

REPORT TO CITY COUNCIL

DATE: JUNE 24, 2020

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: CANDICE K LEE, CITY ATTORNEY

SUBJECT: RESOLUTION NO. 20-1944 APPOINTING NATHAN HAMBURGER TO THE POSITION OF CITY MANAGER EFFECTIVE JULY 1, 2020, AND APPROVING AN EMPLOYMENT AGREEMENT IN CONNECTION THEREWITH

Following the announcement by Greg Ramirez, City Manager, regarding his departure from the City, the City Council met in duly noticed closed session meetings on May 22, 2020, May 27, 2020, June 3, 2020, and June 10, 2020, to discuss the appointment of the next City Manager for the City of Agoura Hills. Following several in-depth discussions and interviews, the City Council directed the City Attorney to prepare a draft employment agreement with Mr. Hamburger as the City's new City Manager, effective July 1, 2020.

Mr. Hamburger has over twenty years of experience in the public sector, including having served the past fourteen years as the City's Assistant to and Assistant City Manager. His duties have included serving as the City's Personnel Director and Risk Manager, Interim Treasurer, Interim Community Development Director, overseeing the City's economic development programs, helping to launch the regional Tourism Improvement District, and assisting with the City's annual budget preparation.

Mr. Hamburger joined the Agoura Hills community in 2006, and was appointed Assistant City Manager in 2007. Mr. Hamburger earned a Bachelor of Arts degree in Political Science with minors in Business Administration and Criminal Justice from California State University at Fullerton, and a Master in Public Administration degree from the University of Southern California. He served as an Executive Board member for the Municipal Management Association of Southern California (MMASC) for six years and is a member of the California City Manager's Foundation and Cal-ICMA (California's affiliate of the International City Managers Association).

Mr. Hamburger has agreed to the terms of the proposed employment agreement, subject to the approval of the City Council.

The employment agreement is attached for your review and sets forth the terms and conditions of the new City Manager's appointment, as recommended by the City Manager Employment Agreement ad hoc committee (Mayor Illece Buckley Weber and Mayor Pro Tem Denis Weber). The main points of the proposed employment agreement are as follows:

- The term of the employment agreement will begin on July 1, 2020.

- The annual base salary will be \$236,000. Salary is also subject to adjustment at the Council's sole discretion, but not more than once a year following an annual performance evaluation.
- The City Manager will be eligible for an annual performance bonus, at the sole discretion of the City Council based on a performance evaluation. A bonus is not required to be paid.
- Mr. Hamburger will be provided an automobile allowance of \$400 per month as delineated in the attached agreement (same monthly auto allowance as the previous City Manager).
- The City shall match and contribute to Mr. Hamburger's contribution up to 4% of Mr. Hamburger's salary to his deferred compensation plan.
- Retirement, health, and medical benefits, as well as other associated benefits will be the same as provided to other Management employees within the City.
- Standard leave balances consistent with those afforded other Executive Management employees will be the same, except for vacation leave and management leave, as set forth in the attached Employment Agreement.
- The employment agreement may be terminated by the City Council with or without "cause." If terminated without "cause", the City Manager will receive a lump sum payment equivalent to 6 months of his monthly base salary.

The annualized costs of salary and benefits for this position are included in the existing budget. The starting salary offered is less than what is paid to the current City Manager and is below the average of City Manager salaries for cities in the greater Conejo Valley area.

RECOMMENDATION

Staff recommends the City Council adopt Resolution No. 20-1944 Appointing Nathan Hamburger to the position of City Manager effective July 1, 2020, and approving an employment agreement in connection therewith.

Attachment: Resolution No. 20-1944

RESOLUTION NO. 20-1944

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AGOURA HILLS, CALIFORNIA, APPOINTING NATHAN HAMBURGER TO THE POSITION OF CITY MANAGER EFFECTIVE JULY 1, 2020, AND APPROVING AN EMPLOYMENT AGREEMENT IN CONNECTION THEREWITH

THE CITY COUNCIL OF THE CITY OF AGOURA HILLS HEREBY FINDS, RESOLVES, AND ORDERS AS FOLLOWS:

Section 1. The City Council hereby appoints Nathan Hamburger to the position of City Manager, effective July 1, 2020.

Section 2. The City Council approves the Employment Agreement between the City of Agoura Hills and Nathan Hamburger, attached hereto as Exhibit A, effective July 1, 2020.

Section 3. The City Clerk shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the book of original resolutions.

PASSED, APPROVED, AND ADOPTED this 24th day of June 2020, by the following vote to wit:

.....AYES ()
NOES ()
ABSENT ()
ABSTAIN ()

Illece Buckley Weber, Mayor

ATTEST:

Kimberly M. Rodrigues, City Clerk

EXHIBIT "A"

**EMPLOYMENT AGREEMENT BETWEEN
THE CITY OF AGOURA HILLS, CALIFORNIA AND NATHAN HAMBURGER**

CITY MANAGER EMPLOYMENT AGREEMENT

The City of Agoura Hills, as represented by its City Council, hereinafter referred to as Employer, and Nathan Hamburger, hereinafter referred to as Employee, in consideration of the mutual promises made herein, agree as follows:

ARTICLE 1. TERM OF EMPLOYMENT

Section 1.01. Term. This agreement shall be effective on July 1, 2020 ("Effective Date"). Employee shall be employed as an "at will" employee, subject only to such limitations on termination as are imposed by Article 6 hereof. Each calendar year, on the anniversary of the Effective Date and commencing as of the first anniversary, the term of this agreement shall automatically be extended for one (1) additional calendar year, unless this agreement is terminated earlier by either party pursuant to Article 6. Such automatic extensions shall not increase the severance benefit payable pursuant to Section 6.02. Employee agrees that he serves at the will and pleasure of the City Council.

ARTICLE 2. DUTIES AND OBLIGATIONS OF EMPLOYEE

Section 2.01. General Duties. Employee shall serve as the City Manager of the City of Agoura Hills, and in such other Executive capacities of Employer's subsidiary agencies as designated by the City Council and the Municipal Code (all such capacities are hereinafter collectively referred to as "City Manager"). Employee's duties and responsibilities shall be those duties and responsibilities commonly assigned to a City Manager in a California general law city, and as described in Agoura Hills Municipal Code Section 2107 and any other act of the City Council, as the same may be amended from time to time. In his capacity as City Manager, Employee shall do and perform all services, acts, or things necessary or advisable to manage and conduct the affairs of Employer in a lawful and professional manner, subject at all times to the policies set by the City Council of Agoura Hills and applicable laws, ordinances, regulations, policies and administrative procedures of the United States, the State of California, Employer, or any agency thereof.

Section 2.02. Devotion to Employer's Business.

(a) Employee shall devote his entire professional time, ability, and attention to the business of Employer during the term of this contract.

(b) Employee shall not engage in any other business duties or pursuits whatsoever, or directly or indirectly render any services of a business, commercial, or professional nature to any other person or organization, whether for compensation or for profit, without the prior written consent of the City Council of Agoura Hills.

(c) Notwithstanding the foregoing, employee shall be permitted to conduct or engage in limited teaching and other formal classroom and/or instructional programs for compensation without obtaining the prior consent of the City Council, so long as such activities do not interfere with Employee's primary duty as City Manager or constitute a conflict of interest under applicable law.

(d) This agreement shall not be interpreted to prohibit Employee from making passive personal investments permitted under, and pursuant to, the laws, ordinances, regulations, and polices of the United States, State of California, Employer and agencies thereof.

Section 2.03. Corporate Surety Bond. Employer shall secure and provide, at its cost, any corporate surety bond required by Agoura Hills Municipal Code Section 2106.

ARTICLE 3. COMPENSATION OF EMPLOYEE

Section 3.01. Compensation.

(a) As compensation for the services to be performed hereunder, Employee shall receive an initial salary of two hundred thirty six thousand dollars (\$236,000.00) per year, payable in equal installments. Such compensation is, and shall remain, in effect as of the effective date of this agreement and shall be paid to Employee at the same times and in the same manner as payments are made to other City management employees, subject to normal payroll deductions as directed by Employee.

(b) Except as limited in Section 3.01(c), said compensation may be adjusted, by resolution of the City Council and without further amending this agreement, not more than once annually, after the first anniversary of effective date of this agreement. Any such compensation adjustment is not required by this agreement. If such compensation adjustment is authorized by the City Council, the compensation adjustment shall be paid starting with the first pay period after an Annual Performance Evaluation is completed and the compensation adjustment is approved, in an amount subject to negotiation between Employer and Employee.

(c) The parties may mutually agree to defer or forego all or any part of an annual salary adjustment in times of economic hardship, such as a year when General Fund revenue does not increase as projected.

Section 3.02. Performance Evaluations.

(a) **Annual Performance Evaluation.** The City Council shall conduct an annual evaluation of Employee's performance. The City Council may engage an outside party to facilitate the evaluation at its sole discretion. Nothing in this paragraph is intended to prohibit the City Council from evaluating Employee's performance at any additional time during the Term of this Agreement. The purpose of the annual performance evaluation shall be to provide feedback to the Employee regarding Employee's performance against goals and objectives, to establish goals and objectives for the following year, to determine whether any compensation adjustment pursuant to Section 3.01(c) is warranted, and to determine whether to award Employee a Performance Bonus subject to the criteria set forth below in Section 3.02(c).

(b) **Performance Bonus.** At the conclusion of an annual performance evaluation, the City Council may determine to award Employee with a one-time Performance Bonus in any amount from Zero Dollars (\$0) to a maximum of Fifteen Thousand Dollars (\$15,000) or any sum in between, in recognition of either (1) continued exceptional performance or (2) a singular exceptional achievement on behalf of the City. Whether a bonus is given, and the amount thereof, shall be subject to the sole and absolute discretion of the City Council and, if awarded, shall be decided in an open and public meeting of the City Council. The Performance Bonus

shall be payable not later than the last City pay period of each calendar year beginning in 2021 and Employee shall not be eligible to receive more than one (1) such Performance Bonus in any fiscal year. The parties agree and acknowledge that the maximum amount of bonus if any, set forth in this Section 3.01(c) is intended to serve as a maximum limit only, and that the City Council retains complete discretion whether to award a Performance Bonus and, if so, the amount of said Bonus up to the maximum amount set forth herein.

ARTICLE 4. BENEFITS

Section 4.01. Fringe Benefits. Except as specifically provided herein, Employer shall provide the same fringe benefits including, without limitation, retirement, health and technology benefits, to Employee as are provided to other Management Employees specified in the then-current City of Agoura Hills Personnel Rules and any subsequent or amended personnel rule or regulation applicable to Management Employees and not in conflict with this agreement. Employee acknowledges receipt of a copy of the current City of Agoura Hills Personnel Rules prior to his execution of this agreement.

Section 4.02. Deferred Compensation Plan. The City shall match and contribute City Manager's contribution up to 4% of City Manager's salary to the ICMA 457 deferred compensation plan.

Section 4.03. Automobile Allowance. Employee shall receive a monthly automobile allowance of \$400.00 in lieu of having an automobile provided to him by the City for business and personal use. Employee shall be solely responsible for maintaining the records necessary for personal tax purposes. This monthly automobile allowance does not, however, preclude the City Manager from using City vehicles for City business when appropriate.

Section 4.04. Professional Development. Employer hereby agrees that it is in the Employer's best interest that the Employee set aside a reasonable period of time each year for his continuing education and professional development. Employer agrees to budget and pay for Employee's professional dues and subscriptions, and to facilitate Employee's continuation and full participation in national, state and local associations and organizations (including, without limitation, ICMA, League of California Cities, the California City Management Foundation), and any related reasonable travel and subsistence expenses related to such professional development.

Section 4.05. Leave Accrual.

(a) Except as provided herein, Employee shall accrue the same leave time benefits, subject to the City's accrual and "cash out" policies, as provided to other Management Employees as specified in the then-current City of Agoura Hills Personnel Rules, and any subsequent or amended applicable personnel rule or regulation.

(b) **Vacation Leave.** Employee shall receive four (4) weeks paid vacation leave annually subject to City's normal accrual policies. Employee shall be entitled to accumulate and "cash out" up to fifty (50) hours of vacation time twice a year at his then-current hourly rate, subject in all other respects to the same rules applicable to all City employees for accrued vacation time and provided that City Manager complies with the minimum accrual and "cash" out requirements applicable to all City Management Employees.

(c) Management Leave. Upon the effective date of this Agreement, Employee shall receive 100 hours of paid Management Leave annually, subject to the City's normal accrual policies. Management Leave shall be scheduled at the convenience of and with the approval of the Mayor. Employee shall be entitled to "cash out" up to 24 hours of Management Leave annually, provided that Employee complies with the minimum accrual and "cash" out requirements applicable to all City Management Employees.

ARTICLE 5. ADDITIONAL PROVISIONS IN PERSONNEL RULES

Section 5.01. General. The Personnel Rules and Regulations of the City of Agoura Hills, as amended from time to time, shall govern the non-monetary compensation (including certain benefits) to which Employee may be entitled, except to the extent that items of compensation and/or benefits are specified in this agreement, in which case this agreement shall control. Matters so governed by the Personnel Rules include (without limitation): management leave, sick leave, PERS contributions, life insurance, long term disability insurance, health benefits and fringe benefits. The Personnel Rules and Regulations shall not govern separation or discipline rights and procedures, as Employee is an "at will" contracted employee.

ARTICLE 6. TERMINATION OF EMPLOYMENT

Section 6.01. Termination for Cause. Employer reserves the right to terminate this agreement if Employee commits such acts of dishonesty, fraud, misrepresentation or other acts of moral turpitude or personal misconduct as the City Council reasonably believes would interfere with the continuing ability to effectively perform his duties or if, by words or deed, Employee breaches a material term of this agreement or abandons his employment as City Manager. Employer may, at its option, terminate this agreement for the reasons stated in this Section 6.01 by giving written notice of termination to Employee without prejudice to any other remedy to which Employer may be entitled either at law, in equity, or under this agreement. In the case of a termination for cause, Employer shall not be liable to employee for any severance benefit or payment.

Section 6.02. Termination Without Cause.

(a) This agreement shall be terminated automatically upon the death of the Employee, or at the expiration of its term.

(b) Employer, in its absolute discretion, may terminate this contract without cause by providing at least thirty (30) days prior written notice of termination to the Employee pursuant to the terms of Agoura Hills Municipal Code Section 2103. If the Employer terminates this agreement for a reason other than those described in Section 6.01 or 6.02(a), and Employee signs, delivers to the City Council, and does not revoke the General Release Agreement in the form attached hereto as **Exhibit "A"**, Employer shall pay Employee a lump sum amount equal to six (6) months of Employee's salary at the then-current rates of compensation. City shall also provide reimbursement of City COBRA health insurance premiums for the Employee for six (6) months following termination or until Employee finds other employment, whichever occurs first. The severance benefit payable under this Section 6.02(b) is in addition to, and independent of, any severance payment or benefit offered to City Managers by the California Joint Powers Insurance Authority, while City is a Member, to which Employee may be entitled.

(c) Notwithstanding the foregoing, Employer shall not terminate this agreement without cause during or within the 180-day period immediately following any regular municipal election at which a member of the City Council is elected, or the date on which a new member of the City Council is appointed pursuant to Agoura Hills Municipal Code Section 2104.

Section 6.03. Termination by Employee. Employee may terminate his obligations under this agreement by giving Employer at least thirty (30) days written advance notice. The City Council may waive the employee's notice requirement. During the period prior to such a termination by Employee, he shall continue to devote full time and effort to the business of the City and shall cooperate fully with Employer in any transition to a new management employee. Employee shall not be entitled to receive any severance benefit if Employee terminates this agreement.

ARTICLE 7. GENERAL PROVISIONS

Section 7.01. Written Authorizations. Any compensation adjustment, performance bonus, or other benefit authorized for Employee pursuant to this Agreement and approved by the City Council shall require the written authorization or signature of the Mayor or the Mayor Pro Tem.

Section 7.02. Indemnification. Consistent with and in the manner provided by California Government Code sections 825 *et seq.* and 995 *et seq.*, City shall defend, save harmless, and indemnify Employee from and against any tort, liability claim or demand, or other legal action arising out of an alleged act or omission occurring in the course and scope of the performance of Employee's duties as City Manager .

Section 7.03. Law Governing Agreement. This agreement shall be governed by and construed in accordance with the laws of the State of California, as if mutually drafted by both parties.

Section 7.04. Modifications. Any modification of this agreement will be effective only if it is in writing, approved by the City Council as required by law and signed by both parties.

Section 7.05. Effective Waiver. The failure of either party to insist on 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, or 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.

Section 7.06. 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.

Section 7.07. Entire Agreement. This agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the employment of Employee by Employer and contains all of the covenants and agreements between the parties with respect to that employment in any manner whatsoever. Each party to this agreement acknowledges that no representation, inducement, promise, or agreement, orally

or otherwise, has been made by any party, or anyone acting on behalf of any party, which is not embodied herein, and that no other agreement, statement, or promise not contained in this agreement shall be valid or binding on either party.

Executed on June 24, 2020, at Agoura Hills, California.

CITY OF AGOURA HILLS (“EMPLOYER”)

BY _____
Illece Buckley Weber, Mayor
City of Agoura Hills

ATTEST

BY _____
Kimberly M. Rodrigues, MMC, City Clerk
City of Agoura Hills

APPROVED AS TO FORM

BY _____
Candice K. Lee
City Attorney

Nathan Hamburger (“EMPLOYEE”)

BY _____
Nathan Hamburger

EXHIBIT "A"

GENERAL RELEASE AGREEMENT

This General Release Agreement ("Release Agreement") is entered into by and between NATHAN HAMBURGER ("Manager") and CITY OF AGOURA HILLS ("City"), in light of the following facts:

A. Manager's employment with City concluded on _____, 2____.

B. Certain disputes have arisen between City and Manager.

C. City and Manager each deny any liability whatsoever to the other.

D. City and Manager wish to fully and finally resolve any and all disputes they may have with each other.

E. Manager is hereby informed that he has twenty-one (21) days from receipt of this Agreement to consider it. City hereby advises Manager to consult with his legal counsel before signing this Agreement.

F. Manager acknowledges that for a period of seven (7) days following the signing of this Agreement ("Revocation Period"), he may revoke the Agreement. This Agreement shall not become effective or enforceable until the day the Revocation Period has expired.

G. Manager acknowledges that the Salary Payment referenced in paragraph 1 of this Agreement represents all compensation, including salary, accrued benefit balances and reimbursed expenses, due and payable to him through the date of employment termination. Manager also acknowledges that City has made this Salary Payment without regard to whether he signs this Agreement. The Salary Payment does not constitute consideration for this Agreement.

1. Receipt of Salary Payment. Manager hereby acknowledges receipt of a check or checks for all compensation owing to him/her, including salary, accrued benefit balances and reimbursed expenses ("Salary Payment") from City.

2. Severance. Within five (5) business days following Manager's signing, delivering to the City, and not revoking this Agreement, City shall pay Manager the gross amount provided for in Section 6.02(b) of the attached Employment Agreement, less applicable deductions and shall provide the months of health insurance benefits as provided in that same Section 6.02(b). Manager acknowledges that the Severance is in excess of all amounts due and owing him as a result of his employment by City.

3. General Release.

A. In consideration of the Severance to be paid and provided to Manager, and other good and valuable consideration, Manager hereby releases and discharges City and its past and present City Council Members, employees, representatives and agents, from all rights, claims, causes of action, and damages, both known and unknown, in law or in equity, concerning and/or arising out of his employment by City which he now has, or ever had, including but not limited to any rights, claims, causes of action or damages arising under Title VII of the Civil Rights Act of 1964, the Vocational Rehabilitation Act of 1973, the Employee Retirement Income Security Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Older Workers Benefits Protection Act, the Family and Medical Leave Act of 1993, the Domestic Partners Act of 2003, the California Labor Code, the Private Attorneys

General Act of 2004, the California Moore-Brown-Roberti Family Rights Act, the California Unruh Civil Rights Act, the California Fair Employment and Housing Act, any other federal, state, or local employment practice legislation, or any federal or state common law, including wrongful discharge, breach of express or implied contract, or breach of public policy. Manager hereby waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of California. Manager understands and acknowledges the significance and consequences of this specific waiver of Section 1542. Section 1542 of the Civil Code of California states as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

B. Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of City and its past and present City Councilmembers, employees, representatives and agents, Manager expressly acknowledges that this General Release is intended to include in its effect, without limitation, all claims which he does not know or suspect to exist in his favor.

C. Manager further acknowledges that he has read this General Release and that he understands that this is a general release, and that he intends to be legally bound by the same.

4. Fees and Costs. Manager and City agree that in the event of litigation relating to this Release Agreement, the prevailing party shall be entitled to recover his/its reasonable attorneys' fees and costs.

CITY OF AGOURA HILLS ("CITY")

NATHAN HAMBURGER ("MANAGER")

By: _____,
Mayor

By: _____
Nathan Hamburger

ATTEST:

By: _____
Kimberly M. Rodrigues, MMC
City Clerk