

AMENDED AND RESTATED EMPLOYMENT AGREEMENT

This Amended and Restated Employment Agreement ("Agreement") dated for identification purposes as of January 11, 2017, is entered into by and between the City of Walnut, a California municipal corporation ("City") and Robert M. Wishner ("Employee").

RECITALS

A. The office of City Manager of City is created by Walnut Municipal Code Title I, Chapter 2, Article III, commencing with Section 2-18 *et seq.*

B. Employee has the education, training and experience in local government management necessary to fulfill the duties of City Manager and has served as City Manager of City since November 6, 2006. For purposes of this Agreement, references to "City Manager" shall be deemed to include the positions and duties of the City Manager as Executive Director of the Successor Agency of the Walnut Improvement Agency and the Walnut Housing Authority.

C. It is the desire of the City Council of the City of Walnut ("City Council") acting as the legislative body of City to (1) continue to secure and retain the services of Employee as City Manager, and (2) memorialize the salary, benefits, and terms and conditions of employment of Employee as set forth in this Agreement.

D. It is the intent of the City Council and Employee that this Agreement be effective as of November 6, 2016 (the "Effective Date") to reflect Employee's continuous and uninterrupted service pursuant to and following the expiration of Amendment Eight to City Manager Employment Agreement dated as of December 9, 2015.

AGREEMENT

1. Term

The term of this Agreement (the "Term") shall be for an initial period commencing on the Effective Date and expiring on June 30, 2019 unless earlier terminated as provided by Section 8 or 9 of this Agreement or extended in accordance with this Section 1 or by a subsequent writing executed by City and Employee. Provided this Agreement has not been previously terminated and unless notice of termination is given by City pursuant to Section 8.a. at least six (6) months before the expiration of the Term or any extension thereof, this Agreement shall automatically extend for an additional two (2) years from the anniversary of the expiration date.

2. Duties

a. During the Term, Employee shall perform (a) the duties of City Manager, as such duties are prescribed by the laws of the State of California and Walnut Municipal Code Section 2-23 as the same now exists or as it may be amended subsequently, and all ordinances, resolutions and policies adopted pursuant thereto; and (b) such other duties as the City Council may lawfully assign to Employee.

b. Employee shall remain in the exclusive employ of City during the Term and, except as provided hereinbelow, shall not consult or engage in non-City business or employment without the express written approval of the City Council. The term "exclusive

employ” shall not be construed to include and City Council approval shall not be required in connection with occasional teaching, writing or other activity during Employee’s personal time so long as such activities do not interfere with the effective performance of Employee’s duties.

c. Employee shall perform the duties and services of City Manager hereunder in conformance with the International City/County Management Association (ICMA) Code of Ethics and shall not engage in any business or transaction, or have a financial or other personal interest or association, direct or indirect, that is in conflict with the proper discharge of his official duties or that would impair the independence of his judgment or action in the performance of his official duties. Employee acknowledges that he must comply with applicable state and local conflict of interest laws, regulations and disclosures, including City’s conflict of interest code.

3. Salary

a. City agrees to pay Employee for the services required by this Agreement an annual salary of \$206,484, which shall be paid in installments in accordance with the City’s established payroll program and at the same time as other management employees are paid. Employee’s salary shall be subject to customary withholding for taxes, social security and other required deductions.

b. City and Employee agree that any change in salary pursuant to this Section 3 or benefits provided pursuant to Section 4 herein shall be dependent upon the results of the annual performance evaluation conducted under the provisions of Section 7 of this Agreement. Upon the condition that Employee meets performance expectations in the annual performance review to be conducted in 2017, Employee’s salary shall be automatically increased by three percent (3%) effective July 1, 2017. Thereafter, any change in salary or benefits shall be documented by written amendment to this Agreement.

c. At all times during the Term, Employee shall receive the highest salary and highest level of benefits provided and/or available to City’s executive management or other City employees in accordance with City policies, ordinances, personnel rules or other practices.

4. Benefits

In addition to the salary set forth in Section 3, Employee shall receive benefits throughout the Term as follows:

a. Automobile. Employee is on call twenty-four (24) hours per day and shall be given exclusive and unrestricted use of a City automobile; provided, however, that personal use shall be deemed taxable compensation and Employee shall pay all applicable income taxes thereon. The City shall be responsible for paying for liability, property damage, and comprehensive insurance coverage. City shall also pay for the purchase or lease, operation, maintenance, and repair of the automobile.

b. Retirement. City contracts with the California Public Employee’s Retirement System (PERS) for retirement benefits. During the Term, City will pay the City’s portion and the Employee’s portion for participation in PERS. Retirement benefits shall be based

upon a 2% at 55 formula. Employee shall pay any legally required Social Security withholding.

c. Medical and Other Insurance. During the Term, City shall provide Employee with the same medical, dental and vision insurance coverage, disability insurance and life insurance benefits as are provided to City's executive management employees to be applied towards a cafeteria plan or other flexible spending account or equivalent reimbursement plan governed by IRS Section 125 for purchase of medical, dental, vision, disability, life and other qualified benefits at Employee's election. City shall provide and pay for all other insurance mandated by applicable state or federal law.

d. Fidelity Bond. City shall bear the full cost of any fidelity or other bonds required of the Employee under any applicable state or federal law or City ordinance.

e. Miscellaneous Benefits. City shall provide Employee such other benefits as are provided to City's executive management employees, including without limitation, any applicable allowance for cell phone or other equipment used for City related business.

5. Sick Leave, Vacation, Administrative Leave and Holidays.

a. Leave Time. Employee shall be entitled to sick leave, vacation leave, administrative leave, floating holiday and bereavement leave (hereinafter collectively as "leave time") in the same manner and commensurate with City's executive management employees. Employee shall accrue sick leave at 100% on a dollar for dollar basis. All other leave time shall be accrued at the same monthly rate as provided to City's executive management employees.

b. Accrued Leave Time. Employee may elect to cash-out up to eighty (80) hours of accrued vacation leave and up to eighty (80) hours of accrued sick leave on an annual basis in a lump sum paid at one hundred percent (100%) of Employee's current monthly salary rate. Upon separation from City employment, Employee shall be paid for all unused accrued leave time. Accumulated leave time balances shall be paid at Employee's monthly salary rate at the effective date of separation.

c. Holidays. Employee shall be entitled to the same number of paid holidays each year as provided to other full-time City employees.

6. Business Expenses

a. Professional Development. City agrees to budget and pay for travel and subsistence expenses of Employee for professional and official travel, meetings, institutes, and seminars to adequately continue Employee's professional development and to pursue necessary official functions for City, including but not limited to the Annual League of California Cities and California Contract Cities conferences, and such other national, regional, state, and local governmental groups and committees in which City and/or Employee is a member. Such expenditures are subject to annual budget constraints and shall be paid to the extent deemed reasonable by the City Council.

b. Dues and Subscriptions. City agrees to annually budget and allocate funds to pay for the professional dues and subscriptions of Employee necessary for his continuation and full participation in national regional, state and local associations and organizations necessary and desirable for his continued professional participation, growth

and advancement, and for the good of the City, including but not limited to the International City/County Management Association (ICMA), California City Management Foundation (CCMF), California League of Cities, California Contract Cities and similar organizations to which City is a member. Such expenditures are subject to annual budget constraints and prior City Council approval.

c. General Expenses. City recognizes that certain expenses of a non-personal but job related nature may be incurred by Employee, and agrees to reimburse or to pay for reasonable expenses which are submitted to the City Council within thirty (30) days for approval and which are supported by duly executed expense or petty cash vouchers, receipts, statements or personal affidavits. Such expenses may include meals where City business is being discussed or conducted and participation in social events of various organizations when representing the City. Such expenditures are subject to annual budget constraints as well as state and City ethics and purchasing policies.

7. Performance Evaluation

City and Employee agree that periodic performance evaluations are an important means by which the City Council and Employee may ensure effective communications regarding expectations and performance. City shall review the performance of the Employee prior to April 30 each year during the Term; provided, however, additional performance evaluations shall be conducted upon the request of either party. The performance evaluation shall be subject to a process, form, criteria, and format for the evaluation that shall be mutually agreed upon by the City and Employee. The process at a minimum shall include the opportunity for both parties to meet and discuss the performance of Employee and to establish goals, objectives and/or performance standards as appropriate.

8. Termination or Removal by City

Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City to terminate or remove the Employee as City Manager at any time by a majority vote of the City Council, subject to the provisions set forth herein.

a. Without Cause. Employee is an at-will employee serving at the pleasure of the City Council as provided in Section 36506 of the California Government Code and the Section 2-26 of the Walnut Municipal Code. The City Council may at any time during the Term dismiss or discharge Employee without cause upon notice delivered in writing. Notwithstanding the foregoing and in accordance with Walnut Municipal Code Section 2-27, notice of termination shall not be given during or within a period of ninety (90) days succeeding any general municipal election held in the City at which members of the City Council are elected.

i. In the event Employee is terminated at any time that Employee is still willing and able to perform the duties of City Manager, and the termination is without cause as "cause" is defined in Section 8.b. of this Agreement, then subject to the limitations set forth in Government Code Section 53260, City shall pay Employee a lump sum cash payment equal to six (6) month's aggregate salary, benefits owing under Section 4.b. and 4.c. of this Agreement, CalPERS retirement service credit accrual for six (6) months and unused accrued leave time under Section 5.b. Alternatively, Employee may elect to

receive severance pay in installments during each payroll period over six (6) months in amounts equal to Employee's salary together with the benefits owing under Section 4.b. and 4.c, CalPERS retirement service credit accrual and unused accrued leave time under Section 5.b. The parties acknowledge and agree that Employee shall not be entitled to any severance payment for benefits set forth in Section 4. a., 4.d or 4.e. The word "termination" in this paragraph shall include a reduction in salary (other than an across the board reduction applicable to all city's executive management employees) or other financial benefits of Employee or Employee's resignation, if preceded by a formal request by a majority of the City Council that he resign.

b. With Cause. Notwithstanding the provisions of Section 8. a., the City Council may at any time during the Term discharge or dismiss Employee for cause. In the event Employee is terminated for cause, then City may terminate this Agreement immediately and Employee shall be entitled only to the compensation accrued up to the date of termination and the amount of any unused accrued leave. No severance pay shall be due or payable in the event of such involuntary termination for cause. As used in this Section, "for cause" shall be defined as follows:

i. Employee has been convicted of any criminal offense involving moral turpitude or any felony. The word "convicted" shall be construed to mean convicted in any manner referred to in Section 689 of the California Penal Code. The words "moral turpitude" shall be construed to mean any act done contrary to justice, honesty, modesty, or good morals or any willful or corrupt misconduct or deception for personal gain.

ii. Employee has been convicted of a misdemeanor arising directly out of the City Manager's duties pursuant to this Agreement.

iii. Employee has committed intentional or grossly negligent acts or inaction that materially and substantially impedes or disrupts the operations of the City or its organizational units, is detrimental to employee or public safety, has caused damage to public property or brings scandal or disrepute to the City.

iv. Employee violates City's properly established rules or procedures or is otherwise insubordinate which shall mean the repeated, willful and intentional failure to carry out clear, unambiguous, materially significant and lawful directions of the City Council or appear before the City Council, grand jury, court or other authorized office or tribunal on any subject relating to the conduct of official business of the City or any department, board or commission thereof.

v. Employee is removed from office by the Grand Jury, grand jury, court or other authorized office or tribunal.

vi. Employee has been willfully and intentionally absent or has willfully and intentionally failed to fulfill the City Manager's duties pursuant to this Agreement.

c. Subject to the applicable provisions of Government Code Section 54957, the decision to terminate or not renew this Agreement shall be made in closed session and confirmed by vote of the City Council in a public meeting. In recognition of Employee's professional status and integrity, Employee and the City Council shall prepare a joint public statement to be made by the City Council at the public meeting when termination is confirmed.

d. Employee may choose to resign his office instead of being terminated if a decision by the City Council to terminate has been made in closed session. In such an event, the public announcement as provided for in Section 8.c, will state that Employee has resigned. If Employee resigns pursuant hereto following a closed session determination by the City Council to dismiss Employee without cause, Employee shall be entitled to severance pay in accordance with the provisions of Section 8.a.

e. (i) This section applies only to the following matters: (a) Any rights of Employee to receive severance benefits under this Agreement, (b) any right of employee to continue employment with City, and (c) any claims, demand, or cause of action or damages for wrongful termination (collectively the "Released Matters").

(ii) This section does not otherwise affect, waive, nor release any other rights Employee may have under this Agreement, or applicable law.

(iii) Upon City's full payment of severance benefits to Employee and Employee's acceptance of same, Employee (a) releases and discharges City and its elected officials, appointed officers, employees, sub-contractors, agents, accounts, attorneys, successors and all other persons acting for, under, or in concert with City both past and present from any and all personal claims, demands, actions, causes of action, obligations, damages, liabilities, losses, costs and expenses, including attorney's fees of any kind or nature whatsoever, past, present and future, arising from, relating to or in connection with the Released Matters, and (b) agrees to waive any and all claims, demands, actions, causes of action, obligations, liabilities, claims of credits or offsets, costs and expenses, including attorney's fees, of any kind or nature whatsoever as to the Released Matters. As to the Released Matters only, Employee acknowledges that he has read and understands California Civil Code § 1542 which states:

"A general release does not extend to the claims which a 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."

The parties agree that full payment of the severance benefits in this Agreement act as a complete and total release of all future claims which may arise out of the Released Matters whether such claims are currently known or unknown, foreseen or unforeseen, contingent or absolute; and to the Released Matters the parties intentionally and specifically waive any rights they may have under the provisions of Civil Code § 1542, as well as under any other statutes or common law principles of similar effect, and each party assumes full responsibility for such injuries, damages, losses or liabilities that any of them may hereafter incur with respect to the Released Matters. This Section will survive termination of the Agreement.

9. Employee Resignation

Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from his position as City Manager subject only to the provisions set forth herein. Unless otherwise agreed to by the parties, in the event Employee desires to voluntarily resign his position with City as City Manager before expiration of the Term, Employee shall give City not less than thirty (30) days advance

written notice. Promptly after the effective date of such resignation, City shall pay Employee a lump sum amount equal to salary owing as of the effective date of the resignation and accrued leave time. Except as provided in Section 8.d., no severance pay shall be due or payable in the event of voluntary resignation by Employee.

10. Death or Disability

If Employee dies or is permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or health, City shall have the option to terminate this Agreement in accordance with Section 8.b. and any unpaid wages and accrued leave time shall be paid by City to Employee's spouse or other designated beneficiary.

11. Indemnification

City shall defend, save harmless and indemnify Employee in accordance with state law.

12. Other Terms and Conditions of Employment

The City Council shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Walnut Municipal Code or any applicable law. Unless otherwise specified herein, Employee shall be entitled to benefits granted to Employees covered by the City's general compensation plan for all unclassified executive management employees.

13. Conflict of Interest

Employee shall not engage in any business or transaction, or have a financial or other personal interest or association, direct or indirect, that is in conflict with the proper discharge of his official duties or that would tend to impair the independence of his judgment or action in the performance of his official duties. Employee acknowledges that he is subject to applicable state and local conflict of interest laws, regulations and disclosures.

14. Assignment; Personal Contract

City and Employee acknowledge that this Agreement is for the personal and professional services of the City Manager and that this Agreement is not assignable by either party.

15. Notices

Any notice given under this Agreement shall be in writing and either served personally or sent prepaid, first class mail. Any such notice shall be addressed to the other party at the address set forth below. Notice shall be deemed delivered immediately upon personal service or within 48 hours from the time of mailing if mailed as provided in this Section 15.

If to City: City of Walnut
Attn: City Attorney
21201 La Puente Road
Walnut, CA 91789

If to Employee: Mr. Robert M. Wishner
21201 La Puente Road
Walnut, CA 91789

16. Municipal Code

The provisions of Title I, Chapter 2, Article III, commencing with Section 2-18 *et seq.* of the Walnut Municipal Code as now exists or as may be subsequently amended are incorporated by reference into this Agreement.

17. Amendments

This Agreement may be amended only by a written document executed by both Employee and City and approved as to form by the City Attorney.

18. Waiver

Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.

19. Severability

If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

20. Controlling Law Venue

This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall, to the extent allowed by law, be held exclusively in a state court in the County of Riverside.

21. Mediation

The parties agree to make a good faith attempt to resolve any disputes arising out of this Agreement through mediation prior to commencing litigation. The parties shall mutually agree upon the mediator and share the costs of mediation equally. If the parties are unable to agree upon a mediator, the dispute shall be submitted to JAMS/ENDISPUTE ("JAMS") or its successor in interest. JAMS shall provide the parties with the names of five qualified mediators. Each party shall have the option to strike two of the five mediators selected by JAMS and thereafter the mediator remaining shall hear the dispute. If the dispute remains unresolved after mediation, either party may commence litigation.

22. Execution

This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when both parties hereof shall have signed at least one copy hereto. In approving this

Agreement, it shall not be necessary to produce or account for more than one such counterpart.

23. Authority to Enter Agreement

Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

24. Representation by Counsel

Employee acknowledges that this Agreement has been prepared by Leibold McClendon & Mann, P.C., as City Attorney for the City. Employee acknowledges that he has been informed that he is entitled to, and has been advised to seek, separate legal representation, and, accordingly, represents that he either (i) has engaged such counsel in connection with this Agreement, or (ii) has voluntarily decided to enter into this Agreement without such representation.

25. Entire Agreement

This Agreement constitutes the complete and exclusive statement of Agreement between the City and Employee. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement.

IN WITNESS WHEREOF the parties have caused this Agreement executed on the date first written above.


CITY OF WALNUT:


Eric Ching, Mayor

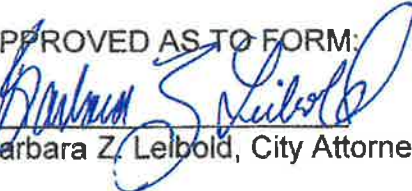
EMPLOYEE:


Robert M. Wishner, City Manager

ATTEST:


Teresa De Dios, City Clerk

APPROVED AS TO FORM:


Barbara Z. Leibold, City Attorney