

## **AGREEMENT FOR SERVICES BETWEEN THE CITY OF LAKEPORT AND KEVIN M. INGRAM**

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This Agreement for Services ("Agreement"), dated August 1, 2020, is entered into by and between the CITY OF LAKEPORT ("City") and KEVIN M. INGRAM ("Manager"). Under this Agreement, the City offers, and Manager accepts, employment as City Manager of the City.

### **1. Duties:**

Manager shall perform those duties and have those responsibilities that are commonly assigned to a city manager of a city in California, those set forth in the City's Municipal Code, and those required by State law. Manager shall perform such other legally permissible and proper duties and functions consistent with the office of City Manager, as the City Council shall from time to time assign.

### **2. Devotion to City Business:**

- A. Manager's position is full-time. Manager shall not engage in any business, educational, professional, charitable, or other activities that would conflict or materially interfere with performance of his City Manager duties as provided for by State law. During the term of this Agreement, Manager shall be exclusively employed by the City, unless prior authorization otherwise is received from the City Council, which authorization will not be unreasonably withheld.
- B. Manager is an exempt employee but is expected to engage in those hours of work that are necessary to fulfill the obligations of his position. Manager does not have set hours of work as Manager is expected to be available at all times. Manager shall not be entitled to additional compensation for hours in excess of eight (8) hours per day and/or forty (40) hours per week.
- C. It is recognized that Manager must devote a great deal of time to the business of the City outside of the City's customary office hours, and to that end Manager's schedule of work each day and week shall vary in accordance with the work required to be performed. Manager shall spend sufficient hours on site to perform Manager's duties; however, Manager has discretion over his work schedule and work location.

### **3. Term:**

- A. Manager's employment will commence on August 1, 2020, and shall continue for a term of two (2) years and eight (8) months, until March 31, 2023, or the date of earlier termination in accordance with provisions in this Agreement. On April 1, 2022, and on each succeeding April 1<sup>st</sup> while this Agreement is in effect, this Agreement shall be automatically extended for one (1) additional year unless prior to that date the City Council notifies Manager of its intent not to extend the Agreement for one additional year. City's election not to extend this Agreement shall not entitle Manager to severance pursuant to Section 5 of this Agreement.
- B. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City Council to terminate the services of Manager at any time, subject to the provisions in Section 5.
- C. Nothing in this document shall prevent, limit, or otherwise interfere with Manager's right to resign at any time from his position with City, subject to the provisions in Section 5.
- D. Pursuant to section 2.10.030 of the Lakeport Municipal Code, Manager serves at the pleasure of the City Council and on an "at will" basis and has no vested right to his employment during the term of this Agreement, subject to the terms and provisions set forth herein.

### **4. City Council Commitments:**

- A. Except for the purpose of inquiry, the City Council and its members shall deal with all subordinate City employees, officers, contractors, and consultants solely through the Manager or Manager's designee, and neither the City Council nor any member thereof shall give direction to any subordinate of the Manager, either publicly or privately.
- B. No member of the City Council will order the appointment or removal of any person to any office or employment under the supervision and control of the Manager.
- C. Neither the City Council nor any of its members shall interfere with the execution of the powers and duties of the Manager, as specified in the Municipal Code, this Agreement, or any other lawfully adopted and authorized document.

## 5. Termination:

- A. For the first 12 months of employment under this Agreement, if Manager is terminated without cause during such time Manager is willing and able to perform the duties of the position, Manager shall be entitled to a severance benefit of six (6) months of Manager's base salary at the time of termination plus accrued vacation and sick leave benefits and one month's health insurance. This base salary and vacation and sick leave pay-out shall be made in equal payments until fully paid at such time as other City employees are normally paid. No other compensation or benefits shall be paid except as referenced in Section 7(E) & 7(F).

However, for each full year of service as City Manager of City after the first 12 months of employment under this Agreement, the amount of severance pay and benefits shall be increased by one full month, capped at a maximum of twelve (12) months plus accrued vacation and sick leave benefits and one month's health insurance. No other compensation or benefits shall be paid except as referenced in Sections 7(E) and 7(F) of this Agreement. In the event that Manager finds other employment within six (6) months, or the adjusted severance term referenced above, Manager will notify City and payment for health insurance shall cease. In no event shall Manager ever receive more severance pay and benefits than the number of months remaining within Agreement.

In no event shall the above lump sum and health insurance payments exceed the amounts determined pursuant to Article 3.5 (commencing with Section 53260) of Chapter 2 Part 1 of Division 2 of Title 5 of the Government Code.

- B. If City terminates this Agreement (thereby terminating Manager's employment) with cause, as determined by the affirmative votes of a majority of the members of the City Council, Manager shall not be entitled to any additional compensation or payment, including severance, but shall be entitled only to accrued, pro-rated base salary, vacation and sick pay, and any other accrued and unused benefit allowances according to their terms ("Accrued Salary and Benefits"). As used in this Agreement, cause means any of the following:
- i. Conviction of, or plea of guilty or nolo contendere to, any crime or offense (other than minor traffic violations or similar offenses) which is



likely to have a material adverse impact on the City or on the City Manager's reputation;

- ii. Proven failure of Manager to observe or perform any of his duties and obligations, if that failure continues for a period of thirty (30) days from the date of his receipt of notice from the City Council specifying the acts or omissions deemed to amount to that failure;
- iii. Conviction of any crime involving an "abuse of office or position," as that term is defined in Government Code section 53243.4;
- iv. Use of alcohol or drugs that impedes performance of duties;
- v. A proven claim of either sexual harassment or abuse of employees in violation of law or adopted City policy;
- vi. Repeated failure to carry out a directive or directives of the City Council; and
- vii. Any grossly negligent action or inaction by Manager that materially and adversely: (a) impedes or disrupts the operations of City or its organizational units; (b) is detrimental to employees or public safety; or (c) violates City's properly-established rules or procedures.

- C. Notwithstanding the above, Manager may voluntarily resign employment with the city by giving 30 days written notice in advance of the last day of employment. However, both parties may mutually agree to a shorter period. In the event of a voluntary resignation, Manager is not entitled to any other compensation except for Accrued Salary and Benefits.
- D. In no event may Manager be terminated within ninety (90) days before or after any municipal election for the selection or recall of one or more of the members of the City Council.
- E. Given the at-will nature of the position of City Manager, an important element of this Agreement pertains to termination. It is in both the City's interest and that of Manager that any separation of the City Manager is done in a businesslike manner.

In the event at any time during the term of this Agreement, the City Council approves a motion to terminate Manager in closed session, then, in that event, Manager may, at his option, choose to resign his office instead of being terminated and be deemed "terminated" at the date of such resignation within

the meaning and context of the severance pay provision in Section 5(A) or Section 5(B), as applicable.

In the event the City Council terminates Manager for any reason or no reason, City and Manager will endeavor to issue a mutually acceptable announcement regarding the termination.

- F. In the event Manager dies while employed by City, his beneficiaries or those entitled to his estate shall be paid his Accrued Salary and Benefits at the rate applicable on the date of death.

#### **6. Compensation and Annual Evaluation:**

- A. Manager's initial annual base salary shall be one hundred forty thousand eight hundred and forty-four dollars (\$140,844.00), payable in monthly or bi-weekly installments at the same time and in the same manner as other employees of the City are paid. Increases in Manager's base salary may be effective at any time in the sole discretion of the City Council.
- B. City, by the City Council, and Manager may set mutually-agreed-upon objectives for each year under this Agreement. The City Council shall evaluate Manager's performance at least once a year during the months of February or March ("Annual Evaluation"). It shall be Manager's responsibility to initiate this review each year. Manager will be afforded an adequate opportunity to discuss each evaluation with the City Council. A performance bonus of fifteen hundred dollars (\$1,500.00) shall be paid annually on the last pay period in June, contingent upon a positive Annual Evaluation; provided that no performance bonus shall be paid in any fiscal year in which Manager receives a cost of living adjustment or other non-merit based salary increase.
- C. Whenever a cost of living adjustment or other non-merit based salary increase is provided to other at-will management employees, the City Council shall consider whether it is reasonable and appropriate to grant a similar increase to Manager's base salary upon the written request of the Manager.
- D. Manager's base salary increases approved by the City Council from time to time pursuant to this Agreement shall not require an amendment to this Agreement to be effective. Such may be set forth in an annual salary resolution or minute action approved by the City Council and ratified by the annual salary resolution.

- E. If the City reduces the base salary or any other financial benefit of the Manager in a percentage that is greater than the average reduction of all at-will management employees, such action shall constitute a termination of this Agreement without cause under Section 5(A) of this Agreement, and Manager shall be entitled to severance, unless otherwise agreed by the City Council and Manager, or where the reduction results from a reorganization or elimination of departments.

## **7. Benefits:**

The Manager shall be entitled to the following City benefits:

- A. City agrees to maintain Manager's enrollment as a member of the California Public Employees Retirement System (CalPERS). Manager shall be entitled to retirement benefits at the 2.5% @ 55 'classic employee' formula. City shall also provide highest final year compensation factor (Section 20042) and conversion of unused sick leave to service credit. IRS provision 414(h)(2) shall also be implemented to provide for payment of Manager's share of CalPERS premium from non-taxed dollars.
- B. The City agrees to provide Manager health, vision and dental insurance as is provided to management employees as may be amended from time to time. Alternatively, Manager may choose to opt out of the City-provided health insurance program, so long as the opt out benefit is available to management employees, upon providing documentation of proof of coverage under an alternate medical insurance program and be paid monthly two hundred and fifty dollars (\$250.00) if eligible for single enrollment; four hundred dollars (\$400.00) if eligible for double enrollment; or five hundred dollars (\$500.00) if eligible for family enrollment.
- C. The City agrees to provide Manager life insurance coverage equal to that provided to management employees.
- D. The City shall provide Manager with long-term disability insurance coverage equal to that provided to other full-time employees of City.



- E. Manager shall accrue vacation leave at the rate of 20 days (160 hours) a year in addition to recognized City holidays. During the term of this Agreement Manager may accumulate vacation leave up to a maximum of 50 days (400 hours). At any time during the term of the Agreement, Manager shall be entitled to cash out accrued but unused vacation days, provided that at least 20 days (160 hours) accrued but unused vacation leave days remain available. The amount paid to Manager shall be based on Manager's annual base salary at the time the vacation leave is paid. For vacation leave of more than two weeks at a time, Manager must provide sufficient notice of his intended vacation absence so that the City Council may approve such absence in order to avoid an extended absence of Manager during critical time periods. Upon termination or resignation from employment or the non-renewal of this Agreement, Manager shall be paid for all accrued and unused vacation time.
- F. Manager shall accrue sick leave at rate of one (1) day per month. Upon termination or resignation from employment or the non-renewal of this Agreement, Manager shall be eligible for sick leave payout as provided to management employees.
- G. Manager shall be entitled to bereavement leave consistent with leave provided to management employees.
- H. The City Manager position is classified as "exempt" under the Fair Labor Standards Act and Manager shall not be entitled to the payment of overtime. Employee shall be entitled to executive leave of 80 hours per employment year with full pay. Hours shall be credited on July 1<sup>st</sup> of each year. Executive leave does not accumulate and is not earned vacation time or benefit. Manager shall be entitled to request a cash-out payment of executive leave equal to the full 80 hours in lieu of using it as paid time off.
- I. A car allowance of \$400.00 per month for travel within a 40-mile radius of City Hall. This allowance is in lieu of mileage reimbursement or other expenses that may be incurred by Manager in connection with his use of his own automobile for City purposes. For travel beyond a 40-mile radius from City Hall for City business, City shall reimburse Manager for mileage at the IRS rate then applicable or for the cost of a rental car, at Manager's discretion. In consideration for said allowance/reimbursement, Manager shall be responsible for all costs of maintenance and operation of his vehicle. Manager shall at all

times maintain automobile liability insurance on any vehicle used by his in the course of City employment. Such insurance shall have coverage limits acceptable in form and amounts to City. Manager shall provide a certificate or other evidence of such insurance to City. Manager acknowledges that this allowance will be subject to payroll taxes unless he maintains the records required by law to permit other treatment of this allowance.

- J. A cell phone stipend of \$100.00 per month.
- K. A technology allowance of \$1,500 per year available on a reimbursement basis (not subject to income tax) or in a lump-sum cash payment (subject to income tax).

**8. Business and Professional Expenses:**

- A. The City will pay dues and subscriptions of the Manager necessary for continued and full participation in regional, state and local associations and organizations necessary and desirable for the full representation of the City's interests. The City shall also pay Manager's dues for membership in the League of California Cities and the International City Management Association, and reimburse any travel expenses to attend functions of this organization. It is also provided that the Manager may request to join other associations and organizations, and if approved, the City shall pay such other dues and appropriate expenses.
- B. The City recognizes that certain expenses of a non-personal and generally job-related nature are incurred by the Manager in the performance of Manager's duties and responsibilities. The City agrees to reimburse or to pay said general expenses that are authorized by the City budget on receipt of duly executed expense or petty cash vouchers, receipts or statements, attached to a monthly request for reimbursement.
- C. City will pay for the registration, travel and subsistence of Manager to adequately pursue necessary official functions for the City, short courses, institutions, seminars, and other functions that are necessary for Manager's professional development and for the good of the City. These shall include but not be limited to the California City Management Association, Redwood Empire Municipal Insurance Fund, and the League of California Cities.



- D. Any expenses of a purely personal nature while participating in any organization shall be borne by Manager. Manager agrees to obtain prior approval for expenses unless specifically provided in the annual budget.

**9. Residency:**

Manager and City mutually agree that it is desirable for Manager to live within close proximity to the City of Lakeport to fully and effectively execute Manager's duties under this Agreement, the Lakeport Municipal Code, and other applicable federal, state, and local laws. Manager hereby agrees to and shall, for the duration of this Agreement, establish and maintain his primary residence within a 30-minute travel time to and from Lakeport City Hall.

**10. Indemnification:**

Consistent with the California Government Code, City shall defend, hold harmless, and indemnify Manager using legal counsel of City's choosing, against expense or legal liability for acts or omissions by Manager occurring within the course and scope of Manager's employment under this Agreement to the extent required by Government Code sections 825 and 995. Legal representation, provided by City for Manager, shall extend until a final determination of the issues including any and all losses, damages, judgments, interest, settlements, fines, court costs, and the reasonable costs and expenses of legal proceedings, including appeals, and including attorneys' fees, and expert witness fees and all other trial and appellate costs, and other liabilities incurred, imposed upon, or suffered by Manager in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened. In the event there is a conflict of interest between City and Manager such that independent counsel is required for Manager, Manager may engage his/her own legal counsel, in which event City shall indemnify Manager, including direct payment of all such reasonable costs related thereto.

**11. Notices:**

Any notices to be given hereunder by either party to the other in writing may be affected either by personal delivery, mail, or email. Mailed notices shall be addressed to the parties as set forth below, but each party may change his/her/its address by written notice given in accordance with this Section. Notices delivered personally or by email will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated and received as of three (3) calendar days following the date of mailing:

CITY: City of Lakeport  
Attention: City Clerk  
225 Park Street  
Lakeport, CA 95453

With a courtesy copy to the City Attorney at the following address or the address then shown in the records of the City for the City Attorney:

David J. Ruderman, Esq.  
Lakeport City Attorney  
420 Sierra College Drive, Ste. 140  
Grass Valley, CA 95945

MANAGER: Kevin M. Ingram  
Address on File with City Clerk

#### **12. Conflict with Lakeport Municipal Code:**

The City personnel ordinances, resolutions, rules and policies shall apply to Manager in the same manner as applied to other management employees, provided, however, in the event of a conflict between the provisions of this Agreement and the Municipal Code, the Municipal Code shall prevail over this Agreement.

#### **13. Entire Agreement:**

This Agreement represents the entire agreement between the parties and supersedes any and all other agreements, either oral or in writing, between the parties with respect to the employment of Manager by City, and contains all of the covenants and agreements between the parties with respect to that employment. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by either party, or by anyone acting on behalf of either party, which are not embodied herein, and that no other employment agreement, statement, or promise not contained in this Agreement shall be valid or binding upon either party.

**14. Modifications:**

Any modifications to this Agreement shall be effective only if in writing and signed by both of the parties hereto.

**15. Effect of Waiver:**

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

**16. Partial Invalidity:**

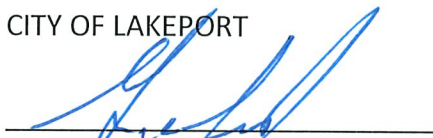
If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

**17. Governing Law; Venue; Attorneys' Fees:**

This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue for any disputes arising from or relating to this Agreement shall lie in the Superior Court for the County of Lake, California. If an action at law or in equity is necessary to enforce or interpret this Agreement, the prevailing party shall be entitled to reasonable and actual attorneys' fees and costs with respect to the action.

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

CITY OF LAKEPORT

  
\_\_\_\_\_  
GEORGE SPURR, Mayor

Dated: 7/20/20

  
\_\_\_\_\_  
KEVIN M. INGRAM

Dated: 7/22/2020



Attest:

Kelly Buendia  
KELLY BUENDIA, City Clerk

Dated: 7-20-2020

Approved as to form:

\_\_\_\_\_  
DAVID J. RUDERMAN, City Attorney

Dated: \_\_\_\_\_