

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

This EMPLOYMENT AGREEMENT ("Agreement") is entered into this 17th day of June, 2010, by and between the TOWN OF YUCCA VALLEY ("Town"), a California general law Town and municipal corporation, and MARK NUAIMI ("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 City's Municipal Code; and

WHEREAS, it is the desire of the Town Council to (i) secure and retain the services of Employee after having conducted a competitive selection process, (ii) have Employee perform all of the regular functions of the Town Manager pursuant to the codes and regulations of Town, (iii) to provide inducement to Employee to maintain such employment, and (iv) to establish the terms and conditions of Employee's services to the Town through this Agreement; and

WHEREAS, Employee has the necessary level of education, having earned a Master's Degree in Business Administration from the University of LaVerne and a bachelor's degree in electrical engineering from California State Polytechnic University, Pomona; and

WHEREAS, Employee has the skills and expertise to fulfill such position, along with the practical experience by serving as Assistant City Manager for over three years with the City of Colton, serving in an elected capacity as Mayor / Councilman for over thirteen years with the City of Fontana, and Employee desires to accept employment from the Town.

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 hereby 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, and to perform such other duties and functions as the Town Council shall from time to time assign. Employee acknowledges that his duties shall include services to the Yucca Valley Redevelopment Agency since the Town Manager also serves as the Redevelopment Agency's Executive Director. 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 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 Other Activities.

(a) Employee shall focus his or her professional time, ability, and attention to Town business during the term of this Agreement.

(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) The 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. Therefore, Employee shall resign from his current elected position as Mayor of Fontana, appointed position with the San Bernardino Associated Governments (SANBAG), and appointed position with the San Bernardino Local Agency Formation Commission (LAFCO), concurrent to assuming the duties as Town Manager.

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.

1.5 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.

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

## **2.0 COMPENSATION AND REIMBURSEMENT**

2.1 Compensation. For the services rendered pursuant to this Agreement, Employee shall be compensated One Hundred and Ninety Thousand and 00/100 Dollars (\$190,000.00) 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.

2.2 Deferred Compensation. Town shall contribute an amount equal to Ten Thousand and 00/100 Dollars (\$10,000.00) on Employee's behalf into a qualified 401(a) plan established by the Town. Such payment shall be made to Employee's account on January 8, 2011, and annually thereafter during the term of the Employee's employment as Town Manager, unless Town elects, with employees consent, to pay this directly to Employee as current salary.

2.3 Cost of Living Increase. If approved by the Town Council, Town shall provide a cost of living adjustment in Employee's base salary. If such increase is approved by the Town Council, it shall be given to Employee at the same time as other Department Heads of the Town.

2.4 Annual Salary Review. The Town Council and Employee agree to conduct an annual salary review, commencing January 2012 and concurrently with the annual performance evaluation set forth in Section 5.2. Any action to approve an increase must be approved by a majority vote of the Council at a public meeting.

2.5 Reimbursement. Notwithstanding Section 2.6, Town shall reimburse Employee for reasonable and necessary travel greater than 75 miles from Yucca Valley, subsistence, and other business expenses incurred by Employee in the performance of his duties. There shall be no reimbursement for commuting-related travel expenses. All reimbursements shall be subject to and in accordance with California law and the City's adopted Employee Reimbursement Policy.

2.6 Automobile Allowance. Employee's duties require the extensive use of an automobile in the normal course of business. Accordingly, Employee shall receive an automobile allowance of up to Six Hundred Dollars (\$600) monthly to be paid when the other Department Heads receive their automobile allowances. Both parties acknowledge that it will be occasionally necessary for Employee to utilize a 4-wheel drive Town-owned pool car to access areas of Yucca Valley or the surrounding communities and use of such a vehicle shall not affect Employee's automotive allowance.

## **3.0 TERM**

3.1 Commencement & Effective Date. Employee shall commence his services hereunder on July 6, 2010.

3.2 Term. This Agreement is not for any specific term and shall be considered as continuing for as long as the Town wishes to employ Employee. At the Town's option, at any

time while this Agreement is in effect, the Town Council may fix a term of any length at the conclusion of which this Agreement shall automatically terminate.

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. Employee may terminate this Agreement at any time following commencement of services, with or without cause, upon at least one hundred twenty (120) days written notice before the effective date of termination of the Agreement, unless a shorter period is acceptable to the Town.

3.4 Definition of Cause. For the purposes of this Agreement, "cause" for termination shall include, but not be limited to, the following: theft or attempted theft, financial mismanagement, material dishonesty, willful or persistent material breach of duties, engaging in unlawful discrimination or harassment of employees or any third party while on Town premises or time, conviction of a felony, engaging in conduct tending to bring embarrassment or disrepute to the Town, unauthorized or excessive absences, willful misconduct as defined in Yucca Valley Municipal Code § 2.08.100, or similar matters.

3.5 Waiver of Certain Termination Rights. Employee expressly waives any rights provided under the City'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 without cause, except those rights Employee may have under the California or Federal Constitutions to a name-clearing hearing.

#### 4.0 SEVERANCE

4.1 Severance. In the event the Town terminates this agreement for cause, Employee shall have the severance rights provided in Yucca Valley Municipal Code §2.08.090, except as otherwise specifically provided in this Article 4.0. Section 2.08.090 and this Article shall constitute the sole and only entitlement of Employee in the event of termination for cause, 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.

(a) Severance Pay. In the event of termination of Employee by the Town without cause, the Town shall provide the employee with: (1) Six (6) months salary; and (2) continuation of Employee's health benefits as of the time of termination, for twelve (12) months or until Employee finds other employment, whichever occurs first. The salary severance payment required under this subparagraph shall be increased by one (1) month on an annual basis, beginning January 8, 2012, except that under no circumstances shall the total salary severance payment exceed twelve (12) months.

(b) Termination Without Cause Within First Year. If the Town Council terminates the Employee without cause before the expiration of the first year of this Agreement (i.e., on or before July 6, 2011), the Town shall not be required to make the severance payment provided herein.

(c) Termination Without Cause in the Six Months Following an Election. Notwithstanding Section 4.1(b), if at the November 2, 2010, Yucca Valley Municipal Election three new members of the Town Council are elected, and if the Town Council gives notice to terminate the Employee without cause before the expiration of the first year of this Agreement (i.e., on or before July 6, 2011), the Employee shall be entitled to Severance Pay as defined in Section 4.1(a).

(d) Application of Government Code Section 53260. Government Code Section provides that all contracts of employment with a Town 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 18 months if the unexpired term exceeds 18 months. The severance payments provided for in this Article 4.0 are so limited by this provision and under no circumstances may any severance payment be made to Employee except after amendment of this Article 4.0.

(e) No Severance Pay 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 made within ten (10) days of termination. The balance of the salary payment shall be paid monthly starting ninety (90) days following 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 Section 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 January 8, 2011 and annually thereafter during the term of the 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 Goals and Objectives. Annually, the Town Council and the 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. Commencing with the effective date of this Agreement, Employee shall accrue on the same basis as other Town Management Employees the maximum level of vacation days, sick leave, holiday, admin leave and other benefits as given in an equal number to other Department Heads of the Town. Employee shall be credited upon the effective date of this Agreement with eighty (80) hours vacation time and eighty (80) hours sick leave.

6.2 Health and Life Insurance. Town agrees to put into force and to make such premium payments for Employee for insurance policies for life, accident, sickness, dental, vision, short and long-term disability income benefits, major medical and dependents' coverage group insurance covering Employee and his dependents to the same level as the other Management Employees receive. 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 plus deferred compensation.

### 6.3 Other Benefits.

(a) Employee shall receive the same PERS benefit provided to non-sworn department heads. Employee agrees to pay two percent (2.0%) towards the employee portion of PERS premiums. The amount of Employee's share toward PERS benefit shall be reviewed during the annual salary review.

(b) Except as otherwise described in this Article 6, Town agrees to give the Employee all other benefits that are given to other Town Department Heads generally.

## **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 City'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 Other Terms. 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.

7.4 No Singular Reduction of Benefits. Town shall not during the term of this Agreement reduce the base salary or other financial benefits of Employee, except to the degree that such reduction is applied across-the-board to all Department Heads, or as agreed to by the Employee, and/or except to the extent that they are inconsistent with the provisions hereof, in which case the provisions hereof shall govern.

## 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, including the Prior Contract, 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 City'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:

Mark Nuaimi  
4932 Toronto Avenue  
Fontana, CA 92336

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 the 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 Indemnification. Town shall defend, indemnify and hold harmless Employee against any tort, professional liability claim or demand or other legal action arising out of an alleged act or omission occurring in the performance of Employee's services under this Agreement. 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 this Agreement, or any other intentional or malicious conduct or gross negligence of Employee.

8.8 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.

8.9 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 of this Agreement.

8.10 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.

TOWN OF YUCCA VALLEY

\_\_\_\_\_  
Date:  
Mayor Chad Mayes

MARK NUAIMI

\_\_\_\_\_  
Date:  
Mark Nuaimi

ATTEST:

\_\_\_\_\_  
Town Clerk

APPROVED AS TO FORM

\_\_\_\_\_  
Town Attorney