

**AGREEMENT EMPLOYING JOSHUA McMURRAY AS CITY MANAGER
FOR THE CITY OF OAKLEY, CA**

WHEREAS, the City of Oakley desires to employ Joshua McMurray as its City Manager.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Employment: This City Manager Employment Agreement (“Agreement”) is entered into by and between the CITY OF OAKLEY (“City”), a California “General Law” City, and JOSHUA McMURRAY (“Manager”). Under this Agreement, the City offers, and Manager accepts, employment as City Manager of the City. Manager agrees that employment with City is “at will,” at the will of the City Council, which may terminate said employment in its sole discretion, with or without cause. There has been no express or implied promise made to Manager concerning continued employment and any such promise can arise in the future, if at all, only expressly from a resolution adopted by the City Council.

2. Duties: Manager shall perform those duties and have those responsibilities that are commonly assigned to a city manager of a city in California, and as may be further set forth in the City’s Municipal Code. Manager shall perform such other legally permissible and proper duties and functions consistent with the office of City Manager, as the City Council shall from time to time assign.

3. Devotion to City Business: During the term of this Agreement, Manager shall not accept any other employment and shall be exclusively employed by City, unless prior authorization is received from the City Council, at its sole and exclusive discretion.

4. Term: Manager’s employment will commence November 10, 2021, and shall continue until June 30, 2024, or the date of earlier termination in accordance with provisions in this Agreement.

5. City Council Commitments:

A. Neither the City Council nor any member thereof shall give direction to any subordinate of the Manager, including subcontractors and consultants, either publicly or privately, except as authorized by Manager.

B. 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 the Manager.

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

6. Termination of Employment and this Agreement; General Release; Severance:

A. If City terminates this Agreement (thereby terminating Manager's employment) without Cause, as determined by the affirmative votes of a majority of the members of the City Council at a Regular Meeting of the City Council, and if Manager signs, delivers to the City Council, and does not revoke, a General Release Agreement ("Release Agreement"), City shall pay Manager a lump sum benefit equal to eight (8) months of Manager's then Base Salary; and, subject to any restrictions of the City's Medical benefit provider(s) shall provide health (medical, dental, and vision) benefits continuing under the health benefit plans in which Manager and any dependents are then enrolled for eight (8) months or until the Manager finds other employment, whichever comes first (the cash payment and continuing benefits, collectively "Severance").

Notwithstanding the foregoing, and in accordance with Government Code section 53260, if the remaining term of Manager's Agreement is less than six (6) months, the maximum Severance that Manager may receive shall be an amount equal to Manager's monthly salary multiplied by the number of months left on the unexpired term of the Agreement.

B. If City terminates this Agreement (thereby terminating Manager's employment) with Cause, as determined by the affirmative votes of a majority of the members of the City Council at a Regular Meeting of the City Council, Manager shall not be entitled to any additional compensation or payment, including Severance, but shall be entitled only to accrued Base Salary and vacation pay, and any other accrued and unused benefit allowances according to their terms ("Accrued Salary and Benefits").

As used in this Agreement, Cause shall mean any of the following:

1. Conviction of, or plea of guilty or nolo contendere to, any crime or offense (other than minor traffic violations or similar offenses) which is likely to have a material adverse impact on the City or on the Manager's reputation;

2. Proven failure of the Manager to observe or perform any duties and obligations, if that failure continues for a period of thirty (30) business days from the date of receipt of notice from the City Council specifying the acts or omissions deemed to amount to that failure;

3. Conviction of any crime involving an "abuse of office or position," as that term is defined in Government Code Section 53243.4 (see Section 6. C., (below));

4. Repeated failure to carry out a directive or directives of the City Council made by the City Council as a body at a Brown Act compliant meeting; and

5. Any grossly negligent action or inaction by Manager that materially and adversely: (a) impedes or disrupts the operations of City or its organizational units; (b) is detrimental to employees or public safety; or (c) violates City's properly-established rules or procedures.

C. Notwithstanding any of the provisions in Sections 6. A. and 6. B. (above), in any circumstance in which the Manager is convicted of a crime involving abuse of his or her office

or position with the City as defined in California Government Code Section 53243.4, any paid administrative leave provided by the City pending an outcome of the investigation into such crime, any City funds expended for the legal criminal defense to such criminal allegation, any cash settlement or severance provided to the Manager upon termination shall be fully reimbursed by the Manager to the City.

D. If, during the Term or any extended Term, Manager dies, Manager's estate shall receive Accrued Salary and Benefits, but shall not be entitled to any additional compensation or payment, including Severance.

E. In the event Manager is permanently disabled or is otherwise unable to perform duties because of sickness, accident, injury, or mental incapacity for a period of three consecutive months beyond any provided sick leave, the City may terminate Manager's employment and this Agreement.

F. Manager may resign from employment at any time, upon giving forty-five (45) days written notice to the City Council.

7. Compensation and Annual Evaluation:

A. Manager's initial annual Base Annual Salary shall be Two-Hundred Fifty-Thousand Dollars (\$250,000.00) payable in equal installments at the same time and in the same manner as other employees of the City are paid. The salary shall be subject to withholding.

B. At least annually the City, by the City Council, and Manager may set mutually-agreed-upon objectives for each year under this Agreement. These objectives shall coincide with the City Council's completion of a public employee performance evaluation of the City Manager in April of each year, the Council shall discuss the results of the evaluation with Manager ("Annual Evaluation").

C. Subject to Manager's overall satisfactory performance at the annual performance evaluation referred to in Section 7. B. (above), Manager's base salary shall be adjusted based upon The Consumer Price Index, San Francisco Area (San Francisco-Oakland-Hayward) ("CPI") as reported by the Bureau of Labor Statistics ("CPI Adjustment"). Any applicable CPI Adjustment shall be effective for the following fiscal year, beginning July 1 of 2023. The base salary shall, however, not be reduced by a negative CPI Adjustment. Such base salary adjustment shall be set forth in an annual salary resolution or minute action approved by the City Council and ratified by resolution at a regular meeting of the City Council.

8. Pension: City agrees to continue to enroll Manager as a member of the Public Employees Retirement System (PERS) in the PERS plan selected by City in its sole discretion. The City shall continue to pay Manager's employee-share of contributions, as Manager has been receiving for his employment with the City existing before the effective date of this Agreement. Pursuant to California government Code Section 53244, a local public officer who is convicted by a state or federal trial court of any felony under state or federal law for conduct arising out of or in the performance of, his or her official duties shall forfeit any contract right or other

common law, constitutional or statutory claim against a public agency employer to retirement or pension rights or benefits.

9. **Non-Cash Compensation and Benefits Insurance:** City shall provide Manager with deferred compensation of \$500 per month and the same health plans and employer contributions (medical, dental, and vision, group or individual life insurance, accidental death or dismemberment, catastrophic illness or disability insurance, vacation leave, and sick leave) which are provided to other City management-level employees. All actions taken by the City Council relating to those benefits for other management employees of City shall be considered actions relating to these benefits of Manager and shall be deemed to be agreeable amendments to this Agreement without any need for a written, modification signed by all parties.

10. **Car Allowance:** Manager's duties require being available and to respond to the demands of City business at all times and outside of regular business hours, including weekends. City shall pay Manager Four Hundred Dollars (\$400) monthly in compensation for the use and maintenance of a personal vehicle on City business.

[11. **Technology Equipment:** City shall provide a City-owned electronic devices (cellphone and computer), or in the alternative shall provide the same monthly stipend as provided to other management-level employees for the business use of a personal cell phone or other technology devices.

12. **Tax Liability for Benefits:** Manager shall be responsible for any income tax liability arising out of receipt of benefits provided under this Agreement that exceed the allowable tax exempt amounts including, but not limited to excess life insurance, and agrees to hold City harmless and indemnify it for any liabilities, costs and expenses caused by any tax authority relating to these benefits.

13. **Business and Professional Expenses:**

A. City recognizes that Manager may incur expenses of a non-personal, job-related nature that are reasonably necessary to Manager's service to City. City agrees to either pay such expenses in advance or to reimburse the expenses, so long as the expenses are incurred and submitted according to City's normal expense reimbursement procedures or such other procedure as may be designated by the City Council. To be eligible for reimbursement, all expenses must be supported by documentation meeting City's normal requirements and must be submitted within time limits established by City.

B. City agrees to pay the professional dues and subscriptions on behalf of Manager which are necessary for Manager's continuation or full participation in international, 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, in an amount up to Two Thousand Five Hundred Dollars (\$2,500) per year.

C. City agrees to pay Manager's preapproved travel and subsistence expenses for official travel, meetings, and occasions reasonably necessary to continue Manager's professional

development, and for Manager's reasonable participation in necessary official and other functions for the City; including, but not limited to, national, regional, state, and local conferences, and governmental groups and committees on which Manager serves as a member. Notwithstanding the above, the number of conferences or meetings City will pay for each year, and attendance at out-of-state conferences and meetings, shall be at the discretion of the City Council as set forth in the City's budget.

14. Management Leave: Manager shall receive and accrue management leave consistent with City policy relating to its management employees. Such leave must be used during the fiscal year and total management leave will be capped at annual fiscal year accruals, i.e., total management leave will not exceed the amounts accrued on a fiscal year basis. Upon termination without cause of the employment of Manager, Manager shall be compensated for that portion of the remaining balance at Manager's base hourly rate.

15. Enforcement of this Agreement: The prevailing party in any actions brought to enforce this Agreement or to resolve any dispute or controversy arising under its terms and conditions, shall be entitled to payment of his/her/its reasonable attorneys' fees and costs.

16. Communications Upon Manager's Separation: In the event the City terminates the Manager for any reason or no reason, the City and the Manager agree that no member of the City Council, the City Management staff, nor the Manager, shall make any written, oral or electronic statement to any member of the public, the press, or any city employee concerning the Manager's termination except in the form of a joint press release or statement, the content of which is mutually agreeable to the City and the Manager. 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 inquiry.

17. Indemnification: Consistent with the California Government Code, City shall defend, hold harmless, and indemnify Manager using legal counsel of City's choosing, against expense or legal liability for acts or omissions by Manager occurring within the course and scope of Manager's employment under this Agreement, provided that such indemnity shall not extend to any judgment or damages arising out of any willful wrongdoing. Legal representation, provided by City for City Manager, 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 Manager 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 Manager such that independent counsel is required for Manager, Manager may engage Manager's own legal counsel, in which event City shall indemnify Manager, including direct payment of all such reasonable costs related thereto.

18. Notices: Any notices to be given hereunder by either party to the other in writing may be effected either by personal delivery, mail, or email. Mailed notices shall be addressed to the parties as set forth below, but each party may change his/her/its address by written notice given in accordance with this Section. Notices delivered personally or by email will be deemed

communicated as of actual receipt. Mailed notices will be deemed communicated and received as of three (3) calendar days following the date of mailing.

CITY:
City of Oakley
Attention: Mayor
3231 Main Street
Oakley, CA 94561

MANAGER:
Joshua McMurray
c/o 3231 Main Street
Oakley, CA 94561

19. Conflict with City Municipal Code: The City personnel ordinances, resolutions, rules and policies shall apply to Manager in the same manner as applied to other management employees, provided, however, in the event of a conflict between the provisions of this Agreement and the City Municipal Code, the City Municipal Code shall prevail over this Agreement.

20. Entire Agreement: This Agreement represents the entire agreement between the parties and supersedes any and all other agreements, either oral or in writing, between the parties with respect to the employment of Manager by City, and contains all of the covenants and agreements between the parties with respect to that employment. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by either party, or by anyone acting on behalf of either party, which are not embodied herein, and that no other employment agreement, statement, or promise not contained in this Agreement shall be valid or binding upon either party.

21. Modifications: Any modifications to this Agreement shall be effective only if in writing and signed by both of the parties hereto.

22. Effect of Waiver: The failure of either party to insist upon 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.

23. Partial Invalidity: If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

24. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of California.

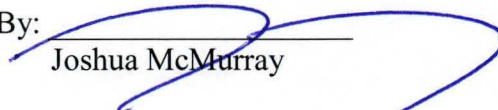
(Signatures on Following Page)

This Agreement is entered into this 10th day of November, 2021.

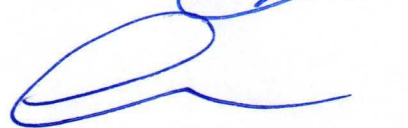
CITY OF OAKLEY

CITY MANAGER

By: 
Sue Higgins, Mayor

By: 
Joshua McMurray

APPROVED AS TO FORM: 
Derek Cole, City Attorney

ATTEST: 
Libby Vreonis, City Clerk