

**CITY MANAGER AT-WILL EMPLOYMENT AGREEMENT  
FOR PROFESSIONAL SERVICES**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of November 2019, by and between the CITY OF EUREKA, State of California, a municipal corporation, (“CITY”), and Dean Lotter, (“EMPLOYEE”), both of whom understand as follows:

RECITALS:

WHEREAS, the Charter of the City of Eureka, Section 600 and following, establish the Office of the City Manager, and delineates the duties thereof; and

WHEREAS, CITY desires to engage the services of said Dean Lotter to perform the duties of the Office of the City Manager of the City of Eureka, as provided by the City of Eureka Charter; and

WHEREAS, it is the desire of the Eureka City Council to provide certain benefits, to establish certain conditions of employment, and to set working conditions of said EMPLOYEE; and

WHEREAS, it is the desire of the parties to establish certain conditions of employment and to set forth the working conditions of the EMPLOYEE within the framework of an at-will employment relationship; and

WHEREAS, it is the intention of the parties to fully comply with the provisions of the Charter of the City of Eureka and its municipal code;

WHEREAS, the parties acknowledge that EMPLOYEE is a member of the International City/County Management Association (ICMA) and that EMPLOYEE is subject to the ICMA Code of Ethics.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

**Section 1: DUTIES**

CITY hereby agrees to employ said EMPLOYEE as City Manager of said CITY to perform the functions and duties of City Manager as set forth in the Eureka Charter, Municipal Code, resolutions, ordinances, and/or other regulations of the City, and to perform other legally permissible and proper duties and functions as the City Council shall from time-to-time assign.

## **Section 2: TERM**

A. This Agreement shall commence December 20, 2019 and shall continue for an indefinite time.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Council to terminate the services of EMPLOYEE at any time, subject only to the provisions set forth in Section 3.

C. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the EMPLOYEE to resign at any time from his position with CITY, subject only to the provision set forth in Section 4 of this Agreement.

## **Section 3: TERMINATION AND SEVERANCE PAY**

A. This Agreement shall terminate upon the occurrence of any of the following events:

1. Upon sixty (60) days notice given to the CITY by the EMPLOYEE; or
2. Upon the death of the EMPLOYEE; or
3. Upon the permanent disability and inability of the EMPLOYEE to perform the essential duties of his position; or
4. Upon the effective date of retirement from the CITY'S service pursuant to CalPERS; or
5. Upon decision of the City Council of CITY to terminate EMPLOYEE, with or without cause.

B. In the event EMPLOYEE is terminated before the expiration of the aforesaid term of employment without cause, then in that event CITY agrees to pay EMPLOYEE a lump sum cash severance payment equal to the total of the EMPLOYEE's then current aggregate salary, benefits, and deferred compensation that he would have been entitled to receive for a period of six (6) months under the terms of this Agreement. EMPLOYEE shall also be compensated for all earned vacation, holidays (excluding sick leave) and other accrued benefits to date.

C. In the event EMPLOYEE is terminated for cause or conviction, then, in that event, CITY shall have no obligation to pay the aggregate severance sum designated in the above paragraph.

Notwithstanding the provisions of Section 3.A.5, above, EMPLOYEE may not be terminated (excepting a termination for cause) for a period of six (6) months following a municipal election wherein (a) new Council Member(s) is/are seated. "Termination for Cause" shall include:

1. Willful breach of the Agreement as interpreted pursuant to Labor Code

Section 2924.

2. Habitual neglect of the duties required to be performed as City Manager as interpreted pursuant to Labor Code 2924.
3. Any acts of dishonesty, fraud, misrepresentation or other acts of moral turpitude.
4. Conviction of any act which would constitute a crime, whether misdemeanor or felony, and which would bring disrespect to the Office of City Manager or the CITY.
5. Willful violations of CITY policies of a serious nature, including for example, CITY's Sexual Harassment or "Drugs in the Workplace" policies.

D. Pursuant to the Eureka Municipal Code, should EMPLOYEE be terminated or suspended for cause, EMPLOYEE shall have a written notice of the cause of his removal or suspension from duty, and he shall have the opportunity to be heard on the cause of his removal or suspension before a public hearing of the City Council.

E. In the event CITY at any time during the term of this Agreement reduces the salary or other financial benefits of EMPLOYEE in a greater percentage than an applicable across-the-board reduction for all EMPLOYEES of CITY, or in the event CITY refuses, following written notice, to comply with any other provision benefitting EMPLOYEE herein, or the EMPLOYEE resigns following a suggestion, whether formal or informal, by the Council that he resign, then in that event the EMPLOYEE may, at his option, be deemed to be terminated at the date of such reduction or such refusal to comply within the meaning and context of the herein severance pay provision.

#### **Section 4: RESIGNATION**

In the event EMPLOYEE voluntarily resigns his position with CITY, then EMPLOYEE shall give CITY a sixty-day (60) notice in advance, unless the parties agree otherwise.

#### **Section 5: COMPENSATION**

CITY agrees to pay EMPLOYEE for his services rendered pursuant hereto an initial annual base salary of \$170,000 payable in installments at the same time as other Unrepresented EMPLOYEES of the CITY are paid. In addition, CITY agrees to increase said salary and/or benefits in such amounts and to such extent as the Council may determine that it is desirable to do so based on periodic salary review. Said reviews will be conducted on an annual basis on or about the Anniversary Date of the Agreement.

Except as hereinafter provided, EMPLOYEE shall receive such other and further benefits as are accorded other Unrepresented EMPLOYEES of the CITY, including, but not limited to, cost of living adjustments, holidays, sick and bereavement leaves, and management leave days.

## **Section 6: PERFORMANCE EVALUATION**

A. The Council shall review and evaluate the performance of the EMPLOYEE at least once annually on the Anniversary Date established. Said review and evaluation shall be in accordance with specific criteria developed jointly by CITY and EMPLOYEE. Said criteria may be added to or deleted from as the Council may from time to time determine, in consultation with the EMPLOYEE. Further, the City Council shall provide the EMPLOYEE with a summary written statement of the finding of the City Council and provide an adequate opportunity for the EMPLOYEE to discuss his evaluation with the City Council.

B. Annually, the City Council and EMPLOYEE shall define such goals and performance objectives that they determine necessary for the proper operation of the City of Eureka and in the attainment of the City Council's policy objectives, and shall further establish a relative priority among those various goals and objectives, said goals and objectives to be reduced to writing. They shall generally be attainable within the time limitations as specified and the annual operating and capital budgets and appropriations provided.

C. In effecting the provisions of this Section, the City Council and EMPLOYEE mutually agree to abide by the provisions of applicable law.

## **Section 7: EQUIPMENT**

CITY shall provide at CITY's cost all office, computing, and communications equipment (including cellular phone and an ipad), furniture, and fixtures necessary and convenient to carry out the terms of this Agreement. Such equipment, furniture and fixtures shall be deemed the property of the CITY.

## **Section 8: AUTOMOBILE**

EMPLOYEE's duties require that he shall have the exclusive and unrestricted use at all times during his employment with the City of an automobile. Should the CITY not provide said vehicle, EMPLOYEE will furnish his own personal vehicle for which the CITY shall provide a monthly allowance of Three Hundred Fifty Dollars (\$350).

**Section 9: VACATION, SICK, AND MANAGEMENT LEAVE**

- A. The EMPLOYEE shall receive five (5) weeks of vacation per year. Vacation accrual shall be equivalent to (five) 5 weeks of combined vacation and executive leave per year.
- B. The EMPLOYEE shall utilize and accrue, and have credited and removed from his personal account, vacation, holidays (including personal holidays), and sick leave at the same rate and on the same basis as other Unrepresented EMPLOYEES of the City.
- B. EMPLOYEE shall be given the same holidays as other Unrepresented EMPLOYEES of the City.
- C. EMPLOYEE shall receive 72 hours of management leave per year in recognition of the time EMPLOYEE must work outside normal office hours.
- D. EMPLOYEE will begin service with a vacation leave accrual of 80 hours and a sick leave accrual of 40 hours. Future leave will be accrued at the same rate as other management, mid-management, professional and confidential employees of CITY.

**Section 10: DISABILITY AND LIFE INSURANCE**

- A. The CITY agrees to provide the EMPLOYEE life insurance, workers compensation, and short-term disability coverage to the EMPLOYEE on the same basis as other Unrepresented EMPLOYEES of the City, and to pay all premiums thereon.
- B. CITY's Medicare contribution of 1.45% is matched by an EMPLOYEE contribution of 1.45% of EMPLOYEE's salary for mandated Medicare coverage.

**Section 11: RETIREMENT**

CITY agrees to pay the CITY's cost, excluding the EMPLOYEE's share, into the California Public Employees' Retirement System (CalPERS 2% at 62 formulas) for the benefit of the EMPLOYEE.

**Section 12: DUES AND SUBSCRIPTIONS**

CITY agrees, to the extent it is financially able and with City Council approval, to budget for and to pay for professional dues and subscriptions of EMPLOYEE necessary for his continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for his continued professional participation, growth, and advancement, and for the good of the CITY.

**Section 13: PROFESSIONAL DEVELOPMENT**

A. CITY hereby agrees, to the extent it is financially able and with City Council approval, to budget for and to pay for travel and subsistence expenses of EMPLOYEE for professional and office travel, meetings, and occasions adequate to continue the professional development of EMPLOYEE and to adequately pursue necessary official functions for CITY, including but not limited to the ICMA Annual Conference, the state league of municipalities, and such other national, regional, state, and local governmental groups and committees thereof which EMPLOYEE serves as a member.

B. CITY also agrees, to the extent it is financially able, to budget for and to pay for travel and subsistence expense of EMPLOYEE for short courses, institutes, and seminars that are necessary for his professional development and for the good of the CITY.

#### **Section 14: INDEMNIFICATION**

In addition to that required under state and local law, CITY shall defend, save harmless, indemnify EMPLOYEE against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of EMPLOYEE'S duties as City Manager.

CITY will compromise and settle any such claims or disputes and pay the amount of any settlement or judgment rendered thereon.

#### **Section 15: BONDING**

CITY shall bear the full cost of any fidelity or other bonds required of the EMPLOYEE under any law or ordinance.

#### **Section 16: MOVING EXPENSES/STORAGE COSTS**

CITY will pay for moving expenses. EMPLOYEE will secure three (3) bids from licensed and bonded moving companies and EMPLOYEE agrees to secure the service of the lowest bidder. Payment shall be made by the CITY directly to the lowest bidder.

The CITY will pay for storage costs for household goods up to six (6) months (either in Minnesota or Eureka) or a maximum of \$1,000.00 while EMPLOYEE locates permanent housing.

The CITY will pay \$3,500 for trip related costs associated with the moving of persons and pets from Minnesota to Eureka. (This is separate from moving household goods and belongings).

These sums shall be reimbursed to CITY if EMPLOYEE voluntarily resigns his position as City Manager with the CITY before December 20, 2021. Such sums shall be repaid to CITY within thirty (30) days of EMPLOYEE'S last day of employment with the CITY.

## **Section 17: OTHER TERMS AND CONDITIONS OF EMPLOYMENT**

A. The Council, in consultation with the City Manager, shall fix any such other terms and conditions of employment, as it may determine from time to time, 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 of Eureka Charter and Municipal Code or any other law.

B. All provisions of the City of Eureka Charter and Municipal Code, regulations and rules of the CITY relating to vacation and sick leave, retirement and pension system contributions, holidays and other benefits and working conditions as they now exist or hereafter may be amended also shall apply to EMPLOYEE as they would to other EMPLOYEEs of the CITY, in addition to said benefits enumerated specifically for the benefit of the EMPLOYEE except as herein provided.

## **Section 18: NOTICES**

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service postage prepaid, addressed as follows:

- (1) CITY: City of Eureka, 531 K Street, Eureka; California 95501
- (2) EMPLOYEE: Dean Lotter, 531 K Street, Eureka, California 95501

Alternately, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course transmission in the United States Postal Service.

## **Section 19: GENERAL PROVISIONS**

A. The terms herein shall constitute the entire Agreement between the parties.

B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of EMPLOYEE and may only be amended by the mutual written agreement of the parties.

C. This Agreement shall become effective commencing December 20, 2019. The “Anniversary Date” of this Agreement shall be December 31st.

D. If any section 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.

E. CITY and EMPLOYEE agree that they will, at all times, assist each other in defending any litigation involving the City, or EMPLOYEE's duties with the City, and CITY agrees to defend EMPLOYEE against any claim or action against him for an injury arising out of an act or omission occurring within the scope of his employment. The parties shall each comply with the requirements of Section 825 of the Government Code or its successor, in implementing this paragraph.

F. Should any litigation occur regarding the interpretation of this Agreement, the prevailing party shall, in addition to damages, be entitled to recover reasonable attorney's fees and costs.

IN WITNESS WHEREOF, the City of Eureka has caused this Agreement to be signed and executed its behalf by its Mayor, and duly attested by its City Clerk, and the EMPLOYEE has signed and executed this Agreement, both in duplicate, the day and year first above written.

CITY OF EUREKA

By: \_\_\_\_\_  
Susan Seaman, Mayor

EMPLOYEE

By: \_\_\_\_\_  
Dean Lotter  
Approved as to Form:

By: \_\_\_\_\_  
Robert Black, City Attorney

Attest:

By: \_\_\_\_\_  
Pamela J. Powell, City Clerk