

**AGREEMENT
BETWEEN THE
CITY OF AMERICAN CANYON
AND JASON B. HOLLEY
FOR EMPLOYMENT AS CITY MANAGER**

This Agreement is entered into and effective as of July 1, 2021 (“Effective Date”) by and between the City of American Canyon, California, a municipal corporation and general law city (the “City”), Jason B. Holley, an individual (the “City Manager”). The City and the City Manager are sometimes individually referred to as a “Party” and collectively as “Parties” in this Agreement.

RECITALS

WHEREAS, the City requires the services of a City Manager; and,

WHEREAS, the City Manager has the necessary education, executive ability and qualifications to serve as the City’s City Manager; and,

WHEREAS, the City Council of the City (the “City Council”) desires to employ the City Manager to serve as the City Manager of City; and,

WHEREAS, in consideration of these Recitals and the performance by the Parties of the promises, covenants, and conditions contained in this Agreement, the Parties agree as follows:

AGREEMENT

1. EMPLOYMENT OF THE CITY MANAGER.

The City, consistent with the provisions of City Municipal Code Chapter 2.08 (“Chapter 2.08”)¹, appoints and employs the City Manager as its City Manager, and the City Manager hereby accepts such employment.

2. OBLIGATIONS OF THE PARTIES.

A. City Manager Obligations.

(1) Duties and Authority.

The City Manager shall be the administrative head of the City under the direction and control of the City Council except as provided in Chapter 2.08 and this Agreement.

- (a) The City Manager shall have those powers and perform all of the duties of the City Manager as set forth in Municipal Code Section 2.08.060 and City policies and procedures approved by the City Council, as may be provided from time to time.

¹ All Chapter or Section references are to the Municipal Code unless otherwise noted.

- (b) The City Manager shall administer and enforce policies established by the City Council and promulgate rules and regulations as necessary to implement City Council policies and direct the work of all appointive City officers and departments except those that report directly to the City Council, the City Attorney, or the Board of Directors of the American Canyon Fire Protection District, a subsidiary special district of the City (*e.g.*, the District Fire Chief).
- (2) Hours of Work.
 - (a) The City Manager is an exempt employee, but is expected to engage in those hours of work that are necessary to fulfill the obligations of the City Manager's position. The City Manager does not have set hours of work as the City Manager is expected to be available at all times, unless utilizing the leave benefits described in Section 3.B.(1).
 - (b) It is recognized that the City Manager must devote a great deal of time to the business of the City and to that end, the City Manager's schedule of work each day and/or week shall vary in accordance with the work required to be performed. The City Manager shall spend sufficient hours to perform the City Manager's duties; however, the City Manager has discretion over the City Manager's work schedule and work location. Moreover, the City Manager has discretion as to the utilization of leave benefits described in Section 3.B.(1).
 - (c) Subject to Section 2.A.(2)(d), the City Manager shall not undertake any forms of employment outside of his regular duties as City Manager, and shall not undertake teaching, consulting, speaking, or other non-City connected business for which compensation is paid unless specifically authorized by the City Council.
 - (d) Notwithstanding the foregoing, the City Manager is the President of a consulting firm (J.B. Holley and Associates), and the Parties agree that the City Manager may, at his sole discretion, continue any existing activities and/or initiate new activities associated with J.B. Holley and Associates provided that the City Manager's undertaking of such activities would not conflict with his regular duties as City Manager pursuant to the relevant provisions of AB 1234.
- (3) Disability or inability to perform. In the event the City Manager becomes mentally or physically incapable of performing the City Manager's functions and duties with reasonable accommodation and it reasonably appears such incapacity will last for more than six months, the City Council may terminate the City Manager. If the City Council does elect to terminate the City Manager due to incapacity, the City Manager shall receive all severance benefits provided in Agreement Section 5.C.

- (4) The City Manager shall periodically hold “team building” retreats with key Departmental personnel, the timing of which shall be in the City Manager’s discretion.

B. City Obligations.

- (1) The City shall provide the City Manager with the compensation and benefits, as set forth in Agreement Section 3.
- (2) The City shall provide the City Manager with an office, staff, office equipment, supplies, automobile allowance, and all other facilities and services adequate for the performance of the City Manager’s duties, including but not limited to computer, laptop computer, high-speed internet access, cellular phone allowance, pager, electronic calendar, fax, copy machine and similar devices in an office at City Hall and/or the City Manager’s home office so that the City Manager is equipped to effectively communicate with the City Council and City Staff and perform the City Manager’s duties.
- (3) The City shall pay for or provide the City Manager reimbursement for all actual business expenses consistent with Government Code section 53234 *et seq.*, also known as “AB 1234,” City Resolution No. 2005-27 and Government Code Section 12950.1, training concerning sexual harassment and prevention of abusive conduct in the workplace. The City shall provide the City Manager a City credit card to charge legally authorized and necessary City business expenses.
- (4) The City agrees to pay the professional dues or membership dues and subscriptions on behalf of the City Manager, including the International City Manager’s Association (“ICMA”) and the California City Management Foundation (“CCMF”), and attend ICMA and CCMF annual meetings at City expense.
- (5) The City agrees to pay the travel and subsistence expenses of the City Manager to pursue official and other functions for the City, and meetings and occasions to continue the professional development of the City Manager, including, but not limited to, national, regional, state, and local conferences and/or governmental groups and committees upon which the City Manager serves as a member subject to annual review by the City Council.
- (6) The City also agrees to pay for the travel and subsistence expenses of the City Manager for short courses, institutes and seminars that are necessary for the performance of City Manager duties as set forth in Municipal Code Section 2.08.060.

C. City Council Obligations.

- (1) The City Council sets policy for the governance and administration of the City, and it implements its policies through the City Manager.

- (2) The City Council recognizes that to meet the challenges facing the City they must exercise decisive policy leadership. As one step in carrying out this leadership responsibility, the City Council commits to spending time each year outside of regular City Council meetings to work with the City Manager and staff on creating and revisiting the City's strategic plan, for setting goals and priorities for the City government, and to work on issues that may be inhibiting the maximal achievement of City goals. Likewise, each member of the City Council will make sufficient time available to the City Manager to provide an opportunity to be briefed on City issues.

D. Mutual Obligations.

- (1) Initial Goal Setting

On or about January 2022 and each January thereafter, the Parties shall meet in order to establish shared goals, performance objectives, expectations, priorities, working relationships, and professional development as they mutually determine are necessary for the proper operation of the City and for the attainment of the City Council's policy objectives.

- (2) Performance Evaluation.

- (a) The City Council shall evaluate the City Manager's performance on a periodic basis as described below. The City Manager's "Performance Evaluation" shall be reasonably based upon specific criteria agreed to in advance by the Parties. Such criteria may be modified from time to time as agreed to by the Parties.
- (b) During the Term of the Agreement, the City Manager shall provide "status updates" to the City Council on a quarterly basis; however, the purpose the status updates shall limited to the review of progress on key initiatives and progress and expressly not to be considered "performance evaluations" as defined herein.
- (c) The City Council shall conduct a City Manager Performance Evaluation at least once each year on or around December 31.
- (d) The Parties agree more frequent or periodic performance evaluations may occur if agreed upon by the Parties as the result of a prior Performance Evaluation.
- (e) The Parties agree an outside facilitator paid for by City may be used to assist them in conducting the City Manager's Performance Evaluation

- (3) ICMA Code of Ethics.

The Parties acknowledge that the City Manager is a member of the International City Management Association (ICMA) and desire that the City Manager be subject to and comply with the most recent ICMA Code of Ethics, which shall be incorporated as part of this Agreement. A copy of the current

ICMA Code of Ethics is attached as Exhibit A. Neither the City Council nor any of its members will give the City Manager any order, direction, or request that would require the City Manager to violate the ICMA Code of Ethics.

3. COMPENSATION.

The City agrees to provide the following compensation to the City Manager:

A. Compensation and Required Employer Costs.

(1) Base Salary.

- (a) Beginning Fiscal Year 2021/22 the base salary for the position of City Manager shall be \$230,000 as set forth in the City's most current Salary Schedule.
- (b) Beginning Fiscal Year 2022/23, the base salary for the position of City Manager shall be \$245,000. Notwithstanding the foregoing, this salary amount in Fiscal Year 22/23 is contingent upon satisfactory performance set by the City Council pursuant to Section 2.D of the Agreement.
- (c) Beginning Fiscal Year 2023/24, base salary shall be subject to automatic cost of living adjustments of between 2% and 4% on July 1 of each year, as determined by the prior 12-months Consumer Price Index for the San Francisco Bay Area Region
- (d) The City Manager shall be paid at the same intervals and in the same manner as other regular City employees.
- (e) The City shall not at any time during the term of this Agreement reduce the base salary, compensation or other financial benefits of the City Manager, unless as part of a general City management salary reduction, and then in no greater percentage than the average reduction of all City department heads.

(2) Performance Increase.

To provide an incentive for the City Manager to produce results above and beyond the expected fulfillment of the City Manager's regular duties, the City agrees to consider providing a financial incentive for extraordinary performance. Annually, and at the Council's sole discretion, the City Manager may be eligible for a "performance increase" equal up to 3% of the City Manager's Base Salary. Any such incentive would be considered a one-time bonus and not a portion of the City Manager's salary and thus, is not pensionable. The performance increase may be based, in part, on the accomplishment of specific goals set by the City Council pursuant to Section 2.D of the Agreement.

- (3) Required City Costs. The following costs, to the extent they are applicable, shall be borne by the City:

- (a) Unemployment Compensation.
- (b) The “Employer’s Share” of Public Employees Retirement System (PERS). The City contracts with the California PERS for retirement benefits.
- (c) The cost of any fidelity or other bonds required by law for the City Manager.
- (d) The cost to defend and indemnify the City Manager as provided in Agreement Section 6.E.
- (e) Workers Compensation.

B. Basic Benefits.

- (1) Vacation/Management/Sick Leave.

Subject to the following, City Manager’s vacation time and sick leave shall be administered the same as all at-will management employees as outlined in the Unrepresented Compensation Program. Notwithstanding the foregoing, the City Manager shall not accrue Management Leave during the Term of the Agreement. Moreover, City Manager in his sole discretion, shall be allowed, to “cash out” accrued leave balances twice (2) each fiscal year, the amount of which each time shall be the maximum amount allowed under the Program.

- (2) Holidays.

The City Manager shall receive the same paid holidays as outlined in the Unrepresented Compensation Program.

- (3) Automobile Allowance.

The City Manager shall be provided a monthly automobile allowance of \$400 in lieu of making a vehicle available for the City Manager’s own personal use.

- (4) Benefits that Accrue to Other Employees.

The City Manager shall be entitled to all compensation benefits, rights, and privileges accorded to at-will management except as otherwise provided in this Agreement. If there is any conflict between this Agreement and any resolution fixing compensation and benefits for at-will management employees or other unrepresented employees, this Agreement shall control. See Exhibit B - Unrepresented Compensation Program.

- (5) Cell Phone Allowance

The City Manager shall receive a monthly technology allowance in the amount of \$180 in lieu of making a cell phone available for the City Manager’s own personal use.

4. SECURITY.

A. Pensions.

- (1) California Public Employees Retirement System (CalPERS) as required by state law.
 - (a) City Manager shall contribute to PERS (i.e. "Employee Share") 7% of total "CalPERS eligible" compensation and any sharing of "additional costs" of the "Employer Share" as defined in Government Code Section 20516 and required by the City's contract, including the latest amendments thereof, with CalPERS.
 - (b) City shall contribute the "Employer's Share" of CalPERS costs for benefits consistent with other non-safety management employees as outlined in the Unrepresented Compensation Program, currently the 2% at 55/single highest year retirement plan.
- (2) Deferred Compensation. The City Manager shall be eligible to participate in the 401(A) matching plan and the other optional Deferred Compensation plans available to the at-will management group as outlined in the Unrepresented Compensation Program. However, the City shall contribute annually an amount equal to the IRS Contribution Limit into the City Manager's deferred compensation plan.

B. Insurance.

(1) Insurance Benefits

- (a) Medical Insurance- The City Manager shall receive the same medical insurance contributions as the at-will management group.
- (b) Retiree Medical Insurance- The City Manager shall receive the same retiree medical insurance contributions as the at-will management group.

(2) Cafeteria Plan and other Benefits

The City Manager shall receive the same cafeteria plan contribution and access to all benefit plan options available to the at-will management group.

5. SEPARATION.

A. Resignation.

The City Manager may resign at any time and agrees to give the City at least 60 days advance written notice of the effective date of the City Manager's resignation, unless the Parties to this agreement mutually agree to other notice.

B. Non-Renewal of Employment Agreement, Termination & Removal.

- (1) Manager is an at-will employee serving at the pleasure of the City Council, as provided in Government Code Section 36506.
- (2) The City Council may remove the City Manager at any time, with or without cause provided such decision is consistent with the provisions of this Section and applicable law. Removal shall only occur after an effectuated Notice of Termination or Notice of Non-Renewal is provided to the City Manager in writing consistent with the provisions of Municipal Code Section 2.08.100. Any such Notice of Termination or Notice of Non-Renewal shall only be effectuated at a duly noticed regular meeting of the City Council.
- (3) No single member of the City Council may request, nor shall the City Council act to direct that the City Manager resign, take a reduction in salary or other financial benefit of the City Manager (including a general City Management salary reduction), take a material reduction in the powers and authority of the City Manager, or suggest an elimination of the City Manager's position.
- (4) Other than for misconduct in office, the City Manager shall not be removed during the 90-day period preceding or following any City election for membership on the City Council.
- (5) The City Manager shall not be removed with less than nine (9) months' remaining in the original Term of the Agreement, or any subsequent extension of the Term thereof except for "cause" as provided in Section 5.D of the Agreement.
- (6) Given the at-will nature of the position of City Manager, an important element of the Employment Agreement pertains to termination. It is in both the City's interest and that of the City Manager that any separation of the City Manager is done in a businesslike manner.

C. Separation without Cause and Severance Pay.

- (1) In the event the City Manager is terminated by the City Council during such time that the City Manager is willing and able to perform the City Manager's duties under this Agreement, then the City agrees to pay the City Manager a lump sum cash payment ("severance pay") equal to nine (9) months' base salary then in effect as provided in Agreement Section 3.A.(1).
- (2) In addition, the City shall extend to the City Manager the right to continue health insurance as may be required by and pursuant to the terms and conditions of the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA). The City agrees to pay the City Manager's COBRA coverage for the same number of months for which the City Manager is entitled to a lump sum cash payment under Section 3.C.(1) above, or until Employee either secures full-time employment or obtains other health insurance, whichever of these three events first occurs. The City Manager shall notify the City within five working days of securing new full-time employment or insurance.

- (3) In the event the City refuses, following written notice of noncompliance, to comply with any provision in this Employment Agreement benefiting the City Manager, including but not limited to the provisions of Section 5.B.3, then, the City Manager may, at his sole discretion, be deemed to be “terminated” as of the date of such refusal to comply or suggestion to resign, and the severance pay provision of Section 5.C.(1) and COBRA pay provisions of Section 5.C.(2) shall be actuated.

D. Separation for Cause.

- (1) The City Manager may be terminated “for cause” which shall mean only one or more of the following:
 - (a) Conviction of a felony or a misdemeanor involving moral turpitude.
 - (b) Continued abuse of non-prescription or prescription drugs, alcohol or controlled substances that affect the performance of the City Manager's duties.
 - (c) Willful misconduct as defined and implemented by the provisions of Municipal Code Sections 2.08.150 and 2.08.160.
- (2) In the event the City terminates the City Manager for “cause”, then the City may terminate this Agreement immediately, and the City Manager shall be entitled to only the compensation accrued up to the date of termination, payments required by Agreement Section 5.C.2, and such other termination benefits and payments as may be required by law. The City Manager shall not be entitled to any severance benefits provided by Agreement Section 5.C.1.
- (3) In the event the City terminates the City Manager for cause, the City, the Mayor and/or the City Council members and the City Manager agree that neither Party shall make any written or oral statements to members of the public or the press concerning the City Manager’s termination except in the form of a joint press release which is mutually agreeable to both Parties. The joint press release shall not contain any text or information that would be disparaging to either Party. Provided, however, that either Party may verbally repeat the substance of any such press release in response to inquiries by members of the press or public.

E. Payment for Unused Leave Balances.

- (1) Regardless of whether for cause, without cause, resignation or termination, on separation from City employment, the City Manager shall be compensated for all unused accrued leave allowances provided in Agreement Section 3.B.(1), except for sick leave. The City Manager may apply the sick leave time to service credit for retirement purposes if permitted by PERS.
- (2) In the event the City Manager dies while employed by the City under this Agreement, the City Manager’s beneficiaries or those entitled to the City

Manager's estate, shall be entitled to the City Manager's earned salary, and any in-lieu payments for accrued benefits, including compensation for the value of all accrued leave balances.

6. GENERAL PROVISIONS.

A. Term and Notice of Non-Renewal.

The initial Term of this Agreement shall be from the Effective Date until December 31, 2026. Subject to City's right to terminate City Manager's employment at any time as provided for in this Agreement, the initial Term shall automatically be extended for one additional twelve (12) month period on March 30, 2026, and for an additional twelve (12) month period at each March 30th thereafter unless City issues the City Manager a Notice of Non-Renewal pursuant to Section 5.B.(2) of this Agreement. If the City issues the City Manager a Notice of Non-Renewal at least nine (9) months prior to expiration of the original Term or any subsequent extension of the Term thereof, then the City Manager shall not be eligible to receive "severance pay" pursuant to Section 5.C. of this Agreement.

B. Provisions that Survive Termination.

Many sections of this Agreement are intended by their terms to survive the City Manager's termination of employment with the City, including but not limited to Sections 4, 5, and 6.E. These sections, and the others so intended, shall survive termination of employment and termination of this Agreement.

C. Amendments.

This Agreement may be amended at any time by mutual written agreement of the City and the City Manager.

D. Conflict of Interest.

- (1) The City Manager shall not engage in any business or transaction or shall not have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties. Personal as distinguished from financial interest includes an interest arising from blood or marriage relationships or close business, personal, or political associations. This section shall not serve to prohibit independent acts or other forms of enterprise during those hours not covered by active City employment, providing such acts do not constitute a conflict of interest as defined herein.
- (2) The City Manager shall also be subject to the conflict of interest provisions of the California Government Code and any conflict of interest code applicable to the City Manager's City employment.
- (3) The City Manager is solely responsible for submitting to the City Clerk the appropriate Conflict of Interest Statements at the time of appointment, annually thereafter, and at the time of separation from the position.

E. Indemnification.

- (1) As provided by the California Torts Claims Act (Government Code Section 810 et seq.) and the indemnity provisions of this Agreement, whichever shall provide the greatest protection to the City Manager, and the City, jointly and severally, shall defend and indemnify the City Manager against and for all losses sustained by the City Manager in direct consequences of the discharge of the City Manager's duties on the City's behalf for the period of the City Manager's employment.
- (2) The City shall defend, save harmless and indemnify the City Manager against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of the City Manager's duties as City Manager. The City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon.
- (3) If the City Manager is sued for damages arising out of the performance of the City Manager's duties, the City shall provide defense counsel for the City Manager in such suit and indemnify the City Manager from any judgment rendered against the City Manager. Such indemnity shall not extend to any judgment for damages arising from acts associated with grounds for termination with cause as provided for under Agreement Section 5.D. Separation.

This indemnification shall extend beyond termination of employment and the otherwise expiration of this Agreement to provide protection for any such acts undertaken or committed in the City Manager's capacity as City Manager, regardless of whether the notice of filing of a lawsuit occurs during or following employment with the City. This indemnity provision shall survive the termination of the Agreement and is in addition to any other rights or remedies that the City Manager may have under the law.

- (4) The City and all parties claiming under or through it, hereby waives all rights of subrogation and contribution against the City Manager, while acting within the scope of the City Manager's duties, from all claims, losses and liabilities arising out of or incident to activities or operations performed by or on behalf of the City or any party affiliated with or otherwise claiming under or through it, regardless of any prior, concurrent, or subsequent active or passive negligence by the City Manager.
- (5) In the event that the City Manager shall serve as the chief executive of other City-related legal entities as provided in Agreement Section 2.A.(1)(a), then each provision of this Agreement Section 5.E. shall be equally applicable to each City-related legal entity as though set forth in an indemnity agreement between the City Manager and that legal entity. The City hereby guarantees the performance of this indemnity obligation by the City-related legal entity, and shall indemnify and hold the City Manager harmless against any failure or refusal by City-related legal entity to perform its obligations under this Section 6.E.

- (6) Notwithstanding the foregoing, and consistent with Sections 53243 through 53243.3 of the Government Code, City Manager shall be required, if convicted of a crime involving an abuse of his office or position, to fully reimburse the City for: (1) any paid leave salary offered by the City to the City Manager; (2) any funds provided for the legal criminal defense of the City Manager; (3) any cash settlement related to the termination that City Manager may receive; and (4) any other payments received by City Manager from City that in any way relate to the foregoing.

F. Severability.

If any clause, sentence, part, section, or portion of this Agreement is found by a court of competent jurisdiction to be illegal or unenforceable, such clause, sentence, part, section, or portion so found shall be regarded as though it were not part of this Agreement and the remaining parts of this Agreement shall be fully binding and enforceable by the Parties hereto.

G. Jurisdiction and Venue.

This Contract shall be construed in accordance with the laws of the State of California, and the Parties agree that venue for legal action concerning any aspect of the Agreement in State Court shall be maintained in Napa County Superior Court and for an action in Federal Court shall be in the United States District Court for the Northern District of California.

H. Entire Agreement.

This Contract represents the entire agreement of the Parties, which has been jointly drafted by the Parties, and no representations have been made or relied upon except as set forth in this Agreement which may be amended or modified only by a written, fully executed agreement of the Parties. Any prior agreement relating to employment between the Parties is of no further force and effect, except that the City will remain bound by its indemnification obligations as stated therein.

I. Notice.

Any notice, amendments, or additions to this Agreement, including change of address of either party during the Term of this Agreement, which the City Manager or the City shall be required, or may desire, to make shall be in writing and shall be sent by prepaid first-class mail or hand-delivered to the respective Parties as follows:

- (1) If to the City:

City Clerk
4381 Broadway Street, Suite 201
American Canyon, CA 94503
Fax: (707) 643-2355

- (2) If to the City Manager:

Current address on file with the City Clerk

J. Allowance of Attorney Fees Associated with Preparation of Agreement.

The City shall pay up to a maximum of \$4,000.00 for the City Manager's attorney fees associated with the preparation of this Agreement.

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7. EXECUTION.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the Agreement Effective Date.

CITY MANAGER

DocuSigned by:
By: Jason Holley
Jason B. Holley
607366239971464...

Date: 10/13/2021

APPROVED AS TO FORM:

DocuSigned by:
By: Craig Scott
R. Craig Scott, Esq.
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Date: 10/14/2021

CITY OF AMERICAN CANYON

DocuSigned by:
By: Leon Garcia
Leon Garcia, Mayor
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Date: 10/15/2021

ATTEST:

Taresa Geilfuss, City Clerk

DocuSigned by:
By: Taresa Geilfuss
669347683BC94DC...

Date: 10/18/2021

APPROVED AS TO FORM:

William D. Ross, City Attorney

DocuSigned by:
By: William Ross
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Date: 10/15/2021