



CITY MANAGER EMPLOYMENT AGREEMENT

This Employment Agreement ("Agreement") is dated April 7, 2021, and is effective as of June 29 2021, by and between the City of Escondido, California, a municipal corporation (the "City"), and Sean McGlynn, an individual (the "City Manager") (collectively referred to herein at times as the "Parties").

RECITALS

WHEREAS, the City requires the services of a City Manager; and

WHEREAS, the City Manager has the necessary education, experience, skills and expertise to serve as the City's City Manager; and

WHEREAS, the City Council of the City (the "City Council") desires to employ the City Manager to serve as the City Manager of City; and

WHEREAS, the Parties desire to execute this Agreement pursuant to the authority of and subject to the provisions of the Escondido Municipal Code and Government Code Section 53260, *et seq.*; and

WHEREAS, in consideration of these Recitals and the performance by the Parties of the promises, covenants, and conditions herein contained, the Parties agree as provided in this Agreement.

AGREEMENT

1. Employment

The City hereby employs the City Manager as its City Manager, and the City Manager hereby accepts such employment.

2. Commitments and Understandings

A. The City Manager's Commitments

(1) Duties & Authority

(a) The City Manager shall be the Chief Executive Officer of the City and be responsible to the City Council for the proper administration of all affairs of the City.

(b) The City Manager shall perform all of the duties of the City Manager as set forth in Article 3, of Chapter 2, of the Escondido 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.

(c) The City Council has designated and may also designate the City Manager as the chief executive of other City-related legal entities.

(d) To accomplish the terms of this Agreement, the City Manager shall have the power and be required to:

(i) Attend all meetings of the City Council, and take part in the discussion of all matters before the City Council either personally or by delegation.

(ii) Review all agenda documents before preparing the agenda for any regular or special meetings of the City Council.

(iii) Direct the work of all City officers and departments that are the concern and responsibility of the City Council, except as provided in Municipal Code section 2-64. The City Manager may undertake any study or investigation that is necessary or desirable to, or as directed by, the City Council. The City Manager shall endeavor to implement changes that the City Manager believes will result in greater efficiency, economy, or improved public service in the administration of City affairs.

(iv) Recommend to the City Council adoption of such measures as the City Manager may deem necessary or expedient for the health, safety, or welfare of the community or for the improvement of administrative services.

(v) Consolidate or combine offices, positions, departments, or units under the City Manager's jurisdiction. The City Manager may be the head of one or more City departments.

(vi) Conduct research in administrative practices in order to bring about greater efficiency and economy in City government and develop and recommend to the City Council long-range plans to improve City operations and prepare for future City growth and development.

(vii) Provide management training and develop leadership qualities among department heads and staff as necessary to maintain a City management team that can plan for and meet future challenges.

(viii) Exercise control of City government in emergencies as authorized by the Municipal Code and California law.

(2) Hours of Work

(a) The City Manager is an exempt employee without set hours of work but is expected to be available at all reasonable times and to engage in those hours of work that are necessary to fulfill the obligations of the City Manager's position.

(b) The City Manager shall spend sufficient hours on site to perform the City Manager's duties; however, the City Manager has discretion over the City Manager's work schedule and work location.

(3) Disability or inability to perform

In the event the City Manager becomes mentally or physically incapable of performing the City Manager's functions and duties with reasonable accommodation, the City Council may appoint an Interim City Manager and may apply for disability retirement of the City Manager, pursuant to Government Code section 21153, and any other applicable provisions of law.

B. City Commitments

(1) The City shall provide the City Manager with the compensation, incentives and benefits, specified elsewhere in this Agreement.

(2) The City shall provide the City Manager with office space, staff, equipment, supplies and all other facilities and services adequate for the performance of the City Manager's duties.

(3) The City shall pay for or provide the City Manager reimbursement for all actual business expenses. The City shall provide the City Manager a credit card to charge appropriate and lawful business expenses.

(4) The City agrees to pay the professional dues and subscriptions on behalf of the City Manager for participation in national, regional, state, or local associations and organizations, as necessary and desirable for the good of the City.

(5) The City agrees to pay the travel and subsistence expenses of the City Manager for purposes such as official functions, meetings, occasions, short courses, institutes and seminars that are necessary for the good of the City and consistent with the Administrative Directives applicable to Executive Management positions at the City.

C. City Council Member Commitments

(1) The City Council sets policy for the governance and administration of the City, and it implements its policies through the City Manager.

(2) As provided in the Escondido Municipal Code, and except for the purpose of inquiry or as otherwise established by a policy agreed upon by the City Manager and City Council, the City Council and its members shall deal with all subordinate City employees, officers, contractors, and consultants solely through the City Manager or the City Manager's designee, and neither the City Council nor any member thereof, shall give orders to any subordinate of the City Manager, either publicly or privately.

(3) The City Council agrees none of its individual members will order the appointment or removal of any person to any office or employment under the supervision and control of the City Manager.

(4) Neither the City Council nor any of its members shall interfere with the execution of the powers and duties of the City Manager. The City Manager shall take direction, orders and instructions from the City Council when it is sitting as a body in a lawfully held meeting.

(5) The City Council agrees that any criticism of a staff member shall be done, whenever reasonably possible, privately through the City Manager.

D. Mutual Commitments

(1) Performance Evaluation

The City Council recognizes that for the City Manager to respond to the City's needs and to grow in the performance of the City Manager's job, the City Manager needs to know how the City Council members evaluate the City Manager's performance. To assure that the City Manager gets this feedback, the City Council shall conduct an evaluation of the City Manager's performance in a properly noticed closed session not less than one (1) year after the effective date of this Agreement. Thereafter, the City Council will annually review the City Manager's performance within forty-five (45) days of the anniversary date of the City Manager's employment, or as otherwise agreed, and/or when it deems necessary to discuss any concerns or direction in performance. At the time of the initial evaluation, and on each anniversary evaluation thereafter, the City Council shall consider in good faith performance-based salary adjustments, based upon comparable compensation information for cities in San Diego County. However, the City Council shall have no obligation to make any such adjustments, regardless of City Manager's level of performance. The City Council may, in its sole discretion, elect to utilize an outside facilitator to assist in the performance evaluation process.

(2) Ethical Commitments

The City expects the City Manager to adhere to the highest professional standards. The City Manager's actions will always comply with those standards. The City Manager agrees to follow the Code of Ethics of the International City/County Management Association (ICMA) and the ethics rules, regulations, and laws of the State of California. Consistent with the standards outlined in the Code, the City Manager shall not endorse candidates, make financial contributions, sign or circulate petitions, or participate in fundraising activities for individuals seeking or holding elected office, nor seek or accept any personal enrichment or profit derived from confidential information or misuse of public time. The City shall support the City Manager in keeping these commitments by refraining from any order, direction or request that would require the City Manager to violate the ICMA Code of Ethics. Neither the City Council nor any individual member thereof shall request the City Manager to endorse any candidate, make any financial contribution, sign or circulate any petition, or participate in any

fundraising activity for individuals seeking or holding elected office, nor to handle any matter of personnel on a basis other than fairness, impartiality, and merit.

3. COMPENSATION

The City agrees to provide to the City Manager compensation and benefits, and assume certain costs on behalf of the City Manager, during the term of the Agreement as follows:

A. Compensation & Required Employer Costs

(1) Base Salary

(a) The annual Base Salary for the position of City Manager shall be two hundred and eighty thousand dollars (\$280,000).

(b) The City Manager shall be paid at the same intervals and in the same manner as regular City employees. In the event that there are more than twenty-six (26) pay periods in a calendar year, the periodic payments shall be adjusted accordingly so that the Base Salary or other compensation or benefits shall not exceed any amount approved by the City Council.

(c) The City shall not at any time during the term of this Agreement reduce the Base Salary, compensation or other financial benefits of the City Manager unless, as part of a general City management salary reduction, and then in no greater percentage than the average reduction of all City department heads. The City shall give the City Manager ninety (90) day's written notice of any intent to reduce the Base Salary pursuant to this provision.

(2) Required Employer Costs

(a) Federal Medicare Contributions (as required).

(b) State Unemployment Insurance.

(c) Public Employees Retirement System (PERS)

The City contracts with the California Public Employees' Retirement System for retirement benefits. The City will pay the City's share, and the City Manager shall pay the employee's share for participation in PERS as a Tier 3 PEPRAs member, currently set at seven percent (7%).

(d) The cost of any fidelity or other bonds required by law for the City Manager, which the City reserves the right to waive.

(e) The cost to defend and indemnify the City Manager as provided in Section 6(E) below.

(f) Workers' Compensation Insurance.

B. Basic Benefits

(1) Holidays

The City Manager is entitled to ten (10) paid holidays per year.

(2) Vacation, Sick Leave and Management Leave Allowance

Upon the Effective Date of this Agreement, the City Manager shall receive:

(a) A vacation leave bank of one hundred and twenty (120) hours. Thereafter, the City Manager shall accrue vacation leave hours commencing at the same rate as City employees who have been working for the City for five (5) or more years and progressing according the schedule for city employees generally thereafter. The City Manager may accrue up to up to the maximum leave balance as permitted under existing City policy for a five (5) year or more City employee. The City Manager may convert vacation leave hours to cash at the same rate and at the same times as City Executive Management employees. The City Manager shall be paid for any unused accrued vacation hours upon either voluntary or involuntary termination of employment.

(b) A sick leave bank of eighty (80) hours. Thereafter, the City Manager shall accrue sick leave hours at the same rate and at the same times as City employees who have been working for the City for five (5) or more years.

(c) Ten (10) days (equivalent to 90 hours) of Management Leave. The City Manager shall thereafter receive ten (10) days of Management Leave annually. The Management Leave hours do not carry from one Fiscal Year to the next and will expire at the close of each Fiscal Year if unused. The City Manager may cash out the Management Leave hours in whole or in part at the times established for all City employees.

(d) Moving and relocation expenses in the amount of twenty thousand dollars (\$20,000). This amount shall constitute the total amount of compensation arising out of or related to the City Manager's move from his current home to the City of Escondido including, but not limited to, the need for temporary housing and related relocation expenses.

(3) Automobile

Upon the Effective Date of this Agreement, the City Manager shall be provided a monthly automobile allowance in the amount of seven hundred fifty dollars \$750.00 (\$9,000.00 annually) in lieu of making a vehicle available for the City Manager's City-related business and/or functions during, before and after normal work hours. The City Manager is not precluded from using City vehicles for City business during, before, and after the normal workday on occasion, when appropriate.

(4) Non-Compensable Benefits that Accrue to Other Employees

The City Manager shall be entitled to all other non-compensable benefits, rights, and privileges accorded to City Executive Management employees except as otherwise provided in this Agreement.

4. SECURITY

A. Pensions

(1) Public Employees Retirement System ("PERS")

For the purposes of PERS reporting, the City shall incorporate into the reported Base Salary as compensation earnable the Section 3.A(1)(a) Base Salary, but only to the extent, if any, that PERS will consider it to be compensation earnable. City Manager is a Tier 3 PEPR member of CalPERS ("PERS"), and as such, the City Manager is obligated to contribute to PERS at the same level as all other City Tier 3 PEPR PERS members, which is currently seven percent (7%) of Base Salary.

(2) Deferred Compensation

(a) Plan Contribution

The City will make, in equal proportionate amounts each pay period, a pro-rated total annual contribution of seven percent (7%) of Base Salary into a qualified deferred compensation plan as selected by the City Manager. Amounts contributed under this section shall be to the benefit of the City Manager in accordance with the Deferred Compensation Plan participation agreement and shall be considered employer contributions.

(b) Internal Revenue Code Compliance

All provisions of this Section 4.A are subject to the provisions and limitations of the Internal Revenue Code and its related regulations as amended from time to time. No requirement of any provision of this Section 4.A shall be effective if it would violate any provision of the Internal Revenue Code or its related regulations.

B. Insurance

(1) Disability Insurance

Short and Long Term Insurance is provided and the City Manager shall contribute 0.715% of Base Salary for short-term disability coverage and 0.50% of Base Salary for long-term disability.

(2) Medical/Dental/Vision Insurance

The City Manager shall receive the same cafeteria plan equal to four percent (4%) of Base Salary plus one hundred and twenty-five dollars (\$125.00) for allowable medical,

dental and vision insurance options and related benefits as are available to other City Executive Management employees.

(3) Life Insurance

The City Manager shall receive Basic Life and AD&D insurance procured by the City and calculated at the rate of twice the Base Salary with a cap of five hundred thousand dollars (\$500,000).

5. SEPARATION

The City Manager is an at-will employee serving at the pleasure of the City Council as provided in Government Code Section 36506. This Agreement may be terminated, or the City Manager may be separated from employment under this Agreement, as follows:

A. By City

The City may terminate this Agreement at any time, either with or without cause, by majority vote of the membership of the City Council at a properly posted and duly authorized public meeting. Termination shall be under one or more of the following provisions:

(1) For Cause:

(A) Misconduct. In the event that the City determines there is good cause to terminate this Agreement due to (1) malfeasance, (2) gross negligence, (3) fraud, or (4) conviction of a crime, other than a traffic offense or infraction on the part of the City Manager, the City shall give the City Manager notice of termination, which at the option of the City Council shall either be effective immediately, or the notice shall specify the intent to terminate and the date the termination will become final. In either case, the notice shall be accompanied by a statement of the basis for the termination. In the case of a termination that is effective immediately, the City Manager shall have the right to present any rebuttal information to the City Council, in writing, no later than 10 calendar days after the termination. In the event that the City Council gives notice of an intent to terminate at a future date, the City Manager shall have the right to present any rebuttal information to the City Council, in writing, prior to the effective date of the termination. In either case, the City Manager shall have the right to be represented and to have a hearing before the City Council, in open or closed session as authorized by the Ralph M. Brown Act, within 14 days following termination. The City Council shall review any rebuttal information provided by the City Manager and any other relevant material and shall then determine whether to uphold the termination or to rescind it. The City Council's decision shall be final. Any actions of the City taken under this paragraph shall occur only after the majority vote of the membership of the City Council.

(B) Material Uncorrected Failure to Perform. In the event that the City determines there is good cause to terminate this Agreement that does not rise to the level of seriousness addressed above in Section 5.A(1)(A), such as (1) a repeated material failure to meet reasonable performance objectives which have been identified

and adopted by the City Council at a properly notice public meeting, that are within the City Manager's control, or (2) uncorrected material failure to present a positive image to the City Council, staff, public or media on behalf of the City, the City may terminate the Agreement for cause provided the City (1) first gives notice to the City Manager in writing of the alleged failure in performance and a reasonable opportunity to cure the problem, and (2) gives the City Manager a reasonable opportunity to present evidence to the City Council in rebuttal to any alleged failure in performance or of any extenuating circumstances showing that the failure was beyond the control of the City Manager. The City will not terminate for cause under this Section 5.A(1)(B) unless it is determined in writing that the evidence in support of the grounds for termination is substantial taking into account all of the information available to the City Council, including any evidence presented by the City Manager. Any actions of the City taken under this paragraph shall occur only after the majority vote of the membership of the City Council.

(C) No Severance Benefits. In the event that this Agreement is terminated by the City pursuant to Section 5.A(1) for cause, the City Manager shall not be entitled to any severance benefits under this Agreement or under any other provision of law or City policy or procedure, except for previously accrued vacation and management leave to which the City Manager is otherwise entitled.

(2) For Convenience

The City may terminate this Agreement at any time without cause and for its convenience as the City shall, in its sole discretion, determine appropriate provided (1) the City Manager shall be given at least thirty (30) days' written notice and an opportunity to be heard, in open or closed session or in writing, as the City Council shall determine consistent with the Ralph M. Brown Act, with respect to the proposed termination before it becomes effective, and (2) the City Council shall vote by not less than a majority of the membership of the City Council to exercise its termination rights under this provision. The City Manager shall be offered the severance benefits specified below in Section 5 which he may accept or reject as provided in Section 5.

B. By the City Manager

The City Manager may terminate this Agreement at any time, with or without cause, by (1) giving Employer ninety (90) days advance written notice of his intent to terminate, or (2) a termination sooner by mutual agreement with the City. In the event that the City Manager exercises his right to terminate, he shall not be entitled to the severance benefits set forth below under Section 5.C or to any other similar termination benefits under law or the City's rules or regulations, provided however, that the City Manager shall be entitled to payment for any vacation or management leave earned and unused at the time his notice of termination is effective.

C. Severance

In the event that the City Manager's employment is terminated by the City for convenience pursuant to Section 5.A(2) above, the City Manager shall be offered and shall be entitled to the severance benefits stated in this Section 5.C, as follows:

(1) Computation

The City shall offer to the City Manager, for a termination occurring during the first five (5) year period after the Effective Date of this Agreement, to pay an amount equal to one (1) year of his Base Salary. For any termination occurring after the first five (5) year period after the Effective Date of this Agreement, an amount equal to six (6) months of his Base Salary. Such severance benefits shall be paid in addition to payment of any accrued vacation or management leave otherwise payable to the City Manager.

(2) Separately Negotiated; Waiver

The Parties expressly acknowledge and agree that these severance pay provisions have been independently negotiated. Acceptance by the City Manager of the severance pay benefits provided by this Section 5 shall operate as a full and complete waiver and release of any and all rights, claims, and/or causes of action which the City Manager may have, or have had, at any time, in the past or in the future, arising out of the City Manager's employment by the City, including but not limited to claims for wrongful termination of this Agreement. If the City Manager wishes to retain any such rights, the City Manager must decline to accept the severance benefits provided by this paragraph. The City Manager shall notify the City of this election to accept or reject these severance benefits within seven (7) days of notice of termination of this Agreement, or within such other time period as the Parties may agree to in writing.

Acceptance of the severance benefits under this paragraph will operate as a general release on the part of the City Manager as to all claims, known or unknown, and the City Manager specifically waives the provisions of Civil Code Section 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

(3) The severance provisions of this Agreement shall not apply in the event the City Manager is terminated for cause as provided for in Sections 5.A(1)(A) or (B).

6. MISCELLANEOUS PROVISIONS

A. Term

The term of this Agreement shall be from the Effective Date until terminated pursuant to the terms of this Agreement.

B. Provisions that Survive Termination

Many sections of this Agreement are intended by their terms to survive the City Manager's termination of employment with the City including, but not limited to, Sections 5 and 6.E. These sections, and the others so intended, shall survive termination of employment and termination of this Agreement.

C. Amendments

This Agreement may be amended at any time by mutual agreement of the City and the City Manager. Any amendments are to be negotiated, put in writing, and adopted by the City Council.

D. Conflict of Interest

(1) The City Manager shall not engage in any business or transaction or have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties.

(2) The City Manager shall also be subject to the conflict of interest provisions of the California Government Code and Municipal Code.

(3) The City Manager is responsible for submitting to the City Clerk the appropriate Conflict of Interest Statements at the time of appointment, annually thereafter, and at the time of separation from the position.

E. Indemnification

The City shall defend and indemnify the City Manager to the fullest extent required by Government Code section 825, *et seq.* and as may be required or provided for under the Municipal Code and related City Administrative Directives.

F. Severability

If any clause, sentence, part, section, or portion of this Agreement is found by a court of competent jurisdiction to be illegal or unenforceable, such clause, sentence, part, section, or portion so found shall be regarded as though it were not part of this Agreement and the remaining parts of this Agreement shall be fully binding and enforceable by the Parties hereto.

G. Laws Affecting Title

In addition to those laws affecting a City Manager, the City Manager shall have the same powers, rights and responsibilities as a Chief Executive Officer, City Administrative Officer, Administrator, and City Administrator as those terms are used in local, state or federal laws.

H. Jurisdiction and Venue

This Contract shall be construed in accordance with the laws of the State of California, and the Parties agree that venue shall be in San Diego County, California, notwithstanding any conflicting provisions of the California Code of Civil Procedure.

I. Provisions of Government Code Section 53243, et. seq.

(1) In the event that the City provides paid leave to City Manager pending an investigation of a crime involving abuse of his office or position covered by Government Code section 53243.4, and should that investigation lead to either a criminal conviction or a civil or administrative penalty by the FPPC or any similarly authorized agency, City Manager shall fully reimburse the City for any salary provided for that purpose.

(2) In the event that the City provides funds for the legal criminal defense of City Manager pending an investigation of a crime involving abuse of his office or position covered by Government Code section 53243.4, and should that investigation lead to either a criminal conviction or a civil or administrative penalty by the FPPC or any similarly authorized agency, City Manager shall fully reimburse the City for any funds provided for that purpose.

(3) In the event that the City provides City Manager with severance, or any other type of cash settlement related to the termination of City Manager, and City Manager subsequently is convicted of a crime, or subjected to civil or administrative penalties, resulting from abuse of his office or position covered by Government Code section 53243.4, City Manager shall fully reimburse the City for any such severance or cash settlement.

(4) This provision shall not be interpreted or construed as creating a contractual obligation on the City to provide paid leave, a legal criminal defense or cash settlement related to an investigation or termination of the City Manager.

J. Entire Agreement

This Agreement represents the contractual relationship of the Parties, and no representations have been made or relied upon except as set forth herein. This Agreement may be amended or modified only by a written, fully executed agreement of the Parties.

IN WITNESS WHEREOF, the City of Escondido has caused this Agreement to be signed and executed on its behalf by its Mayor as authorized by Resolution No. 2021-49, and City Manager has signed and executed this Agreement set forth below.

CITY OF ESCONDIDO

CITY MANAGER

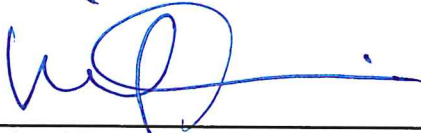


Paul McNamara, Mayor



Sean McGlynn

APPROVED AS TO FORM:



Michael R. McGuinness, City Attorney