

EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT (the "Agreement") is made and entered as of this 3rd day of March 2020 (the "Effective Date"), by and between the CITY OF LA PALMA, a public body and general law city of the State of California (the "City"), and CONAL McNAMARA, an individual (the "City Manager"), both of whom understand as follows:

RECITALS:

WHEREAS, the City desires to employ the services of Conal McNamara as the City Manager as provided by the La Palma Municipal Code Chapter 2, Article II; and

WHEREAS, it is the desire of the City to establish certain conditions of employment and to set working conditions of said City Manager; and

WHEREAS, City Manager desires to accept employment as City Manager of said City.

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

SECTION 1. DUTIES.

A. City hereby agrees to employ Conal McNamara as City Manager of said City to perform the functions and duties specified in the La Palma Municipal Code Chapter 2, Article II, pursuant to Government Code sections 36501, 36506, and 34851 *et seq.*, and as provided by other state and federal law, and to perform other legally permissible and proper duties and functions as the City Council of the City of La Palma (the "City Council") shall from time to time assign.

B. City Manager, with prior written approval of the City Council, may undertake outside professional activities for compensation, including teaching, speaking and writing, provided they do not interfere with City Manager's normal duties, are done only during vacation or other non-working time of City Manager, and are not done with any then-existing vendors or contractors of the City, or past vendors or contractors where conflicts of interest are triggered under state or local law. Under no circumstances shall such outside activity create a conflict with the duties of the City Manager and the interests of the City. The City Council, in its sole discretion, may determine when such a conflict exists.

SECTION 2. TERM.

A. City Manager's employment shall commence on April 1, 2020.

B. City Manager shall serve at the pleasure of City Council. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Council acting for the City to terminate the services of City Manager at any time, with or without cause, subject only to the provisions set forth in Section 5 of this Agreement, and the provisions of the La Palma Municipal Code, Chapter 2, Article II, not otherwise waived hereunder.

C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Manager to resign at any time from his position with City, subject only to the provision set forth in Section 5, Paragraph G, of this Agreement.

SECTION 3. DUTIES.

Pursuant to Municipal Code Section 2-42 and subject to Section 1.B, City Manager shall devote full-time to his work duties to the office of the City Manager. City Manager shall not, while employed by the City, perform any other work for hire or any unpaid or volunteer work that conflicts with performance of his duties as City Manager. City Manager shall perform those duties and have those responsibilities that are commonly assigned to a City Manager of a general law city in the State of California with a council-manager form of government, and as are further set forth in the City's Municipal Code, including but not limited to 2-42 thereof, as may be amended from time to time. The terms of Municipal Code Chapter 2, Article II, as the same may from time to time be amended, are incorporated herein as though fully set forth. In the event of any conflict between the terms of this Agreement and the terms of Chapter 2, Article II, the provisions of this Agreement shall prevail pursuant to the authority of the City Council to enter into this Agreement.

SECTION 4. ADMINISTRATIVE LEAVE WITH PAY.

City may place City Manager on Administrative Leave with full pay and benefits at any time during the term of this Agreement. However, if the purpose of placing City Manager on Administrative Leave With Pay is to conduct an investigation into potential wrongdoing, and after that investigation, City Manager is convicted of a crime involving abuse of his/her office or position, then pursuant to Government Code Section 53243, City Manager shall be required to fully reimburse City for any salary or benefits received while on Administrative Leave With Pay. "Abuse of office or position" shall be as defined in Government Code Section 53243.4, as may be amended.

SECTION 5. TERMINATION AND SEVERANCE PAY.

A. The City Council shall have the right at any time during the term of the Agreement, upon forty-five (45) days' prior written notice to City Manager to terminate this Agreement and City Manager's employment, for any reason or for no reason, by a vote of a majority of the members of the City Council (and not a majority vote of the quorum only, in the event of a meeting where less than the full number of members are present, and the majority of the quorum is less than four votes) voting at regular, adjourned regular, or special meeting of the City Council. However, there shall be no termination within 90 days after a municipal election or appointment of a Councilmember. If such termination is involuntary and for reasons other than "misconduct in office" or "for cause" as further specified herein, City Manager shall be entitled to receive a severance payment in an amount consistent with Government Code section 53260. In addition, City Manager shall be entitled to receive City-paid health benefits (medical, dental, and vision) for the same duration of the severance payment: six (6) months. No other cash or non-cash settlement payment shall be made other than payment for City Manager's accrued and unpaid vacation.

B. The City Manager and City acknowledge and agree that there is a mutual benefit in advancing and maintaining a positive and non-controversial resolution to the employment

relationship. In keeping with the spirit of this provision, and as a condition to the receipt of any amount of severance pay as provided in paragraph 5.A above, and as partial consideration therefor, City Manager agrees not to make any public or private statements critical or disparaging of the City, the City Council, its members, department heads, officers or employees; similarly, the City Council agrees not to make any public or private statements critical or disparaging of the City Manager.

C. Pursuant to Government Code sections 53243, 53243.1 and 53243.2, if City Manager is convicted of a crime involving an abuse of his office or position, all of the following shall apply: (1) if City Manager is provided with Administrative Leave pay pending an investigation, City Manager shall be required to fully reimburse City such amounts paid; (2) if City pays for the criminal legal defense of City Manager (which would be in its sole discretion, as it is generally not obligated to pay for a criminal defense), City Manager shall be required to fully reimburse City such amounts paid. For purposes of this Section, abuse of office or position means either: (1) an abuse of public authority, including waste, fraud, and violation of the law under color of authority; or (2) a crime against public justice, including, but not limited to, a crime described in Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

D. To the extent City Manager's termination is not involuntary, is for misconduct in office, or is otherwise "for cause" as provided below, City Manager shall be entitled to no severance pay from the City. Any of the following shall constitute "misconduct in office":

(1) conviction of a felony or misdemeanor involving misrepresentation, fraud, or moral turpitude;

(2) knowingly and unlawfully participating in a governmental decision in which he has a conflict of interest as defined in Government Code sections 87100, *et seq.*, or Government Code sections 1090 *et seq.*;

(3) abuse of alcohol, prescription medications, stimulants, or controlled substances that materially affects City Manager's discharge of his duties;

(4) failure to follow a written directive of the City Council, recognizing that said directive cannot be unlawful, require City Manager to engage in illegal conduct, or require City Manager to violate the relevant code of ethics, after written notice of such failure is provided to City Manager;

(5) repeated or recurring unexcused absences from the City Manager office, City Hall, or City Manager's duties;

(6) performance of outside business interests, or participation in transactions, contracts, or financial activities that conflict directly with City's policies or activities, without prior consent of any such conflict in writing by City Council;

(7) conduct that is publicly insubordinate, or humiliating, or demeaning to the City or City Council;

(8) willful destruction or misuse of City property;

(9) willful and unlawful retaliation against any employee, officer, official, manager, agent, or representative of the City, or member of the general public, who in good faith reports, discloses, reveals, or divulges to any appropriate authority, any violation of law, or any facts or information pertaining thereto; and

(10) willful disclosure of closed session confidential communications, attorney-client confidential communications, or other information whose confidentiality is privileged or protected by law.

Apart from such grounds for removal as are otherwise defined under state law, the La Palma Municipal Code, or this Agreement, the determination of what constitutes appropriate "cause" for termination of City Manager shall be within the sole discretion of the City Council.

E. Nothing in this Agreement shall prohibit City from imposing discipline less than termination upon City Manager, including written reprimands, or suspensions. Such discipline may be imposed by City in its discretion.

F. In the absence of grounds for imposing discipline on City Manager, in the event: (1) City at any time during the term of this Agreement reduces the salary or other financial benefits of City Manager in a greater percentage than an applicable across-the-board reduction for all general full-time employees of City; or (2) City refuses, following written notice by City Manager to the City Attorney specifying a breach of this Employment Agreement, to remedy or undertake to remedy any such breach, then City Manager may, at his option, elect to be deemed to be "terminated" as of that time, and shall be entitled to the severance pay from City.

G. In the event City Manager voluntarily resigns his position with City, then City Manager shall give City no less than forty-five (45) days' notice in advance, unless the parties otherwise agree, and City Manager shall not be entitled to any severance pay from City.

SECTION 6. DISABILITY.

If City Manager is permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or health for a period of twenty-six (26) successive weeks beyond any accrued sick leave to which City Manager is entitled, or for the legal duration of the Family and Medical Leave Act (whichever is greater), City shall have the option to terminate this Agreement. Termination pursuant to this Section will not subject the City to payment of severance pay. However, City Manager shall be compensated for any accrued vacation, holidays, and other accrued benefits on the same basis as any other employee of the City pursuant to the Personnel Rules.

SECTION 7. SALARY AND BENEFITS.

A. Salary.

City agrees to pay City Manager for his services rendered pursuant hereto an annual base salary of one hundred ninety thousand (\$190,000.00) ("Base Salary"), effective on March 30, 2020 ("Base Salary Effective Date"), payable in equal installments at the same time and manner as other employees of the City are paid. In addition to Base Salary, City Manager shall be entitled to any

future cost of living (“COLA”) increases or salary adjustments after the Effective Date that are provided to other general, professional, or management full-time employees of the City, with the exception of any COLA adjustment for the year 2020. City Manager shall receive normal compensation for all time served if summoned for jury duty in a court action or subpoenaed as a witness in a deposition or court proceeding. Effective the pay period including March 30, 2021, and subject to a satisfactory performance evaluation pursuant to Section A, the City Manager will be eligible for an increase of up to 3% of the then existing annual salary. Effective the pay period including March 30, 2022, and subject to a satisfactory performance evaluation pursuant to Section A, the City Manager will be eligible for an increase of up to 3% of the then existing annual salary.

City agrees to review Base Salary and other benefits of City Manager at the time of an annual performance evaluation which shall be initiated in January or February for each year of the Term. It shall be the responsibility of City Manager to advise City each year of the necessity for the annual performance review, and to schedule same, by closed session with the City Council, or other appropriate procedure. Notwithstanding the necessity for at least one annual performance review, City Council may perform other performance reviews of City Manager’s performance, at any time. City Council may implement adjustments to salary, other benefits, or both, during the time period of any performance review, provided, however, that consistent with Government Code section 54956, such compensation or benefits may only be modified at a regularly scheduled meeting of the City Council.

B. Benefits.

Where otherwise not specified, City Manager benefits shall be governed by Resolution 2018-21. In addition to those benefits and the salary referred to in Paragraph 7.A above, City Manager shall receive from City the following benefits:

- (a) the same package(s) of health/medical insurance benefits and dental and vision allowances identified in Resolution 2018-21 as available to all other full-time City Management employees hired prior to July 1, 2018;
- (b) During the period of the City Manager’s employment, the City shall pay for a term life insurance and Accidental Death and Dismemberment (AD&D) policy in the face amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) on City Manager’s life with a carrier selected by the City. City Manager shall designate the beneficiaries of the policy;
- (c) participation in PERS in the same manner and to the same extent as available to all other full-time City employees;
- (d) automobile expense reimbursement of Three Hundred Fifty Dollars (\$350.00) each month, which shall be annually reviewed along with any possible salary adjustment;
- (e) provision of a City–owned cellular phone, data plan, laptop computer, tablet, and additional similar communications and computing equipment as deemed appropriate by City Council (excluding desktop computer equipment for use outside City Hall);
- (f) paid professional dues and subscriptions in the International City/County

Management Association (ICMA), League of California Cities, California City, California City Management Foundation, and American Planning Association for City Manager's professional participation, growth or for the good of the City;

(g) paid business travel, subsistence expenses, and meeting attendance for City Manager for official travel and attendance at professional groups and associations adequate to continue the professional development of the City Manager and for City Manager's reasonable pursuit of necessary official and other functions of the City including, but not limited to, national, state, and local conferences, government groups and committees upon which City Manager may serve as a member. The number of conferences paid by the City is subject to budget authorization by the City Council as part of the annual City budget or subsequent appropriations; provided, however, that any out-of-state business travel or other reimbursed travel requested by City Manager for other members of City staff at the same event for which City Manager receives reimbursed travel must be approved in advance by the City Council;

(h) upon commencing employment, City Manager shall be credited with eighty (80) hours of vacation and provided with the same vacation accrual amounts and in the same time and manner received by Tier 1 Managers hired prior to July 1, 2011, with 10 years of continuous service. Not more than eighty (80) hours of vacation may be taken consecutively by City Manager without the prior approval of the City Council. Carryover and accrual of vacation time shall be subject to the following provisions: City Manager shall have the option, not later than thirty (30) days prior to end of each fiscal year ending June 30, to provide notice to the City Council that he elects to either (i) be paid for any unused vacation time existing as of the end of that fiscal year just ended, or (ii) carryover to the next fiscal year that began that July 1 such unused vacation time; provided, however, that in no event shall City Manager be permitted to carry over more than eighty (80) hours of unused vacation time for a given year;

(i) upon commencing employment, City Manager shall be credited with sixty (60) hours of sick leave and provided with the same sick leave accrual amounts and in the same time and manner received by full-time management employees hired prior to July 1, 2011;

(j) During the period of the City Manager's employment, the City shall pay 100% of the costs of a long-term disability plan with a 60% benefit percentage (maximum monthly benefit of \$11,667);

(k) the City will contribute \$215 per pay period to the City Manager's deferred compensation plan on City Manager's behalf;

(l) upon commencing employment and on each subsequent March 30th, City Manager shall be credited with thirty-six (36) hours of "floating holiday" to be used for the holiday closure between the Christmas and New Year's holidays; and

(m) the City Manager shall pay the City Manager's share of the contribution under the City's defined contribution retirement plan for non-public safety employees under the Public Employees Retirement System (PERS). The City shall maintain its enrollment in CalPERS Government Code Section 21548 (pre-retirement optional settlement 2 death benefit), an optional benefit provision under PERS that protects spouses if an employee dies prior to retirement, for the

benefit of the City Manager and his spouse.

SECTION 8. HOURS OF WORK.

In addition to working normal business hours, it is recognized that City Manager must devote time outside the normal office hours to business of the City. In consideration for these obligations, City Manager shall have eighty (80) hours annually of Administrative Time Off. Forty (40) of such hours shall accrue upon the Effective Date, and forty (40) additional hours shall accrue six (6) months after the Effective Date. Eighty (80) additional hours shall accrue each anniversary of the Effective Date thereafter. Administrative Time Off shall not carryover year to year, and will not be paid upon termination or separation of City Manager from employment, but instead any unused Administrative Time Off at the time of termination or other separation will be forfeited.

SECTION 9. OTHER TERMS AND CONDITIONS OF EMPLOYMENT.

A. The City Council, in consultation with the City Manager, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of City Manager, provided such terms and conditions are not inconsistent or in conflict with the provisions of this Agreement, the La Palma Municipal Code or any applicable state or federal law.

B. All regulations and rules of the City relating to vacation and sick leave, retirement and pension system contributions, holidays and other fringe benefits and working conditions as they now exist or hereafter may be amended, shall also apply to City Manager as they would to other general full-time employees of City, in addition to the benefits specifically set forth herein for the benefit of City Manager.

C. Consistent with the California Government Code, the City shall defend and indemnify City Manager against any expense or legal liability for any act or omission by City Manager occurring within the course and scope of City Manager's employment under this Agreement. Notwithstanding the foregoing, the City shall not be required to defend or indemnify City Manager for claims, actions, damages, or fees, when indemnity is prohibited, restricted, or limited by law, including without limitation, California Government Code sections 825, and 995.2 through 995.8.

SECTION 10. NOTICES.

Notices pursuant to this Agreement shall be given by: (1) email with verification of delivery; (2) personal delivery; (3) overnight delivery service with confirmation; or (4) deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

CITY: CITY OF LA PALMA
7822 Walker Street
La Palma, CA 90623
Attn: City Clerk
email: kimberlyk@cityoflapalma.org

with copy to: RUTAN & TUCKER, LLP
611 Anton Blvd., Suite 1400
Costa Mesa, CA 92626
Attn: Ajit S. Thind, Esq.
email: athind@rutan.com

CITY MANAGER: Conal McNamara
[Home Address on File]
email: conalm@cityoflapalma.org

Notice shall be deemed given as of the date of personal, overnight delivery, email, or facsimile service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

SECTION 11. GENERAL PROVISIONS.

A. This Agreement shall constitute the entire agreement between the parties. No prior oral or written communications are incorporated herein.

B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of City Manager.

C. This Agreement may be signed in counterparts with signature pages transmitted by email, facsimile, personal delivery or overnight delivery, all of which will be treated as originals.

D. 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.

E. No officer, official, City manager, agent, or representative of the City shall be personally liable to City Manager in the event of any default or breach by the City of this Agreement or for any amount which may become due to City Manager under this Agreement or for breach by City of any of the terms of this Agreement.

F. Governing Law; Remedies; Attorneys' Fees/Litigation Matters; Waivers.

(1) The internal laws of the State of California, without regard to principles of conflicts of laws, shall govern the interpretation of this Agreement.

(2) In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding anything in this Agreement to the contrary, in no event shall City Manager be entitled to economic or consequential damages or to punitive damages.

(3) Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at

the same or different times, of any other rights or remedies for the same default or any other default by the other party. The rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

(4) Waivers of the provisions of this Agreement by any party hereto shall not be effective unless in writing.

G. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, including but not limited to any recruitment brochures or materials, are merged into this Agreement and shall be of no further force or effect.

H. Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

I. Amendment; Modification. This Agreement may be amended or modified only by a written instrument approved as to form by the City Attorney and signed by both parties after approval of same by a majority of the members of the City Council voting in open session at regular, adjourned regular, or special meeting of the City Council.

J. Time for Approval. Once this Agreement has been signed by City Manager and delivered to the Mayor, it shall thereafter be null and void unless approved by a majority of the members of the City Council voting in open session at regular, adjourned regular, or special meeting of the City Council, not later than March 3, 2020.

IN WITNESS WHEREOF, the City of La Palma has caused this Agreement to be signed and executed in its behalf by its Mayor, and duly attested by its City Clerk, and the City Manager has signed and executed this Agreement, both in duplicate, to become effective as of the Effective Date.

CITY:

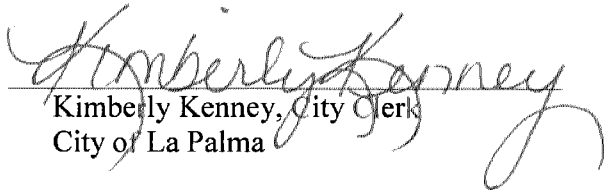
CITY OF LA PALMA

By: _____



Peter L. Kim, Mayor
City of La Palma


ATTEST:



Kimberly Kenney, City Clerk
City of La Palma

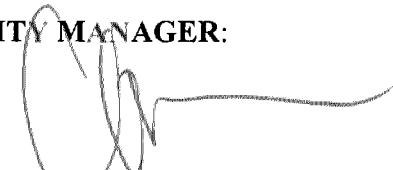
APPROVED AS TO FORM:

RUTAN & TUCKER, LLP

By: 

Ajit S. Thind, City Attorney
City of La Palma

CITY MANAGER:



Conal McNamara, an individual