

CITY OF COLUSA

EMPLOYMENT SERVICES AGREEMENT

CITY MANAGER

This Employment Services Agreement (“Agreement”) is made and entered into this 21st day of January 2020, by and between the City of Colusa (the “City”), a general law city, and Jess Cain (“Employee”). City and Employee are collectively referred to as “parties.”

RECITALS

City desires to employ the services of Employee as City Manager for the City of Colusa and Employee desires to accept employment as City Manager. It is the desire of the Parties through this Agreement to provide for certain benefits, establish conditions of employment and to set working conditions for Employee. This Agreement will supplant the existing City Manager Agreement between the City and Employee and Employee will vacate the title and position of Public Works Director.

1. Appointment of City Manager:

The City Council of the City hereby appoints Employee to the position of City Manager,

2. Term of Agreement:

This Agreement will become effective on the date approved by the City Council on the signature page below. However, the terms are retroactive to January 1, 2020. The Agreement will expire on January 1, 2026, unless extended or terminated as provided herein. The parties to this Agreement may terminate this Agreement pursuant to the provisions of paragraph 5.

3. At-Will Employment:

Employee is an “at will” employee who shall serve at the pleasure of the City Council. Accordingly, the City Council may terminate Employee’s employment at any time, with or without cause. This provision may not be altered except by a written instrument executed by Employee, and formally approved by the City Council, which specifically references this Agreement and section. Employee shall at all times be considered an agent or employee of the City. Subject to the prior authorization of the City Council, Employee may act as a representative of City in such a manner as may be required to carry out Employee’s duties hereunder.

4. Duties and Responsibilities:

A. Employee shall serve as the City Manager of the City and shall perform the duties of City Manager as outlined in the class specification listed in Exhibit C. and shall perform other duties as required by the City Code or as otherwise assigned.

- B. Employee agrees to devote his productive time, ability and attention to the City's business. For the duration of this Agreement, Employee shall not hold secondary employment, and shall be employed exclusively by the City, subject to any exceptions approved in writing by the City Council. As an exempt employee, Employee shall not receive overtime or extra compensation for work performed outside normal business hours. Employee is expected to engage in those hours of work that are necessary to fulfill the obligations of these positions. Employee does not have set hours of work as Employee, but is expected to be available at all times.
- C. During the term of the Agreement, Employee shall not engage in any business or transaction or maintain a financial interest which conflicts, or reasonably might be expected to conflict, with the proper discharge of Employee's duties under this agreement.

5. Termination of Employment and Severance:

- A. Employee may terminate this Agreement with or without cause, by giving the City sixty (60) days written notice in advance of termination. During the notice period, all the rights and obligations of the parties under this Agreement shall remain in full force and effect.
- B. The City Council may, at any time, terminate this Agreement with or without cause.
- C. In the event City terminates Employee's employment without cause, Employee shall revert to prior held City Position of Public Works Administrator under the Department Head Group Memorandum of Understanding.
- D. If Employee is terminated for "cause," the City shall not owe any Severance, or Supplemental Severance, under this Agreement. The determination of whether there is "cause" for termination may include, but shall not be limited to the following:
  - 1. Violation of administrative policies and procedures;
  - 2. Failure to properly perform assigned duties;
  - 3. Theft of City property;
  - 4. Insubordination;
  - 5. Conviction of a felony, or conviction of a misdemeanor relating to Employee's fitness to perform assigned duties;
  - 6. Unauthorized absence from employment;
  - 7. Failure to maintain satisfactory working relationships with other employees or the public;
  - 8. Reporting for work, or being at work, under the influence of or in possession of alcohol, non-prescribed controlled substances or prescribed medications which impair Employee's ability to perform his duties.;

9. Improper use of City funds;
10. Unauthorized use of City property;
11. Willful misconduct or malfeasance;
12. Any act of moral turpitude or dishonesty; and
13. Other failure of good behavior either during or outside of employment such that the employee's conduct causes discredit to the City.

6. Compensation: For services rendered pursuant to this Agreement, Employee shall receive the following compensation

- A. Employee shall be paid \$15,719 per month
- B. Employee shall receive an additional \$500.00 per month each January 1<sup>st</sup> for five years contingent on a positive annual evaluation from the City Council.
- C. Salary range shall be from \$15,719 to \$18219 per month
- D. Employee shall receive the benefits identified in Exhibit B to this Agreement.
- E. The compensation provided for herein shall be reported to the California Public Employee Retirement System (CalPERS) in accordance with any then-applicable and governing laws or rules.

7. Indemnification:

The City shall defend, hold harmless and indemnify Employee against any negligent tort, civil rights, personnel, discrimination, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged negligent act of omission occurring in the performance of Employee's duties in accordance with the provisions of California Government Code Section 825 and provide a defense in accordance with Government Code Section 995. The City may decline to defend and/or indemnify only as permitted by the California Government Code. The City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment therefore.

8. Notices:

Notices pursuant to this Agreement shall be in writing given by deposit in the custody of the United States Postal Service, first class postage prepaid, addressed as follows:

- A. The City:  
City Attorney  
City of Colusa  
425 Webster Street  
Colusa, CA 95932

B. Employee:  
Jesse Cain  
425 Webster Street  
Colusa, CA 95932

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial process. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice, postage prepaid, with the United States Postal Service.

9. Arbitration:

- A. Any controversy or claim arising out of or relating to this Agreement or the breach thereof, or arising out of or relating to Employee's employment or termination thereof, including but not limited to claims of employment discrimination based on federal and state law, which cannot be resolved among the parties themselves, shall, on the written request of either party served on the other within the applicable statute of limitations, be submitted and resolved by final and binding arbitration in a manner consistent with the Federal Arbitration Act, if applicable, or the California Code of Civil Procedure (including CCP Section 1283.05). Service of the written request shall be made only by certified mail, with a return receipt requested. Time is of the essence; if the request is not served within a one-year period for claims arising out of this Agreement, or within the applicable statute of limitations for the alleged federal and state law claims, the complaining party's claim(s) shall be forever waived and barred before any and all forums, including, without limitation, arbitration or judicial forums.
- B. The Arbitrator shall have no authority to alter, amend, modify or change any of the terms of this Agreement unless a provision expressly conflicts with applicable federal or state laws. Any arbitrator selected under this provision shall have the express authority to consider statutory violations of federal and state law in addition to disputes involving this Agreement. The decision of the Arbitrator shall be final and binding and judgment therein may be entered in any court having jurisdiction over the dispute.
- C. The Arbitration shall be conducted under the National Rules ("Rules") for the Resolution of Employment Disputes of the American Arbitration Association ("AAA") current at the time of the dispute. If any of the above Rules are determined to be in conflict with federal or state law, then the arbitrator shall have the authority to amend the Rules accordingly. The City shall be responsible for paying all the AAA's administrative and arbitrator's fees. In all other respects, the parties shall bear their own attorneys' fees and costs except as otherwise required by law. The parties shall have the right to conduct discovery which provides them with access to documents and witnesses that are essential to the dispute, as determined by the arbitrator. The arbitrator's written award shall include the essential findings and conclusions upon which the award is based.
- D. The parties intend that this arbitration procedure is mandatory and shall be the exclusive means of resolving all disputes whether founded in fact or law between Employee and the City and/or its officers, employees, elected officials or agents arising out of or relating to this Agreement, the parties' employment relationship and/or the termination of that

relationship, including, but not limited to, any controversies or claims pertaining to wrongful or constructive discharge, violations of the covenant of good faith and fair dealing, implied contracts, public policies, anti-discrimination statutes or any employment-related statutes. THE PARTIES EXPRESSLY WAIVE ANY CONSTITUTIONAL OR STATUTORY RIGHT TO HAVE ANY SUCH DISPUTE DECIDED IN A COURT OF LAW AND/OR BY A JURY IN A COURT PROCEEDING.

10. Bonding:

The City shall bear the full cost of any fidelity or other bond required under any law or ordinance.

11. Performance Evaluations:

The City Council shall review and evaluate the performance of Employee annually, on or about the anniversary of this Agreement. At the time of each evaluation, performance goals shall be discussed that will be used to assist in the evaluation of Employee's performance in the future.

12. Miscellaneous:

- A. The text herein shall constitute the entire agreement between the parties. This Agreement may not be modified, except by written agreement executed by both parties.
- B. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.
- C. This Agreement shall be governed by the laws of the State of California, and venue shall be in Colusa County.
- D. The parties agree that any ambiguity in this Agreement shall not be construed or interpreted against, or in favor of, either party.
- E. This Agreement may be executed in counterparts containing original signatures.

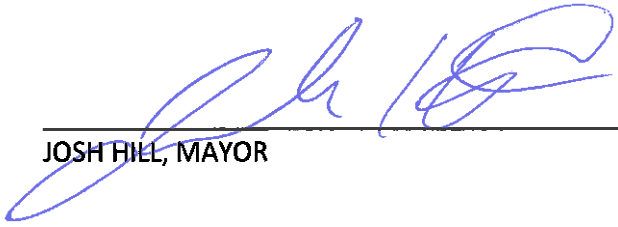
IN WITNESS WHEREOF, the City has caused this Agreement to be signed and executed on its behalf by the Mayor and Employee has signed and executed this Agreement, on the day and year written below.

EMPLOYEE

  
\_\_\_\_\_  
Jesse Cain, Employee

  
\_\_\_\_\_  
Date

CITY

  
\_\_\_\_\_  
JOSH HILL, MAYOR

1-28-2020  
Date

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Ryan Jones, CITY ATTORNEY

EXHIBIT A

1. Releases:

In consideration for this payment, which provides consideration in addition to anything of value to which EMPLOYEE is already entitled, EMPLOYEE (for himself, his heirs, successors and assigns) fully and forever releases, discharges and covenants not to sue or otherwise institute or in any way actively participate in or voluntarily assist in the participation of a legal or administrative proceeding against the CITY (which term includes without limitation the City's employees, agents, representatives, attorneys, affiliated entities, commissions, boards, councils, departments, council members, elected and appointed officials, etc.) with respect to any and all manner of claims, complaints, liabilities, demands, causes of action, grievances, costs, expenses, attorneys' fees, damages, and obligations of every kind and nature, in law, equity or otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way related to acts, conduct, or omissions related to his employment at any time prior to the Effective Date, including but not limited to tort law Government Code §§54950-54962; contract law; wrongful discharge law; and the implied covenant of good faith and fair dealing, except as set forth below. EMPLOYEE understands that this release precludes him/her from filing any new claim against the CITY, based on, or related to, acts or events taking place on or before the effective date of his termination, with the exception of any job-related worker's compensation claim. EMPLOYEE understands that he/she is waiving his right to file a claim under the Age Discrimination in Employment Act of 1967 ("ADEA") (29 U.S.C. § 621 *et seq.*) or similar laws.

EMPLOYEE understands and acknowledges that he/she has been given at least twenty-one (21) days to consider his release of claims under the ADEA, and that he/she expressly waives this 21 day notice provision. EMPLOYEE further acknowledges that he/she has seven (7) days from the date he/she executes this Agreement to revoke his release under the ADEA; provided, however, that should EMPLOYEE revoke his release, the City may in its sole discretion rescind this entire Agreement and obtain all amounts paid hereunder. \_\_\_\_\_ (Initials)

The EMPLOYEE understands that by making the above waivers and releases he/she has forever surrendered every claim, complaint or cause of action of any kind or nature, whether known or unknown, suspected or unsuspected, at the time of the effective date of EMPLOYEE' termination. However, EMPLOYEE understands that the CITY cannot relieve or absolve him/her from possible liability regarding third party claims, and that this Agreement does not foreclose the CITY's right to indemnification for his asserted acts or omissions concerning third parties. The CITY understands that it still has to comply with any statutes, rules or regulations, or as otherwise required by law, requiring it possibly to defend and/or indemnify EMPLOYEE against claims alleged to arise in the course of employment, subject to reservation of rights.

These releases are binding upon and inure to the benefit of the heirs, executors, representatives, assigns, agents, predecessors, successors, subsidiaries, divisions, affiliates, insurers, officers, board members, directors, attorneys, employees, administrators and investors of EMPLOYEE.

EMPLOYEE: \_\_\_\_\_

DATE: \_\_\_\_\_



1-28-2020

## EXHIBIT B

- **Health, Vision, Dental, Retirement Benefits**

EMPLOYEE shall receive the same health, vision, dental, retirement and other benefits, including PERS pension that are provided to employees, as set forth in the Memorandum of Understanding (MOU) between the City of Colusa and the Department Head Group. EMPLOYEE shall receive any additional benefits that may be provided to Department Head Group employees in the future upon approval of the City Council.

- **Vacation**

EMPLOYEE shall accrue vacation leave in accordance with the Department Head Group. EMPLOYEE shall receive any additional benefits that may be provided to Department Head Group in the future upon approval of the City Council.

- **Administrative Leave**

EMPLOYEE shall accrue Administrative Leave in accordance with the Department Head Group. EMPLOYEE shall receive any additional benefits that may be provided to Department Head Group in the future upon approval of the City Council.

- **Sick Leave**

EMPLOYEE shall accrue Sick Leave in accordance with the Department Head Group. EMPLOYEE shall receive any additional benefits that may be provided to Department Head Group in the future upon approval of the City Council.

- **Other Leaves**

EMPLOYEE shall receive all other leaves, (Bereavement, Family and Medical, Jury Duty, Military, etc.) as other employees, as set forth in the Department Head Group MOU.

- **Holidays**

EMPLOYEE shall receive the same legal holidays as other employees, as set forth in the Department Head Group MOU.

- **Life Insurance**

Term policy in the amount of \$50,000