

CITY OF CORONA
AMENDED AND RESTATED
EMPLOYMENT AGREEMENT
FOR
NON-REPRESENTED EMPLOYEE
(ASSISTANT CITY ATTORNEY/ASSISTANT
LEGAL & RISK MANAGEMENT DIRECTOR)

1. PARTIES AND DATE.

This Agreement (hereinafter referred to as the "Agreement") is made and entered into this 2nd day of March, 2022 by and between the CITY OF CORONA, a municipal corporation (hereinafter referred to as "City") and JOHN D. HIGGINBOTHAM (hereinafter referred to as "Employee"), in order to provide in writing the terms and conditions of employment. City and Employee are sometimes individually referred to herein as "Party" and collectively as "Parties" throughout this Agreement.

2. RECITALS.

2.1 Position; Terms of Employment. City desires to employ the services of Employee as Assistant City Attorney/Assistant Legal & Risk Management Director for the City of Corona ("Position"), and Employee desires to accept such employment. It is the desire of the Parties through this Agreement to provide for certain benefits, establish conditions of employment, and to set working conditions for Employee.

2.2 Prior Agreements. City and Employee previously entered into that certain Employment Agreement dated December 26, 2012, as well as three amendments to the Employment Agreement dated October 16, 2013, November 14, 2017 and February 20, 2020 (collectively "Prior Agreements"). City and Employee desire to amend and restate the Prior Agreements as set forth herein.

3. TERMS.

3.1 Employment. City and Employee hereby agree to the employment of Employee in the Position upon the terms and conditions set forth herein.

3.2 Duties.

3.2.1 Designated Duties. Employee hereby agrees to perform the functions and duties of the Position in accordance with the City's ordinances and municipal code, the approved City job description for the position, and applicable law. Employee shall also perform other

legally permissible and proper duties and functions as the City Attorney/LRM Director shall from time to time assign. Employee further agrees to perform all such functions and duties to the best of his/her ability and in an efficient and competent manner.

3.2.2 Control and Supervision. Employee shall serve at the will and pleasure of the City Attorney/LRM Director pursuant to the terms and limitations of this Agreement, and will be under the City Attorney/LRM Director's day-to-day supervision and direction.

3.2.3 City Council & Other Meetings. Employee shall attend any City Council or other meetings as directed by the City Attorney/LRM Director.

3.2.4 Moonlighting. Employee will focus his/her professional time, ability, and attention on City business during the term of this Agreement. To the extent consistent with applicable law, 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 otherwise, without the prior consent of the City Attorney/LRM Director, except that:

(1) The expenditure of reasonable amounts of time not in conflict with the City's needs and interests, for educational, charitable, community, and professional activities, shall not be deemed a breach of this Agreement and shall not require prior consent.

(2) This Agreement shall not be interpreted to prohibit Employee from making passive personal investments or conducting private business affairs if those activities do not materially interfere with the services required under this Agreement or create conflicts of interest.

3.2.5 City Documents. All data, studies, reports and other documents prepared by Employee while performing his/her duties during the term of this Agreement shall be furnished to and become the property of the City, without restriction or limitation on their use. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other materials either created by or provided to Employee in connection with the performance of this Agreement shall be held confidential by Employee. Such materials shall not, without the prior written consent of the City Attorney/LRM Director, be used by Employee for any purposes other than the performance of his/her duties. Nor shall such materials be disclosed to any person or entity not connected with the performance of services under this Agreement, except as required by law. The terms of this Section 3.2.5 shall survive termination or expiration of this Agreement.

3.3 Term. Subject to the termination provisions in Section 3.4, the Term of this Agreement shall commence on March 2, 2022 and shall continue for twelve (12) months thereafter through March 1, 2023 ("Initial Term"); provided, however that at the expiration of the first month of the Initial Term and any authorized Succeeding Term thereafter, as provided for herein, the Agreement shall be automatically extended for an additional one (1) month ("Succeeding Term") under the same terms and conditions, unless and until the City Attorney/LRM Director provides written notice to Employee prior to the expiration of any given

month of his/her intent not to extend the Term of this Agreement for any additional months. Following such notice, the Term of this Agreement shall have eleven (11) months remaining. The phrases "Initial Term" and "Succeeding Term" may be generally referred to as "Term" throughout this Agreement. If the City Attorney/LRM Director elects not to extend the Term, as provided for herein, Employee shall have no right to the Severance Payment provided for in Section 3.4.4 below.

3.4 Termination; Severance Payment.

3.4.1 Termination. The Parties hereby expressly understand and agree that the employment relationship created by this Agreement is "at-will" and thus Employee serves at the will and pleasure of the City Attorney/LRM Director and may be terminated at any time, during the Initial Term or a Succeeding Term of this Agreement, without notice and with or without cause, but subject to the terms of this Agreement. Nothing in this Agreement, any statute, ordinance, or rule shall prevent, limit or otherwise interfere with the right of the City Attorney/LRM Director to terminate, without cause or right of appeal or grievance, except for those rights expressly set forth in this Section 3.4, the employment of the Employee at any time during the Initial Term or a Succeeding Term of this Agreement. Accordingly, Employee agrees that this Agreement sets forth the only terms and conditions applicable to the termination of his/her employment.

3.4.2 Accrued and Unused Leave. Notwithstanding anything to the contrary stated herein, if Employee is terminated either with or without cause, Employee shall be entitled to be compensated for his/her accrued and unused Annual Leave, if any, through the effective date of termination, as defined and provided for in the Executive Group Employee Resolution described in Section 3.8.1 below.

3.4.3 Automatic Termination. This Agreement, and Employee's employment, shall automatically terminate and Employee shall not be entitled to any severance payment (including the Severance Payment provided for in Section 3.4.4 below), except for compensation for accrued and unused annual leave, upon the happening of any of the following events:

- (1) Upon mutual agreement in writing by both Parties to terminate this Agreement.
- (2) Upon thirty (30) days notice of resignation given to City by Employee.
- (3) Upon the death of Employee.
- (4) To the extent consistent with applicable law, including without limitation, Government Code Section 12940, when Employee has been unable for a period of three (3) months to either: (A) perform all or substantially all of the essential duties of his/her position, even with reasonable accommodation, due to a medical condition or physical or mental disability; or (B) perform all or substantially all of the essential duties of his/her position, even with reasonable accommodation, in a manner that would not endanger Employee's health or

safety or the health or safety of others. The Parties understand, acknowledge and agree that, if a reasonable accommodation is determined not to be available pursuant to any interactive process required by applicable law, the automatic termination shall be effective at the end of the three (3) month period.

(5) Upon the natural expiration of the Initial Term or any authorized Succeeding Term of this Agreement, as provided for herein.

3.4.4 Termination Without Cause; Severance Payment. This Agreement and Employee's employment may be terminated without prior notice at any time, with or without cause, by the City Attorney/LRM Director. In the event Employee is terminated without cause, other than under an Automatic Termination instance as provided for in Section 3.4.3 above, and at such time as Employee is willing and able to perform his/her duties under this Agreement, the City agrees to pay Employee, in compliance with Government Code Sections 53260 and 3511.2, a maximum severance payment equal to the lesser of: (1) six (6) months Base Salary, as described in Section 3.5 below; or (2) the unexpired Term of this Agreement, as described in Section 3.3 above, multiplied by Employee's Base Salary, as described in Section 3.5 below ("Severance Payment"); provided, however, that Employee shall be required to fully comply with the terms of Section 3.4.5 below as a condition to receiving the Severance Payment. If Employee fully complies with Section 3.4.5, the Severance Payment shall be Employee's sole and exclusive remedy for termination without cause. If Employee fails to fully comply with Section 3.4.5, Employee understands, acknowledges and agrees that he/she shall have no remedy, in law or equity, for termination without cause. Upon termination, Employee shall also be entitled to compensation for accrued and unused annual leave, as provided for in the Executive Group Employee Resolution. The Severance Payment and annual leave cash-out, if any, shall be paid by the City in one lump sum, less applicable deductions, on the date provided for in the release required pursuant to Section 3.4.5 below.

3.4.5 Termination Without Cause; Release. Notwithstanding Section 3.4.4 above or any other section or provision of this Agreement, the Severance Payment shall be conditioned upon Employee executing a personnel form providing a release and waiver of any and all claims against City, its officers, employees and agents, arising out of Employee's employment with City and the termination thereof, in a form required by the City Manager and City Attorney in their sole and absolute discretion.

3.4.6 Termination for Cause; Procedure. Except as provided for in Subsection (7) below, in the event Employee is terminated for cause, City shall have no obligation to pay any severance, including the Severance Payment described in Section 3.4.4 above.

(1) Upon termination for cause, the City shall deliver to Employee a written specification of the charges or other reasons upon which "cause" is alleged. For purposes of this Agreement, termination for "cause" shall be defined as follows: (a) a willful breach of this Agreement; (b) neglect of duties required to be performed under this Agreement; (c) any acts of dishonesty, fraud, misrepresentation or other acts of moral turpitude; or (d) refusal or failure to act in accordance with any directive or order of the City Attorney/LRM Director.

(2) Employee shall then have five (5) business days to challenge such termination for cause by delivery of a written response to such specifications. Within such five (5) day period, Employee may also demand a hearing upon the specifications. Failure to submit a written response or demand a hearing within the five (5) business day period shall constitute a waiver of such right, and the City Attorney/LRM Director's determination shall be final.

(3) If a written response is submitted but no hearing is demanded, the City Attorney/LRM Director shall review his/her decision based upon Employee's written response. However, any determination by the City Attorney/LRM Director, after reviewing such written response (where no hearing has been demanded), shall be final and without right of appeal.

(4) If a hearing is demanded, such hearing shall be held before an independent hearing officer to be mutually agreed between the Parties, or if no agreement can be reached within ten (10) calendar days, the hearing officer shall be selected from a list provided by JAMS. The list shall consist of five (5) hearing officers who are experienced in public employee labor law issues. Employee shall strike the first name from the list, and the Parties shall then take turns eliminating names from the list until one remains. The remaining name shall then be the selected hearing officer. The fees of the hearing officer shall be advanced, in full, by the City. The decision of the hearing officer shall be binding and without right of appeal.

(5) The issues to be determined in the hearing shall be whether the specification(s) alleged constitute "cause" pursuant to this Agreement and whether the specification(s) are supported by a preponderance of the evidence.

(6) The Parties acknowledge that a requested hearing for cause shall be held at the earliest possible date, and to that extent, they shall cooperate in selecting a date for the hearing which shall be no later than sixty (60) days following the City's notice of termination for cause.

(7) In the event the hearing officer concludes in favor of Employee that no cause exists, Employee's sole and exclusive remedy shall be the Severance Payment provided for under Section 3.4.4 above; provided, however, that Employee shall be required to fully comply with the terms of Section 3.4.5 above as a condition to receiving the Severance Payment. If Employee fully complies with Section 3.4.5, the Severance Payment shall be Employee's sole and exclusive remedy for termination without cause. If Employee fails to fully comply with Section 3.4.5, Employee understands, acknowledges and agrees that he/she shall have no remedy, in law or equity, for termination without cause. City shall be required only to change its records to reflect that Employee was terminated without cause. The Severance Payment, if required, shall be paid by the City in one lump sum, less applicable deductions, on the date provided for in the document required pursuant to Section 3.4.5 above. Under no circumstance shall Employee be entitled to reinstatement as a result of such hearing.

3.4.7 Notice for Resignation. In the event Employee voluntarily resigns his/her position with City, then Employee shall give City thirty (30) calendar days' notice in advance, unless the Parties otherwise agree. Upon voluntary resignation, Employee shall be entitled to

accrued and unused annual leave, if any, as provided for in the Executive Group Employee Resolution, paid in one lump sum, but not to the Severance Payment described in Section 3.4.4 above.

3.4.8 Statutory Obligations; Abuse of Office or Position. Pursuant to Government Code Sections 53243, 53243.1 and 53243.2, if Employee is convicted of a crime involving an abuse of his/her office or position, all of the following shall apply: (1) if Employee is provided with administrative leave pay pending an investigation, Employee shall be required to fully reimburse such amounts paid; (2) if the City pays for the criminal legal defense of Employee (which would be in its sole discretion, as it is generally not obligated to pay for a criminal defense), Employee shall be required to fully reimburse such amounts paid; and (3) if this Agreement is terminated, any cash settlement related to the termination that Employee may receive from the City shall be fully reimbursed to the City or void if not yet paid to Employee. For this Section, abuse of office or position means either: (1) an abuse of public authority, including waste, fraud, and violation of the law under color of authority; or (2) a crime against public justice, including a crime described in Title 7 commencing with section 92 of the Penal Code.

3.5 Base Salary. Effective March 12, 2022, City shall compensate Employee at an annual base salary equal to Two Hundred Thirty-Three Thousand Two Hundred and Thirty-Five Dollars (\$233,235) (Range 384, Step 5) (“Base Salary”), as provided for in the City’s Position Library and Compensation Plan last approved on March 2, 2022 (hereinafter referred to as the “Salary Table”). Effective January 14, 2023, Employee’s Base Salary shall be increased to Two Hundred Forty-One Thousand Five Hundred and Twenty-Two Dollars (\$241,522) (Range 391, Step 5) upon City Council approval of a Salary Table that authorizes such increase for Employee’s Position. Effective January 13, 2024, Employee’s Base Salary shall be increased to Two Hundred Forty-Seven Thousand Six Hundred and Twenty-One Dollars (\$247,621) (Range 396, Step 5) upon City Council approval of a Salary Table that authorizes such increase for Employee’s Position. The Base Salary shall be payable bi-weekly at the same time as other Executive Group employees of the City are paid. The Base Salary may be modified pursuant to the provisions of the Executive Group Employee Resolution, as described in Section 3.8.1 below. The Base Salary may also be adjusted from time-to-time by the City Attorney/LRM Director following a performance evaluation, as provided for in Section 3.7 below. In no event shall Employee’s Base Salary adjust automatically pursuant to any mechanism, and in no event shall Employee’s Base Salary exceed the maximum amount approved by the City Council, including in the Salary Table or any other salary table or other document that may be adopted by the City Council in the future. Any other salary enhancements provided for in the Executive Group Employee Resolution (e.g. longevity pay, bilingual pay, etc.) shall not be deemed to be a part of Employee’s Base Salary.

3.6 Benefits.

3.6.1 Leave Benefits. Except as otherwise provided herein, Employee shall be entitled to those holiday, annual, and other leave benefits provided for Employee's classification in the Executive Group Employee Resolution, as described in Section 3.8.1 below.

3.6.2 Health and Other Benefits. Except as otherwise provided herein, Employee shall be entitled to those health, life insurance, disability and other health benefits expressly provided for Employee's classification in the Executive Group Employee Resolution, as described in Section 3.8.1 below.

3.6.3 Retirement Benefits. City agrees to execute all necessary agreements to enroll Employee in the Public Employee's Retirement System of the State of California and to pay such contributions provided for Employee's classification in the Executive Group Employee Resolution, as described in Section 3.8.1 below. In addition, Employee shall be entitled to the same retiree medical benefits provided for Employee's classification in the Executive Group Employee Resolution.

3.6.4 Auto Benefit. As provided for in the Executive Group Employee Resolution, as described in Section 3.8.1 below, Employee shall be entitled to an automobile allowance for a personal vehicle required for City business. The automobile allowance shall be \$480 per month, and shall be payable in installments at the same time as other Executive Group employees are paid automobile allowances. Employee shall be responsible for the costs of operation, repair, maintenance, and liability, property damage and comprehensive insurance for such personal vehicle.

3.6.5 Business Equipment. City shall provide Employee with a cellular telephone and personal computer (at work) for use in connection with City business. City shall be responsible for maintenance of said items.

3.6.6 Professional Development. City shall pay Employee's membership dues in the California State Bar, as well as all reasonable costs associated with Employee's State Bar Mandatory Continuing Legal Education requirements. The City Attorney/LRM Director may, in his/her sole discretion and subject to the City's budget constraints and City Council approval, consider requests for membership in other professional organizations. All additional professional development requests, including requests for continuing education and other conference and meeting attendance, shall be subject to the City's budget constraints and to City Attorney/LRM Director approval on a case-by-case basis.

3.6.7 Other Benefits. In addition to the benefits contained in this Agreement, Employee shall be entitled to any other benefits provided for Employee's classification in the Executive Group Employee Resolution, as described in Section 3.8.1 below.

3.7 Performance Review. The City Attorney/LRM Director will conduct an annual performance evaluation of Employee, which shall be conducted on or about the anniversary date of this Agreement. The City Attorney/LRM Director may also conduct performance evaluations more often than annually, whenever he/she believes one is necessary. Based on a review, the City Attorney/LRM Director may adjust Employee's Base Salary or, if necessary, request that the City Council adjust the Salary Table to allow for an adjustment in Employee's Base Salary.

3.8 General Provisions.

3.8.1 Executive Group Employee Resolution. The terms and provisions of the Executive Group Employee Resolution (last approved on March 2, 2022), as it now exists or as it may be amended from time to time, is incorporated herein by reference and shall be applicable to Employee and take precedence over this Agreement with respect to any inconsistencies in its interpretation or enforcement. The City reserves the right to unilaterally amend, modify or replace the Executive Group Employee Resolution at any time, and such amendment, modification or replacement shall thereupon become terms and conditions of Employee's employment to the extent not inconsistent with this Agreement.

3.8.2 Defense and Indemnification. The City shall defend and indemnify Employee in accordance with the requirements of applicable state law.

3.8.3 Bonding. If applicable, the City shall bear the full cost of any fidelity or other bonds or security required of Employee in the performance of his/her duties.

3.8.4 Modification. Any modification of this Agreement will be effective only if it is in writing and signed by both Parties.

3.8.5 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 for all or any other times.

3.8.6 Assignment. Neither this Agreement, nor any right, privilege or obligation of Employee hereunder shall be assigned or transferred by him/her without the prior written consent of the City Attorney/LRM Director. Any attempt at assignment or transfer in violation of this provision shall, at the option of the City Attorney/LRM Director, be null and void and may be considered a material breach of this Agreement.

3.8.7 Entire Agreement. This Agreement supersedes any and all other agreements, either oral or in writing, between the City and Employee with respect to Employee's terms of employment. This Agreement contains all of the covenants and agreements between the Parties with respect to Employee's employment by the City in any manner whatsoever. Each Party to this Agreement acknowledges that no representations, inducements, promises, or agreements, oral 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.

3.8.8 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.

3.8.9 Law Governing Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue shall be in Riverside County.

3.8.10 No Presumption of Drafter. The Parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the Parties, and this Agreement reflects their mutual agreement regarding the subject matter of this Agreement. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any Party to be the drafter of this Agreement and, therefore, no presumption for or against validity or as to any interpretation hereof, based upon the identity of the drafter shall be applicable in interpreting or enforcing this Agreement.

3.8.11 Attorney's Fees. If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing Party shall be entitled to recover such amount as the court may award as reasonable attorney's fees and costs.

3.8.12 Notices. Any notice to be given hereunder by either Party to the other shall be in writing and may be transmitted by personal delivery or mail, registered or certified, postage prepaid, with return receipt requested. Mailed notices shall be addressed to the following respective addresses:

City: City of Corona
400 South Vicentia Avenue
Corona, CA 92883
Attn: City Attorney/LRM Director

Employee: John D. Higginbotham


Notices delivered personally shall be deemed communicated as of the date of actual receipt. Mailed notices shall be deemed communicated as of the date of mailing, plus two (2) days.

3.8.13 Assistance of Counsel. Each Party to this Agreement warrants to the other Party that it has either had the assistance of counsel in negotiation for, and preparation of, this Agreement or could have had such assistance and voluntarily declined to obtain such assistance.

[SIGNATURES ON NEXT PAGE]


**SIGNATURE PAGE FOR
EMPLOYMENT AGREEMENT
FOR
NON-REPRESENTED EMPLOYEE
(CHIEF DEPUTY CITY ATTORNEY)**

IN WITNESS WHEREOF, the City of Corona has caused this Agreement to be signed and executed on its behalf by its City Attorney/LRM Director, and duly attested by its City Clerk, and Employee has signed and executed this Agreement, both in duplicate, effective as of the day and year first above written.

CITY OF CORONA

By: 

Dean Derleth
City Attorney/LRM Director

ATTEST: 

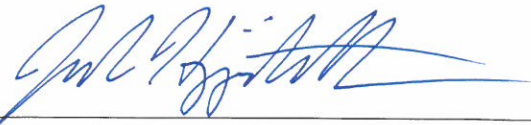
Sylvia Edwards
City Clerk

APPROVED AS TO FORM:



Dean Derleth
City Attorney/LRM Director

EMPLOYEE

By: 

John D. Higginbotham