

EMPLOYMENT AGREEMENT

This Employment Agreement between the City of Menifee (“**City**”) and Armando Gutierrez Villa (“**Manager**”) (“**Agreement**”) is made this 16th day of December, 2017.

RECITALS

A. City desires to employ Armando Gutierrez Villa as the City Manager of the City of Menifee effective December 18, 2017 as provided by Chapter 2.08 of the Menifee Municipal Code and the terms and conditions set out herein.

B. Manager desires to serve as City Manager of the City of Menifee on the terms and conditions set out herein.

C. The City desires to enter into a three-year contract with Armando Gutierrez Villa as City Manager of the City of Menifee for the period December 18, 2017 to and including December 18, 2020.

AGREEMENT

NOW, THEREFORE, the parties agree as follows on the terms and conditions of Manager’s employment.

1. DUTIES

Effective December 18, 2017 (“**Effective Date**”), City hereby employs Manager, and Manager hereby accepts employment, as City Manager of the City. Manager shall perform the functions and duties specified for the City Manager of the City in Chapter 2.08 of the Menifee Municipal Code and other ordinances, resolutions and policies of the City, and shall perform such other legally permissible and proper duties and functions as the City Council of the City of Menifee (the “**Council**”) may from time to time assign, consistent with the Menifee Municipal Code and other applicable law. Manager will work Monday through Friday through May 18,

2018, and thereafter will transition to a 9/80 work schedule such that he will take alternating Fridays off work. The City and Manager hereby expressly agree that the employment relationship created by this Agreement is “at will” and that the Manager serves at the will and pleasure of the City Council.

2. NOTIFICATION REQUIREMENTS REGARDING EXPIRATION OF AGREEMENT

On or before June 18, 2020, and in the event Agreement is not earlier terminated, Manager shall notify Council of the provisions of Section 2 of this Agreement, and within 45 days thereafter Manager and Council shall meet to discuss whether Agreement shall be renewed or not renewed, and if renewed, upon such terms as the parties may mutually agree to.

3. SEVERANCE AND SEVERANCE PAY AND BENEFITS

(a) Termination by City Without Cause. Manager shall serve at the will and pleasure of the Council, and the Council shall be entitled to terminate the employment of Manager without cause. If Manager is involuntarily terminated by the Council without cause, or a “negotiated settlement” for voluntary termination is approved by the Council, City agrees to pay Manager within 15 days of the later to occur of (i) the date of termination of employment or (ii) the date of final determination by the Council of the matters subject to a hearing as set forth in this paragraph, a lump sum cash payment (“**Severance Pay**”) equal to 6 months of the base salary Manager is receiving on the date of the Council’s action to terminate Manager, less legally required or authorized deductions. Pursuant to Government Code section 53261, City shall also continue the health benefits being provided to Manager at the time of a termination without cause for 6 months, or until Manager finds other employment and becomes eligible for health benefits, or until Manager retires, or for the number of months left on the unexpired term of this agreement, whichever occurs first (“**Severance Benefits**”).

In exchange for and as a condition to receipt of the Severance Pay, Manager shall execute a release and waiver, in a form acceptable to the City Attorney, releasing the City from any claims associated with Manager's termination and waiving any rights to unemployment benefits to which Manager may otherwise be entitled.

Pursuant to Government Code section 53260(a), if this Agreement is terminated without cause, the maximum cash settlement that Manager may receive shall be an amount equal to the monthly base salary of Manager multiplied by the number of months left on the unexpired term of this Agreement, provided that Manager shall not be entitled to any greater cash settlement than the amount of Severance Pay then in effect in the year in which the termination without cause occurs.

(b) Termination by City With Cause. If Manager is terminated for cause as defined herein due to the reasonable determination of the Council, based upon the weight of the evidence produced at a hearing conducted by the Council, that Manager has committed, in the performance of Manager's duties or in any manner that causes harm to Manager's or the City's reputation, either (i) any illegal act involving personal gain to Manager or (ii) malfeasance, then, and in that event, City shall have no obligation to pay the Severance Pay and Severance Benefits described above in Section 3, subpart (a). The Council's determination of the sufficiency of cause shall be final and binding.

Nothing set forth herein shall be deemed to confer upon Manager the right to have a hearing by Council concerning any proposed termination of Manager; provided, however, that Manager shall be entitled to a hearing solely concerning any proposal by the Council not to pay Manager the Severance Pay and Severance Benefits.

(c) Termination by Manager. If Manager terminates his employment as Manager, then Manager shall give City at least six (6) weeks' notice of termination in writing in advance of the date of termination, unless mutually agreed upon otherwise. If Manager resigns or retires voluntarily, then City shall have no obligation to pay Severance Pay and Severance Benefits to Manager.

(d) All Terminations. Manager agrees that if Manager's employment is terminated, with or without cause, under no circumstances will Manager be entitled to contest the existence or nature of Manager's "at will" employment status, nor will Manager be entitled to seek or receive the remedy of reinstatement to employment with the City in any administrative or legal forum. Manager agrees that the sole issue for resolution upon termination of Manager's employment will be whether the City is obligated to pay to Manager Severance Pay and Severance Benefits.

(e) Effect of City Elections on Terminations. Notwithstanding the other termination provisions of this Agreement, City agrees not to terminate Manager's employment within a period of 90 days after any general municipal election at which any new member of the City Council is elected, as provided for in Chapter 2.08 of the Meniffee Municipal Code.

4. SALARY AND OTHER COMPENSATION

(a) Salary. Commencing on the Effective Date (also "**Anniversary Date**"), City agrees to pay Manager an annual base salary, exclusive of benefits, in the sum of \$205,000 per year. Council shall conduct a performance evaluation, as described below in Section 7, of Manager at a meeting between May and July of 2018, at which time Manager will be eligible for an increase in salary in Council's discretion based upon, among other factors, merit, performance, and goals established by the Council. Council shall conduct further performance evaluations of Manager, at a minimum, at a meeting between May and July of 2019, and at a

meeting between May and July of 2020. If, during any performance evaluation, a majority of the Council deems Manager to have successfully performed up to the date of such review, the Council may in its sole discretion grant Manager an increase in base salary based upon, among other factors, merit, performance, goals established by the Council, and consistency with the City's compensation policy in effect at the time of said increase.

Council may, in its discretion, reduce the salary of Manager due to budgetary constraints, on condition that any such reduction shall not exceed the average reduction applicable to all management employees of the City at the time of reduction in Manager's salary. Furthermore, Manager, in his sole discretion may elect not to receive any salary increase that may be granted hereunder; provided, however, if Manager elects not to receive a salary increase provided hereunder, said salary increase shall be subsequently implemented, on a prospective basis only, upon written request of Manager.

(b) Performance Pay. Should the City establish in the future a pay-for-performance plan, the Manager will be eligible for participation.

Should the City not establish a pay-for-performance plan for all management employees, Manager may still be eligible for a one-time performance bonus at the sole discretion of the City Council.

In no event shall Manager receive both a pay-for-performance and a one-time performance bonus in the same year measured from his Anniversary Date.

(c) Retirement. Manager shall be classified as a Classic Member and shall be accrue retirement benefits at the rate of the City's executive management employees (i.e., a rate of 2.7% at age 55, with an employee retirement contribution of 8%).

5. BENEFITS

(a) General. Manager shall accrue leave benefits at the rates set forth in this Section. Upon the effective date of this Agreement, Manager shall receive an advance credit of benefits as follows: 40 hours of personal leave and 40 hours of sick leave. Manager shall be entitled to the 13.5 paid holidays per year identified by the City. The City does not participate in Social Security, and as such no Social Security benefits shall accrue as a result of Manager's employment with the City.

(b) Personal Leave. Manager shall accrue personal leave at a rate of one 160 hours per year (6.15 hours per pay period), with a maximum amount of accrued personal leave of 160 hours. All personal leave must be used, and may not be "cashed out" upon cessation of employment with City.

(c) Sick Leave. Manager shall accrue sick leave at a rate of 104 hours per year (4 hours per pay period). There shall be no cap on accrued sick leave. Sick leave may not be "cashed out" upon cessation of employment with City.

(d) Administrative Leave. Manager shall accrue administrative leave up to 80 hours per year (3.08 hours per pay period), with a maximum amount of administrative leave of 80 hours. Administrative leave may not be "cashed out" upon cessation of employment.

(e) Vehicle Allowance. Manager shall receive a monthly vehicle allowance of \$500 to be used to purchase, lease, or own and to operate and maintain a vehicle. Manager shall be solely responsible for paying for liability, property damage, and comprehensive insurance coverage upon such vehicle and shall further be responsible for all expenses related to the purchase, operation, maintenance, repair, and regular replacement of said vehicle. At a minimum, Manager shall procure and maintain in full force and effect during the term of this Agreement automobile liability insurance with minimum limits as established by the City's risk

manager. Vehicle allowance shall include all mileage incurred in the use of vehicle including personal and City related use of vehicle.

(f) Moving Expenses. Should the Manager opt to relocate within a 20 mile radius of City Hall within one year from Effective Date, an expense reimbursement of up to \$5,000 will be made to either a moving company or based on incurred expenses with original receipts.

(g) Temporary Housing Expenses: City shall reimburse Manager up to \$2,000 per month for up to six months for housing costs incurred prior to Manager's relocation as specified in Section 5(f).

(h) Supplemental Benefits. Except as provided otherwise herein, Manager shall receive any and all other supplemental benefits including, but not limited to, health, dental, life insurance, disability insurance, holidays, retirement benefits (PERS), deferred compensation plan, flexible spending account/dependent care, and long term disability, as are generally available to management employees of the City as provided by applicable City Resolutions and Personnel Rules. Manager shall, in addition to such benefits, be entitled to (1) up to \$1,000 per year incurred for tuition, books and fees for college-level or job-related courses; and (2) a life insurance policy with a benefit amount of \$350,000. Except as otherwise provided herein, all actions undertaken by City relating to fringe benefits for management employees shall be considered actions affecting the same benefits applicable to Manager.

City shall not at any time during the term of this Agreement reduce the base salary, compensation or other employment benefits of Manager, except as permitted by this Agreement.

6. PROFESSIONAL DEVELOPMENT, OUTSIDE PROFESSIONAL ACTIVITIES AND GENERAL EXPENSES

(a) Professional Development.

(i) Subject to the Council's discretion to adopt and amend the budget, City agrees to pay for professional dues and subscriptions on behalf of Manager which are reasonably necessary, as determined by the Council, for the Manager's continuation and full participation in national, regional, state or local associations and organizations necessary and desirable for Manager's continued professional participation, growth and advancement, or for the good of the City. Furthermore, City shall pay for any additional professional dues and subscriptions as may be approved by the Council from time to time.

(ii) Subject to the Council's discretion to adopt and amend the budget, City agrees to pay within the adopted budget the reasonable travel and subsistence expenses of Manager for official travel, meetings and events reasonably necessary to continue the professional development of Manager and reasonably necessary to fulfill official and other functions for the City, all as determined to be reasonable and necessary by the Council. Such meetings and events may include, but are not limited to, the annual International City Management Association meeting and other national, regional, state and local conferences of governmental groups and committees in which Manager serves as a member.

(b) Outside Professional Activities. Manager agrees to remain in the exclusive employ of the City of Menifee while employed by the City of Menifee. This section shall not prohibit occasional teaching, writing, or speaking, for compensation, a fee or other value provided that Manager gives advance written notification to the Council of such teaching, writing, speaking, consulting or other employment. Any teaching, writing, speaking, consulting or other employment performed or engaged in by Manager during the term of this Agreement

shall not interfere with Manager's performance of Manager's duties and obligations under this Agreement.

(c) General Expenses. City recognizes that certain expenses of a non-personal and generally job-affiliated nature are incurred by the Manager, including participation in civic and other local organizations, and hereby agrees to reimburse or pay said reasonable general expenses.

Subject to the Council's discretion to adopt and amend the budget, the City Director of Finance (or other designated employee) is hereby authorized to disburse funds within the adopted budget as needed to fulfill all provisions of this Agreement upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits.

City shall bear full cost of any fidelity or other bonds required of Manager under any law or ordinance.

(d) Technology. City shall provide Manager with a monthly allowance of \$75 to cover cell phone and internet charges incurred by Manager in connection with for official City business. The City shall also supply Manager with a computer (with docking station) and an I-pad for business use including providing full access to internet coverage at City Hall as appropriate.

7. PERFORMANCE EVALUATION

The Council and Manager may periodically define such goals and objectives for the City which they mutually determine necessary for the proper operation of the City in the attainment of the Council's policy objectives, and the Council and Manager may further establish a priority among those various goals and objectives to be reduced to writing. The process of considering the establishment and priority of goals and objectives of the City shall be conducted and completed generally in connection with the Manager's performance evaluations (at the times set

forth in Section 4(a), above). However, within 120 days of the Effective Date the City Council shall define goals and objectives, put them in writing and they shall be deemed to be Exhibit "A" to this Agreement ("**Goals and Objectives**").

8. TERMS OF EMPLOYMENT

The Council, following informal and nonbinding consultation with Manager, may by motion, resolution or written amendment to this Agreement approved as an official Council meeting agenda item, fix any other terms and conditions of employment as it may determine, from time to time, relating to the performance of Manager, provided such terms and conditions are not prohibited by the provisions of this Agreement, the Menifee Municipal Code or any other rules or regulations of the City.

9. CONFLICT OF INTEREST PROHIBITION

It is understood and agreed that because of the duties of Manager within and on behalf of the City of Menifee and its citizenry, Manager shall not, during the term of this Agreement, individually, as a partner, joint venturer, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of the City of Menifee, except for stock ownership in any company whose capital stock is publicly held and regularly traded, without prior approval of the City Council. For and during the term of this Agreement, Manager further agrees, except for a personal residence or residential property acquired or held for future use as his personal residence and real property acquired by Manager prior to the Effective Date of this Agreement, not to invest in any other real estate or property improvements within the corporate limits of the City of Menifee without the prior consent of the City Council.

10. PROVISIONS OF GOVERNMENT CODE SECTIONS 53243-5324.4

(a) In the event that the City provides paid leave to the 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 a conviction, the Manager shall fully reimburse the City for any salary provided for that purpose.

(b) In the event that the City provides funds for the legal criminal defense of the 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 a conviction, the Manager shall fully reimburse the City for any funds provided for that purpose.

(c) In the event that the City provides a cash settlement related to the termination of the Manager as defined in the terms of this Agreement and the Manager subsequently is convicted of a crime involving abuse of his office or position covered by Government Code section 53243.4, the Manager shall fully reimburse the City for any funds provided for that purpose.

11. ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties concerning the subject matter set forth herein and no promise, representation, warranty or covenant not included in this Agreement has been or is relied upon by any party hereto concerning the offer and acceptance of employment described herein.

12. NO CONTINUING WAIVER

No waiver of any term or condition of this Agreement by either party shall be deemed a continuing waiver of such term or condition.

13. EFFECTIVE DATE AND TERM


The Effective Date of this Agreement shall be December 18, 2017.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth hereinabove.


CITY:



Neil Winter
Mayor



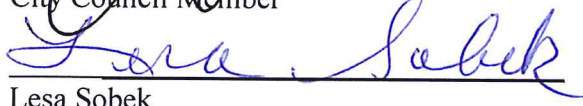
Matt Liesemeyer
Mayor Pro Tempore



John Denver
City Council Member



Greg August
City Council Member



Lesa Sobek
City Council Member

MANAGER:



Armando Gutierrez Villa

Date Agreement ratified by City Council in open session at a regular City Council Meeting


_____.

ATTEST:



Sarah Manwaring
City Clerk

APPROVED AS TO FORM:



Rutan & Tucker, LLP
City Attorney