

CITY OF LOMPOC
INTERIM UTILITY DIRECTOR
EMPLOYMENT AGREEMENT

This INTERIM UTILITY DIRECTOR EMPLOYMENT AGREEMENT (“Agreement”) is made by and between the CITY OF LOMPOC (the “City”) and GEORGE MORROW (“Employee”). The City and Employee may be referred to individually as a “Party” or collectively as “the Parties.”

RECITALS

WHEREAS, the City’s former Utility Director recently retired from this position and as a result, the Utility Director position is presently vacant; and

WHEREAS, the City is currently conducting an open recruitment to permanently fill the position of Utility Director; and

WHEREAS, pursuant to California Government Code (hereinafter “Government Code”) §34856 and Lompoc Municipal Code §2.12.030(E), the City Manager of the City has the authority to appoint, discipline and remove the Utility Director of the City, as well as propose, negotiate and approve an employment contract for each at-will employee, subject to the number of positions and funding approved by the City Council; and

WHEREAS, Government Code subdivision 21221(h) permits retired annuitants under the California Public Employees’ Retirement System (“CalPERS”) to be employed without reinstatement from retirement upon appointment by the governing body to fill a vacant position on an interim basis during the recruitment to permanently fill the vacant position; and

WHEREAS, as a CalPERS retired annuitant under Government Code subdivision 21221(h), Employee (i) possesses extensive experience in a Utility Director capacity and the skill set to perform the required duties of Interim Utility Director, (ii) desires to perform the duties of and assume responsibility for the position of Interim Utility Director, and (iii) acknowledges such employment is at-will and of a limited duration for a definite period of time, as described below; and

WHEREAS, the City anticipates the Utility Director position will be filled with a permanent replacement within six (6) months after the effective date of this Agreement; and

WHEREAS, the City desires to hire Employee as an at-will, temporary employee for the position of Interim Utility Director; and

WHEREAS, the Parties wish to establish the terms and conditions of Employee’s services to the City, as described in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the CITY and EMPLOYEE hereby agree as follows:

Section 1: TERM

The term of this Agreement shall commence on December 31, 2019 and shall automatically terminate on December 31, 2020, unless terminated prior to that date by either Party (the "Term"). The City shall terminate this Agreement in accordance with Section 4 of this Agreement upon the City appointment of a permanent replacement for the position of Utility Director. In no event shall the Term exceed the 960-hour per fiscal year limit under Government Code subdivision 21221(h); in the event Employee works 960 hours during the Term of this Agreement, then this Agreement shall terminate automatically. December 31, 2019, shall be Employee's "Hire Date" for purposes of this Agreement.

Section 2: DUTIES, RESPONSIBILITIES, AND WORK HOURS

A. Employee shall be appointed to the position of Interim Utility Director, the functions and duties of that position, as described in Exhibit "A" to this Agreement and such other legally permissible and proper duties and functions as the City Manager shall, from time to time, direct or assign to Employee. Employee acknowledges the position of Interim Utility Director requires specialized skills and expert professional services for a definite period of time, as described above in Section 1 of this Agreement.

B. Employee acknowledges proper performance of the duties of Interim Utility Director will generally require Employee to work thirty (30) hours per week during normal business hours (currently 8:00 a.m. to 5:00 p.m., Monday through Friday, including a standard one hour lunch period), as set by the City. Employee may also be required to devote time outside of normal office hours, including attendance at City Council and other City or community meetings. Employee further acknowledges he must be available at all times in order to fulfill the obligations of the position. However, Employee shall in no event work more than forty (40) hours in a single week.

C. All data, studies, reports, and other documents prepared and/or reviewed 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. Such materials, without the prior written consent of the City, shall not be used by Employee for any purpose other than the performance of his duties. Nor shall such materials be disclosed to any person or entity not connected with the performance of services under this Agreement, except as required by law.

Section 3: COMPENSATION/ BENEFITS PROHIBITED

A. The City agrees to compensate Employee at an approved hourly rate of compensation for the Utility Director position, which is Eighty Three Dollars and Sixty One Cents (\$83.61) per hour (monthly salary of \$14,492 per month / 173.333).

B. Employee shall not be eligible for any other benefits, incentives, compensation in lieu of benefits, or any other forms of compensation in addition to the hourly rate except for the above hourly rate and workers' compensation benefits.

Section 4: RESIGNATION/TERMINATION

A. Employee may resign at any time; provided, however, Employee shall reasonably provide the City Manager with at least **ten (10) days' advance written notice**.

B. Employee is an at-will employee and serves at the will and pleasure of the City Manager and may be terminated at any time, with or without cause, and with or without notice, at any time by the City Manager.

C. In accordance with state law and the requirements of the California Public Employees Retirement Law, Employee may not be reappointed to this position following the expiration of this Agreement, nor may this Agreement be modified to extend the term of the Agreement.

D. After notice of resignation or termination, Employee shall cooperate with the City, as requested by the City, to effect a transition of Employee's responsibilities and duties and to ensure the City is aware of all matters being handled by Employee.

E. Employee shall not be entitled to severance pay and Employee expressly waives any and all rights with respect to severance pay.

Section 5. NOTICES

Notices required to be served pursuant to this Agreement shall be served in person or by first-class U.S. mail addressed as follows:

City

City Manager
City of Lompoc
100 Civic Center Plaza
Lompoc, California 93436

Employee

George Morrow
Address on file with the City

Section 6: GENERAL TERMS AND CONDITIONS

The General Terms and Conditions of this Agreement are described as follows:

A. 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.

B. Entire Agreement. The text of this Agreement shall constitute the entire and exclusive agreement between the Parties regarding the subject matter hereof. All prior oral or written communications, understandings, or agreements between the Parties not set forth herein shall be superseded in total by this Agreement. No amendment or modification to this Agreement may be made except by a written agreement signed by the Employee and the City Manager and approved as to form by the City Attorney.

C. Assignment. This Agreement is not assignable by either the City or Employee.

D. Severability. In the event any provision of this Agreement is finally held or determined to be illegal or void by a court having jurisdiction over the Parties, the remainder of this Agreement shall remain in full force and effect unless the parts found to be illegal or void are wholly inseparable from the remaining portions of this Agreement.

E. Effect of Waiver. The failure of either Party to insist on strict compliance with any of the terms, covenants, or conditions in 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 time or times.

F. Governing Law and Jurisdiction. 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 date of execution. Any action to interpret or enforce the terms of this Agreement shall be held exclusively in a state court in Santa Barbara County, California. Employee expressly waives any right to remove any such action from Santa Barbara County.

G. Effective Date. This Agreement shall not become effective until it has been signed by Employee and on behalf of the City.

H. Effect of Agreement on Employee's CalPERS Retirement Benefits. The City makes no representation on the impact, if any, this Agreement shall or may have upon Employee's CalPERS retirement benefits, status, duties, and/or obligations. Employee acknowledges that in entering into this Agreement, he has not relied upon any such representations (none of which being in existence) in assessing the CalPERS-related impact of his employment. Therefore, Employee releases the City from any and all CalPERS-related claims or liabilities that may arise in connection with his employment pursuant to this Agreement.

I. No Unemployment Insurance Benefits Received By Employee. Employee expressly certifies and warrants to the City that he has not received any unemployment insurance payments for retired annuitant work for any public employer within the 12 months prior to his appointment date.

J. Compliance With 960 Hours Per Fiscal Year Limit. Employee further certifies and warrants to the City his anticipated work schedule of 30 hours per week will not cause him to exceed the 960 hours per fiscal year limit pursuant to Government Code subdivision 21221(h), including work for any other CalPERS employer during the current fiscal year.

K. 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 1090, 1125, and 87100 *et seq.* of the Government Code, and all other similar statutory and administrative rules.

L. 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, that each has carefully reviewed this entire Agreement, 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.

M. Government Code §§ 53243 - 53243.4. Government Code §§ 53243 - 53243.4 are intended to provide greater transparency in local government and institute certain limitations on compensation paid to local government executives. Those statutes also require contracts between local agencies and its 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 it is their mutual intent to fully comply with the cited 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:

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

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

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

§53243.3. Reimbursement of noncontractual payments upon conviction or crime involving office or position.

§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.

IN WITNESS WHEREOF, the City of Lompoc has caused this Agreement to be signed and executed on its behalf by its City Manager, and approved as to form by the City Attorney, and executed by the Employee.

CITY OF LOMPOC,

Dated: _____
James Throop, City Manager

Attest: _____
Approved as to form:

Stacey Haddon, City Clerk Jeff M. Malawy, City Attorney

EMPLOYEE,

In signing this Agreement, Employee understands and agrees he is an **at-will, salaried and exempt employee** and his rights to employment with the City are governed by the terms and conditions of this Agreement rather than the ordinances, resolutions, and policies of the City, which might otherwise apply to classified or other employees of the City. Employee further acknowledges he was given the opportunity to consult with an attorney prior to signing this Agreement.

Dated: _____
Signed: _____
George Morrow