

## CITY OF SIGNAL HILL

### CITY MANAGER EMPLOYMENT AGREEMENT

This CITY MANAGER EMPLOYMENT AGREEMENT (hereinafter referred to as the "AGREEMENT") is entered into and made effective this 13th day of December, 2022, by and between the CITY OF SIGNAL HILL, a charter city and municipal corporation (hereinafter referred to as the "CITY") and CARLO TOMAINO, an individual (hereinafter referred to as "EMPLOYEE"). For purposes of this AGREEMENT, CITY and EMPLOYEE may be collectively referred to as the "Parties" or individually as a "Party."

### RECITALS

WHEREAS, it is the desire of the City Council of the City of Signal Hill (hereinafter the "City Council") to employ an individual to serve in the position of City Manager, which position is prescribed by state law and the CITY's Municipal Code; and

WHEREAS, California Government Code section 34852 provides that an ordinance establishing a city manager form of government shall define the powers and duties of the city manager; and

WHEREAS, the duties of the City Manager of the CITY are set forth in full in Signal Hill Municipal Code ("SHMC") Chapter 2.04 and in Exhibit "A" to this AGREEMENT; and

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

WHEREAS, based on EMPLOYEE's executive and administrative qualifications and ability, the City Council desires to employ EMPLOYEE to serve as the City Manager for the CITY; and

WHEREAS, EMPLOYEE has the required level of education, experience, skills and expertise to serve as the City Manager of the CITY; and

WHEREAS, EMPLOYEE desires to perform and assume responsibility for the provision of City Manager services to the CITY and its related agencies; and

WHEREAS, the Parties wish to establish the terms and conditions of EMPLOYEE's employment with the CITY and its related agencies through this AGREEMENT;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the CITY and EMPLOYEE hereby agree as follows:

### AGREEMENT

#### **1.0 EMPLOYMENT & DUTIES**

1.1 Duties. The City Council hereby appoints and employs EMPLOYEE as City Manager for the CITY to perform the functions and duties of that position, as described in Exhibit "A" to this AGREEMENT, Signal Hill Municipal Code § 2.04.010 through 2.04.280, the California Government Code, and such other legally permissible and proper duties and

functions as the City Council shall, from time to time, direct or assign to EMPLOYEE. CITY reserves the right to amend City Manager functions and duties, as it deems necessary and appropriate, without requiring EMPLOYEE's agreement or an amendment of this AGREEMENT. EMPLOYEE agrees to perform all such functions and duties to the best of his ability and in an efficient, competent, and ethical manner.

1.2 Work Schedule. It is recognized that the City Manager is expected to engage in the hours of work that are necessary to fulfill the obligations of the position, must be available at all times, and must devote a great deal of time outside the normal office hours to the business of the CITY. EMPLOYEE acknowledges that proper performance of the duties of City Manager will require EMPLOYEE to generally observe normal business hours (currently 7:30 a.m. to 5:30 p.m., Monday through Thursday, and 7:30 a.m. to 4:30 p.m., Friday, with Employee off on alternating Fridays, including a standard one hour lunch period), as set by the CITY and as may be revised from time-to-time by the CITY, and will also often require the performance of necessary duties outside of normal business hours. Furthermore, the City Manager position remains an "exempt" classification under the overtime provisions of the federal Fair Labor Standards Act ("FLSA") and EMPLOYEE shall not be entitled to any compensation for overtime nor subject to such overtime provisions of the FLSA.

1.3 FLSA Exempt Status. EMPLOYEE acknowledges and agrees that the City Manager position is that of an exempt employee of the CITY for the purposes of the FLSA.

1.4 Other Activities. EMPLOYEE shall focus his professional time, ability, and attention to the CITY's business during the term of this AGREEMENT. EMPLOYEE shall not engage, without the express prior written consent of the City Council, in any other business duties or pursuits whatsoever, or directly or indirectly render any services of a business, commercial, or professional nature to any other person or organization, whether for compensation or otherwise, that is or may be competitive with the CITY, that might cause a conflict-of-interest with the CITY, or that otherwise might interfere with the business or operation of the CITY or the satisfactory performance of the functions and duties of the City Manager.

1.5 Employment Status. Upon appointment to the City Manager position, EMPLOYEE shall serve at the will and pleasure of the City Council and understands that by accepting the City Manager appointment, he shall be an "at-will" employee and shall be subject to summary dismissal without any right of notice or hearing, including any due process pre-disciplinary "Skelly" hearing. The CITY may terminate EMPLOYEE at any time in accordance with Section 3.4 below.

1.6 Exemption from Personnel System. SHMC §2.80.015(E) expressly exempts the City Manager position from the CITY's Personnel System established in SHMC Chapter 2.80. EMPLOYEE understands, acknowledges and agrees that EMPLOYEE is exempt from the CITY's Personnel System.

1.7 CITY Documents. All data, studies, reports and other documents prepared by EMPLOYEE while performing his duties during the term of this AGREEMENT shall be furnished to and become the property of the CITY, without restriction or limitation on their use. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other materials either created by or provided to EMPLOYEE in

connection with the performance of this AGREEMENT shall be held confidential by EMPLOYEE, except as may be required pursuant to applicable law, or by any governmental agency or court of competent jurisdiction. Such materials shall not be used by EMPLOYEE, without the prior written consent of the City Council, for any purposes other than the performance of EMPLOYEE's duties. Additionally, no such materials may be disclosed to any person or entity not connected with the performance of services under this AGREEMENT, except as required by (a) law, (b) any governmental agency, (c) subpoena, or (d) an order issued by a court of competent jurisdiction.

## **2.0      COMPENSATION AND REIMBURSEMENT**

2.1      Base Salary. For the services rendered pursuant to this AGREEMENT, EMPLOYEE's annual base salary shall start at Two Hundred Fifty Thousand Dollars (\$250,000) ("Base Salary"), which shall be paid on a pro-rated basis biweekly at the same time as other employees of the CITY are paid. Such Salary shall be subject to normal and proper withholdings as determined by state and federal law.

2.2      Salary Review. The City Council and EMPLOYEE agree to conduct an annual Salary review concurrently with the annual performance evaluation set forth in Section 5.2 hereof. The first Salary review will occur in July 2023.

2.3      Salary Adjustment. Following the annual performance evaluation set forth in Section 5.2 hereof and the annual Salary review set forth above in Section 2.2, the City Council may increase EMPLOYEE's base salary and benefits package based on the results of those annual reviews. Any adjustments in the base salary and/or benefits following the annual performance evaluation under Section 5.2 and review under Section 2.2 shall be at the sole discretion of the City Council. Employee will be eligible to receive those salary cost-of-living adjustments, which may be granted by the City Council under the terms of a Memorandum of Understanding with the Signal Hill Employees' Association, upon approval by the City Council. EMPLOYEE is eligible to receive the cost-of-living adjustment of two percent (2%) on July 1, 2023. At EMPLOYEE's election, any salary adjustment approved by the City Council as a result of the annual performance evaluation set forth in Section 5.2 as well as the two percent (2%) increase provided as a cost-of-living adjustment, along with future increases, may be taken as an increase in vacation accrual rather as a salary increase.

2.4      Business Expense Reimbursements. CITY shall reimburse EMPLOYEE for reasonable and necessary travel, and other CITY related business expenses incurred by EMPLOYEE in the performance of his duties. All reimbursements shall be subject to and in accordance with California law, the CITY's adopted policies, and IRS rules for reporting compensation through payroll or reimbursement through accounts payable.

## **3.0      TERM**

3.1      Commencement & Effective Date. EMPLOYEE shall commence service hereunder at 7:30 a.m. Pacific Daylight Time on January 9, 2023, or such other date/time upon which EMPLOYEE and City Council may mutually agree.

3.2      Term. This AGREEMENT shall remain in effect from the Effective Date until this AGREEMENT is terminated pursuant to Section 3.3 or 3.4.

3.3 Termination by EMPLOYEE. EMPLOYEE may terminate this AGREEMENT at any time, provided EMPLOYEE provides the City Council with at least thirty (30) days' advance written notice. In the event EMPLOYEE terminates this AGREEMENT, EMPLOYEE expressly agrees that EMPLOYEE shall not be entitled to any severance pay.

3.4 Termination by CITY. The City Council may terminate this AGREEMENT at any time with or without cause, and without advance notice. The City Council's right to terminate EMPLOYEE pursuant to this Section 3.4 shall not be subject to or in any way limited by the CITY's Rules and Regulations of the Personnel System, or any subsequent related resolutions, or past CITY practices related to the employment, discipline or termination of the CITY's employees. EMPLOYEE is subject to termination at-will and is not entitled to any process, notice, or cause prior to or after termination. Nothing herein shall be construed to create a property interest, where one does not exist by rule of law in the position of City Manager.

(a) Termination by CITY for Cause. The CITY may terminate this AGREEMENT at any time by providing EMPLOYEE with five (5) business days' written notice of the termination for cause and the facts and grounds constituting such cause. The term "cause" shall be defined to include any misconduct materially related to performance of official duties, including but not be limited to any of the following: 1) breach of this AGREEMENT, 2) willful or persistent material breach of duties, 3) résumé fraud or other acts of material dishonesty, 4) unauthorized absence or leave, 5) conviction of a misdemeanor involving moral turpitude (i.e., offenses contrary to justice, honesty, or morality), conviction of a misdemeanor DUI, or conviction of a felony, 6) violation of the CITY's anti-harassment policies and/or a finding that legally prohibited personal acts of harassment against a CITY official or employee or legally prohibited personal acts of discrimination against a CITY official or employee has occurred, 7) violation of the SHMC, ordinances, rules, and regulations, including but not limited to the CITY's Rules and Regulations of the Personnel System and Administrative Policies, 8) use or possession of illegal drugs, 9) engaging in conduct tending to bring embarrassment or disrepute to the CITY, 10) any illegal or unethical act involving personal gain, 11) pattern of repeated, willful and intentional failure to carry out materially significant and legally constituted directions or policy decisions of the City Council, and 12) gross misfeasance or gross malfeasance. The CITY may, in its discretion, place EMPLOYEE on paid or unpaid administrative leave until resolution of any criminal charges brought against EMPLOYEE. If the CITY terminates for cause this AGREEMENT and the services of EMPLOYEE hereunder, the CITY shall have no obligation to pay EMPLOYEE any severance.

(b) Termination by CITY Without Cause. By providing EMPLOYEE at least thirty (30) days' prior written notice thereof, the CITY may terminate EMPLOYEE without cause. Notwithstanding anything above to the contrary, in no event may EMPLOYEE be terminated without cause within ninety (90) days before or after any municipal election for the selection or recall of one or more of the members of the City Council.

3.5 Death of Employee. If during the Term, EMPLOYEE dies, EMPLOYEE's estate shall receive accrued salary (under Section 2) and benefits (under Section 6), but shall not be entitled to any additional compensation or payment, including severance.

#### **4.0 SEVERANCE**

4.1 Severance Pay. In the event EMPLOYEE is terminated without cause and EMPLOYEE agrees to a general waiver and release of all claims related to his employment with CITY, then CITY shall pay to EMPLOYEE severance in an amount equal to the monthly base salary of EMPLOYEE then in effect multiplied by six (6) excluding deferred compensation or the value of any other benefits. This payment shall be made in one lump sum, payable within seven (7) days of the effective date of the agreement containing the general waiver and release. In addition, City shall purchase the six (6) month City Manager separation benefit from the California Joint Powers Insurance Authority (CJPIA). Six (6) months after separation from employment, EMPLOYEE will be provided the CJPIA separation payment of six months' salary, reduced by the amount of any compensation EMPLOYEE has received based on alternate employment during that time. To be eligible for this benefit, EMPLOYEE must meet all of the terms of eligibility for that benefit including, signing a general waiver and release of all claims related to EMPLOYEE's employment, in a form acceptable to CJPIA. If EMPLOYEE chooses not to sign the general waiver and release, EMPLOYEE will not be entitled to any severance, and will retain his rights to file any claim or lawsuit.

4.2 Severance Medical Premium Payment. In the event EMPLOYEE is terminated without cause and agrees to the general waiver and release, as described above, then CITY shall also provide EMPLOYEE with healthcare premium coverage for up to twelve (12) months, or until EMPLOYEE obtains other employment, at the then current monthly health care premium rate provided to current active employees, EMPLOYEE shall use these monies to purchase his health care coverage through COBRA, at a rate of 102 percent of current monthly premiums, but with the same cap as provided under the terms applicable to other management employees. If EMPLOYEE's monthly health premium is less than the current monthly rate provided by the CITY, then EMPLOYEE shall receive an amount equivalent to the monthly premium. In no case shall the CITY provide funds above EMPLOYEE's monthly premium rate. If EMPLOYEE's monthly health premium is more than the currently monthly rate provided by the CITY, then EMPLOYEE shall be responsible for the additional cost.

Notwithstanding the foregoing, should such proposed severance payment exceed the amount authorized to be paid under Government Code Section 53260, et. seq., then the amount paid to EMPLOYEE shall be reduced in the amount necessary to comply with such statute. (Government Code Section 53260 provides that all contracts of employment with a city must include a provision limiting the maximum cash settlement for the termination of the contract to the monthly salary [excluding benefits] multiplied by the number of months left on the unexpired term, but not more than eighteen (18) months if the unexpired term exceeds 18 months and Section 53261 provides that severance shall not include other noncash items except for health benefits which may be continued for the same duration as the severance or until the employee finds other employment, whichever occurs first).

4.3 No Severance Pay if Termination for Cause or Initiated by EMPLOYEE. As provided in Section 3.4(a), should EMPLOYEE be terminated for cause, the CITY shall have no obligation to pay the severance provided for in Section 4.1 above. As provided in Section 3.3, should EMPLOYEE initiate termination of this AGREEMENT, the CITY shall have no obligation to pay the severance provided for in Section 4.1 above.

## **5.0 PERFORMANCE EVALUATIONS**

5.1 Purpose. The performance review and evaluation process set forth herein is intended to provide review and feedback to EMPLOYEE so as to facilitate a more effective management of the CITY. Nothing herein shall be deemed to alter or change the employment status of EMPLOYEE as City Manager (as set forth in Section 1.5 above), nor shall this Section 5.0 be construed as requiring "cause" to terminate this AGREEMENT, or the services of EMPLOYEE hereunder.

5.2 Annual Evaluation. The City Council shall conduct a formal or informal review and evaluate the performance of EMPLOYEE on an annual basis to coincide with the timing of reviews provided to other Management employees, using an evaluation form to be approved by City Council. Such performance review and evaluation shall be conducted concurrently with an annual base salary review provided for in Section 2.2 hereof, and in accordance with the purpose noted in Section 5.1 above. The next such review will occur in July 2023, after the first half year of employment. Nothing in this provision limits City Council's ability to evaluate EMPLOYEE's performance at any time.

5.3 Written Summary. The City Council may, at its sole discretion, elect to provide a written summary of each performance evaluation to EMPLOYEE within two (2) weeks following the conclusion of the performance review and evaluation process, and may, at its sole discretion, schedule at least one (1) City Council closed session with EMPLOYEE to deliver and discuss the evaluation.

## **6.0 BENEFITS AND OTHER COMPENSATION**

6.1 Professional Development. The CITY recognizes its obligation to the professional development of its City Manager, and agrees that EMPLOYEE shall be given adequate opportunities to develop and maintain skills and abilities as a public administrator. EMPLOYEE is expected and encouraged to and does agree to participate in professional organizations and to attend area and regional meetings and conferences related to matters of interest to the CITY consistent with the time required for such attendance in relationship to EMPLOYEE's other responsibilities as determined by the City Council. The City Council hereby agrees to budget an amount to be determined in the exercise of its sole discretion to pay the cost, travel and subsistence expense of EMPLOYEE for professional and/or official travel, meetings, and occasions adequate to continue professional development of EMPLOYEE and to adequately pursue necessary official functions for the CITY. These activities shall include membership in at least one professional association and attendance at one annual conference. EMPLOYEE shall be responsible for maintaining any professional certifications recognized as necessary or desirable in the performance of the duties hereunder. Tuition will be reimbursed to EMPLOYEE for professional and technical courses approved by the City Council and taken in an accredited educational institution provided that: i) the subject matter of the course relates directly to and contributes toward the City Manager position with the CITY; ii) EMPLOYEE has received at least a competent proficiency rating on the last performance evaluation report; and iii) EMPLOYEE has furnished evidence that the course has been completed with at least a "C" or "pass" grade.

The City Council also agrees to budget and pay for travel and subsistence expenses of EMPLOYEE for short courses, institutes, and seminars that are necessary for EMPLOYEE's professional development and for the good of the CITY. The City Council agrees to budget and pay for professional dues and subscriptions of EMPLOYEE reasonably related to the professional growth, development, education and training of EMPLOYEE.

6.2            Management Benefits. For purposes of benefits, in accordance with Resolution 2022-07-6697, as may be amended by the City Council from time to time, the City Manager is considered a "management employee" for purposes of benefits and EMPLOYEE shall receive all benefits provided to other management employees, as they may be amended from time to time. The current benefits include the following:

(a)        Sick Leave. EMPLOYEE shall be entitled to ninety-six (96) hours of sick leave annually. Sick leave shall accrue at the rate of 3.69 hours per pay period. Employee shall be entitled to cash out sick leave in accordance with City policy. Sick leave must be used and deducted from accruals on a minute by minute basis for time missed from normal work hours which for purposes of this section are deemed to be normal City operating hours. Upon termination for any reason, EMPLOYEE shall be entitled to the unused sick leave on the books then existing in a manner consistent with the terms for management employees.

(b)        Vacation Leave. EMPLOYEE shall be entitled to ninety-six (96) hours of vacation leave annually, which shall increase through years of service in accordance with the schedule provided for management employees. Vacation leave shall initially accrue at the rate of 3.69 hours per pay period. Vacation leave may only be accrued to a maximum of two times the yearly accrual, at which point vacation leave accrual will cease until the accrued hours fall below the maximum. Vacation leave must be used and deducted from accruals on a minute by minute basis for time missed from normal work hours which for purposes of this section are deemed to be normal City operating hours. Upon termination, for any reason, EMPLOYEE shall be entitled to one hundred percent (100%) of the unused vacation leave on the books then existing. Employee shall be eligible, after taking forty (40) hours of vacation leave or executive/personal leave, or a combination thereof during the prior 12 month period, to cash out leave in accordance with City policy.

(c)        Holiday Leave. EMPLOYEE shall be granted the same holidays as other management employees, as prescribed under the terms of the Management Resolution and set forth in the Memorandum of Understanding with the Signal Hill Employees' Association, unless EMPLOYEE's services are specifically required by the City Council or by the CITY's business. Holiday leave must be used and deducted from accruals in increments of no less than one hour for time missed from normal work hours which for purposes of this section are deemed to be normal City operating hours.

(d)        Executive Leave and Personal Leave. EMPLOYEE as a management employee shall be entitled to sixty-three (63) hours of executive leave and thirty-six (36) hours of personal leave annually and used in the same manner as vacation leave. Executive and Personal leaves are not cumulative and cannot exceed the annual cap of sixty-three hours and thirty-six hours, respectively, at any time as no further accrual will occur beyond sixty-three (63) or thirty-six (36) hours. Upon each annual accrual, only as much leave shall be accrued as is necessary to bring the balance up to the maximum for that annual accrual period. Executive/Personal leave must be used and deducted from accruals in increments of no less than one hour for time missed from normal work hours which

for purposes of this section are deemed to be normal City operating hours. Upon termination, for any reason, EMPLOYEE shall be entitled to one hundred percent (100%) of the unused executive and personal leave on the books then existing.

(e) Bereavement Leave. In the event of the death of a member of EMPLOYEE's family, including EMPLOYEE's spouse, domestic partner, mother, father, brother, sister, child, grandchild, or grandparent or any one of the same relatives of EMPLOYEE's spouse or domestic partner, EMPLOYEE shall be allowed three (3) bereavement leave days plus two (2) sick leave days for each death of a family member. Bereavement leave must be used and deducted from the total allowed hours in increments of no less than five hours for time missed from normal work hours which for purposes of this section are deemed to be normal City operating hours. In the event of the death of a spouse or multiple family deaths occurring within a 24-hour period, EMPLOYEE shall be allowed forty (40) hours of total bereavement leave for this unfortunate event. In the case of the death or critical illness of a spouse or domestic partner or if the EMPLOYEE must travel 500 or more miles one-way to visit a critically ill immediate family member or attend services, EMPLOYEE shall be entitled to a leave of absence with pay for up to five (5) regular work days.

6.3 Health & Welfare Benefits. EMPLOYEE shall be provided the same health and welfare benefits as other management employees in accordance with Resolution 2022-07-6697, as may be amended by the City Council from time to time. Employee will be provided the same percentage of CITY contribution toward premiums for medical insurance, dental insurance, vision insurance, and disability insurance. CITY also currently provides life insurance (two times salary up to a maximum of \$300,000), a flexible spending account and retiree medical benefits (with employees contributing 1% of their salary towards those future benefits).

6.4 Social Security and Medicare. EMPLOYEE shall pay his own required Social Security and Medicare contributions. (Required Social Security and Medicare contributions are currently at 7.65%.)

6.5 Retirement.

(a) Retirement Plan. EMPLOYEE shall be permitted to continue to participate in the CITY's CalPERS Retirement Program for Miscellaneous Employees 2% at 60 formula.

(b) Employee Contribution. EMPLOYEE shall be responsible for the full member contribution for EMPLOYEE's CalPERS retirement plan, currently at seven percent (7%) of EMPLOYEE's pre-tax compensation.

6.6 Contribution Toward Deferred Compensation. CITY provides a \$1 match for every \$2 contributed by EMPLOYEE, up to a maximum of 4% annual salary.

6.7 Physical Well-Being. CITY provides, by means of reimbursement, up to \$750 per fiscal year for use by the Employee for one or more of the following purposes:

1. Membership in a health club or fitness center.



2. Other formal wellness programs provided by professionals (smoking cessation, weight control, nutrition, or similar programs).
3. Reimbursement for employee medical expenses (deductibles or co-payments) not covered by the employee's health, dental or vision insurance.

Reimbursement to the Employee for his expenditure for one or more of the above purposes shall be accomplished by submitting applicable receipts and a request for reimbursement to Personnel.

6.8 Supplemental Benefits. The following additional benefits are provided to EMPLOYEE as the City Manager:

(a.). Automobile Allowance. CITY shall provide an automobile allowance of \$350 month in lieu of use of a CITY vehicle.

(b.) Vacation Bank. Upon employment, EMPLOYEE shall be entitled to a one time accrued bank of fifty (50) accrued vacation hours.

6.9 Business Equipment. The CITY will provide to EMPLOYEE any job-related personal tools or equipment, such as a computer, cell phone, etc., that serve the professional development of EMPLOYEE and/or is needed to perform EMPLOYEE'S functions and duties. Upon termination, for any reason, EMPLOYEE shall return all business equipment to CITY no later than EMPLOYEE'S last day of employment.

6.10 Bonding. CITY shall bear the full cost of any fidelity or other bonds required for EMPLOYEE under any law or CITY ordinance.

## **7.0 INDEMNIFICATION**

To the extent mandated by the California Government Code, the CITY shall defend, hold harmless, and indemnify EMPLOYEE against any tort, professional liability, claim or demand, or other legal action arising out of an alleged act or omission occurring in the performance of EMPLOYEE's services under this AGREEMENT. Legal representation, provided by CITY for EMPLOYEE, shall extend until a final determination of the issues including any and all losses, damages, judgments, interest, settlements, fines, court costs, and the reasonable costs and expenses of legal proceedings, including appeals, and including attorneys' fees, and expert witness fees and all other trial and appellate costs, and other liabilities incurred, imposed upon, or suffered by EMPLOYEE in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened. This section shall not apply to any crime committed by EMPLOYEE, to any action outside the course and scope of EMPLOYEE's employment, or any other conduct for which indemnification is not required under applicable law.

## **8.0 OTHER TERMS- CONDITIONS OF EMPLOYMENT**

The City Council, in consultation with EMPLOYEE, shall establish any such other terms and conditions of employment as it may determine from time to time, provided such terms and conditions do not exceed the maximum salary and benefits approved by the City Council and are reduced to writing and signed by EMPLOYEE and the Mayor.

## **9.0 GENERAL PROVISIONS**

9.1 Entire Agreement. This AGREEMENT represents the entire AGREEMENT and understanding between the Parties and supersedes any and all other agreements and understandings, either oral or in writing, between the Parties with respect to EMPLOYEE's employment by the CITY and contains all of the covenants and agreements between the Parties with respect to such employment. No ordinances or resolutions of CITY governing employment, including the Personnel System, shall apply unless specified herein. Each Party to this AGREEMENT acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by either Party, or anyone acting on behalf of either Party, which are not embodied herein, and that no other agreement, statement or promises not contained in this AGREEMENT shall be valid or binding upon either Party.

9.2 Amendment. This AGREEMENT may be amended at any time by the mutual consent of the Parties by an instrument in writing, which amendment shall require City Council approval.

9.3 Notices. Any notice required or permitted by this AGREEMENT shall be in writing and shall be personally served or shall be sufficiently given when served upon the other Party as sent by United States Postal Service, postage prepaid and addressed as follows:

To CITY:

Mayor  
City of Signal Hill  
2175 Cherry Ave.  
Signal Hill, California 90755

To EMPLOYEE:

Carlo Tomaino  
[On file with Human Resources Dept.]

Notices shall be deemed given as of the date of personal service or upon the date of deposit in the course of transmission with the United States Postal Service.

9.4 Conflicts Prohibited. During the term of this AGREEMENT, EMPLOYEE shall not engage in any business or transaction or maintain a financial interest which conflicts, or reasonably might be expected to conflict, with the proper discharge of EMPLOYEE's duties under this AGREEMENT. EMPLOYEE shall comply with all requirements of law, including but not limited to, Sections 87100 *et seq.*, Section 1090 and Section 1126 of the Government Code, and all other similar statutory and administrative rules.

9.5 Effect of Waiver. The failure of either Party to insist on strict compliance with any of the terms, covenants, or conditions of this AGREEMENT by the other Party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

9.6 Partial Invalidity. If any provision in this AGREEMENT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

9.7 Governing Law. This AGREEMENT shall be governed by and construed in accordance with the laws of the State of California, which are in full force and effect as of the date of execution and delivery by each Party hereto.

9.8 Government Code §§ 53243 - 53243.4. Assembly Bill 1344, which was subsequently enacted as Government Code §§ 53243 - 53243.4, sought to provide greater transparency in local government and institute certain limitations on compensation paid to local government executives. These statutes also require that contracts between local agencies and its employees include provisions requiring an employee who is convicted of a crime involving an abuse of his office or position to provide reimbursement to the local agency. These statutes are incorporated herein by reference. Accordingly, the Parties agree that it is their mutual intent to fully comply with these Government Code sections and all other applicable law as it exists as of the date of execution of this AGREEMENT and as such laws may be amended from time to time thereafter. Specifically, the following Government Code sections are called out and hereby incorporated by this AGREEMENT:

§53243. Reimbursement of paid leave salary required upon conviction of crime involving office or position.

§53243.1. Reimbursement of legal criminal defense upon conviction of crime involving office or position.

§53243.2. Reimbursement of cash settlement upon conviction of crime involving office or position.

§53243.3. Reimbursement of non-contractual payments upon conviction or crime involving office or position.

§53243.4. "Abuse of office or position" defined.

EMPLOYEE represents that EMPLOYEE has reviewed, is familiar with, and agrees to comply fully with each of these provisions if any of these provisions are applicable to EMPLOYEE, including that EMPLOYEE agrees that any cash settlement or severance related to a termination that EMPLOYEE may receive from the CITY shall be fully reimbursed to the local agency if EMPLOYEE is convicted of a crime involving an abuse of EMPLOYEE' s office or position.

9.9 Independent Legal Advice. The CITY and EMPLOYEE represent and warrant to each other that each has received legal advice from independent and separate legal counsel with respect to the legal effect of this AGREEMENT, or had the opportunity to do so, and the CITY and EMPLOYEE further represent and warrant that each has carefully reviewed this entire AGREEMENT and that each and every term thereof is understood and that the terms of this AGREEMENT are contractual and not a mere recital. This AGREEMENT shall not be construed against the Party or its representatives who drafted it or who drafted any portion thereof.

IN WITNESS WHEREOF, the City of Signal Hill has caused this AGREEMENT to be signed and executed on its behalf by its Mayor, and duly attested by its officers thereunto duly authorized, and EMPLOYEE has signed and executed this AGREEMENT, all in triplicate.

**CITY OF SIGNAL HILL**

**EMPLOYEE**

\_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
Carlo Tomaino

ATTEST:

\_\_\_\_\_  
Carmen R. Brooks  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Best Best & Krieger LLP  
City Attorney

**EXHIBIT A**

**JOB DESCRIPTION CITY MANAGER**

## Chapter 2.04

### ADMINISTRATIVE OFFICER\*

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#### Sections:

- 2.04.010 City manager deemed city administrative officer.
- 2.04.020 Established.
- 2.04.040 Eligibility.
- 2.04.050 Bond.
- 2.04.060 Assistant--Acting administrative officer.
- 2.04.070 Compensation--Reimbursement for expenses.
- 2.04.080 Powers and duties generally.
- 2.04.090 Law enforcement.
- 2.04.100 Supervision of employees.
- 2.04.110 Appointment and removal of officers and employees.
- 2.04.120 Administrative organization.
- 2.04.130 Ordinance recommendation.
- 2.04.140 Council meeting attendance.
- 2.04.150 Financial reports.
- 2.04.160 Budgeting.
- 2.04.170 Purchasing duties.
- 2.04.180 Investigation of complaints.
- 2.04.190 Supervision of public property.
- 2.04.200 Employment hours.
- 2.04.210 Other duties.
- 2.04.220 Relation of council to administrative services.
- 2.04.230 Cooperation of departments and officers.
- 2.04.240 Relation to commissions, boards and committees.
- 2.04.250 Removal--Generally.
- 2.04.260 Removal--Limitations.
- 2.04.270 Nonlimitation of council authority.
- 2.04.280 Conflicts with other provisions.

\* Prior code Ch. 2.08, from which the provisions of this chapter are derived, contained the following historical footnote:  
"Prior ordinance history: Ordinance 537."

#### **2.04.010 City manager deemed city administrative officer.**

The administrative officer of the city shall be referred to as city manager. The use of the title of city manager shall mean the administrative officer of the city.

(Ord. 74-7-731 § 1: Ord. 70-5-659 § 1 (part): prior code § 2.08.140)

#### **2.04.020 Established.**

The office of administrative officer of the city is created and established. The administrative officer shall be appointed by the city council wholly on the basis of his administrative and executive ability and qualifications and shall hold office for and during the pleasure of the city council.

(Ord. 70-5-659 § 1 (part): prior code § 2.08.010)

#### **2.04.040 Eligibility.**

No member of the city council shall be eligible for appointment as administrative officer until one year has elapsed after such council member has ceased to be a member of the city council.

(Ord. 70-5-659 § 1 (part): prior code § 2.08.030)

#### **2.04.050 Bond.**

The administrative officer shall furnish a corporate surety bond to be approved by the city council in such sum as may be determined by the city council and shall be conditioned upon the faithful performance of the duties imposed upon the administrative officer as prescribed in this chapter. Any premium for such bond shall be a proper charge against the city.

(Ord. 70-5-659 § 1 (part): prior code § 2.08.040)

#### **2.04.060 Assistant--Acting administrative officer.**

A. The assistant administrative officer shall serve as administrative officer pro tempore during any temporary absence or disability of the administrative officer.

B. In the event there is no assistant administrative officer, the city council shall designate a qualified person to exercise the powers and perform the duties of administrative officer during his temporary absence or disability.

C. In the event the administrative officer's absence or disability extends over a six-month period, the city council may, after a six-month period, appoint an acting administrative officer.

(Ord. 70-5-659 § 1 (part): prior code § 2.08.050)

#### **2.04.070 Compensation--Reimbursement for expenses.**

A. The administrative officer shall receive such compensation and expense allowances as the city council shall from time to time determine, and the compensation and expenses shall be a proper charge against such funds of the city as the city council shall designate.

B. In addition, the administrative officer shall be reimbursed for all actual and necessary expenses incurred by him in the performance of his official duties, including those incurred when traveling on business pertaining to the city. Reimbursement shall only be made, however, when an itemized claim, setting forth the sums expended for such business for which reimbursement is requested, and has been presented to and approved by the city council.

(Ord. 70-5-659 § 1 (part): prior code § 2.08.060 (part))

#### **2.04.080 Powers and duties generally.**

The administrative officer shall be the administrative head of the government of the city under the direction and control of the city council. He shall be responsible for the efficient administration of all the affairs of the city which are under his control. In addition to his general powers as administrative head, and not as a limitation thereon. It shall be his duty and he shall have the powers set forth in Sections 2.04.090 through 2.04.210.

(Ord. 70-5-659 § 1 (part): prior code § 2.08.070 (part))

#### **2.04.090 Law enforcement.**

It shall be the duty of the administrative officer as representative of the city council to enforce all laws and ordinances of the city and to see that all franchises, contracts, permits, and privileges granted by the city council are faithfully observed.

(Ord. 70-5-659 § 1 (part): prior code § 2.08.070(a))

#### **2.04.100 Supervision of employees.**

It shall be the duty of the administrative officer and he shall have the authority to control, order, and give directions to all department heads, to all contractual employees except the city attorney, to all consultants, and to subordinate officers and employees of the city under his jurisdiction through their department heads.

(Ord. 70-5-659 § 1 (part): prior code § 2.08.070(b))

#### **2.04.110 Appointment and removal of officers and employees.**

It shall be the duty of the administrative officer to, and he shall appoint, remove, promote, and demote any and all officers and employees of the city except the city clerk, city attorney, and city treasurer and other officers and employees whose appointment, removal, promotion and demotion are reserved to the city council, subject to all applicable personnel ordinances, rules and regulations.

(Ord. 83-03-903 § 1: Ord. 70-5-659 § 1 (part): prior code § 2.08.070(c))

#### **2.04.120 Administrative organization.**

It shall be the duty and responsibility of the administrative officer to conduct studies and effect such administrative reorganization of offices, positions, or units under his direction as may be indicated in the interest of efficient, effective and

economical conduct of the city's business.

(Ord. 70-5-659 § 1 (part): prior code § 2.08.070(d))

#### **2.04.130 Ordinance recommendation.**

It shall be the duty of the administrative officer to, and he shall recommend to the city council for adoption such measures and ordinances as he deems necessary.

(Ord. 70-5-659 § 1 (part): prior code § 2.08.070(e))

#### **2.04.140 Council meeting attendance.**

It shall be the duty of the administrative officer to attend all meetings of the city council unless excused therefrom by the mayor individually or city council as a whole, except when his removal is under consideration.

(Ord. 70-5-659 § 1 (part): prior code § 2.08.070(f))

#### **2.04.150 Financial reports.**

It shall be the duty of the administrative officer to keep the city council at all times fully advised as to the financial condition and needs of the city.

(Ord. 70-5-659 § 1 (part): prior code § 2.08.070(g))

#### **2.04.160 Budgeting.**

It shall be the duty of the administrative officer to prepare and submit the proposed annual operating budget, the capital improvement budget, and the proposed annual salary plan to the city council for its approval.

(Ord. 70-5-659 § 1 (part): prior code § 2.08.070(h))

#### **2.04.170 Purchasing duties.\***

It shall be the duty of the administrative officer and he shall be responsible for the purchase of all supplies for all the departments or divisions of the city. No expenditures shall be submitted or recommended to the city council except on report and approval of the administrative officer.

(Ord. 70-5-659 § 1 (part): prior code § 2.08.070(i))

\* For provisions regarding the duties of the purchasing officer, see §3.20.020 of this code.

#### **2.04.180 Investigation of complaints.**

It shall be the duty of the administrative officer to make investigations into the affairs of the city and any department or division thereof, and any contract or the proper performance of any obligations of the city. Further, it shall be the duty of the administrative officer to investigate all complaints in relation to matters concerning the administration of the city government and in regard to the service maintained by public utilities in the city.

(Ord. 70-5-659 § 1 (part): prior code § 2.08.070(j))

#### **2.04.190 Supervision of public property.**

It shall be the duty of the administrative officer to, and he shall exercise general supervision over all public buildings, public parks and all other public property which are under the control and jurisdiction of the city council.

(Ord. 70-5-659 § 1 (part): prior code § 2.08.070(k))

#### **2.04.200 Employment hours.**

It shall be the duty of the administrative officer to devote his entire time to the duties of his office and in furthering the interests of the city.

(Ord. 70-5-659 § 1 (part): prior code § 2.08.070(l))

#### **2.04.210 Other duties.**

It shall be the duty of the administrative officer to perform such other duties and exercise such other powers as may be delegated to him from time to time by ordinance or resolution or other official action of the city council.

(Ord. 70-5-659 § 1 (part): prior code § 2.08.070(m))

#### **2.04.220 Relation of council to administrative services.**

The city council and its members shall deal with the administrative services of the city only through the administrative officer, except for the purpose of inquiry.



(Ord. 70-5-659 § 1 (part): prior code § 2.08.080)

#### **2.04.230 Cooperation of departments and officers.**

It shall be the duty of all subordinate officers and the city clerk, city treasurer and city attorney to assist the administrative officer in administering the affairs of the city efficiently, economically, and harmoniously.

(Ord. 70-5-659 § 1 (part): prior code § 2.08.090)

#### **2.04.240 Relation to commissions, boards and committees.**

The administrative officer may attend any and all meetings of the planning commission, parks and recreation commission, civil service commission, and any other commissions, boards, or committees created by the city council, upon his own volition or upon direction of the city council. At such meetings which the administrative officer attends, he shall be heard by such commissions, boards, or committees as to all matters upon which he wishes to address the members thereof, and he shall inform the members as to the status of any matter being considered by the city council, and he shall cooperate to the fullest extent with the members of all commissions, boards, or committees appointed by the city council.

(Ord. 70-5-659 § 1 (part): prior code § 2.08.100)

#### **2.04.250 Removal--Generally.**

A. The removal of the administrative officer shall be effected only by a majority vote of the whole council as then constituted, convened in a regular council meeting.

B. On termination of employment of the administrative officer by reason of involuntary removal from service other than for misconduct in office, the administrative officer shall receive ninety days' written notice prior to such termination.

(Ord. 70-5-659 § 1 (part): prior code §§ 2.08.060 (part), 2.08.110)

#### **2.04.260 Removal--Limitations.**

Notwithstanding the provisions of Section 2.04.250, the administrative officer shall not be removed from office, other than for misconduct in office, during or within a period of ninety days next succeeding any general municipal election held in the city at which election a member of the city council is elected. The purpose of this provision is to allow any newly elected member of the city council or a reorganized city council to observe the actions and ability of the administrative officer in the performance of the powers and duties of his office. After the expiration of the ninety-day period, the provisions of Section 2.04.250 as to the removal of the administrative officer shall apply and be effective.

(Ord. 70-5-659 § 1 (part): prior code § 2.08.120)

#### **2.04.270 Nonlimitation of council authority.**

Nothing in this chapter shall be construed as a limitation of the power or authority of the city council to enter into any supplemental agreement with the administrative officer delineating additional terms and conditions of employment not inconsistent with any provisions of this chapter.

(Ord. 70-5-659 § 1 (part): prior code § 2.08.130)

#### **2.04.280 Conflicts with other provisions.**

To the extent that any provision of this chapter clearly conflicts with the provision of any chapter, this chapter shall control.

(Ord. 70-5-659 § 1 (part): prior code § 2.08.150)