CITY MANAGER EMPLOYMENT AGREEMENT

This Agreement is made as of March 1, 2004 by and between the City of Mission Viejo ("City") and Dennis Wilberg ("Wilberg"). City and Wilberg are sometimes hereinafter referred to as the "Parties."

RECITALS

WHEREAS, City desires to employ the services of Wilberg as City Manager, pursuant to California Government Code §§ 36501, 36506, and 34851, et seq., and Mission Viejo Municipal Code § 2.08.010, to serve at the pleasure of the City Council of the City of Mission Viejo; and

WHEREAS, the Parties further desire to establish certain benefits and certain conditions of Wilberg's employment that are reflective of his duties; and

WHEREAS, as used in this Agreement, the term "City Council" shall mean the City Council of the City of Mission Viejo.

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

1. EMPLOYMENT. City agrees to employ Wilberg to render services as City Manager of City in accordance with California Government Code §§ 36501, 36506, and 34851, *et seq.*, and Chapter 2.08 of the City of Mission Viejo Municipal Code (commencing with §§ 2.08.010, *et seq.*), on the terms and conditions set forth in this Agreement, and Wilberg accepts such employment on the terms and conditions set forth in this Agreement.

2. TERM. Wilberg's employment as City Manager commenced January 5, 2004, and shall continue until July 1, 2006 (the "Initial Term"), or the date of termination of Wilberg's employment in accordance with Paragraph 7 of this Agreement. Unless terminated or not renewed in accordance with the provisions of Paragraphs 7 and 8 of this Agreement, the Initial Term of this Agreement shall be automatically extended for successive periods of one (1) year commencing from July 1, 2006.

3. POSITION AND DUTIES. Wilberg shall serve as City Manager of City. Pursuant to California Government Code § 36506 and Mission Viejo Municipal Code § 2.08.010, Wilberg shall serve at the pleasure of the City Council. The City Council shall have the power to determine the specific duties and responsibilities which Wilberg must perform under this Agreement including, but expressly not limited to, the powers and duties set forth in Mission Viejo Municipal Code § 2.08.060. Wilberg agrees to devote all of his business time, skill, attention, and best efforts to the discharge of the duties and responsibilities assigned to him by the City Council during

the term of his employment, except that Wilberg may teach or serve as a board member of a non-profit entity.

4. EMPLOYMENT STATUS, EXEMPTION FROM PERSONNEL SYSTEM, AND TERMINATION.

A. At-Will Employment

(i) Pursuant to California Government Code Section 36506 and Municipal Code § 2.08.010, Wilberg's employment is at the pleasure of the City Council, and Wilberg is appointed on an at-will basis, and holds an at-will position with the City. Pursuant to his at-will status, Wilberg shall not have any property right in his job. Under applicable law, at-will employees may be dismissed or terminated from employment by the City Council without advance notice or cause, and similarly, at-will employees may resign their employment without notice or cause by their employer. Without modifying Wilberg's at-will status, termination shall be by at least three (3) affirmative votes of the City Council. The procedures regarding termination from employment by either the City or Wilberg are set forth in Paragraphs 7 through 10 of this Agreement.

(ii) Wilberg is exempt from the City's Personnel System.

(iii) Wilberg understands, acknowledges and agrees that no representative of the City has made or can make any promises, statements, or representations which state or imply that Wilberg is hired or retained under any terms other than those set forth in this Agreement and the provisions of California Government Code § 36506 and Chapter 2 (commencing with Municipal Code §§ 2.08.010, *et seq.*), of the City of Mission Viejo Municipal Code. Wilberg understands acknowledges, and agrees that no agreement can impliedly arise that Wilberg is employed under any terms other than those set forth in this Agreement.

(iv) By signing this Agreement, Wilberg certifies and acknowledges that he has read this Paragraph 4 regarding his at-will status, and acknowledges and agrees that his employment shall be subject to these terms.

5. COMPENSATION AND BENEFITS. Wilberg shall receive the following compensation:

A. Salary. Wilberg shall receive an annual salary of one hundred thirty-six thousand eight hundred fifty-nine dollars and no cents ($136,859.00). Such salary shall be effective as of January 5, 2004. On July 1, 2004, Wilberg's annual salary shall be increased to one hundred forty-eight thousand eight hundred fifty-nine dollars and no cents ($148,859.00).

B. Group Insurance. The City agrees to put into force and make required premium payments for Wilberg the same insurance benefits generally given to or provided for Executive Management employees of the City.

C. Retirement. The City shall contribute all of the City's share of the PERS contribution and that portion of Wilberg's employee share as is paid on behalf of other City employees, to maintain Wilberg as a member of the Public Employee's Retirement System ("CALPERS") under the terms and conditions set forth in the City's agreement with CALPERS.

D. Leave Benefits. All provisions of the rules, regulations and ordinances of the City relating to comprehensive annual leave ("CAL") and holidays as they now exist, or as they may be hereinafter amended, shall apply to Wilberg except as herein provided. In addition to the CAL provisions applicable to other Executive management employees of the City, Wilberg shall receive five (5) additional days of administrative leave each calendar year during the term of this Agreement.

E. Deferred Compensation. City shall provide Wilberg an annual contribution of seven thousand five hundred dollars ($7,500.00) to be deposited in the deferred compensation program of Wilberg's choice. Said contribution will occur on the first regularly scheduled payday in January of each year, except for the 2004 payment which shall be made on the second regularly scheduled payday in March, 2004.

F. Automobile Allowance. City shall provide Wilberg with an automobile allowance in the amount of four hundred fifty dollars ($450.00) per month.

6. ANNUAL PERFORMANCE REVIEW. The City Council shall evaluate Wilberg's performance annually. On May 1 of each year, Wilberg shall submit a memorandum to the City Council discussing his performance during the prior year, and shall schedule a performance review for a closed session to be held during the second regularly scheduled meeting of the City Council in May of each year. The City Council shall have until June 30 of each year to complete the performance review process. The annual review shall not in any manner modify or convert Wilberg's status from that of an at-will employee to an employee with a property right in his job and/or who may only be terminated with notice and/or cause. The City Council shall not delegate the evaluation of Wilberg to any other person or entity, by full or partial assignment or delegation, provided, however, the Council shall have the authority to retain a consultant to investigate the factual basis of any allegation which might be made concerning Wilberg.

7. RENEWAL OF AGREEMENT.

A. The City is under no obligation to renew this Agreement upon completion of the Agreement's term, and the City may decide to do so solely at its own discretion. Not later than one year prior to the end of the Initial Term, or any successive term, the City Council shall determine whether or not to renew the Agreement, and shall notify Wilberg in writing of its decision. In the event that a notice of non-renewal has not been given to Wilberg at least one year prior to the end of the term (or any successive term), the Parties agree that this Agreement shall be automatically extended for an additional term of one (1) year. The failure of the City to give notice of non-renewal of this Agreement shall not preclude the City from terminating this Agreement in accordance with the provisions of Paragraph 8, below.

B. In the event the City Council decides not to renew this Agreement, the following provisions shall apply during the one (1) year period prior to the expiration of the Initial Term or any successive term of this Agreement:

(i) Wilberg shall continue to fulfill his professional responsibilities as in accordance with this Agreement, and shall cooperate and assist the City in the transition to a new City Manager until the date that is nine (9) months prior to the end of the term of the Agreement. During this working period, Wilberg shall be entitled to use his available leave in accordance with the terms of this Agreement.

(ii) On the date that is nine (9) months prior to the end of the term of the Agreement, Wilberg duties as City Manager shall cease and he shall be given a severance payment of nine (9) months salary calculated at Wilberg's then current salary, with applicable payroll taxes withheld. Wilberg shall not be entitled to any benefits or car allowance after this date.

(iii) Notwithstanding the provisions of Paragraph 8, Wilberg may terminate this Agreement with two (2) weeks written notice during this working period. Upon the effective date of termination under this subparagraph (iii), Wilberg shall receive the severance pay described in Section 7B(ii).

(iv) Except as otherwise provided in this subsection, all other terms of the Agreement shall remain in effect during the working period prior to the cessation of Wilberg's duties as City Manager under this Paragraph 7B.

8. TERMINATION AND SEVERANCE.

A. Either Party may terminate this Agreement at any time, in accordance with the following procedures. As used in this Paragraph 8, "termination" or "terminate" shall mean any termination or removal of Wilberg as City Manager other than a non-renewal under Paragraph 7 of this Agreement.

(i) If Wilberg terminates this Agreement, Wilberg shall provide the City Council with thirty (30) days written notice prior to the date that he ceases to perform his duties and responsibilities under this Agreement.

(ii) If the City terminates this Agreement, the City shall provide Wilberg with thirty (30) days written notice prior to the effective date of the termination.

B. If the City's termination of this Agreement is for any reason other than Wilberg's misconduct, the City shall pay Wilberg a severance payment equivalent to nine (9) months salary calculated at Wilberg's then current salary, with applicable payroll taxes withheld. "Misconduct" means Wilberg's dishonesty, fraud, self-dealing, or willful misconduct committed in the performance of Wilberg's duties and responsibilities under this Agreement, or Wilberg's violation of any law which can be punished as a felony committed at any time. The determination of whether Wilberg was terminated due to misconduct is in the City's sole discretion. If the City terminates this Agreement at any time due to Wilberg's misconduct, as defined above, City shall not pay Wilberg any severance payment. If Wilberg terminates this Agreement at any time prior to the date on which notice of non-renewal must be given pursuant to Paragraph 7 of this Agreement, or the date on which notice of non-renewal is actually given, whichever is earlier, City shall not pay Wilberg any severance payment. Upon the termination of this Agreement, Wilberg shall not be entitled to any other compensation or payment, except as provided in this Paragraph or Paragraph 7.

9. VOTE REQUIRED. Any action of the City Council to not renew this Agreement under Paragraph 7, or to terminate Wilberg's employment with the City at any time under Paragraph 8, shall require three (3) affirmative votes of the whole City Council as then constituted pursuant to Chapter 2.08 of the Mission Viejo Municipal Code.

10. REIMBURSEMENT. The City shall reimburse Wilberg for all actual and necessary expenses he incurs in the performance of his official duties as City Manager, including those expenses incurred when traveling on business pertaining to the City, in accordance with City policies applicable to employees.

11. BOND. Wilberg shall furnish a corporate surety bond in the amount of one hundred thousand dollars ($100,000.00) from a qualified surety for the faithful performance of the duties imposed upon Wilberg as City Manager. This bond requirement may be satisfied by the City's acceptance of a blanket fidelity bond for City employees. The premium for such bond shall be a proper charge against the City.

12. NONASSIGNMENT. Wilberg's duties and obligations under this Agreement are personal and not assignable.

13. ARBITRATION. City and Wilberg agree that in consideration of the mutual benefits of arbitration, including but expressly not limited to, cost, efficiency and timing to both Parties, any disputes arising out of this Agreement, and/or the employment and/or termination of Wilberg by the City, or Wilberg's voluntary separation from employment, shall be resolved only and exclusively by arbitration conducted in accordance with the following provisions:

A. All disputes between City and Wilberg with regard to his employment and/or termination from employment shall solely be subject to resolution via the arbitration provisions set forth herein. Such claims include but are expressly not limited to, claims by Wilberg of wrongful conduct of any type by City, its agents or representatives, City conduct in violation of any express or implied condition, term or covenant of employment whether based in fact or in law (by means of example only, claims for violation of any policy, rule, ordinance, or regulation of the City, the California Fair Employment and Housing Act (Government Code §§ 12940, et seq.), Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967 (29 U.S.C. §§ 621-634), the Americans With Disabilities Act, whistleblower laws, false claims statutes, wrongful termination in violation of public policy, or otherwise), or claims of breach of this Agreement or any other alleged wrongful conduct by City as regards Wilberg, and claims of wrongful conduct by Wilberg towards the City. The only claims exempt from the arbitration provisions of this Agreement shall be claims arising under the California Workers Compensation statutes, and claims arising under the California Unemployment Compensation statutes.

B. Wilberg, being currently forty (40) years of age or older, warrants and represents that he is fully aware of and understands all of his rights under the Age Discrimination in Employment Act of 1967 (29 U.S.C. §§ 621-634), including the amendments made by the Older Workers Benefit Protection Act, Pub. L. 101-433, 104 Stat. 978 (collectively "ADEA"), including any right to judicial review for any alleged violations of the ADEA. By signing this Agreement, including the arbitration provision of this Paragraph 13, Wilberg voluntarily and knowingly relinquishes any right to judicial review of any claims under the ADEA, except as expressly provided herein; and knowingly and voluntarily agrees to submit any ADEA claims to arbitration.

i) Wilberg further acknowledges that under the ADEA he has the right to take twenty-one (21) calendar days to consider the terms and effects of this Agreement with respect to his rights to judicial review under the ADEA, prior to executing it; that his 21-day period would expire on February 26, 2004; that Wilberg has been advised of his right to consult with legal counsel regarding his rights under the ADEA; and Wilberg expressly acknowledges that he has had sufficient time to consider the Agreement and to consult with legal counsel and, by signing this Agreement, expressly waives the twenty-one day consideration period.

ii) Notwithstanding Paragraph 13(B)(i) of this Agreement, Wilberg further understands that under the ADEA, the terms of this Agreement with respect to Wilberg's rights under the ADEA are not effective until eight (8) calendar days after its execution. Wilberg may revoke this Agreement with respect to his rights under the ADEA within seven (7) calendar days of its execution. Revocation shall not be effective unless it is communicated in writing to and actually received by the City within seven (7) calendar days after the execution of this Agreement. If Wilberg revokes this Agreement with respect to his rights under the ADEA, City shall be relieved of all of its obligations under this Agreement with respect to Wilberg's rights under the ADEA. If not revoked, the Agreement will become effective on the eighth (8) day after the date set forth in the Preamble on page 1 of this Agreement (the Agreement's "Effective Date").

C. Except as provided in this Subparagraph C of Paragraph 13, arbitration shall be conducted in accordance with the provisions of Title 9 of Part III of the California Code of Civil Procedure §§ 1280, *et seq.* To the extent that the provisions of the Federal Arbitration Act ("FAA") (9 U.S.C. §§ 1, *et seq.*), are deemed to apply to any Federal statutory claims, the provisions of the FAA shall apply to any arbitration under this Agreement.

D. Wilberg further expressly acknowledges and agrees that except as expressly provided in this Subparagraph (D), in any such arbitration the exclusive remedies available to Wilberg, regardless of the basis for any such remedy, shall be limited to a sum equal to the wages that Employee would have earned from the date of any discharge until the date that an arbitration award is issued, and that Wilberg shall not be entitled to reinstatement or any other remedy at law or in equity against City. With respect to State or Federal statutory claims, the available remedies shall also include any substantive and remedial remedy available to City and/or Wilberg by virtue of the statutory claim or claims upon which either Party may prevail under applicable Federal or State law in the arbitration.

E. The arbitrator shall not have the authority to modify any terms, covenants, or conditions of this Agreement, nor any terms, covenants or conditions of any ordinances, regulations, rules, or policies, of the City, or of applicable Federal or State constitutional or statutory law. The arbitrator shall be required to prepare a written decision which shall contain written findings and conclusions of law upon which the arbitration award is based, and such written decision shall be issued within thirty (30) days of the conclusion of the arbitration hearing.

F. City shall pay those costs that are unique to arbitration, including but expressly not limited to, the compensation of the arbitrator him/herself. Additionally, discovery shall be permissible pursuant to the provisions of Code of Civil Procedure §§ 1280 *et seq.*, including, without limitation, Code of Civil Procedure § 1283.05.

G. Selection of the arbitrator shall first be attempted through mutual agreement of the Parties. Absent the reaching of an agreement after reasonable effort

is made to do so, the Parties shall through a joint written communication, direct a recognized judicial dispute resolution service to provide a list of nine (9) names of qualified arbitrators, such as the American Arbitration Association, State Mediation and Conciliation Service, JAMS, or similar organization. Absent agreement to appoint one of said individuals as the arbitrator, the Parties shall alternately strike names until one name remains. Said individual shall be the designated arbitrator. The initial strike of names shall be determined by lot.

H. Either Party may seek judicial review of the decision of the arbitrator only in accordance with and subject to the grounds set forth in California Code of Civil Procedure §§ 1285, *et seq.* and 1286, *et seq.*, as such statutes have been interpreted by California court decisions. To the extent that the FAA applies to any Federal statutory claims, judicial review of any arbitration decision pertaining to such Federal statutory claims shall be subject to judicial review only according to and subject to the grounds and criteria of the FAA.

14. ENTIRE AGREEMENT. This Agreement contains the entire agreement and understanding among the Parties hereto, and contains all of the terms and conditions of the Parties' agreement. This Agreement supersedes all prior agreements and understandings relating to its subject matter. Each of the Parties represents that it/he is not relying, and has not relied, on any representation or statement made by any other Party with respect to the facts involved in this Agreement or with regard to its/his rights or asserted rights with respect thereto.

15. MODIFICATION. This Agreement may be modified or amended only by an agreement in writing executed by all of the Parties to this Agreement following approval of the City Council.

16. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

17. NO WAIVER. No Party's failure to enforce any provision or provisions of this Agreement shall be construed in any way as a waiver of any such provision or provisions, or prevent that Party thereafter from enforcing each and every other provision of this Agreement.

18. SEVERABILITY. If any provision or portion of this Agreement is held to be unconstitutional, invalid or unenforceable, the remainder of this Agreement shall be deemed severable and shall not be affected and shall remain in full force and effect.

19. INTERPRETATION. No interpretation or construction of any provision or portion of this Agreement will be influenced by the identity of the Party drafting the Agreement.

20. HEADINGS. Paragraph headings used in this Agreement are for convenience only and shall not be considered a part of the terms of this Agreement.

21. **INTERIM CITY MANAGER AGREEMENT.** The Interim City Manager Agreement between the parties dated as of December 15, 2003 is hereby terminated.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth in the Preamble on page 1 of this Agreement.

CITY OF MISSION VIEJO

Gail Reavis, Mayor

DENNIS WILBERG

Dennis Wilberg

ATTEST:

Karen Hamman
Interim City Clerk

APPROVED AS TO FORM:

Peter M. Thorson, City Attorney

CONTRACT # A04-11A

FIRST AMENDMENT TO CITY MANAGER EMPLOYMENT AGREEMENT

THIS FIRST AMENDMENT TO CITY MANAGER EMPLOYMENT AGREEMENT is made and entered into as of June 20, 2005 by and between the City of Mission Viejo ("City") and Dennis Wilberg ("Wilberg"). In consideration of the mutual promises and agreements set forth below and in the Employment Agreement, City and Wilberg agree as follows:

1. **Recitals.** This First Amendment is made with respect to the following facts and purposes, which the parties hereto agree are true and correct:

a. On March 1, 2004, the City and Wilberg entered into that certain agreement entitled "City Manager Employment Agreement" for Wilberg's employment as City Manager for City ("Employment Agreement").

b. The parties now desire to amend the Employment Agreement in order to modify certain terms.

2. **Modification of Compensation.** Paragraph 5A of the Employment Agreement, Salary, is hereby amended to read as follows:

> "A. Salary. Wilberg shall receive an annual salary of one hundred fifty nine thousand eight hundred forty dollars ($159,840.00). Said salary shall be effective on July 2, 2005."

3. **Other Provisions.** Except as expressly provided herein, all other terms and provisions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth above

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CITY OF MISSION VIEJO

Patricia Kelley

Patricia Kelley, Mayor

DENNIS WILBERG

Dennis Wilberg

ATTEST:

Karen Hamman

Karen Hamman, CMC
City Clerk

APPROVED AS TO FORM:

William P Curley

Peter M. Thorson
City Attorney

A04-113

SECOND AMENDMENT TO CITY MANAGER EMPLOYMENT AGREEMENT

THIS SECOND AMENDMENT TO CITY MANAGER EMPLOYMENT AGREEMENT is made and entered into as of June 19, 2006 by and between the City of Mission Viejo ("City") and Dennis Wilberg ("Wilberg"). In consideration of the mutual promises and agreements set forth below and in the Employment Agreement, City and Wilberg agree as follows:

1. **Recitals.** This Second Amendment is made with respect to the following facts and purposes, which the parties hereto agree are true and correct:

a. On March 1, 2004, the City and Wilberg entered into that certain agreement entitled "City Manager Employment Agreement" for Wilberg's employment as City Manager for City ("Employment Agreement").

b. On June 20, 2005 the City Council approved the First Amendment to this Agreement.

c. The parties now desire to amend the Employment Agreement in order to modify certain terms.

2. **Modification of Compensation.**

(i) Section 5B is hereby amended as follows:

"Group Insurance. The City agrees to maintain in force and make the required premium payments for Wilberg as are being provided as of June 19, 2006, subject to further negotiation subsequent to Wilberg's 2006 employee evaluation."

(ii) Section 5C is hereby amended as follows:

"Retirement. The City agrees to maintain and contribute all of the City's share of the PERS contribution and that portion of Wilberg's employee share as is currently paid as of June 19, 2006 and to maintain Wilberg as a member of the Public Employee's Retirement System (CALPERS") under the terms and conditions set forth in the City's Agreement with CALPERS, all subject to further negotiation subsequent to Wilberg's 2006 employee evaluation."

(iii) Section 5D is hereby amended by the addition of a new second paragraph:

"The above benefits shall be provided to Wilberg by City on the terms they are being provided Wilberg as of June 19, 2006, subject to further negotiation subsequent to Wilberg's 2006 employee evaluation."

(iv) A new Section 5G is agreed upon, to read as follows:

"5G: Further contracts – Wilberg is authorized to administratively establish employee agreement(s) with the assistant city manager, upon terms and conditions consistent with City Council policy, for the purpose of ensuring that all potential or perceived conflicts of interest are avoided."

3. **Other Provisions.** Except as expressly provided herein, all other terms and provisions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth above.

CITY OF MISSION VIEJO

Lance MacLean, Mayor

DENNIS WILBERG

Dennis Wilberg

ATTEST:

Karen Hamman, CSC
City Clerk

APPROVED AS TO FORM:

William P. Curley III, City Attorney

A04-11C

THIRD AMENDMENT TO CITY MANAGER EMPLOYMENT AGREEMENT

THIS THIRD AMENDMENT TO CITY MANAGER EMPLOYMENT AGREEMENT is made and entered into as of September 18, 2006, by and between the City of Mission Viejo ("City") and Dennis Wilberg ("Wilberg"). In consideration of the mutual promises and agreements set forth below and in the Employment Agreement, City and Wilberg agree as follows:

1. **Recitals.** This Third Amendment is made with respect to the following facts and purposes, which the parties hereto agree are true and correct:

a. On March 1, 2004, the City and Wilberg entered into that certain agreement entitled "City Manager Employment Agreement" for Wilberg's employment as City Manager for City ("Employment Agreement").

b. On June 20, 2005, the City Council approved the First Amendment to this Agreement.

c. On June 19, 2006, the City Council approved the Second Amendment to this Agreement.

d. The parties now desire to amend the Employment Agreement in order to modify certain terms as set forth below.

2. **Modification of Benefits.**

(i) Section 5B is hereby amended as follows:

"Group Insurance. The City agrees to maintain in force and make the required premium payments for Wilberg as are being provided to all executive level personnel as of September 18, 2006."

(ii) Section 5C is hereby amended as follows:

"Retirement. The City agrees to maintain and contribute all of the City's share of the PERS contribution and that portion of Wilberg's employee share as is currently paid as of September 18, 2006, and to maintain Wilberg as a member of the Public Employee's Retirement System (CALPERS) under the terms and conditions set forth in the City's Agreement with CALPERS."

(iii) Section 5D is hereby amended by the addition of a new second paragraph:

"The above benefits shall be provided to Wilberg by City on the terms they are being provided Wilberg as of September 18, 2006, subject to further negotiation subsequent to Wilberg's 2007 employee evaluation."

3. **Modification of Compensation.** Paragraph 5A of the Employment Agreement, Salary, is hereby amended to read as follows:

> "A. Salary. Wilberg shall receive an annual salary of one hundred sixty eight thousand eight hundred forty dollars ($168,840.00). Said salary shall be effective September 18, 2006."

4. **Modification of Position and Duties.** Paragraph 3 shall have a further paragraph added to read: "Wilberg may, pursuant to the Orange County Council of Governments (OCCOG) Joint Powers Agreement previously approved by the City, perform as the Interim Executive Director of the Orange County Council of Governments. Wilberg may utilize City staff as necessary to further the purposes of OCCOG. This authorization shall terminate on July 1, 2007, unless extended by the City Council by resolution."

5. **Other Provisions**. Except as expressly provided herein, all other terms and provisions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth above.

CITY OF MISSION VIEJO

Lance MacLean, Mayor

DENNIS WILBERG

Dennis Wilberg

ATTEST:

Karen Hamman, CMC
City Clerk

APPROVED AS TO FORM:

William P. Curley III
City Attorney

Goals to accomplish 2006-07:

- Identify in consultation with the Council ad hoc committee possible amendments to the YMCA operating agreement for the rehabilitation of the Marguerite Recreation Center.

- Engage an independent 3rd party traffic consultant to study major arterials and recommend circulation improvements including, but not limited to further traffic signal synchronization.

- Initiate a feasibility study with the Capo school district for the construction of a circulation road around Newhart School to coincide with the classroom renovation project scheduled summer 2007.

- Complete the environmental, preliminary engineering, final design, right of way acquisition and secure funding to go out to bid for the street improvement for La Paz road and bridge widening from I-5 to Chrisanta.

- Complete preliminary engineering, final design and right of way acquisition to go out to bid for the Oso/Marguerite intersection improvement project.

- Develop a city wide street pot hole reporting and timely repair best practices policy utilizing public works, police services, etc who regularly drive our streets and are in the best position to see and report pot hole service requests.

- Complete the design, go out to bid and construct the most economically feasible restroom facility at Melinda Park.

- Implement information technology (IT) consultant recommended improvements in the area of emergency preparedness, business processes and customer service.

- Develop a policy to protect city franchise fees with the possibility that phone companies will begin to provide TV services to residents.

- Complete in conjunction with the City Attorney and Council ad hoc committee revisions to the general plan housing element to bring the city into state housing law compliance.

- Continue to work with the residents of Ferrocaril to present options that will assist the residents to complete final slope repairs including city cost recovery.

- Complete with the input from the independent consultant and City Council various options to develop program(s) for consideration to address GASB reporting requirements and the PERS benefits and Retiree Medical unfunded liability.

- Develop a plan to work with the numerous owners for the rehabilitation, and renovation of the commercial property across the street from city hall.

- Continue to explore and evaluate possible development and/or sale of the city owned arroyo property below the Animal Shelter.

- Develop a succession plan by identifying key back-up personnel to ensure business continuity when staff is out of the office.

- Implement a policy that all agenda staff reports will be included with the distribution of the agenda by the Wednesday prior to council meetings (no late reports).

- The City Manager will meet with the Mayor and Mayor Pro Tem within 30 days of this review to establish department performance and organizational development objectives in the upcoming year for selected departments as identified by the Council.

In closing, the City Council thanks you for your effort and advice this past year. We look forward to working with you in the coming year to accomplish our mutual goal of top quality service to the residents of the city of Mission Viejo.

Sincerely,

Lance MacLean
Mayor

Frank Ury
Mayor Pro Tem

Trish Kelley
Council Member

John Paul Ledesma
Council Member

Gail Reavis
Council Member

A04-11D

FOURTH AMENDMENT TO CITY MANAGER EMPLOYMENT AGREEMENT

THIS FOURTH AMENDMENT TO CITY MANAGER EMPLOYMENT AGREEMENT is made and entered into as of Sept. 4, 2007 by and between the City of Mission Viejo ("City") and Dennis Wilberg ("Wilberg"). In consideration of the mutual promises and agreements set forth below and in the Employment Agreement, City and Wilberg agree as follows:

1. **Recitals.** This Fourth Amendment is made with respect to the following facts and purposes, which the parties hereto agree are true and correct:

a. On March 1, 2004, the City and Wilberg entered into that certain agreement entitled "City Manager Employment Agreement" for Wilberg's employment as City Manager for City ("Employment Agreement").

b. On June 20, 2005, the City Council approved the First Amendment to the Employment Agreement.

c. On June 19, 2006, the City Council approved the Second Amendment to the Employment Agreement.

d. On September 18, 2006, the City Council approved the Third Amendment to the Employment Agreement.

e. The parties now desire to amend the Employment Agreement in order to modify certain terms as set forth below.

2. **Modification of Benefits.**

a. Section 5F is hereby amended to read in its entirety as follows:

"Automobile Allowance. City shall provide Wilberg with an automobile allowance in the amount of five hundred fifty dollars ($550.00) per month."

b. A new Section 5H is agreed upon, to read in its entirety as follows:

"5H: Additional Retirement Service Credit. City shall provide Wilberg with a bi-weekly contribution of two hundred seventy-nine dollars and eighty-six cents ($279.86) to be used by Wilberg for the purchase of CalPERS Additional Retirement Service Credit."

3. **Modification of Compensation.** Section 5A is hereby amended to read in its entirety as follows:

"Salary. Wilberg shall receive an annual salary of one hundred eighty-six thousand five hundred twenty-three dollars and sixty-four cents ($186,523.64). Said salary shall be effective Sept 4, 2007."

4. **Effective Date**. Except as otherwise provided in this Amendment, this Amendment shall be effective on and after Sept 4, 2007. This Amendment shall have the effect of continuing the Employment Agreement without interruption.

5. **Other Provisions.** Except as expressly provided herein, all other terms and provisions of the Employment Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth above.

CITY OF MISSION VIEJO

Gail Reavis, Mayor

DENNIS WILBERG

Dennis Wilberg

ATTEST:

Karen Hamman, CMC
City Clerk

APPROVED AS TO FORM:

William P. Curley III
City Attorney

11088/0008/992483v2

CONTRACT # A04-11E

FIFTH AMENDMENT TO CITY MANAGER EMPLOYMENT AGREEMENT

THIS FIFTH AMENDMENT TO CITY MANAGER EMPLOYMENT AGREEMENT is made and entered into as of July 1, 2008 by and between the City of Mission Viejo ("City") and Dennis Wilberg ("Wilberg"). In consideration of the mutual promises and agreements set forth below and in the Employment Agreement, City and Wilberg agree as follows:

1. **Recitals.** This Fifth Amendment is made with respect to the following facts and purposes, which the parties hereto agree are true and correct:

a. On March 1, 2004, the City and Wilberg entered into that certain agreement entitled "City Manager Employment Agreement" for Wilberg's employment as City Manager for City ("Employment Agreement").

b. On June 20, 2005, the City Council approved the First Amendment to the Employment Agreement.

c. On June 19, 2006, the City Council approved the Second Amendment to the Employment Agreement.

d. On September 18, 2006, the City Council approved the Third Amendment to the Employment Agreement.

e. On September 7, 2007, the City approved the Fourth Amendment to the Employment Agreement.

f. The parties now desire to amend the Employment Agreement in order to modify certain terms as set forth below.

2. **Modification of Compensation.** Section 5A is hereby amended to read in its entirety as follows:

"Salary. Wilberg shall receive an annual salary of one hundred ninety seven thousand seven hundred and sixteen dollars ($197,716.00). Said salary shall be effective July 1, 2008."

City will evaluate the totality of the circumstances at its first City Council meeting in January, 2009 and determine if Wilberg should be granted a performance related incentive bonus to recognize his accomplishments and to encourage him to perform in excess of his personal goals.

3. **Effective Date**. Except as otherwise provided in this Amendment, this Amendment shall be effective on and after July 1, 2008. This Amendment shall have the effect of continuing the Employment Agreement without interruption.

4. **Other Provisions.** Except as expressly provided herein, all other terms and provisions of the Employment Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth above.

CITY OF MISSION VIEJO

Trish Kelley, Mayor

DENNIS WILBERG

Dennis Wilberg

ATTEST:

Karen Hamman, CMC
City Clerk

APPROVED AS TO FORM:

William P. Curley III
City Attorney

992483.3

CONTRACT # A04-11F

SIXTH AMENDMENT TO CITY MANAGER EMPLOYMENT AGREEMENT

THIS SIXTH AMENDMENT TO CITY MANAGER EMPLOYMENT AGREEMENT is made and entered into as of February 1, 2010 by and between the City of Mission Viejo ("City") and Dennis Wilberg ("Wilberg"). In consideration of the mutual promises and agreements set forth below and in the Employment Agreement, City and Wilberg agree as follows:

1. **Recitals.** This Sixth Amendment is made with respect to the following facts and purposes, which the parties hereto agree are true and correct:

a. On March 1, 2004, the City and Wilberg entered into that certain agreement entitled "City Manager Employment Agreement" for Wilberg's employment as City Manager for City ("Employment Agreement").

b. On June 20, 2005, the City Council approved the First Amendment to the Employment Agreement.

c. On June 19, 2006, the City Council approved the Second Amendment to the Employment Agreement.

d. On September 18, 2006, the City Council approved the Third Amendment to the Employment Agreement.

e. On September 7, 2007, the City approved the Fourth Amendment to the Employment Agreement.

f. Effective August 18, 2008, the City Council approved the Fifth Amendment to the Employment Agreement.

g. The parties now desire to amend the Employment Agreement in order to modify certain terms as set forth below.

2. **Modification of Agreement.**

A. Section 3 of the Agreement is revised to read as follows:

"3. POSITION AND DUTIES. Wilberg shall serve as City Manager of City. Pursuant to California Government Code § 36506 and Mission Viejo Municipal Code § 2.08.010, Wilberg shall serve at the pleasure of the City Council. The City Council shall have the power to determine the specific lawful and customary duties and responsibilities which Wilberg must perform under this Agreement including, but expressly not limited to, the powers and duties set forth in Mission Viejo Municipal Code § 2.08.060. Wilberg agrees to devote all of his business time, skill, attention, and best efforts to the discharge of the duties and responsibilities

assigned to him by the City Council during the term of his employment, except that Wilberg may teach or serve as a board member of a non-profit entity."

B. Section 5.B of the Agreement is revised to read as follows:

"5.B. Group Insurance. The City agrees to put into force, during and after employment, and make required premium payments for, and maintain for, Wilberg, during and after employment, the same insurance benefits, including Retiree Medical Insurance, generally given to or provided for Executive Management employees of the City as of July 1, 2009."

C. Section 7.B(ii) is revised to read as follows:

"7.B(ii) On the date that is nine (9) months prior to the end of the term of the Agreement, Wilberg's duties as City Manager shall cease and he shall be given a lump sum severance payment of nine (9) months salary calculated at Wilberg's then current salary, with applicable payroll taxes withheld. Wilberg shall be entitled to continuation of health benefits for 9 months after this date."

D. Section 8.B is revised to read as follows:

"8.B. If the City's termination of this Agreement is for any reason other than Wilberg's Misconduct, the City shall pay Wilberg a lump sum severance payment equivalent to nine (9) months salary calculated at Wilberg's then current salary, with applicable payroll taxes withheld (the severance payment is understood to include nine (9) months of the health benefits and other cash compensation items specified in paragraph 5 of this Agreement). "Misconduct" means only Wilberg's misappropriation of public funds or his conviction of a felony involving moral turpitude. If the City terminates this Agreement at any time due to Wilberg's Misconduct, as defined above, City shall not pay Wilberg any severance payment. If Wilberg terminates this Agreement at any time prior to the date on which notice of non-renewal must be given pursuant to Paragraph 7 of this Agreement, or the date on which notice of non-renewal is actually given, whichever is earlier, City shall not pay Wilberg any severance payment. Upon the termination of this Agreement, Wilberg shall not be entitled to any other compensation or payment, except as provided in this Paragraph or Paragraph 7."

E. Section 8.C is added to read:

"8.C. In the event the City terminates Wilberg for any reason or no reason, the City and Wilberg agree that no member of the City Council,

the City Management staff, nor Wilberg shall make any written, oral, or electronic statement to any member of the public, the press, or any City employee concerning Wilberg's termination except in the form of a joint press release or statement, which is mutually agreeable to the City and Wilberg. The joint press release or statement shall not contain any text or information that is disparaging to either party. Either party may verbally repeat the substance of the joint press release or statement in response to any inquiry."

F. Section 13.I is added to read:

"13.I. The prevailing party in any arbitration shall be awarded his or its reasonable attorneys' fees."

3. **Effective Date**. Except as otherwise provided in this Amendment, this Amendment shall be effective on and after February 1, 2010. This Amendment shall have the effect of continuing the Employment Agreement without interruption.

4. **Other Provisions.** Except as expressly provided herein, all other terms and provisions of the Employment Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth above.

CITY OF MISSION VIEJO

Lance MacLean, Mayor

DENNIS WILBERG

Dennis Wilberg

ATTEST:

Karen Hamman, CMC
City Clerk

APPROVED AS TO FORM:

William P. Curley III
City Attorney

1202045v1

CONTRACT # A04-116

SEVENTH AMENDMENT TO CITY MANAGER EMPLOYMENT AGREEMENT

THIS SEVENTH AMENDMENT TO CITY MANAGER EMPLOYMENT AGREEMENT is made and entered into as of January 17, 2011 by and between the City of Mission Viejo ("City") and Dennis Wilberg ("Wilberg"). In consideration of the mutual promises and agreements set forth below and in the Employment Agreement, City and Wilberg agree as follows:

1. **Recitals.** This Seventh Amendment is made with respect to the following facts and purposes, which the parties hereto agree are true and correct:

a. On March 1, 2004, the City and Wilberg entered into that certain agreement entitled "City Manager Employment Agreement" for Wilberg's employment as City Manager for City ("Employment Agreement").

b. On June 20, 2005, the City Council approved the First Amendment to the Employment Agreement.

c. On June 19, 2006, the City Council approved the Second Amendment to the Employment Agreement.

d. On September 18, 2006, the City Council approved the Third Amendment to the Employment Agreement.

e. On September 7, 2007, the City approved the Fourth Amendment to the Employment Agreement.

f. Effective August 18, 2008, the City Council approved the Fifth Amendment to the Employment Agreement.

g. Effective February 1, 2010, the City Council approved the Sixth Amendment to the Employment Agreement.

h. The parties now desire to amend the Employment Agreement in order to modify certain terms as set forth below.

2. **Modification of Agreement.**

Section 5E of the Agreement is revised to read as follows:

"5E. Deferred Compensation. City shall provide Wilberg an annual contribution of seven thousand five hundred dollars ($7,500.00), which at his annual option, may either be deposited in the deferred compensation program of Wilberg's choice, or received as additional current compensation. Said contribution will occur on the first regularly

scheduled payday in January of each year, except for the 2004 payment which was, by agreement, made on the second regularly scheduled payday in March, 2004."

3. **Effective Date**. Except as otherwise provided in this Amendment, this Amendment shall be effective on and after January 14, 2011. This Amendment shall have the effect of continuing the Employment Agreement without interruption.

4. **Other Provisions.** Except as expressly provided herein, all other terms and provisions of the Employment Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth above.

CITY OF MISSION VIEJO

Dave Leckness, Mayor

DENNIS WILBERG

Dennis Wilberg

ATTEST:

Karen Hamman, CMC
City Clerk

APPROVED AS TO FORM:

William P. Curley III
City Attorney

CONTRACT # A04-114

EIGHTH AMENDMENT TO CITY MANAGER EMPLOYMENT AGREEMENT

THIS EIGHTH AMENDMENT TO CITY MANAGER EMPLOYMENT AGREEMENT is made and entered into as of May 6, 2013 by and between the City of Mission Viejo ("City") and Dennis Wilberg ("Wilberg.") In consideration of the mutual promises and agreements set forth below and in the Employment Agreement, City and Wilberg agree as follows:

1. **Recitals.** This Eighth Amendment is made with respect to the following facts and purposes, which the parties hereto agree are true and correct:

a. On March 1, 2004, the City and Wilberg entered into that certain agreement entitled "City Manager Employment Agreement" for Wilberg's employment as City Manager for City ("Employment Agreement.")

b. On June 20, 2005, the City Council approved the First Amendment to the Employment Agreement.

c. On June 19, 2006, the City Council approved the Second Amendment to the Employment Agreement.

d. On September 18, 2006, the City Council approved the Third Amendment to the Employment Agreement.

e. On September 7, 2007, the City approved the Fourth Amendment to the Employment Agreement.

f. Effective August 18, 2008, the City Council approved the Fifth Amendment to the Employment Agreement.

g. Effective February 1, 2010, the City Council approved the Sixth Amendment to the Employment Agreement.

h. Effective January 14, 2011, the City Council approved the Seventh Amendment to the Employment Agreement.

i. The parties now desire to amend the Employment Agreement in order to modify certain terms as set forth below.

2. **Modification of Benefits.**

(i) Section 5A of the Agreement is revised to read as follows:

"5A. Salary. Wilberg shall receive an annual salary of $214,000.00 such salary shall be effective as of January 19, 2013."

(ii) Section 5B of the Agreement is revised to read as follows:

"5B. Group Insurance. The City agrees to put into force, during, after, and continuously through Wilberg's employment, and make the required premium payments for, an maintain for, Wilberg, during and after employment, the same and equivalent insurance benefits, including Retiree Medical Insurance, given to or provided for Executive Management employees of the City as of the earliest date of this Amendment."

(iii) Section 5C of the Agreement is revised to read as follows:

"5C. Retirement. The City shall contribute all of the City's share of any PERS contribution. Wilberg shall pay 5.5%, of his salary, (approximately 69% of the employee share) consistent with management staff PERS payment as of the date of this Agreement. Wilberg is and shall remain a member of the California Public Employee's Retirement System (CALPERS) under the terms and conditions as set forth in the City's Agreement with CALPERS. This Section 5C shall be effective as of the earliest date of this Agreement."

3. **Effective Date**. Except as otherwise provided in this Amendment the terms of this Amendment shall be effective on, and continue without interruption, after May 6, 2013, unless terminated pursuant to this Employment Agreement, as amended. This Amendment shall have the effect of continuing the Employment Agreement without interruption.

4. **Other Provisions.** Except as expressly provided herein this Eighth Amendment, all other terms and provisions of the Employment Agreement between City and Wilberg shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth above.

CITY OF MISSION VIEJO

Rhonda B. Reardon, Mayor

DENNIS WILBERG

Dennis Wilberg

ATTEST:

Karen Hamman, CMC
City Clerk

APPROVED AS TO FORM:

William P. Curley III
City Attorney

CONTRACT # A04-11 I

NINTH AMENDMENT TO CITY MANAGER EMPLOYMENT AGREEMENT

THIS NINTH AMENDMENT TO CITY MANAGER EMPLOYMENT AGREEMENT is made and entered into as of June 16, 2014 by and between the City of Mission Viejo ("City") and Dennis Wilberg ("Wilberg"). In consideration of the mutual promises and agreements set forth below and in the Employment Agreement, City and Wilberg agree as follows:

1. **Recitals.** This Ninth Amendment is made with respect to the following facts and purposes, which the Parties hereto agree are true and correct:

(a) On March 1, 2004, the City and Wilberg entered into that certain agreement entitled "City Manager Employment Agreement" for Wilberg's employment as City Manager for City ("Employment Agreement").

(b) On June 20, 2005, the City Council approved the First Amendment to the Employment Agreement.

(c) On June 19, 2006, the City Council approved the Second Amendment to the Employment Agreement.

(d) On September 18, 2006, the City Council approved the Third Amendment to the Employment Agreement.

(e) On September 7, 2007, the City Council approved the Fourth Amendment to the Employment Agreement.

(f) Effective August 18, 2008, the City Council approved the Fifth Amendment to the Employment Agreement.

(g) Effective February 1, 2010, the City Council approved the Sixth Amendment to the Employment Agreement.

(h) Effective January 14, 2011, the City Council approved the Seventh Amendment to the Employment Agreement.

(i) Effective May 6, 2013, the City Council approved the Eighth Amendment to the Employment Agreement.

(j) The Parties now desire to amend the Employment Agreement in order to modify certain terms as set forth below.

2. **TERMINATION AND SEVERANCE.** In order to comport with current laws regarding abuse of position by senior public officials, the following paragraph shall be added to the Employment Agreement as Section 8C.

"C. In accordance with California Government Code section 53243, *et seq.*, and as a separate contractual obligation, should the City Manager receive a paid leave of absence or severance payment if this contract is terminated with or without cause, such paid leave or severance payment shall be fully reimbursed to the City by the City Manager if the City manager is convicted of a crime involving an abuse of his/her office or position, as defined in California Government Code section 53243.4. In addition, if the City funds the criminal defense of the City Manager against charges involving abuse of office or position and the City Manager is then convicted of such charges, the City Manager shall fully reimburse the City all funds expended for his criminal defense."

3. **Modification of Benefits.** Section 5C of the Employment Agreement, "Retirement," is hereby amended to read as follows:

"C. **Retirement.** Effective June 7, 2014 through June 5, 2015, the City shall contribute all of the City's share of any California Public Employment Retirement System ("CalPERS") contribution and 1.25% of the normal member contribution required by Wilberg. Wilberg shall pay 6.75% of the normal member contribution, consistent with management staff PERS payment as of the date of this Agreement.

Effective June 6, 2015, the City shall contribute all of the City's share of any California Public Employment Retirement System ("CalPERS") contribution and 0.00% of the normal member contribution required by Wilberg. Wilberg shall pay 8.00% of the normal member contribution. Wilberg is and shall remain a member of CalPERS under the terms and conditions as set forth in the City's Agreement with CalPERS."

3. **Effective Date.** Except as otherwise provided in this Amendment, the terms of this Amendment shall be effective on, and continue without interruption, after June 6, 2015, unless terminated pursuant to this Employment Agreement, as amended. This Amendment shall have the effect of continuing the Employment Agreement without interruption.

4. **Other Provisions.** Except as expressly provided herein this Ninth Amendment, all other terms and provisions of the Employment Agreement between City and Wilberg shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth above.

CITY OF MISSION VIEJO

Trish Kelley, Mayor

DENNIS WILBERG

Dennis Wilberg

ATTEST:

Karen Hamman, CMC
City Clerk

APPROVED AS TO FORM:

William P. Curley III
City Attorney

CONTRACT # A04-11 J

TENTH AMENDMENT TO CITY MANAGER EMPLOYMENT AGREEMENT

THIS TENTH AMENDMENT TO CITY MANAGER EMPLOYMENT AGREEMENT is made and entered into as of August 18, 2014 by and between the City of Mission Viejo ("City") and Dennis Wilberg ("Wilberg"). In consideration of the mutual promises and agreements set forth below and in the Employment Agreement, City and Wilberg agree as follows:

1. **Recitals.** This Tenth Amendment is made with respect to the following facts and purposes, which the Parties hereto agree are true and correct:

(a) On March 1, 2004, the City and Wilberg entered into that certain agreement entitled "City Manager Employment Agreement" for Wilberg's employment as City Manager for City ("Employment Agreement").

(b) On June 20, 2005, the City Council approved the First Amendment to the Employment Agreement.

(c) On June 19, 2006, the City Council approved the Second Amendment to the Employment Agreement.

(d) On September 18, 2006, the City Council approved the Third Amendment to the Employment Agreement.

(e) On September 7, 2007, the City Council approved the Fourth Amendment to the Employment Agreement.

(f) Effective August 18, 2008, the City Council approved the Fifth Amendment to the Employment Agreement.

(g) Effective February 1, 2010, the City Council approved the Sixth Amendment to the Employment Agreement.

(h) Effective January 14, 2011, the City Council approved the Seventh Amendment to the Employment Agreement.

(i) Effective May 6, 2013, the City Council approved the Eighth Amendment to the Employment Agreement.

(j) Effective June 6, 2014, the City Council approved the Ninth Amendment to the Employment Agreement.

(k) The Parties now desire to amend the Employment Agreement in order to modify certain terms as set forth below.

2. **Modification of Compensation.** Section 5A is hereby amended to read in its entirety as follows:

> "Salary. Wilberg shall receive an annual salary of two hundred twenty four thousand seven hundred dollars and no cents ($224,700.00). Said salary shall be effective July 1, 2014."

3. **Effective Date.** Except as otherwise provided in this Amendment, the terms of this Amendment shall be effective on, and continue without interruption, after July 1, 2014, unless terminated pursuant to this Employment Agreement, as amended. This Amendment shall have the effect of continuing the Employment Agreement without interruption.

4. **Other Provisions.** Except as expressly provided herein this Tenth Amendment, all other terms and provisions of the Employment Agreement between City and Wilberg shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth above.

CITY OF MISSION VIEJO

Trish Kelley, Mayor

DENNIS WILBERG

Dennis Wilberg

ATTEST:

Karen Hamman, CMC
City Clerk

APPROVED AS TO FORM:

William P. Curley III
City Attorney