

SECOND AMENDMENT TO EMPLOYMENT AGREEMENT

This Second Amendment to Employment Agreement between the City of Menifee (“**City**”) and Armando G. Villa (“**Manager**”) (“**Second Amendment**”) is made this 21st day of August, 2019.

RECITALS

- A. On or about December 18, 2017, City and Manager entered into that certain “**Employment Agreement**” pursuant to which City hired Manager to serve as the City Manager of the City of Menifee.
- B. On or about June 20, 2018, City and Manager entered into that certain “First Amendment to Employment Agreement” (“**First Amendment**”) pursuant to which City and Manager modified Manager’s base salary.
- C. On August 7, 2019, the City Council conducted a performance evaluation of Manager and, based upon that performance evaluation, consideration in open session of revisions to the agreement duration, compensation terms, severance and termination provisions, and provisions relating to moving expenses and cash-out of accrued leave are all appropriate.
- D. On August 21, 2018, the City Council considered this Second Amendment which authorizes (i) an extension of the term of the Employment Agreement, such that it will now expire on December 31, 2023; (ii) two increases in Manager’s base salary spread over the next approximately ten (10) months, (iii) a provision allowing for future cost of living adjustments equal to those provided to the City’s employees; (iv) an annual contribution to Manager’s defined contribution retirement program under Section 457 of the Internal Revenue Code; (v) a commitment that the City Council will not terminate Manager without cause for a period of six months following any general municipal election at which a new

City Councilmember is elected; (vi) an eight month extension to the time window within which City Manager may exercise his rights to recoup moving expenses, and (vii) clarification that Manager may cash out accrued vacation and administrative leave twice per year.

AGREEMENT

NOW, THEREFORE, the parties agree to the following modifications to the Employment Agreement.

1. AMENDMENT TO SECTION 2 OF EMPLOYMENT AGREEMENT

Section 2 of the Employment Agreement is replaced, superseded, and amended in full as follows:

On or before July 1, 2023, and in the event Agreement is not earlier terminated, Manager shall notify Council of the provisions of Section 2 of this Agreement, and within 90 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.

2. AMENDMENT TO SECTION 3(a) OF EMPLOYMENT AGREEMENT

Section 3(a) of the Employment Agreement is replaced, superseded, and amended in full as follows:

(a) Separation by City Without Cause. Manager shall serve at the will and pleasure of the Council, and the Council shall be entitled to discontinue the receipt of day-to-day services from the Manager without cause. If the Council makes such election, or a “negotiated settlement” for voluntary separation is approved by the Council, City agrees to place Manager on administrative leave with full pay and benefits (less legally required or authorized deductions) (“**Severance Pay**”) for the shortest of (i) until Manager finds new full time employment, (ii) six months, and (iii) as many months as then remain on

Manager's contract term (the "**Administrative Leave Period**"). At the conclusion of the Administrative Leave Period, Manager shall be entitled to no further compensation or benefits from City. 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 and all claims associated with Manager's termination.

3. AMENDMENT TO SECTION 3(e) OF EMPLOYMENT AGREEMENT

Section 3(e) of the Employment Agreement is replaced, superseded, and amended in full as follows:

(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 6 months after any general municipal election at which any new member of the City Council is elected.

4. AMENDMENT TO SECTION 4(a) OF EMPLOYMENT AGREEMENT

Section 4(a) of the Employment Agreement is replaced, superseded, and amended in full as follows:

Commencing on August 21, 2019 City agrees to pay Manager an annual base salary, exclusive of benefits, in the sum of \$241,381 per year. Commencing on the date of the opening of the Menifee Police Department (currently contemplated for July 1, 2020), City agrees to increase Manager's annual base salary, exclusive of benefits, to \$257,262. In addition to the foregoing, Manager's base salary shall be increased to reflect cost of living increases in the same amounts as are made generally available to members of the City's employees. Council shall conduct performance evaluations of Manager pursuant to Section 7 of the Employment Agreement, at a minimum, at a meeting between May and July of each year during the term of this Employment Agreement. 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.

5. AMENDMENT TO SECTION 4(c) OF EMPLOYMENT AGREEMENT

Section 4(c) of the Employment Agreement is replaced, superseded, and amended in full as follows:

(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%). In addition, City shall annually contribute 7% of Manager's base salary into a defined contribution plan under Internal Revenue Code section 457.

6. AMENDMENT TO SECTION 5(b) OF EMPLOYMENT AGREEMENT

Section 5(b) of the Employment Agreement is replaced, superseded, and amended in full as follows:

(c) 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. Manager may, twice per year, “cash out” personal leave at an hourly rate based on his base salary. Personal may not be “cashed out” upon cessation of employment with City.

7. AMENDMENT TO SECTION 5(d) OF EMPLOYMENT AGREEMENT

Section 5(d) of the Employment Agreement is replaced, superseded, and amended in full as follows:

(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. Manager may, twice per year, “cash out” administrative leave at an hourly rate based on his base salary. Administrative leave may not be “cashed out” upon cessation of employment.

8. AMENDMENT TO SECTION 5(f) OF EMPLOYMENT AGREEMENT

Section 5(f) of the Employment Agreement is replaced, superseded, and amended in full as follows:

(f) Moving Expenses. Should the Manager opt to relocate within a 20 mile radius of City Hall within 20 months 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.

9. AMENDMENT TO SECTION 13 OF EMPLOYMENT AGREEMENT

Section 13 of the Employment Agreement is replaced, superseded, and amended in full as follows:

The Effective Date of this Second Amendment shall be August 21, 2019. This Employment Agreement shall expire on December 31, 2023.

10. NO OTHER AMENDMENTS TO EMPLOYMENT AGREEMENT


Except as expressly provided in Section 1, above, the remainder of the Employment Agreement shall remain in full force and effect.

11. EFFECTIVE DATE AND TERM

The Effective Date of this Second Amendment shall be August 21, 2019.

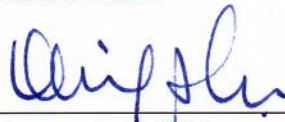
IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment as of the date first set forth hereinabove.

CITY:



Bill Zimmerman
Mayor

MANAGER:




Armando G. Villa

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

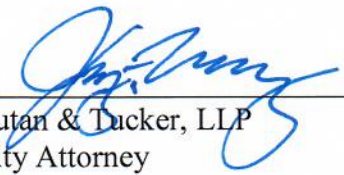
August 21, 2019

ATTEST:



Sarah A. Manwaring
City Clerk

APPROVED AS TO FORM:



Rutan & Tucker, LLP
City Attorney