

**AGREEMENT
BETWEEN THE CITY OF DUBLIN
AND CHRISTOPHER L. FOSS
FOR EMPLOYMENT AS CITY MANAGER**

This Agreement is entered as of February 18, 2014 by and between the City of Dublin, California, a municipal corporation and general law city (the "City"), and Christopher L. Foss, an individual (the "City Manager"). The City and the City Manager are sometimes individually referred to as a "Party" and collectively as "Parties" in this Agreement.

RECITALS

WHEREAS, the City requires the services of a City Manager; and,

WHEREAS, the City Manager has the necessary education, executive ability and qualifications to serve as the City's City Manager; and,

WHEREAS, the City Council of the City of Dublin (the "City Council") desires to employ the City Manager to serve as the City Manager of City.

WHEREAS, in consideration of these Recitals and the performance by the Parties of the promises, covenants, and conditions contained in this Agreement, the Parties agree as follows:

AGREEMENT

I. EMPLOYMENT OF THE CITY MANAGER.

The City, consistent with the provisions of City Municipal Code Chapter 2.04 (all subsequent Chapter or Section references are to the Municipal Code unless otherwise noted), appoints and employs, effective upon the separation of the City's current City Manager, which is anticipated to be on April 25, 2014, Christopher L. Foss as its City Manager, and Christopher L. Foss hereby accepts such employment effective on April 26, 2014 ("the Appointment Date"). The parties acknowledge that Christopher L. Foss has been serving as the Acting City Manager since December 21, 2013 and is anticipated to continue doing so until the Appointment Date. During the term of employment, the City Manager shall not undertake any employment other than as City Manager of the City except that he may also serve as the chief executive of other legal entities without violating this Agreement when appointed to such position or positions by the City Council.

II. COMMITMENTS OF THE PARTIES.

A. City Manager Commitments.

1. Duties and Authority.

(a) The City Manager shall have those powers and perform all of the duties of the City Manager as set forth in the laws of the State of California, Municipal Code Chapter 2.04, and City policies and procedures approved by the City Council from time to time.

(b) The City Manager shall administer and enforce policies established by the City Council and promulgate rules and regulations as necessary to implement City Council policies and direct the work of all appointive City officers and departments except those that are directly appointed by or report directly to the City Council.

2. Hours of Work.

(a) The City Manager is an exempt, at-will employee but is expected to engage in those hours of work that are necessary to fulfill the obligations of the City Manager's position. The City Manager does not have set hours of work as the City Manager is expected to be available at all times.

(b) It is recognized that the City Manager must devote a great deal of time to the business of the City outside of the City's customary office hours, and to that end the City Manager's schedule of work each day and week shall vary in accordance with the work required to be performed. The City Manager shall spend sufficient hours on site to perform the City Manager's duties; however, the City Manager has discretion over the City Manager's work schedule and work location.

3. Disability or inability to perform.

In the event the City Manager becomes mentally or physically incapable of performing the City Manager's functions and duties with reasonable accommodation and it reasonably appears such incapacity will last for more than six months, the City Council may terminate the City Manager. If the City Council does elect to terminate the City Manager due to incapacity, the City Manager shall receive all severance benefits provided in Section V.C below.

B. City Commitments.

1. As of the Appointment Date, the City shall provide the City Manager with the compensation and benefits, as set forth in Section III below.

2. The City shall pay for or provide the City Manager reimbursement for all actual business expenses consistent with Government Code section 53234 et seq., also known as "AB 1234". The City shall provide the City Manager a City credit card to charge legally authorized and necessary City business expenses.

3. The City agrees to pay the professional dues or membership dues and subscriptions on behalf of the City Manager as may be agreed by City Manager and City Council, including the International City Manager's Association ("ICMA").

4. The City agrees to pay the travel and subsistence expenses of the City Manager to pursue official and other functions for the City, and meetings and occasions to

continue the professional development of the City Manager, including, but not limited to, national, regional, state, and local conferences, and governmental groups and committees upon which the City Manager serves as a member subject to annual review by the City Council.

5. The City also agrees to pay for the travel and subsistence expenses of the City Manager for short courses, institutes and seminars that are necessary for the performance of City Manager duties as set forth in Municipal Code Section 2.04.060.

C. City Council Commitments.

1. The City Council sets policy for the governance and administration of the City, and it implements its policies through the City Manager.

2. The City Council recognizes that to meet the challenges facing the City they must exercise decisive policy leadership. As one step in carrying out this leadership responsibility, the City Council commits to spending time each year outside of regular City Council meetings to work with the City Manager and staff on creating and revisiting the City's strategic plan, for setting goals and priorities for the City government, and to work on issues that may be inhibiting the maximal achievement of City goals. Likewise, each member of the City Council will make sufficient time available to the City Manager each week to provide an opportunity to be briefed on City issues.

3. The City Council agrees none of its individual members will order the appointment or removal of any person to any office or employment under the supervision and control of the City Manager.

D. Mutual Commitments.

1. Strategic Workshops.

(a) As soon as practicable after March 1, 2014, the City Council and the City Manager will meet to review the City's existing Strategic Plan and/or set out goals and priorities for the City Manager to implement prior to the City Manager's annual performance evaluation or such other dates as determined in the course of the meeting.

(b) Thereafter the review and update of the City Council's Strategic Plan will occur bi-annually between January 1st and March 31st, in accordance with the City's budget cycle. For purposes of clarity, the City Council and the City Manager shall further establish a relative priority among those goals and objectives within the Strategic Plan.

2. Annual Performance Evaluation.

(a) The City Council shall conduct an evaluation of the City Manager's performance at least once each year. The City Council and the City Manager agree that performance evaluations, for the purpose of mid-course corrections, may occur at any time. The parties agree that the initial evaluation shall occur shortly before or after the first anniversary of the Appointment Date.

(b) The annual review and evaluation shall be in accordance with specific criteria developed jointly by the City Council and the City Manager during the initial strategic planning and goal setting workshop described in Section II.D.1(a) above. Such criteria may from time to time be added to or deleted as the City Council determines in consultation with the City Manager.

(c) In addition to the annual strategic plan workshops the City Council and the City Manager may further define such goals and performance objectives during the annual evaluation as they mutually determine are necessary for the proper operation of the City for the attainment of the City Council's policy objectives. The City Council and the City Manager shall further establish a relative priority among those goals and performance objectives. The Parties may use an outside facilitator paid for by City to assist them in conducting the City Manager's annual performance evaluation.

(d) The City Manager shall hold annual team building retreats with key Departmental personnel.

3. ICMA Code of Ethics.

(a) The Parties acknowledge that the City Manager is a member of the ICMA and desire that the City Manager be subject to and comply with the ICMA Code of Ethics, a copy of which is attached as Exhibit A.

(b) The City and the City Council agree that neither the City Council nor any of its members will give the City Manager any order, direction, or request that would require the City Manager to violate the ICMA Code of Ethics.

III. COMPENSATION.

The City agrees to provide the following compensation to the City Manager:

A. Compensation and Required Employer Costs.

1. Base Salary.

(a) The initial salary for the position of City Manager shall be \$18,690 per month. The Salary shall be adjusted on July 1, 2014 based on the percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers for the San Francisco-Oakland-San Jose Area between February 2013 and February 2014. The City agrees to reevaluate the salary following the initial performance evaluation described in Section II.D.2(a) above.

(b) The City Manager shall be paid at the same intervals and in the same manner as regular City employees.

(c) The City shall not at any time during the term of this Agreement reduce the base salary, compensation or other financial benefits of the City Manager, unless as

part of a general City management salary reduction, and then in no greater percentage than the average reduction of all designated management employees.

2. Pay-for-Performance.

(a) To provide a recognition for the City Manager to produce laudable results for the organization, the City Council agrees to consider providing a Pay-for-Performance payment for meeting or exceeding specific goals established by City Council that are achieved by the City Manager. The City Manager will be eligible at the sole discretion of the City Council for a Pay-for-Performance payment that is equivalent to the miscellaneous employees Pay-for-Performance program.

(b) Any adjustment in earnings under this section shall be included as "compensation earnable" by the City Manager in reporting to the California Public Employees Retirement System (CalPERS) for annual pension credit, but only to the extent, if any, that CalPERS will consider it to be "compensation earnable."

3. Required State Costs. The following costs, to the extent they are applicable, shall be borne by the City:

(a) Unemployment Compensation.

(b) California Public Employees Retirement System (CalPERS). The City contracts with the CalPERS for retirement benefits. The City shall pay the same amount of employer and the employee contributions to CalPERS as provided for miscellaneous employees of the City of Dublin. In addition, the City Manager shall be eligible for the CalPERS Third Level 1959 Survivor Benefits. The City shall pay the portion required by CalPERS, and the City Manager shall pay \$2 per month.

(c) The cost of any fidelity or other bonds required by law for the City Manager.

(d) The cost to defend and indemnify the City Manager as provided in Section VI.E below.

(e) Workers Compensation.

B. Basic Benefits.

1. Holidays.

The City Manager shall receive the same paid holidays as allocated to miscellaneous general City employees.

2. Leave Allowance:

(a) General Leave:

City Manager shall receive thirty three (33) days of general leave on April 26, 2014, May 1, 2015, and each May 1 thereafter so long as the Agreement remains in effect. Such leave shall be subject to the same rules applicable to the miscellaneous general City employees, including maximum accruals, except that on April 26, 2015 and April 26, 2016, City Manager may elect to be compensated for any unused general leave granted the previous April 26 not to exceed 144 hours. The City agrees to reevaluate the provisions of this section following the annual review in 2016.

(b) Management Leave:

On May 1 of each year during the term of this agreement, City Manager shall receive twelve (12) days of "Management Leave." This leave is treated differently than other leave, in that if the City Manager is unable to use this leave by May 1 of the year following the City Manager's receiving it, City Manager will be compensated for any unused Management Leave at that time. Such compensation shall be based upon the City Manager's base salary identified in Section III.A.1(a) above.

(c) Payments upon Resignation or Termination:

In the event that the City Manager's services are terminated for any reason, the City Manager shall be compensated for any unused general leave and management leave, but not for general leave that has been converted to sick leave. Such compensation shall be based upon the City Manager's base salary identified in Section III.A.1(a) above.

3. Automobile Allowance.

The City Manager shall be provided a monthly automobile allowance of \$541.66 for his use of his personal vehicle for CITY purposes and shall be paid on the first payroll of the month.

4. Benefits that Accrue to Other Employees.

The City Manager shall be entitled to all compensation benefits, rights, and privileges accorded to City's designated management employees except as otherwise provided in this Agreement. If there is any conflict between this Agreement and any resolution fixing compensation and benefits for City's designated management employees or other unclassified/miscellaneous employees, this Agreement shall control.

5. Technology Allowance.

Given the importance of technological tools to the effective and efficient business of City government, the City shall provide the City Manager with an annual \$1,000 technology allowance. The technology allowance shall be paid with the first of the City's adopted pay periods following May 1 of each year, beginning with 2014.

IV. SECURITY.

A. Pensions.

1. California Public Employees Retirement System (CalPERS).

For the purposes of CalPERS reporting, the City shall treat as "compensation earnable" all payments that CalPERS will consider to be "compensation earnable."

2. Deferred Compensation.

The City agrees to the City Manager's participation in a Deferred Compensation Plan. City shall contribute \$5,000 annually to such a Plan on the City Manager's account commencing in May 2014. The annual contribution shall be prorated on a monthly basis.

B. Insurance.

The City Manager shall receive the same health, dental, vision, life, long term disability coverage available to the designated management employees of the City.

V. SEPARATION.

A. Resignation.

The City Manager may resign at any time and agrees to give the City at least 60 days advance written notice of the effective date of the City Manager's resignation, unless the Parties to this agreement mutually agree to other notice.

B. Non-Renewal of Employment Agreement, Termination & Removal.

1. The City Manager is an at-will employee serving at the pleasure of the City Council, as provided in Government Code Section 36506.

2. The City Council may terminate the City Manager at any time, with or without cause, by a majority vote of its members. Notice of termination or non-renewal of this employment agreement shall be provided to the City Manager in writing consistent with this Agreement.

3. The City Manager shall not be removed 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, except upon four-fifths vote of the City Council.

4. Given the at-will nature of the position of City Manager, an important element of the employment agreement pertains to termination. It is in both the City's interest and that of the City Manager that any separation of the City Manager is done in a businesslike manner.

C. Severance Pay.

1. In the event that the City Council terminates the City Manager's employment for reasons other than for "cause" as further defined under subparagraph D below, the City shall pay to the City Manager a Severance Payment, which shall be equal to twelve (12) months of the base salary on the effective date of termination. In the event that the City is obligated to make the Severance Payment, the amount shall be paid to the City Manager, at the City Manager's option, in either twelve (12) equal monthly installments commencing on the 10th work day following the date of termination or in a lump sum. Notwithstanding anything to the contrary in the foregoing, the Parties agree that in no event shall the City Manager receive a cash settlement upon termination of this Agreement in excess of the maximum cash settlement authorized by subdivision (a) of Government Code section 53260.

2. In addition, in accordance with Government Code section 53261, the City will reimburse the City Manager for the premiums for the City Manager's medical, dental and vision insurances for a twelve (12) month period at the rates in effect on such dates, provided that such reimbursements will terminate upon the City Manager's retirement or when the City Manager finds other employment so long as the other employment includes paid coverage for medical and dental insurance.

3. In the event the City refuses, following written notice of noncompliance, to comply with any provision in this Employment Agreement benefiting the City Manager, or the City Manager resigns following a suggestion, whether formal or informal, by a majority of the City Council that the City Manager resign, or the City Council imposes a material reduction in the powers and authority of the City Manager, then, in that event, the City Manager may, at the City Manager's option, be deemed to be "terminated" as of the date of such refusal to comply or suggestion to resign and this severance pay provision shall be actuated.

D. Separation for Cause.

1. Notwithstanding the provisions of Section V.C above, the City Manager may be terminated for cause. For purposes of this Agreement, "cause" shall mean one or more the following:

(a) Conviction of a felony, or conviction of a misdemeanor involving moral turpitude;

(b) Commission of an act of moral turpitude; the City Council will not make a finding or determination about whether the City Manager has engaged in such conduct without first providing the City Manager a full, fair opportunity to rebut, defend and justify any such alleged act involving moral turpitude in an open or closed session, at the sole choice of the City Manager

(c) Abuse of non-prescription or prescription drugs, alcohol or controlled substances that affect the performance of the Manager's duties;

(d) Repeated and extended absences from the City Manager's office and duties, which absences have not been approved by the City Council.

(e) Violation of the City's policies concerning sexual harassment;

(f) Material breach of the terms and conditions of this Agreement.

2. In the event the City terminates the City Manager for cause, then the City may terminate this Agreement immediately, and the City Manager shall be entitled to only the compensation accrued up to the date of termination and such other termination benefits and payments as may be required by law. The City Manager shall not be entitled to any severance benefits provided by Agreement Section V.C above.

3. In the event the City terminates the City Manager for cause, the City, the Mayor and/or the City Council members and the City Manager agree that neither Party shall make any written or oral statements to members of the public or the press concerning the City Manager's termination except in the form of a joint press release which is mutually agreeable to both Parties. The joint press release shall not contain any text or information that would be disparaging to either Party. Provided, however, that either Party may verbally repeat the substance of any such press release in response to inquiries by members of the press or public.

E. Payment for Unused Leave Balance.

In the event the City Manager dies while employed by the City under this Agreement, the City Manager's beneficiaries, or those entitled to the City Manager's estate, shall be entitled to the City Manager's earned but then-unpaid salary, and any in-lieu payments for then-accrued benefits, including compensation for any unused general and management leave in accordance with Section III.B.2(c) above.

VI. GENERAL PROVISIONS.

A. Term.

1. The Initial Term shall be for a period of 60 months commencing on April 26, 2014, and continuing until April 26, 2019 ("the Termination Date").

2. This Agreement shall automatically renew as provided herein unless the City gives the City Manager timely notice of non-renewal. The City must give the City Manager written notice of non-renewal at least twelve (12) months prior to the Termination Date or any succeeding Termination Date, as defined in the next sentence. Unless such notice of non-renewal is timely given, this Agreement shall automatically renew for an additional three-year Term and a new Termination Date shall be accordingly established.

B. Provisions that Survive Termination.

Many sections of this Agreement are intended by their terms to survive the City Manager's termination of employment with the City, including but limited to Sections IV, V.C, V.E, and

VI.E above. These sections, and the others so intended, shall survive termination of employment and termination of this Agreement.

C. Amendments.

The Agreement may be amended at any time by mutual written agreement of the City and the City Manager.

D. Conflict of Interest.

1. The City Manager shall not engage in any business or transaction or shall have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties. Personal as distinguished from financial interest includes an interest arising from blood or marriage relationships or close business, personal, or political associations. This section shall not serve to prohibit independent acts or other forms of enterprise during those hours not covered by active City employment, providing such acts do not constitute a conflict of interest as defined herein.

2. The City Manager shall also be subject to the conflict of interest provisions of the California Government Code and any conflict of interest code applicable to the City Manager's City employment.

3. The City Manager is solely responsible for submitting to the City Clerk the appropriate Conflict of Interest Statements at the time of appointment, annually thereafter, and at the time of separation from the position.

E. Indemnification.

1. The City shall defend, save harmless and indemnify the City Manager against any claim or action to the extent required by, and subject to the limitations contained in, Government Code sections 825-825.6 and Government Code sections 995-996.6. The City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon.

2. In the event that the City Manager shall serve as the chief executive of other City-controlled legal entities, then the City agrees, for the purposes of the indemnity and defense obligations under this section and Government Code sections 825-825.6 and 995-996.6, that any actions or omissions within the scope of those duties shall be treated as within the scope of City Manager's employment by the City.

F. Severability.

If any clause, sentence, part, section, or portion of this Agreement is found by a court of competent jurisdiction to be illegal or unenforceable, such clause, sentence, part, section, or portion so found shall be regarded as though it were not part of this Agreement and the remaining parts of this Agreement shall be fully binding and enforceable by the Parties hereto.

G. Jurisdiction and Venue.

This Agreement shall be construed in accordance with the laws of the State of California, and the Parties agree that venue for legal action concerning any aspect of the Agreement in State Court shall be maintained in Alameda County Superior Court and for an action in Federal Court shall be in the United States District Court for the Northern District of California.

H. Entire Agreement.

This Agreement represents the entire agreement of the Parties, which has been jointly drafted by the Parties, and no representations have been made or relied upon except as set forth in this Agreement which may be amended or modified only by a written, fully executed agreement of the Parties.

I. Notice.

Any notice, amendments, or additions to this Agreement, including change of address of either party during the term of this Agreement, which the City Manager or the City shall be required, or may desire, to make shall be in writing and shall be sent by prepaid first class mail or hand-delivered to the respective Parties as follows:

If to the City:

City Clerk
City of Dublin
100 Civic Plaza
Dublin, CA 94568

If to the City Manager:

Christopher L. Foss

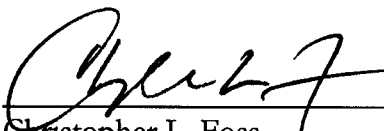

VII. EXECUTION

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT in duplicate at Dublin, California, as of the date set forth above.

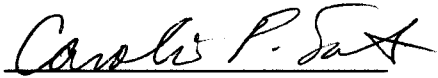
CITY OF DUBLIN

By: 
Tim Sbranti, Mayor

CITY MANAGER

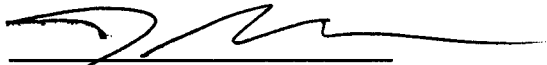

Christopher L. Foss

ATTEST:



Caroline P. Soto, City Clerk

APPROVED AS TO FORM:



John Bakker, City Attorney

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