

**Town of Yucca Valley**  
**TOWN COUNCIL STAFF REPORT**

**To:** Honorable Mayor & Town Council  
**From:** Robert Leone, Mayor  
Lona Laymon, Town Attorney  
**Date:** November 10, 2016  
**Meeting Date:** November 15, 2016  
  
**Subject:** Employment Agreement First Amendment- Town Manager

**Recommendation:**

That the Town Council approve the First Amendment to the Town of Yucca Valley Employment Agreement for the Position of Town Manager.

**Order of Procedure**

- Request Staff Report
- Request Public Comment
- Council Discussion/Questions of Staff
- Motion/Second
- Discussion on Motion
- Call the Question

**Discussion**

On October 18, 2016, the Town Council announced that in accordance with the Employment Agreement between the Town and Town Manager Curtis Yakimow, the Town Council has completed an annual performance evaluation of the Town Manager. The Town Council is pleased to report that Mr. Yakimow received an "outstanding" performance evaluation covering the past year, and the Council is pleased with the Manager's efforts to date.

Further, it was the unanimous desire of the Town Council to extend the Employment Agreement with Mr. Yakimow currently scheduled to end in June 2017. Accordingly, the Town Council requested that the Town's ad hoc committee designated as labor negotiators develop a proposed contract extension that is acceptable to both the Town Council and employee, and return the proposed contract extension to the entire Council for consideration within the next 30 days, under the terms broadly identified in April 2016 negotiations.

The negotiation process has now been completed, resulting in the proposed First Amendment to the employment agreement, as recommended by the Ad Hoc Committee. Changes reflected in the proposed amendment are summarized as follows:

1. Base Compensation - from \$149,500 to \$168,000 annually
2. COLA - Language changed for cost of living adjustment to be tied with all Town employees rather than increasing based on LA/ Riverside Co./ OC consumer price index
3. Term - Three year extension from July 16, 2017 to and including July 15, 2020; removes language regarding annual evaluation being performed at least 6 months prior to the expiration of the term
4. Vacation - No change compared with current rate of accrual; removal of language related to lower rate of vacation accrual when Employee is no longer performing services of Director of Administrative Services.
5. Retirement - Continues participation in 457 deferred compensation plan. Employer contribution to deferred compensation plan would be increased from 5% of current salary to the maximum permissible amount as provided by the U.S. Internal Revenue Service Rules and Regulations (currently \$18,000 or \$24,000 if Employee is over the age of 50).

No other changes are proposed to the existing agreement. The effective date of the First Amendment will be July 15, 2016.

Local Agency Comparative

The following table provides a comparative base salary listing for similar public agency positions within the Morongo Basin, reflecting the proposed amendment.

Agency	Position	Base Salary
Hi Desert Water District	General Manager	\$207,000
Morongo Unified School	Superintendent	\$178,000
City of 29 Palms	City Manager	\$178,000
Town of Yucca Valley	Town Manager	\$168,000
Copper Mountain College	President/Superintendent	<del>\$162,000</del>

180,000 (eff. 7/1/2017)

Classification and Compensation Review

As part of the recently completed Town-wide Classification and Compensation review completed by Koff & Associates, the following table summarizes the placement of the Town Manager relative to the 12 comparator agencies used in the study, reflecting the proposed amendment.

**Town Manager**

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<b>Rank</b>	<b>Comparator Agency</b>	<b>Class Title</b>	<b>Top Annual Salary</b>
1	Town of Apple Valley	Town Manager	\$253,920
2	City of Banning	City Manager	\$237,153
3	City of Big Bear Lake	City Manager	\$221,000
4	City of Coachella	City Manager	\$220,000
5	City of Yucaipa	City Manager	\$216,114
6	City of Loma Linda	City Manager	\$210,000
7	City of Cathedral City	City Manager	\$206,640
8	City of Rancho Mirage	City Manager	\$200,000
9	City of Norco	City Manager	\$190,948
10	City of Perris	City Manager	\$189,432
11	City of Highland	City Manager	\$179,184
12	City of Twentynine Palms	City Manager	\$177,996
13	<b>Town of Yucca Valley</b>	<b>Town Manager</b>	<b>\$168,000</b>

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**Alternatives**

None recommended.

**Fiscal Impact**

The proposed amendment will increase the employee's base salary from \$149,500 to \$168,000, an increase of \$18,500. Increases to employer deferred compensation contributions would be approximately \$11,000 annually or approximately \$17,000 annually if Employee is over the age of 50. All proposed changes are accommodated by the FY 2016-18 adopted budget.

**Attachments:**

First Amendment to the Town Manager Employment Agreement

**FIRST AMENDMENT TO THE  
TOWN OF YUCCA VALLEY  
EMPLOYMENT AGREEMENT  
For the Position of  
TOWN MANAGER**

This FIRST AMENDMENT TO THE TOWN OF YUCCA VALLEY EMPLOYMENT AGREEMENT For the Position of TOWN MANAGER (the "First Amendment") is made and entered into November 15, 2016, to be effective retroactive to July 15, 2016 ("Effective Date"), by and between TOWN OF YUCCA VALLEY ("Town"), a California general law Town and municipal corporation organized and existing under the laws of the State of California, and Curtis Yakimow, an individual ("Employee").

**RECITALS**

WHEREAS, on July 15, 2015, the Town approved the TOWN OF YUCCA VALLEY EMPLOYMENT AGREEMENT For the Position of TOWN MANAGER ("Agreement"); and

WHEREAS, the Town Council recently conducted an annual performance evaluation of Employee and provided Employee with an "outstanding" performance evaluation for the past year; and

WHEREAS, it is the desire of the Town Council of the Town of Yucca Valley (hereinafter the "Town Council") to continue to retain Employee to serve in the position of Town Manager; and

WHEREAS, section 7.3 of the Agreement provides that any amendment to the Agreement shall be in writing, signed by the parties, and approved by the affirmative vote of three (3) members of the Town Council; and

WHEREAS, the Town and Employee now desire to amend the Agreement in order to implement the following changes to the terms and conditions of the Agreement: i) base compensation increased from \$149,500 to \$168,000 annually; ii) cost of living adjustment tied to Town employees rather than LA/ Riverside Co./ OC consumer price index; iii) three year term extension from July 15, 2017 until July 15, 2020; iv) removes vacation leave provision language providing lower vacation leave when Employee is no longer performing services of Director of Administrative Service and leaves current accrual rate of 200 hours per year in place; and v) increases employer deferred compensation contribution amount from appx. \$7,475 to the IRS maximum annual contribution, which is currently \$18,000 annually, or \$24,000 annual if Employee is over 50 years of age.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, including the Recitals which are made a part hereof, Town and Employee hereby agree as follows:

## A G R E E M E N T

SECTION 1. The above recitals are incorporated by reference as if set forth in full herein.

SECTION 2. Section 2.1 of the Agreement is hereby amended, in its entirety, to read as follows:

“2.1 Base Compensation. For the services rendered pursuant to this Agreement, Employee shall receive base compensation of One Hundred Sixty-Eight Thousand Dollars (\$168,0000.00) annually (“Salary”), which shall be paid on a pro-rated basis bi-weekly at the same time as other employees of Town are paid. Such Salary shall be adjusted for payroll taxes, workers’ compensation, and other payroll-related liability costs.”

SECTION 3. Section 2.2 of the Agreement is hereby amended, in its entirety, to read as follows:

“2.2 Cost of Living Increase. Town agrees to provide a cost of living adjustment to Employee’s base salary at the same time and at the same rate as that provided, if any, to all Town employees.”

SECTION 4. Section 3.2 of the Agreement is hereby amended, in its entirety, to read as follows:

“3.2 Term. Town hereby employs Employee for an additional three (3) year term, beginning July 16, 2017 and continuing to and including July 15, 2020, subject to termination by the Town or by Employee, with or without cause, as hereinafter provided in Section 3.3, at the conclusion of which this Agreement shall automatically terminate. The Term of this Agreement may be extended upon mutual concurrence from the Town and the Employee, as evidenced by a writing signed by both parties. The Town agrees that prior to the last year of the Agreement, the Parties will meet and confer and the Agreement may be extended for one or more years at that time by mutual consent of the Parties.”

SECTION 5. Subsection (a) of Section 6.1 is hereby amended, in its entirety, to read as follows:

“(a) Vacation. Employee shall accrue vacation at a rate equivalent to two hundred (200) hours per year, which equals 7.69 hours per pay period. Vacation is accrued on a pro rata basis throughout the year.”

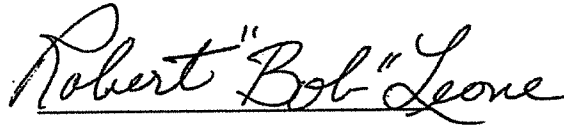
SECTION 6. Subsection (b) of Section 6.4 is hereby amended, in its entirety, to read as follows:

“(b) Town shall permit Employee to continue in the Town-sponsored 457(b) program and shall contribute the maximum permissible (including applicable catch-up provisions) under U.S. Internal Revenue Service Rules and Regulations, which shall be paid on a pro-rated basis bi-weekly at the same time as other employees of Town are paid. The amount of this benefit, including applicable catch-up provisions, is currently \$18,000 per year, or \$24,000 per year if Employee is over the age of 50. The amount of this benefit will adjust automatically to ensure consistency with amendments to the Deferred Compensation Rules & Regulations of the U.S. Internal Revenue Service.”

SECTION 7. Except as expressly amended by this First Amendment, the underlying terms, conditions, and compensation of Town Manager by Town as and for his employment as Town Manager shall be as set forth in the Agreement.

IN WITNESS WHEREOF, the TOWN OF YUCCA VALLEY has caused this First Amendment to be signed and executed on its behalf by its Mayor, and duly attested by its officers thereunto duly authorized, and Employee has signed and executed this First Amendment, both in duplicate.

TOWN OF YUCCA VALLEY



Robert "Bob" Leone, Mayor

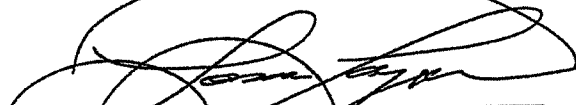
ATTEST:

  
Town Clerk

EMPLOYEE

  
Curtis Yakimow

APPROVED AS TO FORM:

  
Lona Laymen  
Town Attorney

Dated: 11/15/2016

[END OF SIGNATURES]

**TOWN OF YUCCA VALLEY  
EMPLOYMENT AGREEMENT  
For the Position of  
TOWN MANAGER**

This EMPLOYMENT AGREEMENT ("Agreement") is entered this 15<sup>th</sup> day of July, 2014, by and between the TOWN OF YUCCA VALLEY ("Town"), a California general law Town and municipal corporation organized and existing under the laws of the State of California, and Curtis Yakimow ("Employee"), an individual.

**RECITALS**

WHEREAS, it is the desire of the Town Council of the Town of Yucca Valley (hereinafter the "Town Council") to employ an individual to serve in the position of Town Manager, which position is prescribed by state law and the Town's Municipal Code; and

WHEREAS, the Town requires the services of a Town Manager; and

WHEREAS, Employee has the required necessary level of education, experience, skills and expertise to serve as the Town's Town Manager; and

WHEREAS, it is the desire of the Town Council to (i) have Employee perform all of the regular functions of the Town Manager pursuant to the codes and regulations of Town, and (ii) establish the terms and conditions of Employee's services to the Town through this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, including the Recitals which are made a part hereof, Town and Employee hereby agree as follows:

**AGREEMENT**

**1.0 EMPLOYMENT & DUTIES**

1.1 Duties. Town Council hereby appoints and employs Employee as Town Manager for the Town to perform the functions and duties of that position, as described in the Yucca Valley Municipal Code § 2.08.050, the California Government Code, and such other legally permissible and proper duties and functions as the Town Council shall, from time to time, direct or assign. Town reserves the right to amend Municipal Code Chapter § 2.08, including Town Manager functions and duties, as it deems necessary and appropriate, without requiring Employee's acquiescence or an amendment of this Agreement. Employee acknowledges that his duties shall include services to the Successor Agency to the Yucca Valley Redevelopment Agency, since the Town Manager also served as the Executive Director of the Successor Agency to the former Community Redevelopment Agency of the Town of Yucca Valley. Employee further agrees to perform all such functions and duties to the best of his ability and in an efficient, competent, and ethical manner.

1.2 Work Schedule. Employee is expected to engage in the hours of work that are necessary to fulfill the obligations of the position. Employee acknowledges that proper

performance of the duties of the Town Manager will often require the performance of necessary services outside of the Town's normal business hours. However, the Town intends that reasonable time off be permitted to Employee, such as is customary for exempt management employees, so long as the time off does not interfere with normal business. Employee's compensation (whether salary or benefits or other allowances) is not based on hours worked and Employee shall not be entitled to any compensation for overtime.

1.3 Absence From Work. Employee shall notify the Town Clerk and the Human Resources Manager as soon as reasonably practicable of any full-day absence from work, and shall specify the reason for absence. In the event Employee must miss a Town Council meeting, he shall provide the Mayor, or in the Mayor's absence, the Mayor Pro Tem, with as much notice as is reasonably practicable.

(a) Employee shall focus his or her professional time, ability, and attention to Town business during the term of this Agreement. Employee shall not spend more than ten (10) hours per month in teaching, counseling, or other non-employer connected business activities without express prior approval of the Town Council.

(b) Employee shall not engage, without the express prior written consent of the Town Council, in any other business duties or pursuits whatsoever or, directly or indirectly, render any services of a business, commercial, or professional nature to any other person or organization, whether for compensation or otherwise, that is or may be competitive with the Town, that might cause a conflict-of-interest with the Town, or that otherwise might interfere with the business or operation of the Town or the satisfactory performance of Employee's duties as Town Manager.

(c) Employee understands the Town Council belief that Employee's position as Town Manager shall require significant time, attention, and focus of priority such that it is not possible for Employee to fulfill his obligations as Town Manager while serving in any elected or appointed capacity for another governmental agency.

1.4 Employment Status. Employee shall serve at the will and pleasure of the Town Council under this Agreement and understands he is an "at will" employee serving at the pleasure of Town Council and subject to termination by the Town at any time, as set forth in Section 3.3 below, without any further right of notice or hearing except as required in Section 4.1(a), including any so-called pre-disciplinary "Skelly" meeting or conference.

1.5 FLSA Exempt Status. Employee agrees that his position is that of an exempt employee for the purposes of the Fair Labor Standards Act.

1.6 Disability or Inability to Perform. In the event Employee becomes mentally or physically incapable of performing the Town Manager's functions and duties with reasonable accommodation and it reasonably appears such incapacity will last for more than six (6) months, the Town Council may terminate the Town Manager. If the Town Council elects to terminate Employee due to incapacity, he shall receive severance benefits as provided in Section 4.1(b) and (c) below, so long as he executes and does not revoke a general release of claims.



1.7 Town Documents. All data, studies, reports, and other documents prepared by Employee while performing his duties during the term of this Agreement shall be furnished to and become the property of the Town, without restriction or limitation on their use. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other materials either created by or provided to Employee in connection with the performance of this Agreement shall be held confidential by Employee to the extent permitted by applicable law. Such materials shall not, without the prior written consent of the Town Council, be used by Employee for any purposes other than the performance of his duties. Nor shall such materials be disclosed to any person or entity not connected with the performance of services under this Agreement, except as required by law.

## 2.0 COMPENSATION AND REIMBURSEMENT

2.1 Base Compensation. For the services rendered pursuant to this Agreement, Employee shall receive base compensation of \$149,500 annually ("Salary"), which shall be paid on a pro-rated basis bi-weekly at the same time as other employees of Town are paid. Such Salary shall be adjusted for payroll taxes, workers' compensation, and other payroll-related liability costs.

2.2 Cost of Living Increase. Town agrees to provide a cost of living adjustment to Employee's base salary based on the current year's Los Angeles/Riverside/Orange County Consumer Price Index. For the purposes of this section, the index used shall be the same index series used by Town historically.

2.3 Merit Increase; Annual Salary Review. The Town has the right, but not the obligation, to conduct an annual salary review of Employee concurrently with the annual performance evaluation set forth in Section 5.2, and to offer discretionary merit increases. Following any annual performance evaluation, the Town may increase Employee's base salary by means of a discretionary merit increase. The Town may increase Employee's base salary by one percent (1%) of his base salary, provided Employee's performance evaluation is determined by the Town Council, at its sole discretion, to be "satisfactory" ("meets expectations"). The Town may increase Employee's base salary by up to two-and-one-half percent (2.5%) provided Employee's performance is determined by the Town Council, at its sole discretion, to be "above satisfactory" ("exceeds expectations"). Any action to approve an increase must be approved by a majority vote of the Town Council at a public meeting. The Town Council and/or Employee reserve the right to defer or refuse any or all of any base salary adjustment if either party determines that the fiscal state of the Town warrants such action.

2.4 Reimbursements. Town shall reimburse Employee as follows, with all reimbursements subject to and in accordance with California law and the Town's Employee Reimbursement Policy:

(a) For actual expenses incurred by Employee while attending out-of-town meetings, conferences or seminars related to his employment with Town, although to be eligible for such reimbursement, Employee must have budgeted funds available for such and must present an appropriate receipt therefor;

(b) For the actual cost of other business expenses incurred by Employee in the performance of his duties for the Town upon the presentation of an appropriate receipt therefor, including but not limited to expenses incurred related to business lunch and/or dinner meetings. Town shall not reimburse Employee for any alcoholic beverage expense.

(c) There shall be no reimbursement for commute-related travel expenses.

2.5 No Gifts of Value. The California Political Reform Act, Government Code §§ 81000 *et. Seq.* , which applies to local officials such as Employee, establishes a gift limit on the total value of gifts public officials may receive from a single source during the calendar year. As of January 1, 2013, the annual limit is Four Hundred Forty Dollars (\$440.00). Gifts are defined as any payment or other benefit provided to an official that confers a personal benefit for which the official does not provide goods or services of equal or greater value.

Based on the limits imposed by the Political Reform Act, Employee is hereby prohibited from accepting gifts greater than Four Hundred Forty Dollars (\$440.00) in a single calendar year from a single source, including but not limited to Town residents, employees, contractors, businesses or anyone seeking to do business with the Town. The Political Reform Act also requires that Employee's receipt of gifts totaling Fifty Dollars (\$50.00) or more from a single source during the calendar year be disclosed on a Statement of Economic Interests.

Any public official who violates the gift limit is liable in a civil action brought by the California Fair Political Practices Commission for up to three times the amount of the gift, plus administrative sanctions, including fines of up to Five Thousand Dollars (\$5,000.00) per violation.

### 3.0 TERM

3.1 Commencement & Effective Date. Employee shall commence his services hereunder on July 15, 2014, which shall also be deemed the effective date of this Agreement ("Effective Date").

3.2 Term. Town hereby employs Employee for an initial term of three (3) calendar years commencing on the Agreement's Effective Date and continuing to and including July 15, 2017, subject to termination by the Town or by Employee, with or without cause, as hereinafter provided in Section 3.3, at the conclusion of which this Agreement shall automatically terminate. The Term of this Agreement may be extended upon mutual concurrence from the Town and the Employee, as evidenced by a writing signed by both parties. The Town agrees that in the last year of the Agreement, the annual evaluation will be performed at least six (6) months prior to the expiration of the term, and the Agreement may be extended for one or more years at that time by mutual consent of the Parties.

3.3 Termination by Town Council or Employee. The Town Council may terminate this Agreement at any time with or without cause and without prior notice or hearing, except that required in Section 4.1(a). Employee may terminate this Agreement at any time following commencement of services, with or without cause. Employee agrees to the extent possible to provide the Town with reasonable notice of his intent to terminate the Agreement to facilitate the transition process.

*Definition of Cause.* For the purposes of this Agreement, “cause” for termination shall include, but not be limited to, the following: (1) loss of mental capacity for more than six (6) consecutive months as determined by a court of competent jurisdiction; (2) persistent, habitual or willful neglect of duty; (3) insubordination (which shall be defined as a single or repeated failure to carry out a directive or directives of the Council made by Council as a body); (4) corrupt or willful misconduct in office; (5) willful malfeasance, or conviction of a felony amounting to an act of moral turpitude (a conviction following a plea of *nolo contendere* is deemed a conviction under this Agreement); (6) willful destruction or misuse of Town property; (7) intoxication while on duty, whether by alcohol, prescription or non-prescription drugs, and in the case of prescription drugs, where they are being used in a manner not authorized by Employee’s treating physician; (8) unexcused absences of two or more consecutive or intermittent days without an authorized leave of absence; (9) willful political activity involving the support of candidates for Town Council or Charter amendments; (10) theft or attempted theft; (11) financial mismanagement amounting to fraud or purposeful withholding of financial information; (12) material dishonesty; (13) willful violation of Federal, State or Town discrimination and harassment laws concerning race, religious creed, color, national origin, ancestry, physical handicap, marital status, sexual orientation, sex or age concerning either members of the general public or Town employee(s) while acting in the course and scope of employment, while on Town premises or time, (14) willful and unlawful retaliation against any Town officer or employee or member of the general public who in good faith reports, discloses, divulges or otherwise brings to the attention of any appropriate authority any facts or information relative to actual or suspected violations of any law occurring on the job or related directly thereto; (15) willful violation of any conflict of interest or incompatibility of office laws; (16) performance of material outside business interests that conflict directly with the activities and duties as Town Manager, but not including educational or professional training programs conducted by Employee whether for personal financial gain or not; (17) refusal to take or subscribe to any oath or affirmation which is required by law; and (18) willful misconduct as defined in Town of Yucca Valley Municipal Code § 2.08.100, or similar matters.

3.4 Waiver of Certain Termination Rights. Employee expressly waives any rights provided under the Town’s Personnel System or Policies, and any rights provided to the Town Manager under the Yucca Valley Municipal Code or under State or Federal law to any form of pre- or post-termination hearing, appeal, or other administrative process pertaining to termination, except those rights Employee may have under the California or Federal Constitutions to a name-clearing hearing.

#### 4.0 SEVERANCE

4.1 Severance. Employee shall have the severance rights provided herein. The severance rights provided in this Article 4.0 shall constitute the sole and only entitlement of Employee in the event of termination, and Employee expressly waives any and all other rights except as provided herein. Nothing in this paragraph shall be construed as precluding Employee’s right to contest the appropriateness of termination in San Bernardino Superior Court or any court of competent jurisdiction or otherwise enforce the provisions of this Agreement, as provided in Agreement Section 8.7 below.

(a) Termination With Cause. If the Town Council terminates Employee with cause, as defined in Section 3.3, the Town shall not be required to make the severance payment provided herein.

(1) Written Statement Describing Cause; Name-Clearing Hearing. In the event Employee is terminated for Cause, the Town shall provide Employee with a written statement describing the Cause and shall offer Employee a name-clearing hearing before the Town Council at a reasonable time upon reasonable notice. The name-clearing hearing shall not delay or prevent the Town from terminating Employee and may therefore take place after the termination has occurred.

(2) No Severance Payment While Under Investigation. In the event Employee is under investigation for any of the foregoing reasons, the Town may withhold part or all of any severance payment afforded Employee, in Section 4.2 below, until it is determined if charges will be filed, and if charges are filed, until final judgment is rendered; provided, however, that the Town may not withhold the severance payment (if any), in whole or in part, beyond twelve (12) months of the initiation of an investigation and/or the filing of charges, whichever shall last occur.

(b) Termination Without Cause. If the Town Council terminates Employee without cause before the expiration of the aforesaid term of employment, the Town shall provide the Employee with a minimum 30-day Notice of Intent to Terminate. Further, the Town shall provide Employee with the shorter of: (1) five (5) months' Salary; or (2) an amount equal to the monthly salary of Employee multiplied by the number of months left on the unexpired term of the contract, provided Employee executes and does not revoke the Severance Agreement, a copy of which is attached hereto as Exhibit A. However, if the unexpired term of the contract is greater than five (5) months, the maximum cash settlement shall be an amount equal to the monthly salary of Employee multiplied by five (5). The payment of any severance shall not occur until thirty (30) business days after the Effective Date of the Severance Agreement and shall occur as specified in Section 4.2 below. In the event Employee declines to execute or revokes the general release of claims, he shall not be paid any severance.

The Effective Date of the Severance Agreement shall be ten (10) calendar days after all parties have signed the Severance Agreement.

In addition, Town shall continue to provide Employee with Town-paid "COBRA" benefits (medical, dental and vision) for a maximum of twelve (12) months, except that if Employee obtains other employment prior to the end of the severance period, such benefits and insurance coverage (excluding severance pay) shall cease on the commencement date of such other employment benefits and insurance coverage.

(c) Termination Without Cause in the Six Months Following An Election. If the Town Council gives notice to terminate Employee without cause during the six (6) months following an election, the Town shall pay employee a lump sum payment equal to four (4) months base salary, in addition to the payment provided in Section 4.1(b), provided he first executes and does not revoke the Severance Agreement, and except as provided in Section 4.1

(d). This provision will offer new Town Council members an opportunity to work with and observe the Employee prior to taking any action.

(d) Application of Government Code Provisions. Notwithstanding any other provision of this Agreement, the following State law restrictions upon Employee's Salary and benefits shall take precedent:

(1) Government Code Section 53260 provides that all contracts of employment with a city must include a provision limiting the maximum cash settlement for the termination of the contract to the monthly salary (excluding benefits) multiplied by the number of months left on the unexpired term, but not more than eighteen (18) months if the unexpired term exceeds 18 months. The severance payments provided by Article 4.0 are limited by this provision [(e.g., if termination occurred with six (6) months left in the term, severance would be equal to the monthly base salary multiplied by six (6) rather than twelve (12), provided Employee executes and does not revoke a general release of claims].

(2) Government Code Section 53243.3. If this Agreement provides for: (1) paid leave for the official pending an investigation; (2) funds for the legal criminal defense of the official, or (3) any cash settlement related to Employees' termination, such sums shall be fully reimbursed by Employee to the Town if the Employee is convicted of a crime involving abuse of his or her office or position. All provisions of Government Code § 53243.3 shall take precedence over the terms of this Agreement.

(3) Government Code Section 3511.2. Notwithstanding any other provisions of this Agreement, it shall be prohibited for this Agreement to provide an automatic renewal hereof that provides for an automatic compensation increase in excess of a cost-of-living adjustment or a maximum cash settlement in excess of certain limits. Government Code § 3511.2 is hereby incorporated into the terms of this Agreement as follows:

"On or after January 1, 2012, any contract executed or renewed between a local agency and a local agency executive shall not provide for the following:

(a) An automatic renewal of a contract that provides for an automatic increase in the level of compensation that exceeds a cost-of-living adjustment.

(b) A maximum cash settlement that exceeds the amounts determined pursuant to Article 3.5 (commencing with Section 53260) of Chapter 2 of Part 1 of Division 2 of Title 5" (i.e., a cash settlement that exceeds 18 months of the Salary and benefits).

(e) No Severance if Termination Initiated By Employee. Employee expressly agrees that he shall not be entitled to any severance payment as the result of the termination of this Agreement if such termination is initiated by Employee.

4.2 Payment. Half of any severance payment required under this Article shall be paid within ten (10) days following the execution of a Severance Agreement, provided Employee has

not revoked the Severance Agreement. The balance of the Salary payment shall be paid monthly following ninety (90) days after the date of separation.

## **5.0 PERFORMANCE EVALUATIONS.**

5.1 **Purpose.** The performance review and evaluation process set forth herein is intended to provide review and feedback to Employee so as to facilitate a more effective management of the Town. Nothing herein shall be deemed to alter or change the employment status of Employee (as set forth in Section 1.4 above), nor shall this Article 5.0 be construed as requiring "cause" to terminate this Agreement, or the services of Employee hereunder.

5.2 **Annual Evaluation.** The Town Council shall conduct a review and evaluate the performance of Employee on an annual basis, commencing on Employee's anniversary date or as soon thereafter as is reasonably practicable and continuing annually thereafter during the term of Employee's employment as Town Manager. The review and evaluation shall be in accordance with specific criteria developed jointly by the Town Council and Employee. The evaluation shall be predicated on such criteria, as well as any other deemed appropriate by the Town Council, provided it is communicated in writing to Employee. Thereafter, the Town Council shall provide Employee with a written summary statement of the performance evaluation and shall provide an opportunity for Employee to discuss the contents thereof with him for the purpose of improving the overall effectiveness of Employee in his position, including an opportunity for Employee to comment on the evaluation should Employee so elect.

5.3 **Written Evaluation.** In closed session, the Town Council shall utilize an "Evaluation of Town Manager" form in order to evaluate the performance of Employee to date. The Town Council shall have sole discretion to determine the form of the evaluation form used. Thereafter, the Town Council shall prepare a written evaluation form, memorializing its comments regarding Employee, shall schedule at least one (1) closed session with Employee to deliver and discuss such evaluation, and will include the same in his personnel file within two (2) weeks following the conclusion of the review and evaluation process.

5.4 **Town Manager's Goals and Objectives.** Annually, the Town Council and Employee shall define goals and performance objectives that they determine are necessary for the proper operation of the Town and, in the attainment of the Town Council's policy objectives, shall further establish a relative priority among those various goals and objectives. The goals and objectives shall be reduced to writing. The goals and objectives shall be generally obtainable within the time limitations as specified and the annual operating and capital budgets and appropriations as provided.

## **6.0 FRINGE BENEFITS AND OTHER COMPENSATION.**

6.1 **Annual Leave.** Where the benefits provisions of the Employee handbook and this Agreement conflict, this Agreement shall control.

(a) **Vacation.** While performing the Director of Administrative Services job duties in addition to his position of Town Manager, Employee shall accrue vacation at a rate equivalent to two hundred (200) hours per year, 7.69 hours per pay period. This accrual rate will remain in effect so long as Employee performs the job duties of the Director of Administrative

Services position. In the event Employee ceases to perform the Director of Administrative Services job duties, he will no longer accrue vacation at the rate of 200 hours per year, 7.69 hours per pay period, but will instead accrue vacation at the lower rate of one hundred sixty hours per year, 6.16 hours per pay period. Vacation is accrued on a pro rata basis throughout the year. Upon the Effective Date of this Agreement, Employee's currently accrued vacation shall be carried over.

(1) Vacation Accrual Cap. Vacation may only be accrued to a maximum of forty-five (45) days (360 hours). Employee may not cash out vacation time except upon termination or to provide self-reimbursement for payment of required employee PERS contribution, such option as is available to all affected employees. However, the Town Council may approve a vacation leave accrual above the provided limits or a vacation leave cash out if it is deemed to be in the best interests of the Town.

(2) Full Day Absence. In the event Employee wishes to take two or more consecutive days off, he shall notify the Mayor or in the Mayor's absence, the Mayor Pro Tem. Such notification shall be provided no less than two (2) weeks prior to the absence, whenever practicable. Employee shall also notify the Town Clerk and the Human Resources Manager of any absence.

(b) Sick Leave. Employee shall accrue paid sick leave at the rate of one sick leave day per calendar month, or 3.69 hours per pay period, up to a maximum of twelve (12) sick leave days. Accrued, unused sick leave may be carried over to the next calendar year, and Employee's currently accrued sick leave shall be carried over. Employee, if Employee is eligible under CalPERS, may upon retirement, or if he/she retires within one hundred twenty (120) days of separation, convert unused sick leave to CalPERS service credit.

Unused sick leave is forfeited upon retirement from employment with the Town unless Employee is eligible to convert it to CalPERS service credit.

(1) Full Day Absence. In the event Employee is absent from work due to illness or injury, he shall notify the Town Clerk and the Human Resources Manager of his absence as soon as practicable.

(c) Other Leave. Employee shall accrue on the same basis as other Town Management Employees the maximum level of holiday, and other benefits as given in an equal number to other Department Heads of the Town. Accrued, unused sick leave may be carried over to the next calendar year. Upon retirement, Employee, if eligible under CalPERS, shall have all accrued unused sick leave converted to service credit. Upon termination from employment, Employee's accrued unused sick leave shall be forfeited

6.2 Use of Town-Owned Automobile During Normal Business Hours: The Employee's duties require the use of an existing Town-owned automobile during the duration of this Agreement. Town shall provide Employee with the use of an existing Town-owned vehicle, as well as fuel, maintenance and insurance for said vehicle for Employee's use in the performance of his employment duties and incidental personal use to the extent that such personal use is (i) during normal work hours, or (ii) for home/work commuting, and (iii) so long

as such use does not interfere with Employee's work duties. For purposes of this section, the term "incidental personal use" shall mean brief excursions to/from a primary work place for reasons related to the needs of family, medical/dental, meal, financial or mandatory governmental needs during normal work hours so long as such use does not interfere with Employee's work duties. The following are illustrative of acceptable incidental personal uses of the Town-owned car: (i) short excursions from the work place for the pick-up or drop-off of family members for school, work, medical or extracurricular needs, (ii) short excursions from the work place for banking, DMV, or similar such personal needs, (iii) short excursions from the work place for meal breaks, and (iv) other short excursions from the work place for reasons that are substantially similar to these listed uses.

Employee shall be responsible for the tax treatment applicable to incidental personal use in accordance with current IRS guidelines.

6.3 Health and Life Insurance. Town agrees to put into force and to make such insurance premium payments for life, health, dental and vision, for Employee and his dependents (defined as Employee's spouse, his natural or adopted children up to age twenty-six (26)), and short and long-term disability income benefits to Employee. Such coverage shall be selected by the Employee from among the group insurance options available to other qualified employees. Notwithstanding the forgoing, the Town agrees that the life insurance provided for the benefit of the Employee's beneficiaries shall be term life insurance in an amount equal to two times (2x) Employee's annual base salary.

(a) In the event the Employee opts out of health insurance coverage, the Town will provide Employee with a medical opt-out payment of \$525/month, or Employee may instead opt to roll the medical opt-out payment into his Public Section 457(b) account.

6.4 Other Benefits.

(a) Employee shall receive the same PERS benefit provided to non-sworn department heads, in accordance with applicable law. Employee agrees to pay the employee portion of the PERS premiums. The amount of Employee's share toward PERS benefit shall be set at the same amount as other non-sworn department heads, as follows:

- (1) Tier 1: Employees hired before July 1, 2011: 2.7 @ 55
- (2) Tier 2: Employees hired before July 1, 2012: 2 @ 60
- (3) Tier 3: Employees hired on or after January 1, 2013: 2 @ 62.

(b) So long as Employee performs the job duties of the Director of Administrative Services in addition to his position of Town Manager, Town shall permit Employee to continue in the Town-sponsored 457(b) program and shall contribute five percent (5%) of Employee's annual base salary, up to a maximum of \$17,500, which shall be paid on a pro-rated basis bi-weekly at the same time as other employees of Town are paid. In the event Employee ceases to perform the Director of Administrative Services job duties, Town shall no longer make any contributions on behalf of Employee into the Town sponsored 457 plan.



(c) Except as otherwise described in this Article 6, Town agrees to give Employee all other benefits given to other Town Department Heads generally, excepting that Employee is under no circumstances entitled to "paid time off" and/or "personal time off" ("PTO") accrual plan.

## **7.0 OTHER TERMS – CONDITIONS OF EMPLOYMENT**

7.1 Dues, Subscriptions and License Fees. Town agrees to pay for the professional dues and subscriptions necessary for Employee's full participation in national, state, regional and local associations and organizations necessary and desirable for his professional participation, growth and advancement, and for the good of the Town. Town also agrees to pay for or reimburse Employee for fees necessary to maintain professional licenses in possession of Employee.

### **7.2 Professional Development.**

(a) Town agrees to pay travel and subsistence expenses of Employee, subject to the Town's travel policy, for professional and official travel, meetings and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official and other functions for Town including, but not limited to, the annual conferences of the International City Management Association, the League of California Cities City Managers' Department Meeting and other such national, regional, state and local government groups and committees on which Employee serves as a member, provided such travel and membership is approved by the Town Council.

(b) Town also agrees to pay travel and subsistence expenses of Employee for short courses, institutes and seminars necessary for Employee's professional development and the good of the Town, provided such activities are approved by the Town Council.

7.3 Amendment of Agreement. Town and Employee agree that any amendment to this Agreement shall be in writing, signed by the parties hereto, approved by the affirmative vote of three (3) Town Council members. The Town Council, in consultation with Employee, shall establish any such other terms and conditions of employment as it may determine from time to time, provided such terms and conditions are reduced to writing and signed by Employee and the Town Council.

## **8.0 GENERAL PROVISIONS**

8.1 Entire Agreement. This Agreement represents the entire agreement between the parties and supersedes any and all other agreement, either oral or in writing, between the parties with respect to Employee's employment by Town and contains all of the covenants and agreements between the parties with respect to such employment. No ordinances or resolutions of Town governing employment, including the Town's Personnel System, shall apply unless specified herein. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by either party, or anyone acting on behalf of either party, that are not embodied herein, and that no other

agreement, statement or promises not contained in this Agreement shall be valid or binding upon either party.

8.2 Notices. Any notice required or permitted by this Agreement shall be in writing and shall be personally served or shall be sufficiently given when served upon the other party as sent by United States Postal Service, postage prepaid and addressed as follows:

To Town:

Attn: Mayor  
Town of Yucca Valley  
57090 Twentynine Palms Highway  
Yucca Valley, CA 92284

To Employee:

[NAME]  
[ADDRESS]  
[CITY, STATE, ZIP]

w/copy to:

Town Attorney  
c/o Aleshire & Wynder, LLP  
18881 Von Karman Ave, #400  
Irvine, CA 92612

Notices shall be deemed given as of the date of personal service or upon the date of deposit in the course of transmission with the United States Postal Service.

8.3 Conflicts Prohibited. During the term of this Agreement, Employee shall not engage in any business or transaction or maintain a financial interest which conflicts, or reasonably might be expected to conflict in any manner, with the proper discharge of Employee's duties under this Agreement. Employee shall comply with all requirements of law, including but not limited to, Sections 87100 *et seq.*, Section 1090 and Section 1125 of the Government Code, and all other similar statutory and administrative rules. Whenever any potential conflict arises or may appear to arise, the obligation shall be on Employee to seek legal advice concerning whether such conflict exists and Employee's obligations arising therefrom.

8.4 Effect of Waiver. The failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

8.5 Partial Invalidity. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

8.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, which are in full force and effect as of the date of execution.

8.7 Choice of Law and Forum For Enforcement: This Agreement is made and entered into in the State of California, and shall be governed, interpreted and enforced under the laws of the

State of California. The Parties agree jurisdiction and/or venue of any action involving the validity, interpretation, or enforcement of this Agreement or any of its terms shall exist exclusively in a court or government agency located within the County of San Bernardino, State of California. The Parties further agree this Agreement may be used as evidence in any subsequent proceeding, in which any of the Parties allege a breach of this Agreement or seeks to enforce its terms, conditions, provisions, or obligations. This Agreement may not be used for any purpose in the event it is revoked.

8.8 Indemnification. Town shall indemnify Employee only to the extent provided herein. Except as otherwise provided in Government Code sections 995.2, 995.4 and 995.6, Town shall, upon the request of Employee, defend, indemnify and hold harmless Employee against any civil action or proceeding brought against him in his official or individual capacity or both, on account of an act or omission in the scope of his employment as an employee of Town unless it determines any of the following: (1) the act or omission was not within the scope of Employee's employment; (2) Employee acted or failed to act because of actual fraud, corruption or actual malice; (3) the defense of the action or proceeding by Town would create a specific conflict of interest between Town and Employee. "Specific conflict of interest" means a conflict of interest or an adverse or pecuniary interest, as specified by statute or a rule or regulation of the Town.

(a) The Town may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon. This section shall not apply to any intentional tort or crime committed by Employee, to any action resulting from fraud, corruption or malice of Employee, to any action outside the course and scope of the services provided by Employee under the Agreement, or any other intentional or malicious conduct or gross negligence of Employee.

(b) Town will not indemnify Employee for the defense of an action or proceeding in the following circumstances, unless it determines the defense would be in the best interests of the Town and that Employee acted, or failed to act, in good faith, without actual malice and in the apparent interests of the Town:

(1) Town will not indemnify Employee for the defense of an action or proceeding brought by the Town to remove, suspend or otherwise penalize Employee, or an appeal to a court from an administrative proceeding by Town to remove, suspend, or otherwise penalize Employee.

(2) Town will not indemnify Employee for the defense of an administrative proceeding brought against Employee, including but not limited to instances where the proceeding is brought on account of an act or omission in the scope of Employee's employment as an employee of Town, unless the Town Council determines the defense would be in the best interests of Town.

(3) Town will not indemnify Employee for the defense of an action or proceeding brought by Town against Employee as an individual, and not in his official capacity, or an appeal therefrom.

8.9 Independent Legal Advice. Town and Employee represent and warrant to each other that each has received legal advice from independent and separate legal counsel with respect to the legal effect of this Agreement. Town and Employee further represent and warrant that each has carefully reviewed this entire Agreement, and that each and every term thereof is understood, and that the terms of this Agreement are contractual and not a mere recital. This Agreement shall not be construed against the party or its representatives who drafted it or who drafted any portion thereof.

8.10 Assignment. Neither this Agreement, nor any right, privilege, nor obligation of Employee hereunder, shall be assigned or transferred by Employee without the prior written consent of the Town. Any attempt at assignment or transfer in violation of this provision shall, at the option of the Town, be null and void and may be considered a material breach hereof.

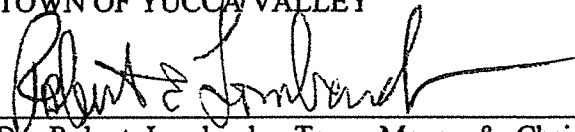
8.11 Bonding. Town shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Town of Yucca Valley has caused this Agreement to be signed and executed on its behalf by its Mayor, and duly attested by its Town Clerk, and Employee has signed and executed this Agreement, the day and year below written.

Dated: 7-21-14

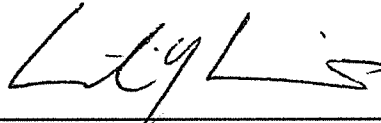
TOWN OF YUCCA VALLEY



Dr. Robert Lombardo, Town Mayor & Chair of  
Successor Agency to Dissolved Community  
Redevelopment Agency of Town of Yucca Valley


Dated: 07/17/14

[EMPLOYEE NAME]




[Employee Name]

ATTEST:

  
Town Clerk

APPROVED AS TO FORM

  
Lona N. Layman, Town Attorney