

ITEM 6 ATTACHMENT B
FIRST AMENDED EMPLOYMENT AGREEMENT

THIS FIRST AMENDED EMPLOYMENT AGREEMENT is made and entered into as of the 10th day of November 2021, by and between the CITY OF CALABASAS, California, a Municipal Corporation, hereinafter called the “City,” and Kindon Meik, hereinafter called “Employee.”

RECITALS

A. City desires to, and has, retained the services of Employee in the position of City Manager, and Employee desires employment as City Manager of the City;

B. The City Council desires to:

- (1) Retain the services of Employee.
- (2) Encourage the highest standards of fidelity and public service on the part of Employee.
- (3) Provide a just means for terminating Employee’s employment and this Agreement when City may desire to do so.

C. The parties further desire to establish the Employee’s conditions of employment.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained the parties agree as follows:

1. Duties. City hereby employs Employee as City Manager of City to perform the functions and duties of the City Manager as specified in City’s Municipal Code and to perform such other legally permissible and proper duties and functions as the City Council may from time to time assign to Employee. The City Manager shall consult with the City Attorney or other City legal counsel before taking any adverse employment action against any City Department Director or other person in a Management Classification under the then-current City Council Resolution Approving a Salary Schedule for Permanent Employees. Employee agrees to devote Employee’s full time and effort to the performance of this Agreement and to remain in the exclusive employ of City and not to become otherwise employed nor engage in any outside business activities while this Agreement is in effect without the prior written approval of the City Council. For purposes of this Agreement, outside business activities means any outside employment or any outside commercial activity which interferes with or poses a conflict with Employee’s position as City Manager.

2. Hours of Work. Employee shall maintain a regular Monday through Friday work schedule and shall not participate in the 9/80 schedule made available to certain other employees. Employee’s duties may involve expenditures of time in excess of eight (8)

hours per day and/or forty (40) hours per week, and may also include time outside normal office hours such as attendance at City Council meetings or as needed to respond to emergencies. Employee shall be exempt from paid overtime compensation and shall not be entitled to additional compensation for such time.

3. Term. This Agreement shall be effective March 15, 2021, or such earlier date as determined by the Mayor and Employee, and will remain in force and effect until terminated as provided herein. The amendments to this Agreement made by this First Amendment are effective as of November 10, 2021.

4. Salary. Under this Employment Agreement City shall pay Employee for the performance of Employee's duties as City Manager under this Agreement an annual salary of \$240,000 less customary and legally required payroll deductions. Salary and/or benefit adjustments shall be considered by the City Council annually in conjunction with Employee's annual performance evaluation pursuant to paragraph 11 of this Agreement.

5. Automobile. City shall provide Employee with a monthly auto allowance of \$500, which Employee acknowledges shall be subject to taxation. Employee shall be responsible for paying for all liability, property damage, and comprehensive insurance and for the purchase, operation, maintenance, repair, and replacement of an automobile. This monthly automobile allowance shall not, however, preclude Employee from using City-owned vehicles from time to time to conduct official business during regular business hours or for extended travel authorized by the Mayor.

6. Retirement and Deferred Compensation. Employee shall pay the full 7% employee contribution for the cost of membership in the Public Employees Retirement System (PERS) during the term of this Agreement. If the City's contract with PERS is ever amended to provide for City employees to pay a portion of the employer's contribution for the cost of membership in PERS, then Employee shall pay the same percentage basis portion of the employer's contribution as other City employees during the term of this Agreement. City shall also make available to Employee a qualified deferred compensation program under Internal Revenue Code Section 457 and will match any contributions Employee may make to that plan up to 2% of the Employee's salary.

7. Medical, Dental and Vision Insurance. City shall pay the monthly premiums for medical, dental and vision insurance for Employee and Employee's dependents in an amount sufficient to cover most plans offered by the City and not less than the amount afforded other City management employees.

8. Other Benefits. City shall provide to Employee any other benefits mandated by state or federal law. The City shall reimburse Employee up to a maximum of \$10,000 for actual and reasonable, documented expenses for moving and relocation of Employee or Employee's dependents. In addition, if Employee moves his primary residence to the City of Calabasas through purchase of a primary residence within the City during the term of this

Agreement, the City shall pay Employee an additional one-time amount of \$10,000.

9. General Expenses and Business Equipment. City recognizes that certain expenses of a non-personal and job-related nature may be incurred by Employee. City agrees to reimburse Employee for reasonable expenses which are authorized by the City budget, submitted to the City Council for approval, and which are supported by expense receipts, statements or personal affidavits, and audit thereof in like manner as other demands against the City. Any purchases of supplies or other tangible items must be delivered to City Hall or other City facilities to be eligible for reimbursement. City shall provide Employee with a lap-top computer, iPad, and an iPhone with data plans for the conduct of City business and to assure availability to the City in the event of an emergency.

10. Official and Professional Development Expenses. City shall pay reasonable sums for professional dues and subscriptions for Employee necessary in the judgment of the City Council for Employee's continued participation in associations and organizations, which memberships are necessary and desirable for the continued professional development of Employee and for the good of the City, such as the League of California Cities and the International City/County Management Association. Employee may participate in the City's tuition reimbursement program on the same terms and conditions as other City management employees. Notwithstanding the foregoing, the City Council shall have discretion to establish appropriate amounts, in the annual City budget or otherwise, for official and professional development expenses and travel costs.

11. Performance Evaluation. The City Council shall review and evaluate Employee's performance at least once annually. During the first year of employment the City Council shall review and evaluate Employee's performance after six months. The City Council and Employee shall annually develop mutually agreeable performance goals and criteria which the City Council shall use in reviewing Employee's performance in the following year. It shall be Employee's responsibility to initiate this review each year. Employee will be afforded an adequate opportunity to discuss each evaluation with the City Council. Employee will be eligible for consideration of a salary increase after each performance evaluation. Whether to grant any salary increase and the amount thereof, shall be in the sole discretion of the City Council.

12. Indemnification. City shall defend, hold harmless and indemnify Employee against any claim, demand, judgment, or action of any type or kind arising within the course and scope of Employee's employment to the extent required by Government Code Sections 825 and 995.

13. Other Terms and Conditions of Employment.

(A) The City Council may from time to time fix other terms and conditions of employment relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provision of this Agreement, the Municipal Code, or other applicable law. Employee shall not engage in any outside employment nor engage in any outside business activities without having obtained the prior written approval of City Council.

(B) The provisions of the City's Personnel Rules and Regulations and Human Resource Guidelines ("Rules") shall apply to Employee, except that if the specific provisions of this Agreement conflict with the Rules, the terms of this Agreement shall prevail. Without limiting the generality of the exception noted in the previous sentence, however, no provision of the Rules or this Agreement shall confer upon Employee a property right in Employee's employment or a right to be discharged only upon cause during Employee's tenure as City Manager. At such times as Employee is serving as City Manager, Employee is an at-will employee serving at the pleasure of the Council and may be dismissed at any time with or without cause, subject only to the provisions of this Agreement.

(C) Employee shall be entitled to 120 hours of vacation leave with pay per fiscal year. During the first fiscal year, Employee shall be credited with 80 hours of such vacation leave upon execution of this Agreement and shall accrue the remaining 40 hours of vacation leave during the remainder of Fiscal Year 2020-2021. Employee may accrue up to 480 hours vacation leave and, once having accrued that amount, shall accrue no further vacation under this Agreement until vacation leave time is used to reduce the accrued balance. The Employee may cash out vacation leave time of up to 80 hours once per fiscal year, unless the City Council acts to suspend vacation leave cash outs. Upon termination or resignation from employment, Employee shall be entitled to compensation for 100% of accumulated and unused vacation leave at Employee's then-current salary, not to exceed the maximum accrual amount set forth above.

(D) Employee shall be entitled to 12 days of sick leave and 80 hours of executive leave with pay per fiscal year. During the first fiscal year, Employee shall be credited with 5 days of sick leave and 40 hours of executive leave upon execution of this Agreement and shall accrue the remaining 7 days of sick leave and 40 hours of executive leave during the remaining of Fiscal Year 2020-2021. In addition, upon execution of this Agreement, Employee shall be credited with a further 5 days of sick leave. Employee may not cash out unused sick or executive leave at any time. Except as expressly provided in this Agreement, Employee's use and accrual of sick and executive leave shall be governed by the Rules.

(E) Employee shall be exempt from paid overtime compensation.

(F) Employee shall be entitled to eleven and one-half holidays per year pursuant to City policy and to one additional floating holiday per year. Except as expressly provided in this Agreement, Employee's holidays shall be governed by the Rules.

(G) The City will pay for Employee's memberships in the Calabasas Tennis & Swim Center and the Agoura Hills / Calabasas Community Center, if and when such facilities are open.

(H) The City will provide Employee short-term and long-term disability insurance on the same terms as such insurance is provided to department heads of the City. The City will provide Employee with life insurance in the amount of one and one-half times annual

salary with Employee to name the beneficiary. The City will pay the premium for Employee and Employee's dependents to participate in the City's Employee Assistance Program.

14. General Provisions.

(A) The parties agree to fully comply with Government Code sections that are part of Assembly Bill 1344, Statutes 2011, Chapter 692, and other applicable law as it relates to reimbursement by an employee upon conviction of a qualifying crime or abuse of office as defined, including the following:

- (1) Gov't Code sec. 53243. Reimbursement of paid leave salary required upon conviction of crime involving the office or position.
- (2) Gov't Code sec. 53243.1. Reimbursement of legal criminal defense upon conviction of a qualifying crime involving the office or position.
- (3) Gov't Code sec. 53243.2. Reimbursement of cash settlement upon conviction of a qualifying crime involving the office or position.
- (4) Gov't Code sec. 53243.3. Reimbursement of non-contractual payments upon conviction of a qualifying crime involving the office or position.
- (5) Gov't Code sec. 53243.4 Abuse of office or position defined.

(B) This Agreement constitutes the entire agreement between the parties. City and Employee hereby acknowledge that they have neither made nor accepted any other promise or obligation with respect to the subject matter of this Agreement. This Agreement may be amended only by a writing signed by Employee, approved by the City Council, and executed on behalf of the City.

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

(D) This Agreement may be terminated by either party with or without notice and with or without cause subject only to the requirements of paragraph 15 below regarding severance. Notice of termination to City shall be given in writing to City, either by personal service or by registered or certified mail, postage prepaid, addressed to City as follows:

Mayor
City of Calabasas
100 Civic Center Way
Calabasas, CA 91302.

With a courtesy copy to:

Matthew T. Summers
Colantuono Highsmith & Whatley,
790 E. Colorado Blvd. Suite 850
Pasadena, CA 91101-2109.

Any notice to Employee shall be given in a like manner, and, if mailed, shall be addressed to Employee at the address then shown in City's personnel records. For the purpose of determining compliance with any time limit stated in this Agreement, a notice shall be deemed to have duly given (a) on the date of delivery, if served personally on the party to whom notice is to be given, or (b) on the second (2nd) calendar day after mailing, if mailed in the manner provided in this section to the party to whom notice is to be given. Notwithstanding the forgoing, this Agreement shall automatically terminate on the death or permanent disability of Employee and Employee agrees to make best efforts to give City not less than 60 days' written notice of resignation or retirement. Upon termination, Employee shall return any City-issued property, including any electronic devices, computers, or telephones, and shall further make any privately owned electronic devices, computers, or telephones used by Employee for City business available to the City's Communications Department to confirm the erasure of any City information or data.

Notwithstanding the foregoing, the City shall not terminate this Agreement, with or without cause, during or within a period of one-hundred and twenty (120) days next succeeding any general municipal election held in the city at which election a member of the City Council is elected or when a new City Council member is appointed, unless a four-fifths majority of the whole City Council as then constituted votes to terminate Employee's employment, with or without cause.

(E) If an action at law or in equity is necessary to enforce or interpret this Agreement, the prevailing party in that action shall be entitled to reasonable and actual attorneys' fees and costs with respect to the prosecution or defense of the action.

(F) A waiver of any of the terms and conditions of this Agreement shall not be construed as a general waiver by the City and the City shall be free to enforce any term or condition of this Agreement with or without notice to Employee notwithstanding any prior waiver of that term or condition.

15. Severance. If City terminates Employee without cause, as defined in this paragraph, or asks the Employee to resign, then City shall pay Employee severance equal to six months' salary and benefits, in the amounts in effect at the time the notice of termination is given. The City shall have cause to terminate Employee without payment of severance under this paragraph 15 if the City Council finds, by majority vote, that Employee engaged in any of the following conduct:

- (a) Conviction of a felony or conviction of a misdemeanor involving moral turpitude or adversely reflecting on Employee's fitness to perform assigned duties (a conviction following a plea of guilty or nolo contendere shall be deemed a conviction for purposes of this Agreement);
- (b) Intoxication on duty due to alcohol or a controlled substance, or continued abuse of "controlled substances," as that term is defined in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 as amended to date that materially affects the performance of the City Manager's duties;
- (c) Inexcusable absence without leave (for purposes of this subsection, City Manager's absence for more than 3 business days in any 5 business day period for any reason other than illness or injury without notifying and securing permission from the Mayor or City Council shall constitute an inexcusable absence);
- (d) Habitual and willful neglect of duty;
- (e) Documented and confirmed violation of local, state, and federal laws which prohibit discrimination including, but not limited to, discrimination based on race, religion, national origin, ancestry, physical handicap, marital status, sex, sexual orientation, age, gender identity, gender expression, or any other category protected by local, state or federal law, involving either members of the general public or City employees;
- (g) Retaliation against any other City officer or employee or member of the public who in good faith reports, discloses, divulges, or otherwise brings to the attention of any appropriate authority any facts or information relative to actual or suspected violations of any law occurring on the job directly related thereto;
- (h) Verifiable actions or behaviors that create a hostile work environment or demonstrate any form of harassment prohibited by local, state, or federal law;
- (i) Willful violation of any local, state, or federal conflict of interest or incompatibility of office laws;
- (j) Engaging in any outside business activities without the prior written approval of the City Council;
- (k) Failure to comply with lawful directives of the City Council;

- (l) Theft, destruction, or unauthorized use of City property, City funds, or City equipment, including City staff time;
- (m) Refusal to take or subscribe any oath or affirmation which is required by law;
- (n) Acceptance by Employee of any valuable consideration from any person or entity other than the City for the regular performance of Employee's duties; and
- (o) Any violation of the Rules, to the extent they explicitly apply to the position of City Manager, except that if the specific provisions of this Agreement conflict with the Rules, the terms of this Agreement shall prevail.

IN WITNESS WHEREOF the parties have executed this First Amended Employment Agreement as of the day and year first above written.

EMPLOYEE

Kindon Meik

CITY OF CALABASAS

ATTEST:

Maricela Hernandez
CITY CLERK

James R. Bozajian
MAYOR

Approved as to form:

Matthew T. Summers
Colantuono Highsmith & Whatley
City Attorney