

EMPLOYMENT AGREEMENT

THIS AGREEMENT is made and entered into this 28th day of May, 2014, by and between the City of Nevada City, a Municipal Corporation, (“City”) and Mark T. Prestwich, an individual, (“Manager”).

W I T N E S S E T H

WHEREAS, City desires to contract for the services of an Employee as City Manager and to provide for him such terms and conditions of employment to appropriately compensate him for the responsibilities and duties of the position of City Manager; and

WHEREAS, in addition to the terms and conditions of employment and associated compensation for the City Manager, it is the desire of the City to mutually agree upon the working conditions and understanding of the authorities of the position and the expectations of both the City and the Manager.

NOW, THEREFORE, the parties agree as follows:

1. **Duties**

City hereby agrees to employ Mark T. Prestwich as the City Manager of the City of Nevada City to perform on a continuing basis the functions and duties which are generally described in applicable City Ordinances, and to perform other legally permissible and proper duties and functions as the City Council of the City shall from time to time assign, and Manager agrees to accept such employment and to perform such functions and duties as directed by the full City Council.

2. **Term**

The term of this Agreement shall begin on June 26, 2014 (“Start Date”) and continue until June 30, 2018, unless extended by one additional year to June 30, 2019 by mutual agreement at least 90 days prior to June 30, 2018.

3. **Salary**

City agrees to pay Manager for services rendered, a base salary of \$97,500.00 per year, payable in installments at the same time as the other employees of the City are paid. Manager is exempt for overtime compensation under the Fair Labor Standards Act.

4. **Other Benefits**

- A. The City agrees to budget and pay travel (other than mileage) and subsistence expenses of the Manager for official travel, meetings and occasions to continue the professional development of the Manager.
- B. The City Council recognizes the desirability of representation in and before local civic and other organizations, and the City Manager is authorized to become a member of civic clubs or organizations. Manager shall be reimbursed for dues to

participate in such local civic clubs or organizations which Manager believes will advance the goals of the city to enhance communication and partnerships.

- C. Manager shall be granted 40 hours of vacation-leave credit effective July 1, 2014. He shall then begin accruing vacation leave at the rate of 10 hours per month. The maximum accrual of vacation leave time shall be 240 hours.
- D. Manager shall be enrolled in the second tier of the City's CalPERS retirement plan otherwise known as the 2%@ 60 plan with an employee contribution of 5%.
- E. City shall pay 100% of employee only medical premium and 75% of additional premium for any dependent coverage.
- F. City shall pay 100% for employee and 75% of dependent premiums for dental insurance.
- G. Manager shall receive Sick Leave and Administrative Leave as provided for current management employees. For fiscal year 2013-2014 the number of Administrative Leave hours provided to management is 96 hours annually. Up to 24 hours of Administrative Leave may be carried over into the next fiscal year.
- H. Manager shall be credited with three days of sick leave effective July 1, 2014.
- I. City shall pay Manager a monthly auto allowance of \$200.00 in lieu of making a vehicle available for the Manager's own use and for City-related business and/or functions during, before and after normal work hours.
- J. City agrees to provide a deferred compensation contribution each pay period to the city's deferred compensation plan to the account of the Manager. The City contribution shall be a maximum amount of \$375 in each of the 26 pay periods. The total annual contribution from the City may not exceed \$9,750. The contributions from the City shall be in addition to the base salary.
- K. Fourteen Holidays are provided to management employees according to the schedule contained in the Nevada City Personnel Resolution.
- L. Unless otherwise specified herein, all future changes to benefit provisions adopted by the City as they apply to city management employees shall apply to Manager as well.

5. Termination and Severance

- A. This Agreement may be terminated at any time upon the mutual written consent of both City and Manager.
- B. Voluntary Resignation. Manager may terminate this Agreement at any time by providing the City not less than thirty (30) calendar days prior written notice.
- C. By City without Cause
 - i. City may terminate Manager without cause by providing Manager not

less than thirty (30) calendar days prior written notice. In the event the City Council terminates Manager's employment without cause, the City shall pay Manager severance in a sum equal to six (6) months base salary plus six (6) months COBRA health insurance payments for Manager and covered dependents.

- ii. Notwithstanding section (i) above, Manager shall not be removed by the City Council during the first 120 days following any change in membership of the City Council, except upon a 4/5 (four-fifths) vote of the City Council.

D. By City with Cause

City may terminate Manager for cause, without obligation to make the severance payment to Manager specified in Section 5(C) (i) above, subject to all of the following:

- a. City shall provide Manager written notice of the charges constituting the cause for termination at least ten (10) working days prior to termination.
- b. Within the ten-day period, but not earlier than five working days after the notice has been given, City Council shall meet with Manager in closed session lawfully agendized under the Brown Act and provide Manager an opportunity to address City Council regarding the charges consistent with the Brown Act. After hearing Manager's response to the charges, City Council shall make a decision as to whether to terminate Manager and shall inform Manager in writing of its decision.
- c. For the purposes of this section, "for cause" means Manager's material breach of this Agreement; conviction of a felony; conviction of a misdemeanor arising out of Manager's duties under this agreement and involving a willful or intentional violation of law; willful abandonment of duties; or any other intentional or grossly negligent action or inaction by Manager that materially and substantially impedes or disrupts the performance of City or its organizational units, or is detrimental to employee or public safety.

6. **Performance Evaluation**

Annual performance evaluations are an important way for the City Council and the City Manager to ensure effective communication regarding expectations and performance. The annual performance review and evaluation shall be in accordance with specific criteria developed jointly by City Council and City Manager. Such criteria may be added to or deleted as the City Council from time to time may determine in consultation with Manager.

Not later than three months after the Start Date, and in consultation with the City Council, the City Manager shall develop a list of goals and performance objectives which are determined necessary for the proper operation of the City for the attainment of the City Council's policy objectives. The City Council and the City Manager shall further establish a relative priority among those various goals and objectives which shall be reduced to writing.

In recognition of accomplishments and objectives, and excellent performance, a merit increase may, in City's sole discretion, be granted.

7. **Hours of Work**

Manager shall attend all City Council meetings, unless excused by the Mayor. Upon the request of the Mayor or City Council, the Manager shall attend Planning Commission and various committee meetings. City Council will consider permitting the City Manager to work a "9/80" type schedule or other flexible-time work schedule for the City Manager.

8. **Professional Development**

Subject to available funds and City Council appropriation, City agrees to pay for professional fees, dues and subscriptions on behalf of Manager which are reasonably necessary to the continuation and participation in organizations necessary and desirable for continued professional growth and development.

Subject to available funds and City Council appropriation, City agrees to budget and pay travel (other than mileage) and subsistence expenses for travel to and attendance at the League of California Cities' annual conference and the League of California Cities' City Managers' Department annual conference.

9. **Liability**

City agrees to indemnify, hold harmless and defend at its expense Manager from any and all claims, actions, losses, damages, charges, expenses or attorney's fees to which Manager may be subject to arising out of, or resulting from, the performance of his duties hereunder, excepting therefrom those matters arising from criminal acts or gross negligence.

10. **Bonding**

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

11. **Other Terms and Conditions**

- A. The parties agree that the City Manager position is at-will employment.
- B. City may from time to time fix other terms and conditions relating to the performance of Manager hereunder, provided such terms and conditions are mutually agreed upon by both parties, and are not inconsistent or in conflict with the provisions of this Agreement.
- C. Manager shall perform his duties in accordance with all the laws, ordinances, rules and regulations applicable to his position. This Agreement shall be interpreted in accordance with the laws of the State of California.
- D. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement. Except as herein expressly provided to the contrary, the provisions of this Agreement are for the benefit of the parties solely and not for the benefit of any other person, persons or legal entities.
- E. Manager acknowledges that he has not been induced to enter into the Agreement

by any representation or statements, oral or written, not expressly contained herein or expressly incorporated by reference. City makes no representations, warranties or guarantees, expressed or implied other than expressed representations, warranties or guarantees contained in this Agreement.

F. City Manager shall also be subject to the Conflict of Interest provisions of the California Government Code and any Conflict of Interest Codes applicable to his employment.

G. If any provision or portion of this Agreement is held to be unconstitutional, invalid or unenforceable, the remainder of this Agreement shall be deemed severable, and shall not be affected and shall remain in full force and effect.

H. All communications or notice regarding this Agreement shall be sent to the City in care of the Mayor, unless Manager is notified to the contrary in writing. Manager shall advise City, in writing of his residence address for the forwarding of any communication regarding this Agreement. Any written notice hereunder shall become effective as of the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the address as stated below, or at such other address as may hereafter be specified by notice in writing. In lieu of mailing, written notice shall become effective as of the date it is personally delivered to the addressee.

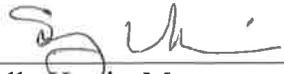
I. Notices required by this Agreement shall be given as follows:

To City: Mayor
City of Nevada City
317 Broad Street
Nevada City, California 95959

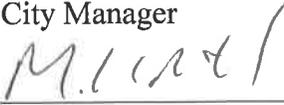
To Manager: Mark T. Prestwich
City of Nevada City
317 Broad Street
Nevada City, California 95959

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first set forth above, by and between:

CITY OF NEVADA CITY, a municipal corporation

 5/28/2014
Sally Harris, Mayor Date
Mayor, City of Nevada City

City Manager

 5/26/2014
Mark T. Prestwich Date

ATTESTED: BY  City Clerk, Date: 5/28/2014

APPROVED AS TO FORM:  City Attorney, Date: 5/28/2014