



# STAFF REPORT

**Report To:** Board of Supervisors

**Meeting Date:** 1-21-16

**Staff Contact:** Nicholas F. Marano, City Manager (nmarano@carson.org)

**Agenda Title:** Discussion and possible action to approve the renewal and amendment of the City Manager's employment contract from June 2, 2016 to June 2, 2018.

**Staff Summary:** On December 21, 2015, Nicholas F. Marano, City Manager, sent a letter to the members of the Board of Supervisors requesting the renewal and amendment of his employment contract in accordance with Section 1.3 "Employment, Term and Renewal". In accordance with the current employment contract, the Board of Supervisors, "shall decide whether or not it desires to renew and extend, enter into negotiations, or not renew or negotiate, for a new term of one (1), but not more than two (2), years."

**Agenda Action:** Formal Action/Motion

**Time Requested:** 30 minutes

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## Proposed Motion

I move to approve the renewal and amendment of the City Manager's employment contract from June 2, 2016 to June 2, 2018, with the proposed changes as agreed to and reflected on today's record.

## Board's Strategic Goal

N/A

## Previous Action

On May 15, 2014, the Board of Supervisors approved the City Manager Employment Agreement that is scheduled to expire on June 2, 2016.

## Background/Issues & Analysis

On May 15, 2014, the Board of Supervisors approved the City Manager Employment Agreement that is scheduled to expire on June 2, 2016. Pursuant to Section 1.3, "Not more than six (6) months before the end of this Agreement, but not less than three (3) months before the term of this Agreement shall run out, Employee may submit a written proposal to the Board for the renewal or extension of the provisions of this Agreement for a new two (2) year term, and/or any desired revision of the provisions of this Agreement for a new term, and in either case, the Board shall decide whether or not it desires to renew and extend, enter into negotiations, or not renew or renegotiate, for a new term of one (1), but not more than two (2), years." The City Manager made the request to amend the agreement and extend for a two year period on December 21, 2015. In accordance with Section 1.3, "The Board shall advise the Employee of its decision within thirty (30) days after receipt of the written proposal."

The City Manager's proposal contains the following language changes to the contract:

- The effective date of the contract will begin June 2, 2016 and expire on June 2, 2018.
- Automatic one year extensions of the contract will occur beginning June 2, 2018 and on each annual anniversary date thereafter, unless either party notifies the other of its desire not to extend the contract.

**Applicable Statute, Code, Policy, Rule or Regulation**

N/A

**Financial Information**

Is there a fiscal impact?  Yes  No

If yes, account name/number: 101-0600-413.01-01

Is it currently budgeted?  Yes  No

Explanation of Fiscal Impact: This is a budgeted position and there are no changes to the salary and benefits in the proposed employment contract. If changes are made at the Board meeting that affect compensation or benefits, than there will be a fiscal impact.

**Alternatives**

The Board of Supervisors can choose not to renew the agreement or to enter into negotiations with the City Manager and to renew with different terms and conditions.

**Board Action Taken:**

Motion: \_\_\_\_\_

- 1) \_\_\_\_\_
- 2) \_\_\_\_\_

Aye/Nay

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(Vote Recorded By)

## CITY MANAGER EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("hereinafter "Agreement"), made and entered into this ~~21<sup>st</sup> day of January, 2016~~<sup>15<sup>th</sup> of May, 2014</sup>, by and between the CARSON CITY BOARD OF SUPERVISORS (hereinafter "Board"), acting on behalf of Carson City, a consolidated municipality of the State of Nevada (hereinafter "City"), and Nicholas F. Marano (hereinafter "Employee", or "City Manager").

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WHEREAS, Carson City is a consolidated city and county, which generally operates as a "county" under the Nevada Revised Statutes and the Carson City Charter. NRS 0.033; Carson City Charter ("Charter") Sec. 1.010;

WHEREAS, as a charter city, the Nevada Legislature has established that Carson City consists of three branches of government including a Legislative Department, an Executive Department and a Judicial Department. Charter, Articles 2, 3 and 4;

WHEREAS, pursuant to Charter Sec. 3.020 the Board may appoint a "manager who is the chief administrative officer of the city," who is similar to a county manager under NRS 244.125-.135, and who heads up the Executive Department of the City under the job title designation of "City Manager";

WHEREAS, the City Manager is a public officer under the Nevada Ethics in Government Law (NRS chapter 281A) who must file annual financial disclosure statements with the Secretary of State pursuant to NRS 281.559;

WHEREAS, pursuant to the Charter Sec. 3.010-.015 the Mayor (or the Mayor pro tempore in the Mayor's absence or disability) holds positions in both the Executive Department and the Legislative Department, which provides for some limited cross-over authority and duties of the Mayor in the Executive Department;

WHEREAS, Articles 3 and 4 of the Charter and NRS chapters 3, 4, 5, 245, 246, 247, 248, 249, 250 and 252 provide for elected judicial and public officer positions of the Judicial Department, Clerk-Recorder, Treasurer, Assessor, Sheriff and District Attorney, who are independent and are not directly supervised by the City Manager, but may collegially cooperate in the Board's budgeting and agenda management systems administered by the City Manager;

WHEREAS, the Board directly appoints and supervises four (4) positions in City government: the City Manager (Charter Sec. 3.020), the Internal Auditor (Charter Sec. 3.075), the Chief of the Department of Alternative Sentencing (NRS 211A.100; CC Municipal Code Chapter 2.38), and the Public Guardian (NRS 253.150). The Board's scope of day to day supervision of these positions is not uniform and the role of the City Manager, if any, in assisting the Board in its oversight duties varies; and

NOW THEREFORE, in consideration of mutual promises and other valuable consideration, the parties agree to the following terms and conditions:

**Section 1. Employment, Term and Renewal.**

Sec. 1.1. City agrees to employ Employee as the City Manager of Carson City to perform the functions and duties of such office as are specified in the Carson City Charter and as set forth herein. The two (2) year term of employment of Employee as the City Manager under this Agreement shall commence on June 2, 201~~6~~<sup>4</sup>, and shall continue until June 2, 201~~8~~<sup>6</sup>, unless otherwise concluded, terminated or renewed pursuant to the terms and conditions of this Agreement.

Section 1.2 Automatic Extensions. Commencing on June 2, 2018, and on each annual anniversary of that date thereafter, the Agreement shall be extended for one (1) additional year, unless either party elects not to extend the Agreement, and notifies the other party of its election in writing prior to each such anniversary date. In the event the Agreement is not automatically extended, all compensation, benefits and requirements of the Agreement shall remain in effect until the expiration of the Agreement in effect at the time, unless sooner terminated under the provisions of this Agreement.

~~Sec. 1.2. In compliance with NRS 354.626(2)(e), the term of this Agreement may not legally be for more than two (2) years from the effective date set forth above without a separately approved and executed amendment renewal to this Agreement. Nothing in this Agreement is intended to restrict the parties' rights and abilities to enter into subsequent amendments to this Agreement, provided however, that in no event shall any amendment have the effect of extending the term of this Agreement, as amended, for a period greater than two (2) years unless the Nevada Revised Statutes are changed to allow such. Any such amendment shall be upon terms and conditions agreed to by both parties and comply with the general provisions contracting requirements of this Agreement.~~

~~Sec. 1.3. Not more than six (6) months before the end of this Agreement, but not less than three (3) months before the term of this Agreement shall run out, Employee may submit a written proposal to Board for the renewal or extension of the provisions of this Agreement for a new two (2) year term, and/or any desired revision of the provisions of this Agreement for the new term, and in either case, the Board shall decide whether or not it desires to renew and extend, enter into negotiations, or not renew or renegotiate, for a new term of one (1), but not more than two (2), years. The Board shall advise Employee of its decision within thirty (30) days after receipt of the written proposal. Nothing contained herein shall be construed to require the Board to revise or extend this Agreement. If either the Employee fails to timely seek further employment with the City, or the Board chooses not to extend or renegotiate this Agreement, and the Board does not immediately end the Employees employment pursuant to Sec. 10.12 (Expiration of~~

Agreement), the Employee agrees to participate in a transition plan including the recruitment of a new City Manager during the remainder of the Agreement's term.

## **Section 2. Position, Duties, and Responsibilities.**

Sec. 2.1. Employee shall perform and discharge the official duties of City Manager which are set forth in Section 3.020 of the Carson City Charter, as well as other associated duties and functions as the Board may from time to time assign. Section 3.020 of the Carson City Charter states:

Sec. 3.020 - Manager: Appointment; duties; salary.

1. The board may appoint a manager who is the chief administrative officer of the city. He is responsible for carrying out the policy of the board. His duties and salary must be fixed by the board.
2. The manager may appoint such clerical personnel and create such administrative positions as he considers necessary, subject to the review and approval of the board.

Sec. 2.2. The City Manager is the Chief Administrative Officer of the Consolidated Municipality of Carson City. The City Manager is responsible for the efficient administration of all affairs of the City which are under his control. In addition to his general powers as administrative head of the Executive Department of City government, and not as a limitation thereon, it shall be his duty and he shall have the power to perform the following:

### Sec. 2.2.1. Enforcement.

The City Manager shall see that the laws of the State of Nevada and all laws, ordinances and policies of Carson City are duly enforced and that all franchises, permits, leases, agreements, contracts, and privileges granted or entered into by the City are faithfully observed.

### Sec. 2.2.2. Departments and Employees and Redevelopment Agency.

The City Manager shall control, order, give direction to, appoint, promote, discipline, and demote or remove all heads of departments and/or subordinate officers and employees of the City and the Carson City Redevelopment Authority (hereinafter "Redevelopment Authority") within his jurisdiction. The City Manager shall have the authority to organize, reorganize, consolidate or combine offices, positions, departments or other units under his jurisdiction as permitted by the Carson City Charter, the Carson City Municipal Code, and Nevada state law.

### Sec. 2.2.3. Control and Supervision.

The City Manager shall exercise control over and to supervise, in general, all departments and divisions of City government and the Redevelopment Authority and all appointed officers and employees within those departments and divisions under his jurisdiction. Unless otherwise provided by the Board, and except with respect to the Board's appointed internal auditor, the Board delegates generally to the City Manager its day to day oversight of those officers and employees directly appointed and supervised by the Board, to wit, the Chief of the Department of Alternative Sentencing and the Public Guardian.

Sec. 2.2.4. Agenda Preparation.

Upon consultation and consent of the Mayor, who pursuant to Sec. 3.010(a) of the Charter "shall serve as a member of the board and preside over its meetings," the City Manager shall have the authority and discretion to determine the timing, order, content and recommendation, if any, of prepared agendas and the items for consideration, deliberation and action for all Board of Supervisors' and the Redevelopment Authority's meetings as deemed necessary and in the best interests of the City. Unless directed otherwise by the Mayor, Board policy, resolution or other Board action, the City Manager shall in good faith attempt to accommodate an agenda item request by an individual Board Member. However, if the City Manager believes accommodating such individual Member agenda item will require staff time in excess of two (2) hours, the City Manager may decline to do such staff work and shall place the Member's desired request on the next reasonably available Board agenda for consideration of whether the Board shall direct the necessary staff work be done in support of the Member's desired agenda item for future consideration by the Board.

The City Manager, or his designee(s), shall assist all City public bodies subject to the Open Meeting Law in their preparation, construction and posting of their various agendas and conduct of meetings in compliance with Nevada's Opening Law (NRS chapter 241) and the enabling authority of such public bodies.

Sec. 2.2.5. Attend Meetings.

The City Manager shall attend all meetings of the Board of Supervisors, the Carson City Liquor and Entertainment Board and the Carson City Redevelopment Authority unless excused by the Mayor or the Mayor pro tem.

Sec. 2.2.6. Recommendations.

The City Manager shall recommend as necessary and appropriate the Board of Supervisors' or the Redevelopment Authority's adoption of such actions, resolutions and ordinances that are in the best interests of the City. He shall make reports and recommendations as may be desirable or requested by the

Board of Supervisors. As an unelected Chief Administrative Officer, whose primary duty is to advocate before the Board the best interests of the City as a corporate entity, the Board requires a collegial candid assessment from the City Manager, which the Board will weigh against its broader consideration of the taxpayers, the citizens, the visitors and the local and regional community as a whole.

Sec. 2.2.7. Inform and Advise.

The City Manager shall exercise good judgment in keeping the Board of Supervisors fully advised at various times and places, and as appropriate or needed, as to the operational, financial, general condition, needs and incidents with respect to the City.

Sec. 2.2.8. Annual Budget.

The City Manager shall timely prepare and submit to the Board of Supervisors and the State of Nevada the annual budgets for the City and the Redevelopment Authority and shall administer them after adoption.

Sec. 2.2.9. Salary Plan.

The City Manager shall prepare and recommend to the Board of Supervisors a salary plan for classified and unclassified employees and appropriate revisions to the personnel ordinance and the unclassified employees' benefits resolution.

Sec. 2.2.10. Investigation of City Matters.

The City Manager shall investigate into the matters of the City and any department or division thereof and any contract, or the proper performance of any obligation running to the City.

Sec. 2.2.11. Investigation of Complaints.

The City Manager shall investigate all complaints in relation to matters concerning the administration of the government of the City and the service provided by City utilities.

Sec. 2.2.12. Supervision of Public Property.

The City Manager shall exercise general supervision over all public buildings, public parks, streets and other public property (personal and real) which are

under the control and jurisdiction of the Board of Supervisors and the Redevelopment Authority. Except as otherwise directed by the Board, specific budget authorization or contract, the City Manager may determine the assignment of offices and work space for, departments, divisions, agencies, officers and employees within his jurisdiction, and shall further provide the Mayor and City Supervisors with suitable office accommodations in such location(s) as will enable them to perform their official duties.

**Sec. 2.2.13. Full Time Duties.**

The City Manager shall be in the exclusive employment of the City and to devote his entire time to the duties set forth in this Agreement and to the interests of the City.

**Sec. 2.2.14. Other Powers and Duties.**

The City Manager shall perform such other duties and exercise such other powers as may be delegated to him from time to time by the Board.

**Section 3. Absence from Duty.**

Sec. 3.1. In the event of a temporary absence from duty, the City Manager has the authority to appoint, and shall appoint, a duly qualified City employee to perform his duties during the period of temporary absence. A temporary absence from duty shall be defined as being:

- (1) out of state (not including the Tahoe Basin while on City business);
- (2) more than a two hours travel time from the City; or
- (3) any unreasonable extended period of time more than eight (8) regular City Hall work day hours where the City Manager will foreseeably be unavailable to timely respond at least electronically to any emergency or any business related communication from a Board Member, the press or the City's department or agency heads.

Pursuant to Section 5, below, the City Manager is not temporarily absent from duty during a temporary physical absence from his Carson City office location.

Sec. 3.2. In case of the disability of the City Manager constituting an absence from duty, the Board of Supervisors shall appoint some duly qualified person to perform the duties of the City Manager during the period of any such disability.

**Section 4. Salary, Compensation, Performance Evaluation and Benefits.**

Beginning the effective date of this Agreement, the City shall compensate Employee for services rendered pursuant to this agreement as set forth below:



Sec. 4.1. The Employee shall be paid bi-weekly base salary of ~~\$6,702.84~~~~\$6,596.15~~ (~~\$174,273.84~~~~171,500.00~~ annually) with PERS contribution adjustments pursuant to NRS 286.421, which in some cases may be a cost equally shared between the City and the Employee pursuant to law and the relevant section of the *Resolution of the Board of Supervisors of Carson City Setting Forth the Benefits for Unclassified Employees Effective July 1, 2013* (hereinafter "unclassified employees' benefits resolution") adopted by the Board, which Resolution No. 2013-R-44 is hereby incorporated by reference as **Attachment A** to this Agreement.

Sec. 4.2. Upon approval of the Board of Supervisors, the City's Director of Human Resources may conduct a total compensation comparison of similar Chief Administrative Officers in the region and the Board of Supervisors may consider and approve changes in the existing salary range for the Employee. If the salary is adjusted downward due to the compensation study, Sec. 10.7 (Termination Not-For-Cause) shall not apply to that reduction.

Sec. 4.3. In the event the City Manager is forced by economic condition to recommend to the Board a salary reduction be imposed upon all non-elected unclassified employees, the Board reserves the discretionary right to reduce the City Manager's base salary by the same approved reduction percentage and Sec. 10.7 (Termination Not-For-Cause) shall not apply to the reduction.

Sec. 4.4. Within the first six (6) months of initial employment the Board and Employee shall mutually establish the performance criteria for annual performance evaluation. In June of each year beginning June 2015, the Board shall conduct a public meeting review and evaluate the performance of the Employee. The Board shall define the desired outcomes it deems necessary for the proper operation of the City and the attainment of the Board of Supervisors' policy objectives. The Board shall prioritize the desired outcomes. These goals and objectives shall be generally obtainable within time limits specified. Based on the Employee's achievement of the goals, the Board may grant a merit increase to the Employee up to, but not exceeding the current salary range for City Manager. If such a merit increase is approved by the Board of Supervisors, it will be granted effective for the next fiscal year budget to begin the following July 1.

Sec. 4.5. Except and not including section J (Pay Ranges), section K (Performance Pay) and section L (Temporary Duty Pay) of Attachment A to this Agreement, and except those benefits which Employee does not separately possess the pre-qualifications, Employee shall participate in and enjoy any cost sharing or payment provided for, holidays, retirement, medical and other insurance, and leave benefits as such are set out in the relevant sections of the unclassified employees' benefits resolution adopted by the Board. ~~The City-~~

~~agrees to waive the 90-day waiting period in the health insurance contract.~~ The Employee's medical, dental, vision and life insurance benefits will begin on June 1, 2014.

Sec. 4.6. Employee will be paid a \$3,900.00 per year automobile allowance in bi-weekly installments with regular payroll. This allowance is in lieu of any mileage reimbursement benefit.

Sec. 4.7. The Employee's salary based contributions to the Public Employees Retirement System (PERS) shall be paid 100% by the City (except regarding any shared PERS adjustments as addressed in Sec. 4.1).

Sec. 4.8. Medicare payments, on behalf of Employee, shall be paid by the City in the same manner as other unclassified employees.

Sec. 4.9. Worker's Compensation insurance premiums, if any, will be paid by the City at the required level. Currently, the City is self-insured for worker's compensation coverage.

Sec. 4.10. At the sole expense of the City, Employee will receive all necessary equipment, i.e. computer equipment, software, cell phone (\$960.00 per year phone allowance), radio, etc., necessary to perform the essential functions of the position, and in accordance with the relevant City policies.

~~Sec. 4.11. City Manager will receive reimbursement for moving expenses from his current location to Carson City, Nevada. Reimbursement shall not exceed \$10,000.00 and may include supplies, materials, and transportation costs, temporary lodging, and freight and delivery costs. Cost of meals is not eligible for reimbursement. The City Manager may have up to 10 days of administrative leave to coordinate and complete his move to Carson City. Said administrative leave shall not exceed 10 days and will not result in the use of annual leave or management leave. While on administrative leave, City Manager is not in his course and scope of employment while moving.~~

## Section 5. Hours of Work.

It is recognized that City Manager must devote a great deal of time outside the normal office hours to the 24-hour, 7-days a week business of the City, and to that end Employee is authorized to take periodic time off for person matters during the day, work occasionally from home, and work occasionally while out in the community, as City Manager shall deem appropriate during said normal office hours. The City Manager shall maintain his electronic communication link with the City while taking such liberties during normal office hours.

## Section 6. Leave Benefits.

The relevant sections of the fiscal year unclassified employees' benefits resolution adopted by the Board provide for sick leave, annual leave, management leave and other general benefits involving various forms of leave. Employee shall participate in such leave benefits the same as any other unclassified employee of the City.

**Section 7. Dues and Contributions.**

Conditioned upon favorable economic conditions, the Board agrees to budget and to pay for reasonable professional dues and subscriptions of the Employee necessary for the continued membership in associations and organizations necessary and desirable for his continued professional growth and advancement. The Board reserves the right to review these expenses on a periodic basis to assure reasonableness.

**Section 8. Professional Development.**

Conditioned upon favorable economic conditions, the Board agrees to budget and pay for reasonable travel and subsistence for Employee for professional and official travel to meetings and other events to continue professional development of Employee. The Board reserves the right to review these expenses on a periodic basis to assure reasonableness and the relevance of these activities. Employee will comply with City travel policies in accessing and utilization of professional development.

**Section 9. General Expenses.**

The Board recognizes that certain expenses of a non-personal and job-affiliated nature are incurred by Employee in conjunction with his responsibilities herein described, and shall continue to reimburse or to pay said general expenses in accordance with existing city policy for city employees. The Board reserves the right to review these expenses on a periodic basis to assure reasonableness.

**Section 10. Discipline, Termination, Expiration of Agreement.**

Sec. 10.1. The City Manager is an at-will employee and shall serve at the pleasure of the Board in accordance with NRS 244.125. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Board to terminate the services of the Employee at any time for any reason or for no reason at all, subject to the provisions set forth in this Agreement. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from his position with the City, subject only to the provisions set forth in this Agreement.

Sec. 10.2. Discipline and Termination.

At any time during the Agreement's term, or at the conclusion of the annual performance evaluation, the Board may discipline the Employee with respect to his

performance under this Agreement, or with respect to his private conduct adversely impacting the City or his performance under this Agreement, as follows:

- (1) A Public Reprimand;
- (2) A Public Reprimand and Notice to Cure;
- (3) Public Reprimand and Reduction in Base Salary;
- (4) Public Reprimand and Reduction in Responsibilities;
- (5) Notice of For Cause Termination;
- (6) Notice of Not-For-Cause Termination.

As an at-will public officer employee of the City serving at the pleasure of the Board, the City shall not be obligated to provide any form of progressive discipline. Pursuant to NRS 241.033 and NRS 241.034 the City must provide notice to the Employee before the Board conducts a public meeting to perform the Employee's performance evaluation and any possible resulting administrative action. Unless it is otherwise expressly provided for in such notice that the Board will consider possible "termination without cause" of this Agreement, no such notice with respect to the possibility of any other form of discipline shall, by itself, constitute a Not-For-Cause termination event under Sec. 10.7.

#### Sec. 10.3. Termination For Cause.

Sec. 10.3.1. The Board may terminate the Employee for cause, generally.

"Cause" shall include, without limitation:

- (1) activity that results in the filing of felony, gross misdemeanor or misdemeanor criminal charges (excluding traffic citations found in NRS 484, 484A and 484B; exclusive of 484B.657);
- (2) any willful act or omission or gross negligence which materially injures the interests of the City;
- (3) any act or omission on the part of the Employee which impacts his reputation to the extent he can no longer credibly perform the duties of City Manager;
- (4) any refusal, whether direct or implicit, to comply with any lawful directions of the Mayor or the Board, provided such directions are not internally inconsistent;
- (5) a material breach of this Agreement; or
- (6) an incapacity to perform the duties of the position due to any physical or mental condition for which no reasonable accommodation is required in accordance with this Agreement.

Sec. 10.3.2. Acts, omissions and conduct that occur while the Employee is not performing City duties or outside regular working hours may constitute "cause" for termination.

Sec. 10.4. In the event the Employee is terminated for cause for conviction of any felony or gross misdemeanor or misdemeanor, the City shall have no obligation to offer or to pay any lump sum or other Sec. 10.8.2 conditional severance benefits. Employee shall

be entitled to only any earned and unpaid base salary to the date of termination and the accrued and unpaid leave benefits that are otherwise payable pursuant to City policy upon termination of any unclassified employee.

Sec. 10.5. In the event of termination for cause not based upon a conviction as provided in Sec. 10.4., City has the discretionary option, but is not required, to offer or to pay any lump sum or other Sec. 10.8.2 conditional severance benefits. Employee shall be entitled to earned and unpaid base salary to the date of termination and the accrued and unpaid leave benefits that are otherwise payable pursuant to City policy upon termination of any unclassified employee.

Sec. 10.7. Termination Not-For-Cause.

For purposes of this Agreement, whenever termination Not-For-Cause ("without cause") shall occur pursuant to the events set forth in this Sec. 10.7., the Employee shall be entitled to recover termination without cause severance benefits as limited and set out in Sections 10.8.1 and 10.8.2. The relevant events shall be:

- (1) A majority of the Board votes to terminate Employee "without cause" at a duly authorized public meeting prior to the expiration of the term of this Agreement.
- (2) The Employee resigns his employment following notice from the Human Resource Department that the Board will be considering terminating the Employee's employment without cause at a duly authorized public meeting.
- (3) The Employee resigns his employment following the Board involuntarily reducing the salary or responsibilities of the Employee as a form of discipline.

Sec. 10.8. Severance Benefits.

Sec.10.8.1. If the Employee is terminated without cause by the Board during such time that Employee is willing and able to perform the duties under the Agreement, the City will pay Employee, as a lump sum *base severance benefit* less federal income tax withholding. This base severance benefit shall include:

- (1) all accrued and unused management leave (up to 40 hours at the base salary rate);
- (2) all accrued and unused annual leave (up to 300 accrued hours); and
- (3) all accrued and unused sick leave up to a maximum of 1080 hours at 100%,

The payment of the accrued leave will be made on the next regularly scheduled pay date for the City following the last day of employment.

Sec. 10.8.2. When otherwise allowed or required by another provision of this Agreement, the City will offer Employee the following *conditional severance benefits* for termination:

- (1) a lump sum payment to the Employee equal to six (6) months' base salary;

- (2) a lump sum payment of the Employee's COBRA health insurance benefits payment for six (6) months following termination or until Employee secures other health insurance; and
- (3) purchase by the City of six (6) months of service credit with the Nevada Public Employees Retirement System ("PERS") only if the Employee is already a vested member of PERS.

These conditional severance benefits are conditioned upon satisfaction of the requirements set forth in Sec. 10.8.3., below. For the purpose of continuation of benefits under the Consolidated Omnibus Budget Reconciliation Act (COBRA), the six (6) months of health insurance coverage shall apply to the eighteen-month maximum continuation period.

Sec. 10.8.3. In order to receive the conditional severance benefits set forth above, Employee shall be required to execute the attached voluntary separation agreement and release of all claims. Employee acknowledges receipt of a form copy of the *Voluntary Separation Agreement, Waiver and Release* prior to Employee's execution of this Agreement. (**Attachment B** is hereby incorporated into this Agreement). The conditional severance benefits set forth above will be consideration for the separation agreement and release of all claims. The payment of the lump sum, if applicable, will be made on the next regularly scheduled pay date for the City following the expiration of the revocation period for the separation agreement and release of all claims.

#### Sec. 10.9. Termination by Death.

Employee's employment shall terminate automatically upon his death. The City shall pay to the Employee's beneficiaries or estate, as appropriate, any compensation then due and owing, and shall in addition pay in a lump sum the amount of Employee's salary and benefits through the second full month after his death. Thereafter, all obligation of the City under this Agreement for payment of compensation shall cease. In the event of such demise of the Employee, City agrees to continue health and other insurance benefits for the Employee's dependents for six (6) months consistent with terms of the Summary Plan Description for the City's basic PPO point of sale plan, if any is provided its employees. Nothing in this section shall affect any entitlement of Employees' heirs to the benefits of any life insurance plan or other applicable benefits.

#### Sec. 10.10. Termination by Disability.

If the Employee is unable to perform the essential functions of the position, with reasonable accommodation pursuant to the American with Disabilities Act (ADA), for a period of more than ninety (90) work days in the aggregate in any twelve-month period, then, to the extent permitted by law, the City may terminate the Employee's employment. In that event, the City shall pay to the Employee all compensation to which he was entitled through the last day of the month in which the 90th day of incapacity occurs including compensation for any accrued and unused leave benefits otherwise

payable to an unclassified employee pursuant to City policy. Thereafter, all of the obligations of the City under this Agreement shall cease. Nothing in this Section shall affect the Employee's rights under any disability plan in which he is a participant.

**Sec. 10.11. Voluntary Resignation.**

In the event Employee voluntarily resigns his position with the City before expiration of the term of this Agreement, for reasons other than defined in Sec. 10.7 (Not-For-Cause events) above, the Employee shall give the City sixty (60) days advance written notice, unless the parties otherwise agree. It is understood that no base severance benefit nor any conditional severance benefits would be offered or paid should the Employee voluntarily resign his employment during the term of this Agreement.

**Sec. 10.12. Expiration of Agreement.**

Should the Mayor or Board propose to take future action not to renew or extend this Agreement, Employee shall be notified in writing of any pending Board agenda item to either not renew or extend this Agreement, or to begin the process to hire a new City Manager and, at the discretion of the Board, the possibility that the Board would relieve Employee of his duties immediately. Employee would be paid for all hours due through the end of this Agreement, and in addition payment for the accrued and unused leave normally payable to unclassified employees. This action would not constitute a Not-For-Cause termination under Sec. 10.7 and no base severance benefit nor conditional severance benefits would be offered or paid, and final pay through the end of this Agreement would be processed as any other unclassified employee whose employment has ended.

**Sec. 10.13. Cooperation in Pending Work.**

Following the termination or expiration of this Agreement, the Employee shall fully cooperate with the City in all matters relating to the transition of pending work on behalf of the City and the orderly transfer of duties to his successor. Employee shall also cooperate in the defense of any action brought by a third party against the City that relates in any way to the Employee's acts or omissions while employed by the City. If Employee's cooperation in the defense of any such action requires more than ten (10) hours of his time, the Employee and the City shall mutually agree on appropriate remuneration for his time and expense.

**Sec. 10.14. Return of Property.**

Upon termination of this Contract, Employee shall immediately return all keys and City property to the Mayor or Mayor pro tem. If all property is not returned within five (5) days of termination of the Contract, the Board may institute a legal action against Employee for conversion.

**Section. 11. Duty to Defend.**

The Duty to Defend is subject to the requirements and conditions of NRS chapter 41. The District Attorney shall provide for the defense, including the defense of cross-claims and counterclaims, in any civil action brought against the City Manager based on any alleged act or omission relating to his public duties or employment if:

- (1) Within 15 days after service of a copy of the summons and complaint or other legal document commencing the action, he submits a written request for defense to the District Attorney; and
- (2) The District Attorney determines that the act or omission on which the action is based appears to be within the course and scope of public duty or employment and appears to have been performed or omitted in good faith.

**Section 12. General Provisions.**

**Sec. 12.1. Notices.**

All Notices or other communications required or permitted hereunder shall be made in writing and shall be deemed to have been duly given if delivered by hand or mailed, postage prepaid, by certified or registered mail, return receipt requested, and addressed to the City and to Employee. Employee's address is set forth in the employment records Employee shall provide to the Human Resources Department. Employee and the City shall be obligated to notify the other of any change in address. Notice of change of address shall be effective only when made in accordance with this Section.

**Sec. 12.2. Entire Agreement.**

This Agreement is intended to be the final, complete, and exclusive statement of the terms of Employee's employment by the City. This Agreement supersedes all other prior and contemporaneous agreements and statements pertaining in any manner to the employment of Employee; and it may not be contradicted by evidence of any prior or contemporaneous statements or agreements. To the extent that the practices, policies, or procedures of the City, now or in the future, apply to Employee and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control.

**Sec. 12.3. Amendments, Waivers.**

This Agreement may not be modified or amended except by an instrument in writing, signed by Employee and by a duly authorized representative of City after Board approval. No failure to exercise and no delay in exercising any right, remedy, or power under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or power under this Agreement preclude any other or further exercise thereof, or the exercise of any other right, remedy, or power provided herein or by law or in equity.



Sec. 12.4. Severability; Enforcement.

In any provision of this Agreement, or the application thereof to any person, place, or circumstance, shall be held by an arbitrator or a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Agreement and such provisions as applied to the parties hereto, or other persons, places and circumstances shall remain in full force and effect.

Sec. 12.5. Governing Law.

The validity, interpretation, enforceability and performances of this Agreement shall be governed by and constructed in accordance with the law of the State of Nevada.

Sec. 12.6. Arbitration.

Any claim or controversy between Employee and the City arising under or in connection with this Agreement shall be settled by arbitration in accordance with the then current Employment Dispute Resolution Rules of the American Arbitration Association and shall be the exclusive remedy for all disputes including, but not limited to, Employee's compensation. The City and Employee agree that arbitration shall be held in or near Carson City, Nevada, and the arbitrator shall have authority to award or grant legal or equitable remedies. The parties shall bear equally the cost of the arbitrator. The decision of the Arbitrator shall be final and binding. This Agreement to arbitrate survives termination of Employee's employment. In any dispute arising under or in connection with this Agreement, the prevailing party shall be entitled to recover all costs and reasonable attorney's fees.

Sec. 12.7. Residency.

Unless waived by the Board for hardship or other extenuating circumstances, the City Manager must reside within the jurisdictional boundaries of Carson City as described in Carson City Charter, Section 1.030, during the term of this Agreement.

Sec. 12.8. Acknowledgment of Parties.

The parties acknowledge (a) that they have consulted with or have had the opportunity to consult with independent counsel of their own choice concerning this Agreement, and (b) that they have read and understand the Agreement, are fully aware of its legal effect, and have entered into it freely based on their own judgment and not on any representations or promises other than those contained in this Agreement.

IN WITNESS WHEREOF, the consolidated municipality of Carson City has caused this Agreement to be signed and executed on its behalf by its Mayor and duly attested by its Clerk-Recorder, and the Employee has signed and executed this

Agreement on the day and year first set forth herein. This Agreement may be executed in separate counterparts, which shall be deemed one integrated agreement.

**EMPLOYEE:**

\_\_\_\_\_  
Carson City, Nevada

**CARSON CITY:**

201 N. Carson St.  
Carson City, Nevada 89701

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Robert L. Crowell, Mayor

ATTEST:

APPROVED AS TO FORM:

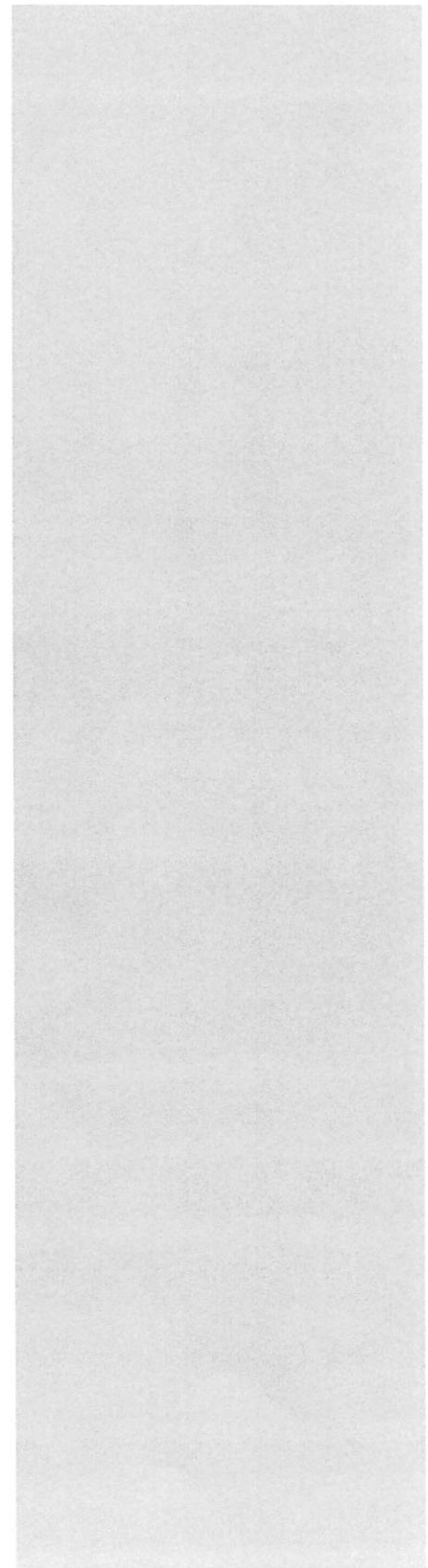
\_\_\_\_\_  
~~Susan Merriwether~~~~Alan Glover~~, Clerk-Recorder  
~~Rombardo~~, District Attorney

\_\_\_\_\_  
~~Jason D. Woodbury~~~~Neil-~~

**ATTACHMENT A – City Manager’s Agreement**

Resolution No. 2013-R-44

Resolution of the Board of Supervisors of Carson City Setting Forth the Benefits for  
Unclassified Employees Effective July 1, 2013



**ATTACHMENT B – City Manager’s Agreement**

**VOLUNTARY SEPARATION AGREEMENT, WAIVER AND RELEASE**

This **Voluntary Separation Agreement, Waiver and Release** (hereinafter “Agreement”), is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between Carson City, a consolidated municipality and political subdivision of the State of Nevada, (hereinafter referred to as “Carson City”) and \_\_\_\_\_ (herein after “Employee”), City Manager, an unclassified position with Carson City. In consideration paid for Employee’s years of service and other promises and covenants set forth herein, the parties agree as follows:

1. **Separation from Employment:** Employee’s employment with Carson City is terminated effective with the close of business on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (hereinafter referred to as “Separation Date”).
2. **Payment to Employee:** In consideration of Employee’s promises and performance and execution of this Agreement, Carson City will provide Employee with a lump sum payment of \$ \_\_\_\_\_ less applicable federal withholding.
3. **Benefits:** Subsequent to the Separation date, Employee’s health insurance coverage will be effective through the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_. Effective \_\_\_\_\_, Employee will be eligible to participate in COBRA (Consolidated Omnibus Benefits Reconciliation Act) at a cost specific to his choice of coverage. Payment amount and information will be sent to Employee’s home address following his Separation date.
4. **Confidential Information:** Employee agrees that in the course of his employment with Carson City he may have come to know certain general and specific information which is deemed confidential to Carson City and hereby agrees that he will not disclose any confidential information to any person or other entity or for any personal or business purpose. However, Employee agrees to cooperate as a witness for Carson City in any lawsuit or claim which he may have knowledge that would benefit Carson City.
5. **Reference:** Except as provided in paragraph 7, below, Carson City Human Resources Department agrees to abide by the City policy and only provide dates of employment and position title in the event it is called upon to provide a reference of employment for Employee. In accordance with City policy, Carson City agrees not to provide comments relating to the substance of the work performed by Employee for Carson City.
6. **Release of Carson City and Waiver of Claims:** Employee hereby fully, finally and completely releases, waives and forever discharges Carson City, together

with all of its respective officials, elected officials, officers, directors, employees, and agents (the "Released Parties"), of and from and waive to the maximum extent permitted by law, all claims, demands, liabilities, damages, actions, causes of action, costs and expenses of every kind whatsoever, past, present, and future, whether known or unknown, arising out of or relating to employment with Carson City as of and prior to the date Employee executes this Agreement. This release and waiver of claims includes without limitation:

- a. Claims in connection with Employee's employment relationship, the terms and conditions of his employment, and the employment practices of Carson City.
- b. Claims in connection with the separation of employment of Employee and his employment status, Employee's retirement, and the circumstances regarding the separation.
- c. Claims of any nature whatsoever that may be raised under any federal, state or local law, constitution, statute, regulation or any other legal theory.
- d. Claims of discrimination on the basis of race, religion, sex, sexual orientation, age, color, national origin, ancestry, disability, medical condition, or other employment claims recognized under federal, state or local law for injury to Employee including, but not limited to, any claim arising under Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1967, as amended, including the Civil Rights Act of 1991, the Americans with Disabilities Act, Nevada Revised Statute Chapter 613, and any other federal, state, and/or local anti-discrimination laws.
- e. Employee hereby acknowledges that he knowingly and voluntarily enters into this Agreement with the purpose of waiving and releasing any claims he may have under the Age Discrimination in Employment Act of 1967, as amended by the Older Workers' Benefit Protection Act of 1990 ("ADEA"), and federal, state, and local anti-discrimination laws ("FSLAL") and as such, he acknowledges and agrees that:
  - i. this Agreement is written in a manner he fully understands;
  - ii. he specifically waives any rights or claims arising under the ADEA or FSLAL;
  - iii. the rights and claims waived in this Agreement are in exchange for consideration over and above anything to which Employee is already entitled;
  - iv. Employee acknowledges that by receipt of an executed copy of this Agreement, Carson City has advised him in writing to consult with an attorney prior to executing this Agreement, and that he has had an opportunity to do so;
  - v. Employee agrees that he has (i) received all compensation due him as a result of services performed for Carson City with receipt of his final paycheck; (ii) reported to Carson City any and all work-related injuries incurred by him during his employment with Carson City;

and (iii) been properly provided any leave of absence because of his or a family member's health condition and has not been subjected to any improper treatment, conduct or actions due to a request for or taking such leave.

- vi. Employee has been given a period of at least twenty-one (21) calendar days to consider this Agreement. He knowingly and voluntarily waives the remainder of the 21-day consideration period, if any, following the date he signed this Agreement. He further agrees that he has not been asked by Carson City to shorten his time period for consideration regarding whether to sign this Agreement. Carson City has not threatened to withdraw or alter the benefits due him prior to the expiration of the 21-day period nor has Carson City provided different terms to him because he has decided to sign this Agreement prior to the expiration of the 21-day consideration period. He further agrees that he understands that having waived some portion of the 21-day consideration period, Carson City may expedite the processing of benefits provided to him in exchange for signing this Agreement; and
- vii. Employee acknowledges that he has a period of seven (7) calendar days within which he may revoke his acceptance of this Agreement, and this Agreement will not be effective until the seven-day revocation period has been exhausted. He further acknowledges that should he choose to change his mind and revoke this Agreement within seven days after signing it, he must return it with written revocation notice to the Carson City Human Resources Department. In addition, this Agreement will not be effective until after the seven-day period has expired and no benefits will be received until after the Agreement is effective. If the revocation day expires on a weekend or holiday, Employee has until the end of the next business day to revoke.

7. **Not a Confidential Agreement:** Carson City and Employee agree that Employee is a chief executive public officer and the existence and terms of this Agreement are not confidential. Employee agrees that Carson City may disclose the existence and terms of this Agreement to the officials and employees of Carson City to the extent necessary to administer the terms of this Agreement and may freely discuss and comment upon any matter regarding Employee that was first raised in a public meeting.

Employee further agrees that this Agreement may be used as evidence in a subsequent proceeding in which Carson City or he allege a breach of this Agreement or as a complete defense to any lawsuit. In addition, this Agreement may be released if there is an issue relating to unemployment benefits. Carson City may also disclose to State employees necessary to administer the terms of the agreement.

8. **Severance Pay:** Employee agrees that the payment under this agreement also constitutes severance pay under NRS 612.420, which may affect the number of weeks he may be eligible for unemployment benefits.
9. **Carson City Property:** Employee agrees to return all confidential information, computer hardware or software, files, papers, memoranda, correspondence, customer lists, financial data, credit cards, keys, tape recordings, pictures and security access cards, and any other items of any nature which were or are the property of Carson City. He further agrees not to retain any copies of any such property in his possession or under his control.
10. **Entire Agreement:** The parties acknowledge that this Agreement contains the entire understanding of the parties, that it supersedes all oral and any written agreement and understandings between Employee and Carson City and that this Agreement may not be modified, changed, or altered except in a written amendment. This Agreement is to be construed solely as a reflection of the parties' desire to facilitate a harmonious separation of employment and to ensure that no unresolved issues exist between them. Following the revocation period, this Agreement will be final and binding.

Employee promises that he will not pursue any claim that he has settled by this Agreement. If he breaks this promise, he agrees to pay all of Carson City's costs and expenses (including reasonable attorneys' fees) related to the defense of any claims. The promise not to sue does not apply to claims that he may have under the OWBPA and the ADEA. Although he is releasing claims that he may have under the OWBPA and the ADEA, he understands that he may challenge the knowing and voluntary nature of this Agreement under the OWBPA and the ADEA before a court, the Equal Employment Opportunity Commission (EEOC), the National Labor Relations Board (NLRB), or any other federal, state or local agency charged with the enforcement of any employment laws. He understands, however, that if he pursues a claim against Carson City under the OWBPA and/or the ADEA, a court has the discretion to determine whether Carson City is entitled to restitution, recoupment, or set off (hereinafter "reduction") against a monetary award obtained by him in the court proceeding. A reduction never can exceed the amount he recovers, or the consideration he received for signing this Agreement, whichever is less. He also recognizes that Carson City may be entitled to recover costs and attorney's fees incurred by Carson City as specifically authorized under applicable law. He further understands that nothing in this Agreement prevents him from filing a charge or complaint with or from participating in an investigation or proceeding conducted by the EEOC, NLRB, or any other federal, state or local agency charged with the enforcement of any employment laws, although by signing this Agreement he is waiving his right to individual relief based on claims asserted in such a charge or complaint.

Employee agrees that the validity of this Agreement shall be construed under Nevada law. He further agrees that should any part of this Agreement be found to be void or unenforceable by a court of competent jurisdiction, that determination will not affect the remainder of this Agreement.

11. **Opportunity to Discuss:** Employee represents and agrees that he is fully aware of his right to discuss any and all aspects of this matter with Carson City's Human Resources Department and that he was specifically advised to consult with his own counsel prior to executing this Agreement. Employee further represents that he has carefully read and fully understands all of the provisions of this Agreement and that he was given a reasonable period in which to consider this Agreement and that he is entering into this Agreement knowingly, voluntarily, and without coercion or pressure.
12. **Notice:** Any notice to be given to Carson City shall be deemed sufficient if addressed to Carson City and personally delivered or mailed to Carson City, Human Resources Department, 201 N. Carson St., Suite 4, Carson City, NV 89701. Any notice to be given to Employee shall be deemed sufficient if addressed to him and personally delivered or mailed to the address Employee has provided to the Human Resources Department as his current address.
13. **Changes to this Document:** Employee agrees that changes, whether material or immaterial, do not restart the running of the 21-day consideration period.

The parties have signed this Agreement on the dates written by the signatures below, to be effective on the eighth day after this Agreement is signed by the parties so long as Employee has not revoked his acceptance of the Agreement. If Employee does not sign this Agreement and return it on or before the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ then this Agreement shall be null and void.

**Carson City:**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Employee Signature/Name:**

\_\_\_\_\_ Date: \_\_\_\_\_