

CITY OF PITTSBURG
CITY MANAGER EMPLOYMENT AGREEMENT

This City Manager Employment Agreement (Agreement) is entered into on the 5th of February 2019 by and between the City of Pittsburg, the Successor Agency to the Redevelopment Agency of the City of Pittsburg, the Housing Authority of the City of Pittsburg, the Pittsburg Power Company, the Southwest Pittsburg Geologic Hazard Abatement District II, the Pittsburg Arts and Community Foundation, and the Public Finance Authority of the City of Pittsburg (collectively hereinafter called and referred to as "City") and Garrett D. Evans (hereinafter called and referred to as "Employee" or "Manager"). Under this Agreement, the City offers, and Manager accepts, employment as City Manager of the City.

RECITALS

City desires to employ Employee as City Manager of the City of Pittsburg, California and Executive Director of the Successor Agency to the Redevelopment Agency of the City of Pittsburg, the Housing Authority of the City of Pittsburg, the Pittsburg Power Company, the Southwest Pittsburg Geologic Hazard Abatement District II, the Pittsburg Arts and Community Foundation, and the Public Finance Authority of the City of Pittsburg and Employee desires to serve in such capacity.

The City Council of the City of Pittsburg and the Boards of Directors of the Successor Agency to the Redevelopment Agency of the City of Pittsburg, the Housing Authority of the City of Pittsburg, the Pittsburg Power Company, the Southwest Pittsburg Geologic Hazard Abatement District II, the Pittsburg Arts and Community Foundation, and the Public Finance Authority of the City of Pittsburg have delegated to the City Council of the City of Pittsburg their respective authority as to Employee and the terms and conditions of this Agreement.

The City Council of the City of Pittsburg, as appointing authority, and Employee desire to agree in writing on the terms and conditions of Employee's employment.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and representations hereinafter set forth, the parties hereto do now agree as follow:

1. Duties:

Manager shall perform those duties and have those responsibilities that are commonly assigned to a city manager of a city in California, and as may be further set forth in the City's Municipal Code. Manager shall perform such other legally permissible

and proper duties and functions consistent with the office of City Manager, as the City Council shall from time to time assign.

2. Devotion to City Business:

Manager's position is full-time. Manager shall not engage in any business, educational, professional, charitable, or other activities that would conflict or materially interfere with performance of his/her City Manager duties, except as may be specifically authorized by the City Council.

3. Term:

Manager's employment will commence February 5, 2019, and shall continue until February 4, 2022, or the date of earlier termination in accordance with provisions in this Agreement. On March 31, 2020, and on each succeeding March 31st while this Agreement is in effect, this Agreement shall be automatically extended for one (1) additional year unless six (6) months prior to that date the City Council notifies Manager of its intent not to extend the Agreement for one additional year. City's election not to extend this Agreement shall not entitle Manager to Severance pursuant to Section 5 of this Agreement.

4. City Council Commitments:

A. Except for the purpose of inquiry, the City Council and its members shall deal with all subordinate City employees, officers, contractors, and consultants solely through the Manager or the Manager's designee, and neither the City Council nor any member thereof shall give direction to any subordinate of the Manager, either publicly or privately.

B. No member of the City Council will order the appointment or removal of any person to any office or employment under the supervision and control of the Manager.

C. Neither the City Council nor any of its members shall interfere with the execution of the powers and duties of the Manager, as specified in the Municipal Code, this Agreement, or any other lawfully adopted and authorized document.

5. Termination of Employment and this Agreement; General Release:

Severance:

A. If City terminates this Agreement (thereby terminating Manager's employment) without Cause, as determined by the affirmative votes of a majority of the members of the City Council at a Regular Meeting of the City Council, and if Manager signs, delivers to the City Council, and does not revoke, the General Release Agreement ("Release Agreement") in the form attached hereto as Exhibit A, City shall pay Manager a lump sum benefit equal to all accrued Base Salary and vacation pay, and any other accrued and unused benefit allowances according to their terms ("Accrued Salary and

Benefits”) and an additional five (5) months of his then Base Salary within year one (1) of this Agreement, and shall provide six (6) months of health (medical, dental, and vision) benefits continuing under the benefit plans in which Manager and his dependents are then enrolled (the cash payment and continuing benefits, collectively “Severance”). In the event the City terminates this Agreement within year two (2) of this Agreement, the Severance shall include the Accrued Salary and Benefits and an additional seven (7) months of his Base Salary. In the event the City terminates this Agreement within year three (3) of this Agreement, the Severance shall include the Accrued Salary and Benefits and an additional eight (8) months of his Base Salary.

B. If City terminates this Agreement (thereby terminating Manager’s employment) with Cause, as determined by the affirmative votes of a majority of the members of the City Council at a Regular Meeting of the City Council, Manager shall not be entitled to any additional compensation or payment, including Severance, but shall be entitled only to the Accrued Salary and Benefits. As used in this Agreement, Cause shall only mean any of the following:

1. Conviction of, or plea of guilty or nolo contendere to, any crime or offense (other than minor traffic violations or similar offenses) which is likely to have a material adverse impact on the City or on the Manager’s reputation;
2. Proven failure of the Manager to observe or perform any of his duties and obligations, if that failure continues for a period of thirty (30) business days from the date of his receipt of notice from the City Council specifying the acts or omissions deemed to amount to that failure;
3. Conviction of any crime involving an “abuse of office or position,” as that term is defined in Government Code Section 53243.4;
4. Repeated failure to carry out a directive or directives of the City Council made by the City Council as a body at a Brown Act-compliant meeting; and
5. Any grossly negligent action or inaction by Manager that materially and adversely: (a) impedes or disrupts the operations of City or its organizational units; (b) is detrimental to employees or public safety; or (c) violates City’s properly-established rules or procedures.

C. If, during the Term or any extended Term, Manager dies, Manager’s estate shall receive Accrued Salary and Benefits, but shall not be entitled to any additional compensation or payment, including Severance.

D. In the event Manager is permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, or mental incapacity for a period of more than twelve (12) weeks during any twelve (12) month period, the City may terminate Manager's employment and this Agreement.

E. Manager may resign from his employment at any time, upon giving sixty (60) days written notice to the City Council.

6. Compensation and Annual Evaluation:

A. Manager's initial annual Base Salary shall be Two Hundred Forty Six Thousand Six Hundred Sixteen Dollars (\$246,615.00). Said amount shall be payable in monthly or bi-weekly installments at the same time and in the same manner as other employees of the City are paid.

B. City, by the City Council, and Manager may set mutually-agreed-upon objectives for each year under this Agreement. The City Council shall evaluate Manager's performance at least once a year during the months of November or December ("Annual Evaluation"). Following the completion of the Annual Evaluation, the City Council may, in its sole discretion, grant Manager a Performance Bonus in any amount from Zero Dollars (\$0) to a maximum of Ten Thousand Dollars (\$10,000.00) or any sum in between. Mutually agreed upon objectives will be set during the first quarter of each calendar year. Said Performance Bonus shall not be reportable to CalPERS as earnable compensation.

C. On February 5, 2020, and on each succeeding February 5th while this Agreement is in effect, the City Manager's Base Salary shall be increased no greater than the San Francisco Bay Area Consumer Price Index, All Consumers and no less than Two Percent (2.0%). The City Council will determine the percentage of the annual cost of living adjustment. Should all of the bargaining groups in the City of Pittsburg not receive a salary increase during the fiscal year, the City Council may elect to not extend the cost of living adjustment in this Section.

D. Manager's Base Salary increases approved by the City Council from time to time pursuant to this Agreement shall not require an amendment to this Agreement to be effective.

E. If the City reduces the Base Salary or any other financial benefit of the Manager in a percentage that is greater than the average reduction of all executive managers, such action shall constitute a termination of this Agreement without Cause under Section 6.A. of this Agreement, and Manager shall be entitled to Severance.

7. Deferred Compensation:

A. As part of Manager's annual compensation, City agrees to provide a Section 457 deferred compensation program and to pay into such program for Manager's benefit, up to Four Hundred Dollars (\$400) a month matching contribution.

B. City shall reduce Manager's annual vacation accrual up to eighty (80) hours and contribute the cash value of this reduction, based on Manager's Base Salary, as an employer contribution to Manager's Internal Revenue Code 401(a) deferred compensation plan. Such reduction in vacation accrual and deferred compensation contribution shall be payable in installments at the same time as other employees of the City are paid.

8. Pension and Retiree Health Insurance:

A. City agrees to enroll Manager as a member of the Public Employees Retirement System (PERS) in the PERS plan selected by City in its sole discretion.

1. Manager shall pay the greater of ten and one half percent (10.5%), the current Senior Executive Team PERS contribution plus one percent (1%) or the non-sworn PEPRA rate plus one percent (1%) as a contribution towards CalPERS.

B. City shall provide Manager retiree health insurance benefits up to the age of sixty five (65) for Manager and spouse subject to the conditions below.

1. Manager and spouse are eligible for seventy five percent (75%) Retiree Health Insurance benefits if the Manager separates from City employment before the twenty fifth (25th) year of working at the City. Upon the twenty fifth (25th) year anniversary, the Manager and spouse will be eligible for one hundred percent (100%) of the Retiree Health Insurance benefits.
2. Manager must retire, and begin collecting a monthly annuity, from the California Public Employees' Retirement System (CalPERS) within five (5) years of employment separation from the City.
3. If Manager dies and his spouse remarries, the Manager's spouse is not eligible for Retiree Health Insurance benefits.
4. The described spousal benefits shall only apply to the spouse married to the Manager at the time of the Manager's separation from City employment.
5. Manager, if participating in the Retiree Health Insurance, may subsequently discontinue participation and may re-enroll subject to the

requirements and/or limitations imposed by the health insurance provider.

6. Manager and/or his spouse, if receiving Retiree Health Insurance through a non-City medical insurance provider, shall annually provide verification of medical insurance coverage and cost of the medical insurance ("proof of coverage"). Proof of coverage shall be on a form furnished by the City. Should after two (2) separate notices, provided at least one (1) month apart, the Manager and/or his spouse fail to furnish such annual verification, a forfeiture of the Retiree Health Insurance benefits may result.
7. If Manager dies prior to retirement from the City, the Manager's spouse (if surviving) shall become eligible to receive Retiree Health Insurance benefits subject to the conditions above.

9. Health and Medical Benefits Insurance:

City shall provide Manager with the same health plans (medical, dental, and vision) which are provided to other City employees, and shall pay that portion of the employee and dependent rate or premium as is determined by the City Council for all Senior Executive Team employees.

10. Life Insurance:

The City agrees to pay for a term life insurance policy in the face amount of Three Hundred Fifty Thousand Dollars (\$350,000.00) on Manager's life with a carrier selected by the City. Manager shall designate the beneficiaries of the policy. Manager shall also be entitled to participate in any group life or disability insurance programs approved by the City Council for all employees.

11. Car Allowance:

Manager's duties require him to be available and to respond to the demands of City business at all times and outside of regular business hours, including weekends. City shall pay Manager Four Hundred Fifty Dollars (\$450.00) monthly in compensation for the use and maintenance of his personal vehicle on City business.

12. Equipment:

Manager may have, at Manager's option, a City provided cellular phone and may use such cellular phone consistent with the City Manager's Administrative Order and/or other City administrative regulations.

13. Business and Professional Expenses:

A. City recognizes that Manager may incur expenses of a non-personal, job-related nature that are reasonably necessary to Manager's service to City. City agrees to either pay such expenses in advance or to reimburse the expenses, so long as the expenses are incurred and submitted according to City's normal expense reimbursement procedures or such other procedure as may be designated by the City Council. To be eligible for reimbursement, all expenses must be supported by documentation meeting City's normal requirements and must be submitted within time limits established by City.

B. City agrees to pay the professional dues and subscriptions on behalf of Manager which are necessary for Manager's continuation or full participation in international, national, regional, state, or local associations and organizations necessary and desirable for Manager's continued professional participation, growth and advancement, or for the good of the City, including but not limited to International City-County Management Association (ICMA), League of California Cities, Municipal Management Association Northern California, and California City Management Foundation.

C. City agrees to pay Manager's travel and subsistence expenses for official travel, meetings, and occasions reasonably necessary to continue Manager's professional development, and for Manager's reasonable participation in necessary official and other functions for the City; including, but not limited to, national, regional, state, and local conferences, and governmental groups and committees on which Manager serves as a member. Notwithstanding the above, the number of conferences or meetings City will pay for each year, and attendance at out-of-state conferences and meetings, shall be at the discretion of the City Council as set forth in the City's budget.

14. Vacation and Sick Leave:

City shall provide Manager with vacation, sick, holiday, and administrative leave in the same manner as provided to all Senior Executive Team members of the City. City shall provide Manager with all other benefits as provided to Senior Executive Team members. As used herein, benefits include, but are not limited to, vacation, sick leave, holidays, PERS retirement benefits and payments, retiree health insurance, deferred compensation contributions, and educational tuition reimbursement.

15. Abuse of Office or Position:

If Manager is convicted of a crime involving an abuse of his office or position, all of the following shall apply: (a) if Manager is provided with administrative leave pay pending an investigation, Manager shall be required to fully reimburse City such amounts paid; (b) if City pays for the criminal legal defense of Manager (which would be in its sole discretion, as it is generally not obligated to pay for a criminal defense), Manager shall be required to fully reimburse City such amounts paid; and (c) if this Agreement is terminated,

any Severance Pay and Severance Benefits related to the termination that Manager may receive from City shall be fully reimbursed to City or shall be void if not yet paid to Manager. For purposes of this Section, abuse of office or position means either: (x) an abuse of public authority, including waste, fraud, and violation of the law under color of authority; or (y) a crime against public justice.

16. Enforcement of this Agreement:

The prevailing party in any action brought to enforce this Agreement or to resolve any dispute or controversy arising under its terms and conditions, shall be entitled to payment of his reasonable attorneys' fees and costs.

17. Communications Upon Manager's Separation:

In the event the City terminates the Manager for any reason or no reason, the City and the Manager agree that no member of the City Council, the City Management staff, nor the Manager, shall make any written, oral or electronic statement to any member of the public, the press, or any city employee concerning the Manager's termination except in the form of a joint press release or statement, the content of which is mutually agreeable to the City and the Manager. The joint press release or statement shall not contain any text or information that is disparaging to either party. Either party may verbally repeat the substance of the joint press release or statement in response to any inquiry.

18. Indemnification:

Consistent with the California Government Code, City shall defend, hold harmless, and indemnify Manager using legal counsel of City's choosing, against expense or legal liability for acts or omissions by Manager occurring within the course and scope of Manager's employment under this Agreement. Legal representation, provided by City for City Manager, shall extend until a final determination of the issues including any and all losses, damages, judgments, interest, settlements, fines, court costs, and the reasonable costs and expenses of legal proceedings, including appeals, and including attorneys' fees, and expert witness fees and all other trial and appellate costs, and other liabilities incurred, imposed upon, or suffered by Manager in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened. In the event there is a conflict of interest between City and Manager such that independent counsel is required for Manager, Manager may engage his own legal counsel, in which event City shall indemnify Manager, including direct payment of all such reasonable costs related thereto.

19. Notices:

Any notices to be given hereunder by either party to the other in writing may be effected either by personal delivery, mail, or email. Mailed notices shall be addressed to the parties as set forth below, but each party may change his/her/its address by written

notice given in accordance with this Section. Notices delivered personally or by email will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated and received as of three (3) calendar days following the date of mailing.

CITY: City of Pittsburg
Attention: Mayor
65 Civic Avenue
Pittsburg, CA 94518
MANAGER: Garrett D Evans
Address on file with Human Resources

20. Conflict With City Municipal Code:

The City personnel ordinances, resolutions, rules and policies shall apply to Manager in the same manner as applied to other management employees, provided, however, in the event of a conflict between the provisions of this Agreement and the City Municipal Code, the City Municipal Code shall prevail over this Agreement.

21. Entire Agreement:

This Agreement represents the entire agreement between the parties and supersedes any and all other agreements, either oral or in writing, between the parties with respect to the employment of Manager by City, and contains all of the covenants and agreements between the parties with respect to that employment. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by either party, or by anyone acting on behalf of either party, which are not embodied herein, and that no other employment agreement, statement, or promise not contained in this Agreement shall be valid or binding upon either party.

22. Modifications:

Any modifications to this Agreement shall be effective only if in writing and signed by both of the parties hereto.

23. Effect of Waiver:

The failure of either party to insist upon strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

24. Partial Invalidity:

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

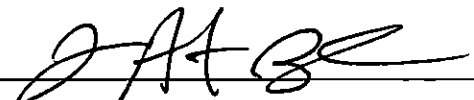
25. Governing Law:

This Agreement shall be governed by and construed in accordance with the laws of the State of California.


This Agreement is entered into this 5th day of February 2019.

CITY OF PITTSBURG

By:




Juan Antonio Banales, Mayor



Garrett D Evans, Manager

Attest:



Alice Evenson, City Clerk

Approved as to Form:



Donna Mooney, City Attorney