

CITY MANAGER EMPLOYMENT AGREEMENT

1 Employment.

This City Manager Employment Agreement (Agreement) is entered into by and between the City of Hemet ("City"), a general law city, and Mark T. Prestwich (City Manager). Under this Agreement, the City offers, and City Manager accepts, employment as City Manager of the City effective February 21, 2023 ("Effective Date").

2 Duties.

The City Manager shall be the chief executive officer of the City and be responsible to the City Council for the proper administration of all affairs of the City. City Manager shall administer and enforce policies established by the City Council and promulgate rules and regulations as necessary to implement City Council policies. City 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 Municipal Code. City 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, including serving as the chief executive of any City-created agencies.

3 Devotion to City Business.

City Manager agrees to devote his productive time, ability and attention to the City's business during the term of this Agreement. City Manager may, without the prior approval of the City Council, undertake limited outside activities in teaching, writing, consulting, or other business pursuits, provided that such activities do not in any way interfere with or adversely affect his employment as City Manager or the performance of his duties as provided herein. It is recognized that the City Manager must devote a great deal of time to the business of the City outside of the City's customary office hours, and to that end the City Manager's schedule of work each day and week shall vary in accordance with the work required to be performed. City Manager shall spend sufficient hours on site to perform City Manager's duties; however, City Manager has discretion over the City Manager's work schedule.

4 Term.

City Manager's employment under this agreement will commence on the Effective Date, and shall continue for a term of 5 years, or the date of earlier termination in accordance with provisions in this Agreement unless extended by mutual agreement. This agreement shall have a renewal period whereas, one year prior to the end of this agreement, the City will notify the City Manager in writing whether or not they will extend his contract or let it expire at the end of the five years. If the City gives the City Manager notice that the contract will not be extended, the City Manager will continue to serve until the end of the five-year term. If the City has not provided such notice, the agreement shall be extended one day at a time, so that there will always be one year remaining on the term until such

notice is given.

5 CITY COUNCIL COMMITMENTS.

5.1 Subordinates.

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

5.2 Appointment/Removal.

No member of the City Council will order or pressure the City Manager to appoint or remove any person to any office or employment under the supervision and control of the City Manager.

5.3 Interference.

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

5.4 Direction and Authority.

The City Manager shall take orders and instructions from the City Council only when it is sitting as a body in a lawfully held meeting. Nothing above shall be construed as restricting the ability of the City Council, when sitting as a body in a lawfully held meeting, from exercising any power or authority granted to it under state law or the City's Municipal Code.

6 Termination; General Release; Severance.

6.1 Termination Without Cause.

The City Council may terminate this Agreement, and thereby terminate City Manager's employment, without cause by the affirmative votes of a majority of the City Council at a lawfully held meeting. Notice of termination shall be provided to City Manager in writing with thirty (30) days' notice. If City Manager signs, delivers to the City Attorney, and does not revoke, the General Release Agreement ("Release Agreement") in the form attached hereto as Exhibit A, City shall pay City Manager a cash payment equal to 12 months of the City Manager's then Base Salary ("Severance"). The cash payment provided for by this Subsection shall be paid in a lump sum within thirty (30) days of receipt of the Release Agreement by the City.

Termination, as used in this section, shall also include request that the City Manager

resign, a reduction in salary or other financial benefits of the City Manager (unless voluntary, as part of a general City employee salary reduction, or by mutual agreement by City Manager and City Council), a material reduction in the powers and authority of the City Manager, or the elimination of the City Manager position. Any such notice of termination or act constituting termination shall be given at or effectuated at a lawfully held meeting of the City Council.

6.2 Termination With Cause.

The City Council may terminate this Agreement, and thereby terminate City Manager's employment, with cause, by the affirmative votes of a majority of the members of the City Council at a lawfully held meeting of the City Council. City 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:

- A. Conviction of, or plea of guilty or nolo contendere to, a felony (other than traffic violations or similar offenses) which is likely to have a material adverse impact on the City, and if the date of conviction or plea of guilty or nolo contendere is not more than twelve (12) months from the effective date of termination;
- B. Proven failure of the City Manager to observe or perform any of his lawful 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;
- C. Conviction of any crime involving an "abuse of office or position," as that term is defined in Government Code Section 53243.4;
- D. Proven failure of the City Manager to carry out directives of the City Council made by the City Council as a body at a lawfully held meeting, 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;
- E. Any grossly negligent action or inaction by City Manager that materially and adversely:
 - i. impedes or disrupts the operations of City or its organizational units;
 - ii. is detrimental to employees or public safety; or

- iii. violates City's ordinances, or City's properly-established rules or procedures.

6.3 Elections.

In no event may City Manager be terminated within sixty (60) days prior to and ninety (90) days after any municipal election where a member of the City Council is elected.

6.4 Death.

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

6.5 Disability.

In the event City 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 City Manager's employment and this Agreement.

6.6 Resignation.

City 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:

7.1 Initial Salary.

City Manager's initial annual Base Salary shall be \$273,000. Said amount shall be payable in installments at the same time and in the same manner as other employees of the City are paid. Increases in City Manager's Base Salary may be effective at any time in the sole discretion of the City Council.

7.2 Annual Salary Increase.

The City Manager shall receive an annual increase to his Base Salary of at least 2% each year on the anniversary of the Effective Date of this Agreement unless the City Manager has received more than that amount due to the operation of Section 7.4 during the preceding 12 months.

7.3 Performance Evaluation.

The City Council and City Manager may set mutually agreed upon objectives for each year under this Agreement. The City Council may evaluate City Manager's performance at least once a year on or about each anniversary of the Effective Date of this Agreement ("Annual Evaluation") and may determine at that time to provide the City Manager more

than the amount specified in Section 7.2.

7.4 Compaction.

The annual base salary of the City Manager shall never be less than the City's next highest paid employee. Effective January 1, 2025, the annual base salary of the City Manager shall never be less than 7.5% above the base salary of the City's next highest paid employee.

7.5 No Amendment Required.

The salary increases pursuant to Subsection 7.2 and 7.4 above shall not require an amendment to this Agreement to be effective.

8 Deferred Compensation.

As part of City Manager's annual compensation, the City Manager may participate in the deferred compensation plan pursuant to Section 457 of the Internal Revenue Code as established by the City. The City shall annually contribute into the qualified 457 account in the City Manager's name an amount equal to four (4%) percent of City Manager's base salary as it may be adjusted from time to time. Such contributions shall be made proportionately in each pay check.

9 Retirement.

City agrees to maintain City Manager as a member of the State of California Public Employees Retirement System (CalPERS). City shall give City Manager CalPERS benefits on the same terms and conditions as the City's management employees. As the City does not participate in Social Security, no deduction shall be taken from the City Manager's salary for this purpose.

10 Health and Medical Benefits Insurance.

City shall pay the City Manager the same amount as offered to the City's other management confidential employees towards the premiums for group health insurance, dental and vision care for City Manager and dependents. City Manager may choose from any of the plans offered to the City's management confidential employees.

11 Life Insurance.

The City agrees to pay 100% towards the premium for a term life insurance policy in an amount two times (2X) the amount of the City Manager's base salary with a carrier selected by the City. City Manager shall designate the beneficiaries of the policy. City Manager shall also be entitled to participate in any group life or disability insurance programs approved by the City Council for management confidential employees.

12 Gym Program.

During the period of his employment the City Manager is eligible to participate in the City's Gym Program and utilize the City designated gym facilities in accordance with the guidelines established for such program.

13 Employee Assistance Program

During his period of employment, the City Manager and his eligible dependents are eligible to participate in the City's Employee Assistance Program in accordance with the guidelines established for such program.

14 Automobile Allowance.

City 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 City Manager five hundred dollars (\$500) monthly in compensation for the use and maintenance of his personal vehicle on City business.

15 Equipment.

As the City Manager is expected to be available by cell phone, email and text as described in Section 3 above, the City shall provide City Manager a cell phone, i-pad or similar device, and a laptop.

16 Business and Professional Expenses.

16.1 Expense Reimbursement.

City recognizes that City Manager may incur expenses of a non-personal, job-related nature that are reasonably necessary to City 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. City Manager may also be issued a City credit card to be used only for the payment of those sums that would otherwise qualify for reimbursement and subject to all applicable policies as adopted by the City Council. The City Council, or a duly appointed committee comprised of its members, reserves the right to review the City Manager's reimbursements or credit card statements at any time at its sole discretion.

16.2 Professional Dues.

City agrees to pay the professional dues and subscriptions on behalf of City Manager which are necessary for City Manager's continuation or full participation in international, national, regional, state, or local associations, organizations and service clubs necessary and desirable for City Manager's continued professional participation, growth and

advancement, or for the good of the City, in an amount not to exceed the amount budgeted by the City Council in each budget year.

16.3 Travel Dues.

City agrees to pay City Manager's travel and subsistence expenses for official travel, meetings, and occasions reasonably necessary to continue City Manager's professional development, and for City Manager's reasonable participation in necessary official and other functions for the City; including, but not limited to, national, regional, state, and local conferences, and governmental groups and committees on which City Manager serves as a member. 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.

17 Vacation and Leave.

The City Manager shall be eligible to participate in the Personal Time Off (PTO) program provided by the Management Confidential Personnel Resolution ("MCP Resolution"), as may be amended from time to time by the City Council, on the same terms and conditions as other City Employees except that: (1) the City Council may not reduce the benefits provided by the PTO Program under the MCP Resolution as to the City Manager; (2) prior CalPERS agency length of service shall be utilized for calculation of length of service; and the City Manager shall be credited with 50 hours of Administrative Leave as of the Effective Date of this Agreement and 60 hours on each January 1st thereafter.

18 Abuse of Office or Position.

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

19 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/its reasonable attorneys' fees and costs.

20 Communications Upon City Manager's Separation.

In the event the City terminates the City Manager without cause, the City and the City Manager agree that no member of the City Council, the City's management staff, nor the City Manager, shall make any public written or electronic statement concerning the City Manager's termination except in the form of a press release or statement, the content of which is approved as to form by the City Attorney. The 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 press release or statement in response to any inquiry.

21 Indemnification.

Consistent with the California Government Code, City shall defend, hold harmless, and indemnify City Manager using legal counsel of City's choosing, against expense or legal liability for acts or omissions by City Manager occurring within the course and scope of City 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 City 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 City Manager such that independent counsel is required for City Manager, the City shall reasonably provide for separate counsel, which shall be paid for by the City.

22 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/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 Hemet
Attn: Mayor
445 E Florida Avenue
Hemet, CA 92543

CITY MANAGER: Mark T. Prestwich
[***Address on File with the City***]

23 Conflict With City Municipal Code.

The City personnel rules and policies shall apply to City Manager in the same manner as

applied to other employees, provided, however, in the event of a conflict between the provisions of this Agreement and such personnel rules and policies, the provisions of this Agreement shall prevail over this Agreement.

24 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 City 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.

25 Modifications.

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

26 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.

27 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.

28 Governing Law; Venue.

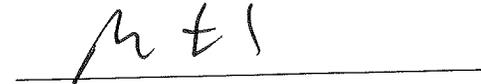
This Agreement shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the Parties, venue in state trial courts shall lie exclusively in the County of Riverside, California. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Riverside.

**CITY MANAGER EMPLOYMENT AGREEMENT
BY AND BETWEEN
THE CITY OF HEMET AND MARK T. PRESTWICH**

This Agreement is entered into this 13th day of January, 2023.

CITY OF HEMET
Mayor Joe Males

CITY MANAGER
Mark T. Prestwich

By:  By: 

APPROVED AS TO FORM
CITY ATTORNEY

By: 

ATTEST
CITY CLERK

By: 

GENERAL RELEASE AGREEMENT

This General Release Agreement ("Release Agreement") is entered into by and between Mark T. Prestwich ("City Manager") and City of Hemet ("City"), in light of the following facts:

- A. City Manager's employment with City concluded on _____.
 - B. Certain disputes have arisen between City and City Manager.
 - C. City and City Manager each deny any liability whatsoever to the other.
 - D. City and City Manager wish to fully and finally resolve any and all disputes they may have with each other.
 - E. City Manager is hereby informed that he has twenty-one (21) days from receipt of this Agreement to consider it. City hereby advises City Manager to consult with his legal counsel before signing this Agreement.
 - F. City Manager acknowledges that for a period of seven (7) days following the signing of this Agreement ("Revocation Period"), he may revoke the Agreement. This Agreement shall not become effective or enforceable until the day the Revocation Period has expired.
 - G. City 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 through the date of employment termination. City Manager also acknowledges that City has made this Salary Payment without regard to whether he signs this Agreement. The Salary Payment does not constitute consideration for this Agreement.
1. Receipt of Salary Payment. City Manager hereby acknowledges receipt of a check or checks for all compensation owing to him, including salary, accrued benefit balances and reimbursed expenses ("Salary Payment") from City.
 2. Severance. Within five (5) days following City Manager's signing, delivering to the City, and not revoking this Agreement, City shall pay City Manager the gross amount provided for in Section 6.1 of the attached Employment Agreement, less applicable deductions. City 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 City Manager, and other good and valuable consideration, City 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 employment by City which he 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.

City Manager hereby waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of California. City 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, City Manager expressly acknowledges that this General Release is intended to include in its effect, without limitation, all claims which he does not know or suspect to exist in his favor.

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

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

[Signatures on Following Page]

GENERAL RELEASE AGREEMENT

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

CITY OF HEMET
Mayor _____
By: _____

CITY MANAGER
Mark T. Prestwich
By: _____

APPROVED AS TO FORM
City Attorney
By: _____

ATTEST
City Clerk
By: _____