

**CITY OF SAN RAMON
FOURTH AMENDMENT TO THE AGREEMENT FOR EMPLOYMENT
OF CITY MANAGER**

This Fourth Amendment to the Agreement for Employment of City Manager ("Fourth Amendment") is made and entered into this 14th day of January, 2020 by and between the City of San Ramon ("City"), a charter city, and Joseph S. Gorton ("Employee"), collectively referred to as "the Parties."

WHEREAS, the City of San Ramon entered into an Employment Agreement of City Manager ("Agreement") on January 10, 2017, appointing Joseph S. Gorton as City Manager; and

WHEREAS, the First Amendment to the Agreement for Employment of City Manager was entered into on April 11, 2017 applying the CalPERS Tier I classification category 2.7% at 55 formula; and

WHEREAS, the Second Amendment to the Agreement for Employment of City Manager was entered into on January 23, 2018 amending Section 4 "Vacation, Sick Leave, Holidays, Benefits"; and

WHEREAS, the Third Amendment to the Agreement for Employment of City Manager was entered into at the City Council Meeting on January 22, 2019 by adopting Resolution No. 2019-010.

WHEREAS, the City Council authorized the Fourth Amendment to the Agreement for Employment of City Manager at the City Council Meeting of January 14, 2020 by adoption Resolution No. 2020-001.

NOW THEREFORE, Section 1 "Compensation and Term" of the original Agreement for Employment of City Manager entered into on January 10, 2017, and amended on January 14, 2020, is hereby further amended to read as follows:

1. COMPENSATION AND TERM.

For the period of January 10, 2020 through January 10, 2022, the City agrees to compensate Employee a flat rate of \$22,583.60 per month, which compensation may be adjusted annually as a result of the performance evaluation set out in paragraph 3 below. Effective January 10, 2020, the City agrees to pay a one-time, non-PERSable lump sum payment, in the amount of seven thousand five-hundred dollars (\$7,500). In lieu of a car allowance, the City would like to promote environmentally friendly transportation options as well as support fuel-cell technology within the City. The City agrees to purchase or lease a fuel cell or other eco-friendly vehicle for Employee to conduct City business. Employee is authorized to home garage the vehicle and may use it for limited incidental personal use not to exceed 10%.

Employee shall participate in the Public Employees Retirement System (CalPERS), 2.7% at age 55, and shall pay 100% of the employee portion. Effective January 10, 2020, the

Employee will contribute, in addition to the employee portion, two percent (2%) to the employers' share of CalPERS.

Employee's term as City manager shall commence on January 10, 2017 and end on January 10, 2022. The City Council reserves the sole discretion to extend the term as below provided. Not later than three (3) months prior to the expiration of the term, the City Council shall provide notice to Employee in writing as to whether or not the City Council intends to extend the term for at least one (1) additional year on terms and conditions at least as favorable as those set forth in this Agreement.

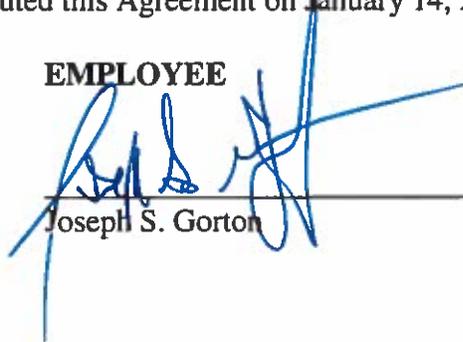
IN WITNESS WHEREOF, the parties have executed this Agreement on January 14, 2020.

CITY OF SAN RAMON



Bill Clarkson, Mayor

EMPLOYEE



Joseph S. Gorton

**CITY OF SAN RAMON
THIRD AMENDMENT TO THE AGREEMENT FOR EMPLOYMENT
OF CITY MANAGER**

This Third Amendment to the Agreement for Employment of City Manager ("Third Amendment") is made and entered into this 22nd day of January, 2019 by and between the City of San Ramon ("City"), a charter city, and Joseph S. Gorton ("Employee"), collectively referred to as "the Parties."

WHEREAS, the City of San Ramon entered into an Employment Agreement of City Manager ("Agreement") on January 10, 2017, appointing Joseph S. Gorton as City Manager; and

WHEREAS, the First Amendment to the Agreement for Employment of City Manager was entered into on April 11, 2017 applying the CalPERS Tier I classification category 2.7% at 55 formula; and

WHEREAS, the Second Amendment to the Agreement for Employment of City Manager was entered into on January 23, 2018 amending Section 4 "Vacation, Sick Leave, Holidays, Benefits"; and

WHEREAS, the City Council authorized the Third Amendment to the Agreement for Employment of City Manager at the City Council Meeting of January 22, 2019 by adopting Resolution No. 2019-010.

NOW THEREFORE, Section 1 "Compensation and Term" of the original Agreement for Employment of City Manager entered into on January 10, 2017, and amended on April 11, 2017, is hereby further amended to read as follows:

1. COMPENSATION AND TERM.

For the period of January 10, 2017 through January 10, 2020, the City agrees to compensate Employee a flat rate of \$22,360 per month, which compensation may be adjusted annually as a result of the performance evaluation set out in paragraph 3 below. In lieu of a car allowance, the City would like to promote environmentally friendly transportation options as well as support fuel-cell technology within the City. The City agrees to purchase or lease a fuel cell or other eco-friendly vehicle for Employee to conduct City business. Employee is authorized to home garage the vehicle and may use it for limited incidental personal use not to exceed 10%.

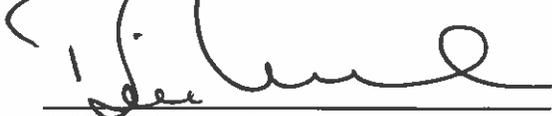
Employee shall participate in the Public Employees Retirement System (CalPERS), 2.7% at age 55, and shall pay 100% of the employee portion. Effective January 10, 2019, the Employee will contribute, in addition to the employee portion, one percent (1%) to the employers' share of CalPERS.

Employee's term as City manager shall commence on January 10, 2017 and end on January 10, 2020. The City Council reserves the sole discretion to extend the term as below provided. Not later than three months prior to the expiration of the term, the City Council shall provide

notice to Employee in writing as to whether or not the City Council intends to extend the term for at least one (1) additional year on terms and conditions at least as favorable as those set forth in this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on January 22, 2019.

CITY OF SAN RAMON



Bill Clarkson, Mayor

EMPLOYEE



Joseph S. Gorton

**CITY OF SAN RAMON
SECOND AMENDMENT TO THE AGREEMENT FOR EMPLOYMENT
OF CITY MANAGER**

This Second Amendment is made and entered into this 23rd day of January, 2018 by and between the City of San Ramon ("City"), a charter city, and Joseph S. Gorton ("Employee"), collectively referred to as "the Parties."

WHEREAS, the City of San Ramon entered into an Employment Agreement of City Manager on January 10, 2017 appointing Joseph S. Gorton as City Manager; and

WHEREAS, the First Amendment to the Agreement for Employment of City Manager was entered into on April 11, 2017 applying the PERS Tier I classification category 2.7% at 55 formula; and

WHEREAS, the City Council authorized this Second Amendment at the City Council Meeting of January 28, 2018 by adopting Resolution No. 2018-013.

NOW THEREFORE, Section 4 "Vacation, Sick Leave, Holidays, Benefits" of the original Agreement for Employment of City Manager entered into on January 10, 2017 is hereby amended to read as follows:

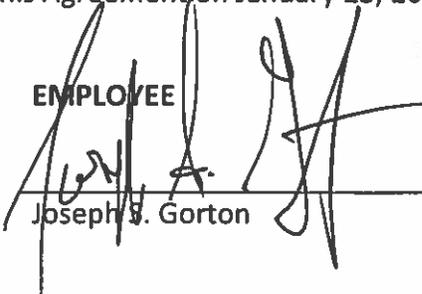
4. VACATION, SICK LEAVE, HOLIDAYS, BENEFITS.

Employee shall accrue vacation at a rate of 27 days of vacation per year with the same vacation accrual limits, discretionary, administrative leave, sick leave, holidays, health care, life insurance, and all other benefits as provided to all other Department Head Miscellaneous employees per the City's Rules. Also consistent with existing City Policies and CalPERS rules, vacation and sick leave cash payments at termination or retirement are not credited as employee contributions for benefits under the CalPERS retirement system.

IN WITNESS WHEREOF, the parties have executed this Agreement on January 23, 2018.

CITY OF SAN RAMON


Bill Clarkson, Mayor

EMPLOYEE


Joseph S. Gorton

Approved as to Form:



Martin Lysons, City Attorney

ATTEST:



Renée Beck, City Clerk

**CITY OF SAN RAMON
FIRST AMENDMENT TO THE AGREEMENT FOR EMPLOYMENT
OF CITY MANAGER**

This First Amendment ("Agreement") is made and entered into this 11th day of April, 2017 by and between the City of San Ramon ("City"), a charter city, and Joseph S. Gorton ("Employee"), collectively referred to as "the Parties."

WHEREAS, the City of San Ramon entered into an Employment Agreement of City Manager on January 10, 2017 appointing Joseph S. Gorton as City Manager; and

WHEREAS, the original Employment Agreement states that the employee shall participate in the Tier II PERS 2% at age 60 category; and

WHEREAS, the City has been notified by PERS that the Tier II classification category is erroneous and that the Tier I classification 2.7% at 55 formula should apply; and

WHEREAS, the City Council authorized this First Amendment at the City Council Meeting of April 11, 2017 by adopting Resolution No. 2017-032.

NOW THEREFORE, Section 1 "Compensation and Term" of the original Agreement for Employment of City Manager entered into on January 10, 2017 is hereby amended to read as follows:

1. COMPENSATION AND TERM.

For the period January 10, 2017 through January 10, 2020, the City agrees to compensate Employee a flat rate of \$21,500 per month, which compensation may be adjusted annually as a result of the performance evaluation set out in paragraph 3 below. In lieu of a car allowance, the City would like to promote environmentally friendly transportation options as well as support fuel-cell technology within the City. The City agrees to purchase or lease a fuel cell or other eco-friendly vehicle for Employee to conduct City business. Employee is authorized to home garage the vehicle and may use it for limited incidental personal use not to exceed 10%.

Employee shall participate in the Public Employees Retirement System (PERS), 2.7% at age 55, and shall pay 100% of the employee portion.

Employee's term as City Manager shall commence on January 10, 2017 and end on January 10, 2020. The City Council reserves the sole discretion to extend the term as below provided. Not later than three months prior to the expiration of the term, the City Council shall provide notice to Employee in writing as to whether or not the City Council intends to extend the term for at least one (1) additional year on terms and conditions at least as favorable as those set forth in this Agreement.

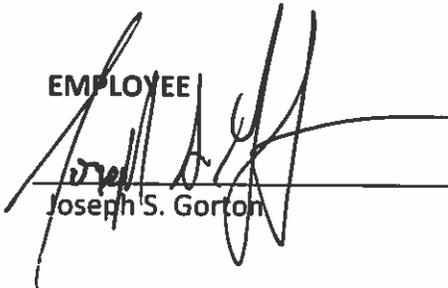
IN WITNESS WHEREOF, the parties have executed this Agreement on April 11, 2017.

CITY OF SAN RAMON



Bill Clarkson, Mayor

EMPLOYEE



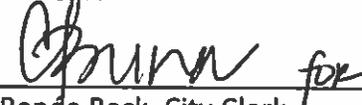
Joseph S. Gorton

Approved as to Form:



Bob Saxe, Interim City Attorney

ATTEST:



Rende Beck, City Clerk

**CITY OF SAN RAMON
AGREEMENT FOR EMPLOYMENT
OF CITY MANAGER**

This Employment Agreement ("Agreement") is made and entered into this 10th day of January, 2017 by and between the City of San Ramon ("City"), a charter city, and Joseph S. Gorton ("Employee"), collectively referred to as "the Parties."

WHEREAS, this Agreement will provide for Employee services as City Manager, performing the duties and functions specified in the City Charter and Municipal Code, and to perform such other legally permissible and proper duties and functions as the City Council shall from time to time assign, as are in the best interest of the City of San Ramon, subject always to the direction of the City Council; and

WHEREAS, because the City Manager must devote significant time in conducting the City's business outside of customary office hours, the City Manager shall have discretion over the schedule and location of work each day in accordance with the work required to be performed; and

WHEREAS, the City and Employee have entered into this Agreement in recognition of the benefits accruing to each party; and

WHEREAS, this Agreement supersedes and replaces the previous agreement for employment between City and Employee as interim City Manager;

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. COMPENSATION AND TERM.

For the period January 10, 2017 through January 10, 2020, the City agrees to compensate Employee a flat rate of \$21,500 per month, which compensation may be adjusted annually as a result of the performance evaluation set out in paragraph 3 below. In lieu of a car allowance, the City would like to promote environmentally friendly transportation options as well as support fuel-cell technology within the City. The City agrees to purchase or lease a fuel cell or other eco-friendly vehicle for Employee to conduct City business. Employee is authorized to home garage the vehicle and may use it for limited incidental personal use not to exceed 10%.

Employee shall participate in the Public Employees Retirement System (PERS), 2% at age 60, and shall pay 100% of the employee portion.

Employee's term as City Manager shall commence on January 10, 2017 and end on January 10, 2020. The City Council reserves the sole discretion to extend the term as below provided. Not later than three months prior to the expiration of the term, the City Council shall provide notice to Employee in writing as to whether or not the City Council intends to

extend the term for at least one (1) additional year on terms and conditions at least as favorable as those set forth in this Agreement.

2. SEPARATION.

- A. Termination and Removal: Employee is an at-will employee serving at the pleasure of the City Council. The City Council may remove the Employee at any time, with or without cause, by a majority vote of its members.
- B. Resignation/Retirement: Employee may resign at any time and agrees to give the City thirty (30) days advance written notice of the effective date of the resignation. If Employee retires from full-time public services with the City, Employee shall provide sixty (60) days advance notice.
- C. Contract Nonrenewal: The City may decide at its sole discretion and without cause not to renew Employee's contract, provided that the City gives the Employee ninety (90) days advance written notice of that decision. If the City exercises this option, in addition to the ninety (90) days' notice, the Employee shall be entitled to six (6) months' severance pay, with associated benefits. If the ninety (90) days' notice of nonrenewal is not provided at the conclusion of the initial three-year term of this Agreement, this Agreement shall automatically renew for an additional one-year term. Likewise, if the ninety (90) days' notice of nonrenewal is not provided at the conclusion of any subsequent term of this Agreement, this Agreement shall automatically renew for an additional one-year term.
- D. Termination of Agreement upon Inability to Perform: This Agreement shall terminate upon the permanent disability and inability of the Employee to perform the essential duties of this position.
- E. Termination without Cause: The City Council may terminate Employee without cause at any time. If the Employee is terminated by the Council during the term of this Agreement without cause during such time that the Employee is willing and able to perform the City Manager's duties under this Agreement, then the City agrees to pay the Employee a lump sum cash payment as follows: a) if the termination without cause is initiated before January 10, 2018 the payments shall be equal to twelve (12) months base salary, then-in-effect, payment of leave balances along with the cash value of all of the other related benefits provided for in this Agreement for that twelve (12) month period; or b) if the termination without cause is initiated on or after January 10, 2018, the payments shall be equal to nine (9) months base salary, then-in-effect, payment of leave balances along with the cash value of all of the other related benefits provided for in this agreement for that nine (9) month period.

- F. Termination for Cause: Notwithstanding any other provision of this Agreement, the Employee may be terminated for cause. As used in this section "cause" shall mean one or more of the following:
1. Willful breach of this Agreement pursuant to Labor Code §2924 as that code section has been interpreted.
 2. Habitual neglect of the duties required to be performed, as pursuant to Labor Code §2924 as that code section has been interpreted.
 3. Any acts of dishonesty, fraud, or other acts of moral turpitude.
 4. Conviction of any act which would constitute a crime, whether misdemeanor or felony, and which would bring disrespect to the Office of City Manager or the City.
 5. Willful violations of City policies of a serious nature, including for example, but not limited to, the City's Harassment or Drug-Free Workplace policies.

Employee may not be terminated for cause based upon a failure to perform a request or directive which violates the International City Management Association (ICMA) code of ethics.

If the Employee is terminated or suspended for cause, Employee shall have a written notice of the cause of his removal or suspension from duty, and shall have the opportunity to be heard on the cause of his removal or suspension before a public hearing of the City Council.

Termination or suspension for cause shall not trigger rights to any severance benefits provided for "Contract Nonrenewal" (section 2C above) or "Termination without Cause" (section 2E above).

3. PERFORMANCE EVALUATION.

The City Council shall review and evaluate the performance of the Employee twice during the first year of employment, once within the first six (6) months – on or before July 10, 2017 – and again on or before January 10, 2018, and then annually by January 10 of each year thereafter. The performance evaluation shall be conducted by use of an outside professional facilitator with appropriate qualifications and experience in facilitating and coordinating the review of executive staff by multi-member boards and councils. The facilitator will be chosen by the mutual agreement of the City Council and the Employee. The facilitator will have no role in the performance evaluation except to coordinate and facilitate the review and to assist the Parties in ensuring that the reviews are conducted in a timely fashion as set out in this Agreement. Use of a facilitator may be waived by mutual consent of the City Council and Employee. Any annual pay adjustments shall be based on the results of the Council's evaluation and effectuated by a written amendment to this Agreement.

4. VACATION, SICK LEAVE, HOLIDAYS, BENEFITS.

Employee shall accrue vacation at a rate of 22 days of vacation per year with the same vacation accrual limits, discretionary, administrative leave, sick leave, holidays, health care, life insurance, and all other benefits as provided to all other Department Head Miscellaneous employees per the City's Rules. Also consistent with existing City Policies and CalPERS rules, vacation and sick leave cash payments at termination or retirement are not credited as employee contributions for benefits under the CalPERS retirement system.

5. PROFESSIONAL DEVELOPMENT.

The City acknowledges its interest in the continuing professional development of Employee and agrees to allow and pay all expenses associated with attendance at annual conferences of the International City Management Association, League of California Cities, and California City Managers Association. Further, the City agrees to pay the membership dues for Employee in the International City Management Association and City Manager's Department of the League of California Cities. With the prior budgetary allowance and consent of the Council, the City agrees to allow Employee to attend and participate in such other professional associations and conferences as may be mutually agreeable to both parties. The City acknowledges the right of Employee to engage in other professional activities as long as they do not interfere or conflict with the Employee's duties as City Manager. Such professional activities may include teaching, writing, consulting and other compatible activities, so long as they do not raise conflicts of interest or incompatible offices issues.

6. INDEMNIFICATION.

To the extent permitted by law, the City shall defend, hold harmless and indemnify Employee against any tort, professional liability claim or demand or other civil legal action, whether groundless or otherwise, arising out of any alleged act or omission occurring in the performance of Employee's duties to the City. In its sole discretion, the City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered therefrom. This duty to defend and indemnify shall not apply to criminal charges against the Employee, except at the sole discretion of the City Council based on a finding that it is in the public interest and in the best interests of the City to do so.

7. OTHER RIGHTS OF PARTIES.

Unless expressly set forth in this Agreement, nothing in this Agreement shall abrogate any rights, responsibilities, benefits or privileges to which either party would otherwise be entitled. This specifically includes Employee's vested credits toward retiree medical benefits previously transferred from his service with the Contra Costa County Sheriff's Department.

8. AMENDMENT OF AGREEMENT.

The Agreement may be amended only in writing by mutual agreement of the Parties.

9. STATE LAW AND JURISDICTION.

The right and obligation of the parties to this Agreement shall be governed by the laws of the State of California. Any appropriate state court in Contra Costa County or federal district court within the Northern District of California shall have exclusive jurisdiction over any case or controversy arising under or in connection with this Agreement.

10. RECITALS.

The recitals set forth above are incorporated by reference and made a part of this Agreement.

11. FAILURE TO ACT OR DELAY OF ACTION.

No failure to exercise and no delay in exercising any right, remedy or power set forth in this Agreement shall operate as a waiver to the exercise of that right, remedy, or power in the future.

12. ENTIRE AGREEMENT.

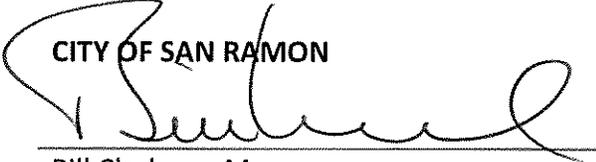
This Agreement contains the entire agreement between the parties. No promise, representation, warranty, or covenant not included in this Agreement has been or is relied upon by either party to this Agreement.

13. SEVERABILITY.

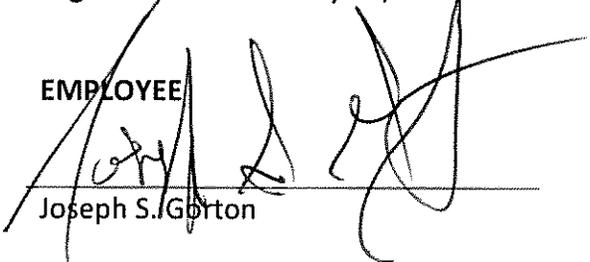
Should any paragraph, subparagraph, sentence, clause, phrase or word included in this Agreement be found invalid by a court of competent jurisdiction, the balance of this Agreement shall remain in full force and effect.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties have executed this Agreement on January 10, 2017.

CITY OF SAN RAMON


Bill Clarkson, Mayor

EMPLOYEE


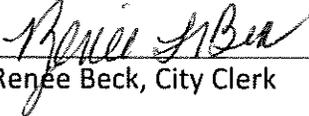
Joseph S. Gorton

Approved as to Form:



Bob Saxe, Interim City Attorney

ATTEST:



Renee Beck, City Clerk