified in the Newport Beach City Charter, the NBMC and all relevant resolutions, rules, regulations, procedures, applicable job description(s) and state codes, as they currently or may in the future exist, specifically including but not limited to those set forth in the "City Manager" job description attached hereto as Exhibit A and incorporated herein by this reference. Employee shall exercise such power and authority and perform such other functions and duties, not inconsistent with this Agreement, as Employer, by its City Council, may legally assign.

SECTION 3: Compensation and Performance Evaluation.

- A. Employer agrees to pay Employee at the rate of an annual base salary of Two Hundred and Sixty-Five Thousand Dollars (\$265,000.00) ("Base Salary"). The Base Salary shall be subject to deduction 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 Employer's normal paydays for the City Manager, City Attorney, City Clerk, and any Department Directors not covered by collective bargaining agreements ("Executive Management Employees"). Employer shall also deduct sums Employee is obligated to pay because of participation in plans or programs described in Section 4 of this Agreement. The annual Base Salary of Employee is within the approved salary range adopted by resolution of the City Council.
- B. Employer, by the City Council, and Employee may set mutually agreed upon objectives for each year under this Agreement. Employer, by the City Council, may elect to conduct an evaluation of Employee's performance at any time or times during the period in which this Agreement remains in effect.
- C. Employee's compensation as discussed under this Section is not tied to the compensation of any other City employee or group of City employees, except as expressly provided in this Agreement.

SECTION 4: Employee Benefits

- A. Flex Leave. Upon the Effective Date of this Agreement, Employee will be provided a one-time benefit of eighty (80) hours of Flex Leave. Thereafter, Employee shall accumulate Flex Leave as provided in the City's Key and Management Compensation Plan ("Compensation Plan"), Executive Management category, Years of Continuous Service, less than fifteen (15) years, at the current rate of 8.77 hours per Pay Period. Employee's Maximum accrual for Flex Leave is limited to four hundred (400) hours, and no Flex Leave shall further accrue beyond said

maximum. The right to sell back accumulated Flex Leave shall be consistent with the Compensation Plan.

- B. Administrative Leave. Upon the Effective Date of this Agreement, Employee shall be provided eighty (80) hours of Administrative Leave. Thereafter, Employee shall be entitled to eighty (80) hours of Administrative Leave per calendar year and shall be credited with said leave the first pay period in January of each calendar year. Administrative Leave will not accrue from calendar year to calendar year and must be used each calendar year or no additional entitlement above eighty (80) hours shall arise or occur. Upon separation from employment, Employee shall be entitled to payment of any hours remaining of the eighty (80) entitled hours that were not used in the calendar year. Consistent with the Compensation Plan, there is no right to sell back any accumulated Administrative Leave.
- C. Additional Benefits. Except as expressly provided herein, Employee shall receive the same health insurance and retirement benefits, and be entitled to participate in plans and programs such as short term and long-term disability plans, life insurance plans, and deferred compensation plans, as are available under the Compensation Plan. This Agreement shall be deemed amended as to these benefits, and these benefits only, whenever the City Council adopts a resolution or takes action changing these benefits under the Compensation Plan.
- D. Annual Physical Exam. Employee may undergo an annual physical examination and City shall reimburse Employee for the actual cost of the examination up to a maximum of One Thousand Two Hundred Fifty Dollars (\$1,250).
- E. Automobile Allowance. Employee's duties require Employee to be available and respond to demands of City business at all times and outside of regular business hours, including weekends. Employer shall, therefore, pay to Employee Five Hundred Dollars (\$500) per month as an automobile allowance so that Employee may respond to these demands of City business.

- F. Phone Allowance. Employee shall be entitled to the same phone allowance as provided to any Executive Management Employee.
- G. Attorneys' Fees. Upon the submission of invoices acceptable to the City Attorney, the City shall reimburse Employee for the reasonable, actual legal fees and costs incurred by Employee for legal review of this Agreement, up to a maximum of Four Thousand Dollars (\$4,000).
- H. Deferred Compensation. By October 31, 2018, Employer shall make a deferred compensation contribution on Employee's behalf in the amount of Five Thousand Three Hundred Dollars (\$5,300) ("Deferred Compensation Contribution"). Thereafter, provided Employee is employed by Employer on the anniversary date of this Agreement (i.e. September 4), Employer shall make a Deferred Compensation Contribution on Employee's behalf on or before October 31 of the applicable year.
- I. Amendment of Benefits. Except as expressly provided in this Section, Employee's benefits provided under this Section 4 are not tied to the compensation of any other City employee or group of City employees.
- J. Retirement. Employee is a California Public Employees' Retirement System ("CalPERS") classic member. Accordingly, Employee shall be entitled to participate in the City's Tier 2 "Classic" CalPERS retirement program. Employee shall contribute 13.00% of compensation earnable towards Employee's retirement benefit broken down as follows: 7% of the required member contribution; and 6% as cost sharing in accordance with Government Code section 20516(f).

In the event the City Council adopts a Compensation Plan in which retirement contributions for non-safety members of the Key & Management Group exceeds 13.00%, this Agreement shall be deemed amended and Employee will be subject to the same formula or percentage contribution as it is applied to the non-safety members of the Key & Management Group covered under the Compensation Plan

and for the same duration. In no event shall the Employee's retirement contribution be less than 13.00%. Employee retirement contributions that are in addition to the normal PERS Member Contribution shall be calculated on Base Salary, special pays, and other pays normally reported as "PERSable" compensation, and will be made on a pre-tax basis through payroll deduction, to the extent allowable by the Government Code.

SECTION 5: General Business Expenses

- A. Employer recognizes that Employee may incur expenses of a non-personal, job related nature that are reasonably necessary to Employee's service to Employer. Employer agrees either to pay such expenses in advance or to reimburse the expenses, so long as the expenses are incurred and submitted according to Employer'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 Employer's normal requirements and must be submitted within time limits established by Employer.
- B. Employer agrees to budget and pay for professional dues, membership and subscriptions of Employee necessary for continuation and participation in the International City/County Management Association (ICMA), Cal-ICMA, the California City Manager's Foundation (CCMF), and state and national League of Cities and such other organizations as Employer and Employee may agree from time to time. Employer also agrees to pay the cost of a corporate surety bond as contemplated by section 503 of the City Charter.
- C. Employer 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 Employer and Employee's mutually agreed upon goals, and which are related to Employee's duties or Employer'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 outside of Orange County.

- D. The expenses to be budgeted and paid in the Section 5, 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. Employer will separately budget and pay for membership and participation in community, civic or other organizations or events in which Employer requires Employee to participate.

SECTION 6: At-Will Employment Relationship

- A. Consistent with Article V of the City Charter, Section 500, Employee 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 Employer to terminate this Agreement and the employment of Employee at any time, with or without Cause (as defined below), and with or without notice. Employer shall pay Employee for all services through the Effective Date of termination and Employee shall have no right to any additional compensation or payment, except as provided in Section 7, below.
- B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign from Employee's employment with Employer, subject only to Employee providing forty-five (45) calendar days prior written notice to Employer of the effective date of Employee's resignation. Upon the effective date of resignation, Employee forfeits all compensation and benefits owing for the remainder of the term of this Agreement, as well as any potential "Severance" pay per Section 7 below.

SECTION 7: Severance and Benefit Payoff at Termination, and Agreement of Separation, Severance, and General Release

- A. Termination without Cause. If Employer terminates this Agreement (thereby terminating Employee'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, and if Employee signs, delivers to the City Council, and does not revoke, the Agreement of Separation, Severance, and General Release in the form attached hereto as Exhibit B, then Employer shall pay Employee a lump sum benefit equal to six (6) months of Employee's then applicable Base Salary, and six (6) months of medical coverage as provided under the Compensation Plan and/or EPM as long as Employee is already enrolled and receiving medical coverage through the City medical benefits plan at the time of termination.

In accordance with Government Code Section 53260 (a), in no event shall Employee receive a cash settlement that is greater than the monthly Base Salary of Employee multiplied by the number of months left on the unexpired term of the Agreement.

The lump sum payment described in this Section 7 (A) shall be referred to herein as "Severance".

- B. Termination with Cause. If Employer terminates this Agreement (thereby terminating Employee'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, Employee shall not be entitled to any additional compensation or payment, including Severance. 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 Employee a written Notice of Intent to Terminate, stating the reason or reasons for the proposed termination, and providing a thirty (30) day period for Employee to cure. If, in the City Council's independent judgment, Employee cures the identified reason or reasons for Cause termination,

Employee shall not be terminated therefor. As used in this Agreement, Cause shall only mean any of the following:

1. Conviction of a felony;
 2. Conviction of a misdemeanor arising out of Employee'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 Employee that materially and adversely: (a) impedes or disrupts the operations of Employer or its organizational units; (b) is detrimental to employees or public safety; or (c) violates properly established rules or procedures of Employer.
- C. In no event may Employee be terminated within ninety (90) days after any municipal election for the selection or recall of one or more of the members of the City Council.
- D. If Employee resigns or otherwise terminates this Agreement (thereby terminating Employee's employment), Employee shall not be entitled to any additional compensation or payment, including Severance.
- E. Upon termination (regardless of reason), Employee shall be compensated for all accrued but unused Flex Leave and Administrative Leave.

SECTION 8: Employee's Obligations and Hours of Work

Employee shall devote Employee's full energies, interest, abilities and productive time to the performance of this Agreement and utilize Employee's best efforts to promote Employer's interests. Employee'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). Employee's Base Salary includes compensation for all hours worked and Employee shall be classified as an exempt employee for purposes of overtime and shall not be entitled to any form of compensation for overtime. In recognition of the significant time Employee will need to devote outside normal office hours to business activities of Employer and the exempt, salaried nature of the employment, employee is permitted to exercise a flexible work schedule. However, consistent with this flexibility and Employee's participation in activities out of the office, Employee will generally be expected to keep office hours at City Hall, Monday through Friday during normal business hours.

SECTION 9: Confidentiality and Non-Disparagement

- A. Employee acknowledges that in the course of Employee's employment contemplated herein, Employee 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 Employee that is not public information or would be exempt from public disclosure as confidential, protected, exempt or privileged information. Employee 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. Except as otherwise required by law, in the event the City terminates Employee with or without Cause, the City and Employee agree that no member of the City Council, City management staff, nor the Employee shall make any written, oral, or electronic statement to any member of the public, the press, or any City employee

concerning the Employee's termination except in the form of a joint press release or statement, which is mutually agreeable to City and Employee. 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. Nothing herein shall prohibit any Council Member or Employee from exercising their rights under the First Amendment to the United States Constitution.

- C. The obligations of Employer and Employee under this Section 9 shall survive the termination of this Agreement.

SECTION 10: Outside Activities

Employee shall not engage in any activity, consulting service or enterprise, for compensation or otherwise, which is actually or potentially in conflict with or inimical to, or which materially interferes with Employee's duties and responsibilities to Employer.

SECTION 11: Indemnification

To the extent mandated by the California Government Code, the City shall defend, hold harmless, and indemnify Employee against any tort, professional liability, claim or demand, or other legal action arising out of an alleged act or omission occurring in the performance of Employee's services under this Agreement. This section shall not apply to any intentional tort or crime committed by Employee, to any action outside the course and scope of the services provided by Employee under this Agreement, or any other intentional or malicious conduct or gross negligence of Employee.

Notwithstanding the foregoing, and consistent with Sections 53243 through 53243.3 of the Government Code, Employee shall be required, if convicted of a crime involving an abuse of Employee's office or position, to fully reimburse the City for: (1) any paid leave salary offered by the City to the Employee; (2) any funds provided for the legal criminal defense of the Employee; (3) any cash settlement related to the termination that

Employee may receive; and (4) any other payments received by Employee from City that in any way relate to the foregoing.

SECTION 12: Other Terms and Conditions of Employment

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

SECTION 13: 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) EMPLOYER:
City of Newport Beach
c/o City Clerk
100 Civic Center Drive
Newport Beach, California 92660
- (2) EMPLOYEE: _____
at the home address then shown in Employer's files

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 14: General Provisions

- A. Integration: This Agreement sets forth the final, complete and exclusive agreement between Employer and Employee relating to the employment of Employee by Employer. 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, Employee acknowledges that, except as expressly provided in this Agreement, Employee's employment is subject to Employer'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 Employee's employment is, and will continue to be, at the will of the City Council.

- B. Binding Effect: This Agreement shall be binding on the Employer and the Employee 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 Charter provisions, Codes, 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 City Charter or Municipal Code. In the event of a conflict between the provisions of this Agreement and the City Charter, or this Agreement and the NBMC, the City Charter or the NBMC shall prevail over this Agreement. All other City personnel ordinances, resolutions, rules, and policies shall apply to Employee in the same manner as applied to other Executive Management Employees.
- F. Employee's Independent Review: Employee acknowledges that Employee has had the opportunity and has conducted an independent review of the financial and legal effects of this Agreement. Employee acknowledges that Employee has made an independent judgment upon the financial and legal effects of this Agreement

and has not relied upon any representation of Employer, its officers, agents or employees other than those expressly set forth in this Agreement. Employee acknowledges that Employee has been advised to obtain, and has availed himself or herself of, legal advice with respect to the terms and provisions of this Agreement.

(Signatures on Following Page)

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

EMPLOYER
CITY OF NEWPORT BEACH,
A Municipal Corporation

EMPLOYEE,
An Individual

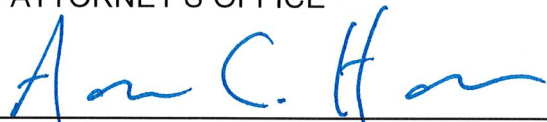
By: _____
Marshall "Duffy" Duffield, Mayor

By: _____

Date: _____

Date: _____

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

By: 
Aaron C. Harp, City Attorney

Date: _____

ATTEST:

By: _____
Leilani Brown,
City Clerk

Date: _____

Exhibit A



CITY MANAGER

Class Code:
600019

Bargaining Unit: Key & Management - Executive Management

CITY OF NEWPORT BEACH
Revision Date: Jul 30, 2014

SALARY RANGE

\$15,684.93 - \$23,526.53 Monthly
\$188,219.20 - \$282,318.40 Annually

DEFINITION:

Responsible for the administrative branch of the City government and provides professional non-partisan administration within the framework of law and policy as set by the City Council; serves the City Council, carries out their dictates and keeps them informed on all important phases of City activities; responsible for appointment and effective coordination of the tasks of all department heads; and is also responsible for enforcement of the laws of the state pertaining to the City, provisions of the Charter and ordinances of the City.

SUPERVISION RECEIVED AND EXERCISED: Provides direct supervision to all department heads, except the City Clerk and the City Attorney, and to the City Manager's immediate staff.

ESSENTIAL DUTIES:

Duties may include, but are not limited to, the following:

- Keep the Council informed on all significant matters relative to services and activities of the City; advise Council on the most appropriate organizational structure for City services;
- Exercise general supervision over public facilities and properties;
- Provide leadership for civic movements when so authorized by the City Council;
- Exercise control over all administrative office and departments of the City except those appointed by the City Council;
- Appoint, suspend or remove, subject to provisions of the Charter, all department heads under his supervision; prepare the annual budget for Council consideration and administer it after adoption;
- Assume general responsibility for public relations of the City and assure that all franchises, permits and contracts granted by the City are faithfully observed; and
- Perform related duties as assigned.

QUALIFICATIONS:

To perform this job successfully, an individual must be able to perform each essential function. The requirements listed below are representative of the knowledge, skill, and/or ability required.

Ability to:

- Deal with a wide variety of people in an effective manner;
- Provide direction to a large municipal organization;
- Make public appearances and prepare and deliver oral and written reports;
- Analyze a wide range of complex issues and execute timely decisions;
- Work effectively with higher levels of government;
- Master complex financial matters; and
- Maintain respect of others.

This position may be required to work overtime hours as needed.

EXPERIENCE & TRAINING AND LICENSE/CERTIFICATE:

A combination of experience and training that would likely provide the required knowledge and abilities may be qualifying. A typical way to obtain the knowledge and abilities would be:

Experience: Eight years in the city management field with at least three as City Manager in another city and the remaining as Assistant City Manager or Administrative Assistant.

Training: A graduate degree with major course work in public administration. GED Level 5.

License/Certificate: Possession of, or ability to obtain, an appropriate, valid California driver's license.

Additional Requirement: Candidates deemed most qualified, as reflected in their application materials, will be invited to continue in the recruitment process. At that time, background information will be requested from the candidates. Prior to employment, the prospective candidate must successfully complete a thorough background review, including being fingerprinted by the Newport Beach Police Department. The resulting report of your conviction history, (if any), will be evaluated along with the other information received in connection with your application. Except as otherwise required by law, a criminal conviction will not necessarily disqualify you from the position. The nature, date, surrounding circumstances, and the relevance of the offense to the position applied for may, however, be considered.

Disaster Service Worker: In accordance with Government Code Section 3100, City of Newport Beach Employees, in the event of a disaster, are considered disaster service workers and may be asked to respond accordingly.

EXHIBIT B

AGREEMENT OF SEPARATION, SEVERANCE, AND GENERAL RELEASE

1. PARTIES

This Agreement of Separation, Severance, and General Release (hereinafter referred to as the "AGREEMENT") is entered into by and between the City of Newport Beach, a charter city and municipal corporation (hereinafter referred to as "THE CITY"), and _____, an individual (hereinafter referred to as "EMPLOYEE").

2. RECITALS

2.1. EMPLOYEE was hired by THE CITY as an at-will City Manager effective September 4, 2018 serving at the pleasure of the City Council of THE CITY pursuant to a written contract, a copy of which is attached hereto as Exhibit "A" ("THE CONTRACT"). EMPLOYEE is currently ____ years old.

2.2. THE CITY and EMPLOYEE desire that EMPLOYEE resign and enter into a severance agreement whereby EMPLOYEE receives severance compensation in exchange for executing a general release and waiver of any and all claims that EMPLOYEE may have against THE CITY, including but not limited to its elected and non-elected officials, employees, attorneys, and agents. Accordingly, the parties hereto intend by this AGREEMENT to mutually conclude any and all employment relationships between THE CITY and EMPLOYEE by means of EMPLOYEE's voluntary separation as of _____, _____. This AGREEMENT sets forth the full and complete terms and conditions concluding EMPLOYEE's employment relationship with the CITY and any obligations related thereto, including any provided under THE CONTRACT.

2.3 In accordance with this AGREEMENT and with applicable state and federal laws, EMPLOYEE acknowledges that EMPLOYEE has been advised of EMPLOYEE's post-employment rights, including but not limited to, EMPLOYEE's rights under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), the Employee Retirement Income Security Act of 1974 ("ERISA"), and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

3. CONSIDERATION

3.1 EMPLOYEE shall receive payment at the time of EMPLOYEE's voluntary separation, all earned salary, accrued fringe benefits as detailed in THE CONTRACT, and/or all other wage compensation/benefits owed to EMPLOYEE upon

separation of employment, as required by law or THE CONTRACT or any other agreement with THE CITY.

3.2. In exchange for the waivers and releases set forth herein, THE CITY shall also cause to be paid to EMPLOYEE an additional compensatory payment by means of severance, settlement and release in the form of a lump sum amount of _____ and ____ cents (\$_____.00), as set forth in THE CONTRACT in the form of a check made payable to EMPLOYEE to be mailed to EMPLOYEE at EMPLOYEE's home address via certified mail return receipt requested within ten (10) business days after the EFFECTIVE DATE (as defined below) of this AGREEMENT.

3.3 In exchange for the severance payment provided for herein, EMPLOYEE, and on behalf of EMPLOYEE's spouse, heirs, representatives, successors, and assigns, hereby releases, acquits, and forever discharges THE CITY, and each of its predecessors, successors, assigns, officials, employees, representatives, agents, insurers, attorneys, and all persons and entities acting by, through, under, or in concert with any of them, and each of them (hereinafter referred to as "THE CITY PARTIES"), from any and all claims, charges, complaints, contracts, understandings, liabilities, obligations, promises, benefits, agreements, controversies, costs, losses, debts, expenses, damages, actions, causes of action, suits, rights, and demands of any nature whatsoever, known or unknown, suspected or unsuspected, which EMPLOYEE now has or may acquire in the future, or which EMPLOYEE ever had, relating to or arising out of any act, omission, occurrence, condition, event, transaction, or thing which was done, omitted to be done, occurred or was in effect at anytime from the beginning of time up to and including _____, _____ (hereinafter referred to collectively as "CLAIMS"), without regard to whether such CLAIMS arise under the federal, state, or local constitutions, statutes, rules or regulations, or the common law. EMPLOYEE expressly acknowledges that the CLAIMS forever barred by this AGREEMENT specifically include, but are not limited to, claims based upon any alleged breach of THE CONTRACT or any other agreement of employment, any demand for wages, overtime or benefits, any claims of violation of the provisions of ERISA, COBRA or HIPAA, any alleged breach of any duty arising out of contract or tort, any alleged wrongful termination in violation of public policy, any alleged breach of any express or implied contract for continued employment, any alleged employment discrimination or unlawful discriminatory act, or any claim or cause of action including, but not limited to, any and all claims whether arising under any federal, state or local law prohibiting breach of employment contract, wrongful termination, or employment discrimination based upon age, race, color, sex, religion, handicap or disability, national origin or any other protected category or characteristic, and any and all rights or claims arising under the California Labor Code or Industrial Welfare Commission Wage Orders, the Federal Fair Labor Standards Act, the California Fair Employment and Housing Act, California Government Code §§12, 900 et

seq., the Americans With Disabilities Act, Title VII of the Civil Rights Act of 1964, the Public Safety Officers Procedural Bill of Right Act, and any other federal, state, or local human rights, civil rights, or employment discrimination or employee rights statute, rule, or regulation.

4. SPECIFIC ACKNOWLEDGMENT OF WAIVER OF CLAIMS UNDER ADEA AND OWBPA

The Age Discrimination in Employment Act of 1967 (hereinafter referred to as the "ADEA") makes it illegal for an employer to discharge any individual or otherwise discriminate with respect to the nature and privileges of an individual's employment on the basis that the individual is age forty (40) or older. The Older Workers Benefit Protection Act (hereinafter referred to as the "OWBPA," 29 U.S.C. § 626, et. seq., Pub L 101-433, 104 Stat. 978 (1990)) further augments the ADEA and prohibits the waiver of any right or claim under the ADEA, **unless the waiver is knowing and voluntary**. By entering into this AGREEMENT, EMPLOYEE acknowledges that EMPLOYEE knowingly and voluntarily, for just compensation in addition to anything of value to which EMPLOYEE was already entitled, waives and releases any rights EMPLOYEE may have under the ADEA and/or OWBPA. EMPLOYEE further acknowledges that EMPLOYEE has been advised and understands, pursuant to the provisions of the ADEA and OWBPA, that:

(a) This waiver/release is written in a manner understood by EMPLOYEE;

(b) EMPLOYEE is aware of, and/or has been advised of, EMPLOYEE's rights under the ADEA and OWBPA, and of the legal significance of EMPLOYEE's waiver of any possible claims EMPLOYEE currently may have under the ADEA, OWBPA and/or similar age discrimination laws;

(c) EMPLOYEE is entitled to a reasonable time of at least twenty-one (21) days within which to review and consider this AGREEMENT and the waiver and release of any rights EMPLOYEE may have under the ADEA, the OWBPA and similar age discrimination laws; but may, in the exercise of EMPLOYEE's own discretion, sign or reject this AGREEMENT at any time before the expiration of the twenty-one (21) days;

(d) The waivers and releases set forth in this AGREEMENT shall not apply to any rights or claims that may arise under the ADEA and/or OWBPA **after** the EFFECTIVE DATE of this AGREEMENT;

(e) EMPLOYEE has been advised by this writing that EMPLOYEE should consult with an attorney prior to executing this AGREEMENT;

(f) EMPLOYEE has discussed this waiver and release with, and been advised with respect thereto by, EMPLOYEE's counsel of choice, and that EMPLOYEE does not need any additional time within which to review and consider this AGREEMENT;

(g) EMPLOYEE has **seven (7) days following ____ execution** of this AGREEMENT to revoke the AGREEMENT;

(h) Notice of revocation within the seven (7) day revocation period must be provided, in writing, to THE CITY pursuant to Paragraph 8.9 herein, and must state, "I hereby revoke my acceptance of our Agreement of Severance and General Release," and

(i) This AGREEMENT shall not be effective until all parties have signed the AGREEMENT and ten (10) days have passed since EMPLOYEE's execution ("EFFECTIVE DATE").

5. UNKNOWN CLAIMS

In relation to the release provisions of Paragraphs 3 and 4 above, EMPLOYEE understands that California Civil Code section 1542 reads as follows:

"General Release--Claims Extinguished"

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

EMPLOYEE hereby waives the protection of California Civil Code section 1542.

6. WAIVER OF ADDITIONAL CLAIMS

EMPLOYEE hereby waives any provisions of state or federal law that might require a more detailed specification of the claims being released pursuant to the provisions of Paragraphs 3, 4, and 5 above.

7. REPRESENTATIONS AND WARRANTIES

Each of the parties to this AGREEMENT represents and warrants to, and agrees with, each other party as follows:

7.1. Advice of Counsel: The parties hereto have received independent legal advice from their respective attorneys concerning the advisability of entering into and executing this AGREEMENT or have been given the opportunity to obtain such advice. The parties acknowledge that they have been represented by counsel of their own choice in the

negotiation of this AGREEMENT, that they have read this AGREEMENT; that they have had this AGREEMENT fully explained to them by such counsel, or have had such opportunity to do so and that they are fully aware of the contents of this AGREEMENT and of its legal effect.

7.2. No Fraud in Inducement: No party (nor any officer, agent, employee, representative, or attorney of or for any party) has made any statement or representation or failed to make any statement or representation to any other party regarding any fact relied upon in entering into this AGREEMENT, and neither party relies upon any statement, representation, omission or promise of any other party in executing this AGREEMENT, or in making the settlement provided for herein, except as expressly stated in this AGREEMENT.

7.3. Independent Investigation: Each party to this AGREEMENT has made such investigation of the facts pertaining to this settlement and this AGREEMENT and all the matters pertaining thereto, as it deems necessary.

7.4. Mistake Waived: In entering into this AGREEMENT, each party assumes the risk of any misrepresentation, concealment or mistake. If any party should subsequently discover that any fact relied upon by it in entering into this AGREEMENT was untrue, or that any fact was concealed from it, or that its understanding of the facts or of the law was incorrect, such party shall not be entitled to any relief in connection therewith, including without limitation on the generality of the foregoing any alleged right or claim to set aside or rescind this AGREEMENT. This AGREEMENT is intended to be, and is, final and binding between the parties, regardless of any claims of misrepresentation, promise made without the intent to perform, concealment of fact, mistake of fact or law, or any other circumstance whatsoever.

7.5. Later Discovery: The parties are aware that they may hereafter discover claims or facts in addition to or different from those they now know or believe to be true with respect to the matters related herein. Nevertheless, it is the intention of the parties that EMPLOYEE fully, finally and forever settle and release all such matters, and all claims relative thereto, which do now exist, may exist or have previously existed against THE CITY or THE CITY PARTIES. In furtherance of such intention, the releases given here shall be, and remain, in effect as full and complete releases of all such matters, notwithstanding the discovery or existence of any additional or different claims or facts relative thereto.

7.6. Indemnification: EMPLOYEE agrees to indemnify and hold harmless THE CITY or THE CITY PARTIES from, and against, any and all claims, damages, or liabilities sustained by them as a direct result of the violation or breach of the covenants, warranties, and representations undertaken pursuant to the provisions of this AGREEMENT. EMPLOYEE understands and agrees that EMPLOYEE shall be exclusively

liable for the payment of all taxes for which EMPLOYEE is responsible, if any, as a result of EMPLOYEE's receipt of the consideration referred to in Paragraph 3 of this AGREEMENT. In addition, EMPLOYEE agrees fully to indemnify and hold the CITY PARTIES harmless for payment of tax obligations as may be required by any federal, state or local taxing authority, at any time, as a result of the payment of the consideration set forth in Paragraph 3 of this AGREEMENT.

7.7. Future Cooperation & Consultation fees: EMPLOYEE shall execute all such further and additional documents as shall be reasonable, convenient, necessary or desirable to carry out the provisions of this AGREEMENT. EMPLOYEE shall provide THE CITY with consultation services (including deposition or trial testimony) in any litigation involving THE CITY which is reasonably related to acts or occurrences transpiring during EMPLOYEE's employment. Said services shall be provided as needed by THE CITY at a rate of \$100.00 per hour.

7.8. Return of Confidential Information and Property: Prior to the separation date, EMPLOYEE shall submit a written inventory of, and return to the City Clerk, all City keys, equipment, computer identification cards or codes, and other equipment or materials or confidential documents provided to or obtained by EMPLOYEE during the course of EMPLOYEE's employment with THE CITY.

7.9 No Pending Claims and/or Actions: EMPLOYEE represents that EMPLOYEE has not filed any complaints or charges against THE CITY or THE CITY PARTIES with any local, state or federal agency or court; that EMPLOYEE will not do so at any time hereafter for any claim arising up to and including the EFFECTIVE DATE of this AGREEMENT; and that if any such agency or court assumes jurisdiction of any such complaint or charge against THE CITY or THE CITY PARTIES on behalf of EMPLOYEE, whenever or where ever filed, EMPLOYEE will request such agency or court to withdraw from the matter forthwith.

7.10. Ownership of Claims: EMPLOYEE represents and warrants as a material term of this AGREEMENT that EMPLOYEE has not heretofore assigned, transferred, released or granted, or purported to assign, transfer, release or grant, any of the CLAIMS disposed of by this AGREEMENT. In executing this AGREEMENT, EMPLOYEE further warrants and represents that none of the CLAIMS released by EMPLOYEE thereunder will in the future be assigned, conveyed, or transferred in any fashion to any other person and/or entity.

7.11 Enforcement Fees and Costs: Should any legal action be required to enforce the terms of this AGREEMENT, the prevailing party shall be entitled to reasonable attorneys' fees and costs in addition to any other relief to which that party may be entitled.

7.12 Authority: Each party represents to the other that it has the right to enter into this AGREEMENT, and that it is not violating the terms or conditions of any other AGREEMENT to which they are a party or by which they are bound by entering into this AGREEMENT. The parties represent that they will obtain all necessary approvals to execute this AGREEMENT. It is further represented and agreed that the individuals signing this AGREEMENT on behalf of the respective parties have actual authority to execute this AGREEMENT and, by doing so, bind the party on whose behalf this AGREEMENT has been signed.

8. MISCELLANEOUS

8.1. No Admission: Nothing contained herein shall be construed as an admission by THE CITY of any liability of any kind. THE CITY denies any liability in connection with any claim and intends hereby solely to avoid potential claims and/or litigation and buy its peace.

8.2. Governing Law: This AGREEMENT has been executed and delivered within the State of California, and the rights and obligations of the parties shall be construed and enforced in accordance with, and governed by, the laws of the State of California.

8.3. Full Integration: This AGREEMENT is the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. This AGREEMENT may be amended only by a further agreement in writing, signed by the parties hereto.

8.4. Continuing Benefit: This AGREEMENT is binding upon and shall inure to the benefit of the parties hereto, their respective agents, spouses, employees, representatives, officials, attorneys, assigns, heirs, and successors in interest.

8.5. Joint Drafting: Each party agrees that it has cooperated in the drafting and preparation of this AGREEMENT. Hence, in any construction to be made of this AGREEMENT, the parties agree that same shall not be construed against any party.

8.6. Severability: In the event that any term, covenant, condition, provision or agreement contained in this AGREEMENT is held to be invalid or void by any court of competent jurisdiction, the invalidity of any such term, covenant, condition, provision or agreement shall in no way affect any other term, covenant, condition, provision or agreement and the remainder of this AGREEMENT shall still be in full force and effect.

8.7. Titles: The titles included in this AGREEMENT are for reference only and are not part of its terms, nor do they in any way modify the terms of this AGREEMENT.

8.8. Counterparts: This AGREEMENT may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one AGREEMENT, which shall be binding upon and effective as to all parties.

8.9. Notice: Any and all notices given to any party under this AGREEMENT shall be given as provided in this paragraph. All notices given to either party shall be made by certified or registered United States mail, or personal delivery, at the noticing party's discretion, and addressed to the parties as set forth below. Notices shall be deemed, for all purposes, to have been given on the date of personal service or three (3) consecutive calendar days following deposit of the same in the United States mail.

As to EMPLOYEE:

At EMPLOYEE's home address on file with THE CITY.

As to THE CITY:

City Clerk

City of Newport Beach

100 Civic Center Drive

Newport Beach, CA 92660

IN WITNESS WHEREOF, THE CITY has caused this AGREEMENT to be signed and executed on its behalf by its Mayor and duly attested by its City Clerk, EMPLOYEE has signed and executed this Agreement, and the attorneys for THE CITY and EMPLOYEE, if any, have approved as to form as of the dates written below.

DATED: _____

EMPLOYEE

By: _____

THE CITY

DATED: _____

By: _____

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

[OFFICE OF THE CITY ATTORNEY]

By: _____

Aaron Harp, City Attorney

[EMPLOYEE's LAW FIRM]

By: _____

[Counsel]