

# **EMPLOYMENT AGREEMENT**

This Agreement ("Agreement") is made between Eric J. Levitt ("Levitt"), an individual, and the CITY OF ALAMEDA, CALIFORNIA (the "City"), a California charter city and municipal corporation.

## **RECITALS**

WHEREAS, the City desires to employ the professional services of Levitt as City Manager of Alameda; and,

WHEREAS, Levitt agrees to serve as the City Manager of Alameda in accordance with the City Charter of Alameda; and,

WHEREAS, both the City and Levitt wish to set forth in writing the terms and conditions of Levitt's employment as City Manager for Alameda.

NOW, THEREFORE, in consideration of the mutual covenants set forth below, the City and Levitt agree as follows:

## **AGREEMENT**

### **INTRODUCTION AND TERM**

#### **1. EMPLOYMENT**

The City shall employ Levitt in accordance with the terms and conditions set forth below, and Levitt accepts the offer of such employment. During the term of this Agreement, the City will pay Levitt the compensation provided for in this Agreement.

#### **2. TERM**

This Agreement shall commence on April 12, 2019 and continue indefinitely, subject to termination as set forth in Sections 16, 17 and 18 below.

### **DUTIES AND PROFESSIONAL RESPONSIBILITIES**

#### **3. DUTIES**

Levitt shall serve as the City Manager for the City of Alameda and shall be vested with the authority granted to the City Manager in the Alameda City Charter. Levitt shall perform such duties as are necessary for him to exercise the authority vested in the City Manager under the Alameda City Charter. Also, Levitt shall perform such duties and undertake such activities as may be assigned from time to time by the City Council, and which are

consistent with the position of City Manager.

4. HOURS OF WORK

Levitt shall be an exempt employee under Fair Labor Standards Act (FLSA). Levitt is expected to devote necessary time outside normal office hours to the business of the City. Levitt's schedule of work each day and week may vary in response to the requirements of the work to be performed. Levitt is expected to be present and available during regular City business hours and in the case of emergencies and spend sufficient hours at Alameda City Hall or other City facilities to perform his duties.

5. OUTSIDE AND OTHER PROFESSIONAL ACTIVITIES

Levitt shall devote his professional time and attention to the City's business during the term of this Agreement. The City acknowledges a mutual interest with Levitt in having Levitt, on occasion, undertake limited outside activities, including serving as an officer or a board member of municipal government organizations, or other related activities, provided that such activities do not distract Levitt from the performance of his duties as City Manager for Alameda.

When consistent with the City's travel policy, the City shall pay for reasonable travel expenses incurred by Levitt for official travel associated with the pursuit of the City's interests including, but not limited to, such other national, regional, state and local government groups or committees upon which Levitt may serve as a member or attend on behalf of the City such as the League of California Cities.

Subject to prior approval of the City Council, Levitt may accept limited teaching or other business opportunities provided that such opportunities do not materially interfere with Levitt's duties under this Agreement, create a financial or other conflict of interest and are not incompatible with Levitt's duties as City Manager.

## **COMPENSATION TO LEVITT**

6. SALARY

Levitt shall receive an annual base compensation of \$259,000 beginning April 12, 2019. Salary is to be paid bi-weekly. The City Council shall not decrease Levitt's compensation unless and except in the case of an across the board salary or other compensation decrease (including furloughs) applicable to all employees covered by the Executive Management Compensation Plan.

7. DEFERRED COMPENSATION (MONEY PURCHASE PENSION PLAN)

Levitt is eligible to participate in the deferred compensation plan (money purchase pension plan) to the same extent as City Department Heads. Levitt must participate in the plan to receive the annual deferred compensation plan contribution described in

Section 6; however, any voluntary contributions from Levitt to such plan are at Levitt's sole discretion.

Additionally, the City shall provide to Levitt \$12,000 annually, i.e., from April 12 of each year to April 11 of the following year, in a deferred compensation/supplemental retirement plan, which plan shall be as mutually agreed by the City and Levitt. The City shall provide such amount to Levitt on a monthly basis.

In the first year of employment and in lieu of a monthly amount of \$1,000 per month as set forth in the previous paragraph, Levitt may elect to receive, as reimbursement, \$3,000 per month for no more than two months for the purpose of providing Levitt with a housing allowance. The City shall make this housing allowance available to reimburse Levitt for actual expenses relative to housing such as rent or mortgage payments associated with Levitt's relocating to the City. Levitt shall bear all tax related expenses for his receipt of this housing allowance. The City Council in its sole discretion may extend the duration of the benefit period and the payment of the housing allowance. If Levitt uses the \$6,000 for a housing allowance, the City shall provide the \$1,000/month beginning in month seven. To the extent Levitt does not use the full amount of the housing allowance, the City shall provide the \$1,000/month in deferred compensation such that the total amount for first year of employment totals \$12,000.

## **EVALUATIONS**

### **8. EVALUATIONS**

During the first year of Levitt's employment, and after completion of approximately six months, Levitt and the City Council shall jointly establish objective, verifiable measures of his performance to be completed during the first year and the City Council shall provide Levitt with a six month's performance evaluation and thereafter an annual performance evaluation. For each subsequent year during the term of this Agreement, the parties shall endeavor to establish prospective objective, verifiable measures of performance for the ensuing year. Levitt shall not have any right to a compensation increase due to a particular rating on a performance evaluation; rather, any decision to increase salary, provide a lump sum payment based on performance or enhance any other element of compensation during the term of this Agreement, or the timing of any such increase or enhancement, shall be in the discretion of the City Council.

## **RETIREMENT, HEALTH AND OTHER BENEFITS**

### **9. RETIREMENT**

Levitt will be covered by the City's "miscellaneous" PERS plan during his employment. The City will pay the mandatory employer contributions for this benefit and Levitt will pay the employee contributions in accordance Section 414(h) (2) of the Internal Revenue Code.

Levitt is classified as “new” members of CalPERS as defined by Public Employees’ Pension Reform Act (PEPRA). The City shall maintain a contract with CalPERS for the provision of a 2% @ 62 (highest 36 months) retirement benefit formula for PEPRA employees. Also pursuant to PEPRA, these employees and the City are each responsible for paying one-half of the normal cost of this retirement plan.

10. VACATION

Levitt shall accrue 25 days (200 hours) of paid vacation annually. Vacation shall be accrued bi-weekly. Levitt may carry over accrued but unused vacation time from one year to the next; provided, however, he may not accrue a vacation balance higher than 50 days (400 hours). Upon separation from the City, Levitt, or in the case of his death Levitt’s heirs, shall be paid for all unused and accrued vacation time. Accumulated vacation balances shall be paid at Levitt’s base salary rate at the effective date of his separation from employment with the City.

Notwithstanding the prior paragraph, for the first seven pay periods of Levitt’s employment, Levitt will not accrue paid vacation but, instead, effective April 12, 2019, the City shall provide him with 49.928 hours of paid vacation. After the first seven pay period as provided in the prior paragraph, Levitt will accrue paid vacation as provided in the prior paragraph.

11. OTHER LEAVES

Except as provided in Section 10 above and in the following sentence, Levitt shall receive the same paid holidays, floating holidays and sick leave benefits as provided in the Executive Management Compensation Plan. Floating holidays for calendar year 2019 will accrue effective April 12, 2019. Notwithstanding the amount of administrative leave that is provided on an annual basis to other City Department Heads under the Executive Management Compensation Plan, Levitt shall receive 8 days of administrative leave annually, and for calendar year 2019 the 8 days of administrative leave shall accrue effective April 12, 2019.

12. OTHER FRINGE BENEFITS

Levitt shall be provided medical coverage, disability benefits, and dental coverage at the same levels and under the same conditions that are provided to other City Department Heads.

13. TRANSPORTATION ALLOWANCE

Levitt shall receive \$500 each month as a transportation allowance in exchange for Levitt making his personal automobile available for City related business or using public transportation in lieu of using his automobile. Levitt will also be entitled to mileage reimbursement at standard rates for trips of over 100 miles taken on City business when such business trips are consistent with City travel policy.

14. MEMBERSHIP DUES

Unless provided otherwise in the City's adopted budget and subject to review and approval by the Mayor, the City shall pay up to a cap of \$2,500 for the professional dues necessary to ensure Levitt's participation in such programs that enhance both Levitt's standing and the City's reputation, including national, regional, state and local associations and organizations.

15. MOVING AND RELOCATION EXPENSES

On May 1, 2019, the City shall pay Levitt \$16,000 for expenses associated with moving and relocating Levitt from his current residence to Alameda, which expenses include packing, moving, storage costs, unpacking and insurance charges. City shall reimburse Levitt for mileage costs for moving two personal automobiles from his current residence to Alameda at the current IRS allowable rate of \$0.545 per mile.

**SEPARATION FROM EMPLOYMENT**

16. RESIGNATION/RETIREMENT

Levitt shall give the City at least forty five (45) days written notice of the effective date of Levitt's resignation or retirement.

17. TERMINATION OF AGREEMENT

The purpose of this Section 16 is to allow the parties to terminate this Agreement as expeditiously and smoothly as possible so that in exchange for the City's providing the severance described in this Section, Levitt will release the City from any claims against the City.

The City, through a majority vote of its City Council and in either closed or open session, may terminate this Agreement, at its sole and absolute discretion, with or without cause. The City Council may request Levitt's resignation and, if Levitt so agrees, the resignation shall be considered a termination of employment without cause. The term "cause" is defined, for the purposes of this Agreement, as set forth in Section 18 below.

If the City terminates this Agreement without cause, Levitt will be paid a severance amount equal only to his full salary (Section 6), deferred compensation (Section 7), and medical and dental coverage for a period of six (6) months from Levitt's receipt of written notice of termination or his agreement to resign as set forth in the previous paragraph. In exchange for the payment of severance, Levitt shall release the City from all claims against the City, its officials, employees and agents, and, as part of the consideration for Levitt's receiving the severance, Levitt shall cooperate with and provide assistance to the

City in the transition of his duties to an acting, interim or new City Manager, the terms of such transition to be mutually agreed upon at the time of the transition.

If the City terminates this Agreement with cause, the City shall have no obligation to continue the employment of Levitt or to pay any salary, deferred compensation or medical and dental coverage as provided in the preceding paragraph.

18. CAUSE

For purposes of this Agreement, "cause" shall mean: (1) indictment, conviction or plea of nolo contendere to any felony or other crime involving moral turpitude; (2) material breach of City policy or this Agreement, which breach Levitt has not cured, to the extent curable, to the satisfaction of the City Council within sixty (60) days after receiving notice of such breach; (3) fraud, embezzlement, misappropriation of funds or disclosure of confidential information; (4) misconduct or gross negligence that results, or reasonably could be expected to result, in financial damage to the City; (5) failure to cooperate with an official investigation authorized by the City Council or City Attorney, or initiated by a governmental authority, in either case related to the City, its business, Council members or City employees; or (6) acceptance of employment from another source which is inconsistent with full time employment as Alameda's City Manager.

## **MISCELLANEOUS PROVISIONS**

19. REIMBURSEMENT

Levitt is entitled to reimbursement for all sums necessarily and reasonably incurred and paid by him in the performance of his duties. Levitt shall submit a claim form to the City for any such claims in the same form and manner as is required by the City's policy or by custom and practice among other employees in the City's Executive Management Compensation Plan.

Additionally, the City shall reimburse Levitt consistent with the City travel policy for the cost of transportation and lodging to attend the City Council Workshop on March 16, 2019 and for Levitt and his spouse for travel and lodging for one visit to the City to find housing.

20. BONDS

The City shall pay the full cost of any bonds, fidelity or otherwise, required of Levitt under any applicable state or local law or ordinance relative to his performance of his duties as City Manager.

21. INDEMNIFICATION

City shall defend, hold harmless, and indemnify Levitt against any claims, demands, or legal actions, whether specious, frivolous, or otherwise, arising out of an alleged action

or omission, direct or indirect, occurring within the scope and during the course of Levitt's employment with the City. Levitt will cooperate in good faith with the City with respect to the defense of such claims, demands or legal actions.

22. SEVERABILITY

In the event that any term of this Agreement is finally held or determined to be illegal or void by a court having jurisdiction over the City and Levitt, the remainder of this Agreement shall remain in full force and effect unless the term or terms held to be illegal or void are wholly inseparable from the remaining portions of the Agreement. If any part of this Agreement is determined to be illegal or void by a court of competent jurisdiction, the parties shall meet and confer to re-negotiate such illegal or void term(s).

23. PARITY IN CONSTRUING AGREEMENT

Both the City and Levitt have had the opportunity to participate in the drafting of this Agreement. Consequently, terms, conditions, or provisions of this Agreement shall not be construed against one party and in favor of the other based upon who actually drafted the Agreement.

24. INTEGRATION CLAUSE

The City and Levitt acknowledge that this Agreement constitutes the sole and entire agreement of the parties in this matter and that any modifications may be made only in a writing signed by both the City and Levitt. The City and Levitt agree that there are no representations, agreements, arrangements or understandings, whether written or oral, between the parties relating to the subject matter of this Agreement which are not fully set forth in this Agreement.

25. NOTICES

Notice pursuant to this Agreement shall be in writing given by (a) personal delivery with acknowledgement of receipt; or (b) by deposit in custody of the United States Postal Service, postage prepaid, and addressed as follows:

To the City: Mayor and City Council  
City of Alameda  
City Hall  
2263 Santa Clara Avenue Alameda, CA 94501

To Levitt: Eric J. Levitt  
(address to be provided following relocation)

*Signatures on following page*

CITY OF ALAMEDA

ERIC J. LEVITT

By: \_\_\_\_\_  
Marilyn Ezzy Ashcraft  
Mayor

\_\_\_\_\_

Attest:

By: \_\_\_\_\_  
Lara Weisiger  
City Clerk

Approved as to form:

By: \_\_\_\_\_  
Michael H. Roush  
Interim City Attorney