

CONTRACT NO. 22,943  
EMPLOYMENT AGREEMENT – CITY CLERK  
MARK JOMSKY

THIS AGREEMENT is entered into on April 23, 2018 by and between the CITY OF PASADENA, a charter city and a municipal corporation of the State of California, herein referred to as "CITY," and Mark Jomsky, herein referred to as "EMPLOYEE."

**WITNESSETH:**

WHEREAS, it is the desire of CITY to retain the services of EMPLOYEE as the City Clerk and the desire of the EMPLOYEE to serve in that capacity; and

WHEREAS, it is the desire of the CITY to provide certain benefits, establish certain conditions of employment and to set certain working conditions of EMPLOYEE; and

WHEREAS, it is the desire of CITY to: (1) provide inducement for EMPLOYEE to remain in CITY'S employment; (2) make possible full work productivity by providing EMPLOYEE with assurances regarding his employment; and (3) provide an equitable process for terminating EMPLOYEE'S services if that should occur; and

WHEREAS, both parties desire to replace contract 22,130 and the three amendments 22,130-1 through 22,130-3 with the following Employment Agreement;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES, COVENANTS AND CONDITIONS HEREIN CONTAINED, THE PARTIES HERETO AGREE AS FOLLOWS:

**1. EMPLOYMENT:**

CITY hereby agrees to employ EMPLOYEE as City Clerk of the City of Pasadena in an at-will capacity, subject to the terms of this Agreement, to perform the functions and duties specified in the City Charter, the Pasadena Municipal Code and the Resolutions and Motions of the City Council, and to perform such other legally permissible duties and functions as the City Council shall from time to time assign.

**2. TERM:**

This Agreement shall commence as of December 1, 2017, and shall remain in effect until terminated by either party as provided herein.

3. COMPENSATION:

- A. City agrees to pay EMPLOYEE a base salary of \$178,602 (one hundred seventy-eight thousand six hundred and two dollars) annually, subject to legally permissible or required deductions, prorated and paid on the City's normal paydays.
- B. EMPLOYEE'S base salary shall be reviewed by the City Council during the performance review process. Salary increases resulting from such reviews shall be at the discretion of the City Council, in consultation with EMPLOYEE and unless amended shall not exceed the control rate of \$182,070 (one hundred eighty-two thousand seventy dollars).
- C. EMPLOYEE shall be eligible for Management Incentive Pay, at the sole discretion of the City Council, using the criteria established in the Executive Management salary resolution. EMPLOYEE and CITY agree that the City Council is not obligated to grant Management Incentive Pay and that no assurances have been given to EMPLOYEE that any Management Incentive Pay will be granted during the term of this Agreement.
- D. Except as otherwise provided in this Agreement and for the term of this Agreement, EMPLOYEE shall also receive no less than all other benefits that are generally applicable to non-safety Executive Management employees (as identified in the Executive Management salary resolution). Subsequent modifications to benefits will be considered by the City Council periodically as appropriate. For purposes of this Agreement, benefits include, but are not limited to, retirement benefits, medical insurance, dental insurance, vision plan, life insurance, short-term disability insurance, long term disability insurance, workers' compensation benefits, including salary continuation, annual medical exam, vacation, sick leave, bereavement leave, holidays, floating holidays, paid jury duty, all other statutory leaves, and technology support.
  - 1) Auto Allowance: EMPLOYEE will receive an auto allowance of \$525 per month for the use of the EMPLOYEE'S personal vehicle for CITY business and will use CITY vehicles on an exception basis only.
  - 2) Management Time Off: EMPLOYEE will be granted eighty (80) hours of management time off annually. Management Time Off has a maximum of 120 (one-hundred twenty) hours. Management Time Off may not be cashed-out.
  - 3) The City Council may authorize and grant to EMPLOYEE additional compensation and/or benefits in the future as may be deemed appropriate. Such additional compensation or benefits shall be considered to be within the terms of this Agreement, as if they had been specifically amended into this Agreement, to be applied prospectively, unless City Council acts to provide otherwise.

#### 4. PERFORMANCE EVALUATION

- A. The City Council will conduct EMPLOYEE'S performance evaluation annually in the last quarter of the calendar year. EMPLOYEE'S evaluation may include the full City Council or any Committee of City Council members designated for this purpose, and may include peer and subordinate input. Said review and evaluation shall be in accordance with specific criteria developed jointly by the City Council and EMPLOYEE. City Council may add to or delete from said criteria as the City Council may from time to time determine, after consultation with EMPLOYEE. The City Council shall provide an adequate opportunity for EMPLOYEE to discuss his evaluation with the City Council.
- B. A committee of the City Council and/or EMPLOYEE may desire additional discussions and/or evaluations of EMPLOYEE'S performance between anniversary dates. Such evaluations may be less formal and may be conducted without written comments or reports.

#### 5. NOTIFICATION OF LEAVE FROM OFFICE

EMPLOYEE shall provide the Mayor with reasonable notice prior to taking two or more consecutive vacation or management leave days off.

#### 6. PROFESSIONAL DEVELOPMENT EXPENSES

- A. EMPLOYEE will receive \$1,000 with the second paycheck in March as a personal/professional development allowance and will budget and pay an additional \$1,000 per fiscal year to cover the cost for professional dues and subscriptions necessary for EMPLOYEE to participate in professional associations and organizations desirable for his continued professional growth and advancement and the good of the CITY.
- B. CITY agrees to budget and pay for the travel and subsistence expenses of EMPLOYEE for professional and official travel, meetings and occasions adequate to continue the professional development of the EMPLOYEE and to adequately pursue necessary official and other functions for CITY, including but not limited to the League of California Cities, and such other national, state, regional, and local government groups and committees thereof on which EMPLOYEE serves as a member. EMPLOYEE shall pay for all expenses of his spouse if his spouse accompanies him on such trips.

## 7. TERMINATION AND SEVERANCE

- A. EMPLOYEE is employed at the pleasure of the City Council and is an at-will employee. The City Council may terminate the employment relationship and this Agreement at any time, with or without cause.
- B. The CITY will provide the EMPLOYEE with no less than a 90 (ninety) day notice of intention to terminate EMPLOYEE'S employment. Such notice can be provided at any time, except within the first forty-five (45) days after installation of City Council member(s) as the result of any municipal election or appointment by the City Council. Should the City Council choose to dismiss the EMPLOYEE, the CITY shall compensate the EMPLOYEE with an amount equivalent to one year's base salary and twelve months of medical COBRA premiums in effect at the time of said dismissal. If the EMPLOYEE is terminated before the expiration of the first 45 (forty-five) days after the installation of City Council members as a result of a regular municipal election, EMPLOYEE'S one year severance pay will be increased by the amount of time between the notice and the expiration of the 45 (forty-five) day period. For example, if notice of termination was provided on the tenth day after said installation, the severance period would be one year plus 35 (thirty-five) days.
- C. Should EMPLOYEE voluntarily resign from the CITY, the CITY will not be obligated to pay any severance upon his termination. Should EMPLOYEE be convicted of a felony, or have engaged in acts of malfeasance or misfeasance in the performance of his job duties, or have engaged in any act of moral turpitude, CITY will not be obligated to provide EMPLOYEE with any severance pay upon termination.
- D. Should EMPLOYEE voluntarily terminate his employment with CITY, he shall provide at least 90 (ninety) days' notice in writing to the City Council.
- E. If the CITY provides notice in accordance with subparagraph B of Section 7, EMPLOYEE shall be compensated at full pay and benefits until his scheduled departure. If so requested by the City Council, EMPLOYEE shall continue to use his best efforts and skills to perform his duties during this period and shall fully cooperate with any successor designated by the City Council.
- F. The following provisions shall apply in the event of termination, as provided and defined in Government Code Sections 53243 through 53244:
  - 1) If an investigation is pending at the time of EMPLOYEE'S termination that results in EMPLOYEE being convicted of a crime involving his abuse of office, EMPLOYEE shall fully reimburse the CITY for any severance provided at the time of separation; and

2) If EMPLOYEE is convicted of a crime involving an abuse of his office, any cash settlement related to the termination of EMPLOYEE that EMPLOYEE may receive from CITY, and CITY funds provided for EMPLOYEE'S criminal defense, if any, shall be fully reimbursed to CITY.

#### 8. INDEMNIFICATION

CITY shall defend, hold harmless and indemnify EMPLOYEE against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the course and scope of EMPLOYEE'S duties, in accordance with the provisions of California Government Code Section 825, and shall provide a defense in accordance with Government Code Sections 995, *et. seq.*, subject to the limitations and qualifications contained in said statutes. CITY may compromise and settle any such claim or suit and pay the amount of any settlement or judgment resulting therefrom. The obligation to defend and indemnify EMPLOYEE shall survive the termination or expiration of this Agreement as to liability during the term of employment.

#### 9. BONDING

CITY shall bear the full costs of any fidelity or other bonds required of EMPLOYEE under any law, ordinance, regulation, contract or covenant.

#### 10. OTHER TERMS AND CONDITIONS OF EMPLOYMENT

The City Council, in consultation with EMPLOYEE, may establish other terms and conditions of employment, as it may determine from time to time are in the best interests of the CITY, relating to the performance of EMPLOYEE, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City Charter or any other law or regulation.

#### 11. NOTICES:

Any notice required or permitted by this Agreement shall be given in writing and by personal delivery or prepaid first class, registered or certified mail, and addressed as follows:

TO CITY: Mayor  
City of Pasadena  
100 North Garfield Avenue  
Pasadena, CA 91101

TO EMPLOYEE: Mark Jomsky  
City Clerk  
100 North Garfield Avenue  
Pasadena, CA 91101

Any such notices shall be deemed given upon delivery, if personally delivered, or, if mailed, upon receipt or upon expiration of three (3) business days from the date of posting, whichever is earlier. Either party may change the address at which it desires to receive notice upon giving written notice to the other party.

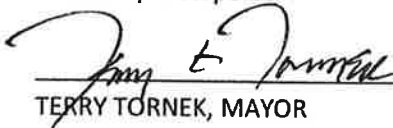
12. GENERAL PROVISIONS:


- A. The text herein shall constitute the entire Agreement between the parties. This Agreement sets forth the final, complete and exclusive agreement between CITY and EMPLOYEE relating to the employment of EMPLOYEE by CITY. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The foregoing notwithstanding, EMPLOYEE acknowledges that, except as expressly provided in this Agreement, his employment is subject to CITY'S generally applicable rules, policies and regulations, including those pertaining to employment matters, such as rules and regulations addressing equal employment opportunity, sexual harassment and violence in the workplace.
- B. This Agreement is not assignable by either party.
- C. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of EMPLOYEE.
- D. This Agreement shall become effective upon approval of the City Council and signing by both parties.
- E. If any provision, or any portion thereof contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.
- F. Any dispute between the parties regarding the interpretation of application of any provision of this Agreement shall be referred to mediation by a mutually acceptable mediator. Should said mediation fail to resolve such issues, they shall be arbitrated in accordance with the Rules of the American Arbitration Association.

G. EMPLOYEE acknowledges that he has had the opportunity and has conducted an independent review of the financial and legal effects of this Agreement. EMPLOYEE acknowledges that he has made an independent judgment upon the financial and legal effects of this Agreement and has not relied on any representation of CITY, its officers, agents or employees other than those expressly set forth in this Agreement.

IN WITNESS WHEREOF, CITY has caused this Agreement to be signed and duly executed on its behalf by its MAYOR, and duly attested by its City Clerk, and EMPLOYEE has signed and executed this Agreement, as of the day and year first above written.

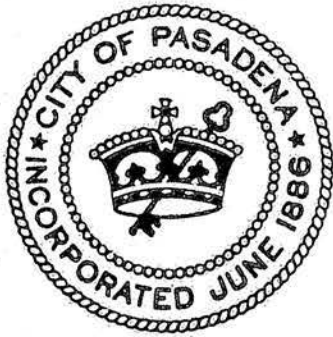
  
\_\_\_\_\_  
MARK JOMSKY, EMPLOYEE

CITY OF PASADENA,  
A municipal corporation  
  
\_\_\_\_\_  
TERRY TORNEK, MAYOR

ATTEST:   
\_\_\_\_\_  
LATASHA REESE, ASSISTANT CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
LESLEY CHEUNG  
ASSISTANT CITY ATTORNEY



# Agenda Report

**DATE:** April 23, 2018

**TO:** City Council

**FROM:** Mayor Terry Tornek

**SUBJECT:** APPROVAL OF EMPLOYMENT AGREEMENT FOR CITY CLERK

## **RECOMMENDATION:**

It is recommended that the City Council:

1. Find that the action proposed herein is not a "project" as defined in the California Environmental Quality Act (CEQA), Public Resources Code Section 21065 and Section 15378(b)(2) of the State CEQA Guidelines and, as such, is not subject to environmental review; and
2. Approve a new employment agreement for City Clerk Mark Jomsky which sets forth the terms and conditions of the employment agreement between the parties. It is further recommended that the Mayor be authorized to sign the employment agreement to reflect City Council approved changes.

## **BACKGROUND:**

On January 26, 2015, the City entered into an employment agreement (Contract No. 22,130) with Mark Jomsky as City Clerk. The employment agreement has been amended and approved by the City Council three times as follows:

- A first amendment (Contract No. 22,130-1) on April 11, 2016
- A second amendment (Contract No. 22,130-2) on March 20, 2017
- A third amendment (Contract No. 22,130-3) on December 4, 2017

As a result of the City Clerk's recently completed performance evaluation, the Council recommends approving the employment agreement with the following modifications:



APPROVAL OF EMPLOYMENT AGREEMENT FOR CITY CLERK

APRIL 23, 2018

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1. Salary – Effective November 27, 2017, the City Clerk will be paid a base annual salary of \$178,602, and the salary control rate for the City Clerk classification shall remain \$182,070.
2. Management Incentive Pay—The City Clerk will receive a one-time, lump sum management incentive pay of \$5,000.
3. Benefits/Pension Contribution—Effective November 13, 2017, the City Clerk, along with the Non-Represented Executive Management employees, began making an additional 2% employee-paid pension contribution for a total 10% employee contribution toward his pension.

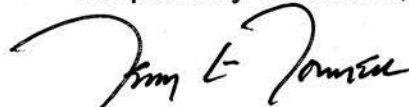
**COUNCIL POLICY CONSIDERATION:**

The approval of the amendment to the employment agreement supports the City Council's strategic goal of maintaining fiscal responsibility and stability.

**FISCAL IMPACT:**

The approval of the employment agreement for the City Clerk is estimated to have an overall fiscal impact of \$10,700 in FY 2018 and is to be absorbed by the City Clerk Department operating budget.

Respectfully Submitted,



Terry Tornek  
Mayor

Prepared by:



Jennifer Curtis  
Director of Human Resources

Attachment:

1. EMPLOYMENT AGREEMENT FOR CITY CLERK