

# **CITY MANAGER EMPLOYMENT AGREEMENT**

## **BETWEEN**

### **CITY OF CYPRESS & JOHN B. BAHORSKI**

This CITY MANAGER EMPLOYMENT AGREEMENT (the "Agreement") is made and entered into this 8th day of January, 2007, by and between the CITY OF CYPRESS, a charter city and municipal corporation (hereinafter the "City"), and JOHN B. BAHORSKI, an individual (hereinafter the "City Manager").

#### **RECITALS**

WHEREAS, it is the desire of the City Council of City (hereinafter the "Council") to employ an individual to serve in the position of City Manager as prescribed by state law and City's Charter § 600; and

WHEREAS, it is the desire of the Council to (1) secure and retain the services of City Manager, (2) to provide inducement for him to maintain such employment, and (3) to provide a mechanism for terminating City Manager's services, if and when necessary; and

WHEREAS, City Manager desires to accept employment as such from City.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, City and City Manager hereby agree as follows:

#### **AGREEMENT**

##### **1.0 EMPLOYMENT & DUTIES**

City hereby employs John B. Bahorski as City Manager to perform the functions and duties specified in City's Charter, City's Municipal Code, and in the Government Code of the State of California, and to perform such other legally permissible and proper duties and functions as Council shall, from time to time, direct or assign.

##### **2.0 TERM**

2.1 Commencement & Effective Date. City Manager shall commence his services at 8:30 a.m., Pacific standard time, on February 14, 2007 which shall also be deemed the effective date of this Agreement.

2.2 Employment Status. City Manager is an "at-will" employee serving at the pleasure of City, acting through its Council, and subject to summary dismissal without any right of notice or hearing, including any so-called "Skelly" hearing. Except as provided in Section 2.3 below, City may terminate the employment of City Manager at any time, with or without cause,

upon compliance with the provisions set forth in Sections 3.0 or 4.0 of this Agreement, and upon the affirmative vote of three (3) members of Council.

2.3 Termination Limitation. City and City Manager agree that the scope of City's limitation upon its right to terminate the employment of City Manager shall be modified from that provided in City's Charter § 600 to require the following:

"Council may not terminate the employment of City Manager for a period of ninety (90) consecutive days prior to or following any election to fill any seat on Council."

2.4 Term. The term of this Agreement shall be indeterminate, subject to Sections 2.2, 2.3, and/or 2.5 of this Agreement.

2.5 Termination by City Manager. If City Manager determines to terminate this Agreement, he shall be required to give a minimum of sixty (60) days' advance written notice to Council prior to the effective date of his termination, unless a shorter period is acceptable to Council, and City Manager shall not be eligible for severance pay in the event of his voluntary resignation.

### 3.0 SEVERANCE

3.1 Severance Payment. Except as provided in Section 4.0 hereafter, should City elect to terminate this Agreement, and the services of City Manager thereunder, City shall, upon the effective date of such termination, pay to City Manager severance pay equal to twelve (12) months salary as defined in Section 5.0 hereinafter, including "COBRA" benefits (medical, dental and vision).

3.2 Payment for Accrued Benefits. Upon the termination of this Agreement, and the services of City Manager thereunder, City shall pay to City Manager the cash equivalent of all accrued benefits to the same extent as Department Head employees are entitled to be paid for accrued benefits, but excluding accrued sick leave in excess of forty (40) hours as provided in Section 9.2 hereinafter.

3.3 Sole Rights. The severance rights provided in this Section 3.0 shall constitute the sole and only entitlement of City Manager under this Agreement in the event of the termination, other than for cause, of the services of City Manager hereunder, and City Manager expressly waives any and all other rights except as provided herein.

### 4.0 TERMINATION FOR CAUSE

City shall not be obligated to make any severance payment as described in Section 3.0 above if City Manager is terminated for corrupt or willful misconduct in office, willful malfeasance constituting grounds for removal from office due to an indictment of the grand jury, or conviction of an illegal act (excepting minor traffic or moving violations) amounting to an act of moral turpitude. In the event City Manager is under investigation for any of the foregoing reasons, City may withhold part or all of any severance payment afforded City Manager, in Section 3.1 above, until it is determined if charges will be filed, and if charges are

filed, until final judgment is rendered; provided, however, that City may not withhold the severance payment (if any), in whole or in part, beyond twelve (12) months of the initiation of an investigation and/or the filing of charges, whichever shall last occur.

## 5.0 SALARY

5.1 Annual Compensation. City agrees to compensate City Manager for his services rendered hereunder at an annual salary of \$195,000 (One Hundred and Ninety-Five Thousand Dollars) as may be adjusted, from time-to-time, in accordance with Section 5.3 hereinafter, or as this Agreement may be amended. Such salary shall be payable in installments at the same time as other Department Head employees of City are paid.

5.2 Annual Salary Review. City and City Manager agree to conduct an annual salary review concurrently with the annual performance evaluation set forth in Section 6.2 hereinafter. Such annual salary review shall include consideration of those benefits afforded City Manager in this Agreement.

5.3 Effectuating Salary Adjustment. City and City Manager agree that the affirmative vote of three (3) members of Council shall be required to effectuate an increase in the salary paid to City Manager paid pursuant to this Agreement. This provision shall not be interpreted to require a separate affirmative vote of three (3) members of Council to approve the additional benefits specified in Section 9.6 of this Agreement.

5.4 Deferred Compensation. As additional compensation, the City shall annually contribute \$15,000 (Fifteen thousand dollars) into City's Deferred Compensation Plan on behalf of City Manager. This benefit shall be distributed by equal shares over twenty-six (26) pay periods.

## 6.0 PERFORMANCE EVALUATION

6.1 Purpose. The performance review and evaluation process set forth herein is intended to provide review and feedback to City Manager so as to facilitate a more effective management of City. Nothing herein shall be deemed to alter or change the employment status of City Manager (as set forth in Section 2.2 above), nor shall this Section 6.0 be construed as requiring "cause" to terminate this Agreement, or the services of City Manager thereunder.

6.2 Annual Evaluation. Council shall review and evaluate the performance of City Manager annually between February 14 and March 14 of each calendar year commencing in 2008. Such review and evaluation shall be conducted concurrently with an annual salary review, and in accordance with the purpose noted above. It shall be the obligation of City Manager and the City Clerk to notify Council of the need to conduct the evaluation required by this Section.

6.3 Written Summary. City and City Manager agree to jointly prepare a written summary of each performance evaluation of City Manager, and to include the same in his personnel file within two (2) weeks following conclusion of the review and evaluation process, and shall schedule at least one (1) closed personnel session with City Manager to deliver and discuss the evaluation.

6.4 Goal Setting. Within 180 days of the effective date of this Agreement, the City Council will participate in a goal setting session with a professional facilitator to provide City Manager with direction for the upcoming year.

## 7.0 HEALTH, WELLNESS

7.1 Scope. City shall provide to City Manager the same group medical, dental, vision, life and long term disability insurance plans and/or programs as are offered other Department Head employees by resolution of Council.

## 8.0 AUTOMOBILE

8.1 Car Allowance. City Manager shall be afforded a Five Hundred Dollar (\$500.00) per month vehicle allowance in full compensation for the usage of City Manager's personal vehicle for City-related business.

## 9.0 VACATION, SICK LEAVE, EXECUTIVE LEAVE & OTHER BENEFITS

9.1 Vacation Leave. As of the effective date of this Agreement, City Manager shall be deemed to have accrued one hundred (100) hours of vacation leave with City. From and after the effective date of this Agreement, City Manager shall accrue vacation leave at the same rate as is currently accrued by Department Head employees as the same may be modified for all Department Head employees by resolution of Council from time to time.

9.2 Sick Leave. As of the effective date of this Agreement, City Manager shall be deemed to have accrued forty (40) hours of sick leave with City. City Manager shall accrue additional sick leave at a rate of eight (8) hours per month up to a maximum of two hundred and forty (240) hours total of accrued sick leave. City Manager shall not be allowed to "cash out" any portion of his accrued sick leave during the tenure of his employment with City. In the event City Manager terminates his employment with City in accordance with Section 2.5, or is terminated from his employment with City in accordance with Section 2.2, City Manager shall be entitled to "cash out" up to a maximum of forty (40) hours of accrued sick leave.

9.3 Bereavement Leave. From and after the effective date of this Agreement, City Manager shall be entitled to such bereavement leave as is currently afforded Department Head employees as the same may be modified for all Department Head employees by resolution of Council from time to time.

9.4 Holidays. From and after the effective date of this Agreement, City Manager shall be entitled to such holidays as are currently afforded Department Head employees as the same may be modified for all Department Head employees by resolution of Council from time to time.

9.5 Executive Leave. As of the effective date of this Agreement, City Manager shall be deemed to have accrued thirty-two (32) hours of annual executive leave with City. Commencing on July 1, 2007, City Manager shall accrue executive leave at the maximum rate of thirty-two (32) hours per year. Executive leave shall not be carried over from year-to-

year, and shall not be considered an accrued benefit for purposes of calculating accrued benefits under Section 3.2 of this Agreement.

9.6 Retirement. City shall pay City Manager's contribution to the California Public Employees Retirement System ("CalPERS") as currently afforded Mid-Management level employees of City.

9.7 Additional Benefits. Unless otherwise specified to the contrary in this Agreement, City Manager shall be entitled to such additional benefits, including cost of living adjustments ("COLA") to compensation, if any, as are afforded Department Head employees as the same may be modified for all Department Head employees by resolution of Council from time to time.

9.8 League of Cities – Mayors & Council Members Academy – Leadership Institute Conference (January 10-12, 2007). City agrees to pay the airfare, hotel, and registration fees for City Manager for this conference.

#### 10.0 PROFESSIONAL DEVELOPMENT

10.1 Dues, Subscriptions and Professional Development. City agrees to budget and to pay for the professional dues and subscriptions of City Manager necessary for his participation in national, regional, state and local associations and organizations necessary and desirable for his professional participation, growth and advancement, and for the good of the City. The City hereby agrees to budget and to pay the travel and subsistence expenses of City Manager for professional and official travel, meetings and occasions adequate to the professional development of City Manager and to adequately pursue necessary official and other functions for the City including, but not limited to, the Annual Conference of the International City Management Association, the State League of Municipalities and such other national, regional, state and local governmental groups and committees thereof which City Manager serves as a member.

#### 11.0 TRAVEL & MEETING EXPENSES

11.1 Out-of-Town Meeting & Seminars. City agrees to reimburse City Manager the actual cost for registration, air or ground travel, lodging, and meals and other expenses incurred by City Manager while attending overnight out-of-town meetings or seminars related to his employment with City. To be eligible to receive reimbursement for meals and lodging for out-of-town meetings or seminars City Manager must have budgeted funds available for such, and shall obtain advance approval of the Council where practical to do so, or in the event such approval cannot be timely obtained, advance approval from the Mayor.

11.2 Local Meetings & Seminars. City agrees to reimburse City Manager the actual cost of registration, meals, and other expenses necessarily incurred while in attendance at local meetings or seminars related to his employment with City.

11.3 Incidental Expenses. City agrees to reimburse City Manager the actual cost of those incidental expenses necessarily incurred by City Manager while engaged in the business of City upon the presentation of an appropriate receipt therefore.

## 12.0 BONDING

The City shall bear the full cost of any fidelity or other bonds required of the City Manager by the Council or as required under any law or ordinance.

## 13.0 AMENDMENT OF AGREEMENT

City agrees that any amendment, alteration, extension, or modification to this Agreement shall be in writing, signed by the parties hereto, approved by the affirmative vote of three (3) members of the City Council with the consent of City Manager

## 14.0 INDEMNIFICATION

For the purpose of indemnification and defense of legal actions, City Manager shall be considered an employee of the City and entitled to the same rights and subject to the same obligations as are provided for all other employees of the City as set forth in Sections 825 through 825.6 and Sections 995 throughout 996.6 of the California Government Code.

## 15.0 GENERAL PROVISIONS

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

15.2 Heirs and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the heirs at law and executors of the City Manager.

15.3 Effect of 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, 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 at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

15.4 Partial Invalidity. If any provision in 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.

15.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, in full force and effect as of the date of execution.

15.6 Independent Legal Advice. City and City Manager represent and warrant to each other that each has received, to the extent desired, legal advice from independent and separate legal counsel with respect to the legal effect of this Agreement and, City and City Manager further represent and warrant that each has carefully reviewed this entire Agreement and that each and every term thereof is understood and that the terms of this Agreement are contractual and not a mere recital. This Agreement shall not be construed against the party or its representatives who drafted it, or who drafted any portion thereof.

IN WITNESS WHEREOF, the CITY OF CYPRESS has caused this Agreement to be signed and executed on its behalf by its Mayor, and duly attested by its officers thereunto duly authorized, and CITY MANAGER has signed and executed this Agreement, both in duplicate.

CITY OF CYPRESS



Mayor

Dated: 1/8/07

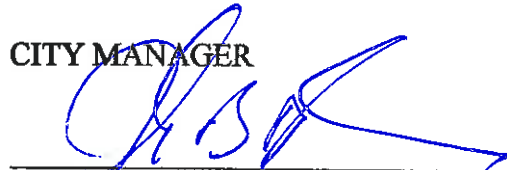
ATTEST:

Renae Basham  
City Clerk

APPROVED AS TO FORM:

W. Wye  
City Attorney

CITY MANAGER



John B. Bahorski

Dated: 1/8/07

**FIRST AMENDMENT TO  
CITY MANAGER EMPLOYMENT AGREEMENT**

**BETWEEN**

**CITY OF CYPRESS & JOHN B. BAHORSKI**

This FIRST AMENDMENT to CITY MANAGER EMPLOYMENT AGREEMENT (the "First Amendment") is effective the 14<sup>th</sup> day of February, 2008, and is by and between the CITY OF CYPRESS, a charter city and municipal corporation (hereinafter "City"), and JOHN B. BAHORSKI, an individual (hereinafter "City Manger").

**RECITALS**

WHEREAS, the City Council of City has now completed its initial performance evaluation of City Manager and, based thereon, desires now to modify certain terms and conditions of the underlying employment agreement between City Manager and City; and

WHEREAS, City Manager has requested modification to his compensation and to the deferred compensation provision of his underlying employment agreement with City.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, City and City Manager hereby agree as follows:

**AGREEMENT**

SECTION 1. Section 5.1 of the Agreement shall be amended, in its entirety, to read as follows:

"5.1 Annual Compensation. Effective February 14, 2008, City Agrees to compensate City Manager for his services rendered hereunder at an annual salary of \$204,750.00 (Two Hundred Four Thousand, Seven Hundred Fifty Dollars) as the same may be adjusted, from time-to-time, in accordance with Section 5.3 hereinafter, or as this Agreement may be amended. Such salary shall be payable in installments at the same time as other Department Head employees of City are paid."

SECTION 1. Section 5.4 of the Agreement shall be amended, in its entirety, to read as follows:

"5.4 Deferred Compensation. Effective Calendar Year, 2008, City shall annually contribute \$20,500.00 (Twenty Thousand Five Hundred Dollars)

into City's Deferred Compensation Plan for and on behalf of City Manager.  
This benefit shall be distributed in over twenty-six (26) pay periods."

SECTION 3. Except as expressly amended by this First Amendment, the underlying terms, conditions, and compensation of City Manager by City as and for his employment as City Manager shall be as set forth in that certain CITY MANAGER EMPLOYMENT AGREEMENT BETWEEN CITY OF CYPRESS & JOHN B. BAHORSKI, made and entered into on January 8, 2007.

IN WITNESS WHEREOF, the CITY OF CYPRESS has caused this First Amendment to be signed and executed on its behalf by its Mayor, and duly attested by its officers thereunto duly authorized, and CITY MANAGER has signed and executed this First Amendment, both in duplicate.

CITY OF CYPRESS

Todd W. Reynolds

Mayor

Dated: 2-12-08

ATTEST:

Denise Basham  
City Clerk

APPROVED AS TO FORM:

W. W. [Signature]  
City Attorney

CITY MANAGER

[Signature]

John B. Bahorski

Dated: 1/31/08

[END OF SIGNATURES]

**SECOND AMENDMENT TO  
CITY MANAGER EMPLOYMENT AGREEMENT**

**BETWEEN**

**CITY OF CYPRESS & JOHN B. BAHORSKI**

This SECOND AMENDMENT to CITY MANAGER EMPLOYMENT AGREEMENT (the "Second Amendment") is effective the 14<sup>th</sup> day of February, 2010, and is by and between the CITY OF CYPRESS, a charter city and municipal corporation (hereinafter "City"), and JOHN B. BAHORSKI, an individual (hereinafter "City Manager").

**RECITALS**

WHEREAS, the City Council of City has now completed its annual performance evaluation of City Manager and, based thereon, desires now to modify certain terms and conditions of the underlying employment agreement between City Manager and City; and

WHEREAS, City Manager has requested modification to his compensation afforded in his underlying employment agreement with City.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, City and City Manager hereby agree as follows:

**AGREEMENT**

SECTION 1. Section 5.1 of the Agreement shall be amended, in its entirety, to read as follows:

"5.1 Annual Compensation. Effective February 14, 2010, City Agrees to compensate City Manager for his services rendered hereunder at an annual salary of \$221,472.00 (Two Hundred Twenty One Thousand, Four Hundred Seventy Two Dollars) as the same may be adjusted, from time-to-time, in accordance with Section 5.3 hereinafter, or as this Agreement may be amended. Such salary shall be payable in installments at the same time as other Department Head employees of City are paid."

SECTION 2. Except as expressly amended by this Second Amendment, the underlying terms, conditions, and compensation of City Manager by City as and for his employment as City Manager shall be as set forth in that certain CITY MANAGER EMPLOYMENT AGREEMENT BETWEEN CITY OF CYPRESS & JOHN B. BAHORSKI, made and entered into on January 8, 2007, as amended.

IN WITNESS WHEREOF, the CITY OF CYPRESS has caused this Second Amendment to be signed and executed on its behalf by its Mayor, and duly attested by its officers thereunto duly authorized, and CITY MANAGER has signed and executed this Second Amendment, both in duplicate.

CITY OF CYPRESS  
P. Naranjo MS  
Mayor  
Dated: 1/11/2010

ATTEST:

Denise Basham  
City Clerk

APPROVED AS TO FORM:

W. Wojcik  
City Attorney

CITY MANAGER  
John B. Bahorski  
John B. Bahorski  
Dated: 1/11/10

[END OF SIGNATURES]