

**CITY OF ANTIOCH
AGREEMENT WITH CORNELIUS H. JOHNSON FOR
CITY MANAGER SERVICES**

The Agreement ("Agreement"), dated for reference purposes only the 26th day of October, 2022, is made and entered into at Antioch, California by and between the City of Antioch, California ("City") and Cornelius H. Johnson ("Johnson").

RECITALS

WHEREAS, the City requires the services of a person with proven executive and administrative qualifications to fill the position of City Manager; and

WHEREAS, the City, acting by and through its City Council, desires to employ the services of Johnson as City Manager and to appropriately compensate him for such services; and

WHEREAS, Johnson desires to be employed by the City as City Manager for appropriate compensation and conditions of employment;

NOW, THEREFORE, in consideration of the mutual promises, terms and conditions contained in this Agreement, the parties agree as follows:

Section 1 – Appointment. The City agrees to employ and appoint Johnson to the position of City Manager for the City of Antioch, California upon the commencement of the Term defined below and does hereby confer upon and delegate to Johnson all of the duties, powers, and responsibilities of City Manager as the same are set forth in State law, the City of Antioch Municipal Code, the ordinances, resolutions, policies, rules and regulations existing thereunder, and the provisions of this Agreement ("the Services"). Johnson accepts employment as City Manager and agrees to serve as such. Johnson serves at the pleasure of a majority of the City Council, and nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City Council to terminate the services of Johnson at any time, subject only to the provisions of this Agreement.

Section 2 – Term.

- A. The initial term of this Agreement shall be for a period of twenty-four (24) months beginning 12:00 a.m. October 26, 2022 and shall continue until 12:00 a.m. October 26, 2024 (the "Initial Termination Date"). Johnson's previous contract (Resolution No. 2021/174) which is set to expire on December 12, 2022, will expire and be superseded by this agreement upon its execution.
- B. This agreement shall automatically renew as provided herein unless the City gives the City Manager timely notice of non-renewal. The City must give the City Manager written notice of non-renewal at least 90 days prior

to the Initial Termination Date. Unless such notice of non-renewal is timely given, this Agreement shall automatically renew for an additional one-year Term or for such other term as agreed upon by the parties, which may be negotiated at any time prior to the Initial Termination Date.

Section 3 – Duties. Johnson's employment shall be Full Time. As City Manager, Johnson shall perform the duties and functions of the City Manager identified in State Law, Antioch Municipal Code, the ordinances, resolutions, policies, rules and regulations existing thereunder and other duties and functions as the City Council may assign. Johnson accepts employment subject to the terms and conditions of this Agreement and agrees: (1) to perform all such duties and functions in a professional and ethical manner to the best of his skill and ability; (2) and to use his best efforts to promote and advance the interests and the City Council's goals and objectives.

Johnson understands and agrees that the position of City Manager is not a part time position and will require Johnson to work greater than a customary forty hour week. Although City Hall is generally open to the public during regular set work hours, Johnson shall perform his obligations as full time City Manager during regular work hours and on such evenings, weekends and other times as are necessary. Johnson also acknowledges that the position of City Manager is a position of high visibility before the public and agrees that he shall conduct himself before the public and City staff, both during and outside of regular working hours, in a manner that reflects favorably on the City.

The parties acknowledge that Antioch is a general law city that operates under a Council-Manager form of government and that the City Manager is therefore vested with responsibility for the administration of all City finances and operations in accordance with the City's ordinances, policies and budgets passed by the City Council. Such responsibility includes but is not limited to the authority, without interference from the City Council, to hire, manage, promote, discipline and terminate all non-elected City employees, except the City Attorney, in accordance with any active collective bargaining agreements and the laws and ordinances to which the City is subject, whether local, state or federal.

Section 4 – No Other Employment. Johnson agrees not to undertake any other employment during the term of this Agreement. Johnson further agrees to confer with the City Council before undertaking any non-paid projects for organizations other than the City which may require a substantial time commitment by Johnson.

Section 5 – Termination by Johnson. Johnson may terminate this Agreement and resign as City Manager at any time, for any reason, upon 45 days prior written notice to the City. Upon receipt of written notice from Johnson, the City may elect to immediately remove Johnson from his position as City Manager or to allow Johnson to remain as City Manager for all or any part of the notice period. If the City removes Johnson from his position as City Manager prior to the expiration of notice period, the City will pay Johnson an amount equal to the salary and benefits that Johnson would have received if he had remained in the City Manager position until the expiration of notice period, less legally required withholdings. If the City advises Johnson that he should continue to perform his

duties and functions as City Manager during the notice period, and Johnson fails to do so, Johnson will receive no salary or benefits after the last date on which he actually performs his City Manager duties and functions.

Section 6 – Termination by City.

- A. Termination for Good Cause. The City Manager may be discharged for Good Cause. Good Cause includes, without limitation, and as determined in the reasonable discretions of the City, any of the following: (1) insubordination, (2) dishonesty, (3) embezzlement, (4) violation of Federal, State or local requirements pertaining to conflict of interest, (5) conviction of a criminal act, (6) involvement in any act involving moral turpitude that would compromise Johnson's effective performance as City Manager, (7) taking a position adverse to the interests of the City without the City's prior written consent, (8) violation of any fiduciary duty owed to the City, (9) failure to abide by the employment restrictions under this Agreement, (10) failure to observe or perform any of his duties and obligations under this Agreement, if that failure continues for a period of thirty (30) days after Johnson receives written notice from the City Council specifying the acts or omissions deemed to constitute that failure; or (11) failure to cooperate or participate in a City administrative investigation when named as a subject of the investigation.

If the City elects to terminate this Agreement for Good Cause, it will pay Johnson for all earned pay and accrued, unused vacation leave at the time it notifies Johnson of the termination decision, less legally required withholdings. Johnson will be entitled to no pay or benefits after the date that the City notifies him that this Agreement and his employment by the City are being terminated for Good Cause. If the City Council intends to terminate this Agreement for Good Cause, it will provide notice of its intention to Johnson with a written explanation of the basis for that decision, sent to Johnson's last known home address at least 10 days prior to the City Council meeting in which the termination will be considered. Johnson will have the right to meet with the City Council for the purposes of discussing the basis for his proposed termination for Good Cause prior to a final vote on his termination, which will take place in closed session unless Johnson timely exercises any right he possesses under Government Code section 54957(b)(1)-(2), if applicable. In order to exercise his right to meet with the Council, Johnson must provide a written request to meet to the Mayor of the City and the City Attorney within five days of the date of the meeting in which termination of employment will be considered. Failure to timely provide such written notice shall constitute a waiver of the right to be heard. Unless he timely exercises his right under Government Code section 54957(b)(1)-(2), to the extent those provisions are applicable, Johnson shall have no right to be heard publicly by the City Council prior or subsequent to a final vote on his termination and hereby waives any right to be heard publicly under the Antioch Municipal Code; provided however that no

provision of this Agreement shall constitute a waiver of Johnson's rights in law or equity to recover damages caused by an abuse of this provision by the City.

- B. Termination without Good Cause. If the City elects to terminate this agreement and Johnson's employment without Good Cause as defined in this Agreement, it shall not be required to provide any reasons for that decision to Johnson or anyone else. Notice of Termination Without Cause shall be provided in writing.

The City will pay Johnson for all earned pay and accrued, unused vacation benefits up to but not including the effective date of termination, less legally required withholdings. Additionally, the City will pay Johnson his monthly salary and health benefits amount (meaning just what is known as the flexible benefits or cafeteria plan amount) at the rate he is earning on the date he is given notice that this Agreement and his employment are being terminated, less legally required withholdings ("severance payment") for twelve (12) months following such notice or until he receives comparable employment within such time, at which point the severance payments shall be discontinued. "Comparable employment" shall mean employment paying seventy-five (75%) or more of his then current city manager salary. Any payment of severance is specifically conditioned on Johnson's execution of a waiver and release of all claims against the City accrued during the duration of Johnson's employment with the City.

- C. Johnson shall not be entitled to any severance payment if he is terminated, resigns or retires following his arrest for a felony or a crime of moral turpitude or for a documented incident of dishonesty affecting the affairs of the City. Further, pursuant to Article 2.6 of Division 2 of Title 5 of the California Government Code (section 43243 et seq.), if Johnson is convicted of a crime involving abuse of his position, as defined under State law, he shall not be entitled to paid leave during the investigation, any cash settlement paid related to termination, or any severance payment and Johnson shall reimburse the City any such salary or benefits or payments provided in this circumstance.

Section 7 – Inability To Perform Essential Duties and Functions. Johnson agrees that if he is unable to perform the essential duties and functions of the City Manager position for any reason for more than 120 consecutive calendar days, the City may terminate this Agreement. If the City elects to terminate this Agreement based on Johnson's inability to perform the essential duties and functions of the City Manager position, it will so advise Johnson in a writing sent to Johnson's last known home address. Such termination shall not be deemed termination for "Good Cause" as defined in this Agreement, unless Johnson chooses to contest the termination pursuant to Section 6.A above. At the time the City provides such notice, it will pay Johnson for all earned pay and accrued, unused vacation benefits, less legally required deductions. However, Johnson will not be entitled to any severance payments described above pursuant to Section 6.B. of this Agreement.

If termination of this Agreement is the result of the death of Johnson, the City shall pay all salary and benefits then due to Johnson's legal heir(s).

Section 8 – Compensation.

- A. Salary. The City agrees to pay Johnson for the performance of his duties and functions an annual salary as follows: \$266,400, salary schedule Step (C). The City Council shall determine annually whether Johnson shall be granted a cost of living adjustment (COLA) provided other Executive Management employees and whether Johnson shall be granted any additional salary increase.

Salary will be paid in installments at the same time that other employees of the City are paid. Johnson shall not be entitled to receive payment or credit for, and City shall not pay or credit Johnson for, overtime, compensated time off in lieu of overtime or other compensation except as expressly provided in this Agreement. Johnson acknowledges that the position of City Manager is exempt from the provision of the Fair Labor Standards Act (FLSA).

- B. Benefits. During the term of this Agreement and his employment hereunder, Johnson shall be entitled to receive benefits on the same terms and conditions as other Executive Management employees of the City as set forth in the current City of Antioch Management Benefit Document (the current City of Antioch Management Benefit Document dated October 1, 2016 through September 30, 2021 is attached as Exhibit 1), unless otherwise set forth in this Agreement.

- Retirement benefits available on the same terms and conditions as other Executive Management employees hired on or after January 1, 2013, who are new members of CalPERS and who were not in a reciprocal system, will be enrolled in the State-wide formula of 2.0% at 62; three year average financial compensation period. In accordance with PEPRA, these employees shall pay a PERS Employee Contribution Rate of 41.4% of the Normal Cost, as determined annually by CalPERS, or as may be amended through the Management Benefit Document for Executive Management employees.
- Johnson is entitled to the City of Antioch's Medical-after-Retirement benefit.

Except as expressly set forth in this Agreement, Johnson shall not be entitled to nor be paid for any other benefits available to non-Executive Management employees of the City.

Section 9 – Performance Evaluations.

- The City Council recognizes that for the City Manager to respond to its needs and to grow in the performance of the City Manager's job, the City Manager needs to know how the City Council members evaluate the City Manager's performance. To assure that the City Manager gets this feedback, the City Council shall conduct an evaluation of the City Manager's performance on or about the six (6) month anniversary of the initial term of this agreement stated in Section 2.A. – Term. The City Council and the City Manager shall jointly define goals and performance objectives which they deem necessary for the proper operation of the City in the attainment of the City Council's policy objectives, and shall establish the relative priority among the various goals and objectives. The City Council shall review and provide the City Manager with a written evaluation of his performance based on criteria established by the City Council with the City Manager's assistance. The City Council and the City Manager shall jointly establish written performance goals and objectives within the first 30 days of the initial term of this agreement stated in Section 2.A. - Term for the balance of the first year of the City Manager's service.
- The City Council shall conduct such evaluation and goal-setting at least annually thereafter. In the annual evaluation, the Council and City Manager shall jointly define such goals and performance objectives and shall further establish a relative priority among those goals and objectives. The City shall review and consider Johnson's performance as City Manager at least annually as close as reasonably possible to the expiration of each twelfth month of this Agreement. The review shall be discussed with Johnson and reduced to writing.

Section 10- Confidential Information. Johnson agrees that he will not reveal any confidential or attorney-client privileged information or work-product about the City, City Officials, or City employees that he learns while performing the duties and functions of City Manager. Johnson understands that attempting to use any such information against the City in any future subsequent proceeding against the City can be deemed "self-help" discovery and the City would be permitted to petition for the return of any unauthorized use and for appropriate sanctions to be issued.

Section 11 – City Property. Johnson agrees that all materials, regardless of their form, that he receives, creates or produces in connection with this Agreement and/or his employment as City Manager are and will remain the exclusive property of the City. Johnson will immediately deliver all originals of such materials to the City that are in his possession or control upon termination of this Agreement.

Section 12 – Assistance in Litigation. Johnson agrees that he will furnish information and proper assistance to the City as it may reasonably require with any litigation in which it is or may become involved, either during or after the termination of this Agreement. Johnson further agrees that he will not discuss, reveal or convey any information or documents pertaining to the City to any person or entity, or to any attorney for or representative of any person or entity, with actual or potential claims adverse to the City

except pursuant to duly issued legal process or as otherwise authorized by the City. Johnson agrees to notify the City immediately upon receipt of any legal process pertaining to the City. This provision shall not apply to any criminal investigation targeting any City official or employee.

Section 13 – Governing Law. This Agreement will be construed and enforced in accordance with the laws of the State of California.

Section 14 – Headings. The headings used in this Agreement are provided for convenience only and may not be used to construe meaning or intent.

Section 15 – Assignment. Neither this Agreement nor any interest in this Agreement may be assigned.

Section 16 – Severability. If any provision or portion of this Agreement is held to be invalid or unenforceable, this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable provision(s) or portion(s) had never been included.

Section 17 – Notices. Notices pursuant to this Agreement will be deposited with the United States Postal Service, postage prepaid and addressed as follows:

City:
Mayor's Office
City of Antioch
P.O. Box 5007
Antioch, CA 94531- 5007

With a copy to: City Attorney
City of Antioch
P.O. Box 5007
Antioch, CA 94531 – 5007

Johnson:
Cornelius H. Johnson
at current address in the
City of Antioch payroll system

Section 18 – Modification. This Agreement may only be modified by a writing executed by the parties, the City Council having approved the modification on behalf of the City.

Section 19 – Entire Agreement. This Agreement supersedes any and all other agreements, either oral or in writing, and contains all agreements between Johnson and the City regarding his employment as City Manager. Johnson and the City agree that no representations, inducements, promises or agreements, oral or otherwise, have been made to either party, or anyone acting on behalf of either party, which are not stated herein, and that no agreement, statement, or promise not contained in this Agreement will be valid or binding on either party.

Section 20 – Effective Date. The effective date of this Agreement is the date this document is executed by the Mayor on behalf of the City; and all salary and other compensation benefits shall be paid in accordance to the first day that is referenced in Section 2.A. - Term.

(Signatures on following page)

City of Antioch

By: 
Lamar Thorpe, Mayor

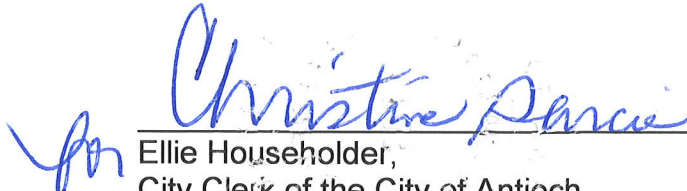
Date: 11/9/2022

Approved as to form:


Thomas Lloyd Smith, City Attorney

Date: 10/31/2022

Attest


Ellie Householder,
City Clerk of the City of Antioch

Date: 11-15-2022

Accepted by:


Cornelius H. Johnson

Date: 10/31/22