

**CITY MANAGER AT-WILL EMPLOYMENT AGREEMENT
WITH AMY NILSEN**

THIS AGREEMENT is made and entered into this 7th day of October of 2024, and becomes effective on November 3, 2024, by and between the CITY OF FORTUNA, a California Charter City, (hereinafter "Employer or City Council"), and AMY NILSEN, (hereinafter "Employee") both of whom understand as follows:

WITNESSES:

WHEREAS, Chapter 2.08 of the Fortuna Municipal Code, establishes the Office of the City Manager, and delineates the duties thereof; and

WHEREAS, Employer desires to obtain the services of said Employee to perform the duties of the Office of the City Manager of the City of Fortuna as provided by the Fortuna Municipal Code; and

WHEREAS, Employer desires to employ Employee and Employee desires to be employed as City Manager for the City of Fortuna on the terms and conditions set forth in this Agreement, and

WHEREAS, it is the desire of the Fortuna City Council, to provide certain benefits, to establish certain conditions of employment, and to set working conditions of said Employee within the framework of an at-will employment relationship; and

WHEREAS, it is the intention of the parties to fully comply with the provisions of the City's Municipal Code;

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

Section 1: DUTIES

Employer hereby agrees to employ Employee as City Manager of Employer to perform the functions and duties of City Manager as set forth in the Fortuna Municipal Code, resolutions, ordinances, and/or other regulations of the City, and to perform other legally permissible and proper duties and functions as the City Council shall from time-to-time assign.

Section 2: TERM

- A. Employee agrees to remain in the exclusive employ of Employer until October 30, 2027("Expiration Date"), and neither to accept other employment nor to become employed by any other employer until said Expiration Date, unless this Agreement is sooner terminated as provided herein. Employee may engage in outside consultation with the prior and continuing approval of the City Council and to the extent that such outside consultation does not interfere with the duties and responsibilities set forth in this Employment Agreement. It is specifically understood and agreed that any outside consultation is to be secondary to this employment by the City of Fortuna and shall not conflict or interfere in any way with the full-time nature of this City employment.
- B. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the Council to terminate the services of Employee at any time, subject only to the provisions set forth in Section 3, paragraphs A, B and C, of this Agreement.
- C. Nothing in this agreement shall prevent, limit, or otherwise interfere with the right of the Employee to resign at any time from their position with Employer, subject only to the provision set forth in Section 4 of this Agreement.

Section 3: TERMINATION AND SEVERANCE PAY

Because positive and confidential relations are necessary between the Employee and the City Council, Employee understands and agrees that he/she serves at the pleasure of the City Council and may be terminated at any time, at the will of the City Council, subject only to the notice of termination provisions set forth herein.

- A. This Agreement shall terminate upon the occurrence of any of the following events:
 - 1. Upon thirty (30) days notice given to the Employer by the Employee; or
 - 2. Upon the death of the Employee; or

3. Upon the effective date of retirement from the Employer's service pursuant to PERS; or
4. By motion carried by three (3) affirmative votes of the City Council of the City, with or without cause.

Notwithstanding the provisions of Section 3.A.4, above, Employee may not be terminated (excepting a termination for cause) for a period of six (6) months following a municipal election wherein (a) new Council Member(s) is/are seated, or when (a) new Council Member(s) is/are appointed to enable such new Council Member(s) adequate time to assess Employee's performance. "Termination for Cause" shall include:

1. Willful breach of the Agreement as interpreted pursuant to Labor Code Section 2924.
 2. Habitual neglect of the duties required to be performed as City Manager as interpreted pursuant to Labor Code 2924.
 3. Any act of dishonesty, fraud, misrepresentation or other act of moral turpitude.
 4. Conviction of any act which would constitute a serious crime, whether misdemeanor or felony.
 5. Willful violations of Employer policies of a serious nature, including for example, Employer's Sexual Harassment or "Drugs in the Work Place" policies.
 6. Inability or unwillingness to perform the duties of the position for a period of sixty (60) consecutive days.
- B. In the event Employee is terminated without cause before October 30, 2027, then in that event Employer agrees to pay Employee the lesser of (i) a lump sum cash severance payment (the "Severance Payment") equal to the total of the Employee's then current aggregate salary, benefits, and deferred compensation that he/she would have been entitled to receive for a period of six (6) months under the terms of this Agreement or (ii) a lump sum cash severance payment equal to the total of the Employee's then current aggregate salary, benefits, and deferred compensation that he/she would have been entitled to for the time from the effective date of the termination through the Expiration Date. Employee shall also be compensated for all earned and unused vacation as of the effective date

of the termination. Earned Sick Leave will be compensated according to the same provisions as other Unrepresented Employees. In the event Employee is terminated for cause, then, in that event, Employer shall have no obligation to pay the Severance Payment.

- C. In the event Employer at any time during the term of this Agreement reduces the salary or other financial benefits of Employee in a greater percentage than an applicable across-the-board reduction for all Unrepresented Employees of Employer, or in the event Employer refuses, following written notice, to comply with any other provision benefiting Employee herein, or the Employee resigns following a formal indication by the Council that he/she resign, then in that event the Employee may, at his/her option, be deemed to be terminated at the date of such reduction or such refusal to comply within the meaning and context of the herein severance pay provision and shall be entitled to Severance Pay in accordance with Section 3B above.

Section 4: RESIGNATION

In the event Employee voluntarily resigns his/her position with Employer before expiration of the previously mentioned term of the employment, then Employee shall give Employer no less than thirty-days (30) written notice in advance, unless the parties agree otherwise. If Employee resigns, employee is not entitled to the Severance Payment.

Section 5: City Council Commitments:

- A. Except for the purpose of inquiry, the City Council and its members shall deal with all subordinate City employees, officers, contractors, and consultants solely through the Employee or the Employee's designee, and neither the City Council nor any member thereof shall give direction to any subordinate of the Employee, either publicly or privately.
- B. No member of the City Council will order the appointment or removal of any person to any office or employment under the supervision and control of the Employee.
- C. Neither the City Council nor any of its members shall interfere with the execution of the powers and duties of the Employee, as specified in the City Charter, the Municipal Code, this Agreement, or any other lawfully adopted and authorized document.

Section 6: COMPENSATION

Employer agrees to pay Employee for his/her services rendered pursuant hereto an initial annual base salary of \$160,000 payable in installments at the same time as other Unrepresented Employees of the Employer are paid.

In addition, Employer agrees to increase said salary in increments of three percent (3%) percent per year in conjunction with the performance evaluation provided that the Employee has performed in a satisfactory manner as determined by the City Council in its sole and absolute discretion. Said reviews will be conducted on an annual basis during the month of October each year, in conjunction with the performance evaluation. The City Council may conduct interim reviews at any point during the term of this Agreement in its discretion.

Except as hereinafter provided, Employee shall receive such other and further benefits as are accorded other Unrepresented Employees of the Employer, including, but not limited to, holidays, sick and bereavement leaves, and executive leave days. Notwithstanding the foregoing, in no event shall Employee receive cost of living or salary adjustments provided to Unrepresented Employees.

Section 7: PERFORMANCE EVALUATION

- A. The Council shall review and evaluate the performance of the Employee at least once annually during the month of October. Said review and evaluation shall be in accordance with specific criteria developed jointly by Employer and Employee. Said criteria may be added to or deleted from as the Council may from time to time determine, in consultation with the Employee. Further, the Mayor shall provide the Employee with a summary written statement of the findings of the City Council and provide an adequate opportunity for the Employee to discuss his/her evaluation with the City Council.
- B. Annually, in conjunction with the performance evaluation, the City Council and Employee shall define such goals and performance objectives that they determine necessary for the proper operation of the City of Fortuna and in the attainment of the City Council's policy objectives, and shall further establish a relative priority among those various goals and objectives, said goals and objectives to be reduced to writing. They shall generally be attainable within the time limitations as specified and the annual operating and capital budgets and appropriations provided.
- C. In effecting the provisions of this Section, the City Council and Employee mutually

agree to abide by the provisions of applicable law.

Section 8: EQUIPMENT

Employer shall provide all office, computing, and communications equipment (including cellular phone), furniture, and fixtures necessary and convenient to carry out the terms of this Agreement. Such equipment, furniture and fixtures shall be deemed the property of the Employer.

Employer shall pay for the purchase, installation, and maintenance of compatible computer equipment (hardware, software and internet access) for Employee at his/her residence, primarily for his/her use in conducting City business; provided, however, that it is expressly understood that the equipment may be subject to incidental personal use by Manager so long as it does not interfere with the equipment's primary business use.

Section 9: TELECOMMUTE

Employee shall be permitted to telecommunicate and work from home periodically provided that doing so is compatible with the interests of the City, and is not detrimental to routine City function.

Section 10: AUTOMOBILE

Employee's duties require that he/she have the use at all times during his/her employment with Employer of an automobile. Use of the City vehicle shall be limited to City business only, and Employee shall not use the City vehicle to commute to and from his/her home. In addition, Employer shall provide a car allowance of four hundred dollars (\$400) per month to compensate Employee for the use of his/her personal vehicle.

Section 11: VACATION, SICK, AND MANAGEMENT LEAVE

- A. The Employee shall utilize and accrue, and have credited and removed from his/her personal account, vacation, holidays (including personal holidays), and sick leave at the same rate and on the same basis as other Unrepresented Employees of the City. In the event of the termination, retirement or expiration of this Agreement, the Employee shall be entitled to payment of all leave balances in accordance with this Agreement. Earned Sick Leave, if any, will be compensated according to the same provisions as other Unrepresented Employees.
- B. Employee shall receive four weeks of vacation per year.

- C. Employee shall be given the same holidays as other Unrepresented Employees of the City.
- D. Employee shall receive 80 hours of management leave per year in recognition of the time Employee must work outside normal office hours.
- E. Employee shall be credited with such vacation, sick and management leave as he/she has accrued prior to the commencement date of this Agreement.

Section 12: DISABILITY, HEALTH, AND LIFE INSURANCE

- A. The Employer agrees to provide health insurance (including medical, dental, and vision coverage to the Employee and family), life insurance, workers compensation, and short-term disability coverage to the Employee, and to pay all premiums thereon on the same basis as other Unrepresented Employees of the City.
- B. Employee shall have the option to “buy out” Employers health insurance coverage (medical coverage to the employees and eligible dependents), and not receive such Employer provided health insurance coverage. If employee elects to do so by written notice to Employer, Employee’s annual salary shall be increased by ten thousand dollars (\$10,000) as “buy out” payment, which shall be paid in the same installments as Employee’s salary.
- C. Employer’s Medicare contribution of 1.45% is matched by an Employee contribution of 1.45% of Employee’s salary for mandated Medicare coverage.

Section 13: RETIREMENT

Employer agrees to pay the Employer’s cost, excluding the Employee’s share, into the Public Employees’ Retirement System (PERS 2.0% at 62 formulas) for the benefit of the Employee.

To the extent authorized by Internal Revenue Code Section 457 and regulations applicable thereto (“federal laws”), City agrees to pay annually, on behalf of Employee 75% of the maximum allowable contribution pursuant to applicable federal laws, into the Employee’s deferred compensation account with the City’s current deferred compensation provider.

Section 14: DUES AND SUBSCRIPTIONS

Employer agrees, to the extent it is financially able and with City Council approval, to budget for and to pay for professional dues and subscriptions of Employee necessary for his/her continuation and full participation in national, regional, state, and local

associations and organizations necessary and desirable for his/her continued professional participation, growth, and advancement, and for the good of the Employer.

Section 15: PROFESSIONAL DEVELOPMENT

- A. Employer hereby agrees, to the extent it is financially able and with City Council approval, to budget for and to pay for travel and subsistence expenses of Employee for professional and office travel, meetings, and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official functions for Employer, including but not limited to the League of California Cities annual Conference and the annual International City Managers Association Meeting, City Manager's Department meeting, and such other national, regional, state, and local governmental groups and committees thereof which Employee serves as a member.
- B. City recognizes that Employee may incur expenses of a non-personal, job-related nature that are reasonably necessary to Employee's service to City. Employer agrees to either pay such expenses in advance or to reimburse the expenses, so long as the expenses are incurred and submitted according to City's normal expense reimbursement procedures or such other procedure as may be designated by the City Council. To be eligible for reimbursement, all expenses must be supported by documentation meeting City's normal requirements and must be submitted within time limits established by City.
- C. Employer agrees to pay the professional dues and subscriptions on behalf of Employee which are necessary for Employee's continuation or full participation in international, national, regional, state, or local associations and organizations necessary and desirable for Employee's continued professional participation, growth and advancement, or for the good of the City, in an amount up to Three Thousand Five Hundred Dollars (\$3,500.00) per year.
- D. Employer agrees to pay Employee's travel and subsistence expenses for official travel, meetings, and occasions reasonably necessary to continue Employee's professional development, and for Employee's reasonable participation in necessary official and other functions for the City; including, but not limited to, national, regional, state, and local conferences, and governmental groups and committees on which Employee serves as a member. Notwithstanding the above, the number of conferences or meetings City will pay for each year, and attendance at out-of-state conferences and meetings, shall be at the discretion of the City Council as set forth in the City's budget.

Section 16: INDEMNIFICATION

Consistent with the California Government Code and local law, City shall defend, hold harmless, and indemnify Employee using legal counsel of City's choosing, against Employer shall defend, save harmless, indemnify Employee against any tort, professional liability claims or demand or other civil legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employees duties as Employee. Legal representation, provided by City for Employee, shall extend until a final determination of the issues including any and all losses, damages, judgments, interest, settlements, fines, court costs, and the reasonable costs and expenses of legal proceedings, including appeals, and including attorneys' fees, and expert witness fees and all other trial and appellate costs, and other liabilities incurred, imposed upon, or suffered by Employee in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened. Employer may compromise and settle any such claims or disputes and pay the amount of any settlement or judgment rendered thereon.

Notwithstanding the foregoing, Employer shall not be obligated to defend or indemnify Employee when it determines that Employees act or omission was not within the scope of employment or that Employee acted or failed to act because of actual fraud, malice or corruption.

In the event there is a conflict of interest between Employer and Employee such that independent counsel is required for Employee, Employee may engage his/her own legal counsel, in which event City shall indemnify Employee, including direct payment of all such reasonable costs related thereto.

Finally, in any criminal proceeding brought against Employee, Employer is not required to defend or indemnify, but in its discretion, may elect to do so.

Section 17: BONDING

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

Section 18: OTHER TERMS AND CONDITIONS OF EMPLOYMENT

- A. The Council, in consultation with the Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, 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 of Fortuna Charter and Municipal Code or any other law.

- B. Any modifications to this Agreement shall be effective only if in writing and signed by both of the parties hereto.

- C. All provisions of the City of Fortuna Charter and Municipal Code, regulations and rules of the Employer relating to vacation and sick leave, retirement and pension system contributions, holidays and other benefits and working conditions as they now exist or hereafter may be amended also shall apply to Employee as they would to other employees of the Employer, in addition to said benefits enumerated specifically for the benefit of the Employee except as herein provided.

Section 19: NOTICES

Notices pursuant to this agreement shall be given via first class mail by deposit in the custody of the United States Postal Service postage prepaid, addressed as follows:

- (1) EMPLOYER: City of Fortuna, 621 11th Street, Fortuna; CA 95540
- (2) EMPLOYEE: Amy Nilsen, 1510 Claire Court, Eureka, CA 95501

Alternately, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course transmission in the United States Postal Service.

Section 20: GENERAL PROVISIONS

- A. The terms herein shall constitute the entire Agreement between the parties. This Agreement embodies the whole Agreement between the parties hereto, and there are no inducements, promises, terms or obligations made or enforced into by the City or Perry other than those contained herein.

- B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee and may only be amended by the mutual written agreement of the parties.

- C. This Agreement shall become effective commencing November 1, 2024. The "Anniversary Date" of this Agreement shall be November 1 of each year thereafter.

- D. If any section 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.

- E. Employer and Employee agree that they will, at all times, assist each other in defending any litigation involving the City, or Employee's duties with the City, and Employer agrees to defend Employee against any claim or action against him for an injury arising out of an act or omission occurring within the scope of his/her employment. The parties shall each comply with the requirements of Section 825 of the Government Code or its successor, in implementing this paragraph.
- F. The parties agree that any ambiguity in this Agreement shall not be construed or interpreted against, or in favor of, either party.

IN WITNESS WHEREOF, the City of Fortuna has caused this agreement to be signed and executed its behalf by its Mayor and duly attested by its City Clerk, and the Employee has signed and executed this agreement, both in duplicate, the day and year first above written.

Tami Trent, Mayor
City of Fortuna

Amy Nilsen, Employee

ATTEST:

Siana Emmons, City Clerk

APPROVED AS TO FORM:

Ryan Plotz, City Attorney