

**CITY MANAGER EMPLOYMENT AGREEMENT**

**ELAINE S. L. LISTER**

This Agreement is made as of July 6, 2024 (“the Effective Date”) by and between the City of Mission Viejo (“City”) and Elaine Lister (“Lister”). City and Lister are sometimes hereinafter referred to as a “Party” or the “Parties”.

**RECITALS**

WHEREAS, City desires to employ the services of Lister 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 Lister’s employment that are reflective of her 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 Lister 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.
2. **TERM.** Lister’s employment as City Manager will commence on July 6, 2024, and shall continue until July 6, 2026 (the “Initial Term”), or the date of earlier termination of Lister’s employment in accordance with Paragraph 7 and 8 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 two (2) years commencing from July 6, 2026.
3. **POSITION AND DUTIES.** Lister shall serve as City Manager of City. Pursuant to California Government Code § 36506 and Mission Viejo Municipal Code § 2.08.010, Lister shall serve at the pleasure of the City Council. The City Council shall have the power to determine the specific duties and responsibilities which Lister 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. Lister agrees to devote all of her business time, skill, attention and best efforts to the discharge of the duties and responsibilities assigned to her by the City Council and Mission Viejo Municipal Code during the term of her employment, except that Lister 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 § 36506 and Mission Viejo Municipal Code § 2.08.010, Lister's employment is at the pleasure of the City Council, and Lister is appointed on an at-will basis, and holds an at-will position with the City. Pursuant to her at-will status, Lister shall not have any property right in her 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 Lister's at-will status, termination shall be by at least three (3) affirmative votes of the City Council with the vote being taken when all five (5) councilmembers are present. The procedures regarding termination shall from employment by either the City or Lister are set forth in Paragraphs 7 through 9 of this Agreement.

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

(iii) Lister 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 Lister 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 the Municipal Code §§ 2.08.010, *et seq.*), of the City of Mission Viejo Municipal Code. Lister understands, acknowledges, and agrees that no agreement can impliedly arise that Lister is employed under any terms other than those set forth in this Agreement.

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



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Lister Initials

**5. COMPENSATION AND BENEFITS.** Lister shall receive the following compensation:

**A. Salary.** Lister shall receive an annual salary of two hundred eighty-five thousand (\$285,000.00). Such salary shall be effective as of the Effective Date of the Agreement. Thereafter, all salary adjustments shall be the result of negotiation between the Parties.

**B. Group Insurance.** The City agrees to put into force and make all required premium payments for Lister of the same insurance benefits generally given to or provided for Executive level personnel of the City, as may be selected by Lister in her sole discretion.

**C. Retirement.** Lister shall contribute 1.5% of the California Public Employment Retirement System ("CalPERS") required Employer Contribution and 100% of the CalPERS Member Contribution, to maintain Lister 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. If at any time the City amends its CalPERS contract to either remove the Member

Paid Employer Contribution provision, or to allow the City to pay towards the Employee Contribution, such charges shall also apply to Lister effective the date the CalPERS contract is amended.

**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 Lister except as herein provided. In addition to the CAL provisions applicable to other Executive management employees of the City, Lister shall receive five (5) additional days of Administrative Leave Time (“A.L.T.”) each calendar year during the term of this Agreement, with each consecutive A.L.T. five (5) days increase being added to the annual amount of total leave. However, A.L.T. will not be compensated, regardless of unused accrual, unless Lister has been separated or terminated in a manner inconsistent with this Agreement.

**E. Deferred Compensation.** City shall provide Lister an annual contribution of the maximum amount allowed under the law for the 457(b) basic and age 50 catch-up, to be deposited in the City’s 401(a) profit-sharing plan. Said contribution will occur on the first regularly scheduled payday in August of each year, except for the calendar year 2024 annual contribution which will be made on September 6, 2024.

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

**6. ANNUAL PERFORMANCE REVIEW.** The City Council shall evaluate Lister’s performance annually. On July 1 of each year, Lister shall submit a memorandum to the City Council discussing her performance during the prior year and shall confer with the Mayor regarding the scheduling of a performance review for a closed session to be held during a regularly scheduled meeting of the City Council in May, or as agreed by the Mayor, of each year. The City Council shall have until August 30, or as agreed by the Mayor, of each year to complete the performance review process. The annual review shall not in any manner modify or convert Lister’s status from that of an at-will employee to an employee with a property right in her job and/or who may only be terminated with notice and/or cause. Further, the Parties may defer or omit the performance review, from time to time, without any penalty or effect on this Agreement. In conjunction with the performance review process, Lister’s annual base salary shall be reviewed to determine whether Lister shall receive an increase in the annual base salary that year. The Council may grant, in its sole discretion, an increase in the annual base salary. The City Council shall not delegate the evaluation of Lister 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 Lister.

**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 Lister in writing of its decision. In the event that a notice of non-renewal has not been given to Lister 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 two (2) years. 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 this two (2) year period prior to the expiration of the Initial Term or any successive term of this Agreement:

(i) Lister shall continue to fulfill her 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 work period, Lister shall be entitled to use her 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, Lister's duties as City Manager shall cease and she shall be given a severance payment of nine (9) months salary calculated as Lister's then current salary, with applicable payroll taxes withheld. Lister shall not be entitled to any benefits or car allowance after she receives the severance payment.

(iii) Notwithstanding the provisions of Paragraph 8, Lister may terminate this Agreement with two (2) weeks written notice during this working period. Upon the effective date of termination under this subparagraph (iii), Lister 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 Lister'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 Lister as City Manager other than a non-renewal under Paragraph 7 of this Agreement.

(i) If Lister terminates this Agreement, Lister shall provide the City Council with not less than fourteen (14) days written notice prior to the date that she ceases to perform her duties and responsibilities under this Agreement.

(ii) If the City terminates this Agreement, the City shall provide Lister 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 Lister's judicially determined Misconduct, the City shall pay Lister a severance payment equivalent to

nine (9) months salary calculated at Lister's then current salary, with applicable payroll taxes withheld. "Misconduct", for purpose of this Agreement, is limited to only a court's judicially determined decision finding of Lister's dishonesty, fraud, self-dealing, or unlawful or intentionally insubordinate conduct committed in the performance of Lister's duties and responsibilities under this Agreement, or Lister's having been found to be in violation of any law, addressing a city managers duties in office, which can be punished as a felony committed at any time while Lister serves as City Manager. The determination of whether Lister is to be terminated due to Misconduct, as defined in this section 8B, is in the City's sole discretion after review of the judicial decision. If the City terminates this Agreement at any time due to Lister's Misconduct, as defined above, City shall not pay Lister any severance payment. If Lister 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 Lister any severance payment. Upon the termination of this Agreement, Lister shall not be entitled to any other compensation or payment, except as provided in this Paragraph or Paragraph 7.

9. **VOTE REQUIRED.** (a) Any action of the City Council not to renew this Agreement under Paragraph 7, or to terminate Lister's employment with the City at any time under Paragraph 8, shall require three (3) affirmative votes of the whole City Council, with all five (5) present, as then constituted pursuant to Chapter 2.08 of the Mission Viejo Municipal Code. (b) No action shall be taken to evaluate, terminate or modify Lister's employment and duties under this Agreement, for one hundred eighty (180) calendar days before or after a regular City Council election date, unless such an action is necessary to address proven Misconduct.

10. **REIMBURSEMENT.** The City shall reimburse Lister for all actual and necessary expenses she incurs in the performance of her 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. **PROFESSIONAL ORGANIZATIONS.** City shall fund the membership into professional organizations up to two thousand dollars (\$2,000.00).

12. **BOND.** Lister shall furnish a corporate surety bond in the amount of five hundred thousand dollars (\$500,000.00) from a qualified surety for the faithful performance of the duties imposed upon Lister 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 and the City shall provide Lister with all requested assistance in obtaining the bond.

13. **NONASSIGNMENT.** Lister's duties and obligations under this Agreement are personal and not assignable.

14. **ARBITRATION.** City and Lister agree that in consideration of the mutual benefits of arbitration, including but not expressly limited to, cost, efficiency and timing to both Parties, any disputes arising out of this Agreement, and/or the employment and/or termination of Lister by

the City, or Lister'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 Lister with regard to her 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 Lister 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 Lister, and claims of wrongful conduct by Lister 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. Lister, being currently forty (40) years of age or older, warrants and represents that she is fully aware of and understands all of her 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 provisions of this Paragraph 13, Lister 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) Lister further acknowledges that under the ADEA she has the right to take twenty-one (21) calendar days to consider the terms and effects of this Agreement with respect to her rights to judicial review under the ADEA, prior to executing it; that her 21-day period would expire on July 29, 2024; that Lister has been advised of her right to consult with legal counsel regarding her rights under the ADEA; and Lister expressly acknowledges that she 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, or alternatively, agrees it has lapsed without further action necessary.

(ii) Notwithstanding Paragraph 14(B)(i) of this Agreement, Lister further understands that under the ADEA, the terms of this Agreement with respect to Lister's rights under the ADEA are not effective until eight (8) calendar days after its execution. Lister may revoke this Agreement with respect to her 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 Lister revokes this Agreement with respect to her rights under the ADEA, City

shall be relieved of all of its obligations under this Agreement with respect to Lister'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.** Lister further expressly acknowledges and agrees that except as expressly provided in this Subparagraph (D), in any such arbitration the exclusive remedies available to Lister, With respect to State or Federal statutory claims, the available remedies shall also include any substantive and remedial remedy available to City and/or Lister 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 not expressly 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 be first 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.

15. **MUTUAL NON-DISPARAGEMENT AND SUPPORT DUTY.** Each Party agrees they owe the other respect, support, and cooperation in their respective service to the City of Mission Viejo, the residents and taxpayers of the City of the Mission Viejo and the business community of the City of Mission Viejo. At all times, each Party shall support the other, and consistent with the law, publicly support the other.

Further, in the event the City terminates Lister for any reason, or no reason, or if Lister resigns, each Party agrees that no member of the City Council, the City Management staff, nor Lister, shall make any written, oral or electronic statement to any member of the public, the press or any city employee concerning Lister's separation except in the form of a, then initially drafted, joint press release the content of which is mutually agreeable to the City and Lister. Each party may verbally repeat the substance of the joint press release or statement in response to any inquiry.

  
Lister Initials

  
City Initials

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

17. **MODIFICATION.** This Agreement may be modified or amended only by an agreement in writing executed by all of the Parties to this Agreement, following a lawfully obtained approval of the City Council.

18. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, with venue in any court in the County of Orange.

19. **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.

20. **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.

21. **INTERPRETATION.** No interpretation or construction of any provision or portion of this Agreement will be influenced by the identify of the Party drafting the agreement and all shall be deemed mutually drafted and accepted.

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



IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth in the Preamble on page 1 of this Agreement, upon which this Agreement is enforceable for all purposes.

Elaine Lister 5/28/24  
Elaine S. L. Lister Date

Trish Kelley 5/28/24  
City of Mission Viejo Date  
Mayor Trish Kelley

William P. Curley III 5/28/24  
Approved as to Form Date  
William P. Curley, III

Kimberly Schmitt 5/28/24  
Clerk Date