

## **EMPLOYMENT AGREEMENT**

**THIS EMPLOYMENT AGREEMENT** (“Agreement”) is made and entered into as of the 21st day of January, 2020 (“effective date”), by and between the City of Orinda (“City”) and Steve Salomon (“Employee”). This Agreement is authorized by City Council Resolution No. 06-20.

### **AGREEMENTS**

**WHEREAS**, the City entered into an October 1, 2017 Employment Agreement to employ the services of Steve Salomon as City Manager; and

**WHEREAS**, the City desires to continue to employ the services of Steve Salomon as City Manager; and

**WHEREAS**, on February 19, 2019, the City Council approved an Extension of Employment Agreement and removed the expiration date of June 30, 2019 from the October 1, 2017 Employment Agreement by Resolution 08-19; and

**WHEREAS**, the City desires to provide certain benefits, establish certain conditions of employment, and to set working conditions of Employee; and

**WHEREAS**, the City desires to secure and retain the services of Employee and to provide inducement for him to remain in such employment; and

**WHEREAS**, Employee desires to continue to be employed as City Manager of the City of Orinda; and

**WHEREAS**, Employee specifically negotiated for a position of .9 FTE (full-time equivalent); and

**NOW, THEREFORE**, in consideration of the mutual covenants contained in this document, the City and Employee agree as follows:

**1. TERM**

This Agreement shall be in full force and effective from the effective date stated in the Agreement’s first paragraph through the effective date of termination or resignation by either the City or Employee as provided herein. (See Paragraphs 5 and 7).

2. **DUTIES**

The City agrees to employ Steve Salomon as a .9 FTE (full time equivalent) City Manager of the City of Orinda to perform the functions and duties as currently in effect or as may later be established by ordinance, resolution or action of the City Council.

3. **COMPENSATION AND HOURS**

The City agrees to compensate Employee for his services as City Manager as follows:

- A. As of the effective date, Employee's base salary will be \$238,320.57 per year (which is the .9 FTE calculated salary of an annual salary of \$264,800.64, which will be paid according to the City's regular payroll periods, policies, and practices, except as modified by the specific terms of the Agreement. Employee will be paid this compensation retroactive to August 3, 2019.
- i. Employee will log hours worked each day in the City's time record spreadsheet.
  - ii. Employee will perform 36 hours of work per week, or Employee will otherwise account for 36 hours per week as non-work time. More specifically, Employee will account for 36 hours a week as one of the following:
    - 1. Hours worked, or
    - 2. Hours not worked but paid, such as vacation, holiday, jury duty service, or other paid time off category, or
    - 3. Hours not paid (or unpaid leave), with Employee's salary to be accordingly reduced by the amount of unpaid leave taken. (29 C.F.R. 541.710).
  - iii. Employee will be exempt from overtime pay because Employee will be paid a salary and will perform exempt services as an exempt executive and/or administrative employee.
  - iv. Although Employee is overtime-exempt, if Employee is in paid status by working or by taking vacation or holiday for over 36 hours in any work week, City will pay an additional hourly rate of \$127.31 for extra

time that Employee works above 36 paid hours in that work week, which shall be paid pro rata based on time worked above 36 hours, rounded up or down to the closest quarter hour (15-minute increment).

- B. Periodically, City Council will set performance objectives for Employee. Periodically, Employee and City Council shall hold a work plan review or performance review with Employee, and such a review shall occur within the 12-month period after the Agreement's effective date. Employee shall assure that this review item is placed on the closed session agenda for Council consideration. City Council shall evaluate the effectiveness of Employee, and the parties will review the effectiveness of the Agreement.
- C. If Employee's performance is satisfactory when reviewed, Employee shall timely cause the City Council's consideration of a salary increase to be placed on the City Council's regular meeting open session agenda in or around Spring or Summer of each year. A salary increase, if any is granted, will be effective on the date Council specifies, but if an increase is granted for a fiscal year after July 1 of the fiscal year, the compensation increase shall be made retroactive to July 1 (the beginning of that fiscal year). The total salary increase to be considered at that time shall not exceed three percent (3%), unless Council determines a higher increase is fiscally responsible and is warranted in recognition of the City Manager's accomplishments. The hourly payment rate in Paragraph 3(A)(iv) for additional time worked beyond 36 hours per week will be adjusted by the same percent increase approved for salary, if any, effective on the date Council specifies for the salary increase, but if an increase is granted for a fiscal year after July 1 of the fiscal year, the compensation increase shall be made retroactive to July 1 of that fiscal year.
- D. The Agreement terminates on the effective date of a termination or resignation (See Paragraphs 5 and 7). There is no automatic increase in the level of compensation, so the Agreement complies with Cal. Gov't Code § 3511.2(a).

#### 4. **BENEFITS**

In addition to the compensation set forth in Section 3 of this Agreement, Employee shall receive benefits to which Employee is entitled at a prorated status of .9 FTE, including the following benefits:

A. General Leave.

Employee shall receive general leave annually at 90% or .9 of 25 days or 200 hours (which is 180 hours per year or 7.5 hours per pay period for 24 payroll periods). \*

\* Orinda has 26 payroll periods, but for general leave accrual, the monthly vacation accrual is divided in half, with half received on the first payday of the month and the second half received on the second payday of the month. For the two months with a third payday, there is no additional accrued general leave added on the third payday. All monthly vacation accrual is provided on the first and second paydays of each month.

- a. Accrued general leave may be used for vacation or for sick leave. Up to 24 hours per year of accrued general leave may be used for the purposes for which Paid Sick Leave (PSL) is allowed to be used under the California Healthy Workplaces, Healthy Families Act of 2014. PSL may be used for the diagnosis, care, or treatment of an existing health condition of, or preventative care for, an employee or an employee's family member. The definition of "family member" is broad and includes, for instance, children, parents, parents-in-law, spouses, registered domestic partners, grandparents, grandchildren, and siblings. PSL may also be used by victims of domestic violence, sexual assault, or stalking.
- b. General Leave is accrued throughout the year based on time worked, as described above in 4.A. of this Agreement, and will not accrue during any period of an unpaid leave of absence of a week or more.
- c. When Employee takes a full day off, Employee will be paid 7.2 hours from his accrued general leave account.
- d. Employee's vacation, if two or more workdays off, will be scheduled with at least two weeks' prior notice to Council, and Employee will make every reasonable effort to schedule vacation at a time when there is no regularly scheduled Council meeting. If Employee will miss a regularly scheduled Council meeting because of vacation, Employee will obtain the Mayor's prior

approval before scheduling that vacation. Such approval will not be unreasonably withheld. For missed Council meetings, Employee will name an Acting City Manager and prepare staff to cover the meeting.

- e. Once during each fiscal year, if Employee has accrued more than 240 hours of general leave, he may elect to cash out a maximum of 80 hours of accrued general leave. A balance of no less than 160 hours must remain after cash out.
- f. Upon termination, including death, Employee or his estate shall be paid for all accrued unused general leave at the Employee's base rate at the time of termination.

B. **Holidays.** The City observes the following holidays and will provide Employee time off with pay of 7.2 hours for each holiday (.9 of an 8-hour holiday) unless otherwise provided in this Agreement.

<b>Holiday</b>	<b>Day Observed</b>
New Years Day	January 1
MLK Jr. Birthday	Third Monday in January
Washington's Birthday	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veterans' Day	November 11
Thanksgiving Day	Fourth Thursday in November
The Day After Thanksgiving	Fourth Friday in November
Christmas Eve (1/2 day or 3.6 hours)	December 24
Christmas	December 25

If the observed holiday falls on a Saturday, the City shall observe it on the Friday immediately preceding the holiday. If the observed holiday falls on a Sunday, the City shall observe it on the Monday immediately following the holiday. Employee also shall be granted two floating holidays of 7.2 hours each day for each calendar year. If an observed City holiday occurs while Employee is taking general leave, no deduction from such accrued leave will be made for the holiday period.

C. **Bereavement Leave.** If Employee experiences a death in his immediate family, he shall be granted up to 3 working days of 7.2 hours each day of paid leave for the purpose of arranging and attending the funeral or memorial service. "Immediate

family” is limited to spouse or domestic partner, mother, father, sister, brother, child, grandmother, grandfather, aunt, uncle, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandchild or dependent.

- D. Jury Duty & Subpoena Leave. If Employee is called or required to serve as a juror, he shall be entitled to be absent with pay (7.2 hours each day) from his duties with the City during the period of such service and while necessarily being present in court as a result of such call. Employee is required to be present at work when not serving as a juror or as a member of a jury selection panel. Employee must surrender to the City any payment received for jury service, excluding mileage reimbursement. If Employee is called to testify pursuant to a subpoena in litigation not involving the City, he may use accrued general leave during that time. If Employee is subpoenaed for litigation involving the City, leave with pay will be given.
- E. Group Medical/Dental/Vision Insurance Benefits. Employee may participate in the City’s group medical and dental benefits with the City that are available to Employee, with City paying 90% and Employee paying 10% of the premium costs of the applicable plan, subject to any maximum or cap the City pays. (The City’s 90% contribution will not exceed the maximum contribution amount the City pays for an employee’s health insurance coverage or “cap”). The City agrees to increase the City contribution for medical insurance premiums by an amount equal to 7 % (based on Kaiser rates for each premium level) during each calendar year (effective January 1st) (again not exceeding any applicable cap). Any increase above 7% shall be shared equally between the City and Employee (again not exceeding any applicable cap). The City will also pay 90% of the family premium for dental and vision plans for Employee and eligible dependents, including a domestic partner with rate increases up to 10% annually (again not exceeding any applicable cap), if Employee pays the remaining 10% of premium costs for dependents also. If Employee is required to partially pay premiums, he shall be allowed to make these payments with pre-tax deductions. The medical and dental benefit coverage for dependent children extends to the date of their

26th birthday, providing they meet the Internal Revenue Service definition of "dependent". If Employee chooses to complete and submit an Affidavit of Domestic Partnership and sign up for medical benefits and/or dental benefits for a domestic partner, Employee shall be subject to federal and state income tax withholding on the imputed income (City's contribution toward the domestic partner's benefits) if the domestic partner is not a dependent as defined by the IRS. Employee may also choose the cash-in-lieu of benefits if Employee waives medical insurance coverage and meets the requirements for the cash-in-lieu payment. Upon termination of Employee's employment, to the extent allowed by COBRA, Employee and dependents may remain in the same City group medical, dental, and/or vision plan for the time allowed under COBRA if immediately before Employee's separation, each is an active subscriber. Under COBRA, Employee pays the full premium costs.

- F. Retirement Plan. The City will make annual contributions to the International City Management Association Retirement Corporation (ICMA-RC) Money Purchase Plan (401(a)) in the amount of 13% of Employee's base salary identified in 3.A. of the Agreement (but City will not make contributions on the additional hourly amounts, if any are paid). Additionally, Employee shall contribute 3% of Employee's base salary identified in 3.A. of the Agreement to this 401(a) plan, and the City shall contribute a 3% match (but City will not make contributions on the additional hourly amounts, if any are paid). Employee is also eligible to participate in the City's Deferred Compensation Plan (457) deferred compensation plan through voluntary payroll deductions from the employee's salary. Employee may contribute, by payroll deduction, an amount up to the maximum allowed by law.
- G. Flexible Benefits Plan. Employee may participate in the City's standard flexible benefits plan, a full description of which is available from the Human Resources Director.
- H. Vehicle Allowance. Employee shall receive a vehicle allowance of \$800 per month. This amount reflects the fact that Employee does not plan to relocate

closer to Orinda and will not receive any relocation assistance from the City. Instead, Employee will commute a significant distance to work.

- I. Cellular Phone. Employee shall receive a cellular phone paid for by the City to use for City business.
- J. Administrative Leave. As Employee is being paid for additional hours worked above 36 hours a week, Employee receives no administrative leave.
- K. Professional Development Costs. The City shall pay standard professional development costs and membership fees for Employee.
- L. Disability Insurance. The City shall provide and pay for coverage for Employee under its standard long-term disability insurance, a full description of which is available from the Human Resources Director.
- M. Accidental Death and Dismemberment Insurance. The City shall provide and pay for coverage for Employee under its standard accidental death and dismemberment insurance, a full description of which is available from the Human Resources Director.
- N. Life Insurance. The City shall provide and pay for life insurance for Employee in the amount of one hundred thousand dollars (\$100,000.00.)
- O. Technical Equipment. The City shall provide necessary technical equipment as Employee and the City reasonably deems appropriate.

**5. TERMINATION BY CITY**

The Agreement is for employment at will. Without cause and without stating a reason, the City may terminate the Agreement with two months' advance written notice to Employee with the termination effective two months after the notice, unless the parties otherwise agree to a shorter notice period and effective date.

**6. SEPARATION AND ACCRUED LEAVE**

If Employee's employment is ended, no severance payment will be made, but City shall compensate Employee for all accrued but unused general leave.



**7. RESIGNATION BY EMPLOYEE**

In the event that Employee voluntarily resigns his position with the City, Employee shall give the City six months' written notice in advance, if feasible, with the resignation effective six months after the notice, unless the parties otherwise agree to a shorter or longer notice period and effective date.

**8. INDEMNIFICATION**

Beyond that required under federal, state or local law, City shall defend, save harmless and indemnify Employee against any third party tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring within the scope of employment and in the performance of Employee's duties as City Manager or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act or omission involved willful or wanton misconduct, actual fraud, corruption or actual malice and/or unless applicable law prohibits the save harmless and indemnification.

Employee may request and the City shall not unreasonably refuse to provide independent legal representation at City's expense, and City may not unreasonably withhold approval if independent legal counsel for Employee is required under applicable law. Legal representation selected by City and provided by City for Employee shall extend until a final determination of the legal action, including any appeals brought by any party.

The City shall indemnify Employee against any and all losses, damages, judgments, interest, settlements, fines, court costs and other reasonable costs and expenses of legal proceedings including but not limited to attorneys fees, and any other liabilities incurred by, imposed upon, or suffered by Employee in connection with or resulting from any claim, action, suit, or other proceedings, actual or threatened, arising out of or in connection with the performance of his duties which the City is required to defend under the previous paragraphs. Any settlement of any claim requires prior approval of City in order for indemnification, as provided in this Section, to be available.

Further, City agrees to pay all reasonable litigation expenses of Employee throughout the pendency of any litigation that the City is required to defend under the previous paragraphs.

Such expense payments shall continue beyond Employee's service to City as long as litigation is pending.

Further, City agrees to pay Employee reasonable consulting fees not to exceed the additional hourly rate specified in Agreement paragraph 3(A)(iv) and travel expenses when, during a period when Employee is no longer employed by City, Employee serves as a witness, advisor or consultant to City regarding pending litigation.

**9. BOND**

The City shall bear the full cost of any fidelity or other bonds required of Employee under any law or ordinance.

**10. PROVISIONS REQUIRED BY ASSEMBLY BILL 1344 (2011)**

As required by Government Code section 53243, to the extent this Agreement provides paid leave salary pending an investigation, any such salary provided for that purpose shall be fully reimbursed if Employee is convicted of a crime involving an abuse of his office or position. As required by Government Code section 53243.1, to the extent this Agreement provides funds for the legal criminal defense of Employee, any such funds provided for that purpose shall be fully reimbursed to the City if Employee is convicted of a crime involving an abuse of his office or position. As required by Government Code section 53243.2, regardless of the term of this Agreement, if it is terminated, any cash settlement related to the termination that Employee may receive shall be fully reimbursed to the City if Employee is convicted of a crime involving an abuse of his office or position. As required by Government Code section 53243.3, if City provides, in the absence of a contractual obligation, for any of these payments mentioned in this paragraph, then Employee, if Employee receives any payments provided for those purposes, shall fully reimburse City if Employee is convicted of a crime involving an abuse of his office or position. The phrase "abuse of office or position" is defined by Government Code section 53243.4 to mean either: (a) An abuse of public authority, including, but not limited to, waste, fraud, and violation of the law under color of authority, or (b) A crime against public justice, including, but not limited to, a crime described in Title 5 (commencing with Section 67), Title 6 (commencing with Section 85), or Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

**11. GENERAL PROVISIONS**


- A. This Agreement shall constitute the entire Agreement between the parties, and this Agreement supersedes all prior agreements, documents, understandings, and discussions between the parties.
- B. This Agreement shall be binding upon and inure to the benefit of the successors in interest of Employee, including but not limited to heirs, devisees, assigns, fiduciaries and personal representatives of Employee.
- C. The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they were executed by both parties subsequent to the expungement or judicial modification of the invalid provision.
- D. This Agreement shall be construed in accordance with the laws of the State of California, and the parties agree that venue shall be in Contra Costa County, California.
- E. Some sections of this Agreement are intended, by their terms, to survive termination of Employee's employment with the City. Those sections shall survive termination of employment and/or this Agreement.
- F. This Agreement may be amended from time to time by mutual written agreement of the parties. This Agreement cannot be modified by the parties except in a writing that is signed by both parties and that is approved by City Council.
- G. Employee shall be subject to and comply with all state and local laws regarding conflicts of interest.
- H. All documents provided to Employee by the City and all reports and supporting data prepared by Employee for the City are the sole property of the City and shall be delivered to the City upon termination of this Agreement or at the City's written request. All confidential reports, information, exhibits and data, including but not limited to electronic data, prepared or assembled by Employee while he serves as City Manager are confidential until released by the City to the public, and Employee shall not make any of these unreleased documents or information

available to any individual or organization, other than the City Attorney without prior written consent signed by the City Council.

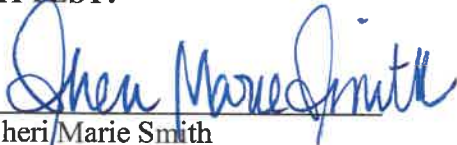
- I. The parties agree that any ambiguity in this Agreement shall not be construed or interpreted against, or in favor of, either party. The parties agree that ambiguities concerning matters addressed in this Agreement should be resolved in a manner consistent with the City Council's approved Manual governing the employment of mid-managers and directors, to the extent those provisions are not inconsistent with this Agreement.

**AUTHORIZED SIGNATURES:**

  
\_\_\_\_\_  
Darlene K. Gee, Mayor  
City of Orinda

  
\_\_\_\_\_  
Steve Salomon, Employee

**ATTEST:**

  
\_\_\_\_\_  
Sheri Marie Smith  
City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Deanna Mouser  
Employment Counsel for City