

## **CITY OF LOMPOC**

### **CITY MANAGER EMPLOYMENT AGREEMENT**

This CITY MANAGER EMPLOYMENT AGREEMENT (“AGREEMENT”) is entered into and made effective the 21st day of December, 2021 (“Effective Date”) by and between the CITY OF LOMPOC, a general law city and municipal corporation (“CITY”) and Dean Albro, an individual (“EMPLOYEE”). For purposes of this AGREEMENT, CITY and EMPLOYEE may be collectively referred to as the “Parties” or individually as a “Party.”

### **RECITALS**

WHEREAS, California 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 Lompoc Municipal Code (“LMC”) sections 2.12.030, 2.12.240, 2.64.020, 2.64.050 and 2.64.080 and in Exhibit A to this AGREEMENT; and

WHEREAS, LMC section 1.04.025 provides any reference to City Administrator in the LMC or any ordinance, resolution, rule or regulation of the City shall mean City Manager; and

WHEREAS, LMC section 2.12.020, states: “The City [Manager] shall be appointed by and serve at the pleasure of the City Council. He or she shall be chosen solely on the basis of his or her executive and administrative qualifications. At the time of appointment, he or she need not be a resident of the City[;]” and

WHEREAS, the City Council of the City of Lompoc (“City Council”) 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 covenants contained herein, the CITY and EMPLOYEE hereby agree as follows:

### **AGREEMENT**

#### **1.0 EMPLOYMENT & DUTIES**

1.1 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 Exhibit A to this AGREEMENT, LMC sections 2.12.030, 2.12.040, 2.64.020, 2.64.050 and 2.64.080, the California Government Code, and such other legally permissible and proper duties and functions as the City Council shall, from time to time, direct or assign to EMPLOYEE. CITY reserves the right to amend the LMC, including, but not limited to, Chapters 2.12 and 2.64 and any or all of the above cited LMC sections, without requiring EMPLOYEE’s acquiescence or an amendment of

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

1.2 Work Schedule. It is recognized the City Manager is expected to engage in the hours of work that are necessary to fulfill the obligations of the position, must be available at all times, and must devote a great deal of time outside the normal office hours to the business of the CITY. EMPLOYEE acknowledges that proper performance of the duties of city manager will require EMPLOYEE to generally observe 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 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.

1.3 FLSA Exempt Status. EMPLOYEE acknowledges and agrees the city manager position is that of an exempt employee of the CITY for the purposes of the FLSA.

1.4 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.

1.5 Employment Status. EMPLOYEE shall continue to 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 3.4 below.

1.6 Exemption from Personnel System. LMC subsection §2.64.030 A. 3. expressly exempts the "city [manager]" position from the CITY's Personnel System established in LMC Chapter 2.64. EMPLOYEE understands, acknowledges and agrees EMPLOYEE is exempt from the CITY's Personnel System.

1.7 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.

1.8 ICMA Code of Ethics. The Parties mutually desire for EMPLOYEE to be subject to and comply with the International City Management Association ("ICMA") Code of Ethics as described in Exhibit B to this AGREEMENT. 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.

1.9 Termination of Management Services Director Agreement. Upon the effectiveness of this AGREEMENT, the Management Services Director Employment Agreement between EMPLOYEE and the CITY shall automatically terminate and be of no further force and effect.

## **2.0 COMPENSATION AND REIMBURSEMENT**

2.1 Current Base Salary. EMPLOYEE shall receive Two Hundred Thirty Thousand Dollars (\$230,000.00) as his annual base salary for the city manager position ("Salary"), which shall be paid on a pro-rated basis bi-weekly at the same time as other employees of the CITY are paid. The 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 Review. The City Council shall initially review the performance of EMPLOYEE within six full calendar months following the Effective Date; at which time, the City Council shall consider, in its sole discretion, whether to increase EMPLOYEE's salary. The City Council and EMPLOYEE shall also meet no later than March 1, 2022, to establish mutually agreed upon performance goals.

2.3 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 the annual review. 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.

2.4 Business Expense Reimbursements. 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.

## **3.0 TERM**

3.1 Commencement. EMPLOYEE shall commence service as the city manager for the CITY effective January 3, 2022.

3.2 Term. The CITY hereby employs EMPLOYEE on an at-will basis for the term of 24 months commencing on January 3, 2022, and continuing through January 2, 2024. This Agreement shall be renewable for two additional 12-month terms, subject to mutual consent; provided, that this Agreement shall automatically renew for each of those terms, unless, within 30 days before the end of the then current term, the CITY or EMPLOYEE provides the other party written notice of its intent not to renew this Agreement.

3.3 Termination by EMPLOYEE. EMPLOYEE may terminate this AGREEMENT at any time, provided EMPLOYEE provides the City Council with at least thirty days' advance written notice. In the event EMPLOYEE terminates this AGREEMENT, EMPLOYEE expressly agrees that EMPLOYEE shall not be entitled to any severance pay.

3.4 Termination by CITY. The City Council may terminate this AGREEMENT at any time with or without cause, by providing written notice of the reason(s). The City Council's right to terminate EMPLOYEE pursuant to this Section 3.4 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 CITY for Cause. The CITY may terminate this AGREEMENT at any time by providing EMPLOYEE with five business-days' 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 (Exhibit C), 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 LMC 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 International City Manager Association Code of Ethics (Exhibit B), 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.

(b) Termination by CITY Without Cause. The CITY may terminate EMPLOYEE without cause but rather based upon management reasons such as implementing the CITY's goals or policies, including, but not limited to incompatibility of management styles. 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.**

3.5 Limitation on Termination Following Election. EMPLOYEE shall not be terminated, except for cause as provided in Subdivision 3.4(a) of this AGREEMENT, during the 90-day period preceding or following any City election for membership on the City Council, or during the 90-day period following any change in membership of the City Council. However, the limitation on termination in this Section 3.5 shall not apply to the November 2022 election.

#### **4.0 SEVERANCE**

4.1 Severance Pay. In the event EMPLOYEE is terminated without cause on or before July 1, 2022, and EMPLOYEE does not challenge such termination, including, but not limited to, by means of appeal or civil or administrative claim, then CITY shall pay to EMPLOYEE severance in an amount equal to EMPLOYEE's monthly base salary then in effect multiplied by three (3). In the event EMPLOYEE is terminated without cause after July 1, 2022, and EMPLOYEE does not challenge such termination, including, but not limited to, by means of appeal or civil or administrative claim, then CITY shall pay to EMPLOYEE severance in an amount equal to EMPLOYEE's monthly base salary 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 18 months.] The severance payment shall not include the monetary value of benefits during said time, but base salary only.

4.2 No Severance Pay if Termination for Cause or Initiated by EMPLOYEE. As provided in Subdivision 3.4(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 3.3, 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 4.0 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 the AGREEMENT. EMPLOYEE expressly waives any and all other rights with respect to severance pay except as provided herein. Any and all severance rights are conditioned upon and in consideration for execution of the

standard “Agreement of Separation, Severance, and General Release” attached hereto in form only as Exhibit D.

## **5.0 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 a more 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 1.5 above), nor shall this Section 5.0 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 in January of each year, using an evaluation form and process approved by the City Council. Such performance review and evaluation shall be conducted in accordance with the purpose noted in Section 5.1 above.

## **6.0 BENEFITS AND OTHER COMPENSATION**

6.1 Professional Development. The CITY recognizes its obligation to the professional development of its city manager, and agrees EMPLOYEE shall be given adequate opportunities to develop and maintain skills and abilities as a public administrator. EMPLOYEE is expected and encouraged to and does agree to participate in professional organizations and to attend area 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. 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 biennial budget. The City Council is the approval authority for the CITY’S biennial budget. At a minimum, that may include any professional dues for membership with the International City Manager's Association (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 Leave.

(a) Sick Leave: EMPLOYEE shall accrue one day (8 hours) paid sick leave per month. EMPLOYEE shall be entitled to receive cash payment for up to 50% of EMPLOYEE's unused, accrued sick leave balance upon separation of employment, provided that such leave does not exceed a total of 720 hours (up to 360 hours paid). EMPLOYEE is entitled to payment for unused sick leave, pursuant to this AGREEMENT, upon retirement or resignation, only if thirty days' written notice of intent to retire or resign is given to the CITY. EMPLOYEE shall be eligible for an annual payment of \$300, if EMPLOYEE's sick leave utilization for the calendar year (prior 12 months) is three equivalent regular work days (24 hours) or less. The payment shall be calculated after the first pay period ending in December. The payment will be paid on the second pay period ending in December. The CITY provides various leave banks for EMPLOYEE's use, with accrual and use record keeping being required to properly maintain the leave banks. Time off of less than two continuous hours in a day does not need to be recorded by EMPLOYEE as an exempt employee of the CITY. Abuse of this exception, such as daily use or random periods within a day, will not be allowed; however, this exception is also not allowed to be combined with other leaves.

(b) Vacation Leave. EMPLOYEE shall be entitled to accrue twenty days (160 hours) of vacation leave annually to be accrued pro rata per pay period in the same manner as other City employees. Upon separation, for any reason, EMPLOYEE shall be entitled to one hundred percent of the EMPLOYEE's unused vacation leave balance then existing, at the 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. Unused vacation leave may be carried over into the following year to a maximum accrual of three hundred twenty (320) hours. EMPLOYEE may exercise the option to convert into cash a maximum of eight days (64 hours) of accrued vacation leave annually. Such conversion shall be computed at EMPLOYEE's then current base hourly rate on an hour-per-hour basis, with thirty days' written notice to payroll. Payment may be made during the first payroll in December, consistent with the payment of this benefit for other CITY employees. The CITY provides various leave banks for EMPLOYEE's use, with accrual and use record keeping being required to properly maintain the leave banks. Time off of less than two continuous hours in a day does not need to be recorded by EMPLOYEE as an exempt employee of the CITY. Abuse of this exception, such as daily use or random periods within a day, will not be allowed. Unrecorded time off shall not be allowed to be combined with other paid leave during any given work day.

(c) Holiday Leave. EMPLOYEE shall be granted the following holidays: New Year's Day, Martin Luther King Day, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving, Day after Thanksgiving Day, December 24, and Christmas (eleven 8-hour days), and any other holiday provided to employees in the Management, Supervisory and Confidential (MS&C) compensation plan. In addition, one floating holiday (one 8-hour day) will be credited to EMPLOYEE's Holiday Leave bank on January 1 each year consistent with the accrual of floating holiday time by other employees in the Management, Supervisory and Confidential (MS&C) compensation plan. EMPLOYEE may accumulate up to a maximum of sixty-four hours of holiday time. Hours of holiday accumulated over sixty-four hours will be paid at the time payroll is processed when the hours are earned.

Holiday time is a compensable leave, and any hours remaining in the employee's holiday bank will be paid out upon separation from CITY service, at EMPLOYEE's then current hourly rate of pay. In addition, EMPLOYEE may be paid for a maximum of thirty hours accrued holiday time-off by providing notice to the Human Resources Manager on appropriate forms. Compensation shall be determined by multiplying the number of hours for which compensation is requested by the employee's regular hourly wage. The required notice by the EMPLOYEE must be given between October 1 and 15 of each year and will be paid on the first payday in November, consistent with the payout of holiday time for employees in the MS&C compensation plan. The CITY provides various leave banks for EMPLOYEE's use, with accrual and use record keeping being required to properly maintain the leave banks. Time off of less than two continuous hours in a day does not need to be recorded by EMPLOYEE as an exempt employee of the CITY. Abuse of this exception, such as daily use or random periods within a day, will not be allowed. Unrecorded time off shall not be allowed to be combined with other paid leave during any given work day.

(d) Management Leave. EMPLOYEE is eligible to earn sixty-four hours of management leave per fiscal year (earned as 5.334 hours of additional vacation time per month). Management leave may be rolled over into the following fiscal year, not to exceed one hundred twenty eight total banked hours of accrued management leave in any fiscal year. This additional management leave/vacation time shall be in lieu of equivalent time off for overtime worked as provided in Rule IV, Section 4 of the Personnel Rules for Management, Supervisory, and Confidential employees. EMPLOYEE may elect to cash in up to eight days (64 hours) of unused vacation time per year. Payment may be made during the first payroll in December. At the time the City provides separate Vacation leave and Management leave banks, the EMPLOYEE's Vacation and Management accruals and leave bank balances will be separated in a similar manner afforded other CITY employees eligible for the two leave benefits. The CITY provides various leave banks for EMPLOYEE's use, with accrual and use record keeping being required to properly maintain the leave banks. Time off of less than two continuous hours in a day does not need to be recorded by EMPLOYEE as an exempt employee of the CITY. Abuse of this exception, such as daily use or random periods within a day, will not be allowed. Unrecorded time off shall not be allowed to be combined with other paid leave during any given work day.

The time during the fiscal year, at which EMPLOYEE may take management leave, shall be determined by the Mayor. Management leave is a compensable leave, and any hours remaining in EMPLOYEE's management leave bank will be paid out upon separation from CITY service, 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. Management leave time must be taken off on an hour by hour basis equaling employee actual time off, regardless of accumulation rates.

6.3 Health & Welfare Benefits. EMPLOYEE has provided proof to the CITY of alternative health coverage, and he will continue to waive and opt out of the CITY's health insurance coverage and vision coverage for the term of this Agreement and maintain proof of alternative health coverage during such time. EMPLOYEE shall otherwise be entitled to the rights and privileges accorded to City Department Directors regarding welfare benefits, including dental coverage, as provided in the MS&C compensation plan.



6.4 Retirement.

(a) Retirement Plan. EMPLOYEE is a Classic Member, as defined by California Public Employees Retirement System (“CalPERS”) and as mandated by the Public Employees’ Pension Reform Act of 2013. EMPLOYEE shall continue to be enrolled in the in the CITY’s CalPERS second tier miscellaneous retirement formula plan (2.0% at Age 60 benefit formula) with the 3 Year Average formula for calculating final retirement compensation.

(b) Employee Contribution. EMPLOYEE shall be responsible for the full member contribution for EMPLOYEE’s CalPERS retirement plan.

6.5 Automobile. EMPLOYEE shall receive a Three Hundred Fifty Dollar (\$350.00) per month car allowance to reimburse EMPLOYEE for use of a personal vehicle in pursuit of recognized official duties within Santa Barbara/San Luis Obispo Counties. 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 either of the CITY’S Deferred Compensation Programs, at EMPLOYEE’s sole cost and expense. EMPLOYEE acknowledges the CITY does not provide any matching benefits or other payments toward the Deferred Compensation Program.

6.7 Retiree Health and Dental Insurance. EMPLOYEE will be eligible for retiree health and dental insurance paid by the CITY consistent with retiree health and dental benefits paid to MS&C Employees if the EMPLOYEE retires from the CITY into the CalPERS system in accordance with the terms and qualifications of the CITY’s MS&C Plan. Section 2-7 of the CITY’s MS&C compensation plan further describes the plan, service credits, Medicare coverage and CITY contributions.

6.8 Bonding. CITY shall bear the full cost of any fidelity or other bonds required for EMPLOYEE under any law or CITY ordinance.

6.9 Life Insurance. EMPLOYEE shall be entitled to life insurance policy equivalent to one times EMPLOYEE’s annual Salary. CITY shall bear the full cost of the policy. The EMPLOYEE is eligible to secure additional coverage provided by the CITY’S insurance provider at EMPLOYEE’s sole cost and expense.

6.10 Long-Term Disability (“LTD”) Insurance Program. The CITY shall provide LTD to EMPLOYEE in the same manner and benefit level as provided Department Directors, and pay the cost for the plan.

6.11 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.

6.12 Business Equipment. 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 etc., 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 CITY no later than EMPLOYEE's last day of employment. 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.

## **7.0 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.

## **8.0 GENERAL PROVISIONS**

8.1 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 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.

8.2 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.

8.3 Notices. Any notice required or permitted by this AGREEMENT shall be in writing and shall be personally served or shall be sufficiently given when served upon the other Party as sent by United States Postal Service, postage prepaid and addressed as follows:

To CITY:

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

To EMPLOYEE:

Dean Albro  
[On file with Human Resources Dept.]

Notices shall be deemed given as of the date of personal service or upon the date of deposit in the course of transmission with the United States Postal Service.

8.4 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.

8.5 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.

8.6 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.

8.7 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 date of execution and delivery by each Party hereto.

8.8 Government Code §§ 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 also require that 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 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:

§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, 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 local agency if EMPLOYEE is convicted of a crime involving an abuse of EMPLOYEE’s office or position.

8.9 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.

IN WITNESS WHEREOF, the City of Lompoc has caused this AGREEMENT to be signed and executed on its behalf by its Mayor, and duly attested by its officers thereunto duly authorized, and EMPLOYEE has signed and executed this AGREEMENT, all in triplicate.

CITY OF LOMPOC

\_\_\_\_\_  
Jenelle Osborne, Mayor

ATTEST:

\_\_\_\_\_  
Stacey Haddon, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Jeff M. Malawy, City Attorney

EMPLOYEE

\_\_\_\_\_  
Dean Albro

**EXHIBIT A**

**JOB DESCRIPTION  
CITY MANAGER**



CITY OF LOMPOC  
Established Date: Feb 5, 2013  
Revision Date: Jul 17, 2021

# CITY MANAGER

Class Code:  
135

Bargaining Unit: Executive

## DEFINITION/CLASS CHARACTERISTICS:

Under policy direction of the City Council, and as prescribed in the Lompoc Municipal Code, the **City Manager** is responsible to plan, direct, organize and administer the operations of the City departments; through appointed department heads to plan, direct and coordinate efficient delivery of the various municipal services and activities; to serve as Chief Executive Officer of the City; and to perform related work as required.

The **City Manager** is an at-will position appointed by the City Council and serves as the top executive of the City. Under direction and guidance from the City Council, the City Manager is responsible for the efficient administration of all affairs of the City and for the quality of performance of all functions of the City.

## ESSENTIAL FUNCTIONS/EXAMPLES OF DUTIES:

*The following duties are typical of this classification. Incumbents may not perform all of the duties and/or may be required to perform specific additional or different duties from those set forth below to address business needs and changing business practices. The omission of specific statements of duties does not exclude them from the position if the work is similar, related or a logical assignment to this class.*

Subject to the approval of the City Council, performs a variety of duties designed to promote and further the interests of the City, including:

- Provides policy direction to the Economic Development Director/Assistant City Manager and other City Directors in the control and coordination of various City services and activities.
- Provides leadership and works with the management team to develop and retain highly competent, excellence in public-service oriented staff through selection, compensation, training and day-to-day management practices that support the City's mission, operating plans, and objectives.

- Participates in regional, state and national meetings and conferences to stay abreast of trends and technology related to municipal programs and operations.
- Meets with, discusses problems, provides information to, plans and receives direction from members of the City Council and the Mayor to develop goals and the planning framework for the City.
- Develops Council meeting agenda with Mayor; attends and participates in all City Council meetings.
- Represents the City and works closely with the City Council, a variety of public, private and community organizations and citizens groups in developing and implementing programs to achieve City priorities and solve community problems with a focus on meeting those needs effectively, efficiently, and with high-quality municipal services.
- Establishes measurable benchmarks to assess the effectiveness of initiatives undertaken by city staff.
- Directs and coordinates preparation of analyses and recommendations on public policy issues and on short-term and long-range plans for City services.
- Ensures development and execution of the City's strategic plan and two-year budget.
- Ensures laws and ordinances of the City and contracts granted by the City are faithfully observed.
- Makes interpretations of City ordinances, codes, applicable laws and regulations to ensure compliance, and defines problems and recommends to the City Council legislative action or the adoption of ordinances, resolutions, and initiatives deemed necessary and appropriate for the best interest of the City.
- Advises the City Council on the fiscal integrity of the City and seeks alternative revenue sources from federal and state levels.
- Coordinates the preparation and submission of grant applications.
- Directs and oversees the creation and maintenance of comprehensive, effective human resources and management programs, policies and systems consistent with the City Council's guidance to improve City operations and effectiveness.
- Prepares, directs, and oversees the preparation of a wide variety of comprehensive reports and presentations for the City Council, citizen committees and outside agencies; oversees the preparation of press releases and materials for dissemination to the media and the public; maintains effective relationships with the media.
- Directs and monitors the City's labor negotiations and labor relations programs and initiatives.
- Performs related work as required.

### **TYPICAL QUALIFICATIONS:**

*Include any combination of training, education and experience which demonstrates an ability to perform the duties of the position. The typical qualifying entrance background is:*

**EDUCATION:** Possession of a Master's degree in Public Administration or other closely related field. Additional management experience, beyond the requisite work experience listed below, may be substituted for the required education on a year-for-year basis up to three (3) years.

**EXPERIENCE:** Five (5) years of increasingly responsible public sector management experience, preferably at the director level in one or more departments. Experience as a City Administrator or City Manager is highly desirable.

**LICENSE REQUIRED:** Possession of a valid and appropriate California Driver's License.



**KNOWLEDGE OF:** Principles and practices of public administration and finance and budgeting; methods of analyzing, evaluating and modifying administrative procedures; City government economy and funding sources; principles of management, training and performance appraisal; modern public relations and personnel practices; pertinent federal, state and local laws, rules and regulations; city government organization and control; and legislative procedures for city government.

**ABILITY TO:** Serve effectively as the Chief Executive Officer of the City; evaluate administrative performance and direct improvements; plan, integrate, fiscally control direct, administer, review and evaluate a broad range of complex municipal services, activities operations, programs and services for a broad range of complex municipal service and programs; define complex public policy, management and operational issues; perform complex analyses and research, evaluate alternatives and develop sound conclusions and recommendations; exercise expert, independent judgment within general policy guidelines; present proposals and recommendations clearly and logically in public meetings; understand, interpret, explain, and apply city, state, and federal laws and regulations governing the conduct of City operation; exercise tact and diplomacy in dealing with highly sensitive political, public policy, community, and employee issues and situations; seek, identify, apply for and receive state and federal grant funding; and establish and maintain effective working relationships with the City Council, all levels of City management, other governmental officials, community and civic organizations, employee organizations, employees, the media, and the public.

## **SUPPLEMENTAL INFORMATION:**

***PHYSICAL DEMANDS AND WORKING CONDITIONS:*** *The conditions herein are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.*

**PHYSICAL: Strength Category:** Light - exert force to 25 pounds occasionally, or 10 pounds frequently, or negligible force constantly. May involve significant standing, walking, pushing and/or pulling. Frequent fingering, typing. Occasional to frequent standing; occasional walking, sitting, bending, stooping, pushing, pulling, handling, gripping, grasping, twisting at the waist, reaching at, above and below shoulder level, extending neck upward, downward and side to side, climbing stairs. On rare occasion, climbing ladders, crouching, kneeling. **Vision:** Visual acuity which could be corrected sufficiently to perform the essential functions of the position; average depth perception needed. **Hearing:** Effectively hear/comprehend oral instructions and communication.

**MENTAL/PSYCHOLOGICAL:** Must endure long hours of intense mental application and stress. Work cooperatively and interact appropriately with those contacted in the course of work, including the general public, management, staff, City officials, consultants, media, citizen groups, and vendors; utilize complex reading, writing, and math skills; read and interpret complex data; communicate effectively orally and in writing; thoroughly analyze and solve problems; investigate and resolve interpersonal conflicts; exercise sound judgment; respond quickly to changing priorities; perform effective multi-tasking; work under pressure; and establish priorities and work within deadlines.

**ENVIRONMENTAL CONDITIONS:** Constantly works indoors. On rare occasion works outdoors. Frequent use of a computer, facsimile, electronic copier, and printer. Occasional use of an adding machine, calculator and other modern office equipment. Occasionally drives City vehicles to attend meetings at various City facilities, meeting sites, and public and private events. Works both alone and with others.

**EXHIBIT B**

ICMA Code of Ethics with Guidelines (June 2020)



## ICMA Code of Ethics with Guidelines

**The ICMA Code of Ethics was adopted by the ICMA membership in 1924, and most recently amended by the membership in June 2020. The Guidelines for the Code were adopted by the ICMA Executive Board in 1972, and most recently revised in June 2020.**

The mission of ICMA is to advance professional local government through leadership, management, innovation, and ethics. To further this mission, certain principles, as enforced by the Rules of Procedure, shall govern the conduct of every member of ICMA, who shall:

**Tenet 1.** We believe professional management is essential to efficient and democratic local government by elected officials.

**Tenet 2.** Affirm the dignity and worth of local government services and maintain a deep sense of social responsibility as a trusted public servant.

### GUIDELINE

Advice to Officials of Other Local Governments. When members advise and respond to inquiries from elected or appointed officials of other local governments, they should inform the administrators of those communities in order to uphold local government professionalism.

**Tenet 3.** Demonstrate by word and action the highest standards of ethical conduct and integrity in all public, professional, and personal relationships in order that the member may merit the trust and respect of the elected and appointed officials, employees, and the public.

### GUIDELINES

Public Confidence. Members should conduct themselves so as to maintain public confidence in their position and profession, the integrity of their local government, and in their responsibility to uphold the public trust.

Length of Service. For chief administrative/executive officers appointed by a governing body or elected official, a minimum of two years is considered necessary to render a professional service to the local government. In limited circumstances, it may be in the best interests of the local government and the member to separate before serving two years. Some examples include refusal of the appointing authority to honor commitments concerning conditions of employment, a vote of no confidence in the member, or significant personal issues. It is the responsibility of an applicant for a position to understand conditions of employment, including expectations of service. Not understanding the terms of employment prior to accepting does not justify

premature separation. For all members a short tenure should be the exception rather than a recurring experience, and members are expected to honor all conditions of employment with the organization.

Appointment Commitment. Members who accept an appointment to a position should report to that position. This does not preclude the possibility of a member considering several offers or seeking several positions at the same time. However, once a member has accepted a formal offer of employment, that commitment is considered binding unless the employer makes fundamental changes in the negotiated terms of employment.

Credentials. A member's resume for employment or application for ICMA's Voluntary Credentialing Program shall completely and accurately reflect the member's education, work experience, and personal history. Omissions and inaccuracies must be avoided.

Professional Respect. Members seeking a position should show professional respect for persons formerly holding the position, successors holding the position, or for others who might be applying for the same position. Professional respect does not preclude honest differences of opinion; it does preclude attacking a person's motives or integrity.

Reporting Ethics Violations. When becoming aware of a possible violation of the ICMA Code of Ethics, members are encouraged to report possible violations to ICMA. In reporting the possible violation, members may choose to go on record as the complainant or report the matter on a confidential basis.

Confidentiality. Members shall not discuss or divulge information with anyone about pending or completed ethics cases, except as specifically authorized by the Rules of Procedure for Enforcement of the Code of Ethics.

Seeking Employment. Members should not seek employment for a position that has an incumbent who has not announced his or her separation or been officially informed by the appointive entity that his or her services are to be terminated. Members should not initiate contact with representatives of the appointive entity. Members contacted by representatives of the appointive entity body regarding prospective interest in the position should decline to have a conversation until the incumbent's separation from employment is publicly known.

Relationships in the Workplace. Members should not engage in an intimate or romantic relationship with any elected official or board appointee, employee they report to, one they appoint and/or supervise, either directly or indirectly, within the organization.

This guideline does not restrict personal friendships, professional mentoring, or social interactions with employees, elected officials and Board appointees.

Influence. Members should conduct their professional and personal affairs in a manner that demonstrates that they cannot be improperly influenced in the performance of their official duties.

Conflicting Roles. Members who serve multiple roles – either within the local government organization or externally – should avoid participating in matters that create either a conflict of interest or the perception of one. They should disclose any potential conflict to the governing body so that it can be managed appropriately.

Conduct Unbecoming. Members should treat people fairly, with dignity and respect and should not engage in, or condone bullying behavior, harassment, sexual harassment or discrimination on the basis of race, religion, national origin, age, disability, gender, gender identity, or sexual orientation.

**Tenet 4.** Serve the best interests of the people.

#### **GUIDELINES**

Impacts of Decisions. Members should inform their governing body of the anticipated effects of a decision on people in their jurisdictions, especially if specific groups may be disproportionately harmed or helped.

Inclusion. To ensure that all the people within their jurisdiction have the ability to actively engage with their local government, members should strive to eliminate barriers to public involvement in decisions, programs, and services.

**Tenet 5.** Submit policy proposals to elected officials; provide them with facts, and technical and professional advice about policy options; and collaborate with them in setting goals for the community and organization.

**Tenet 6.** Recognize that elected representatives are accountable to their community for the decisions they make; members are responsible for implementing those decisions.

**Tenet 7.** Refrain from all political activities which undermine public confidence in professional administrators. Refrain from participation in the election of the members of the employing legislative body.

#### **GUIDELINES**

Elections of the Governing Body. Members should maintain a reputation for serving equally and impartially all members of the governing body of the local government they serve, regardless of party. To this end, they should not participate in an election campaign on behalf of or in opposition to candidates for the governing body.

Elections of Elected Executives. Members shall not participate in the election campaign of any candidate for mayor or elected county executive.

Running for Office. Members shall not run for elected office or become involved in political activities related to running for elected office, or accept appointment to an elected office. They shall not seek political endorsements, financial contributions or engage in other campaign activities.

Elections. Members share with their fellow citizens the right and responsibility to vote. However, in order not to impair their effectiveness on behalf of the local governments they serve, they shall not participate in political activities to support the candidacy of individuals running for any city, county, special district, school, state or federal offices. Specifically, they shall not endorse candidates, make financial contributions, sign or circulate petitions, or participate in fund-raising activities for individuals seeking or holding elected office.

Elections relating to the Form of Government. Members may assist in preparing and presenting materials that explain the form of government to the public prior to a form of government election. If assistance is required by another community, members may respond.

Presentation of Issues. Members may assist their governing body in the presentation of issues involved in referenda such as bond issues, annexations, and other matters that affect the government entity's operations and/or fiscal capacity.

Personal Advocacy of Issues. Members share with their fellow citizens the right and responsibility to voice their opinion on public issues. Members may advocate for issues of personal interest only when doing so does not conflict with the performance of their official duties.

**Tenet 8.** Make it a duty continually to improve the member's professional ability and to develop the competence of associates in the use of management techniques.

#### **GUIDELINES**

Self-Assessment. Each member should assess his or her professional skills and abilities on a periodic basis.

Professional Development. Each member should commit at least 40 hours per year to professional development activities that are based on the practices identified by the members of ICMA.

**Tenet 9.** Keep the community informed on local government affairs; encourage communication between the citizens and all local government officers; emphasize friendly and courteous service to the public; and seek to improve the quality and image of public service.

**Tenet 10.** Resist any encroachment on professional responsibilities, believing the member should be free to carry out official policies without interference, and handle each problem without discrimination on the basis of principle and justice.

## GUIDELINE

Information Sharing. The member should openly share information with the governing body while diligently carrying out the member's responsibilities as set forth in the charter or enabling legislation.

**Tenet 11.** Handle all matters of personnel on the basis of merit so that fairness and impartiality govern a member's decisions, pertaining to appointments, pay adjustments, promotions, and discipline.

## GUIDELINE

Equal Opportunity. All decisions pertaining to appointments, pay adjustments, promotions, and discipline should prohibit discrimination because of race, color, religion, sex, national origin, sexual orientation, political affiliation, disability, age, or marital status.

It should be the members' personal and professional responsibility to actively recruit and hire a diverse staff throughout their organizations.

**Tenet 12.** Public office is a public trust. A member shall not leverage his or her position for personal gain or benefit.

## GUIDELINES

Gifts. Members shall not directly or indirectly solicit, accept or receive any gift if it could reasonably be perceived or inferred that the gift was intended to influence them in the performance of their official duties; or if the gift was intended to serve as a reward for any official action on their part.

The term "Gift" includes but is not limited to services, travel, meals, gift cards, tickets, or other entertainment or hospitality. Gifts of money or loans from persons other than the local government jurisdiction pursuant to normal employment practices are not acceptable.

Members should not accept any gift that could undermine public confidence. De minimus gifts may be accepted in circumstances that support the execution of the member's official duties or serve a legitimate public purpose. In those cases, the member should determine a modest maximum dollar value based on guidance from the governing body or any applicable state or local law.

The guideline is not intended to apply to normal social practices, not associated with the member's official duties, where gifts are exchanged among friends, associates and relatives.

Investments in Conflict with Official Duties. Members should refrain from any investment activity which would compromise the impartial and objective performance of their duties. Members should not invest or hold any investment, directly or indirectly, in any financial business, commercial, or other private transaction that creates a conflict of interest, in fact or appearance, with their official duties.



In the case of real estate, the use of confidential information and knowledge to further a member's personal interest is not permitted. Purchases and sales which might be interpreted as speculation for quick profit should be avoided (see the guideline on "Confidential Information"). Because personal investments may appear to influence official actions and decisions, or create the appearance of impropriety, members should disclose or dispose of such investments prior to accepting a position in a local government. Should the conflict of interest arise during employment, the member should make full disclosure and/or recuse themselves prior to any official action by the governing body that may affect such investments.

This guideline is not intended to prohibit a member from having or acquiring an interest in or deriving a benefit from any investment when the interest or benefit is due to ownership by the member or the member's family of a de minimus percentage of a corporation traded on a recognized stock exchange even though the corporation or its subsidiaries may do business with the local government.

Personal Relationships. In any instance where there is a conflict of interest, appearance of a conflict of interest, or personal financial gain of a member by virtue of a relationship with any individual, spouse/partner, group, agency, vendor or other entity, the member shall disclose the relationship to the organization. For example, if the member has a relative that works for a developer doing business with the local government, that fact should be disclosed.

Confidential Information. Members shall not disclose to others, or use to advance their personal interest, intellectual property, confidential information, or information that is not yet public knowledge, that has been acquired by them in the course of their official duties.

Information that may be in the public domain or accessible by means of an open records request, is not confidential.

Private Employment. Members should not engage in, solicit, negotiate for, or promise to accept private employment, nor should they render services for private interests or conduct a private business when such employment, service, or business creates a conflict with or impairs the proper discharge of their official duties.

Teaching, lecturing, writing, or consulting are typical activities that may not involve conflict of interest, or impair the proper discharge of their official duties. Prior notification of the appointing authority is appropriate in all cases of outside employment.

Representation. Members should not represent any outside interest before any agency, whether public or private, except with the authorization of or at the direction of the appointing authority they serve.

Endorsements. Members should not endorse commercial products or services by agreeing to use their photograph, endorsement, or quotation in paid or other commercial advertisements,

marketing materials, social media, or other documents, whether the member is compensated or not for the member's support. Members may, however, provide verbal professional references as part of the due diligence phase of competitive process or in response to a direct inquiry.

Members may agree to endorse the following, provided they do not receive any compensation: (1) books or other publications; (2) professional development or educational services provided by nonprofit membership organizations or recognized educational institutions; (3) products and/or services in which the local government has a direct economic interest.

Members' observations, opinions, and analyses of commercial products used or tested by their local governments are appropriate and useful to the profession when included as part of professional articles and reports.

**EXHIBIT C**

**CITY ANTI-HARASSMENT POLICIES**

## **Chapter 63: DISCRIMINATION AND HARASSMENT**

**Issue 1: 02/01/2018**

### **I. PURPOSE**

To reinforce the City of Lompoc's commitment to equal employment opportunity and a work environment free of discrimination and harassment, including sexual harassment.

### **II. SCOPE OF APPLICATION**

This policy applies to all City officers, employees, unpaid interns, volunteers, contractors, vendors, suppliers and other persons who participate in City programs and services.

### **III. SUMMARY**

This policy is divided into the following sections:

General Policy

Discrimination and Harassment

Sexual Harassment

Consensual Sexual or Romantic Relationships

Responsibilities (including responsibilities of all employees and supervisors)

Complaint Procedures—General Information (including options of reporting)

Complaint Procedures

For questions regarding this policy or to discuss a particular situation, please contact the Human Resources Manager or his designee.

### **IV. GENERAL POLICY**

It is the policy of the City of Lompoc to promote and maintain a work environment free of illegal discrimination and harassment in employment.

The City of Lompoc, as a public employer and a provider of services, **WILL NOT TOLERATE NOR CONDONE DISCRIMINATION OR HARASSMENT** from any employee, regardless of employment status. All City employees are responsible for maintaining a work environment free from discrimination and harassment as defined below and will be held fully accountable for complying with this policy and for taking appropriate measures to ensure that such conduct does not occur.

An employee, unpaid intern, volunteer or contractor who believes that he or she has been the victim of discrimination or harassment should immediately report the alleged harassment or discrimination as described under "Complaint Procedures" below. Any City employee, unpaid intern, volunteer or contractor who believes he or she has witnessed or has knowledge of any harassment or discrimination in the workplace is strongly encouraged to report the acts or occurrences.

City employees who violate this policy are subject to disciplinary action up to and including termination from City service. Supervisors/managers who know or should have known of discrimination or harassment and fail to report such conduct and fail to take immediate corrective action are also subject to disciplinary action up to and including termination from City service. Contractors or other persons who participate in City programs and services who violate this policy are subject to appropriate sanctions.

## PROTECTION AGAINST RETALIATION

Retaliation or reprisals against witnesses or employees who in good faith file harassment or discrimination complaints or provide information in an investigation will not be tolerated. However, intentionally making a false report or providing false information is cause for discipline.

## **V. DISCRIMINATION AND HARASSMENT**

Under this policy, "**Discrimination**" includes, but is not limited to:

1. Any practice, process or action in the workplace, which works against equality of opportunity, and against the ability of each person to be employed, and to advance on the basis of merit, without regard to the following protected categories/status:
  - Race
  - Color
  - Religion (Religious Creed)
  - National Origin
  - Ancestry
  - Age (40 and above)
  - Sex
  - Pregnancy, childbirth, breastfeeding and/or related medical condition
  - Disability (Physical and/or Mental)
  - Marital Status
  - Medical Condition (Cancer/genetic characteristics)
  - Gender, Gender Identity, and Gender Expression
  - Military Status and Veteran Status
  - Genetic Information
  - Sexual Orientation
2. Basing an employment decision affecting a job applicant or employee (e.g., decision to hire, promote, transfer, terminate, etc.) on one's protected status (e.g., race, color, religion, sex, etc.).
3. Treating an applicant or employee differently with regard to any aspect of employment because of his or her protected status.
4. Taking adverse employment action (i.e., demotion, transfer, discipline, termination) against an employee based on the employee opposing discrimination and/or harassment in the workplace, assisting, supporting, or associating with a member of a protected

category/status who complains about discrimination and/or harassment, or assisting in an investigation of discrimination and/or harassment.

Under this policy, "**Harassment**" is defined by the existence of the following elements:

1. Conduct that is based on a protected category/status;
2. Conduct that is unwelcome;
3. Workplace harm that:
  - Creates a hostile work environment; or
  - Results from a tangible employment action (quid pro quo)

Examples of actions that may lead to workplace harassment complaints based on a Hostile Work Environment and which are prohibited include, but are not limited to, the following:

- **Visual Harassment**, such as posters, photographs, letters, notes, email, cartoons, or drawings related to the person's protected category/status (including using City computer systems related to such materials).
- **Verbal Harassment**, such as epithets, derogatory comments/statements, vulgar, racist or other discriminatory jokes, or slurs based upon a person's protected category/status.
- **Physical Harassment**, such as assault, blocking or impeding access or other physical interference, sabotaging work or imposing demeaning work tasks based upon a person's protected category/status.

Even if conduct does not constitute a hostile work environment, it may still be misconduct that is cause for discipline.

## **VI. SEXUAL HARASSMENT**

"**Sexual Harassment**" is a form of workplace harassment as described above and is defined to include, but is not limited to:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

Sexual harassment can occur in a variety of circumstances, including but not limited to the following:

- The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.
- The harasser can be the victim's supervisor, a supervisor in another area, a manager, a co-worker, or a non-employee.

- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur without economic injury to or termination of the victim.
- The harasser's conduct must be unwelcome.

Determining what constitutes sexual harassment depends upon the specific facts and context.

Sexual harassment:

- May be subtle and indirect or blatant and overt.
- May consist of repeated actions or may arise from a single incident if sufficiently severe.

**“Hostile Work Environment”** cases are a type of Sexual Harassment that can result from various forms of conduct, including, but not limited to the following:

- **Visual Harassment:** leering/staring, making sexual gestures, displaying of sexually suggestive or pornographic objects, pictures, magazines, cartoons, posters, letters, notes, emails, inappropriate gifts.
- **Verbal Harassment:** making or using derogatory comments, epithets, slurs and jokes. Comments about body parts or physical appearance, innuendo, unwanted sexual advances, unfulfilled threats of employment benefits/detriments in exchange for sexual favors, pressure for dates, discussion of a sexual nature, questioning a person's sexual practice or history, sexually degrading words used to describe an individual.
- **Physical conduct:** touching, assault, impeding or blocking movements.

**“Quid Pro Quo (‘This for that’) Harassment”** cases are another type of Sexual Harassment:

- “Quid Pro Quo” Harassment can occur when submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting that individual, such as a promotion, raise, hiring, or performance appraisals.

This kind of Sexual Harassment can only be perpetrated by a supervisor, manager or other person who has the authority to affect the employee's terms and conditions of employment.

### Examples

Examples of actions that may lead to sexual harassment complaints and which must be avoided include, but are not limited to, those listed below:

- Unwanted sexual advances or pressure for dates or sexual favors
- Making implicit or explicit offers of employment benefits in exchange for sexual favors

- Making implicit or explicit threats of retaliation for negative responses to sexual advances
- Leering, sexual looks or sexual gestures with hands or through body movements
- Unwanted touching, including hugging, kissing, patting or stroking
- Pinching, grabbing, assaulting, impeding or blocking movements
- Sexually suggestive objects or pictures, cartoons or posters in the workplace or on computer systems (including email and the internet)
- Graphic verbal commentaries about an individual's body
- Sexually degrading words used to describe an individual, including inappropriate sex-oriented comments about appearance, including dress or physical features
- Lewd propositioning
- Unwanted written communications, telephone calls, or personal gifts
- Sexual teasing, jokes, remarks or questions
- Referring to an adult as a "girl", "hunk", "doll", "babe", or "honey" or whistling at someone
- Sexual innuendoes or stories
- Asking about sexual fantasies, preferences or history
- Questions about sexual life
- Sexual comments about a person's clothing, anatomy or looks
- Telling lies or spreading rumors about a person's personal sex life
- Giving massages, touching a person's clothing, hair or body

Even if conduct does not constitute Sexual Harassment, it may still be misconduct that is cause for discipline.

## **VII. INAPPROPRIATE MATERIALS IN THE WORKPLACE**

The City of Lompoc will not tolerate nor condone City employees who view, display, print, send, download or distribute content that contains or depicts scantily clad individuals, nudity, or sexually explicit material.

City employees who view, display, print, send, download or distribute such content or depictions are **subject to disciplinary action up to and including termination from City service**, regardless of whether or not another employee raises a concern with the material. Further, any such content or depictions that could have criminal implications will be immediately reported to the City of Lompoc's Police Department.

In addition, employees who access content that contains or depicts scantily clad individuals, nudity, or sexually explicit material using the City's email or internet systems may also be in violation of other City policies, including, but not limited to, the City's Use of Email, Internet Services, and Other Electronic Media Policy and the Personal Use of City Equipment Policy.

There may be City business related reasons for accessing materials such as those listed here. If you have any questions on these, please contact the Human Resources Manager or his designee.



## **VIII. CONSENSUAL SEXUAL OR ROMANTIC RELATIONSHIPS**

There are special risks in any sexual or romantic relationship between individuals in inherently unequal positions, and parties in such a relationship assume those risks. Such unequal positions include an employee and a supervisor/manager who is in a position of authority over the employee. This can include direct reporting relationships or indirect reporting relationships where the supervisor/manager is in a higher level position within the same chain of command as the employee.

Because of the potential for conflicts of interest, exploitation, favoritism, and bias, such relationships may undermine the real or perceived integrity of the supervision and evaluation provided. They may be less consensual than the individual in the higher level position believes. The relationship is likely to be perceived in different ways by each of the parties to it, especially in retrospect.

In addition, such relationships may affect others in the work environment. Relationships in which one party is in a position to review/evaluate the work or influence the career of the other may provide grounds for complaint by third parties when that relationship gives undue access or advantage, restricts opportunities, or creates a perception of these problems. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic involvement, this past consent does not remove grounds for a charge based upon subsequent unwelcome conduct.

Where such a relationship exists, the person in the higher level position will bear the primary burden of accountability, and must ensure that he or she does not exercise any supervisory or evaluative function (or does not remain in a position where they can influence the supervisory or evaluative function) related to the other person in the relationship. The person in the higher level position must also notify his or her supervisor and Department Head so that they can evaluate the adequacy of alternative supervisory arrangements to be put in place. The Department Head or designee must consult the Human Resources Office.

As stated above, the responsibility to make the notifications and the responsibility to ensure that alternative supervisory arrangements are put into place rests with the person in the higher level position. Failure to comply with these requirements is a violation of this policy, and therefore cause for discipline.

## **IX. RESPONSIBILITIES**

### **A. Employees, Unpaid Interns, Volunteers, and Contractors**

All employees, unpaid interns, volunteers, and contractors shall be responsible for:

1. Maintaining a work environment free of discrimination and harassment, complying with the Policy, and taking appropriate measures to ensure that such conduct does not occur.

2. Reporting complaints to a supervisor, Department Head or Human Resources Office immediately. Employees are strongly encouraged to report discrimination or harassment conduct before it becomes severe or pervasive.
3. Cooperating fully with all investigations of discrimination and harassment and implementation of remedial measures.
4. Refraining from retaliating against any employee who participates in an investigation or opposes discriminatory practices.

**B. Supervisors/Managers**

Supervisors/Managers shall be responsible for:

1. Contacting the Department Head and the Human Resources Office immediately upon receiving a complaint or when aware of situation involving potential violations of this policy.

**Supervisors/Managers who know or should have known of discrimination or harassment and fail to report such conduct and fail to take immediate corrective action are also subject to disciplinary action up to and including termination from City service.**

**C. Department Heads**

Department Heads shall be responsible for:

1. Assisting the Human Resources Manager by disseminating this Policy to department employees and ensuring that the workplace remains free of discrimination and harassment.
2. Contacting the Human Resources Office immediately upon receiving a complaint from an employee or notification that a complaint has been filed with the EEOC or DFEH, or when aware of situation involving potential violations of this policy. Coordinating and cooperating with the Human Resources Manager in resolving complaints involving employees in their respective departments; and when discrimination and/or harassment has occurred:
  - Taking prompt and appropriate remedial action.
  - Taking reasonable steps to protect the complainant from further discrimination/harassment.
  - Taking reasonable steps to protect the complainant from retaliation as a result of communicating the complaint.
  - Taking action to remedy the effects of discrimination/harassment.

**D. Human Resources Manager**

The Human Resources Manager shall be responsible for:

1. Ensuring that this Policy is disseminated to all employees.

2. Providing training and assistance to Department Heads, supervisors, and employees in preventing and addressing discrimination and harassment.
3. Investigating, resolving and, when appropriate, making recommendations for corrective actions of complaints.
4. Responding to complaints filed with the EEOC or DFEH.
5. Forwarding an EEOC-issued Determination Letter to the complainant and person charged.

## **X. COMPLAINTS – GENERAL INFORMATION**

A report of discrimination or harassment can be made verbally or in writing, but the employee will be asked to communicate all known facts and information about the acts or occurrences so that an investigation can be conducted.

Allegations of discrimination or harassment will be promptly and objectively investigated. All parties involved will be provided due process, as appropriate. The investigation and findings will be based upon the totality of circumstances and each situation will be evaluated on a case-by-case basis. Where discrimination or harassment has occurred, prompt and effective remedial action commensurate with the severity of the offense will be taken in accordance with existing City discipline procedures.

### **Confidentiality**

Anonymous inquiries can be made regarding this policy in order to assist employees who believe that they may be victims of harassment or discrimination in determining available options. Anonymous complaints can be made by phone at (805) 875-8208 (by using a blocked number) or via email, [HR@ci.lompoc.ca.us](mailto:HR@ci.lompoc.ca.us) using an anonymous personal email account sent from a non-City computer.

The City of Lompoc recognizes the sensitivity of discrimination and harassment complaints, and respects the confidentiality and privacy of the individual reporting or accused of harassment or discrimination, or providing information in connection to a complaint of harassment or discrimination, to the extent reasonably or legally possible. For example, information related to a complaint may need to be disclosed in responding to a complaint made to an outside governmental agency such as the California Department of Fair Employment and Housing (DFEH) or the Federal Equal Employment Opportunity Commission (EEOC). In addition, there are circumstances, such as if disciplinary action is taken, when details of the investigation, including the identity of the complainant and witnesses may be disclosed. Concerns regarding confidentiality can be directed to the Human Resources Office.

## **Options to Report**

Complaint procedures are described in detail under "Complaint Procedure" below. The options to file complaints of discrimination or harassment which involve City employees include filing the complaint with:

- A supervisor
- A Department Head
- The Human Resources Office
- The Equal Employment Opportunity Commission (EEOC)
- The Department of Fair Employment and Housing (DFEH)

If an employee is uncomfortable filing a complaint with a supervisor, the complaint can be made to the Department Head or directly to the Human Resources Office. Employees have the right to file a complaint with an outside agency (EEOC or DFEH). However, a violation of this policy may exist even when there is no violation of the law.

If a complaint is filed with a department, or if a department receives notification that a complaint has been filed, the department shall immediately notify the Human Resources Office. The decision as to whether an investigation will be conducted by the department or the Human Resources Office shall be decided by the Human Resources Manager after consultation with the Department Head.

## **Complaints Involving Council Office or Council Appointees**

Complaints which involve Council Members, the City Attorney or City Manager may be made to the Human Resources Manager.

## **Complaints Involving Contractors, Vendors or Suppliers**

Complaints of discrimination or harassment raised by City employees against employees, agents or representatives of contractors, vendors or suppliers doing business with the City shall be promptly reported to the Human Resources Office.

Complaints of discrimination or harassment raised by employees, agents or representatives of contractors, vendors or suppliers doing business with the City against City employees shall be promptly reported to the Human Resources Office.

Firms whose employees discriminate against or who sexually harass City employees in the course of doing business with the City may be subject to termination of contract, suspension or debarment from doing business with the City; or to other measures as the City Administration and the City Attorney may deem appropriate.

## **XI. COMPLAINT PROCEDURES**

### **1. Filing a Complaint**

Employees who believe they have been discriminated against or harassed are to immediately report the act or occurrence, in writing or verbally, to a supervisor, Department Head or the Human Resources Office. Any supervisor who receives a complaint of discrimination or harassment or who becomes aware of a situation involving potential violations of this policy shall notify the Department Head and the Human Resources Office. Any Department Head who receives a discrimination/harassment complaint from an employee, or notification that a complaint has been filed with the EEOC or DFEH, shall notify the Human Resources Manager as soon as possible after receiving the complaint.

### **2. Investigation and Resolution**

After reviewing the discrimination or harassment complaint, the Human Resources Manager shall determine if an investigation is necessary to resolve the issues of the complaint and, if so, authorize and supervise the investigation of the complaint.

The Human Resources Manager will not proceed with the investigation of a complaint if the complaint contains no assertion that the alleged acts occurred based on one or more of the protected categories. However, complaints of alleged misconduct, which do not allege harassment or discrimination on the bases covered by the scope of this procedure, may be investigated by the Department Head or the Human Resources Office at the discretion of the Human Resources Manager.

When the investigation is completed, the Human Resources Manager will determine if there is sufficient evidence to substantiate a violation of this Policy or if any other misconduct has occurred, and if remedial action is necessary to resolve the issues of the complaint. The complainant, alleged harasser, and Department Head will be notified of the Manager's determination.

Complainant	1. File discrimination/harassment complaint immediately. At the discretion of the complainant, complaints may be filed with a supervisor, the Department Head or Human Resources Manager.
Supervisor	2. Contact the Department Head and the Human Resources Office immediately upon receiving a complaint or when aware of situation involving potential violations of this policy.
Department Head	3. Contact the Human Resources Manager immediately upon receiving a complaint from an employee or notification that a complaint has been filed with the EEOC or DFEH.

Human Resources Manager	<p>4. Discuss with complainant and note details of allegations of discrimination/harassment, such as:</p> <ul style="list-style-type: none"> <li>• Date, time and place of incident.</li> <li>• Nature of the incident.</li> <li>• Person or persons against whom allegations are made.</li> <li>• Witnesses.</li> <li>• Preferred remedy.</li> <li>• Other information relevant to the charge and investigation.</li> </ul>
Human Resources Manager	<p>5. Maintain coordination with the Department Head as needed until the complaint is resolved.</p>
Human Resources Manager	<p>6. Determine type and nature of the complaint. If not based on discrimination/harassment, determine appropriate action, if any. If based on discrimination or harassment:</p> <ul style="list-style-type: none"> <li>• Develop a plan for investigating the complaint or retaining an outside investigator to conduct an investigation.</li> <li>• Interview witnesses, if necessary.</li> <li>• Interview former and current supervisors and co-workers where appropriate to substantiate claims or allegations, if necessary.</li> <li>• Review personnel files.</li> <li>• Review data collected and other relevant reports and documents.</li> </ul>
Human Resources Manager	<p>7. Determine factual findings. Prepare (or have prepared by an outside investigator) a written report, including a summary of the investigation, findings and whether the allegations are substantiated or not.</p> <ul style="list-style-type: none"> <li>• If misconduct is substantiated, determine if disciplinary action is required.</li> <li>• Forward letter of determination to complainant and person charged.</li> <li>• If allegations are not substantiated, then proceed to Step 10.</li> </ul>
Human Resources Manager	<p>8. Coordinate implementation of corrective/disciplinary action with City Attorney's Office, Department Head and/or other appropriate officials.</p> <p>9. Implement corrective/disciplinary action.</p> <p>10. Close case.</p>
Complainant	<p>11. If dissatisfied with final determination, consider contacting the Department of Fair Employment and Housing (DFEH), the Equal Employment Opportunity Commission (EEOC), or a private attorney.</p>

Employees remain free to pursue complaints of discrimination or harassment with two outside agencies: the State of California Department of Fair Employment and Housing or the United States Equal Employment Opportunity Commission, whether or not complainants choose to use the City of Lompoc's complaint procedure. Time limits for filing complaints with State and Federal compliance agencies vary and those agencies should be contacted directly for specific information. The addresses and telephone numbers (as of the revision date of this procedure) are:


Department of Fair Employment and Housing  
Santa Ana District Office  
2101 E. 4th Street, Suite 255B  
Santa Ana, CA 92705  
Phone: (800) 884-1684  
TTY (800) 700-2320

Equal Employment Opportunity Commission  
Los Angeles District Office  
Roybal Federal Building  
255 East Temple St., 4th Floor  
Los Angeles, CA 90012  
Phone: (800) 669-4000  
TTY (800) 669-6820

**AUTHORIZED:**



\_\_\_\_\_  
Teresa Gallavan, Interim City Manager



\_\_\_\_\_  
Date

## EXHIBIT D

### AGREEMENT OF SEPARATION, SEVERANCE, AND GENERAL RELEASE

#### **1. PARTIES**

This Agreement of Separation, Severance, and General Release (hereinafter referred to as the "AGREEMENT") is entered into by and between the City of Lompoc, a general law city and municipal corporation (hereinafter referred to as "the CITY"), and Dean Albro, an individual (hereinafter referred to as "EMPLOYEE").

#### **2. RECITALS**

2.1. EMPLOYEE was hired by the CITY as an at-will city manager effective \_\_\_\_\_ serving at the pleasure of the City Council of the CITY pursuant to a written contract, a copy of which is attached hereto as Exhibit A ("the CONTRACT"). EMPLOYEE is currently \_\_\_ years old.

2.2. The CITY and EMPLOYEE desire EMPLOYEE separate from employment with the CITY and enter into a severance agreement whereby EMPLOYEE receives severance compensation in exchange for executing a general release and waiver of any and all claims that EMPLOYEE may have against the CITY, including, but not limited to, its elected and non-elected officials, employees, attorneys, and agents. Accordingly, the parties hereto intend by this AGREEMENT to mutually conclude any and all employment relationships between the CITY and EMPLOYEE by means of EMPLOYEE's separation by means of \_\_\_\_\_ as of \_\_\_\_\_, \_\_\_\_\_. This AGREEMENT sets forth the full and complete terms and conditions concluding EMPLOYEE's employment relationship with the CITY and any obligations related thereto, including any provided under the CONTRACT.

2.3 In accordance with this AGREEMENT and with applicable state and federal laws, EMPLOYEE acknowledges that EMPLOYEE has been advised of EMPLOYEE's post-employment rights, including but not limited to, EMPLOYEE's rights under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), the Employee Retirement Income Security Act of 1974 ("ERISA"), and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

#### **3. CONSIDERATION**

3.1 EMPLOYEE shall receive payment to him at the time of his voluntary separation all earned salary, accrued fringe benefits as detailed in the CONTRACT, and/or all other wage compensation/benefits owed to EMPLOYEE upon separation of employment, as required by state, federal or municipal law or the CONTRACT or any other agreement with the CITY.

3.2. In exchange for the waivers and releases set forth herein, the CITY shall cause to be paid to EMPLOYEE an additional compensatory payment as severance pay by means of a lump sum payment of \_\_\_\_\_ and \_\_ cents (\$\_\_\_\_\_.00), as set forth in the CONTRACT in the form of a check made payable to EMPLOYEE to be mailed to EMPLOYEE at



EMPLOYEE's home address via certified mail return receipt requested within thirty business days after the EFFECTIVE DATE (as defined below) of this AGREEMENT. The lump sum payment shall be subject to applicable state and federal withholdings as determined appropriate by the CITY.

3.3 In exchange for the severance payment provided for herein, EMPLOYEE, and on behalf of EMPLOYEE's spouse, heirs, representatives, successors, and assigns, hereby releases, acquits, and forever discharges the CITY, and each of its predecessors, successors, assigns, officials, employees, representatives, agents, insurers, attorneys, and all persons and entities acting by, through, under, or in concert with any of them, and each of them (hereinafter referred to as "the CITY PARTIES"), from any and all claims, charges, complaints, contracts, understandings, liabilities, obligations, promises, benefits, agreements, controversies, costs, losses, debts, expenses, damages, actions, causes of action, suits, rights, and demands of any nature whatsoever, known or unknown, suspected or unsuspected, which EMPLOYEE now has or may acquire in the future, or which EMPLOYEE ever had, relating to or arising out of any act, omission, occurrence, condition, event, transaction, or thing which was done, omitted to be done, occurred or was in effect at any time from the beginning of time up to and including \_\_\_\_\_, \_\_\_\_ (hereinafter referred to collectively as "CLAIMS"), without regard to whether such CLAIMS arise under the federal, state, or local constitutions, statutes, rules or regulations, or the common law. EMPLOYEE expressly acknowledges that the CLAIMS forever barred by this AGREEMENT specifically include, but are not limited to, claims based upon any alleged breach of the CONTRACT or any other agreement of employment, any demand for wages, overtime or benefits, any claims of violation of the provisions of ERISA, COBRA or HIPAA, any alleged breach of any duty arising out of contract or tort, any alleged wrongful termination in violation of public policy, any alleged breach of any express or implied contract for continued employment, any alleged employment discrimination or unlawful discriminatory act, or any claim or cause of action including, but not limited to, any and all claims whether arising under any federal, state or local law prohibiting breach of employment contract, wrongful termination, or employment discrimination based upon age, race, color, sex, religion, handicap or disability, national origin or any other protected category or characteristic, and any and all rights or claims arising under the California Labor Code or Industrial Welfare Commission Wage Orders, the Federal Fair Labor Standards Act, the California Fair Employment and Housing Act, California Government Code §§12, 900 et seq., the Americans With Disabilities Act, Title VII of the Civil Rights Act of 1964, the Public Safety Officers Procedural Bill of Right Act, and any other federal, state, or local human rights, civil rights, or employment discrimination or employee rights statute, rule, or regulation. Nothing herein shall be interpreted as a release or waiver of any workers' compensation claims or in any way prohibit or prevent EMPLOYEE from participating in any claims or administrative action brought by a state or federal agency. Furthermore, nothing herein shall be interpreted as a release or waiver of the CITY's statutory obligations relative to providing defense and indemnification of public employees, if any, including but not limited to Government Code Sections 825-825.6 and Sections 995-996.6.

**4. SPECIFIC ACKNOWLEDGMENT OF WAIVER OF CLAIMS UNDER ADEA AND OWBPA**

The Age Discrimination in Employment Act of 1967 (hereinafter referred to as the "ADEA") makes it illegal for an employer to discharge any individual or otherwise discriminate with respect to the nature and privileges of an individual's employment on the basis that the individual is age forty (40) or older. The Older Workers Benefit Protection Act (hereinafter

referred to as the “OWBPA,” 29 U.S.C. § 626 *et seq.*, Pub L 101-433, 104 Stat. 978 (1990)) further augments the ADEA and prohibits the waiver of any right or claim under the ADEA, **unless the waiver is knowing and voluntary**. By entering into this AGREEMENT, EMPLOYEE acknowledges that EMPLOYEE knowingly and voluntarily, for just compensation in addition to anything of value to which EMPLOYEE was already entitled, waives and releases any rights he may have under the ADEA and/or OWBPA. EMPLOYEE further acknowledges that EMPLOYEE has been advised and understands, pursuant to the provisions of the ADEA and OWBPA, that:

- (a) This waiver/release is written in a manner understood by EMPLOYEE;
- (b) EMPLOYEE is aware of, and/or has been advised of, EMPLOYEE’s rights under the ADEA and OWBPA, and of the legal significance of EMPLOYEE’s waiver of any possible claims EMPLOYEE currently may have under the ADEA, OWBPA and/or similar age discrimination laws;
- (c) EMPLOYEE is entitled to a reasonable time of at least twenty-one (21) days within which to review and consider this AGREEMENT and the waiver and release of any rights EMPLOYEE may have under the ADEA, the OWBPA and similar age discrimination laws; but may, in the exercise of EMPLOYEE’s own discretion, sign or reject this AGREEMENT at any time before the expiration of the twenty-one (21) days;
- (d) The waivers and releases set forth in this AGREEMENT shall not apply to any rights or claims that may arise under the ADEA and/or OWBPA **after** the EFFECTIVE DATE of this AGREEMENT;
- (e) EMPLOYEE has been advised by this writing that EMPLOYEE should consult with an attorney prior to executing this AGREEMENT;
- (f) EMPLOYEE has discussed this waiver and release with, and been advised with respect thereto by, EMPLOYEE’s counsel of choice or at least had the opportunity to do so, and EMPLOYEE represents by signing this AGREEMENT that EMPLOYEE does not need any additional time within which to review and consider this AGREEMENT;
- (g) EMPLOYEE has **seven (7) days following EMPLOYEE’s execution** of this AGREEMENT to revoke the AGREEMENT;
- (h) Notice of revocation within the seven (7) day revocation period must be provided, in writing, to the CITY pursuant to Paragraph 8.9 herein, and must state, “I hereby revoke my acceptance of our Agreement of Severance and General Release;” and
- (i) This AGREEMENT shall not be effective until all parties have signed the AGREEMENT and ten (10) days have passed since EMPLOYEE’s execution of same (“EFFECTIVE DATE”).

**5. UNKNOWN CLAIMS**

In relation to the release provisions of Paragraphs 3 and 4 above, EMPLOYEE understands that California Civil Code section 1542 reads as follows:

**“General Release--Claims Extinguished”**

“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

EMPLOYEE hereby waives the protection of California Civil Code section 1542.

**6. WAIVER OF ADDITIONAL CLAIMS**

EMPLOYEE hereby waives any provisions of state or federal law that might require a more detailed specification of the claims being released pursuant to the provisions of Paragraphs 3, 4, and 5 above.

**7. REPRESENTATIONS AND WARRANTIES**

Each of the parties to this AGREEMENT represents and warrants to, and agrees with, each other party as follows:

7.1. Advice of Counsel: The parties hereto have received independent legal advice from their respective attorneys concerning the advisability of entering into and executing this AGREEMENT or have been given the opportunity to obtain such advice. The parties acknowledge that they have been represented by counsel of their own choice in the negotiation of this AGREEMENT, that they have read this AGREEMENT; that they have had this AGREEMENT fully explained to them by such counsel, or have had such opportunity to do so and that they are fully aware of the contents of this AGREEMENT and of its legal effect.

7.2. No Fraud in Inducement: No party (nor any officer, agent, employee, representative, or attorney of or for any party) has made any statement or representation or failed to make any statement or representation to any other party regarding any fact relied upon in entering into this AGREEMENT, and neither party relies upon any statement, representation, omission or promise of any other party in executing this AGREEMENT, or in making the settlement provided for herein, except as expressly stated in this AGREEMENT.

7.3. Independent Investigation: Each party to this AGREEMENT has made such investigation of the facts pertaining to this settlement and this AGREEMENT and all the matters pertaining thereto, as it deems necessary.

7.4. Mistake Waived: In entering into this AGREEMENT, each party assumes the risk of any misrepresentation, concealment or mistake. If any party should subsequently discover that any fact relied upon by it in entering into this AGREEMENT was untrue, or that any fact was

concealed from it, or that its understanding of the facts or of the law was incorrect, such party shall not be entitled to any relief in connection therewith, including without limitation on the generality of the foregoing any alleged right or claim to set aside or rescind this AGREEMENT. This AGREEMENT is intended to be, and is, final and binding between the parties, regardless of any claims of misrepresentation, promise made without the intent to perform, concealment of fact, mistake of fact or law, or any other circumstance whatsoever.

7.5. Later Discovery: The parties are aware that they may hereafter discover claims or facts in addition to or different from those they now know or believe to be true with respect to the matters related herein. Nevertheless, it is the intention of the parties that EMPLOYEE fully, finally and forever settle and release all such matters, and all claims relative thereto, which do now exist, may exist or have previously existed against the CITY or the CITY PARTIES. In furtherance of such intention, the releases given here shall be, and remain, in effect as full and complete releases of all such matters, notwithstanding the discovery or existence of any additional or different claims or facts relative thereto.

7.6. Indemnification: EMPLOYEE agrees to indemnify and hold harmless the CITY or the CITY PARTIES from, and against, any and all claims, damages, or liabilities sustained by them as a direct result of the violation or breach of the covenants, warranties, and representations undertaken pursuant to the provisions of this AGREEMENT. EMPLOYEE understands and agrees that EMPLOYEE shall be exclusively liable for the payment of all taxes for which EMPLOYEE is responsible, if any, as a result of EMPLOYEE's receipt of the consideration referred to in Paragraph 3 of this AGREEMENT. In addition, EMPLOYEE agrees fully to indemnify and hold the CITY PARTIES harmless for payment of tax obligations as may be required by any federal, state or local taxing authority, at any time, as a result of the payment of the consideration set forth in Paragraph 3 of this AGREEMENT.

7.7. Future Cooperation & Consultation fees: EMPLOYEE shall execute all such further and additional documents as shall be reasonable, convenient, necessary or desirable to carry out the provisions of this AGREEMENT. EMPLOYEE shall provide the CITY with consultation services (including deposition or trial testimony) in any litigation involving the CITY which is reasonably related to acts or occurrences transpiring during EMPLOYEE's employment. Said services shall be provided as needed by the CITY at a rate of \$100.00 per hour.

7.8. Return of Confidential Information and Property: Prior to the separation date, EMPLOYEE shall submit a written inventory of, and return to the City Clerk, all City keys, equipment, computer identification cards or codes, and other equipment or materials or confidential documents provided to or obtained by EMPLOYEE during the course of EMPLOYEE's employment with the CITY.

7.9. No Pending Claims and/or Actions: EMPLOYEE represents that EMPLOYEE has not filed any complaints or charges against the CITY or the CITY PARTIES with any local, state or federal agency or court; that EMPLOYEE will not do so at any time hereafter for any claim arising up to and including the EFFECTIVE DATE of this AGREEMENT; and that if any such agency or court assumes jurisdiction of any such complaint or charge against the CITY or the CITY PARTIES on behalf of EMPLOYEE, whenever or where ever filed, EMPLOYEE will request such agency or court to withdraw from the matter forthwith. Nothing herein shall be interpreted as a

release or waiver of any workers' compensation claims or in any way prohibit or prevent EMPLOYEE from participating in any claims or administrative action brought by a state or federal agency.

7.10. Ownership of Claims: EMPLOYEE represents and warrants as a material term of this AGREEMENT that EMPLOYEE has not heretofore assigned, transferred, released or granted, or purported to assign, transfer, release or grant, any of the CLAIMS disposed of by this AGREEMENT. In executing this AGREEMENT, EMPLOYEE further warrants and represents that none of the CLAIMS released by EMPLOYEE thereunder will in the future be assigned, conveyed, or transferred in any fashion to any other person and/or entity.

7.11 Enforcement Fees and Costs: Should any legal action be required to enforce the terms of this AGREEMENT, the prevailing party shall be entitled to reasonable attorneys' fees and costs in addition to any other relief to which that party may be entitled.

7.12 Authority: Each party represents to the other that it has the right to enter into this AGREEMENT, and that it is not violating the terms or conditions of any other AGREEMENT to which they are a party or by which they are bound by entering into this AGREEMENT. The parties represent that they will obtain all necessary approvals to execute this AGREEMENT. It is further represented and agreed that the individuals signing this AGREEMENT on behalf of the respective parties have actual authority to execute this AGREEMENT and, by doing so, bind the party on whose behalf this AGREEMENT has been signed.

## **8. MISCELLANEOUS**

8.1. No Admission: Nothing contained herein shall be construed as an admission by the CITY of any liability of any kind. The CITY denies any liability in connection with any claim and intends hereby solely to avoid potential claims and/or litigation and buy its peace.

8.2. Governing Law: This AGREEMENT has been executed and delivered within the State of California, and the rights and obligations of the parties shall be construed and enforced in accordance with, and governed by, the laws of the State of California.

8.3. Full Integration: This AGREEMENT is the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. This AGREEMENT may be amended only by a further agreement in writing, signed by the parties hereto.

8.4. Continuing Benefit: This AGREEMENT is binding upon and shall inure to the benefit of the parties hereto, their respective agents, spouses, employees, representatives, officials, attorneys, assigns, heirs, and successors in interest.

8.5. Joint Drafting: Each party agrees that it has cooperated in the drafting and preparation of this AGREEMENT. Hence, in any construction to be made of this AGREEMENT, the parties agree that same shall not be construed against any party.

8.6. Severability: In the event that any term, covenant, condition, provision or agreement contained in this AGREEMENT is held to be invalid or void by any court of competent

jurisdiction, the invalidity of any such term, covenant, condition, provision or agreement shall in no way affect any other term, covenant, condition, provision or agreement and the remainder of this AGREEMENT shall still be in full force and effect.

8.7. Titles: The titles included in this AGREEMENT are for reference only and are not part of its terms, nor do they in any way modify the terms of this AGREEMENT.

8.8. Counterparts: This AGREEMENT may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one AGREEMENT, which shall be binding upon and effective as to all parties.

8.9. Notice: Any and all notices given to any party under this AGREEMENT shall be given as provided in this paragraph. All notices given to either party shall be made by certified or registered United States mail, or personal delivery, at the noticing party's discretion, and addressed to the parties as set forth below. Notices shall be deemed, for all purposes, to have been given and/or received on the date of personal service or three (3) consecutive calendar days following deposit of the same in the United States mail.

**As to EMPLOYEE:**

At EMPLOYEE's home address on file with the CITY.

**As to the CITY:**

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

**IN WITNESS WHEREOF**, the CITY has caused this AGREEMENT to be signed and executed on its behalf by its Mayor and duly attested by its City Clerk, EMPLOYEE has signed and executed this AGREEMENT, and the attorneys for the CITY and EMPLOYEE, if any, have approved as to form as of the dates written below.

DATED: \_\_\_\_\_

EMPLOYEE

By: \_\_\_\_\_  
Dean Albro

The CITY

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

ALESHIRE & WYNDER, LLP

By: \_\_\_\_\_  
Jeff M. Malawy, City Attorney

[EMPLOYEE'S ATTORNEY'S LAW FIRM]

By: \_\_\_\_\_  
[Counsel Name]