

**CITY OF LOS ALAMITOS**  
**EMPLOYMENT AGREEMENT**  
**FOR**  
**NON-REPRESENTED EMPLOYEE**  
**(CITY MANAGER)**

**1. PARTIES AND DATE.**

This Agreement (hereinafter referred to as the "Agreement") is made and entered into this 21<sup>st</sup> day of January, 2020 ("Effective Date") by and between the City of Los Alamitos, a California charter city and municipal corporation (hereinafter referred to as "City") and Chester C. Simmons (hereinafter referred to as "Employee"), in order to provide in writing the terms and conditions of employment as City Manager for City. City and Employee are sometimes individually referred to herein as a "Party" and collectively as the "Parties."

**2. RECITALS.**

**2.1 City.**

City desires to employ Employee as City Manager for the City of Los Alamitos, 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.

**3. TERMS.**

**3.1 Duties.**

3.1.1 Designated Duties. City hereby agrees to employ Employee as City Manager of City to perform the functions and duties in accordance with applicable state law, the City's Charter and Municipal Code, as well as the approved City job description for the position, a true and correct copy of which is attached hereto, marked Exhibit "A" and incorporated herein by reference. Employee shall also perform other legally permissible and proper duties and functions as the City Council shall from time-to-time assign.

3.1.2 Control and Supervision. Employee shall serve at the will and pleasure of the City Council, and will be under the day-to-day supervision and direction of the City Council.

3.1.3 City Council Meetings. Employee shall attend all City Council meetings, unless excused or directed otherwise by the City Council.

3.1.4 Moonlighting. Employee will focus his professional time, ability, and attention on City business during the Term of this Agreement. To the extent consistent with applicable law, Employee shall not engage in any other business duties or pursuits whatsoever

or, directly or indirectly, render any services of a business, commercial, or professional nature to any other person or organization, whether for compensation or otherwise, without the prior written consent of the City Council, except that:

(1) The expenditure of reasonable amounts of time not in conflict with the City's needs and interests, for educational, charitable, community, and professional activities, shall not be deemed a breach of this Agreement and shall not require prior consent; and

(2) This Agreement shall not be interpreted to prohibit Employee from making passive personal investments or conducting private business affairs if those activities do not materially interfere with the services required under this Agreement or create conflicts of interest.

3.1.5 Work Schedule. It is recognized that Employee must devote a great deal of time outside normal office hours and outside of City Hall to meet the business needs of the City. As such, Employee shall regulate his own work schedule provided he accommodates a normal business schedule and remains accessible, recognizing the needs of the organization and community.

3.1.6 City Documents and Confidentiality. All data, studies, reports and other documents prepared by Employee while performing his duties during the Term of this Agreement shall be furnished to and become the property of the City, without restriction or limitation on their use. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other materials either created by or provided to Employee in connection with the performance of this Agreement shall be held confidential by Employee. Such materials shall not, without the prior written consent of the City Council, be used by Employee for any purposes other than the performance of his duties. Nor shall such materials be disclosed to any person or entity not connected with the performance of services under this Agreement, except as required by law. The obligations of the City and Employee under this section shall survive the termination of this Agreement.

3.1.7 City Council Commitments:

(1) 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 Employee or Employee's designee, and neither the City Council nor any member thereof shall give direction to any subordinate of Employee, either publicly or privately.

(2) 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 Employee.

(3) Neither the City Council nor any of its members shall interfere with the execution of the powers and duties of Employee, as specified in the City Charter, the Municipal Code, this Agreement, or any other lawfully adopted and authorized document.

### **3.2 Term; Termination; Severance Pay.**

3.2.1 Term. This Agreement shall continue from the Effective Date for a period of three (3) years through and including January 20, 2023 unless earlier terminated.

3.2.2 Termination. The Parties understand and agree that the employment relationship created by this Agreement is “at-will” and that Employee shall serve at the will and pleasure of the City Council, and may be terminated at any time, without notice and with or without cause, but subject to the terms of this Agreement and the City’s Charter and Municipal Code.

3.2.3 Automatic Termination. This Agreement, and Employee's employment, shall automatically terminate and Employee shall not be entitled to any severance payment, except for compensation for accrued and unused vacation leave, upon the happening of any of the following events:

(1) Upon mutual agreement in writing by both Parties to terminate this Agreement;

(2) Upon resignation by Employee;

(3) Upon the death of Employee;

(4) When Employee has been unable to perform all or substantially all of the essential functions of his position, with or without reasonable accommodation, due to illness or other disability for a period of three (3) months, provided, however, whenever required by applicable law, Employee shall be entitled to use accrued but unused sick leave before this three (3) month period begins to run.

(5) Upon the natural expiration of the Term of this Agreement, as provided for herein.

3.2.4 Termination Without Cause; Severance. In the event Employee is terminated without cause at such time as Employee is willing and able to perform his duties under this Agreement, other than under an Automatic Termination instance as provided for in Section 3.2.3, the City agrees to pay Employee a severance payment equal to the lesser of: (1) six months base salary (as described in Section 3.3 below); or (2) the unexpired term of this Agreement (as described in Section 3.2.1 above) (“Severance Payment”). Employee shall receive said payment as a lump sum payment within thirty (30) days of Employee’s last day of employment with City. The Severance Payment is expressly contingent on Employee executing a valid waiver and release of all claims against the City and City Council members individually and collectively (“Separation Agreement and General Release”). Should Employee fail to execute the Separation Agreement and General Release, Employee will forego any right to the Severance Payment. Recovery and enforcement of the Severance Payment shall be Employee’s sole remedy for a termination without cause. The Severance Payment shall be paid in one lump

sum on the effective date of termination. Upon termination, with or without cause, Employee shall also be entitled to compensation for accrued and unused vacation leave.

Termination without cause may not be exercised by the City sixty (60) days prior to any City Council election or ninety (90) days following the certification of any City Council election.

3.2.5 Notice for Resignation. In the event Employee voluntarily resigns his position with City, Employee shall give City Council a minimum of thirty (30) days' notice in advance, unless the Parties otherwise agree. Upon voluntary resignation, Employee shall be entitled to accrued vacation leave, but not to the Severance Payment described in Section 3.2.4 above.

3.2.6 Termination for Cause; Procedure. Except as provided in Subsection (5) of 3.2.6.2 below, in the event Employee is terminated for cause, City shall have no obligation to pay the Severance Payment described in Section 3.2.4 above. However, Employee shall be entitled to compensation for accrued and unused vacation leave.

3.2.6.1 *Grounds for Termination for Cause.* As used in this Agreement, cause shall mean any of the following:

- a) Conviction of a felony;
- b) Conviction of a misdemeanor arising out of Employee's duties under this Agreement and involving a willful or intentional violation of law;
- c) Willful abandonment of duties, other than for excused medical reasons;
- d) A 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
- e) Any other intentional or grossly negligent action or inaction by Employee that materially and substantially: (1) impedes or disrupts the operations of the City or its organizational units; (2) is detrimental to employee or public safety; (3) violates properly established rules or procedures of the City causing a material and substantial adverse impact on the City; or (4) has a material and substantial adverse effect on the City's interests as clearly defined and delineated by properly established City Council action taken by the City Council as a body, policy, regulations, or ordinances.

3.2.6.2 *Termination Procedures.* Subject to Section 707 of the City Charter, the following procedures shall apply to any termination for cause:

(1) At least thirty (30) calendar days before the effective date of any termination for cause, the City Council shall deliver to Employee a written specification of the charges or other reasons upon which "cause" is alleged, as well as the specific effective date of termination. After furnishing Employee with written notice of his intended termination for cause ("Termination Notice"), the City Council may suspend him/her from duty, but his total compensation shall continue for sixty (60) days from the date of the Termination Notice.

(2) Within seven (7) calendar days from his receipt of the Termination Notice, Employee may challenge such termination for cause by delivery to the City Clerk of a written demand for a public hearing before the City Council upon the specifications. Failure to submit a written demand for such a hearing within the seven (7) calendar day period shall constitute a waiver of such right.

(3) If a public hearing before the City Council is demanded, no special notice (e.g., newspaper publication) shall be required for the hearing, other than agenda noticing required by the Brown Act. The City Council shall fix a time for the public hearing which shall be held at its regular meeting place before the expiration of the thirty (30) day period referred to in subparagraph (1) above.

(4) The issues to be determined in the hearing shall be whether the specification(s) alleged constitute "cause" pursuant to this Agreement. The City Council's determination shall be final and without right of further appeal.

(5) In the event the City Council concludes in favor of Employee that no cause exists, Employee shall be entitled only to the appropriate amount of severance pay and benefits as he would have received if terminated without cause pursuant to Section 3.2.4 above and upon the conditions set forth in Section 3.2.4. Employee shall not have any reinstatement rights.

3.2.7 Government Code Provisions. In accordance with Government Code sections 53243 through 53243.4, if Employee is paid any leave salary pending investigation, if City provides funds for the legal defense of Employee, or if Employee receives any cash settlement related to the termination of this Agreement, including the Severance Payment specified above, and Employee is subsequently convicted of a crime involving the abuse of his or her office as defined by Government Code section 53243.4, Employee shall fully reimburse City for such monies paid. This provision shall survive termination of this Agreement.

3.2.8 Joint Communications Upon Employee's Termination. In the event the City Council terminates Employee without cause, Neither the City Council, individual City Council members, nor Employee shall make any written, oral or electronic statement to any member of the press concerning Employee's termination except in the form of a joint press release or statement, the content of which is mutually agreeable to the City Council and Employee. The joint press release or statement shall not contain any text or information that is disparaging to either Party. Either Party may verbally repeat the substance of the joint press release or statement in response to any press inquiry.

### **3.3 Salary.**

3.3.1 Employee's base salary shall be One Hundred Eighty-Nine Thousand Six Hundred Dollars (\$189,600.00), subject to all necessary deductions and withholdings required by state and/or federal law. City shall also deduct sums Employee is obligated to pay because of participation in plans or programs described elsewhere in this Agreement.

3.3.2 On the one-year anniversary of the Effective Date of this Agreement, Employee shall receive an automatic two percent (2%) salary increase. Employee shall also receive additional automatic two percent (2%) salary increases annually thereafter. These annual salary increases shall be added to Employee's base salary, which will total \$193,392.00 in year 2021 and \$197,259.00 in year 2022.

3.3.3 At the end of each calendar year, Employee may also be entitled to up to a two percent (2%) performance based incentive bonus. Any performance based incentive shall be dependent upon Employee's success in implementing the performance plan described in section 3.5 below, as well as other issues deemed relevant by the City Council, and shall be within the City Council's sole and absolute discretion.

3.3.3.1 Any performance bonus awarded shall be provided as a lump sum payment and shall not be added to Employee's base salary.

3.3.4 The salary shall be payable bi-weekly at the same time as other employees of City are paid, and may be modified from time-to-time by the City Council pursuant to the Salary and Benefits Resolution.

### **3.4 Fringe Benefits.**

Except as otherwise set forth herein, Employee shall be entitled to those benefits, including holidays, bereavement, temporary disability, jury duty, vacation, sick leave, administrative leave, disability, health and life insurance, and retirement, provided for Executive Management employees in the Salary and Benefit Resolution, as may be amended.

3.4.1 Administrative Leave. Employee shall be credited with 80 hours of administrative leave at the beginning of employment. Future administrative leave accrual shall be in accordance with the rules and policies set forth for Executive Management employees in the Salary and Benefit Resolution, as may be amended.

3.4.2 Vacation Leave. Employee shall accrue vacation leave at the rate of 120 hours, 136 hours, and 152 hours annually for years one, two and three of the Agreement respectively, to be accumulated on a bi-weekly basis at a pro-rated amount equivalent to the annual amount.

3.4.3 Notice of Vacation and Administrative Leave. Employee shall provide as much written notice as possible to the City Council when Employee plans on using more than one day's worth of administrative or vacation leave. Absent extenuating circumstances, in no

event shall the notice be less than seven (7) calendar days.

3.4.4 Disability, Health, and Life Insurance; Physical Examinations. City agrees to provide contributions for comprehensive medical, optical and dental insurance for Employee and his dependents, as provided for Executive Management employees in the Salary and Benefit Resolution, as may be amended, except that the City shall contribute up to One Thousand Four Hundred Dollars (\$1,400.00) per month toward the payment of premiums for health, dental and optical insurance for Employee and his dependents ("Premium Contribution"). Alternatively, Employee may elect to receive a monthly payment equal to the Premium Contribution in lieu of participation in the City's medical, optical and dental insurance program. Employee shall also be entitled to the same long-term disability insurance and physical examination benefits that are provided for Executive Management employees in the Salary and Benefit Resolution, as may be amended.

3.4.5 Retirement. City agrees to execute all necessary agreements to enroll Employee as a "Classic" Employee in the Public Employees' Retirement System of the State of California ("PERS"). Employee shall be entitled to the same retiree medical benefits provided for Executive Management employees in the Salary and Benefit Resolution. Retirement benefits are provided for Executive Management personnel under the 2.7% at 55 Plan of PERS. Level 4 of the 1959 Survivor Benefit and the Pre-Retirement Option 2 Death Benefit.

3.4.5.1 City shall pay the employer share of the PERS retirement contribution as actuarially determined by PERS for each fiscal year covered by the Agreement for the 2.7% at 55 retirement benefit level.

3.4.5.2 Employee shall pay the employee's share of the PERS retirement contribution as actuarially determined by PERS for each fiscal year covered by the Agreement for the 2.7% at 55 retirement benefit level.

3.4.6 Auto Allowance. Employee shall provide his own vehicle to be used in the performance of his duties and City shall provide Employee with a car allowance in the amount of Seven Hundred Dollars (\$700.00) per month. Employee shall at all times maintain automobile liability insurance with a minimum liability coverage of \$250,000 for each person and \$500,000 for each occurrence or \$500,000 aggregate. Employee is not precluded from using non-police City vehicles for City business during, before, and after the normal workday on occasion, when appropriate.

3.4.7 Deferred Compensation. Employee shall have the option of participating in the City's deferred compensation plan.

3.4.8 Cellular Telephone/Allowance. During the term of this Agreement City shall provide Employee with a City issued cellular phone to be used in accordance with City policy. City shall pay for the cellular phone expenses. Alternatively, Employee may elect to use his own cellular phone, for which the City will provide a monthly stipend of \$70. Employee shall be required to execute City's standard cellular telephone use agreement in the event a City phone is provided.

3.4.9 Technology Allowance. Employee shall have the option to purchase a tablet or laptop computer for City business. This one-time expense will be capped at \$1,200. Upon expiration or earlier termination of this Agreement, Employee shall return the tablet or laptop to the City.

3.4.10 Professional Organizations. Participation in professional and service organizations, appointive boards and committees and voluntary programs by Employee is encouraged, provided such participation is consistent with the responsibilities of the City Manager of the City and the goals and priorities set by the City Council for Employee. Employee shall inform the City Council before commencement of any such activities. In accordance with City policy, City will provide membership fees for such organizations and will reimburse reasonable and official travel, meetings, and conferences within the scope of the annual budget within the City Council's discretion. Employee must provide copies of receipts or other detail to the Finance Department prior to receiving reimbursement of business expenses. Payment for travel expenses and reimbursement for expenses shall be in accordance with the City's current travel and Reimbursement Policy.

### **3.5 Performance Evaluation.**

The City Council and Employee shall develop a performance plan for the upcoming year. This performance plan shall define such goals and performance objectives as mutually determined by the City Council and Employee to be necessary for the proper operation of the City and for the attainment of the City Council's policy objectives. The City Council and Employee shall further establish a relative priority among those goals and performance objectives. The performance plan shall be amended from time to time by a majority vote of the City Council. The performance plan shall form the basis for the City Council's performance evaluation process. The City Council shall also perform an annual performance evaluation of Employee which shall be conducted on or about the anniversary date of the Effective Date of this Agreement and which shall be focused in part on Employee's success in implementing the performance plan ("Annual Review"). During the second Annual Review, leading into or occurring year three of the Agreement, the City Council shall inform Employee of its intent – at that time – to either extend the employment relationship with Employee or to allow the Agreement to expire. Notwithstanding the foregoing, any such indication of intent from the City Council shall not extend the Term of this Agreement absent a written agreement executed by both Parties, nor shall any such indication of intent from the City Council in any way limit the City's termination rights under this Agreement. The City Council may conduct performance evaluations during a noticed closed session more often than annually, whenever the majority of the City Council believes one is necessary. Individual City Council members will endeavor to first meet with the City Manager to discuss and resolve any perceived performance issues prior to calling for a closed session performance evaluation outside of the Annual Review.

### **3.6 Notices.**

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage pre-paid, addressed as follows:

CITY: City of Los Alamitos  
3191 Katella Avenue  
Los Alamitos, CA 90720  
ATTN: City Council

EMPLOYEE: Chester C. Simmons  
Attn: City Manager  
[mailing address on file with City Clerk]

With a copy to: Michael S. Daudt, City Attorney  
Woodruff, Spradlin & Smart  
555 Anton Blvd, Suite 1200  
Costa Mesa, CA 92626

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

### **3.7 General Provisions.**

3.7.1 Entire Agreement. The text herein shall constitute the entire agreement between the Parties.

3.7.2 Severability. 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.

3.7.3 Salary and Benefit Resolution for Non-Represented Employees. The terms and provisions of the Salary and Benefits Resolution, as may be amended, shall be applicable to Employee only to the extent not inconsistent with this Agreement, and this Agreement therefore shall take precedence over the Salary and Benefits Resolution with respect to any inconsistencies in its interpretation or enforcement.

3.7.4 Bonding. If applicable, the City shall bear the full cost of any fidelity or other bonds required of Employee in the performance of his duties as City Manager.

3.4.5 Indemnification. Consistent with the California Government Code, City shall defend, hold harmless, and indemnify Employee using legal counsel of City's choosing, against expense or legal liability for acts or omissions by Employee occurring within the course and scope of Employee's employment under this Agreement. Legal representation, provided by City for Employee, 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 Employee 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 Employee such that independent counsel is required for Employee, Employee may engage his/her own legal counsel, in which event City shall indemnify Employee, including direct payment of all such reasonable costs related thereto.

In the event that the City provides funds for the legal criminal defense of Employee, Employee shall fully reimburse said funds to the City if the Employee is convicted of a crime involving an abuse of his office or position. Employee shall reimburse such criminal legal defense fees to the City no later than six (6) months after such conviction. Abuse of office or position shall have the meaning set forth in Government Code 53243.4, as may be amended, of either (1) an abuse of public authority, including, but not limited to, waste, fraud, and violation of the law under color of authority or (2) a crime against public justice, including, but, not limited to, a crime described in Title 7 (commencing with Section 92 of Part 1 of the Penal Code).

3.7.6 Modification. Any modification of this Agreement will be effective only if it is in writing and signed by both Parties.

3.7.7 Effect of Waiver. The failure of either Party to insist on 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.

3.7.8 Assignment. Neither this Agreement, nor any right, privilege or obligation of Employee hereunder shall be assigned or transferred by him/her without the prior written consent of the City Council. Any attempt at assignment or transfer in violation of this provision shall, at the option of the City Council, be null and void and may be considered a material breach of this Agreement.

3.7.9 Law Governing Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue shall be in Orange County, California.

3.7.10 No Presumption of Drafter. The Parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the Parties, and this Agreement reflects their mutual agreement regarding the subject matter of this Agreement. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any Party to be the drafter of this Agreement and, therefore, no presumption for or against validity or as to any interpretation hereof, based upon the identity of the drafter shall be applicable in interpreting or enforcing this Agreement.

3.7.11 Assistance of Counsel. Each Party to this Agreement warrants to the other Party that it has either had the assistance of counsel in negotiation for, and preparation of, this Agreement or could have had such assistance and voluntarily declined to obtain such assistance.

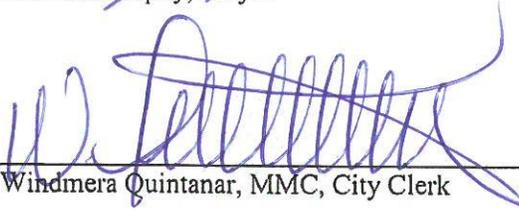
[SIGNATURES ON NEXT PAGE]

**CITY OF LOS ALAMITOS**

By:

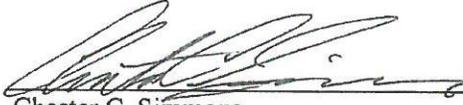
  
Richard Murphy, Mayor

Attest:

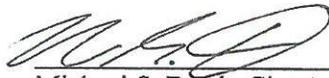
  
Windmera Quintanar, MMC, City Clerk

**EMPLOYEE**

By:

  
Chester C. Simmons

**APPROVED AS TO FORM:**

  
Michael S. Daudt, City Attorney

**Exhibit "A"**

**City Manager Job Description**

## CITY OF LOS ALAMITOS

### Job Description

## CITY MANAGER

### **THE POSITION**

The City Manager serves as the City's Executive responsible for administering the policies of the City Council. The City Manager is appointed by the City Council and serves at its pleasure. All departments and employees of the City report to the City Manager, with the exception of the City Clerk and the City Attorney.

### **ESSENTIAL JOB FUNCTIONS**

Submits the Annual Budget to the City Council and other required financial reports and documents, which are an indication of the City's financial status. Recommends policies for consideration by the City Council and keeps the Council informed of community issues on a timely basis. Responsible for personnel actions of the City and represents the City Council on labor negotiations with employee organizations. Evaluates the performance of department heads and key personnel of the City's workforce and takes appropriate action to ensure that the City is run in an efficient, cost effective manner. Communicates with the public in a thoughtful, courteous, and responsive manner. Acts as spokesperson for the City Council as required.

### **DESIRABLE KNOWLEDGE, SKILLS AND ABILITIES**

The position of City Manager requires a variety of attributes which are characteristic of a seasoned and professional public manager. Excellent interpersonal skills are critical to the position. An ability to accomplish work through others and to motivate, train and inspire the City's workforce is an essential element for the successful growth, development and prosperity of the City. An ability to interact with the community and to resolve neighborhood, as well as, City-wide issues is requisite for the position. Upper most is the ability to create a vision for the accomplishment of goals and objectives, with clear priorities which are consistent with stated policies of the City Council.

### **DESIRABLE EXPERIENCE AND TRAINING**

Bachelor's Degree in Public Administration, Political Science, or closely related field. A Master's Degree is desirable. A proven track in public management with a minimum of five years experience as a Chief Executive or Assistant in a full service public agency.

### **SPECIAL JOB RELATED REQUIREMENTS**

Valid California Driver's License.