



C-10-203 NP

EMPLOYMENT CONTRACT FOR CITY MANAGER

This Employment Contract is made and entered into on APR 27 2010, by and between the CITY OF STOCKTON, STATE OF CALIFORNIA, a municipal corporation, by and through its City Council (EMPLOYER), and Robert Deis (EMPLOYEE).

RECITALS:

1. EMPLOYER is a Chartered City of the State of California.
2. The City Council of the City of Stockton, in accordance with the provisions of Article XII, Section 1200, of the Charter, desires to employ the services of Robert Deis as the City Manager.
3. EMPLOYEE desires to accept employment as Stockton City Manager.
4. It is the desire of both EMPLOYER and EMPLOYEE to set forth the terms and conditions of said employment.

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

ARTICLE I
TERM OF EMPLOYMENT

Section 1.01 **Term:** EMPLOYER hereby employs EMPLOYEE as the City Manager and EMPLOYEE hereby accepts said employment for an initial term of five (5) years commencing on July 1, 2010, and continuing until June 30, 2015 (the initial "Termination Date"). This Contract shall automatically renew as provided herein unless the City gives Employee timely notice of non-renewal at least twelve (12) months prior to the initial Termination Date or any succeeding Termination Date. Unless such notice of non-renewal is timely given, this Contract shall automatically renew for an additional five (5) year term, and a new Termination Date shall accordingly be established.

Section 1.02 **At Will Employee:** EMPLOYEE understands and agrees that he serves at the pleasure of EMPLOYER and may be terminated at the will of EMPLOYER, subject only to the notice and severance provisions set forth in Section 5.02 of this Employment Contract. In like manner, nothing in this Contract shall prevent, limit, or otherwise interfere with the right of EMPLOYEE to resign at any time from the position of City Manager, subject only to the notice provisions set forth in Section 5.02, of this Employment Contract. EMPLOYEE further acknowledges that EMPLOYER has made no implied, expressed, or written assurances of continued employment with the City of Stockton other than as specifically set forth in this Contract.

ARTICLE II
DUTIES AND OBLIGATION OF EMPLOYEE

Section 2.01 **Duties:** EMPLOYER hereby agrees to employ EMPLOYEE as City Manager of the City of Stockton to perform the functions and duties as specified in the City Charter, Ordinances of the City, California Constitution, and California Statutes, and to perform such

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other legally permissible and proper duties and functions as EMPLOYER shall from time to time assign to EMPLOYEE which are reasonably related to the position of City Manager.

Section 2.02 **Devotion to Duties:** EMPLOYEE agrees to devote his entire productive time, ability, and attention to the business of EMPLOYER during the term of this Employment Contract. EMPLOYEE agrees that he shall not engage in any other public or private employment during the term of this Contract. This Contract shall not be interpreted nor intended to prohibit EMPLOYEE from making passive personal investments.

Section 2.03 **Performance Evaluation Procedures:** The City Council shall review and evaluate the performance of EMPLOYEE approximately six-months following the date of initial employment. Said review and evaluation shall be in accordance with specific criteria developed by EMPLOYER after consultation with EMPLOYEE. The evaluation shall include consideration of EMPLOYEE's performance and shall include the presentation of a proposed work plan by the EMPLOYEE. The work plan will be based on an appraisal of the current status or conditions in the City, specific major work program objectives necessary to achieve the City Council's goals, and the resource capability of the City organization. The work plan shall be approved as submitted or as modified by the City Council, at the discretion of the Council, and may be altered at any time by the Council with input from EMPLOYEE. Subsequent evaluations shall occur no less frequently than annually and shall include a review and evaluation of the performance of EMPLOYEE in accordance with the approved work plan together with the other duties and functions assigned to EMPLOYEE, and discussion and decision regarding changes and additions to the work plan. If either EMPLOYER or EMPLOYEE requests it, a professional facilitator may be hired to assist in the performance evaluation process.

ARTICLE III COMPENSATION

Section 3.01 **Annual Base Salary:** EMPLOYER agrees to pay to EMPLOYEE for services rendered by him pursuant to this Employment Contract an annual base salary of \$240,000.00, payable in installments at the time as other employees of EMPLOYER are paid. EMPLOYER, in its sole and absolute discretion, may adjust the annual base salary of EMPLOYEE at such times and to such extent as EMPLOYER may determine. In exercising its discretionary authority, EMPLOYER shall act fairly and in good faith with EMPLOYEE. In no case shall EMPLOYEE's annual base salary be decreased unless such decrease is a percentage consistent with a decrease applicable to employees of EMPLOYER generally.

ARTICLE IV EMPLOYEE BENEFITS

Section 4.01 **Automobile Expense Reimbursement:** During the term of this Employment Contract, EMPLOYEE, to the extent necessary to perform his duties, shall use his own personal vehicle. EMPLOYEE shall be responsible for the payment of all operating expenses of the vehicle, including, but not limited to, gasoline, oil, service and repair, and, if necessary, the replacement of his automobile; provided, however, EMPLOYER shall reimburse EMPLOYEE for travel outside the City of Stockton in accordance with policy adopted, from time to time, by EMPLOYER. EMPLOYEE shall procure and maintain, at his expense, a comprehensive automobile liability insurance policy on the vehicle being used by him, in an amount that is acceptable to EMPLOYER. EMPLOYER shall be named as a co-insured by an endorsement to that policy. During the course of this Employment Contract, EMPLOYEE shall provide EMPLOYER with written documentation that said insurance policy is in full force and

effect. Said policy shall also include a provision notifying EMPLOYER prior to the cancellation thereof.

Section 4.02 Deferred Compensation, Retirement, Health Coverage, Life Insurance, Disability, and Holidays: Except as otherwise provided herein, EMPLOYEE shall be entitled to receive those benefits provided by EMPLOYER to other department heads of the City of Stockton, including those appointed by the Stockton City Council, which consists of EMPLOYER paid health, dental, and vision coverage, retirement benefits, including retiree medical, dental and vision coverage, life insurance, disability, a voluntary deferred compensation plan and holidays. The benefits so provided are subject to modification during the course of this Employment Contract at the sole and absolute discretion of EMPLOYER at such times and to such extent as EMPLOYER may deem appropriate, provided, however, there shall be no reduction in benefits unless EMPLOYER implements the same reduction of benefits to all other department heads of the City of Stockton.

In order to provide EMPLOYEE continuity in family health benefits coverage, and for no other reason, EMPLOYEE shall be provided with family health, dental and vision coverage by EMPLOYER, beginning on his first day of employment.

EMPLOYER and EMPLOYEE agree that they will exercise good faith efforts to develop and implement an arrangement that will compensate EMPLOYEE for the retirement benefits that EMPLOYEE will not receive from the CALPERS system because of the limits imposed by Section 401(a)17 of the Internal Revenue Code relating to the amount of compensation that can be taken into account for determining retirement benefits. EMPLOYER and EMPLOYEE agree that if possible, the plan will be designed as a tax qualified plan.

Section 4.03 Vacation and Sick Leave: Effective July 1, 2010, EMPLOYEE shall be credited with thirty (30) days of vacation as of the commencement of employment as City Manager and shall receive thirty (30) days of annual vacation leave annually. Annual vacation leave shall be administered in the same manner as vacation is administered for department head employees of EMPLOYER with regard to timing of credits and buyback policy. Maximum vacation accrual is sixty (60) days including the initial vacation credits. EMPLOYEE shall be credited with fifteen (15) days of sick leave as of the commencement of employment as City Manager and shall accrue fifteen (15) days of sick leave annually with unlimited accumulation. Sick leave may be used in accordance with policies applicable to department head employees of EMPLOYER. Fifty percent (50%) of unused sick leave credits may be converted to cash upon termination or retirement at EMPLOYEE's then existing hourly rate of base salary.

Section 4.04 Professional Dues and Subscriptions: EMPLOYER agrees to pay for professional dues and subscriptions of EMPLOYEE necessary for his continuation and full participation in national, state, and city manager associations, subject to the prior review and approval therefore by EMPLOYER.

Section 4.05 Expenses: EMPLOYEE shall be entitled to reimbursement for all reasonable expenses necessarily incurred by him in the performance of his duties upon presentation of vouchers indicating the amount and purpose thereof, and further provided that such expenses are in accordance with policies established from time to time by EMPLOYER and consistent with budget allocations adopted by EMPLOYER for that purpose during the term of this Contract.

Section 4.06 **Professional Development:** EMPLOYER hereby agrees to pay travel and subsistence expenses of EMPLOYEE for professional and office travel, meetings, and occasions adequate to continue the professional development of EMPLOYEE and to adequately pursue necessary official functions for EMPLOYER, including, but not limited to, the annual conference of the International City Management Association and such other national, regional, state, and local government groups and committees thereof which EMPLOYEE serves as a member, provided the City Council has specifically approved such participation and made provisions for such costs in the annual budget. EMPLOYER also agrees to pay tuition, travel, and subsistence expenses of EMPLOYEE for short courses, institutes, and seminars that are necessary for his professional development and for the good of the City provided the City Council has specifically approved such participation and provided for same in the annual budget.

Section 4.07 **Technology Allowance:** EMPLOYER hereby agrees to pay to EMPLOYEE a technology allowance of \$200.00 per month. EMPLOYEE shall purchase and maintain his own cellular/smart phone and home/travel computer and related telecommunications and broadband services at EMPLOYEE's expense.

Section 4.08 **Temporary Housing Assistance:** EMPLOYER hereby agrees to pay to EMPLOYEE temporary housing assistance in the amount of \$1,500.00 per month for 24 months beginning upon commencement of employment as City Manager.

Section 4.09 **Deferred Compensation:** EMPLOYER hereby agrees to contribute to EMPLOYEE's 401(a) deferred compensation plan an amount equal to ten (10) percent of EMPLOYEE's annual salary.

Section 4.10 **Moving Expenses:** EMPLOYER shall reimburse EMPLOYEE for reasonable and necessary moving expenses incurred in moving his residence from Santa Rosa, California to Stockton. These expenses shall be limited to the costs of packaging, moving and the temporary storage of household goods and furnishings. EMPLOYEE shall obtain three (3) quotations for such moving services, and EMPLOYER shall have the right to approve the service vendor or vendors to be used.

Section 4.11 **Annual Physical Examination:** EMPLOYEE will be entitled to an annual physical examination at EMPLOYER's expense by a licensed physician pursuant to the City of Stockton's plan for MPA employees.

ARTICLE V SUSPENSION, RESIGNATION AND TERMINATION

Section 5.01 **Suspension:** EMPLOYER may suspend EMPLOYEE with full pay and benefits at any time during the term of this Contract, but only if the required number of affirmative votes of a majority of members of the City Council, as specified in the Charter, agree that it is necessary for the good of the City to suspend EMPLOYEE's rendition of services in order to allow EMPLOYER time to consider whether or not it wishes to permanently terminate EMPLOYEE's services. If EMPLOYER acts to suspend EMPLOYEE's services hereunder for any period or combination of periods in excess of a total of thirty (30) work days during the term of this Contract, EMPLOYEE may, at his option, be deemed to have been terminated within the meaning and context of the herein severance pay provision.

Section 5.02 Resignation, Termination, and Severance Pay: In the event EMPLOYEE is terminated by EMPLOYER and during such time as EMPLOYEE is able and willing to perform his duties under this Contract, EMPLOYER agrees (1) to provide EMPLOYEE with notice at least one (1) month in advance of the final date of employment and further, (2) to pay EMPLOYEE as severance pay a lump sum cash payment in an amount equal to nine (9) months of EMPLOYEE's then current salary and deferred compensation contributions plus any leave time accrued as of the date of termination and to continue in full force and effect for nine (9) months the life insurance and medical, dental and vision insurance coverages then being provided by EMPLOYER to EMPLOYEE, and his dependents; provided, however, that if EMPLOYER terminates EMPLOYEE for cause, EMPLOYER shall have no obligation to provide any severance pay. As used in this section, "cause" shall mean willful failure to implement Council policy, abandonment of his duties, conviction of a felony or misdemeanor in the course of his official duties or continued abuse of non-prescription drugs or alcohol that materially affects the performance of his duties. In the event EMPLOYER terminates EMPLOYEE for cause, EMPLOYER may terminate this Contract immediately, and EMPLOYEE shall be entitled only to the compensation and accumulated vacation accrued up to the date of termination and such other payments and benefits provided by this Contract or by law.

Notwithstanding any other provision of this Contract, beginning on the first anniversary of the effective date of this Contract the length of severance compensation provided for herein shall be extended one month from nine (9) months to ten (10) months, and said increase shall continue in like amount annually until severance has reached a maximum amount of twelve (12) months.

EMPLOYEE agrees that under no circumstances will the EMPLOYEE be able to contest the nature of the EMPLOYEE's at-will status, nor will the EMPLOYEE be able to raise any remedy of reinstatement in any legal forum.

In the event EMPLOYEE voluntarily and without the official request of EMPLOYER resigns his position, EMPLOYEE shall give written notice to the EMPLOYER at least forty-five (45) days in advance of the final date of employment, unless the parties otherwise agree. Such resignation shall not be deemed to be a "termination" within the meaning and context of the herein severance pay provision.

Section 5.03 Disability: If, for a period of four (4) successive weeks beyond any accrued sick leave and vacation, EMPLOYEE is disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity, or ill health, EMPLOYER shall have the option to terminate this Contract. If EMPLOYER exercises this option, EMPLOYEE shall nonetheless be compensated for any accrued leave time and other accrued benefits, including, but not limited to, long-term disability insurance benefits for which EMPLOYEE is eligible; however, EMPLOYEE shall not receive the severance pay described in Section 5.02 above.

ARTICLE VI MISCELLANEOUS

Section 6.01 Other Terms and Conditions of Employment: EMPLOYER, after consultation with EMPLOYEE, shall fix any such other terms and conditions of employment as EMPLOYER may determine from time to time, relating to the performance of EMPLOYEE, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Contract, the City Charter, Municipal code, or any other law.

Section 6.02 **Notices:** Notices pursuant to this Contract shall be served in the same manner as is applicable to civil judicial practice.

Section 6.03 **Bonding:** EMPLOYER shall bear the full cost of any fidelity or other bonds required of EMPLOYEE under any law or ordinance.

Section 6.04 **Indemnification:** EMPLOYER shall defend, save harmless and indemnify EMPLOYEE against any tort, professional liability claim or demand, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of EMPLOYEE's duties as City Manager. If EMPLOYER compromises or settles any such claim or suit, EMPLOYER shall pay the amount of any settlement, or if the claim or suit results in a judgment against EMPLOYEE, EMPLOYER shall pay any such judgment. This indemnification does not apply to any act, action, or omission arising out of the gross negligence, willful misconduct on the part of EMPLOYEE, or acts of EMPLOYEE outside the course and scope of his duties.

Section 6.05 **General Provisions:**

- A. The text herein shall constitute the entire agreement between the parties.
- B. This Contract shall be binding upon and insure to the benefit of the heirs at law and executors of EMPLOYEE.
- C. This Contract may only be modified upon the written consent of the EMPLOYER and EMPLOYEE.
- D. In any action to enforce the terms of this Contract, the prevailing party shall be entitled to recover its attorney's fees and court costs and other non-reimbursable litigation expenses, such as expert witness fees and investigation expenses.

Section 6.06 **Severability:** If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement shall be deemed severable, shall not be affected, and shall remain in full force and effect.

IN WITNESS WHEREOF, EMPLOYER has caused this Contract to be signed and executed in its behalf by its Mayor, and duly attested by its City Clerk, and EMPLOYEE has signed and executed this Contract both in duplicate, the day and year first above written.

ATTEST:


KATHERINE MEISSNER
CITY CLERK
APPROVED AS TO FORM



.....
JOHN M. LUEBBERKE
INTERIM CITY ATTORNEY
.....

CITY OF STOCKTON


ANN JOHNSTON, MAYOR
"EMPLOYER"

AGREED:


ROBERT DEIS
"EMPLOYEE"