

RESOLUTION R2020-__

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NAPA,
STATE OF CALIFORNIA, AMENDING THE EMPLOYMENT
AGREEMENT WITH CITY MANAGER STEVE POTTER

WHEREAS, on July 17, 2018, the City Council adopted resolution R2018-087, by which the Council approved the terms of employment for Steve Potter as the Interim City Manager, with a term of July 28, 2018, and ending on August 6, 2019; and

WHEREAS, on December 18, 2018, the City Council adopted R2018-145, appointing Steve Potter to serve as the City Manager, and setting his salary and compensation in accordance with the terms of the "Executive Compensation and Terms of Employment Summary" with two modifications relating to Retiree Medical Insurance Reimbursement and severance package requirements (as initially defined by R2017-177, and subsequently updated by R2020-009); and

WHEREAS, Mr. Potter wishes to modify the terms of his agreement to forgo his scheduled wage increase and decrease his base salary by 5% and suspend monthly auto and cell phone allowances through June 30, 2021 in light of the Fiscal Emergency facing the City of Napa due to the COVID-19 Pandemic; and

WHEREAS, the City Council has considered all information related to this matter, as presented at the public meetings of the City Council identified herein, including any supporting reports by City Staff, and any information provided during public meetings.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Napa, as follows:

1. The City Council hereby finds that the facts set forth in the recitals to this Resolution are true and correct, and establish the factual basis for the City Council's adoption of this Resolution.
2. The City Council hereby approves the City Manager Employment Agreement attached hereto as Exhibit "A," and incorporated herein by reference, with an Agreement effective date of April 25, 2020.
3. This Resolution shall take effect immediately upon adoption.

ATTACHMENT 1

I HEREBY CERTIFY that the foregoing Resolution was duly adopted by the City Council of the City of Napa at a public meeting of said City Council held on the 21st day of April 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: _____
Tiffany Carranza
City Clerk

Approved as to form:

Michael W. Barrett
City Attorney

EXHIBIT “A” - CITY MANAGER EMPLOYMENT AGREEMENT

City of Napa
CITY MANAGER EMPLOYMENT AGREEMENT

This Agreement is made by and between the CITY OF NAPA (“the City”), a California charter city and municipal corporation, and STEPHEN POTTER (“**Potter**”).

RECITALS

WHEREAS, the City desires to continue to employ the services of **Potter** as City Manager of the City of Napa, California; and

WHEREAS, **Potter** has requested to forego a scheduled raise and to temporarily reduce his compensation in light of the fiscal challenges created by the COVID-19 Pandemic; and

WHEREAS, **Potter** and the City now desire to agree in writing to the terms and conditions of **Potter’s** employment as City Manager;

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

TERMS

1. Appointment of City Manager:

The City initially appointed **Potter** to the position of Interim City Manager, in and for the City of Napa, California, on July 17, 2018 (R2018-087). On December 4, 2018, the City Council unanimously approved the appointment of **Potter** to serve as City Manager and adopted the terms of that appointment by Resolution dated December 18, 2018 (R2018-145). This agreement continues that appointment and sets forth the terms and conditions of **Potter’s** continued appointment.

2. Term of Agreement:

This Agreement is effective as of April 25, 2020, and will continue until terminated pursuant to Paragraph 4, below.

3. Duties and Responsibilities:

- a. **Potter** is an at will employee who serves at the pleasure of the City Council.
 - b. **Potter** shall exercise the duties and powers of the City Manager as set forth in the City Charter, and as directed by the City Council through ordinances, resolutions, and minute actions.
 - c. **Potter** agrees to devote his full productive time, ability and attention to the City's business during the term of this Agreement. **Potter** shall not hold secondary employment and shall be employed exclusively by the City. However, the City recognizes that **Potter** may actively participate in community affairs and shall be permitted to volunteer reasonable time, energy and expertise, and from time-to-time, to serve and hold office in charitable, non-profit, public service, service club, religious and/or community area organizations. **Potter** shall keep the Mayor advised regarding such activities. Such activities shall not be in conflict with his responsibilities as City Manager and shall not create an undue appearance of conflict. As an exempt employee, **Potter** shall not receive overtime or extra compensation for work performed outside normal business hours.
4. Termination of Employment and Severance:
- a. Consistent with City Charter Sections 75 and 76, the City Manager position is an at-will position, and the City Manager serves at the pleasure of the City Council. Therefore, the City Council may at any time terminate the City Manager, with or without cause.
 - b. If the City Council chooses to terminate the City Manager without cause, the City shall either:
 - i. provide 180 days prior written notice of termination, or
 - ii. pay the City Manager severance pay in the amount equal to base salary for 180 days.
 - iii. Such severance is contingent upon **Potter** signing and delivering a general release of all claims against the City (including without limitation its former and current elected officials, employees,

officers and agents). Such severance shall be payable on the eighth day after the form of release is fully executed.

- c. No severance will be available if the City Council terminates the City Manager with cause.
- d. **Potter** may terminate this Agreement, with or without cause at any time provided **Potter** has provided the City with thirty (30) days written notice prior to such termination.

5. Base Salary:

- a. **Potter** shall be paid an annual base salary of \$243,547, less all applicable federal, state and local withholding.
- b. Effective the pay period beginning December 26, 2020, Potter's annual base salary was scheduled to increase by 3% to \$250,853.
- c. However, Potter desires to temporarily reduce his annual base salary by: (1) foregoing the 3% increase and (2) reducing his annual base salary by 5%. Therefore, upon the effective date of this Agreement, Potter's annual base salary will be reduced to \$231,370. This temporary reduction shall remain in effect until the earlier of June 30, 2021 or the City Council's termination of the Fiscal Emergency.

6. Benefits:

- a. The City shall compensate Potter in accordance with all other terms applicable to the City Manager as set forth in the "Executive Compensation and Terms of Employment Summary," most recently updated pursuant to R2020-009, attached hereto as Exhibit "A," with two modifications:
 - i. Termination of employment shall be subject to the terms of Paragraph 4, above.
 - ii. As described in Section 8.2 (Retiree Medical Insurance Reimbursement), upon **Potter's** retirement, if he elects in writing not to receive the supplemental payment of retiree medical reimbursements set forth in R2017-177 section 8.1.5(a), the City

will contribute the single party retiree monthly premium Kaiser health insurance rate, and the payment shall remain in effect for the life of the retiree only.

- b. Pursuant to Section 4 of R2020-009 (Auto Allowance), the City Manager, receives a monthly auto allowance in the amount of five hundred dollars (\$500.00). **Potter** desires to forego his auto allowance. Therefore, the City Manager's Auto Allowance will be suspended until the earlier of June 30, 2021 or the City Council's termination of the Fiscal Emergency.
- c. In addition, Potter receives a cell phone stipend of \$55 twice per month (\$1,320 **annually**). **Potter** desires to forego this allowance as well. Therefore, the City Manager's cell phone stipend will be suspended until the earlier of June 30, 2021 or the City Council's termination of the Fiscal Emergency.

7. Indemnification:

The City shall defend, hold harmless and indemnify **Potter** against any lawsuit pursuant and subject to the provisions and limitations of California Government Code section 825, provided such lawsuit is against **Potter** for acts or omissions within the course and scope of his employment.

8. Notices:

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

- a. The CITY: Mayor and City Council
City of Napa
955 School Street
Napa, CA 94559
- b. POTTER: Steve Potter, City Manager
(Home address on record with Human Resources)

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

9. Bonding:

The City shall bear the full cost of any fidelity or other bond required for the City Manager under any law or ordinance.

10. Professional Memberships, Meetings, Seminars:

It is understood and agreed that the City and **Potter** will mutually benefit from **Potter's** participation in certain professional activities relating to municipal affairs. Therefore, subject to budgetary constraints, **Potter** may enroll, attend, and participate in conferences, courses, seminars, committee work, or other activities of organizations such as those listed above that benefit the City. **Potter** shall be subject to the City's rules, regulations and ordinances that apply to general Executive Managers concerning reasonable costs and expenses in connection with a particular event or activity authorized through the budgetary process.

11. Performance Evaluations:

The City Council shall review and evaluate the performance of **Potter** each year prior to the close of the fiscal year. **Potter** shall receive an annual performance review from the City Council. The City Council shall determine, at its discretion, the form of the performance review; such as whether the review is oral, written, or both.

12. Miscellaneous:

- a. The text herein shall constitute the entire Agreement between the parties.
This Agreement may not be modified, except by written agreement executed by both parties and specifically supersedes and replaces any and all terms of the prior employment agreement between the City and **Potter**.
- b. 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.
- c. This Agreement shall be governed by the laws of the State of California.
- d. The parties hereby incorporate by reference the provisions of California Government Code Title 5, Division 2, Part 1, Chapter 2, Article 2.6 (Sections 53243, *et seq.*).
- e. The parties agree that any ambiguity in this Agreement shall not be construed or interpreted against, or in favor of, either party.

- f. This Agreement may be executed in counterparts containing original signatures.

DATED: _____

Stephen Potter, City Manager

DATED: _____

Jill Techel, Mayor

APPROVED AS TO FORM:

DATED: _____