

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT is made and entered into this 1st day of October 2019 ("Effective Date") by and between the City of Commerce, California, a Municipal Corporation (hereinafter "the City" and "Employer") located at 2535 Commerce Way, Commerce, CA 90040 and Edgar P. Cisneros, an individual (hereinafter "Employee"). From time to time City and Employee are referred to as "Party" or "Parties."

RECITALS

WHEREAS, the Employee has performed his duties effectively and City desires to continue to employ the services of Employee as the City Manager for the City of Commerce; and

WHEREAS, the City Council finds that Employee possesses the education, training, experience and expertise necessary to perform the duties of City Manager; and

WHEREAS, the City Council and Employee believe an agreement will enhance the excellence and continuity of the management of the City for the benefit of its residents; and

WHEREAS, Employee desires to continue employment from the City as the City Manager for the City of Commerce; and

WHEREAS, Employee and City recognize that Employee has been compensated below the current market rate for the last two years of service given that the average salary of a City Manager in comparison cities is approximately \$244,007 and that the previous permanent City Manager for the City of Commerce was compensated at \$238,468.98 in 2017 and before that \$233,863.33 in 2016 and prior to that \$229,210.35 in 2015; and

WHEREAS, the City and Employee have agreed upon the language of an agreement that properly reflects the terms and conditions for Employee's employment as the City Manager.

NOW, THEREFORE, IN CONSIDERATION OF THESE MUTUAL COVENANTS, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. Duties:

The City hereby agrees to employ Employee in the position of City Manager. Employee shall perform the function and duties specified in the City Manager Job Description, as well as in the City of Commerce Municipal Code, the applicable Ordinances of the City of Commerce and other legally permissible and proper duties and functions as the City Council shall from time to time assign.

- A. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the City Council to terminate the services of Employee at any time, subject to the provisions set forth in Section 4 of this agreement.

- B. 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 Employer, subject only to the provisions set forth in this agreement.
- C. Employee agrees to remain in the exclusive employ of Employer as the City Manager throughout the existence of this agreement and neither to accept other employment nor to become employed by any other employer until this agreement is terminated pursuant to the terms set forth herein.

Section 2. Term:

Employee agrees to remain in the exclusive employ of City from October 1, 2019 until October 30, 2023 (the "Termination Date"), unless either Party exercises its right to terminate the agreement prior to the Termination Date consistent with the terms set forth in Section 4 of this agreement. Term of Agreement may be extended if parties mutually agree and the City Council votes to approve an extension of the Agreement.

Section 3. Administrative Leave:

The City Council may place Employee on Administrative Leave with or without full pay and benefits at any time during the term of this agreement, only if a majority of the City Council votes to place Employee on Administrative Leave.

Section 4. Termination and Severance Pay:

- A. In the event Employee is terminated because of his conviction by a competent tribunal of any illegal act constituting a misdemeanor involving a breach of the public trust, or a felony, then, in that event, the City shall have no obligation to pay Employee a severance payment that Employee may otherwise be entitled to in the event the City terminates this agreement prior to the Termination Date.
- B. In the event that the City terminates this agreement or Employee for any reason other than one of the reasons set forth in paragraph A above, Employee shall be entitled to a severance payment equal to _____(____) months of Employee's salary.
- C. In the event Employee voluntarily resigns his position with City, then, Employee shall give the City one month notice in advance, unless the Parties agree otherwise in writing.
- D. Pursuant to the provisions of Section 2.04.060 of the Commerce Municipal Code, Employee shall not be removed from office during or within a period of ninety (90) days next succeeding any general municipal election held in the City at which a member of the City Council is elected.

Section 6. Disability:

If Employee is permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or health, as determined by a qualified health care professional, for a period of four successive weeks, or for twenty working days over a thirty working day period beyond any accrued leave, Employer shall have the option to terminate this agreement, subject to the severance pay requirements of Section 4. However, Employee shall be compensated for any accrued administrative leave, vacation, holidays, compensatory time and other accrued benefits.

Section 7. Compensation:

- A. Salary and Benefits. The City agrees to pay Employee for his services rendered pursuant hereto an annual base salary of _____Dollars (\$_____.00), payable in bi-weekly installments at the same time as other employees of the City are paid.
- B. Benefits. Employee shall also be entitled to all of the benefits, including benefits under the California Public Employee Retirement System, provided by the City to the City's Executive Group Employees/Department Heads, unless otherwise provide herein. If there is a discrepancy between the benefits set forth in this agreement and the benefits provided to the City's Executive Group Employees/Department Heads, the benefits set forth in this agreement shall apply.
- C. Automobile Allowance and Vehicle Use. The City agrees to provide Employee with the use of a City vehicle. The City agrees that such use will include any personal travel within the Southern California area and that the City will pay for all maintenance and operating costs for such vehicle.
- D. Deferred Compensation Contribution. The City shall pay, for Employee's benefit, the maximum annual contribution (\$18,000, currently at 2017 levels) under the City's Internal Revenue Code§ 457 Deferred Compensation Plan.
- E. Electronic Media Allowance. The City shall provide Employee with a monthly allowance for electronic media consistent with the City's current technology policy. Council shall have the discretion to provide Employee with an additional allowance provided Employee demonstrates the need. Employee understands that any applicable taxes are Employee's responsibility to pay and not covered by the City.
- F. ScholarShare 529 Contribution. The City shall pay, for Employee's benefit, an annual amount equal to ___% of the maximum annual Deferred Compensation Contribution (\$_____, currently at 2017 levels) under the City's Internal Revenue Code§ 457 Deferred Compensation Plan in a California ScholarShare529 Plan, in equal amounts per pay period.

Section 8. Performance Reviews/Increases:

- A. The City shall provide Employee with annual performance reviews. The City may provide Employee with performance increases, at its discretion beginning twelve months from the Effective Date.
- B. The performance review by the City Council shall be in accordance with the specific criteria developed jointly by the City. Said criteria may be added to or deleted as the Council may from time to time determine, in consultation with the Employee.
- C. The City Council shall annually define such general goals and performance objectives which they determine necessary for the proper operation of the City and in the attainment of the Council's policy objectives and shall further establish a relative priority amount 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.

Section 9. Vacation, Sick and Management Leave:

Subject to vacation, personal and sick leave accruals as outlined in the City of Commerce Personnel Policies and Procedures handbook, Employee shall accrue leave as follows: Vacation at the rate of 120 hours per year; Sick leave at a rate of 96 hours per year; Management leave at a rate of 80 hours per year.

Section 10. Life Insurance:

The City shall provide Employee with term life insurance in the amount of one hundred fifty thousand dollars (\$150,000) throughout the existence of this agreement. Employee shall be entitled to designate whomever he chooses as the beneficiary of such life insurance policy.

Section 11. Expenses/Professional Development:

- A. Employee shall be reimbursed by the City for all expenses reasonably and necessary incurred by him in the furtherance of his duties and the business of the City, not exceeding the amount budgeted each year in the appropriate City Manager account.
- B. The City agrees that Employee shall be allowed to pursue professional development opportunities related to his employment and effectiveness as the City Manager. Employee shall specify the conferences/seminars that he prefers to attend on an annual basis and shall be allowed to attend such seminars and any others that the City Council agrees, in the exercise of good faith, are beneficial to his professional development and performance as the City Manager.

- C. The City hereby agrees to budget and pay a reasonable amount for travel and subsistence expenses of Employee for professional and official travel, meetings and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official and other functions for City, not exceeding the amount budgeted therefore each year in the appropriate City Manager's account.
- D. The City also 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 City.

Section 12. Dues, Memberships and Subscriptions:

The City agrees to budget and to pay a reasonable amount for the professional dues, memberships, 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. Retirement Health Care Payments:

Following Employee's completion of eighteen (18) months of service, Employee became and is entitled to receive all benefits provided other employees upon retirement from the City.

Section 14. Indemnification:

The City shall defend, save harmless and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise arising out of an alleged act or omission occurring within the scope of Employee's duties as City Manager. The City or its insurance carrier, may, without personal cost to Employee, compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon.

Section 15. 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) The City: Mayor
City of Commerce
2535 Commerce Way
City of Commerce, California 90040-1410

(2) Employee: Edgar P. Cisneros
Employee's Contact information is on file with the
Human Resources Department

Alternatively, 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 of transmission in the United States Postal Service.

Section 16. General Provisions:

- A. The text 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.
- C. 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.
- D. Governing Law: This agreement shall be governed by and construed in accordance with the laws of the State of California, which are full force and effect as of the date of execution.
- E. Independent Legal Advice: City and Employee represent and warrant to each other that each has received legal advice from independent and separate legal counsel with respect to the legal effect of this agreement and, City and Employee further represent and warrant that each has carefully reviewed this entire agreement and that each and every term thereof is understood and that the terms of this agreement are contractual and not a mere recital. This agreement shall not be construed against the Party or its representatives who drafted it or what drafted any portion thereof.

IN WITNESS WHEREOF, the City of Commerce (CITY) has caused this Agreement to be signed and executed on its behalf by its Mayor and duly attested by its City Clerk, and Edgar P. Cisneros (CISNEROS) has signed and executed this EMPLOYMENT AGREEMENT BETWEEN EDGAR P. CISNEROS AND THE CITY OF COMMERCE, in triplicate, the day and year first written above.

EMPLOYEE

CITY OF COMMERCE

Edgar P. Cisneros

John Soria, Mayor

ATTEST

APPROVED AS TO FORM

Lena Shumway, City Clerk

Noel Tapia, City Attorney