

CITY ATTORNEY EMPLOYMENT CONTRACT
(Amended and Restated November 14, 2016)

This contract, dated November 15, 2016, is made between the City of Livermore ("City") a California municipal corporation, and Jason R. Alcala ("Employee"), and upon its effective date amends and replaces the previous employment contract between these parties dated November 16, 2015.

RECITALS

City desires to employ the services of Employee as City Attorney of the City of Livermore and to provide certain compensation and establish certain conditions of employment of the City Attorney.

Employee desires to accept employment as City Attorney under the conditions contained in this contract.

In consideration of the mutual covenants contained in this contract, the parties agree as follows:

I. TERM

The term of this contract shall begin on, and its effective date shall be, November 28, 2016, and shall continue indefinitely subject only to the Termination and Severance (section IV) and Resignation (section VIII) provisions of this contract. Both City and Employee understand that Employee's employment is at the will of both parties. Thus, Employee serves at the pleasure of the City Council, subject only to the Termination and Severance (section IV) and Notices (section VII) provisions contained in this contract. In a like manner, nothing in this contract shall interfere with the right of Employee to resign at any time subject to the Resignation (section VIII) and Notices (section VII) provisions of this contract.

II. DUTIES

City agrees to employ Employee as City Attorney to perform the duties specified in Livermore Municipal Code section 2.12 and the laws of the State of California, as well as other duties assigned by the City Council which reasonably relate to the position of City Attorney.

Employee agrees to remain in the exclusive employment of City except that City acknowledges that Employee may engage in other professional activities (including teaching, writing, legal representation of family members in matters unrelated to the City of Livermore, and the like) so long as these activities do not interfere or conflict with Employee's duties as City Attorney.

III. COMPENSATION

A. Salary. City agrees to pay Employee a salary of \$221,965 per year, payable at the same time as other City employees are paid. On May 29, 2017, Employee's annual salary shall be increased to \$227,514 per year, payable at the same time as other City employees are paid.

B. Benefits. Employee shall be entitled to receive the same benefits as are provided for all City Department Heads. Employee shall also maintain the earned benefits, such as sick leave and vacation leave, that Employee has accumulated in his employment previously for the City. Additionally, Employee shall receive:

- (1) A car allowance of \$400 per month.
- (2) An additional City contribution of up to 2.00% of base annual salary (not to exceed the maximum allowed by law) into a City-recognized deferred compensation program to the extent that such contribution is matched by Employee's contribution. This contribution is in addition to the City's contribution to the Employee of \$200 per month into a City-recognized deferred compensation program provided to City Department Heads.
- (3) Retiree health reimbursement benefit – The City Council acknowledges that, prior to promotion to City Attorney, Employee was eligible to receive this benefit upon retirement and the purpose of this section is the preserve Employee's previously-earned eligibility for this benefit. Employee shall be eligible upon retirement for a retiree health reimbursement benefit up to a cap of \$1,950 per month.

IV. TERMINATION AND SEVERANCE

A. City may terminate, without cause, this contract and the employment of Employee by providing written notice of such termination to Employee in a manner set forth in the Notices (section VII) provisions of this contract.

B. In the event of such termination, while Employee is willing and able to perform the duties of City Attorney, City shall pay Employee's salary and benefits (in the amounts as of the date of termination) for a period of 12 months from the date of termination subject to, and such payment shall be interpreted to comply with, the limitations set forth in California Government Code Sections 53260 and 53261. This provision shall not apply if termination is for cause. For the purpose of this contract, termination for cause shall mean that Employee is terminated for:

- (1) willful misconduct;
- (2) abuse of drugs or alcohol which materially affects the performance of his duties;
- (3) repeated and protracted unexcused absences from the City Attorney's office;
- (4) conviction of any felony;
- (5) conviction of a misdemeanor involving moral turpitude;
- (6) acceptance of employment from another source inconsistent with this contract;
- or
- (7) any material breach of this contract.

V. PERFORMANCE EVALUATION

A. Each October, the City Council shall review Employee's performance to determine, among other things, entitlement to any salary increase (including merit and/or cost of living) or whether to award any one-time special merit award, or bonus, for the accomplishment of the City Council's specific goals, or for exceptional results or performance

above the expected fulfillment of Employee's job obligations.

B. Each year as part of the Employee's evaluation process, Employee and City Council shall meet to discuss establishing performance objectives for Employee. Evaluations shall be primarily based upon the mutually developed and agreed upon performance goals and objectives for that year's evaluation as well as upon the performance of the full range of duties required of Employee as the City Attorney by the laws of the State of California, the Livermore Municipal Code, and the Council goals and policies. The City Council and Employee shall also assess the quality and effectiveness of their working relationship. After reviewing Employee's performance based upon the agreed upon goals and objectives, the City Council shall notify City Attorney in writing whether the City Attorney has performed, in the Council's judgment, satisfactorily or unsatisfactorily.

VI. PROFESSIONAL DEVELOPMENT

City acknowledges its mutual interest in the continuing professional development of Employee. Thus, City agrees to allow and pay all expenses associated with membership fees as well as employment-related conferences, including meals, subscriptions, and professional development costs associated with professional organizations, such as the California Bar Association, the League of California Cities, the Bay Area City Attorney's Association, the Contra Costa City and County Attorney's Association, and the East Alameda County Bar Association. This may include activities such as serving as an officer or board member of such organizations. Professional development activities will not distract Employee from his other duties as City Attorney.

VII. NOTICES

The notices pursuant to this contract shall be by certified registered mail return receipt requested addressed as follows:

A. City:

City Council
City of Livermore
1052 South Livermore Avenue
Livermore, California 94550

B. Employee:

Jason R. Alcalá
City Attorney
City of Livermore
1052 South Livermore Avenue
Livermore, California 94550

VIII. RESIGNATION

Employee may resign, retire, or terminate, without cause, this contract by providing written notice of such event to City in a manner set forth in the Notices (section VII) section of this contract. Employee shall provide the written notice at least 60 days in advance of such event. During the period following notice and until the date the resignation, retirement, or termination of this

contract becomes effective, all rights and obligations of City and Employee under this contract will remain in effect. Upon separation, Employee will be paid for all benefits and earned, accrued, and unused leave in the same manner as City Department Heads upon separation.

IX. GENERAL PROVISIONS

A. This written contract shall constitute the entire agreement between the parties, and they have drafted it jointly. No representations, except for those herein, have been made or relied upon.

B. This contract shall be binding upon and inure to the benefit of the heirs at law and executors of Employee.

C. If any provisions or any portion thereof contained in this contract is held invalid by a court of competent jurisdiction the remainder of this contract shall be deemed severable and shall not be affected and shall remain in full force and effect.

D. This contract may be modified or extended only upon the written consent of City and Employee.

E. Employee will provide the City at least 60 days written notice of the effective date of his resignation or retirement.

F. It is recognized that the position of City Attorney is an executive management position which often requires more than a conventional 40 hour-per-week to provide the desired level of professional service. It is further recognized that to properly fulfill his duties and responsibilities, Employee will devote a considerable amount of time outside normal office hours to the business of the City. Therefore, Employee will not be required to maintain a strict 40 hour-per-week on-site presence at City Hall, and may occasionally be absent from City Hall during normal business hours as is reasonable and appropriate. This flexibility in work schedule shall not be abused. In this regard, Employee is required to maintain a regular on-site presence during normal business hours that is sufficient to properly administer and oversee the activities of the City Attorney's office and its employees, to provide accessibility to City Council members, Department Heads, citizens, and other persons or firms who have business with the City and to generally ensure that the City Attorney's office functions appropriately on a day-to-day basis. Excessive absences during regular business hours will be a matter of concern to the City. Employee is expected to be available at all times, except for the time taken on personal matters, such as vacations. City expects Employee to make prudent and reasonable arrangement for such personal time off, such as reasonable notice and arrangements, for example, for acting City Attorneys.

It is one of the duties of the City Attorney of the City of Livermore to serve as the primary legal advisor to the City for the implementation, support, and articulation of the City Councils' policies and objectives. As such, Employee is expected to maintain a reasonably high level of community involvement, and should become an active participant in community activities including those conducted or sponsored by City and its departments and those conducted or sponsored by various community organizations.

G. In accordance with Government Code Sections 53243, 53243.1, and 53243.2:

(1) In the event Employee is placed on paid leave pending an investigation, Employee shall reimburse such pay to City if he is subsequently convicted of a

- crime involving the abuse of his office or position;
- (2) In the event City pays for Employee's legal criminal defense, he shall fully reimburse such funds to the City if he is subsequently convicted of a crime involving an abuse of his office or position; and,
 - (3) If this contract is terminated, any cash settlement related to the termination that Employee may receive from City must be fully reimbursed to City if he is subsequently convicted of a crime involving an abuse of his office or position.

For the purposes of this section, "abuse or office or position" shall be as defined in Government Code Section 53243.4.

In witness whereof, City has caused this contract to be signed on its behalf by its Mayor, and duly attested by its City Clerk, Employee has signed this document on or before the date written above.

ATTEST:

CITY:



Susan Neer
City Clerk



John Marchand
Mayor

APPROVED AS TO FORM

EMPLOYEE:



Gabriel



Jason P. Alcala
City Attorney