

EMPLOYMENT AGREEMENT

This Agreement is entered into this ____ day of July, 2020 by and between Robert J. Dumouchel II (hereinafter "Employee") and the City of Homer, an Alaskan Municipal Corporation (hereinafter "Employer").

1. Purpose. Employer agrees to employ Employee in the position of City Manager of the City of Homer, Alaska.

2. Term. The term hereof shall commence on August ____, 2020 and continue through July 31, 2023. Thereafter, the Agreement may be renewed upon such terms and conditions to which parties mutually agree.

3. Duties.

(A) Employee shall make every effort and shall devote full time and attention to fulfillment of the duties of the City Manager as more described in the Homer City Code, incorporated into and made a part of this Agreement by reference, and such other duties as the City Council may require from time to time.

(B) Employee shall comply with the policies, procedures, standards, directives and regulations now established or which may be established by the Employer from time to time.

(C) The employment provided for by this Agreement shall be the Employee's primary employment. The employee must obtain written permission from the Council in order to accept outside consulting or teaching opportunities. A written request may be submitted to the Council on the City of Homer's "Request for Approval of Secondary Employment" form. Employee further agrees not to engage in any other business that would conflict or give the appearance of conflict with Employee's duties for Employer.

4. Compensation. In consideration of Employee's performance under this Agreement, Employee shall be paid the following:

(A) An annual salary of \$120,000 payable bi-weekly in equal installments. Any additional increases in compensation to the Employee are dependent upon the results of an annual performance evaluation.

(B) Employee shall receive leave and holidays in accordance with City of Homer Personnel Regulations. Employee will accrue leave at the 2nd year level. The Employee shall initially be credited with a one-time allotment of five days of leave upon employment Employee shall receive a prorated Sick Leave amount for 2020. Employee shall not be entitled to overtime pay or

compensatory time.

(C) Employee and employee's spouse & children shall be covered (at no cost to the employee) by Employer's Health Plan. Employee shall also be covered by City's life insurance and worker's compensation plans.

(D) The Employer agrees to pay the Employee, during the term of this agreement and in addition to other salary and benefits herein provided, the sum of \$250 per month as a vehicle allowance to be used to purchase, lease, or own, operate and maintain a vehicle. The Employee shall be responsible for paying for liability, property damage, and comprehensive insurance coverage upon such vehicle and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of said vehicle.

(E) Recruitment Bonus. Under a separate Memorandum of Understanding (MOU) a \$15,000 recruitment bonus will be payable to employee on the first regularly scheduled pay day with the City. The MOU will specify the nature of, and monthly allocation of the bonus. It is understood that this recruitment bonus is taxable income, and subject to all withholdings required by law.

5. Retirement. Employee will participate in the Public Employees Retirement System (PERS).

6. Termination. Due to the nature of the City Manager position in that it involves dealing on behalf of the City in various fields and the involvement of the City Manager in many different projects, it is agreed that the City's business can only succeed if the City Manager and the City Council enjoy a working relationship based on mutual respect, trust, and positive attitudes. It may, therefore, be impossible to quantify "poor performance" or "just cause" for termination given these complexities which often involve personality factors, as opposed to legal or contractual factors. It is, therefore, the intent of the parties to provide for termination by either Employer or Employee without resorting to any determination of cause or any necessary explanation.

(A) Employee Termination of Contract. The Employee may terminate this Agreement for any reason, or no stated reason, upon giving 60 days written notice to the Employer. The Employer reserves the right to waive the 60 day written notice or any part of and allow the Employee to terminate their employment at any time following the resignation and pay the Employee's usual rate of pay for any time worked and the cash value of their accrued leave.

(B) Employer Termination of Contract. The Employer may terminate this Agreement for any reason, or no stated reason. The Employer will pay the Employee, in one lump sum at the

time of separation, four (4) months severance pay at the Employee's usual rate of pay and the cash value of their accrued leave. For purposes of PERS reporting, employment will end the date Employee is no longer actively working for the City and no additional work time will accrue for retirement purposes. Leave time accrual will end the day Employee is no longer actively working for the City. Life Insurance will terminate on the last day of the month Employee is no longer actively working for the City.

(C) If the Employee is terminated because of a misdemeanor conviction of a crime of moral turpitude or any felony conviction, the Employer is not obligated to pay severance or associated benefits under this section.

(D) Termination by Death or Disability. This Agreement shall immediately terminate upon Employee's death. It shall also terminate upon Employee's disability or illness that renders Employee unable to perform Employee's duties if the disability should continue past the approved time under the Family Medical Leave provisions of the Personnel Regulations. Employee shall thereafter no longer be entitled to any compensation provided herein.

7. Performance Evaluation.

(A) Employer shall annually review the performance of the Employee in July subject to a process, form, criteria, and format for the evaluation which shall be mutually agreed upon by the Employer and Employee. Additional reviews may be initiated by the Employer or requested by the Employee outside of the required annual review.

The annual evaluation process, at a minimum, shall include the opportunity for both parties to: (1) conduct a formulary session where the governing body and the Employee meet first to discuss goals and objectives of both the past twelve (12) month performance period as well as the upcoming twelve (12) month performance period, (2) following that formulary discussion, prepare a written evaluation of goals and objectives for the past and upcoming year, (3) next meet and discuss the written evaluation of these goals and objectives, and (4) present a written summary of the evaluation results to the Employee. The final written evaluation should be completed and delivered to the Employee within 30 days of the initial formulary evaluation meeting.

(B) Unless the Employee expressly requests otherwise in writing, the evaluation of the Employee shall at all times be conducted in executive session of the governing body and shall be considered confidential to the extent permitted by law. Nothing herein shall prohibit the Employer or Employee from sharing the content of the Employee's evaluation with their respective legal counsel.

(C) In the event the Employer deems the evaluation instrument, format and/or procedure

is to be modified by the Employer and such modifications would require new or different performance expectations, then the Employee shall be provided a reasonable period of time to demonstrate such expected performance before being evaluated.

(D) Any increase in pay will be effective on August 1st following the July review.

8. General Business Expenses.

(A) Employer shall reimburse Employee for reasonable employment-related expenses including meals, travel and subscriptions. Reimbursement for expenditures on behalf of the City shall not be paid unless reimbursement is sought in accordance with standard City procedures, including receipts, vouchers, and supporting material.

(B) Employer shall pay the membership dues of Employee in the following organizations: (1) Alaska Municipal Managers Association, (2) International City Management Association.

(C) Recognizing the importance of constant communication and maximum productivity, Employer shall provide Employee a laptop computer with appropriate software for business use and mobile phone with a talk and data plan to perform their duties and maintain communication with Employer's staff and officials as well as other individuals who are doing business with Employer.

9. Conferences and Continuing Education.

(A) Employee shall be reimbursed for all costs of attending approved national or state City Manager association conferences. Employee shall have the opportunity to attend one national conference every two years.

(B) Employer shall pay any reasonable costs of registration, travel, and subsistence relating to training programs or conferences which serve to continue the professional education and development of Employee, subject to prior City Council approval.

10. Ethical Commitments. Employee will at all times uphold the tenets of the ICMA Code of Ethics, a copy of which is attached hereto and incorporated herein. Specifically, Employee shall not endorse candidates, make financial contributions, sign or circulate petitions, or participate in fundraising activities for individuals seeking or holding elected office, nor seek or accept any personal enrichment or profit derived from confidential information or misuse of public time.

Employer shall support Employee in keeping these commitments by refraining from any order, direction or request that would require Employee to violate the ICMA Code of Ethics.

Specifically, neither the governing body nor any individual member thereof shall request Employee to endorse any candidate, make any financial contribution, sign or circulate any petition, or participate in any fund-raising activity for individuals seeking or holding elected office, nor to handle any matter of personnel on a basis other than fairness, impartiality and merit.

11. Indemnification and Hold Harmless. Employer shall defend, indemnify and save Employee harmless as provided in Chapter 1.10 of the Homer City Code.

12. Confidentiality. All matters required to be kept confidential by any provision of federal or state law, or city ordinance shall not be released by Employee to any person or group without the expressed consent of the City Council.

13. Conflict of Interest. Employee agrees to be fair and impartial in all dealings and to avoid any actions which create a conflict of interest or the appearance of a conflict of interest, or which might reasonably be interpreted as affecting the impartiality of the position of City Manager. Employee will avoid any action which adversely affects or appears to affect Employee's ability to perform the duties of City Manager.

14. Miscellaneous Provisions.

(A) Governing Law. This Agreement shall be governed by and construed under the laws of the State of Alaska and is subject to all applicable City Code provisions of the City of Homer.

(B) Personnel Regulations. It is agreed the only provisions of the Homer Personnel Regulations that apply to this Agreement are Sections referring to leave and holiday pay.

(C) Jurisdiction. In the event that any action or suit is brought to enforce this Agreement the parties agree to be subject to exclusive jurisdiction in the Superior Court of Alaska and agree that in any such action venue shall lie exclusively in the Third Judicial District.

(D) Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes all prior negotiations. No other agreement, statement or promise made by or to any party, or any employee, officer, or agenda of any party, which is not contained in this Agreement shall be binding or valid.

(E) Partial Invalidity. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in force and effect and in no way be affected, impaired, or invalidated.

(F) Assignment. Employee may not assign this Agreement.

(G) Amendment. This Agreement may be amended only by a written document executed by the parties hereto.

15. Employee's Certification. Employee hereby certifies receipt of a copy of this Agreement and certifies that the contents hereof are understood by Employee. Employee certifies that this Agreement fairly represents the agreement reached between the parties.

IN WITNESS WHEREOF the parties have executed the Agreement on the date first written above.

EMPLOYEE

Robert J. Dumouchel II, City Manager

CITY OF HOMER

Ken Castner, Mayor

ATTEST:

Melissa Jacobsen, CMC, City Clerk

STATE OF CALIFORNIA)
) ss.
)

THIS IS TO CERTIFY that on this _____ day of _____, 2020, before me, the undersigned, a Notary Public in and for the State of California, personally appeared Robert J. Dumouchel II, known to me and to me known to be the individual named in and who executed the foregoing document, and he acknowledged to me that he signed and sealed the same as his free and voluntary act for the uses and purposes therein set forth.

WITNESS my hand and notary seal the day and year first hereinabove written.

Notary Public in and for California
My Commission Expires: _____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ day of _____, 2020, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared Ken Castner, Mayor, known to me and to me known to be the individual named in and who executed the foregoing document, and he acknowledged to me that he was authorized to execute the foregoing document by authority granted in him by the CITY OF HOMER for the uses and purposes therein set forth.

WITNESS my hand and notary seal the day and year first hereinabove written.

Notary Public in and for Alaska
My Commission Expires: _____