

CITY OF REDLANDS

CITY MANAGER EMPLOYMENT AGREEMENT

This Employment Agreement (this “Agreement”) is made and entered into the 5th day of November, 2019 (“Effective Date”) by and between the City of Redlands, a general law city and municipal corporation (“City”) and Charles M. Duggan Jr., an individual (“Employee”). For purposes of this Agreement, City and Employee are sometimes individually referred to herein as a “Party” and, together, as the “Parties.”

RECITALS

WHEREAS, Government Code section 34852 provides that an ordinance establishing a city manager form of government shall define the powers and duties of the city manager; and

WHEREAS, the duties of the city manager of the City are set forth in full in Chapter 2.04 of the Redlands Municipal Code (“RMC”); and

WHEREAS, RMC section 2.04.010 states: “The City Manager shall be appointed by the City Council solely on the basis of his executive and administrative qualifications and ability, and shall hold office at and during the pleasure of the City Council;” and

WHEREAS, the City Council of the City of Redlands (“City Council”) has determined that Employee has the required executive and administrative qualifications and ability, along with the level of education, experience, skills and expertise to serve as the City Manager of the City;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows:

AGREEMENT

1. Employment and Duties

1.1 Commencement. Employee shall commence service as the City Manager for the City effective January 13, 2020 (“Employment Date”).

1.2 Term. The City hereby employs Employee, as City Manager, on an at-will basis for the term of three (3) years commencing on the Employment Date, and continuing through and including January 12, 2023.

1.3 Duties. The City Council hereby appoints Employee as the City Manager for the City to perform the functions and duties of that position, as described in the California Government Code and Chapter 2.04 of the Redlands Municipal Code (as such Chapter may be amended from time to time in the sole discretion of the City Council without any amendment of this Agreement or Employee’s acquiescence), and such other legally permissible and proper duties and functions as the City Council shall, from time to time, direct or assign to Employee. Employee agrees to

perform all such functions and duties to the best of his ability and in an efficient, competent, and ethical manner.

1.4 Work Schedule. It is recognized that Employee is expected to engage in the hours of work that are necessary to fulfill the obligations of the position of City Manager, must be available at all times and devote significant time outside of “normal” City office hours to the business of the City. Employee acknowledges that proper performance of the duties of the City Manager will require Employee to generally observe normal business hours (currently 7:30 a.m. to 5:30 p.m., Monday through Friday in accordance with City’s “9/80” work schedule), as set by the City and as may be duly revised from time-to-time by the City, and will also often require the performance of necessary services outside of normal business hours. Employee’s compensation (whether salary or benefits) is not based on hours worked. Furthermore, the City Manager position remains an “exempt” classification under the overtime provisions of the federal Fair Labor Standards Act (“FLSA”) and Employee shall not be entitled to any compensation for overtime, nor subject to such overtime provisions of the FLSA.

1.5 Other Activities. Employee shall focus his professional time, ability, and attention to the City’s business during the term of this Agreement. Employee shall not engage, without the express prior written consent of the City Council, in any other business duties or pursuits whatsoever, or directly or indirectly render any services of a business, commercial, or professional nature, to any other person or organization, whether for compensation or otherwise, that is or may be competitive with the City, that might cause a conflict-of-interest with the City, or that otherwise might interfere with the business or operation of the City or the satisfactory performance of the functions and duties of the City Manager.

1.6 Employment Status. Employee shall serve at the will and pleasure of the City Council and understands he shall continue to be an “at-will” employee and shall be subject to summary dismissal without any right of notice or hearing, including any so-called due process pre-disciplinary “Skelly” hearing. The City may terminate Employee at any time in accordance with Section 3.2 below.

1.7 Exemption from Personnel System. Redlands Municipal Code section 2.56.030 expressly exempts the “City Manager” position from the City’s Personnel System established in Redlands Municipal Code Chapter 2.56. Employee understands, acknowledges and agrees that Employee is exempt from the City’s Personnel System.

1.8 City Documents. All data, studies, reports and other documents prepared by Employee while performing his duties during the term of this Agreement shall be furnished to and become the property of the City, without restriction or limitation on their use. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other materials either created by or provided to Employee in connection with the performance of this Agreement shall be held confidential by Employee to the extent permitted by applicable law, except as may be required by any governmental agency or court of competent jurisdiction. Such materials shall not be used by Employee, without the prior written consent of the City Council, for any purposes other than the performance of Employee’s duties. Additionally, no such materials may be disclosed to any person

or entity not connected with the performance of services under this Agreement, except as required by (a) law, (b) any governmental agency, (c) subpoena, or (d) an order issued by a court of competent jurisdiction.

1.9 ICMA Code of Ethics. The Parties mutually desire for Employee to be subject to and comply with the International City/County Management Association (“ICMA”) Code of Ethics, and Employee commits to comply with the ICMA Code of Ethics. The City and the City Council agree that the City Council will not require that Employee violate the ICMA Code of Ethics as part of his employment with the City.

2. Compensation and Reimbursement

2.1 Current Base Salary. Effective the first full pay period after the Employment Date, Employee shall receive Two Hundred Seventy Thousand Dollars (\$ 270,000) as his annual base salary (“Salary”) for the City Manager position, which shall be paid on a pro-rated basis bi-weekly at the same time as other employees of the City are paid. Employee’s Salary shall be subject to normal and proper withholdings as determined by state and federal law, and as determined appropriate by the City Council, and shall be subject to payroll taxes, workers’ compensation, and other payroll-related liability costs.

2.2 Salary Adjustment. Following the annual performance evaluation set forth in Section 5.2 hereof, the City Council may increase Employee’s base salary and benefits package based on the results of those annual reviews. Any adjustments in the base salary and/or benefits following the annual performance evaluation under Section 5.2 are not automatic and instead shall be at the sole discretion of the City Council.

2.3 Business Expense Reimbursements. The City shall reimburse Employee for reasonable and necessary travel, subsistence, and other City related business expenses incurred by Employee in the performance of his duties. All reimbursements shall be subject to and in accordance with California law, the City’s adopted policies, and IRS rules for reporting compensation through payroll or reimbursement through accounts payable.

3. Termination

3.1 Termination by Employee. Employee may terminate this Agreement at any time, provided Employee provides the City with at least thirty (30) days prior written notice. In the event Employee terminates this Agreement, Employee expressly agrees that Employee shall not be entitled to any severance pay.

3.2 Termination by the City. The City may terminate this Agreement at any time, with or without cause, by providing written notice to Employee of the same. The City’s right to terminate Employee pursuant to this Section 3.2 shall not be subject to, or in any way limited by, the City’s Personnel Rules and Regulations, or any subsequent related resolutions, or past City practices related to the employment, discipline or termination of the City’s employees. Employee expressly waives any rights provided for the City Manager under the City’s Personnel Rules and Regulations, Municipal Code, or under other local, state or federal law to any other

form of pre- or post-termination hearing, appeal, or other administrative process pertaining to termination. Nothing herein shall be construed to create a property interest, where one does not exist by rule of law, in the position of City Manager.

(a) Termination by the City for Cause. The City may terminate this Agreement at any time by providing Employee with prior written notice of the termination for cause and the facts and grounds constituting such cause. The term "cause" shall be defined to include any misconduct materially related to performance of official duties, including, but not be limited to, any of the following: (1) willful or persistent material breach of duties or inattention to duties, (2) résumé fraud or other acts of material dishonesty, (3) unauthorized or excessive absence or leave, (4) conviction of a misdemeanor involving moral turpitude (i.e., offenses contrary to justice, honesty, or morality) or abuse of position as City Manager, (5) conviction of a felony under California law, (6) violation by Employee of the City's anti-harassment policies, as may be amended, or a finding a legally prohibited personal act of harassment against a City official or employee or legally prohibited personal act of discrimination against a City official or employee has occurred and Employee was aware or should have been aware of that act, (7) violation of state law or the RMC or any City ordinance, rule or regulation, (8) use or possession of illegal drugs in violation of state law and/or City policy, (9) continued abuse of non-prescription drugs or alcohol that materially affects the performance of required duties as City Manager, (10) engaging in conduct unbecoming for a public official or which brings disrepute to the City, (11) any illegal or unethical act involving personal gain, including conviction of theft or attempted theft, (12) Employee's significant mismanagement of City finances, (13) any pattern of repeated, willful and intentional insubordination of the City Council, (14) gross misfeasance or gross malfeasance, (15) failure to comply with the ICMA Code of Ethics, as may be amended; or (16) any similar cause. For any of the foregoing, the City may, in its discretion, place Employee on paid or unpaid administrative leave until resolution. If the City terminates, for cause, this Agreement and the services of Employee hereunder, then the City shall have no obligation to pay Employee any severance pursuant to section 4, below.

(b) Termination by the City without Cause. The City may terminate Employee without cause, but rather based upon any management reason such as implementing the City's goals or policies, including, but not limited to: (i) change of administration, or (ii) incompatibility of management styles, or for any other reason, or no publicly stated reason. In the event Employee is terminated without cause, Employee expressly agrees Employee shall not be entitled to any severance pay as the result of the termination of this Agreement except as provided in Section 4.1 below.

4. Severance

4.1 Severance Pay. In the event Employee is terminated without cause and Employee does not challenge such termination, including, but not limited to, by means of appeal or civil or administrative claim or "liberty-interest" hearing, then the City shall pay to Employee severance in an amount equal to Employee's monthly base salary (annual Salary divided by twelve (12)) then in effect multiplied by six (6). Notwithstanding any other provision of this Section 4.1, if such proposed severance payment exceeds the amount authorized to be paid under Government Code Section 53260, then the amount paid to Employee shall be reduced in the

amount necessary to comply with such statute. (Government Code Section 53260 provides all contracts of employment with a city must include a provision limiting the maximum cash settlement for the termination of the contract to the monthly salary (excluding benefits) multiplied by the number of months left on the unexpired term, but not more than eighteen (18) months if the unexpired term exceeds eighteen (18) months). The severance payment shall not include the monetary value of benefits during said time, but salary only.

4.2 No Severance Pay if Termination for Cause or Initiated by Employee. As provided in Subdivision 3.2(a), if Employee is terminated for cause, then the City shall have no obligation to pay the severance provided for in Section 4.1 above. As provided in Section 3.1, if Employee initiates termination of this Agreement, then the City shall have no obligation to pay the severance provided for in Section 4.1 above.

4.3 Sole Rights. The severance rights provided in this Section 4 shall constitute the sole and only entitlement of Employee with respect to severance pay in the event of the termination, other than for cause or by expiration of this Agreement. Employee expressly waives any and all other rights with respect to severance pay except as provided herein.

5. Performance Evaluations

5.1. Purpose. The performance review and evaluation process set forth herein is intended to provide review and feedback to Employee so as to facilitate the effective management of the City. Nothing herein shall be deemed to alter or change the employment status of Employee as City Manager (as set forth in Section 1.6 above), nor shall this Section 5 be construed as requiring "cause" to terminate this Agreement, or the services of Employee hereunder.

5.2. Annual Evaluation. The City Council shall endeavor to conduct a formal or informal review and evaluate the performance of Employee on an annual basis within thirty (30) days before the anniversary date of the Effective Date of this Agreement in each year during the term hereof. Such performance review and evaluation may be conducted concurrently with an annual base salary review provided for in Section 2.2 hereof, and in accordance with the purpose noted in Section 5.1 above.

5.3. Establishment of Goals. The City Council will establish performance objectives and goals for Employee in connection with the initial evaluation, and each annual evaluation, of Employee pursuant to this section 5. Such objectives and goals shall be reasonably attainable within the time frame established by the City Council and within the City's annual budget.

6. Benefits and Other Compensation

6.1 Professional Development. The City recognizes its obligation to the professional development of the City Manager, and agrees Employee shall be given adequate opportunities to develop and maintain skills and abilities as the City Manager. Employee is expected and encouraged to and does agree to participate in professional organizations and to attend local and regional meetings and conferences related to matters of interest to the City consistent with the time required for such attendance in relationship to Employee's other responsibilities as determined by

the City Council. The City Council hereby agrees to budget an amount, to be determined in the exercise of its sole discretion, to pay the cost, travel and subsistence expense of Employee for professional and/or official travel, meetings, and occasions adequate to continue professional development of Employee and to adequately pursue necessary official functions for the City. All out-of-state professional and/or official travel by Employee shall be pre-approved, in writing, by City's Mayor and Mayor Pro Tem. Employee shall be responsible for maintaining any professional certifications recognized as necessary or desirable in the performance of the duties hereunder. The City agrees to pay the annual professional dues and subscriptions necessary for full participation in national, regional, state, or local associations and organizations necessary and desirable for the best interests of the City, and for Employee's continued professional participation and advancement. To authorize the City's annual costs related to Employee's continued professional development, the anticipated costs must be included in the City's adopted or amended annual budget. The City Council is the approval authority for the City's annual budget. At a minimum, that may include any professional dues for membership with the ICMA, and the League of California Cities (LCC), as well as including travel expenses and registration for attendance at the annual ICMA conference, the annual LCC General Membership conference (LCC's Annual Conference), the annual LCC City Manager Department conference, and the annual LCC New Mayor and Council Members Academy.

6.2 Paid Annual Leave. Employee shall be entitled to paid annual leave ("Annual Leave") at an accrual rate of fifteen and seven one-hundredths (15.07) hours pro rata per pay period. Employee's Annual Leave is inclusive of all other leave benefits including, but not limited to, sick leave, executive leave, and vacation. Upon separation, for any reason, Employee shall be entitled to one hundred percent (100%) of Employee's unused Annual Leave balance then existing, at Employee's then current hourly rate of pay, subject to normal and proper withholdings as determined by state and federal law, and shall be subject to payroll taxes, workers' compensation, and other payroll-related liability costs in the same manner as other employees of the City.

(a) Holiday Leave. Employee shall be granted the following twelve (12) holidays: New Year's Day, Martin Luther King Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Day after Thanksgiving Day, Christmas Eve and Christmas Day (twelve 8-hour days) .

(b) Leave Bank. Employee shall be credited with a one hundred twenty (120) hour leave bank ("Leave Bank") beginning on the commencement of employment by Employee following the approval of this Agreement.

6.3 Health and Welfare Benefits. Employee shall be entitled to certain rights and privileges accorded to City Department Directors regarding health, welfare and benefits, as provided in the City Department Directors' Memorandum of Understanding, as set forth in Exhibit "A" to this Agreement.

6.4 Retirement. Employee is believed to be a New Member/PEPRA, as defined by CalPERS and as mandated by the Public Employees' Pension Reform Act of 2013. Employee will be classified in the City's Tier II pension plan. Accordingly, Employee shall be entitled to participate in the City's CalPERS Retirement Program with the 2% at 62 formula.

6.5 Automobile. Employee shall receive Five Hundred Dollars (\$500.00) per month as vehicle allowance to reimburse Employee for use of a personal vehicle in pursuit of recognized official duties. The allowance will be paid in the regular payroll process with Salary beginning with the first payroll paid subsequent to the Employee's commencement date consistent with the payment method of allowances provided to other employees of the City. The allowance is subject to normal and proper withholdings as determined by state and federal law and shall be subject to payroll taxes and other payroll-related liability costs in the same manner as other employees of the City. Employee shall be responsible for any personal income tax that may result from that reimbursement.

6.6 Deferred Compensation. Employee is eligible to participate in the City's 457 and 401(a) deferred compensation programs. The City will contribute, annually, the sum of One Thousand One Hundred Twenty-Five Dollars (\$1,125) and the sum of two percent (2%) of Employee's Salary, to Employee's 401(a) deferred compensation plan.

6.7 Bonding. The City shall bear the full cost of any fidelity or other bonds required for Employee under any law or City ordinance.

6.8 Flexible Spending Account. The City provides a Flexible Spending Account (FSA) program at Employee's sole cost and expense (employee cost may be income tax deferred in accordance with IRS regulations). Expenses that may be reimbursed using the FSA program include childcare, medical expenses not covered by insurance plan, orthodontic work, and similar qualifying expenses.

6.9 Business Equipment. The City will provide to Employee any job-related personal tools or equipment, such as a computer, desk, land-line phone, file cabinets, table and chairs, that serve the professional development of Employee and/or is needed to perform Employee's functions and duties. Upon termination, for any reason, Employee shall return all business equipment to the City no later than Employee's last day of employment. The City shall provide a City-owned cell phone for City-related business and functions during, before and after normal work hours. The City shall pay for any expenses related to initial purchase, data plan, monthly service plan, insurance, and replacement due to normal wear and tear. Employee shall follow the inventory control procedures for portable devices such as laptops and cell phones consistent with control procedures for other City employees.

6.10 Relocation/Temporary Housing Expenses. The City shall pay Employee up to Twelve Thousand Dollars (\$12,000) to help defray Employee's moving, relocation, current lease obligations and temporary housing expenses related to his employment with the City; provided, that those expenses shall only be due upon the City's receipt of satisfactory proof of actual expenditures paid by Employee for those expenses and approval of those expenditures by the City Council and shall be paid within thirty (30) days after submission of that satisfactory proof.

7. Indemnification. To the extent mandated by the California Government Code, the City shall defend, hold harmless, and indemnify Employee against any tort, professional liability, claim or demand, or other legal action arising out of an alleged act or omission occurring in the

performance of Employee's services under this Agreement. This section shall not apply to any intentional tort or crime committed by Employee, to any action outside the course and scope of Employee's employment, or any other intentional or malicious conduct or gross negligence of Employee.

8. Other Terms - Conditions of Employment. The City Council, in consultation with Employee, shall establish any such other terms and conditions of employment as it may determine from time to time, provided such terms and conditions do not exceed the maximum salary and benefits approved by the City Council and are reduced to writing and signed by Employee and the Mayor of the City.

9. General Provisions

9.1 Entire Agreement. This Agreement represents the entire Agreement and understanding between the Parties and supersedes any and all other agreements and understandings, either oral or in writing, between the Parties with respect to Employee's employment by the City and contains all of the covenants and agreements between the Parties with respect to such employment. No ordinances or resolutions of the City governing employment, including the Personnel System, shall apply unless specified herein. Each Party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by either Party, or anyone acting on behalf of either Party, which are not embodied herein, and that no other agreement, statement or promises not contained in this Agreement shall be valid or binding upon either Party.

9.2 Amendment. This Agreement may be amended at any time by the mutual consent of the Parties by an instrument in writing, which amendment shall require City Council approval.

9.3 Notice. Any notice or other communication required, or which may be given, pursuant to this Agreement, shall be in writing. Any such notice shall be deemed delivered (i) on the date of delivery in person; (ii) five (5) days after deposit in first class registered mail, with return receipt requested; (iii) on the actual delivery date if deposited with an overnight courier; or (iv) on the date sent by facsimile, if confirmed with a copy sent contemporaneously by first class, certified, registered or express mail; in each case properly posted and fully prepaid to the appropriate address set forth below, or such other address as a Party may provide notice in accordance with this section:

CITY:
City Clerk
City of Redlands
35 Cajon Street, Suite 200
PO Box 3005 (mailing)
Redlands, CA 92373

EMPLOYEE:
Charles M. Duggan Jr.
Address on file with City

9.4 Conflicts Prohibited. During the term of this Agreement, Employee shall not engage in any business or transaction or maintain a financial interest which conflicts, or reasonably might be expected to conflict, with the proper discharge of Employee's duties under this

Agreement. Employee shall comply with all requirements of law, including but not limited to, Sections 87100 et seq., Section 1090 and Section 1126 of the Government Code, and all other similar statutory and administrative rules.

9.5 Effect of Waiver. The failure of either Party to insist on 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.

9.6 Partial Invalidity. If any provision in 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.

9.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, which are in full force and effect as of the Effective Date of this Agreement.

9.8 Government Code Sections 53243 - 53243.4. Government Code sections 53243 - 53243.4 sought to provide greater transparency in local government and institute certain limitations on compensation paid to local government executives. Those statutes require that contracts between local agencies and certain employees include provisions requiring an employee who is convicted of a crime involving an abuse of his office or position to provide reimbursement to the local agency. Those statutes are incorporated herein by reference. Accordingly, the Parties agree that it is their mutual intent to fully comply with these Government Code sections and all other applicable law as it exists as of the date of execution of this Agreement and as such laws may be amended from time to time thereafter. Specifically, the following Government Code sections are called out and hereby incorporated by this Agreement:

Section 53243. Reimbursement of paid leave salary required upon conviction of crime involving office or position.

Section 53243.1. Reimbursement of legal criminal defense upon conviction of crime involving office or position.

Section 53243.2. Reimbursement of cash settlement upon conviction of crime involving office or position.

Section 53243.3. Reimbursement of non-contractual payments upon conviction or crime involving office or position.

Section 53243.4. "Abuse of office or position" defined.

Employee represents Employee has reviewed, is familiar with, and agrees to comply fully with each of these provisions if any of these provisions are applicable to Employee, including that Employee agrees any cash settlement or severance related to a termination Employee may receive

from the City shall be fully reimbursed to the City if Employee is convicted of a crime involving an abuse of Employee's office or position.

9.9 Independent Legal Advice. The 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, or had the opportunity to do so, and the 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 who drafted any portion thereof.


9.10 Prohibition against Assignment. Neither this Agreement nor any right, privilege or obligation of Employee hereunder shall be assigned or transferred by him without the prior written consent of the City Council. Any attempt at assignment or transfer in violation of this subsection shall, in the sole discretion of and at the option of the City Council, be null and void and may be considered a material breach of this Agreement and "cause" for termination of this Agreement.

9.11 Severability. 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 and effect without being impaired or invalidated in any way.

IN WITNESS WHEREOF, the City of Redlands has caused this Agreement to be signed and executed on its behalf by its Mayor, and duly attested by the City Clerk, and Employee has signed and executed this Agreement, all in triplicate.

CITY OF REDLANDS

EMPLOYEE

By: 
Paul W. Foster, Mayor

By: 
Charles M. Duggan Jr.

ATTEST:

By: 
Jeanne Donaldson, City Clerk

Exhibit "A"

Additional Benefits

- Medical Insurance – City pays the entire monthly premium for employees and their eligible dependents through PERS Health
- Dental Insurance – City pays the entire monthly premium for employees and their eligible dependents
- Vision Insurance - City pays the entire monthly premium for employees and their eligible dependents
- \$150 per year to offset medical insurance co-payments and/or deductibles
- Life Insurance - \$25,000
- Accidental Death & Dismemberment Insurance - \$25,000
- State Disability Insurance – All costs paid by employee
- Credit Union
- Employee Assistance Program
- Retiree Health