

**AT-WILL LIMITED DURATION EMPLOYMENT AGREEMENT  
BETWEEN CITY OF CALABASAS AND  
DONALD E. PENMAN  
FOR INTERIM CITY MANAGER**

This At-Will Employment Agreement ("Agreement") is entered into effective November 16, 2020, by and between the CITY OF CALABASAS , a municipal corporation, hereafter referred to the "CITY" and Donald E. Penman, hereafter referred to as "EMPLOYEE".

**WHEREAS**, the CITY has commenced recruitment, and has posted an active recruitment to fill the vacant position of City Manager. During the recruitment period the City has a vital need for an Interim City Manager to allow for organizational and operational continuity, to prevent the stoppage of public business during a state of emergency until a permanent replacement can be appointed; and

**WHEREAS**, EMPLOYEE has served as a City Manager and Interim City Manager in various cities and has exceptional skills which make him qualified as an Interim City Manager, on a temporary basis, including, but not limited to, guiding cities through a state of emergency, while the City recruits for a permanent replacement to fill this vacancy.

**NOW THEREFORE**, in consideration of the above stated desires and the mutual covenants, terms and conditions, herein contained, the parties hereto mutually and freely agree as follows:

**SECTION 1- EMPLOYMENT CONDITIONS AND DUTIES**

- a. EMPLOYEE is appointed by and shall serve at the pleasure of the City Council in a temporary capacity as the Interim City Manager during the City's recruitment for the City Manager position.
- b. As Interim City Manager, EMPLOYEE's duties shall be as set forth in the Calabasas Municipal Code section 2.08.070 and as directed by the City Council.
- c. As Interim City Manager, EMPLOYEE shall attend all regular and special City Council meetings and workshops, and other meetings as directed by the council, unless otherwise excused by the council.
- d. EMPLOYEE acknowledges that this temporary position is an "at-will" position and that EMPLOYEE has no property interest in or expectation of continued

employment or any due process right to a hearing before or after a decision by the City Council to terminate this position. Further, EMPLOYEE acknowledges that this Agreement and his temporary position is not a guarantee of continued employment.

## **SECTION 2- EMPLOYMENT TERM**

- a. The City agrees to employ EMPLOYEE as "Interim City Manager" This is a salaried management position which is FLSA-exempt and is likely to require in excess of 40 hours of work per week. Employee agrees to remain in this position from November 16, 2020 until May 14, 2021 or such time as the permanent appointment is made for a City Manager, pursuant to the City's ongoing recruitment for this position, whichever occurs first. The temporary position of Interim City Manager is an at-will position and EMPLOYEE has no property interest in his position.
- b. During the term of this Agreement, EMPLOYEE shall not serve other entities or development clients in other jurisdictions which would interfere with, or be incompatible or in conflict with the EMPLOYEE'S performance of the duties required under this agreement. The determination of incompatibility will be made by the City Council in their sole discretion and shall be final.
- c. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the rights of the City to terminate the services of the EMPLOYEE at any time during such employment term or any renewal thereof. EMPLOYEE acknowledges and agrees that, as Interim City Manager, EMPLOYEE is not within the confines of Calabasas Municipal Code section 2.08.090.
- d. Nothing in this Agreement shall prevent, limit, or otherwise interfere with EMPLOYEE'S right to resign at any time from this position with the City, subject to the provisions as set forth in this agreement.

## **SECTION 3- COMPENSATION**

- a. The City shall pay EMPLOYEE for all services rendered and worked pursuant to this agreement at an hourly rate calculated based on a monthly salary of \$20,140 divided by 173.333 for an hourly rate of \$116.19 per hour. This is an exempt position under the Fair Labor Standards Act. Employee's compensation will be paid in conformance with the City's established pay periods and pay days.
- b. EMPLOYEE shall not receive nor be entitled to any benefits, incentives, or compensation in lieu of benefits under this agreement, including, but not limited to, medical, dental, vision, deferred compensation, holiday, vacation pay, management or administrative leave, sick leave, PERS contributions, severance, auto allowance, or any other incentives or benefits provided by CITY to permanent full or part time employees.

c. EMPLOYEE is a CalPERS retiree annuitant and as such will be required to comply with CalPERS regulations limiting annuitant's post retirement employment to the extent that such limitations have not been rescinded or suspended by statute or by the Governor through Executive orders issued during the Coronavirus Pandemic (COVID-19) State of Emergency. In addition, pursuant to Government Code section 21221(h) EMPLOYEE is filling what has recently become a vacant position. EMPLOYEE has specialized skills needed to perform the work under this agreement and assist the city through a state of emergency. EMPLOYEE is further providing the City with specialized skills needed for the City's response to the current state of emergency and to maintain the City's essential services, under Government Code section 21224(a). EMPLOYEE desires that he not be reinstated from retirement and that he provide the aforementioned services without interruption of retirement benefits. This employment is structured by CITY and EMPLOYEE to take advantage of, and be in compliance with Government Code sections 21221(h) and 21224(a) as modified by Executive Orders N-25-20 and N-35-20 (see also CalPERS Circular Letter 200-015-20).

#### **SECTION 4-WORK HOURS**

The EMPLOYEE shall coordinate the work schedule based upon needs of the City. EMPLOYEE'S work schedule will be as established by the City Council and can be expected to exceed 40 hours per week, due to required attendance at City Council and other meetings.

#### **SECTION 5- EMPLOYMENT TERMINATION**

The City Council may terminate or remove the EMPLOYEE with or without cause at any time. EMPLOYEE has no property interest in his position and understands that this is a temporary position of limited duration.

#### **SECTION 6 – INDEMNIFICATION**

City will defend and indemnify EMPLOYEE, using legal counsel selected by City or its insurers, against liability for acts or omissions by EMPLOYEE occurring in the course and scope of employment under this Agreement, in accordance with Government Code Sections 825, 995 and 995.2 through 995.8. In the event of a legal conflict as determined by city or its insurer which necessitates independent counsel, city or its insurer shall select and pay the reasonable fees of such counsel.

#### **SECTION 7- MISCELLANEOUS**

- a. This agreement supersedes any and all other agreements between the parties hereto with respect to the employment of the EMPLOYEE by the City and contains all of the covenants and agreements between the parties with respect to such employment. Each party to this Agreement acknowledges that no representations, inducement, promise, or agreements have been made by any

party or anyone acting on behalf of any party orally or otherwise which are not embodied herein.

- b. No other agreement, statement or promise not contained in this Agreement shall be valid or binding or shall be used in interpreting the meaning of this Agreement.
- c. Amendments, modifications or changes may be made to this Agreement and shall become effective on the date contained therein when executed in writing and mutually signed by both parties to this Agreement.
- d. This Agreement and any amendments, modifications or changes thereto shall be binding upon the City during its term.
- e. This Agreement and any amendments, modifications or changes thereto shall be binding upon the EMPLOYEE and inure to the benefit of the heirs at law and executors of the EMPLOYEE.
- f. Except as otherwise provided in the Agreement, EMPLOYEE shall comply with all rules and regulations of the City, including the City's Personnel Rules and Regulations.
- g. EMPLOYEE shall not engage in any activity which is or may become a conflict of interest, a prohibited contract or which may create incompatibility of office as defined under California law.

**SECTION 8- SEVERABILITY**

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

"EMPLOYEE"

"CITY"

*Donald E. Penman*

Donald E. Penman

Alicia Weintraub, Mayor

APPROVED AS TO LEGAL FORM:

\_\_\_\_\_  
Scott H. Howard, Colantuono Highsmith & Whatley,  
City Attorney

ATTEST:

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Maricela Hernandez, City Clerk  
Master Municipal Clerk  
California Professional Municipal Clerk