

CONTRACT NO.
EMPLOYMENT AGREEMENT – CITY MANAGER
STEVEN B. MERMELL

THIS AGREEMENT is entered into on August 8, 2016, by and between the CITY OF PASADENA, a charter city and a municipal corporation of the State of California, herein referred to as "CITY," and Steven B. Mermell, herein referred to as "EMPLOYEE."

WITNESSETH:

WHEREAS, it is the desire of CITY to retain the services of EMPLOYEE as City Manager and the desire of the EMPLOYEE to serve in that capacity; and

WHEREAS, it is the desire of the CITY to provide certain benefits, establish certain conditions of employment and to set certain working conditions of EMPLOYEE; and

WHEREAS, it is the desire of CITY to: (1) provide inducement for EMPLOYEE to remain in CITY'S employment; (2) make possible full work productivity by providing EMPLOYEE with assurances regarding his employment; and (3) provide an equitable process for terminating EMPLOYEE'S services if that should occur; and

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES, COVENANTS AND CONDITIONS HEREIN CONTAINED, THE PARTIES HERETO AGREE AS FOLLOWS:

1. EMPLOYMENT:

CITY hereby agrees to employ EMPLOYEE as City Manager of the City of Pasadena in an at-will capacity, subject to the terms of this Agreement, to perform the functions and duties specified in the City Charter, the Pasadena Municipal Code and the Resolutions and Motions of the City Council, and to perform such other legally permissible duties and functions as the City Council shall from time to time assign.

2. TERM:

This Agreement shall commence as of August 8, 2016, and shall remain in effect for a term of five (5) years or until earlier terminated by either party as provided herein.

3. COMPENSATION:

- A. City agrees to pay EMPLOYEE a base salary of \$275,000 (two hundred seventy-five thousand dollars) annually, subject to legally permissible or required deductions, prorated and paid on the City's normal paydays.

- B. EMPLOYEE'S base salary shall be reviewed by the City Council during the performance review process. Salary increases resulting from such reviews shall be at the discretion of the City Council, in consultation with EMPLOYEE and unless amended shall not exceed the control rate of \$292,510 (Two Hundred Ninety Two Thousand Five Hundred Ten Dollars), which was established as the control rate as of December 31, 2012.
- C. Annually in July, EMPLOYEE shall be eligible for a lump-sum incentive bonus, at the sole discretion of the City Council, for performance substantially above expectations. The City Council will establish specific criteria as the basis of any bonus that may be awarded and such criteria will be delivered in writing to EMPLOYEE before December 31 of each year. EMPLOYEE and CITY agree that the City Council is not obligated to grant an incentive bonus and that no assurances have been given to EMPLOYEE that any incentive bonus will be granted during the term of this Agreement.
- D. Except as otherwise provided in this Agreement and for the term of this Agreement, EMPLOYEE shall also receive no less than all other benefits that are generally applicable to non-safety Executive Management employees (as identified in the Executive Management salary resolution). Subsequent modifications to benefits will be considered by the City Council periodically as appropriate. For purposes of this Agreement, benefits include, but are not limited to, retirement benefits, medical insurance, dental insurance, vision plan, life insurance, short-term disability insurance, long term disability insurance, workers' compensation benefits, including salary continuation, vacation, sick leave, bereavement leave, management time off, holidays, floating holidays, paid jury duty, all other statutory leaves, professional development allowance and expenses, and City provided vehicle or auto allowance.
- 1) Life Insurance: CITY will provide life insurance coverage to EMPLOYEE in an amount equal to one and one-half times his annual base salary, as determined according to the terms and conditions of the applicable plan document. EMPLOYEE may purchase additional coverage at EMPLOYEE'S expense, if available.
 - 2) Annual Medical Exam: EMPLOYEE will be eligible for an annual medical examination provided through the CITY, at CITY expense.
 - 3) Deferred Compensation: EMPLOYEE shall receive a \$10,000 annual contribution from the CITY to a 401(a) deferred compensation plan allowing the EMPLOYEE to defer earnings to the CITY'S 457 plan at his discretion as permitted under the rules promulgated by the United States Internal Revenue Service which are applicable to the CITY'S § 457 deferred compensation program. The annual contribution to EMPLOYEE'S 401(a) deferred compensation account shall be made in bi-weekly installments,

concurrent with the CITY'S regular payroll, and shall be prorated for the number of months or parts of months worked hereunder should the Agreement not be in effect for an entire calendar year. EMPLOYEE'S rights and interests in the amounts contributed by CITY hereunder shall immediately vest in EMPLOYEE upon payment by CITY into his deferred compensation account, and EMPLOYEE shall be entitled to payment of the full amount of contributions made on his behalf by CITY and all earnings thereon under the terms of the CITY'S Deferred Compensation Plan upon termination of his employment.

- 4) **Vacation:** EMPLOYEE will receive 200 hours of vacation time annually accrued on a per pay period basis to a maximum of 400 hours. Upon reaching the maximum accrual, the EMPLOYEE will cease earning vacation until use of vacation brings the accrual below the maximum. EMPLOYEE is allowed to cash out up to one year's earned but unused vacation once per calendar year at his base hourly rate of pay. Upon separation from employment, any accrued but unused vacation will be paid to EMPLOYEE with his final paycheck
- 5) **Management Time Off:** EMPLOYEE will be granted eighty (80) hours of management time off annually. Management Time Off has a maximum of 120 (one-hundred twenty) hours. Management Time Off may not be cashed-out during employment. At the time of separation from the City, earned but unused Management Time Off hours will be paid at base hourly rate of pay to EMPLOYEE with his final paycheck.
- 6) **Vehicle Allowance:** EMPLOYEE will receive a monthly vehicle allowance of \$525 for the use of the EMPLOYEE'S personal vehicle for CITY business and will use CITY vehicles on an exception basis only. EMPLOYEE may not receive mileage reimbursement at any time.
- 7) **Additional Equipment/Business Services:** CITY will provide EMPLOYEE with a cellular telephone/smartphone, tablet, and other necessary computer equipment and support and will pay the monthly telephone, internet access, and email expenses incurred for those devices. EMPLOYEE may opt to receive a cellular telephone/smartphone stipend of \$80 per month in lieu of device and service plan provided by CITY.
- 8) The City Council may authorize and grant to EMPLOYEE additional compensation and/or benefits in the future as may be deemed appropriate. Such additional compensation or benefits shall be considered to be within the terms of this Agreement, as if they had been specifically amended into

this Agreement, to be applied prospectively, unless City Council acts to provide otherwise.

4. PERFORMANCE EVALUATION

- A. The City Council will conduct EMPLOYEE'S performance evaluation annually in August. EMPLOYEE'S evaluation may include the full City Council or any Committee of City Council members designated for this purpose, and may include peer and subordinate input. Said review and evaluation shall be in accordance with specific criteria developed jointly by the City Council and EMPLOYEE. City Council may add to or delete from said criteria as the City Council may from time to time determine, after consultation with EMPLOYEE. The City Council shall provide an adequate opportunity for EMPLOYEE to discuss his evaluation with the City Council.
- B. Annually, the City Council and EMPLOYEE shall define, in writing, such specific performance objectives as they determine are necessary for the proper operation of CITY. The objectives must be reasonably attainable within the time limitations agreed to by CITY and EMPLOYEE and within the fiscal constraints of the annual operating and capital budgets and appropriations approved by CITY. Any unforeseen circumstances which may arise which would affect the achievement of the goals and objectives shall be identified in the consideration of EMPLOYEE'S annual evaluation.
- C. The City Council and/or EMPLOYEE may desire additional performance evaluations between anniversary dates. Such evaluations may be less formal and may be conducted without written comments or reports.

5. NOTIFICATION OF LEAVE FROM OFFICE

EMPLOYEE shall provide the Mayor with reasonable notice prior to taking two or more consecutive vacation or management leave days off.

6. PROFESSIONAL DEVELOPMENT EXPENSES

- A. In addition to the personal development allowance granted to executive managers (pursuant to the executive management salary resolution), CITY agrees to budget and to pay for the professional dues and subscriptions necessary to EMPLOYEE'S participation in national, state, regional and local associations and organizations which are necessary and desirable for continued professional participation, growth, and advancement and for the good of the CITY.

- B. CITY agrees to budget and pay for the travel and subsistence expenses of EMPLOYEE for professional and official travel, meetings and occasions adequate to continue the professional development of the EMPLOYEE and to adequately pursue necessary official and other functions for CITY, including but not limited to the Annual Conference of the International City Management Association, the League of California Cities, and such other national, state, regional, and local government groups and committees thereof on which EMPLOYEE serves as a member. EMPLOYEE shall pay for all expenses of his spouse if his spouse accompanies him on such trips.
- C. CITY agrees to budget and to pay for the travel and subsistence expenses of EMPLOYEE for short courses, institutes, and seminars that are necessary for his professional development and for the good of the CITY as determined by the Mayor, in his or her reasonable discretion.

7. TERMINATION AND SEVERANCE

- A. EMPLOYEE is employed at the pleasure of the City Council and is an at-will employee. Subject to procedural requirements of the City Charter and this Agreement the City Council may terminate the employment relationship and this Agreement at any time, with or without cause.
- B. The CITY will provide the EMPLOYEE with no less than a 60 (sixty) day notice of intention to terminate his employment. Such notice can be provided at any time. Should the City Council choose to dismiss the EMPLOYEE during the first twelve months of his employment as City Manager and the EMPLOYEE is willing and able to perform his duties under this agreement, the CITY shall compensate the EMPLOYEE with an amount equivalent to six (6) months base salary in effect at the time of said dismissal. After completing twelve months as City Manager, if the Council chooses to dismiss EMPLOYEE and he is willing and able to perform his duties under this agreement, the City shall compensate him with an amount equivalent to one year's base salary in effect at the time of said dismissal.
- C. If the EMPLOYEE is terminated before the expiration of the first 45 (forty-five) days after the installation of City Council members as a result of a regular municipal election, EMPLOYEE'S one year severance pay will be increased by the amount of time between the notice and the expiration of the 45 (forty-five) day period. For example, if notice of termination was provided on the tenth day after said installation, the severance period would be one year plus 35 (thirty-five) days.

- D. Should EMPLOYEE voluntarily resign from the CITY, the CITY will not be obligated to pay any severance upon his termination. Should EMPLOYEE be convicted of a felony, or have engaged in acts of malfeasance or misfeasance in the performance of his job duties, or have engaged in any act of moral turpitude, CITY will not be obligated to provide EMPLOYEE with more than 48 (forty-eight) hours' notice of its intention to terminate his employment, and shall not be obligated to pay any severance pay upon termination.
- E. Should EMPLOYEE terminate his employment with CITY, he shall provide at least 60 (sixty) days' notice in writing to the City Council unless such notice is waived in whole in or in part by the City Council.
- F. If the CITY provides notice in accordance with subparagraph B of Section 7, EMPLOYEE shall be compensated at full pay and benefits until his scheduled departure. If so requested by the City Council, EMPLOYEE shall continue to use his best efforts and skills to perform his duties during this period and shall fully cooperate with any successor designated by the City Council.
- G. If Employee is convicted of a crime involving an abuse of his office, any cash settlement related to the termination of EMPLOYEE, as provided and defined in Government Code Sections 53243 through 53244 that EMPLOYEE may receive from City, and City funds provided for EMPLOYEE'S criminal defense, if any, shall be fully reimbursed to City.
- H. To be eligible for severance pay, as identified in subparagraph B. of Section 7, EMPLOYEE shall sign an acknowledgment and release of claims against the CITY. Such acknowledgment and release appears as Attachment "A" to this Agreement.

8. INDEMNIFICATION

CITY shall defend, hold 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 course and scope of EMPLOYEE'S duties, in accordance with the provisions of California Government Code Section 825, and shall provide a defense in accordance with Government Code Sections 995, *et. seq.*, subject to the limitations and qualifications contained in said statutes. CITY may compromise and settle any such claim or suit and pay the amount of any settlement or judgment resulting therefrom. The obligation to defend and indemnify EMPLOYEE shall survive the termination or expiration of this Agreement as to liability during the term of employment.

9. BONDING

CITY shall bear the full costs of any fidelity or other bonds required of EMPLOYEE under any law, ordinance, regulation, contract or covenant.

10. OTHER TERMS AND CONDITIONS OF EMPLOYMENT

The City Council, in consultation with EMPLOYEE, may establish other terms and conditions of employment, as it may determine from time to time are in the best interests of the CITY, relating to the performance of EMPLOYEE, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City Charter or any other law or regulation.

11. NOTICES:

Any notice required or permitted by this Agreement shall be given in writing and by personal delivery or prepaid first class, registered or certified mail, and addressed as follows:

TO CITY: City Clerk
City of Pasadena
100 North Garfield Avenue
Pasadena, CA 91101

TO EMPLOYEE: Steven B. Mermell
City Manager
Address on file in personnel file

Any such notices shall be deemed given upon delivery, if personally delivered, or, if mailed, upon receipt or upon expiration of three (3) business days from the date of posting, whichever is earlier. Either party may change the address at which it desires to receive notice upon giving written notice to the other party.

12. GENERAL PROVISIONS:

- A. The text herein shall constitute the entire Agreement between the parties. This Agreement sets forth the final, complete and exclusive agreement between CITY and EMPLOYEE relating to the employment of EMPLOYEE by CITY. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The foregoing notwithstanding, EMPLOYEE acknowledges that, except as expressly provided in this Agreement, his employment is subject to CITY'S generally applicable rules, policies and regulations, including those pertaining to employment matters, such as rules and regulations addressing equal employment opportunity, sexual harassment and violence in the workplace.
- B. This Agreement is not assignable by either party.
- C. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of EMPLOYEE.

- D. This Agreement shall become effective upon approval of the City Council and signing by both parties.
- E. If any provision, or any portion thereof contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.
- F. Any dispute between the parties regarding the interpretation of application of any provision of this Agreement shall be referred to mediation by a mutually acceptable mediator. Should said mediation fail to resolve such issues, they shall be arbitrated in accordance with the Rules of the American Arbitration Association.
- G. EMPLOYEE acknowledges that he has had the opportunity and has conducted an independent review of the financial and legal effects of this Agreement. EMPLOYEE acknowledges that he has made an independent judgment upon the financial and legal effects of this Agreement and has not relied on any representation of CITY, its officers, agents or employees other than those expressly set forth in this Agreement.

IN WITNESS WHEREOF, CITY has caused this Agreement to be signed and duly executed on its behalf by its MAYOR, and duly attested by its City Clerk, and EMPLOYEE has signed and executed this Agreement, as of the day and year first above written.

CITY OF PASADENA,

A municipal corporation

STEVEN B. MERMELL, EMPLOYEE

TERRY TORNEK, MAYOR

ATTEST:

MARK JOMSKY, CITY CLERK

APPROVED AS TO FORM:

MICHELE BEAL BAGNERIS
CITY ATTORNEY

ATTACHMENT A

ACKNOWLEDGEMENT AND RELEASE

This is to confirm that on this date I have received severance pay in the amount of \$ _____ pursuant to my employment Agreement with the City of Pasadena. I acknowledge that, in accepting such severance pay, I am releasing the City, its employees, officers and agents, from any and all claims of any kind or nature I had or may have had against the City arising from my employment with the City.

I further acknowledge that this Acknowledgement and Release releases the City from and waives any claim I may have against the City, its employees, officers and agents, stemming from my employment relationship, including the severance thereof, to the fullest extent permissible under the law.

I further acknowledge that this waiver extends to all claims, known and unknown, relative to my employment with and cessation of my employment with the City. I specifically waive the application of Civil Code § 1542, which provides:

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

I have had the opportunity to consult with legal counsel relative to this Acknowledgement and Release. I have signed this letter voluntarily and willingly.

Dated: _____

Steven B. Mermell