

**2020
FIRST AMENDMENT TO CITY MANAGER EMPLOYMENT AGREEMENT
(Employee: Nick Kimball)**

THIS 2020 FIRST AMENDMENT (“Amendment”) to that certain agreement entitled “2019 City Manager Employment Agreement – Employee: Nick Kimball” originally executed February 20, 2019 by and between the CITY OF SAN FERNANDO, a municipal corporation and general law city (“City”) and NICK KIMBAL, an individual (“Employee”) is made and entered into this 3rd day of February 2020 (“Effective Date”). For purposes of this Amendment, the capitalized term “Parties” shall be a collective reference to both City and Employee. The capitalized term “Party” may refer to either City or Employee interchangeably as appropriate.

RECITALS

WHEREAS, the Parties executed and entered into an employment agreement dated February 20, 2020 and entitled “2019 City Manager Employment Agreement – Employee: Nick Kimball”, Contract No. 1906 (hereinafter, the “Master Agreement”) (A true and correct copy of the Master Agreement is attached and incorporated hereto as **Exhibit “A”**); and

WHEREAS, the Parties now wish to modify the Master Agreement further; and

WHEREAS, Resolution No. 7692 was later repealed, replaced and superseded by way of City Council Resolution No. 7807 dated August 7, 2017 (“Resolution No. 7807”); and

WHEREAS, Section 4.5 (Amendments) of the Master Agreement allows the Parties to amend the Master Agreement provided such amendments are memorialized in the form of a written amendment approved by the San Fernando City Council (“City Council”) and signed by the Mayor; and

WHEREAS, execution of this Amendment was approved in open session at the City Council’s regular meeting of February 3, 2020 under Agenda Item No. 6 as required under Government Code Section 53262.

NOW, THEREFORE, in consideration of the mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

SECTION 1. Subsection A of Section 1.2 (Term of Employment) is amended in its entirety to state the following:

“Subject to subsection B of this Section, below, this Agreement shall have an indefinite term (“Term”).”

SECTION 2. The term “Base Salary” as defined under subsection A of Section 2.1 (Base Salary) of the Master Agreement is amended to the sum of Two Hundred and Four Thousand Dollars (\$204,000) per year effective as of February 1, 2020.

SECTION 3. Notwithstanding anything set forth under Section 2.2 (Retirement/Deferred

Compensation) of the Master Agreement to the contrary or any other provision of the Master Agreement, commencing as of February 1, 2020, Employee shall contribute two percent (2%) of his Base Salary toward the City's CalPERS pension cost. Each July 1st thereafter, commencing with July 1, 2021, Employee shall annually contribute an additional two percent (2%) of his Base Salary toward the City's CalPERS pension cost until such time as Employee's CalPERS pension cost contribution equals eight percent (8%) of Employee's Base Salary.

SECTION 4. Subsection B of Section 2.2 (Retirement/Deferred Compensation) of the Master Agreement is further modified by the addition of the following sentence.

"CITY shall deposit the sum of Five Hundred Dollars (\$500) per month in EMPLOYEE's 457 Deferred Compensation plan."

SECTION 5. Subsection A of Section 3.3 (Separation for Convenience and Without Cause; Severance) of the Master Agreement is amended in its entirety to state the following:

"In the event EMPLOYEE is terminated for convenience and without cause by the City Council while EMPLOYEE is willing and able to perform the City Manager's duties under this Agreement, then in that event the CITY agrees to pay EMPLOYEE a lump sum cash payment equal to eighteen (18) months' worth of EMPLOYEE's annual Base Salary at the time of separation [i.e., the value of one months' worth of EMPLOYEE's annual Base Salary at the time of separation multiplied by eighteen]."

SECTION 6. Except as otherwise set forth in this Amendment, the Master Agreement shall remain binding, controlling and in full force and effect. The provisions of this Amendment shall be deemed a part of the Master Agreement and except as otherwise provided under this Amendment, the Master Agreement and all provisions contained therein shall remain binding and enforceable. In the event of any conflict or inconsistency between the provisions of this Amendment and the provisions of the Master Agreement, the provisions of this Amendment shall govern and control, but only in so far as such provisions conflict with the Master Agreement and no further.


SECTION 7. The Master Agreement as amended by way of this Amendment constitutes the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed herein and supersedes all other agreements or understandings, whether oral or written, or entered into between City and Employee prior to the execution of this Amendment. No statements, representations or other agreements, whether oral or written, made by any Party which are not embodied herein shall be valid or binding. No amendment, modification or supplement to the Master Agreement as amended by this Amendment shall be valid and binding unless in writing and duly executed by the Parties in the form of a written contract amendment.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed on the day and year first appearing above.


CITY:

City of San Fernando

By: 
Joel Fajardo
Mayor

EMPLOYEE

Nick Kimball, an individual:

By: 
Nick Kimball, an individual

APPROVED AS TO FORM


By: 
Name: Joaquin Vazquez
Title: Deputy City Attorney

Exhibit "A"
Master Agreement

2019
CITY MANAGER EMPLOYMENT AGREEMENT
(Employee: Nick Kimball)

THIS 2019 CITY MANAGER EMPLOYMENT AGREEMENT ("Agreement") is made and entered into on this 20th day of February 2019 ("Effective Date") by and between the CITY OF SAN FERNANDO, a municipal corporation and general law city ("CITY") and NICK KIMBALL, an individual ("EMPLOYEE"). For purposes of this Agreement, the capitalized term "Parties" shall be a collective reference to both CITY and EMPLOYEE. The capitalized term "Party" may refer to either CITY or EMPLOYEE interchangeably and reasonably appropriate.

RECITALS

THIS AGREEMENT is made and entered into in consideration of the following:

WHEREAS, CITY desires to engage and employ EMPLOYEE to serve as the City Manager of the City of San Fernando as that position is generally described under Division 2 (City Manager) of Title III (Officers and Employees) of Chapter 2 (Administration) of the San Fernando Municipal Code ("City Manager"); and

WHEREAS, the City Council finds that EMPLOYEE possesses the education, training, experience and expertise necessary to perform the duties of City Manager; and

WHEREAS, EMPLOYEE desires to accept employment as City Manager subject to the consideration, terms and conditions set forth under this Agreement; and

WHEREAS, the City Council appointed EMPLOYEE to serve as Interim City Manager at its Special Meeting of February 12, 2019, pending EMPLOYEE's appointment as CITY's permanent City Manager and pending the negotiation and establishment of definite terms for such permanent employment to be considered by the City Council in open session at the Regular Meeting of February 19, 2019; and

WHEREAS, the City Council approved the appointment of EMPLOYEE as City Manager and the execution of this Agreement in open session at its Regular Meeting of February 19, 2019 under Item 10 of the Administrative Reports portion of the City Council agenda as required by Government Code Section 53262.

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

SECTION 1. POSITION, TERM, DUTIES

1.1 Employment as City Manager

This Agreement establishes the terms and conditions of employment of EMPLOYEE as the City Manager of CITY.

1.2 Term of Employment

A. This Agreement shall have a term of five (5) years commencing from the Effective Date.

B. Section 1.2.A., above notwithstanding, EMPLOYEE's employment with CITY shall be at-will and EMPLOYEE shall at all times serve at the pleasure of and at the convenience of the San Fernando City Council ("City Council"). Nothing in Section 1.2.A., above, shall operate to prohibit, restrict or otherwise limit the City Council's ability to immediately terminate this Agreement and EMPLOYEE's employment (i) at any time for convenience and without cause; or (ii) at any time for cause.

C. This Agreement along with EMPLOYEE's employment with the City may be terminated by EMPLOYEE at any time for convenience subject to the 45-day resignation notification requirement set forth under Section 3.2, of this Agreement, below.

1.3 Duties and Responsibilities

A. EMPLOYEE shall perform the duties and functions of the City Manager as specified under the laws of the State of California, the San Fernando Municipal Code, the ordinances and resolutions of the CITY and this Agreement. EMPLOYEE shall also perform such other duties and functions as the City Council may assign from time to time.

B. EMPLOYEE shall serve as the City Manager and shall be vested with the powers, duties and responsibilities of the City Manager as set forth in Division 2 (City Manager) of Title III (Officers and Employees) of Chapter 2 (Administration) of the San Fernando Municipal Code ("Division 2"), as the same may be amended or modified from time to time by the City Council. EMPLOYEE's performance of his duties shall be subject to the direction and oversight of the City Council. It is the intent of the Parties that EMPLOYEE shall use all reasonable efforts to keep the City Council fully informed of all significant operations or major undertakings of the CITY. EMPLOYEE's duties and responsibilities shall include, but are not limited to, the following:

1. Except as otherwise provided under the San Fernando Municipal Code, as the same may be amended or modified from time to time by the City Council, or this Agreement, EMPLOYEE shall serve as the CITY's chief executive officer, subject to direction and control of the City Council. The City Manager shall be responsible for the efficient administration of all affairs of the CITY which are under his control.
2. EMPLOYEE shall perform all the duties of the City Manager as set forth in Section 2-121 of Division 2 of the City of San Fernando Municipal Code (the "Municipal Code"), the California Government Code, and CITY policies and procedures approved by the City Council, as may be provided from time to time. The City Manager shall also perform other legally permissible and proper duties and functions as the City Council may assign from time to time.
3. The City Council may also designate EMPLOYEE as the administrative head of other CITY-related legal entities. Such other legal entities could include financing authorities, joint powers authorities and/or the Successor Agency to the San Fernando Redevelopment Agency.

4. EMPLOYEE shall administer and enforce policies established by the City Council and promulgate written policies and procedures as necessary to implement such policies.

1.4 Hours of Work

A. The position of City Manager shall be deemed an exempt position under state and federal wage and hour laws. EMPLOYEE's compensation (whether salary or benefits or other allowances) is not based on hours worked and EMPLOYEE shall not be entitled to any compensation for overtime.

B. EMPLOYEE shall be allowed reasonable flexibility in setting his own office hours, provided: (i) EMPLOYEE maintains a reasonably substantial on-site presence at City Hall during normal CITY business hours; (ii) EMPLOYEE is reasonably available to members of the City Council, CITY staff and members of the community on a regular and routine basis that generally conforms to the CITY's normal business hours as the same may be amended from time to time by the City Council; and (iii) EMPLOYEE is reasonably available to participate in community events or other functions that may occur during non-business hours as the City Council may from time-to-time request.

C. Consistent with subsection B, above, EMPLOYEE's work hours may generally conform to the 9/80 work schedule afforded department heads and directors, however, EMPLOYEE understands that the duties, demands and responsibilities of the office of City Manager may from time to time require that he work days and hours that do not strictly conform to the 9/80 schedule generally afforded to other executive level staff and shall be available to discharge the duties and responsibilities of City Manager at all times as reasonably necessary.

1.5 Regional and Professional Activities

The City Council desires that EMPLOYEE be reasonably active in professional organizations that will promote the standing of the CITY and advance the CITY's goals, interests and policy objectives while also providing EMPLOYEE with opportunities for the type of professional development that will enhance his ability to serve the CITY and perform his duties as City Manager. To this end, EMPLOYEE may, upon reasonable notice and approval by the City Council, join professional organizations and participate in the activities of such organization insofar as such participation promotes the interests of the CITY and does not unduly interfere with the performance of EMPLOYEE's duties as City Manager. These activities may include, without limitation, participation in the California Contract Cities Association, California League of Cities, Independent City Association, City Management Foundation or other similar national, statewide, regional or professional organizations provided that such activities do not in any way interfere with or adversely affect EMPLOYEE's performance as City Manager. Subject to funding availability as determined by the City Council in its sole and absolute discretion, CITY may pay for the dues and subscriptions of the City Manager necessary for his participation in national, statewide, regional or professional organizations.

1.6 Residence

EMPLOYEE shall not be required to reside within the territorial boundaries of the CITY. The foregoing notwithstanding, EMPLOYEE shall maintain a permanent residence within a reasonable distance to the CITY so as to permit EMPLOYEE travel to the CITY within sixty (60) minutes in the event of CITY emergencies.

1.7 Conflicts of Interest

EMPLOYEE shall not, during the term of this Agreement, individually, as a partner, joint venture, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of the CITY, except for stock ownership in any company whose capital stock is publicly held and regularly traded, without prior approval of the City Council. EMPLOYEE shall further refrain from developing a financial stake in any commercial venture or partnership with any entity doing business with the CITY where such financial stake would create a violation of Government Code Section 1090. For and during the term of this Agreement and any extension term, EMPLOYEE further agrees that except for a personal residence or residential property acquired or held for future use as his personal residence, EMPLOYEE will not invest in any other real estate or property improvements within the corporate limits of the CITY without the prior consent of the City Council and subject to the restrictions of all applicable financial conflict of interest laws.

1.8 ICMA Code of Ethics

A. EMPLOYEE agrees to become a member of the International City/County Management Association ("ICMA"). The Parties mutually desire that EMPLOYEE shall comply with the latest draft of the ICMA Code of Ethics, provided such compliance is not inconsistent with or contrary to the laws of the State of California or the San Fernando Municipal Code.

B. CITY and the City Council agree that neither the City Council nor any of its members will give EMPLOYEE any order, direction, or request that would require EMPLOYEE to violate the ICMA Code of Ethics, unless such direction or request is authorized by the laws of the State of California or the San Fernando Municipal Code.

1.9 Performance Evaluation

A. Performance evaluations are an important way for the City Council and EMPLOYEE to ensure effective communications about City Council expectations and EMPLOYEE's performance. The City Council reserves the right to conduct a general job performance evaluation and review of EMPLOYEE at least once each fiscal year. In addition, the City Council reserves the right to conduct an informal job performance review once each fiscal year quarter on an as-needed basis.

B. In conducting the evaluation and review the Parties may, but shall not be required to, use the services of a professional consultant selected by the City Council. The job performance evaluation and review shall serve the following purposes and objectives: (i) to evaluate EMPLOYEE's overall job performance over the course of the fiscal year; (ii) to identify areas of notable progress and/or accomplishment and identify ways to sustain and/or improve upon such progress and/or accomplishments; (iii) to identify areas requiring improvement and how such improvement might be accomplished; (iv) to measure EMPLOYEE's success in meeting, achieving and/or exceeding City Council-defined, goals, objectives, priorities, activities and programs over the fiscal year or since the last performance evaluation and review; (v) to establish goals, objectives, and priorities for the upcoming year; (vi) to determine, what if any, adjustments or enhancement should be considered and approved to EMPLOYEE's compensation terms.

C. The failure of CITY to undertake a performance evaluation shall not limit CITY's ability to terminate this Agreement pursuant to Section 3, below. Nothing in this Section shall be construed to restrict or otherwise limit CITY's ability to undertake any other review or investigation of EMPLOYEE during the course of a fiscal year which the City Council may deem necessary to address any allegation of unlawful or inappropriate conduct or other wrongdoing.

SECTION 2. BASE COMPENSATION; BENEFITS AND REIMBURSEMENTS

2.1 Base Salary

A. Base Salary. CITY shall pay EMPLOYEE an annual base salary of One Hundred and Eighty-Five Thousand Dollars (\$185,000) per year (hereinafter, the "Base Salary"), subject to deductions for taxes, deferred compensation and other out-of-pocket benefits paid for by EMPLOYEE as a CITY executive management employee. CITY shall pay EMPLOYEE in bi-weekly installments at the same time other employees of CITY are paid. Commencing July 1, 2020 and on July 1st of each calendar year thereafter during the Term of this Agreement, the Base Salary shall be adjusted by a percentage equal to the annual percentage change to the May Consumer Price Index for All Urban Consumers (CPI-U) for the Los Angeles-Long Beach-Anaheim area (hereinafter, "May CPI"). If the annual percentage change in the May CPI is zero or less, then the Base Salary, as established at the time, shall remain unchanged.

B. Bilingual Bonus and Longevity Pay. EMPLOYEE shall receive a bilingual bonus and longevity pay subject to the same terms and conditions as the same are provided to City Department Heads under City Council Resolution No. 7692 approved August 3, 2015 (hereinafter, "Resolution No. 7692") as the same may be later repealed, amended or modified by the City Council.

2.2 Retirement/Deferred Compensation

A. In the manner prescribed under Section 5 of Exhibit "A" of Resolution No. 7692 and the CITY's written agreement with CalPERS: (i) EMPLOYEE: shall receive retirement benefits through the California Public Employees Retirement System (CalPERS) at the Second Tier, "Classic" member formula of two percent (2%) at age 55, final 12-month average compensation retirement calculation. As applicable to Second Tier, "Classic" members under Resolution No. 7692, City shall pay seven percent (7%) toward EMPLOYEE's required CalPERS contribution. EMPLOYEE shall receive such other retirement benefits as may be provided to Second Tier "Classic" members under Section 5 of Exhibit "A" of Resolution No. 7692.

B. EMPLOYEE shall also be eligible for deferred compensation through voluntary contribution to the 457 Deferred Compensation plan available through the ICMA.

2.3 Annual Leave (Vacation and Sick)

A. Accrual of Annual Leave. For purposes of this Agreement, the term "Annual Leave" shall have the same meaning as set forth under Resolution No. 7692 or as the meaning of the term "Annual Leave" may be modified or amended by subsequent resolutions of the City Council that repeal, amend or otherwise modify the term "Annual Leave" as defined under Resolution No. 7692. Except as otherwise provided under this Agreement, commencing upon the Effective Date and throughout the term of this Agreement, EMPLOYEE shall accrue Annual Leave in the same amount and in the same manner accrued by the City's Department Head

Classification employees as set forth under Resolution No. 7692 or as the package of compensation and other benefits set forth under Resolution No. 7692 may be subsequently repealed, amended or otherwise modified by subsequent City Council resolution.

B. Except as otherwise provided under Government Code Section 53243 or other applicable law, upon voluntary or involuntary separation from the CITY, EMPLOYEE may cash-out the unused balance of his total accrued Annual Leave. The cash out shall be in an amount equal to the total number of unused annual leave hours multiplied by the quotient of EMPLOYEE's annual base salary at the time of separation divided by two thousand eighty (2080) hours, the number of work hours in a calendar year.

2.4 Additional Miscellaneous Benefits.

A. Commencing upon the Effective Date, EMPLOYEE shall receive the following benefits in the manner prescribed under Resolution No. 7692 as the same may be repealed, amended or otherwise, modified in whole or in part by the subsequent City Council resolution: (i) Management Leave; (ii) Bereavement Leave; and (iii) Wellness Reimbursement Benefit.

2.5 Holidays

EMPLOYEE shall receive paid holidays in accordance with CITY's current practices as set forth under Section 6 of Resolution No. 7692 as such practices may be amended or modified from time to time by the CITY by action of the City Council. Paid holidays will be those approved by the CITY by action of the City Council. The CITY currently provides twelve (12) paid holidays per calendar year.

2.6 Medical, Dental and Vision Insurance

Except as otherwise set forth in this Agreement, and in addition to the benefits specified herein, EMPLOYEE shall receive any and all employee medical, dental, and vision insurance benefits provided under Section 4 of Exhibit "A" of Resolution No. 7692 as the same may be repealed, amended or otherwise modified by subsequent City Council resolution.

2.7 Bonding

Except as otherwise provided under the San Fernando Municipal Code or applicable state law, CITY shall bear the full cost of any fidelity or other bonds required of EMPLOYEE under any law or ordinance.

2.8 Automobile Allowance

EMPLOYEE shall receive the same vehicle-related benefit afforded Department Heads under Section 9 of Exhibit "A" of Resolution No. 7692 as the same may be amended, modified or repealed by the City Council.

2.9 Cellular Phone Allowance; Other Necessary and Customary Business Equipment and Facilities; Special Electronic Equipment

A. CITY shall provide EMPLOYEE with a City-owned/City-issued cellular phone to be used for conducting CITY-related business. Consistent with Resolution No. 7692, EMPLOYEE, in lieu of being provide a City-issued cell phone may elect to receive the technology

reimbursement afforded City Department Heads under Section 8 of Exhibit "A" of Resolution 7692.

B. The CITY shall provide EMPLOYEE with other customary and necessary equipment and facilities reasonably required for EMPLOYEE to perform his duties and functions as City Manager such as an office within City Hall, a landline telephone in the City Hall office, a desktop computer, business cards, business stationary and the like. All such equipment and facilities made available to EMPLOYEE shall at all times remain the property of the CITY and EMPLOYEE acknowledges, understands and agrees that he shall have no right of privacy to such equipment or any data or information stored in such equipment or facilities.

C. The City Council reserves the right but does not assume the obligation to provide EMPLOYEE at CITY's expense, special electronic communications equipment such as an iPad. All such equipment and facilities made available to EMPLOYEE shall at all times remain the property of the CITY, and EMPLOYEE acknowledges, understands and agrees that he shall have no right of privacy to such equipment or any data or information stored in such equipment or facilities.

2.10 Reimbursement for Expenses Not Covered by Allowances

A. CITY shall reimburse EMPLOYEE for reasonable and necessary travel, subsistence and other business expenses incurred by EMPLOYEE in the performance of his duties or in connection with EMPLOYEE's participation in those authorized activities referenced under Section 1.3, above. All reimbursements shall be subject to and in accordance with any limitations or restrictions set forth under the laws of the State of California and any CITY-adopted reimbursement policies as either may be adopted, updated or otherwise amended from time to time.

B. EMPLOYEE may also receive such reimbursements as are offered City Department Heads under Section 8 of Exhibit "A" of Resolution No. 7692.

2.11 Long Term Disability

Except as otherwise set forth in this Agreement, and in addition to the benefits specified herein, EMPLOYEE shall receive any and all employee long term disability program benefits otherwise accorded CITY's Department Head employees, as prescribed as of the Effective Date of this Agreement and such benefits may be modified, amended or repealed from time to time by the City Council.

2.12 Term Life Insurance

Except as otherwise set forth in this Agreement, and in addition to the benefits specified herein, EMPLOYEE shall receive any and all term life insurance program benefits otherwise accorded CITY's executive management employees, as prescribed as of the Effective Date of this Agreement and such benefits may be modified, amended or repealed from time to time by the City Council.

2.13 Jury Duty

EMPLOYEE will receive full pay and benefits while responding to a jury summons or serving on a jury, up to a maximum of fourteen (14) business days. Any compensation for such

jury duty (except travel pay) shall be remitted to CITY.

2.14 Other Benefits

Except as otherwise set forth in this Agreement, and in addition to the benefits specified herein, EMPLOYEE shall receive any and all other benefits granted to all City Department Heads under Resolution No. 7692 as the same may be modified, amended or repealed from time to time by the City Council.

SECTION 3. EMPLOYMENT "AT-WILL"; SEPARATION FROM EMPLOYMENT

3.1 Employment with CITY is "at-will"

A. EMPLOYEE's employment status with CITY shall be at-will and EMPLOYEE shall serve at the pleasure of the City Council as provided under Government Code Section 36506. CITY, through the City Council, may at any time terminate EMPLOYEE's employment with the CITY with or without cause by majority vote of its full membership (i.e., by no less than three affirmative votes). EMPLOYEE acknowledges, understands and agrees that EMPLOYEE may not avail himself of any procedures, provisions or protections set forth under the CITY's Employment Policies, as defined herein, insofar as such procedures, provisions or protections limit, restrict, modify, prohibit or regulate EMPLOYEE's status as an "at-will" employee of CITY or the ability of the City Council to terminate EMPLOYEE's employment at any time for cause or for convenience. For purposes of this Agreement, the capitalized term "Employment Policies" means and refers to any ordinance, resolution, regulation, rule or other written policy of the CITY as the same may be amended, modified or supplemented from time to time (including but not limited to the San Fernando Municipal Code and any written employment manual of the CITY) which governs, regulates or otherwise relates to employment with the CITY. The CITY's Employment Policies shall not apply to EMPLOYEE insofar as such Employment Policies limit, restrict, modify or regulate (or may be interpreted to limit, restrict, modify or regulate) EMPLOYEE's status as an "at-will" employee of CITY.

B. Except as otherwise provided under this Section 3, EMPLOYEE shall not be entitled to any pre-termination hearing or other similar proceeding or appeal proceeding as a precondition to any decision or action by the City Council to terminate EMPLOYEE's employment whether for cause or for convenience.

C. Nothing in this Agreement shall confer upon EMPLOYEE any right to any property interest in continued employment with the CITY.

3.2 Resignation/Retirement

A. EMPLOYEE may resign and/or retire from his employment with the CITY at any time for any reason, provided EMPLOYEE provides the City Council with written notice of his intent to so terminate his employment at least forty-five (45) calendar days prior to the effective date of separation.

B. The City Council in its sole and absolute discretion may waive or shorten the 45-day prior written notice requirement provided the request for such waiver is made in writing by EMPLOYEE and further provided that the City Council's waiver of the notice requirement is also made in writing.

C. The failure of EMPLOYEE to provide the prior written notice required under this Section shall constitute a material breach of this Agreement.

3.3 Separation for Convenience and Without Cause; Severance

A. In the event EMPLOYEE is terminated for convenience and without cause by the City Council while EMPLOYEE is willing and able to perform the City Manager's duties under this Agreement, then in that event the CITY agrees to pay EMPLOYEE a lump sum cash payment equal to six (6) months' worth of EMPLOYEE's annual Base Salary at the time of separation [i.e., the prorated value of one months' worth of EMPLOYEE's annual Base Salary at the time of separation multiplied by six].

B. CITY shall extend to EMPLOYEE the right to continued health insurance as may be required by and pursuant to terms and conditions of this Consolidated Omnibus Reconciliation Act of 1986 ("COBRA"). The CITY agrees to reimburse EMPLOYEE for COBRA coverage at the same benefit level (i.e. employee only, employee +1, or family) as was provided as of the date of separation for the same number of months for which EMPLOYEE is entitled to a lump sum cash payment under Section 3.3(A), or until EMPLOYEE either secures and begins full-time employment or obtains other health insurance, whichever of these three events first occurs. EMPLOYEE shall notify the CITY within five (5) calendar days of securing new full-time employment or insurance.

C. All payments required under Section 3.3(A) or 3.3(B), above, are subject to and shall be interpreted to comply with the limitations set forth in Government Code Section 53260. Further, in the event EMPLOYEE is convicted of a crime involving an abuse of office or position, EMPLOYEE shall reimburse the CITY for any paid leave or cash settlement (including severance), as provided by Government Code Sections 53243 through 53243.4.

D. The foregoing notwithstanding, CITY shall not exercise its right to terminate EMPLOYEE for convenience and without cause during the 90-day period immediately preceding or the 90-day period immediately following any General Municipal Election of the CITY in which two or more City Council seats are subject to an election contest or during the 90-day period immediately preceding or the 90-day period immediately following any Special Municipal Election of the CITY in which two or more City Council seats are subject to an election contest.

3.4 Separation for Cause

A. Notwithstanding the provisions of Section 3.3, above, EMPLOYEE may be terminated for cause. As used in this Section, "cause" shall mean any one or more of the following:

- (i) Any Breach of this Agreement;
- (ii) Conviction (including a plea of no contest) of a felony or any misdemeanor under the Political Reform Act (Government Code Section 81000 et seq.) or Government Code Section 1090;
- (iii) Conviction (including a plea of no contest) of any offense constituting an "abuse of office or position" within the meaning of Government Code Section 53243.4;
- (iv) Conviction (including a plea of no contest) of a misdemeanor involving a crime of

moral turpitude or felony under California law, including but not limited to any conviction under Penal Code Section 424;

- (v) Continued abuse of non-prescription drugs or alcohol that materially affects the performance of EMPLOYEE's duties;
- (vi) Repeated and protracted unexcused absences from EMPLOYEE's office and duties;
- (vii) Résumé fraud;
- (viii) A finding by judicial proceeding that legally prohibited personal acts of sexual harassment against a CITY official or employee or legally prohibited personal acts of discrimination against a CITY official or employee have occurred;
- (ix) A pattern of repeated, willful and intentional failure to carry out materially significant and legally constituted policy decisions of the City Council made by the City Council as a body, or persistent willful violation of properly established rules and procedures; and
- (x) Any other action or inaction of EMPLOYEE that materially and substantially impedes or disrupts the performance of CITY or its organizational units or is detrimental to employee safety or public safety.

The City Council, in its sole and absolute discretion, may place the EMPLOYEE on administrative leave with pay until resolution of allegations or charges, including but not limited to criminal charges, brought against EMPLOYEE, or until a final judicial or administrative decision finding legally prohibited personal acts of sexual harassment against a CITY official or employee or legally prohibited personal acts of discrimination against a CITY official or employee. Prior to terminating this Agreement pursuant to this Section, the City Council shall give EMPLOYEE at least ten (10) calendar days prior written notice of the charges. Within the ten-day period, but not earlier than five (5) calendar days after the notice has been given, the City Council shall meet with EMPLOYEE in closed session and give EMPLOYEE an opportunity to address the City Council regarding the charges. EMPLOYEE may have a representative at the closed session with the City Council. After hearing EMPLOYEE's response to the charges, the City Council shall make a decision as to whether to terminate this Agreement and shall inform EMPLOYEE in writing of its decision. Other than as provided in this subsection, EMPLOYEE expressly waives any other form of hearing or appeal of the City Council's decision. Nothing in this subsection creates a property right in employment. Notwithstanding anything contained in this subsection, EMPLOYEE remains an at will employee serving at the pleasure of the City Council. The initiation of termination proceedings for cause shall not operate to prohibit or otherwise restrict the City Council from exercising its right to terminate EMPLOYEE without cause as provided under Section 3.3 of this Agreement.

B. In the event the CITY terminates EMPLOYEE for cause, then the CITY may terminate this Agreement immediately, and EMPLOYEE shall be entitled to only the compensation accrued up to the date of termination, payments required under Sections 2 and subsection 3.5 and such other termination benefits and payments as may be required by law. In the event of termination for cause, the City Manager shall not be entitled to any severance provided for under subsection 3.3, above. The foregoing notwithstanding, CITY may deduct from such payments any reimbursement sums it is owed pursuant to Government Code Sections

53243 through 53243.4.

3.5 Return of City Equipment

EMPLOYEE agrees that all property, including without limitation, all equipment, tangible, Proprietary Information (as defined below), documents, records, notes, contracts, and computer-generated materials furnished to or prepared by him incident to his employment are the property of CITY and shall be returned promptly to CITY upon termination of EMPLOYEE's employment. EMPLOYEE's obligations under this subsection shall survive the termination of his employment and the expiration or early termination of this Agreement.

SECTION 4. GENERAL PROVISIONS

4.1 Proprietary Information

"Proprietary Information" means all information and any idea pertaining in any manner to the business of the City Council, the CITY or the CITY's various, departments, divisions, committees and commissions, which was produced by EMPLOYEE in the course of his employment or otherwise produced to or acquired by EMPLOYEE in the course of his employment with the CITY. Proprietary Information shall include, without limitation, trade secrets, product ideas, inventions, processes, formulae, data, know-how, software and other computer programs, copyrightable material, marketing plans, strategies, sales, financial reports, forecasts and customer lists. All Proprietary Information not generally known outside of CITY's organization, and all Proprietary Information so known only through improper means, shall be deemed "Confidential Information". During his employment by CITY, EMPLOYEE shall use Proprietary Information, and shall disclose Confidential Information, only for the benefit of CITY and as is or may be necessary to perform his job responsibilities under this Agreement. Following termination, EMPLOYEE shall not use any Proprietary Information and shall not disclose any Confidential Information, except with the express written consent of CITY. EMPLOYEE's obligations under this Section shall survive the termination of his employment and the expiration of this Agreement.

4.2 Notices

All notices, requests, demands and other communications under this Agreement shall be in writing and shall be effective upon delivery by hand or three (3) business days after deposit in the United States mail, postage prepaid, certified or registered, and addressed to CITY at the address below, and or at the last known address maintained in EMPLOYEE's personnel file. EMPLOYEE agrees to notify CITY in writing of any change in his address during his employment with CITY. Notice of change of address shall be effective only when accomplished in accordance with this Section.

CITY's Notice Address:

City of San Fernando
117 Macneil Street
San Fernando, California 91340
Attn: Mayor and City Council

City Manager's Address: [Deliver to last updated address in personnel file]

4.3 Indemnification

A. 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.

B. Subsection (A) of this Section notwithstanding, CITY reserves all rights (including all rights to monetary reimbursement) afforded under Government Code Sections 53243, 53243.1, 53243.2, 53243.3 and 53243.4 and nothing in this Agreement shall be operate or otherwise be construed to place any restriction upon CITY in exercising and/or enforcing such rights under the foregoing Government Code Sections. In the event EMPLOYEE is convicted of an offense constituting an abuse of office or position, EMPLOYEE shall reimburse CITY for any sums expended investigating and/or defending such wrongdoing as provided under Government Code Section 53243, 53243.1 and 53243.3. For purposes of this Agreement, the phrase "abuse of office or position" shall have the same meaning as set forth under Government Code Section 53243.4

4.4 Entire Agreement

This Agreement is intended to be the final, complete, and exclusive statement of the terms of EMPLOYEE's employment by CITY. This Agreement supersedes all other prior and contemporaneous agreements and statements, whether written or oral, express or implied, pertaining in any manner to the employment of EMPLOYEE, and it may not be contradicted by evidence of any prior or contemporaneous statements or agreements. To the extent that the practices, policies, or procedures of CITY, now or in the future, apply to EMPLOYEE and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control.

4.5 Amendments

This Agreement may not be altered, modified, or amended except in a written document signed by EMPLOYEE, approved by the City Council and signed by Mayor.

4.6 Waiver

Failure to exercise any right under this Agreement shall not constitute a waiver of such right.

4.7 Assignment

EMPLOYEE shall not assign any rights or obligations under this Agreement. CITY may, upon prior written notice to EMPLOYEE, assign its rights and obligations hereunder.

4.8 Severability

If any court of competent jurisdiction holds any provision of this Agreement to be invalid, unenforceable, or void, the remainder of this Agreement shall remain in full force and effect.

4.9 Attorney's Fees

In any legal action, arbitration, or other proceeding brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and

costs.

4.10 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California, with venue property only in Los Angeles County, State of California.

4.11 Interpretation

This Agreement shall be construed as a whole, according to its fair meaning, and not in favor of or against any party. By way of example and not in limitation, this Agreement shall not be construed in favor of the party receiving a benefit nor against the party responsible for any particular language in this Agreement. Captions are used for reference purposes only and should be ignored in the interpretation of the Agreement. Each party waives their future right to claim, contest, or assert that this Agreement was modified, cancelled superseded or changed by any oral agreement, course of conduct, waiver or estoppel.

4.12 Acknowledgment

EMPLOYEE acknowledges that he has had the opportunity to consult legal counsel in regard to this Agreement, that he has read and understands this Agreement, that he is fully aware of its legal effect, and that he has entered into it freely and voluntarily and based on his own judgment and not on any representations or promises other than those contained in this Agreement.

4.13 Counterparts

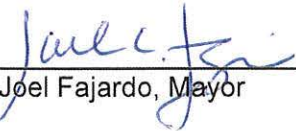
The Parties agree that this Agreement may be executed in multiple originals including multiple counterparts, and that each of the counterparts to any original taken together shall constitute one valid and binding agreement between the Parties.

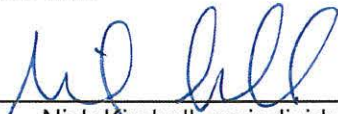
[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, CITY has caused this Agreement to be signed and executed on its behalf by its Mayor and duly attested to by its City Clerk, and EMPLOYEE has signed and executed this Agreement, as of the date first indicated above.

CITY OF SAN FERNANDO

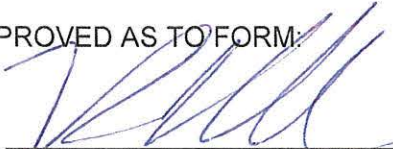
EMPLOYEE

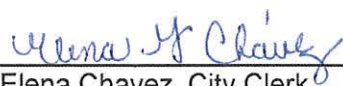
By: 
Joel Fajardo, Mayor

By: 
Nick Kimball, an individual

Date: February 20, 2019

Date: February 20, 2019

APPROVED AS TO FORM:
By: 
Richard Padilla, Asst. City Attorney

ATTEST:
By: 
Elena Chavez, City Clerk

Date: 2/25/19