

AMENDED AND RESTATED
CITY MANAGER EMPLOYMENT AGREEMENT

between the

City of El Cerrito

and

Scott Hanin

dated

June 1, 2016

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CITY MANAGER EMPLOYMENT AGREEMENT

between

the City of El Cerrito

and

Scott Hanin

This Agreement is entered into as of June 1, 2016 by and between the City of El Cerrito, California, a municipal corporation (the "City"), and Scott Hanin, an individual (the "City Manager"). The City and the City Manager are sometimes individually referred to as a "Party" and collectively as "Parties." This Agreement replaces the prior agreement dated March 20, 2006.

RECITALS

1. The City requires the services of a City Manager.
2. The City Manager has the necessary education, experience, skills and expertise to serve as the City's City Manager; and
3. The City Council of the City (the "City Council") desires to employ Scott Hanin to serve as the City Manager of City.
4. The Parties desire to execute this Agreement pursuant to the authority of and subject to the provisions of Government Code Section 53260 et seq.
5. In consideration of these Recitals and the performance by the Parties of the promises, covenants, and conditions herein contained, the Parties agree as follows:

AGREEMENT

1. EMPLOYMENT

The City hereby employs the City Manager as its City Manager, and the City Manager hereby accepts such employment.

2. COMMITMENTS AND RESPONSIBILITIES

The City Manager's commitments and responsibilities are contained in various provisions of State statute, including, but not limited to, the Government Code the El Cerrito Municipal Code and in City policies and procedures, including, but not limited to, a job description for the position of City Manager. The City Council also may designate the City Manager as the chief executive of other City-related legal entities. Such other legal entities could include a redevelopment agency, financing authorities, and joint powers authorities.

3. PERFORMANCE EVALUATION

Annual performance evaluations are an important way for the City Council and City Manager to ensure effective communications about expectations and performance. In order to provide effective and timely feedback on performance, the City Council may conduct a performance review of the City Manager on an annual or more frequent basis. The City Council, in consultation with the City Manager, may define such goals and performance objectives as the Council determines are necessary for the proper operation of the City. The Parties acknowledge that the City Manager is a member of the International City Management Association ("ICMA"). The Parties mutually desire that the City Manager be subject to and comply with the ICMA Code of Ethics as they exist on June 1, 2016. A copy of the ICMA Code of Ethics is attached to this Agreement as Attachment A.

The City and the City Council agree that neither the City Council nor any of its members will give the City Manager any order, direction, or request that would require the City Manager to violate the ICMA Code of Ethics.

4. COMPENSATION

The City agrees to provide the following compensation to the City Manager during the term of this Agreement:

A. Compensation & Required City Costs

For purposes of this Agreement, the phrases "annual salary" and "base salary" shall not include any benefits such as automobile allowance, pension or retirement plan contributions, leave allowances or City paid deferred compensation plan contributions and the phrase "total compensation" shall include annual or base salary, automobile allowance, pension or retirement plan contributions and City paid deferred compensation plan contributions.

All required City costs shall follow all applicable laws. Changes to required City costs due to changes to any applicable law shall not constitute termination under this Agreement.

1. Base Salary

As of the effective date of this Agreement, the monthly salary for the position of City Manager shall be eighteen thousand and seven hundred dollars (\$18,700). An annual cost of living salary increase similar to that paid to the City's Directors (Department Heads) shall be effective with the first payroll period paid in July of each year beginning June 1, 2016. The City Manager shall be paid at the same intervals and in the same manner as regular City employees.

The City shall not at any time during the term of this Agreement reduce the base salary, compensation or other financial benefits of the City Manager, unless as part of a general City management salary reduction, and then in no greater percentage than the average

reduction for all City Directors (Department Heads).

2. Required City Costs and Deferred Compensation

- (a) Federal Insurance Contributions Act (FICA).
 - (i) Old Age Survivor and Disability Income (OASDI).
 - (ii) Medicare.
- (b) Unemployment Compensation.
- (c) Public Employees Retirement System (PERS).

The City contracts with the California Public Employees' Retirement System for retirement benefits. The City will pay the City's share for participation in the Public Employees' Retirement System. Should the City Directors (Department Heads) pay for any portion of the employee's contribution to PERS during the term of this Agreement, City Manager shall pay the same portion of employee's contribution to PERS as the City Directors (Department Heads).

(d) The cost of any fidelity or other bonds required by law for the City Manager.

- (e) Workers' Compensation.
- (f) Life Insurance.

The City shall pay for a life insurance policy for the City Manager. The policy shall be in an amount equal to the City Manager's annual salary to the nearest thousand dollar.

- (g) Long-term Disability.

The City shall pay for long-term disability for the City Manager in an amount equal to two-thirds of the City Manager's annual salary.

B. Basic Benefits

1. Holidays

The City Manager is entitled to the same paid holidays per calendar year as is consistent with those provided to the City's non-public safety Directors (Department Heads).

2. Leave Allowance

(a) The City Manager shall receive the same vacation and sick leave accrual and benefits as provided to the non-public safety Directors (Department Heads), and the City Manager may accrue earned vacation time not to exceed twice the rate of accrual. The beginning vacation accrual shall be twenty-two (22) days per calendar year. The City Manager may accrue unlimited earned sick leave time. The City Manager shall be paid for any unused accrued vacation upon either voluntary or involuntary termination of employment.

(b) The City Manager shall be entitled to 75 hours of executive/administrative leave per year. The City Manager may accumulate executive/administrative leave days up to a maximum of ten working days except as described below. The City Manager shall receive an additional 40 hours of executive/administrative leave to be used in Fiscal Year 2016-17 and an additional 160 hours of administrative/executive leave to be used during Fiscal Year 2017-18. In the event of termination or resignation from employment, the City Manager shall be entitled to compensation for one hundred percent of accumulated and unused administrative leave days, up to the maximum set forth above.

3. Automobile

The City Manager shall be provided a monthly automobile allowance of \$50 in exchange for making a vehicle available for the City Manager's own use and for City-related business and/or functions during, before and after normal work hours so long as the City Manager remains a resident of El Cerrito. By the City Manager making the City Manager's personal automobile available for use, the City Manager is not precluded from using City vehicles for City business during, before, and after the normal workday on occasion, when appropriate.

5. SECURITY

A. Pensions

1. Federal Insurance Contributions Act (FICA)
2. Public Employees Retirement System (PERS)

(a) Under Government Code Section 20636(c), the City has elected to report the value of employer-paid member contributions (EPMC) to CalPERS as additional compensation.

(b) For the purposes of PERS reporting, the City shall incorporate into the reported base pay as compensation earnable, but only to the extent, if any, that PERS will consider it to be compensation earnable, all payments to the City Manager for the following: pay for performance, incentive payments, cafeteria plan contributions, City-paid employee portion of PERS, and deferred compensation, as well as Section 4.A(l) base pay.

- (c) Availability of a 457 deferred compensation plan.

6. SEPARATION

A. Resignation/Retirement

The City Manager may resign at any time and agrees to give the City at least 45 calendar days advance written notice of the effective date of the City Manager's last day, unless the Parties otherwise agree in writing. If the City Manager retires from public service while with the City, the City Manager shall provide *six months'* advance notice unless otherwise mutually agreed upon.

B. Termination & Removal

1. The City Manager is an at-will employee serving at the pleasure of the City Council as provided in Government Code Section 36506.

2. The City Council may remove the City Manager at any time with or without cause, by a majority vote of its members. Notice of termination shall be provided to the City Manager in writing. Termination as used in this Agreement shall include a formal request from a majority of the Councilmembers that the City Manager resign, a reduction in annual salary not a part of a general City management salary reduction or, if during a general City management salary reduction, in a greater percentage than the average reduction for all City Directors (Department Heads), or the elimination of the City Manager's position. Any such notice of termination or act constituting termination shall be given at or effectuated at a duly noticed regular or special meeting of the City Council.

3. The City Manager shall not be removed during the 90-day period preceding or following any City election for membership on the City Council, or during the 90- day period following any change in membership of the City Council.

Given the at-will nature of the position City Manager, an important element the employment agreement pertains to termination. It is in both the City's interest and that of the City Manager that any separation of the City Manager is done in a businesslike manner.

C. Severance Pay

1. In the event the City Manager is terminated by the City Council during such time that the City Manager is willing and able to perform the City Manager's duties under this Agreement and any such termination is not for cause, the City to pay the City Manager a lump sum cash payment equal to twelve months' base salary then effect as provided in 4.A(1) above.

2. In addition, the City shall extend to the City Manager the right to

continue health insurance as may be required by and pursuant to the terms and conditions of the Consolidated Omnibus Budget Reconciliation Act Of 1986 (COBRA). The City agrees to pay the City Manager's COBRA coverage for the same number of months for which the City Manager is entitled to severance pay under Section 6.C(1) above, or until the City Manager either secures full-time employment or obtains other health insurance, whichever of these three events first occurs. The City Manager shall notify the City within five days of securing new full-time employment or insurance.

3. All payments required under Sections 6.C (1), and (2), are subject to and shall be interpreted to comply with the limitations set forth in Government Code Section 53260.

4. The Parties agree that in the event there is any disagreement between the City Manager and the City Council regarding the provisions of this Agreement, the parties shall attempt to resolve such disagreement first through informal mediation between the parties.

D. Involuntary Resignation

In the event that the City Council formally asks the City Manager to resign, then the City Manager shall be entitled to resign and still receive the severance benefits provided in Section 6.C above.

E. Separation for Cause

1. Notwithstanding the provisions of Section 6.C, the City Manager may be terminated for cause. As used in this section, "cause" shall mean only one or more the following:

- (a) Conviction of a felony;
- (b) Continued abuse of drugs or alcohol that materially affects the performance of the Manager's duties. The term "drugs" includes non-prescription drugs and/or non-prescribed drugs;
- (c) Violation of the City's policies regarding discrimination or harassment may, at the election of the City Council, constitute grounds for termination for cause; or
- (d) Repeated and protracted unexcused absences from the City Manager's office and duties.

2. In the event the City terminates the City Manager for cause, then the City may terminate this Agreement immediately, and the City Manager shall be entitled to only the compensation accrued up to the date of termination, payments required by Section 6.F below, and such other termination benefits and payments as may be required

by law. The City Manager shall not be entitled to any severance benefits provided by Section 6.C.

3. In the event the City terminates the City Manager for cause, the City and the City Manager agree that neither Party shall make any written or oral statements to members of the public or the press concerning the City Manager's termination except in the form of a joint press release which is mutually agreeable to both Parties. The joint press release shall not contain any text or information that would be disparaging to either Party. Provided, however, that either Party may verbally repeat the substance of any such press release in response to inquiries by members of the press or public.

F. Payment for Unused Leave Balance

1. On separation from City employment, the City Manager shall be paid for all unused accrued leave allowances provided in Section 4.B (2) above, and/or the City Manager may apply the leave time to service credit for retirement purposes if permitted by PERS. Accumulated leave balances shall be paid at the City Manager's monthly salary rate at the effective date of separation.

2. In the event the City Manager dies while employed by the City under this Agreement, the City Manager's beneficiaries or those entitled to the City Manager's estate, shall be entitled to the City Manager's earned salary, and any payments for accrued but unused benefits, including compensation for the value of all accrued leave balances

7. MISCELLANEOUS PROVISIONS

A. Term

1. Initial Term

The Initial Term shall be for a period commencing on June 1, 2016, , and continuing until June 30, 2019, (the initial "Termination Date").

2. Subsequent Terms

This Agreement shall automatically renew as provided herein unless the City gives the City Manager timely notice of non-renewal. The City must give the City Manager written notice of non-renewal at least twelve (12) calendar months prior to the initial Termination Date or any succeeding Termination Date. Unless such notice of non-renewal is timely given, this Agreement shall automatically renew for an additional three-year Term, and a new Termination Date shall be accordingly established.

B. Provisions that Survive Termination

Many sections of this Agreement are intended by their terms to survive the City

Manager's termination of employment with the City. These sections, and the others so intended, shall survive termination of employment and termination of this Agreement.

C. Amendments

This Agreement may be amended at any time by mutual agreement of the City and the City Manager and shall not constitute termination of the City Manager or of this Agreement. Any amendments are to be negotiated, put in writing, and adopted by the City Council.

D. Indemnification

1. To the full extent of the law as provided by the California Torts Claims Act (Government Code Section 810 et seq.) and the indemnity provisions of this Agreement, whichever shall provide the greatest protection to the City Manager, the City and the El Cerrito Redevelopment Agency, jointly and severally, shall defend and indemnify the City Manager against and for all losses sustained by the City Manager in direct consequences of the discharge of the City Manager's duties on the City's behalf for the period of the City Manager's employment.

2. The City shall defend, save harmless and indemnify the City Manager against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of the City Manager's duties as City Manager. The City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon.

3. Whenever the City Manager shall be sued for damages arising out of the performance of the City Manager's duties, the City shall provide defense counsel for the City Manager in such suit and indemnify the City Manager from any judgment rendered against the City Manager; provided that such indemnity shall not extend to any judgment for damages arising out of any willful wrongdoing. This indemnification shall extend beyond termination of employment and the otherwise expiration of this Agreement to provide protection for any such acts undertaken or committed in the City Manager's capacity as City Manager, regardless of whether the notice of filing of a lawsuit occurs during or following employment with the City. This indemnity provision shall survive the termination of the Agreement and is in addition to any other rights or remedies that the City Manager may have under the law.

4. The City and all parties claiming under or through it, hereby waives all rights of subrogation and contribution against the City Manager, while acting within the scope of the City Manager's duties, from all claims, losses and liabilities arising out of or incident to activities or operations performed by or on behalf of the City or any party affiliated with or otherwise claiming under or through it, regardless of any prior, concurrent, or subsequent active or passive negligence by the City Manager.

5. In the event that the City Manager shall serve as the chief executive of other City-related legal entities as provided in Section 3.A(1)(c) above, then each provision of this Section shall be equally applicable to each City-related legal entity as though set forth in an indemnity agreement between the City Manager and that legal entity. The City hereby guarantees the performance of this indemnity obligation by the City-related legal entity, and shall indemnify and hold the City Manager harmless against any failure or refusal by City-related legal entity to perform its obligations under this Section.

E. Severability

If any clause, sentence, part, section, or portion of this Agreement is found by a court of competent jurisdiction to be illegal or unenforceable, such clause, sentence, part, section, or portion so found shall be regarded as though it were not part of this Agreement and the remaining parts of this Agreement shall be fully binding and enforceable by the Parties hereto.

F. Laws Affecting Title

In addition to those laws affecting a City Manager, the City Manager shall have the same powers, rights and responsibilities as a Chief Executive Officer, City Administrative Officer, Administrator, and/or City Administrator as those terms are used in local, state or federal laws.

G. Jurisdiction and Venue

This Contract 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.

H. Entire Agreement

This Contract represents the entire agreement of the Parties, and no representations have been made or relied upon except as set forth herein. This Contract may be amended or modified only by a written, fully executed agreement of the Parties.

I. Notice

Any notice, amendments, or additions to this Agreement, including change of address of either party during the term of this Agreement, which the City Manager or the City shall be required, or may desire, to make shall be in writing and shall be sent by prepaid first class mail or hand-delivered to the respective Parties as follows:

1. If to the City:

City Clerk
City of El Cerrito

El Cerrito, CA 94530

2. If to the City Manager:

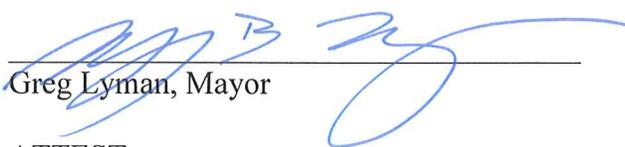
Scott Hanin
2322 Arlington Blvd.
El Cerrito, CA 94530

8. EXECUTION

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

CITY

CITY MANAGER



Greg Lyman, Mayor



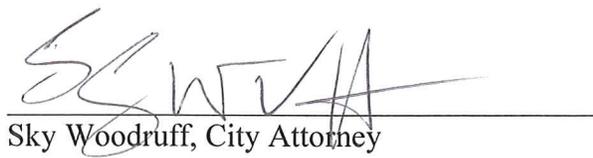
Scott Hanin

ATTEST:



Cheryl Morse, City Clerk

APPROVED AS TO FORM:



Sky Woodruff, City Attorney