

RESOLUTION NO. 2019-012

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
AUTHORIZING THE MAYOR TO EXECUTE AN EMPLOYMENT AGREEMENT
WITH JASON BEHRMANN AS THE CITY MANAGER**

WHEREAS, the Office of the City Manager has been established within the City of Elk Grove, and

WHEREAS, the City Council is authorized to appoint a City Manager; and

WHEREAS, having undergone a recruitment since the departure of the prior City Manager in May of 2018, the City Council appointed Jason Behrmann as City Manager on January 9, 2019; and

WHEREAS, the City Council now wishes to enter into an employment agreement with Jason Behrmann as City Manager.

NOW, THEREFORE, BE IT RESOLVED that the Mayor is authorized to execute an employment agreement with Jason Behrmann as City Manager in substantially the form attached hereto as Exhibit A.

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 23rd day of January 2019.




STEVE LY, MAYOR of the
CITY OF ELK GROVE

ATTEST:



JASON LINDGREN, CITY CLERK

APPROVED AS TO FORM:



JONATHAN P. HOBBS,
CITY ATTORNEY

EXHIBIT A

CITY OF ELK GROVE



EMPLOYMENT AGREEMENT

CITY MANAGER

This Employment Agreement ("Agreement") is made and entered into effective this 10th day of January, 2019, by and between the City of Elk Grove, California, a municipal corporation ("City") and Jason Behrmann ("Employee").

SECTION 1. DUTIES

City hereby employs Employee full-time as City Manager to perform the functions and duties specified in the laws of the State of California, Ordinances, and Resolutions enacted by City, as well as the applicable job description, and to perform such other duties and functions as the City Council shall from time to time assign.

Employee shall faithfully, diligently, and to the best of Employee's abilities, perform all duties that may be required under this Agreement. Employee agrees that Employee has a duty of loyalty and a general fiduciary duty to the City. Employee shall devote the whole of Employee's working time, skill, experience, knowledge, ability, labor, energy, attention, and best effort exclusively to the City's business and affairs. Employee shall not engage in any employment, activity, consulting service, or other enterprise, for compensation or otherwise, which is actually or potentially in conflict with, inimical to, or which interferes with the performance of Employee's duties. Employee shall not, during the term of this Agreement, individually, as a partner, joint venture, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of the City of Elk Grove. Further, as a member of the International City/County Management Association (ICMA), Employee has agreed to abide by the ICMA Code of Ethics, attached hereto.

SECTION 2. TERM OF AGREEMENT

Employee shall serve as the City Manager effective January 10, 2019 ("the Effective Date"). This Agreement shall thereafter continue in full force and effect for an on-going and indefinite term until such time as either party terminates this Agreement pursuant to the provisions hereof. Employee's employment as City Manager shall be at will. This means that



Employee may be terminated from his employment with the City at any time, without cause, and without notice, subject to the provisions hereof.

SECTION 3. SALARY

A. City agrees to pay Employee an annual base salary for services rendered in the amount of two hundred sixty-nine thousand one hundred fifty-six dollars (\$269,156) ("Base Salary") payable in installments at the same time as other employees of the City are paid.

B. Employee shall receive annual compensation cost of living increases, effective the first day of the pay period of his annual review date, to the Base Salary at a rate equal to the December Annual Consumer Price Index - All Urban Consumers for the San Francisco-Oakland-Hayward, California region as published by the U. S. Department of Labor, Bureau of Labor Statistics, based on the amount of the City Manager's salary as may be adjusted from time to time. The City Manager's salary shall not be adjusted downward as a result of a decrease in the above-referenced Consumer Price Index.

C. In addition, the City Council may, in its sole discretion, grant increases and/or performance incentives to Employee. In accordance with Section 7 below, the City Council shall conduct periodic evaluations of Employee's performance. However, the mere fact that the City Council conducts a performance evaluation of Employee shall not entitle Employee to any change in salary or benefits.

SECTION 4. BENEFITS

Employee shall receive the following benefits:

A. City shall provide health, dental, and vision insurance for the Employee and for the Employee's dependents in the same manner, and at the same level, as City provides for such benefits in the City's flexible benefits and/or cafeteria plan for other Executive Management employees. City shall provide Armadacare or similar supplemental health coverage for Employee and for the Employee's dependents consistent with other Executive Management employee benefits.

B. City shall provide one hundred percent (100%) of the cost for life and disability insurance for the Employee in the same manner as City provides for such benefits in the City's flexible benefits and/or cafeteria plan for other Executive Management employees.

C. City shall provide one hundred percent (100%) of the cost of the Employer's share of PERS contributions. Employee shall provide one hundred percent (100%) of the cost of the Employee's share of PERS contributions.

D. City shall contribute an amount equal to 5% multiplied by Employee's Base Salary on Employee's behalf to an IRC § 401(a), or equivalent, deferred compensation plan.



E. Employee shall receive a car allowance of five hundred dollars (\$500.00) per month and a phone/technology allowance of one hundred dollars (\$100.00) per month.

SECTION 5. LEAVE

A. Annual Leave. City shall include Employee in its Annual Leave Program and provide him with an annual accrual of two hundred forty (240) hours of Annual Leave. Employee shall accrue Annual Leave in the manner described in the City's Personnel Rules and Regulations and shall be subject to the cap on accrual of such leave as described therein. Employee shall not accrue Annual Leave in excess of four hundred eighty (480) hours. Employee shall be entitled to sell back to City up to one hundred sixty (160) hours of Annual Leave each fiscal year.

B. Administrative Leave. On July 1 of each year, Employee shall receive eighty (80) hours of Administrative Leave for that fiscal year. Employee shall not have the right to accrue Administrative Leave from year to year. Employee shall be entitled to sell back to City up to 50% of Administrative Leave annually, or such greater percentage as may be authorized by the City's Personnel Rules and Regulations.

SECTION 6. TERMINATION OF AGREEMENT; POSSIBLE SEVERANCE

A. Termination by City. Employee understands and agrees that Employee has no constitutionally-protected property or other interest in Employee's employment as City Manager. Employee understands and agrees that Employee works at the will and pleasure of the City Council, and that Employee may be terminated, or asked to resign, at any time, with or without cause or advance notice. Notice of termination shall be provided to Employee in writing. "Termination," as used in this Agreement, shall also include: (i) a request by a majority of the City Council that Employee resign; (ii) a material reduction in the powers and authority of the City Manager (excluding placement on paid administrative leave).

B. Termination by Employee. Employee may voluntarily terminate employment at any time by giving not less than thirty (30) days' notice.

C. Severance Benefit. If Employee is asked to resign by a majority of the City Council or is terminated as City Manager without cause, then Employee shall receive a one-time, lump sum cash payment equivalent to the sum of Employee's then-current monthly salary multiplied by twelve (12) and the cash value of Employee's then-current monthly medical premiums multiplied by twelve (12) as of the effective date of termination of employment. Eligibility for such severance payment is expressly conditioned upon Employee's execution of (i) a waiver and release of any and all of Employee's claims against City, and (ii) a covenant not to sue. All normal payroll taxes and withholdings as required by law shall be made with respect to any amounts paid under this Section.



All severance payments under this section and any legal criminal defense payments under section 10, if any, are subject to, and shall be interpreted to comply with, the limitations set forth in California Government Code section 53260, concerning the maximum cash settlement in an employment contract, and California Government Code sections 53243 through 53243.4, limiting and/or restricting payment or continued retention of severance payments and/or legal criminal defense payments should Employee be convicted of a crime involving an abuse of office or position. "Abuse of office or position" for purposes of this Agreement, shall be as defined in Government Code section 53243.4 which provides: "'abuse of office or position' means either of the following: (a) An abuse of public authority, including, but not limited to, waste, fraud, and violation of the law under color of authority. (b) A crime against public justice, including, but not limited to, a crime described in Title 5 (commencing with Section 67) or Title 7 (commencing with Section 92) of Part 1 of the Penal Code."

D. Ineligibility for Severance (Termination for Cause; Voluntary Resignation). Notwithstanding the terms in this Section 6, Employee shall not be eligible to receive, and the City shall not be obligated to pay, and shall not pay, any severance amounts or continue any benefits, if Employee is terminated for Cause. Cause, as used herein, shall mean, and be limited to, a termination for any of the following reasons: (i) conviction of a felony or other crime involving moral turpitude (ii) fraud, material dishonesty, or gross negligence in the Employee's performance of his duties as City Manager; (iii) death or permanent disability rendering Employee unable to perform the essential functions of the job; (iv) civil liability for a violation of statute or law constituting misconduct in office. In the event the City Council terminates Employee for Cause, Employee's sole remedy shall be a judicial action in declaratory relief to determine whether there was Cause. If the court determines there was no Cause, Employee shall receive the severance pay provided in this Section 6, but no other damages, litigation costs or expenses, or attorneys' fees. Further, City shall not be obligated to pay any severance amounts or continue any benefits in the event Employee voluntarily resigns his employment.

SECTION 7. PERFORMANCE EVALUATION

Annually, or at such other time as desired by the City Council, the City Council and Employee shall meet to evaluate the performance of Employee. The City Council may, in its sole discretion, use any professional assistance in establishing standards, including but not limited to an agreed-upon facilitator. Nothing in this provision shall be construed to require City Council to grant Employee pay increases based on the performance standards, if any, mentioned above nor to limit in any manner the discretion of City Council to grant or not pay increases. Nor shall anything in this Agreement be construed to require City Council to evaluate Employee solely upon the performance standards, if any, mentioned above, nor to limit the discretion of City Council to evaluate Employee as it deems necessary in the sole discretion of the City Council.



SECTION 8. PROFESSIONAL DEVELOPMENT, PROFESSIONAL ASSOCIATIONS, AND OUTSIDE ACTIVITIES

City shall pay Employee's annual ICMA and California City Manager Foundation (CCMF) membership dues and/or other similar professional organizational dues. During appointment as City Manager, and subject to the City Council's budgetary approval of funds for such purpose, Employee may attend and/or participate in professional activities, including, but not limited to, City Manager conferences and events, the League of California Cities conferences and events, and such other national, regional, and local associations, provided that Employee's ability to perform his duties as City Manager is not compromised. Employee shall be paid his regular salary and benefits while traveling to, attending, or participating in professional activities, and shall be entitled to expense advances and/or reimbursement in accordance with City policy applicable to other employees. Employee shall be entitled to reimbursement for the actual costs of the following expense categories that he incurs as a result of the professional development activities authorized in this section: airfare, rental car, conference fees, meals, and lodging, consistent with City policy and subject to annual budget appropriations. Employee shall notify the City Council in writing in advance of any absences of more than one day related to such professional development activities. If Employee wishes to engage in other outside professional activities (e.g. teaching, consulting, expert witness testimony, speaking, or other non-City connected business for which compensation is paid), he shall seek and obtain express prior consent of the City Council. Employee will take personal leave time for all such outside activities of this nature should such activities interfere with the City Manager's regular City duties.

SECTION 9. REIMBURSEMENT FOR EXPENSES

Employee shall be entitled to reimbursement of reasonable business-related expenses subject to the requirements and restrictions of generally-applicable City reimbursement policies.

SECTION 10. BONDING/INDEMNIFICATION

City shall bear the full cost of any fidelity or other bonds required of Employee under any law or ordinance. The City shall defend, hold harmless, and indemnify Employee against any tort, civil rights, personnel, discrimination, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act of omission occurring in the performance of Employee's duties in accordance with the provisions of California Government Code Section 825 and provide a defense in accordance with California Government Code Section 995. The City may decline to defend and/or indemnify only as permitted by the California Government Code. The City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment therefrom. This provision shall survive any termination or resignation of the Employee or expiration of this Agreement. This section is not intended to provide any rights in excess of those rights provided by state law.



SECTION 11. MISCELLANEOUS

A. City, in consultation with Employee, shall fix any other terms and conditions of employment as City may determine from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Municipal Code, or any other law. No such terms and conditions shall be binding upon the parties to this Agreement unless and until they are reduced to writing and signed by both parties. Neither party may rely upon such terms and conditions without such an executed writing.

B. Unless otherwise specifically provided herein, all provisions of the Municipal Code and regulations and rules of City relating to vacation and sick leave, retirement contributions, health benefits, holidays and other fringe benefits and working conditions as they now exist or hereafter may be amended, also shall apply to Employee as they would to other City Executive Management employees. Except for terms expressly addressed by this Agreement, all other terms of the City's Personnel Rules and Procedures and benefits programs shall apply. To the extent there is an inconsistency between the Personnel Rules and Procedures or benefits programs, the terms of this Agreement shall apply.

SECTION 12. NOTICES

Notices pursuant to this Agreement shall be in writing given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

CITY

Mayor
City of Elk Grove
8401 Laguna Palms Way
Elk Grove, CA 95758

EMPLOYEE

Jason Behrmann, City Manager
City of Elk Grove
8401 Laguna Palms Way
Elk Grove, CA 95758

or

Employee's home address on file with the City's Human Resources Department.

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to the civil judicial process. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service or into a traceable overnight delivery service (e.g. Federal Express or similar).



SECTION 13. GENERAL PROVISIONS

A. The text herein shall constitute the entire agreement between the parties, and supersedes any and all other writings, documents, correspondence, agreements or understandings, either oral or in writing, between the parties hereto with respect to the employment of Employee by City. Each party to this Agreement acknowledges that no representation, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding on either party.

B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee.

C. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

D. Employee may not assign this Agreement in whole or in part.

E. This Agreement shall be governed by the laws of the State of California. The venue for any and all litigation arising from this Agreement shall be in the state superior or federal courts located in Sacramento County, California.

F. This Agreement may be modified or amended, or any of its provisions waived, only by a subsequent written agreement executed by each of the parties. The parties agree that this requirement for written modifications cannot be waived and any attempted waiver shall be void.

G. This Agreement shall be deemed to incorporate by reference the provisions of Sections 53243 *et seq.* of the Government Code, as it may be amended or renumbered.

H. Employee and City agree and acknowledge that the provisions of this Agreement have been arrived at through negotiation and that each party has had a full and fair opportunity to revise the provisions of this Agreement and to have such provisions reviewed by legal counsel, and that both parties agree that they either have had the provisions of this Agreement reviewed by legal counsel or have voluntarily chosen not to do so. Employer expressly agrees and acknowledges that the City Manager was not representing the City of Elk Grove regarding the terms of this Agreement. The parties agree any ambiguities in construing or interpreting this Agreement shall not be resolved against the drafting party. The titles of the various sections are merely informational and shall not be construed as a substantive portion of this Agreement.

[SIGNATURE LINES ON FOLLOWING PAGE]



IT IS SO AGREED:

"EMPLOYEE"




JASON BEHRMANN

IT IS SO AGREED:

CITY OF ELK GROVE,
a Municipal Corporation

By: _____
STEVE LY
Mayor, City of Elk Grove

APPROVED AS TO FORM:

By: 

JONATHAN P. HOBBS
City Attorney

ATTEST:

By: _____
JASON LINDGREN
City Clerk, City of Elk Grove

ICMA CODE OF ETHICS

The mission of ICMA is to create excellence in local governance by developing and fostering professional local government management worldwide. To further this mission, certain principles, as enforced by the Rules of Procedure, shall govern the conduct of every member of ICMA, who shall:

1. Be dedicated to the concepts of effective and democratic local government by responsible elected officials and believe that professional general management is essential to the achievement of this objective.
2. Affirm the dignity and worth of the services rendered by government and maintain a constructive, creative, and practical attitude toward local government affairs and a deep sense of social responsibility as a trusted public servant.
3. Be dedicated to the highest ideals of honor and integrity in all public and personal relationships in order that the member may merit the respect and confidence of the elected officials, of other officials and employees, and of the public.
4. Serve the best interests of the people.
5. Submit policy proposals to elected officials; provide them with facts and advice on matters of policy as a basis for making decisions and setting community goals; and uphold and implement local government policies adopted by elected officials.
6. Recognize that elected representatives of the people are entitled to the credit for the establishment of local government policies; responsibility for policy execution rests with the members.
7. Refrain from all political activities which undermine public confidence in professional administrators. Refrain from participation in the election of the members of the employing legislative body.
8. Make it a duty continually to improve the member's professional ability and to develop the competence of associates in the use of management techniques.
9. Keep the community informed on local government affairs; encourage communication between the citizens and all local government officers; emphasize friendly and courteous service to the public; and seek to improve the quality and image of public service.
10. Resist any encroachment on professional responsibilities, believing the member should be free to carry out official policies without interference, and handle each problem without discrimination on the basis of principle and justice.
11. Handle all matters of personnel on the basis of merit so that fairness and impartiality govern a member's decisions pertaining to appointments, pay adjustments, promotions, and discipline.
12. Public office is a public trust. A member shall not leverage his or her position for personal gain or benefit.

Adopted by the ICMA Executive Board in 1924, and most recently revised by the membership in June 2018.

CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2019-012

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) **ss**
CITY OF ELK GROVE)

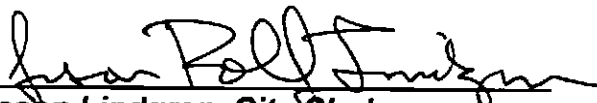
I, Jason Lindgren, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on January 23, 2019 by the following vote:

AYES: COUNCILMEMBERS: Ly, Hume, Detrick, Nguyen, Suen

NOES: COUNCILMEMBERS: None

ABSTAIN: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None



Jason Lindgren, City Clerk
City of Elk Grove, California