

CITY MANAGER EMPLOYMENT CONTRACT

THIS AGREEMENT is entered into this 16th day of Oct. 2001, by and between the City of Clayton, Contra Costa County, State of California, a municipal corporation (hereinafter "Employer" or "City"), and Gary A. Napper (hereinafter "Employee"), both of whom understand as follows:

WHEREAS, Employer desires to employ the qualified professional services of Employee as City Manager of the City of Clayton, as provided by the Clayton Municipal Code; and,

WHEREAS, it is the desire of Clayton City Council (hereinafter "Council") to provide certain benefits, establish certain conditions of employment, and to set working conditions of Employee; and,

WHEREAS, it is the desire of the Council to (1) secure and retain the services of Employee and to provide inducement for him to remain in such employment, (2) to make possible full work productivity by assuring Employee's morale and peace of mind with respect to future security, (3) to act as a deterrent against malfeasance or dishonesty for personal gain on the part of Employee, and (4) to provide a just means for terminating Employee's services at such time as he or City may so desire; and,

WHEREAS, Employee desires to accept employment as City Manager of City of Clayton;

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

Section 1 Duties

City agrees to and does hereby employ Gary A. Napper as City Manager of City to perform the function and duties specified in the Clayton Municipal Code Section 2.10.070, and to perform other legally permissible and proper duties and functions as the Council may assign from time to time. In addition, Employee shall serve as Executive Director to the Clayton Redevelopment Agency. The City Manager has the authority to interview, hire and fire City employees, and to direct the workforce.

Section 2 Term

- A. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City or Employee to terminate the services of Employee at

any time, subject to the provisions set forth in Sections 4 or 5 of this Agreement and any applicable local, state or federal laws, rules, regulations or applicable court decisions or rulings.

- B. Employee agrees to remain in the exclusive employment of City, and not to become employed by any other employer until this Agreement is terminated.
- C. The Agreement shall remain in force and effect until Employee's employment is terminated as provided in Sections 4 or 5 of this Agreement.

Section 3 Suspension

Employer may suspend Employee with full pay and benefits at any time during the term of this Agreement, but only if a majority of Council votes to suspend Employee, provided, however, the Employee shall have been given written notice setting forth any charges regarding his performance or otherwise at least fifteen (15) days prior to such hearing by the Council member(s) bringing such charges.

Section 4 Termination

- A. Pursuant to Clayton Municipal Code Section 2.10.100, Council retains discretion to terminate Employee's employment with or without cause. However, if Employee is terminated or Employee resigns following a request by a majority of the council at a public meeting or closed session that he resign during the time that the Employee is willing and able to perform his duties under this Agreement, then Employer agrees (i) to provide forty-five (45) days' written notice to terminate or accept a written resignation, and (ii) to make severance payments to Employee beginning at the conclusion of this forty-five (45) day notice period. The total cash severance payments shall be equal to six (6) months' aggregate salary during the first two years of employment, and increasing by one (1) month's aggregate salary during each of the next three successive years of employment up to a total of nine (9) months. Aggregate salary shall mean to include full salary and insurance benefits (consisting of health and life insurance as detailed in Section 13 of this Agreement). Additionally, Employee shall be compensated in a lump sum for any accrued benefits on the date of termination, as identified in Sections 12 and 19 of this Agreement. Such benefits include vacation, sick leave and administrative leave.

Said severance payments shall be paid in full to Employee by City within fifteen (15) working days after the effective date of the Employee's termination, or may be paid in other increments as mutually determined.

If Employee is terminated because of willful misconduct in the performance of his duties as City Manager or because of conviction of a felony or other criminal offense involving illegal personal gain to Employee, City shall have no obligation to make severance payments pursuant to this Section. However, Employee shall be compensated in a lump sum for any accrued compensable benefits.

- B. If City, at any time during the term of this Agreement, reduces the salary or other financial benefits of Employee in a greater percentage than an across-the-board reduction for all employees of City; or in the event Employer refuses, following written notice, to comply with any other material provision benefiting Employee herein, or the Employee resigns following request or suggestion by a majority of the Council at a public meeting or closed session that he resign, then in such event, Employee may, at his option, be deemed to be terminated at the date of such reduction or such refusal to comply within the meaning and context of the severance pay provisions of Section 4 of this Agreement.
- C. City shall not terminate Employee within ninety (90) days following any regular or special election at which a member of the City Council is elected.
- D. In the event Employee voluntarily resigns his position with City, Employee shall give City thirty (30) days' minimum written notice, unless the parties otherwise agree.

Section 5 Disability

If Employee is unable to perform his duties because of sickness, accident, injury, mental incapacity or health for a period of four consecutive months, and at the conclusion of such four-month period Council determines that Employee is permanently disabled, Employer shall have the option to terminate this Agreement. If Employee is terminated because of permanent disability, employee shall be compensated in a lump sum for any accrued compensable benefits as identified in Section 4 of this agreement. However, Employer shall have no further responsibility to make severance payments pursuant to Section 4 of this Agreement.

Section 6 Salary

City agrees to pay Employee for his services an annual base salary of \$112,000. Effective October 29, 2001 through February 15, 2002, City shall pay Employee said base salary in installments at the same time as other employees of the City are paid except Employee is not entitled to PERS retirement enrollment or comprehensive health insurance enrollment as Employee represents such typically-provided benefits are presently unnecessary. In lieu of Employee enrollments during this time period, City agrees to compensate Employee in cash payments the incremental value of the City-paid

employee portion of the PERS costs and the \$640/month City contribution for disability, health and life insurance.

Commencing February 15, 2002, City shall ensure Employee is enrolled in the City-provided PERS retirement system and the City-provided disability, health and life insurance programs, and City shall make no further "in lieu" payments to Employee.

Employee shall also be annually eligible to receive an increase in the base salary for performance pay, if he achieves the mutually agreeable goals as identified in Section 7 of this Agreement, as determined by Council in its sole discretion. Employee shall be eligible for the first performance payments on Employee's first anniversary date, and then annually with his performance evaluation.

In addition, City may increase said base salary and/or other benefits of Employee in such amounts and to such extent as the Council may determine that it is desirable to do so on the basis of an annual salary review in June of each year.

Section 7 Performance Evaluation

- A. The Council shall review and evaluate the performance of the Employee at least once annually prior to or on Employee's anniversary date. The 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 Employee. Further, the Council shall provide the Employee with a written summary statement of the evaluation and provide the Employee an adequate opportunity to discuss his evaluation with Council in closed session.

- B. Annually, the Council and Employee shall define such goals and performance objectives that they determine are necessary for the proper operation of the City and the attainment of the Council's policy objectives, and shall further establish a relative priority among those various goals and objectives. The goals and objectives shall be reduced to writing, and shall generally be attainable within the time limitations as specified and the annual operation and capital budgets and appropriations provided. Further, if for any reason or no reason such goals and objectives are not identified or reduced to writing, Employee's performance pay provisions still apply, as the Council may determine.

Section 8 Hours of Work

The Employee shall devote his full time to this position as City Manager and shall generally work normal office hours. It is recognized that Employee must devote a great deal of time outside the normal office hours to business or related business activities,

meetings and functions of the City, and to that end, Employee will need to exercise a flexible work schedule.

Section 9 Outside Activities

Employee's outside activities shall not interfere with the performance of Employee's duties under this Agreement, as determined by the Council in its sole discretion.

Section 10 Relocation Expenses

Employee shall be reimbursed, or Employer may pay directly, for the actual expenses, in an amount not to exceed \$5,000, of packing and moving himself, his family, and his personal property from Glendora, California to Clayton, California, which shall include packing, unpacking, transportation, containers and any necessary storage and moving insurance charges. Employee shall obtain two written bids from competent movers to establish fair costs of service.

Section 11 Automobile

Employee's duties require that he have continuously available transportation for City business or related purposes. Employee shall provide a vehicle for his use for normal business and personal use. The Employer shall provide Employee with an auto allowance of \$400/month. Employer shall pay Internal Revenue Service mileage rate for personal auto use for business or related trips in excess of 200 miles total for any single trip. Employee shall be responsible for all operation expenses, maintenance expenses, replacement cost and insurance for the automobile. Employee shall at all times maintain insurance for the automobile and shall inform his insurer that the automobile is used for personal and business purposes. The Employee shall provide to the City a Certificate of Insurance showing comprehensive automobile liability coverage and naming the City as an additional insured.

Section 12 Vacation, Administrative and Sick Leave

As an inducement to Employee for him to become City Manager, Employee shall be credited at the start of employment with fifteen (15) days of paid vacation, fifteen (15) days of administrative leave and twelve (12) days of paid sick leave as the first year's leave in these categories. Beginning with the first day of employment, Employee shall accrue paid vacation leave at the rate of 10 days per year evenly distributed over the periodic payroll dates, and the first year shall be prorated over the fiscal year. Beginning the second year of employment employee shall receive 15 days per year of paid vacation. Beginning the third year of employment, and thereafter, Employee shall receive 20 days per year of vacation. Employee shall receive sick leave at the rate of one day each month. Employee shall accrue 15 days administrative leave annually awarded on July 1 of each year, the first award to occur on July 1, 2002. Employee shall be allowed to take up to fifteen (15) days annual unpaid leave of absence. Employee may, annually on his

anniversary date, cash out a maximum of 50% of paid vacation earned and may not accrue vacation time from any prior year beyond his anniversary date. Employee can accrue sick leave without limit; however upon leaving City service for any reason, Employee may cash out a maximum of one-third of the amount of sick leave accrued. Employee can accrue a maximum of six weeks of administrative leave.

Section 13 Disability, Health and Life Insurance

- A. Employer agrees to provide a total of \$7,680 annually for the following purposes: (i) to make required premium payments for Employee and his dependents with the City's regular medical, major medical, dental and any optical insurance, and (ii) for contribution into a deferred compensation plan.
- B. Employer shall provide for Employee a group rate LTD (long-term disability) insurance policy in the same manner it provides such insurance for its other employees.

Section 14 Retirement

- A. Employer shall provide Employee with enrollment in the California Public Employees Retirement System (PERS), effective February 15, 2002. Employer shall pay Employee's and Employer's portion of the PERS costs.
- B. City shall provide Employee with a deferred compensation plan into which he may deposit funds from his salary.

Section 15 Expense Reimbursement

- A. The City recognizes that certain general expenses, dues, subscriptions, travel and subsistence expenses are reasonable incurred by the Employee in the performance of job-related activities, functions, meetings, professional development and professional conferences, such as the annual International City/County Management Association, League of California Cities and League's Managers' Division. The City agrees to budget and pay for or reimburse the Employee for these expenses.
- B. City agrees to reimburse Employee for expenses related to educational courses, short courses, seminars and institutes that will benefit the City and improve Employee's professional abilities. These expenses will be approved in advance by the Council.
- C. City shall reimburse Employee for membership and participation in any community or civic organizations in which the City requires or encourages

Employee to participate. These expenses will be approved in advance by the Mayor.

Section 16 Housing Assistance

- A. At such time Employee prepares to commence the purchase of housing within City for himself and his family, the Council agrees to consider such housing assistance suitable to both parties which may include but is not limited to such practices as shared equity models, variable interest or fixed rate loans, interest-only loans and deferred principal loan payments. Such housing assistance considerations may cover closing cost expenses or new loan points.

- B. Employee agrees that should any potential housing assistance benefits be provided by City, such assistance is available only for the Employee's initial relocation purchase in City. Upon termination from City or additional relocation within City by Employee, such provided housing assistance shall terminate. The Employee shall have a set period of time in which to sell the house or buy the City out of his assistance.

Section 17 Communications Technology

Given the importance of communication technologies to the business of City government, the City will provide and pay for a cellular phone and monthly services for use by the Employee.

Section 18 Indemnification

- A. The City shall defend, save and hold harmless and indemnify Employee against any tort, professional liability, claim or any other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the course or scope of Employee's employment as City Manager, except for any act or omission which constitutes fraud, corruption, or malice. When this indemnification applies, the City will in good faith provide and pay for a competent defense. City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment, except as otherwise precluded by law.

- B. The City shall provide and pay for all cost of any surety or other bonds required of the Employee.

Section 19 Other Terms and Conditions of Employment

- A. The Council, in consultation with the Employee, may fix any such other terms and conditions of employment relating to performance of the

Employee, provided the terms or conditions do not conflict with the provisions of this Agreement.

- B. All provisions of the City's ordinances, resolution, regulations, memoranda of understanding or directives relating to vacation, administrative leave, sick leave and cost of living benefits applicable to other management employees shall also apply to Employee in addition to the provisions of this Agreement.
- C. Employee shall have, at his option, on his anniversary date of each fiscal year the right to exchange any administrative leave or vacation balances to cash based on his then current hourly rate of salary, with the limitations as identified in Section 12 of this Agreement.

Section 20 Notices

Notices pursuant to this Agreement shall be given in person or by U.S. mail addressed as follows:

Employee: Gary Napper
 City Hall
 6000 Heritage Trail
 Clayton, CA 94517

City: Mayor
 City Hall
 6000 Heritage Trail
 Clayton, CA 94517

The parties shall advise each other of any change in address or phone.

Section 21 General Provisions

- A. This Agreement constitutes the entire agreement between the parties.
- B. Both parties shall comply with all applicable laws of the City of Clayton, State of California and United States of America.
- C. The Employee will not be required or expected to violate any laws or adopted rules, regulation or resolutions of the City, State or Federal governments.
- D. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee.

E. This Agreement shall become effective commencing October 29, 2001, and Gary A. Napper shall become the City Manager of the City of Clayton on that date.

IN WITNESS WHEREOF, the City of Clayton, County of Contra Costa, in the State of California, has caused this Agreement to be signed and executed in its behalf by its Mayor and duly attested by its City Clerk, and the Employee has signed and executed this Agreement, both in duplicate, on of before Oct. 29, 2001.

CITY OF CLAYTON

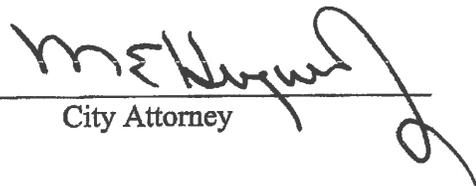
By: 
Title: Mayor

Attest: 
City Clerk

EMPLOYEE

By: 
Gary A. Napper

Approved as to Form and Effect:


City Attorney

FIRST AMENDMENT TO CITY MANAGER EMPLOYMENT CONTRACT

THIS FIRST AMENDMENT TO THE AGREEMENT ("First Amendment") is entered into this 17th day of December, 2013, by and between the City of Clayton, Contra Costa County, State of California, a municipal corporation (hereinafter "Employer" or "City"), and Gary A. Napper (hereinafter "Employee"), both of who understand the follows:

WHEREAS, the parties have heretofore entered into that certain Employment Agreement, dated October 16, 2001 (the "Agreement"); and

WHEREAS, since that time, the Council has made periodic public adjustments to Employee's salary, including increases and more recently successive voluntary decreases self-imposed by Employee.

WHEREAS, since November 1, 2013, the Council and Employee have been actively discussing and negotiating regarding Employee's salary and compensation.

WHEREAS, in light of the City Manager's work performance during the last year, the City Council wishes to amend the Agreement in order to increase the City Manager's salary, restore furlough days consistent with treatment of other City staff, and provide for a pay for performance bonus program as set forth in this Agreement; and

NOW, THEREFORE, in consideration of the terms, covenants and promises contained herein, the above-named parties hereby mutually agree and promise as follows:

1. Amendment of Salary. Section 6 of the Agreement is hereby amended as follows:

"Effective July 1, 2013 through October 28, 2013, City agrees to restore nine of the eleven furlough days and pay Employee for his services an annual base salary of \$182,189.28. Effective October 29, 2013, City agrees to pay Employee for his services an annual base salary of \$190,227.81. City shall pay Employee said base salary in bi-weekly installments at the same time as other employees of the City are paid.

Employee is eligible for enrollment in the City-provided CalPERS retirement system and the City-provided disability, health (medical and dental) and term life insurance programs. City shall pay 100% of the expense for those benefits, and Employee is not eligible for any "in lieu" payments.

Employee shall also be annually eligible to receive and increase in the base salary for performance pay, if he achieves the mutually agreeable goals as identified in Section 7 of this Agreement, as determined by the Council in its sole discretion. Employee shall be eligible for the first performance payments on Employee's next employment anniversary date along with his annual performance evaluation in November of each year.

Beginning Fiscal Year 2013-14, the City may acknowledge Employee for exceptional outcomes, effective teamwork and encourage continued high level performance through

discretionary pay for performance rewards as set forth in this section and as funded each year by the City. The City will determine each year during its annual and mid-year budgeting processes whether funding will be made available for such rewards. The rewards may be cash payments or other forms of recognition that are approved by the City and within its authority.

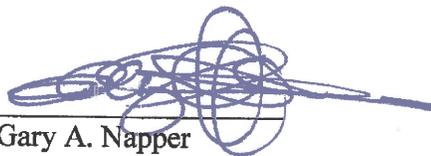
In addition, City may increase said base salary and/or other benefits of Employee in such amounts and to such extent as the Council may determine that is desirable to do so on the basis of an annual salary review in November of each year.”

2. Effect on Agreement. Except as amended by this Amendment, all other provisions of the Agreement remain in full force and effect. From and after the date of this Amendment, whenever the term “Agreement” appears in the Agreement, it shall mean the Agreement as amended by this Amendment.

CITY OF CLAYTON

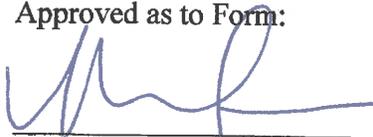
EMPLOYEE

By: 
Hank Stratford, Mayor

By: 
Gary A. Napper

Attest: 
Janet Brown, Interim City Clerk

Approved as to Form:


Malathy Subramanian, City Attorney

SECOND AMENDMENT TO CITY MANAGER EMPLOYMENT CONTRACT

THIS SECOND AMENDMENT TO THE AGREEMENT ("Second Amendment") is entered into this 16th day of December, 2014, by and between the City of Clayton, Contra Costa County, State of California, a municipal corporation (hereinafter "Employer" or "City"), and Gary A. Napper (hereinafter "Employee"), both of who understand the follows:

WHEREAS, the parties have heretofore entered into that certain Employment Agreement, dated October 16, 2001 (the "Agreement"); and

WHEREAS, on December 17, 2013, the parties amended the Agreement to increase the City Manager's salary, remove furlough days in accordance with treatment of other City staff and provide for a pay for performance bonus program (the "First Amendment"); and

WHEREAS, since November 2014, the Council and Employee have been actively discussing and negotiating regarding Employee's salary and compensation.

WHEREAS, in light of the City Manager's performance during the last year, the City Council wishes to amend the Agreement in order to increase the City Manager's salary and remove his voluntarily-imposed final two furlough days in accordance with treatment of other City staff; and

NOW, THEREFORE, in consideration of the terms, covenants and promises contained herein, the above-named parties hereby mutually agree and promise as follows:

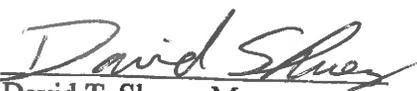
1. Amendment of Salary. Section 6 of the Agreement is hereby amended to include a new second paragraph as follows:

"Effective July 1, 2014 through October 28, 2014, City agrees to remove the final two voluntarily-imposed furlough days and pay Employee for his services an annual base salary of \$ 191,692.80. Effective October 29, 2014, City agrees to pay Employee for his services an annual base salary of \$194,568.19. City shall pay Employee said base salary in installments at the same time as other employees of the City are paid."

2. Effect on Agreement. Except as amended by this Second Amendment, all other provisions of the Agreement and First Amendment remain in full force and effect. From and after the date of this Second Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by the First Amendment and Second Amendment.

CITY OF CLAYTON

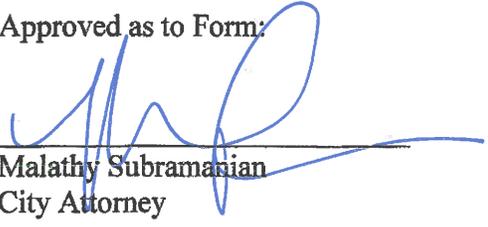
EMPLOYEE

By: 
David T. Shuey, Mayor

By: 
Gary A. Napper

Attest: 

Janet Brown
City Clerk

Approved as to Form:


Malathy Subramanian
City Attorney

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THIRD AMENDMENT TO CITY MANAGER EMPLOYMENT CONTRACT

THIS THIRD AMENDMENT TO THE AGREEMENT ("Third Amendment") is entered into this 1st day of December, 2015, by and between the City of Clayton, Contra Costa County, State of California, a municipal corporation (hereinafter "Employer" or "City"), and Gary A. Napper (hereinafter "Employee"), both of who understand the following:

WHEREAS, the parties have heretofore entered into that certain Employment Agreement, dated October 16, 2001 (the "Agreement"); and

WHEREAS, on December 17, 2013, the parties amended the Agreement to increase the City Manager's salary, remove furlough days in accordance with treatment of other City staff and provide for a pay for performance bonus program (the "First Amendment"); and

WHEREAS, on December 16, 2014, the parties amended the Agreement to increase the City Manager's salary and remove his voluntarily-imposed final two furlough days in accordance with treatment of other City staff (the "Second Amendment"); and

WHEREAS, since November 2015, the Council and Employee have been in active discussions and negotiations regarding Employee's performance in 2015 and the corresponding annual salary and compensation; and

WHEREAS, in light of the City Manager's performance during the last year, the City Council wishes to amend the Agreement in order to increase the City Manager's salary and remove the timing for determining funding for discretionary pay for performance rewards.

NOW, THEREFORE, in consideration of the terms, covenants and promises contained herein, the above-named parties hereby mutually agree and promise as follows:

1. Amendment of Salary.

a. The second paragraph of Section 6 of the Agreement is hereby amended as follows:

"Effective October 30, 2015, City agrees to pay Employee for his services an annual base salary of \$200,016.10. City shall pay Employee said base salary in installments at the same time as other employees of the City are paid."

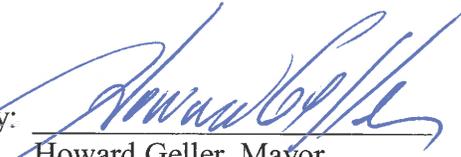
b. The fifth paragraph of Section 6 of the Agreement is hereby amended as follows:

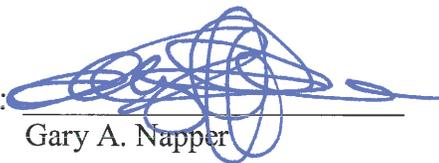
"Beginning Fiscal Year 2013-14, the City may acknowledge Employee for exceptional outcomes, effective teamwork and encourage continued high level performance through discretionary pay for performance rewards as set forth in this section and as funded each year by the City. The City will determine each year whether funding will be made available for such rewards. The rewards may be cash payments or other forms of recognition that are approved by the City and within its authority."

2. Effect on Agreement. Except as amended by this Third Amendment, all other provisions of the Agreement, First Amendment, and Second Amendment remain in full force and effect. From and after the date of this Third Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by the First Amendment, Second Amendment, and Third Amendment.

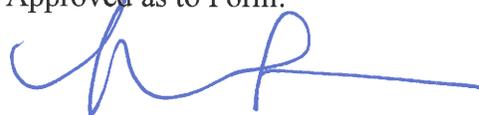
CITY OF CLAYTON

EMPLOYEE

By: 
Howard Geller, Mayor

By: 
Gary A. Napper

Attest: 
Janet Brown
City Clerk

Approved as to Form:

Malathy Subramanian
City Attorney

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