

**THIRD AMENDMENT TO THE
CITY MANAGER EMPLOYMENT AGREEMENT
BETWEEN THE CITY OF GRAND TERRACE & G. HAROLD DUFFEY**

This THIRD AMENDMENT TO THE EMPLOYMENT AGREEMENT BETWEEN THE CITY OF GRAND TERRACE AND G. HAROLD DUFFEY (the “Third Amendment”) is made and entered into June 9, 2020, by and between the CITY OF GRAND TERRACE, a general law city and municipal corporation (the “City”) and G. HAROLD DUFFEY, an individual (“Employee”).

RECITALS

WHEREAS, pursuant to the City Manager Employment Agreement between the City of Grand Terrace and G. Harold Duffey dated May 26, 2015 (the “Agreement”), Employee commenced service as the City’s City Manager effective June 1, 2015; and

WHEREAS, on August 23, 2016, the City Council of the City approved the First Amendment to City Manager Employment Agreement between the City of Grand Terrace and G. Harold Duffey (“First Amendment”), which adjusted Employee’s base salary to \$206,400; and

WHEREAS, on June 27, 2017, the City Council of the City approved the Second Amendment to City Manager Employment Agreement between the City of Grand Terrace and G. Harold Duffey (“Second Amendment”), which: i) adjusted Employee’s base salary to \$215,000 commencing July 1, 2017; ii) amended certain benefits provisions of the Agreement; and iii) extended the term of the Agreement until June 30, 2020; and

WHEREAS, the City and Employee now desire to amend the Agreement through this Third Amendment to City Manager Employment Agreement between the City of Grand Terrace and G. Harold Duffey (“Third Amendment”) by extending the term of the Agreement for an additional five (5) years until June 30, 2025, revising the performance evaluation schedule such that performance evaluations are conducted three times per calendar year, and making certain revisions to clarify the intent of the Agreement; and

WHEREAS, Section 7(C) of the Agreement, entitled “Amendments,” provides that “[t]his Agreement may be amended at any time by mutual agreement of the City and the Employee. Any amendments are to be negotiated, put in writing, and adopted by the City Council[;]” and

WHEREAS, the Employee desires to accept these employment terms as such from the City and has provided his written consent to the following terms and conditions in this Third Amendment.

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

AGREEMENT

SECTION 1. The above recitals are incorporated by reference as if set forth in full herein.

SECTION 2. Section 3(D)(1) of the Agreement is amended to read, in its entirety, as follows (additions show in ***bold italics***, deletions shown in ~~strike through~~):

“(1) Performance Evaluation

- (a) ~~Annual~~ Performance evaluations are an important way for the City Council and Employee to ensure effective communications about expectations and performance.
- (b) The City Council recognizes that for Employee to respond to its needs and to grow in the performance of the City Manager's job, Employee needs to know how the City Council Members evaluate Employee's performance.
- (c) To assure that Employee gets this feedback, the City Council shall conduct three (3) regularly scheduled performance evaluations ~~once~~ each ***calendar*** year ***in August, January and April.*** ~~on or about the Employee's anniversary date of employment. In the first year of Employee's employment with City, the Employee shall initiate a sixth month informal performance update. The August and January performance evaluations shall be for the purpose of evaluating Employee's performance with respect to meeting and/or advancing the City Council's goals and objectives. The April performance evaluation shall be a comprehensive performance evaluation of Employee's performance and shall include a written evaluation. Without further City Council action, the City Manager is hereby directed, and City Manager hereby agrees, to timely place these regularly scheduled August, January and April performance evaluations on the respective City Council agendas. Notwithstanding the foregoing, the City Council may always require the scheduling of additional performance evaluations of the Employee at any time beyond the three regularly scheduled performance evaluations required above.”~~

SECTION 3. Section 4(A)(2) of the Agreement is amended to read, in its entirety, as follows (additions show in ***bold italics***, deletions shown in ~~strike through~~):

“(2) Required Employer Costs

- (a) Federal Insurance Contributions Act (FICA) ~~(if applicable)~~ - ***Medicare only.***
 - ~~(i) Old Age Survivor and Disability Income (OASDI).~~
 - ~~(ii) Medicare.~~
- (b) Unemployment Compensation.

(c) California Public Employees Retirement System (CalPERS).

The City contracts with the California Public Employees' Retirement System for retirement benefits. The City will pay the Employer's (as determined by CalPERS) share for participation in the CalPERS System. The Employee will pay in full, the Employee's share of ~~8%~~ 7% of salary. ~~If **Provided that CalPERS member status is determined solely by CalPERS, the parties believe** Employee to be~~ is a "Classic" **Tier 2** member, ~~as determined by CalPERS, and accordingly~~ Employee will **remain** be enrolled in the **City's 2% @ 60** retirement formula. ~~If employee is a "PEPRA" member, as determined by CalPERS, Employee will be enrolled in the 2% @ 62 retirement formula.~~

(d) The cost of any fidelity or other bonds required by law for the City Manager.

(e) The cost to defend and indemnify Employee as provided in Section 8.E below.

(f) Workers Compensation.”

SECTION 4. Section 4(B)(f)(5) of the Agreement is amended to read, in its entirety, as follows (additions show in **bold italics**, deletions shown in ~~strikethrough~~):

“5. The Employee shall be **granted up to** ~~entitled to a prorated~~ Management Leave based on ~~80 hours per year on hire date and 80~~ hours of Management Leave annually ~~thereafter~~ on January 1st of each year. **Employee shall not accrue more than 80 hours of Management Leave.** ~~Management Leave must be used by the end of the calendar year in which it is given. Any hours from the prior year remaining on the books on January 1 will be forfeited. Upon Employee's separation from City service for any reason, the City shall compensate Employee for any accrued and unused Management Leave. The value of accrued Management Leave shall be calculated using Employee's pay rate on the date of Employee's separation from City service.”~~

SECTION 5. Section 4(C)(2)-(3) of the Agreement shall be amended to read as follows (additions shown in **bold italics**, deletions shown in ~~strikethrough~~):

- “2. Legal Defense: Pursuant to Government Code section 53243.1, in the event that Employee is convicted of a crime involving abuse of his office or position, as defined by Government Code section 53243.4, Employee shall fully reimburse the City for all the costs of **his her** legal criminal defense.
3. Severance: Pursuant to Government Code section 53243.2, in the event that Employee is convicted of a crime involving abuse of **his her** office or position,

as defined by Government Code Section 53243.4, Employee shall fully reimburse the City for any case settlement, including but not limited to severance pay, paid to Employee related to ~~his~~ her termination under this Agreement.”

SECTION 6. A new Section 5(B)(4) is added to the Agreement to read, in its entirety, as follows:

“(4) Consistent with Grand Terrace Municipal Code section 2.08.280, Employee and the City agree that the procedures pertaining to Employee’s separation shall be as set forth in this Agreement rather than as provided in Sections 2.08.220 through 2.08.270 of the Grand Terrace Municipal Code, except that Employee shall not be removed from office, other than for cause, during or within a period of ninety (90) days next succeeding any general municipal election held in the City in which a member of the City Council is elected or when a new City Council member is appointed. Employee and the City further agree that the City Council’s right to terminate Employee pursuant to this Section 5 shall not be subject to or in any way limited by the City’s Personnel Rules or past City practices related to the employment, discipline or termination of the City’s employees. Accordingly, Employee expressly waives any rights provided for the City Manager under the City’s Personnel Rules, Municipal Code, or under other state or federal law to any other form of pre- or post-termination hearing, appeal, or other administrative process pertaining to termination.”

SECTION 7. A new subsection 5(C)(4) is added to the Agreement to read, in its entirety, as follows:

“(4) Any severance payment provided to Employee shall be conditioned upon the following: i) Employee not challenging such termination, including but not limited to by means of appeal or civil or administrative claim and ii) Employee’s execution of a general release of claims, in a form approved by the City’s City Attorney. Payment of severance shall not occur until after the expiration of the release revocation period contained therein. In the event Employee challenges his termination or declines to execute or revokes the general release of claims, no severance payment shall be made.”

SECTION 8. A new Section 5(G) is hereby added to the Agreement to read, in its entirety, as follows:

“G. Any of the following prior to the Termination Date of the Agreement as stated in Section 6(A) shall not be deemed a breach of this

Agreement: i) Employee's resignation/retirement consistent with Section 5(A); ii) Employee's termination without cause consistent with Sections 5(B)-(C); iii) Employee's involuntary resignation consistent with Section 5(D); or iv) Employee's separation for cause consistent Section 5(E)."

SECTION 9. Section 6(A) of the Agreement is hereby amended, in its entirety, to read as follows (additions shown in ***bold italics***, deletions shown in ~~striketrough~~):

"A. Term.

The Term of this Agreement, which commenced on June 1, 2015, for an initial term of three years ending on May 31, 2018 is hereby extended to June 30, ***2025*** ~~2020~~ ("Termination Date")."

SECTION 10. Section 6(B) of the Agreement is hereby amended, in its entirety, to read as follows (additions shown in ***bold italics***, deletions shown in ~~striketrough~~):

"B. Provisions that Survive Termination.

~~Many sections of this Agreement are intended by their terms to survive the Employee's termination of employment with the City, including but limited to Sections 4(C), 5 and 6.E. These sections, and the others so intended, shall survive termination of employment and termination of this Agreement."~~

SECTION 11. Section 6(H) of the Agreement is hereby amended, in its entirety, to read as follows (additions shown in ***bold italics***, deletions shown in ~~striketrough~~):

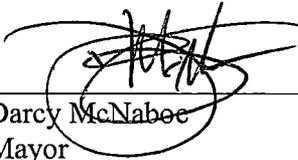
"H. Jurisdiction and Venue.

This Contract shall be construed in accordance with the laws of the State of California, and the Parties agree that venue shall be in ***San Bernardino*** ~~Los Angeles~~ County, California."

SECTION 12. Except as expressly amended by this Third Amendment, the underlying terms, conditions, and compensation of Employee by City as and for his employment as City Manager shall be as set forth in the Agreement and the First Amendment and Second Amendment thereto.

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

CITY OF GRAND TERRACE



Darcy McNaboe
Mayor

ATTEST:



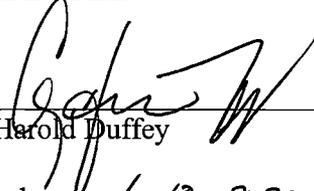
Debra Thomas
City Clerk

APPROVED AS TO FORM:



Adrian R. Guerra
City Attorney

EMPLOYEE



G. Harold Duffey
Dated: 6-10-2020

[END OF SIGNATURES]