

ORIGINAL

CITY MANAGER EMPLOYMENT AGREEMENT

THIS AGREEMENT, dated for purposes of identification only this 21st day of July, 2015, is made and entered into by and between the

THE CITY OF ANAHEIM, a municipal corporation,  
hereinafter referred to as "ANAHEIM,"

A  
N  
D

PAUL EMERY, an individual  
hereinafter referred to as "MANAGER."

W I T N E S S E T H:

WHEREAS, it is the desire of the City Council of ANAHEIM (hereinafter "City Council") to retain the services of MANAGER as City Manager of ANAHEIM pursuant to the provisions of the ANAHEIM City Charter (hereinafter "City Charter"); and

WHEREAS, it is the desire of the City Council to provide certain benefits, establish certain conditions of employment, and to set certain working conditions of MANAGER.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE PROMISES, COVENANTS, AND CONDITIONS HEREIN CONTAINED, IT IS AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. DUTIES.

ANAHEIM hereby agrees to employ PAUL EMERY as the City Manager of ANAHEIM to perform the functions and duties specified in the City Charter, and to perform such other legally permissible duties and functions as the City Council may from time to time assign.

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2. ACCEPTANCE OF APPOINTMENT.

PAUL EMERY hereby accepts the appointment as City Manager of ANAHEIM, subject to all terms and conditions set forth in this Agreement.

3. TERM.

The term of this Agreement shall be from July 22, 2015, until terminated by either party in accordance with the provisions of Section 7 of this Agreement. During the term of this Agreement, MANAGER shall be a full-time City Manager. The term "full-time" shall not be construed to prohibit occasional teaching or consulting performed on MANAGER's own time, provided such activities do not interfere or create a conflict of interest with MANAGER's duties as set forth in this Agreement.

4. COMPENSATION AND BENEFITS.

A. Salary

ANAHEIM agrees to pay MANAGER, and MANAGER agrees to accept from ANAHEIM, as compensation for services rendered by MANAGER pursuant to this Agreement, an annual base salary, commencing on July 22, 2015, in the amount of Two Hundred Ninety Thousand Dollars (\$290,000.00) (hereinafter "Annual Base Salary"), payable in installment payments in the same manner and at the same time that the salaries of other executive managers of ANAHEIM are paid. Commencing in July, 2016, and in each fiscal year thereafter, MANAGER's Annual Base Salary shall be eligible for upward adjustment in accordance with the same rules and procedures by which the salaries of other executive managers of ANAHEIM are adjusted for meritorious performance, except that any such adjustment shall be at the sole discretion of the City Council.

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The term "Annual Base Salary" as used in this Agreement shall also include any such adjustments approved by the City Council, other than any payments not eligible to be added to MANAGER'S Annual Base Salary pursuant to the terms of any applicable salary resolution of ANAHEIM.

The term "Monthly Base Salary" as used in this Agreement shall mean a sum of money equal to one-twelfth (1/12) of MANAGER'S Annual Base Salary as defined herein.

B. Health and Welfare

1. MANAGER's percentage contribution to his CalPERS retirement account shall be twelve percent (12%).

2. Notwithstanding any City rule, regulation or policy to the contrary, MANAGER shall, at MANAGER's own cost, have access to ANAHEIM group health programs upon separation from employment with ANAHEIM.

3. Except as otherwise specified herein, MANAGER shall receive all other benefits generally provided to executive managers of ANAHEIM as of the date of this Agreement, as the same may be modified from time to time after the date of this Agreement, including but not limited to medical insurance, dental insurance, life insurance, a retiree health savings plan, sick leave, holidays, vacation, bereavement and family illness leave, automobile or automobile allowance, annual physical examinations, and participation in a retirement system. For purposes of vacation leave accrual, MANAGER shall have a maximum accrual limit of eight hundred (800) hours. With respect to life insurance coverage, MANAGER is entitled to coverage in the amount of three (3) times his Annual Salary, or \$750,000.00, whichever is lower. Any accrued but unpaid sick leave balance amount shall be paid to MANAGER upon termination of employment.

5. AUTOMOBILE/AUTOMOBILE ALLOWANCE.

MANAGER'S duties for ANAHEIM require frequent use of an automobile.

Accordingly, MANAGER shall receive an automobile allowance in the amount of \$300.00 per bi-weekly pay period. At MANAGER's option, in lieu of the automobile allowance, MANAGER may instead request, and ANAHEIM will provide, a fully equipped vehicle for MANAGER's unrestricted use during his employment with ANAHEIM. If MANAGER exercises this option, ANAHEIM shall be responsible for paying for all liability, property damage and comprehensive insurance, and for all purchase, operation, fuel, maintenance, repair and regular replacement costs associated with the vehicle provided to MANAGER.

6. GENERAL BUSINESS EXPENSES.

A. ANAHEIM agrees to budget for and pay for professional dues and subscriptions of MANAGER necessary for continuation and participation in national, regional, state and local associations and organizations desirable for MANAGER's continued professional participation, growth and advancement, and for the benefit of ANAHEIM.

B. ANAHEIM agrees to budget and pay for travel and subsistence expenses of MANAGER for professional and official travel, meetings, and events to adequately continue the professional development of MANAGER and to fulfill necessary official functions for ANAHEIM.

C. ANAHEIM shall provide MANAGER with the necessary technological tools, including but not limited to computer, software, cell phone and such other additional technologies as required by MANAGER to perform his job duties and maintain communication.

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7. TERMINATION.

Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City Council to suspend from duty, remove from office or otherwise terminate the services of MANAGER at any time, at the sole discretion of the City Council, as provided in Sections 600 and 606 of the City Charter. For purposes of this Agreement, termination shall occur in the following circumstances:

A. If a majority of the City Council votes to terminate MANAGER at a duly authorized public meeting.

B. If any of the governing policies pertaining to the role, powers, duties, authority, or responsibilities of MANAGER are amended so as to substantially change ANAHEIM's form of government, whether by action of the City Council, a duly passed initiative measure or state legislation, MANAGER shall have the right to terminate the Agreement.

C. If the City Council reduces the Annual Base Salary or any other financial benefit of MANAGER, in a percentage that is greater than the average reduction of all executive managers, such action shall constitute a termination of this Agreement.

D. If MANAGER resigns following an offer or request by the City Council that MANAGER resign, then MANAGER may terminate this Agreement as of the date of such offer or request.

E. MANAGER may voluntarily resign his position as City Manager, after giving ANAHEIM at least sixty (60) days written notice prior to the effective date of such resignation, unless such notice is waived in whole or in part by the City Council

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8. SEVERANCE.

A. Except as provided in subparagraph B below, in the event this Agreement is terminated on or before July 1, 2017 pursuant to subparagraphs A through D of Section 7 hereof, MANAGER shall be entitled to a minimum terminating cash payment equal to twelve (12) months of MANAGER's Monthly Base Salary. Further, except as provided in subparagraph B below, in the event this Agreement is terminated between July 2, 2017 and December 31, 2020 pursuant to subparagraphs A through D of Section 7 hereof, MANAGER shall be entitled to a minimum terminating cash payment equal to six (6) months of MANAGER's Monthly Base Salary. At MANAGER's option, such terminating cash payment shall be paid in a lump sum or disbursed throughout the applicable severance period, resulting in additional retirement service credit and continuation of medical, dental and life insurance based on enrollment at the date of termination. No severance shall be due or owing if termination takes place pursuant to subparagraph E of Section 7 or after December 31, 2020.

B. Notwithstanding the foregoing, if MANAGER is terminated as the result of (i) a conviction of any felony or crime of moral turpitude, (2) any act of dishonesty, or (3) any act that brings disrepute to MANAGER or ANAHEIM, then MANAGER shall not be entitled to severance and ANAHEIM shall not be obligated to make any terminating cash payment.

C. Pursuant to California Government Code Section 53243.2, if this Agreement is terminated, any cash settlement related to the termination that MANAGER may receive from ANAHEIM shall be fully reimbursed by MANAGER to ANAHEIM if MANAGER is convicted of a crime involving an abuse of his or her office or position.

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9. HOURS OF WORK.

It is recognized that MANAGER devotes a great deal of time outside the normal office hours to business of ANAHEIM and, to that end, he shall be allowed to establish an appropriate work schedule.

10. INDEMNIFICATION.

A. ANAHEIM shall defend, hold harmless and indemnify MANAGER against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of any alleged act or omission occurring in the performance of MANAGER'S duties or resulting from the exercise of judgment or discretion in connection with the performance of duties or responsibilities, unless the act or omission involved willful misconduct and/or illegal activity. MANAGER may request and ANAHEIM shall not unreasonably refuse to provide MANAGER independent legal representation at ANAHEIM's expense. Legal representation provided by ANAHEIM for MANAGER shall continue until a final determination of the legal action, including any appeals. ANAHEIM shall indemnify MANAGER against any and all losses, damages, judgments, interest, settlements, fines, court costs, attorneys' fees, and other reasonable costs and expenses of legal proceedings, and any other liabilities incurred by, imposed upon, or suffered by MANAGER in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of MANAGER duties, unless such claims or actions arose out of the willful misconduct and/or illegal acts of MANAGER. Settlement of any claim must be made with prior approval of ANAHEIM in order for indemnification, as provided for in this Section, to be available.

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B. ANAHEIM agrees to pay all reasonable litigation expenses of MANAGER throughout the pendency of any litigation to which MANAGER is a party, witness or advisor to ANAHEIM. Such expense payments shall continue beyond MANAGER's employment with ANAHEIM as long as litigation is pending. Post employment, ANAHEIM agrees to pay MANAGER for reasonable consulting fees and travel expenses when MANAGER serves as a witness, advisor or consultant to ANAHEIM regarding pending litigation.

11. BONDING.

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

12. NOTICES.

Any notice required or permitted by this Agreement shall be in writing and shall be personally served, or shall be sufficiently given and deemed served upon the other party if sent by United States Postal Service, postage prepaid, and addressed to the appropriate party as follows:

If to ANAHEIM: City Council  
c/o City Clerk  
City of Anaheim  
200 South Anaheim Boulevard  
Anaheim, California 92805

If to MANAGER: Paul Emery  
City Manager  
City of Anaheim  
200 South Anaheim Boulevard  
Anaheim, California 92805

Notices shall be deemed given as of the date of personal service or upon the date of deposit in the course of transmission with the United States Postal Service.

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13. GENERAL PROVISIONS.

A. This writing constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior oral or written representations or written agreements which may have been entered into between the parties. No modification or revision of this Agreement shall be of any force or effect, unless the same is in writing and executed by the parties hereto.

B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of MANAGER.

C. This Agreement shall become effective upon execution by ANAHEIM.

D. If any provision, or any portion thereof, in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable and shall remain in full force and effect.

IN WITNESS WHEREOF, ANAHEIM and MANAGER have each caused this Agreement to be duly executed by the persons whose signatures are subscribed below, each of whom is duly authorized to execute this Agreement.

*(Remainder of page intentionally left blank; signatures on next page)*

DATE OF EXECUTION:

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CITY OF ANAHEIM,  
a municipal corporation

By \_\_\_\_\_  
Tom Tait  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

“ANAHEIM”

  
\_\_\_\_\_  
Paul Emery

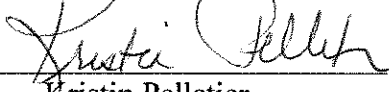
“MANAGER”

DATE OF EXECUTION:

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APPROVED AS TO FORM:

MICHAEL R.W. HOUSTON, CITY ATTORNEY

By   
\_\_\_\_\_  
Kristin Pelletier  
Senior Assistant City Attorney

Date 7/15/15