

**EMPLOYMENT AGREEMENT BETWEEN
THE CITY OF COLTON
AND THE ASSISTANT CITY MANAGER**

This AGREEMENT (hereinafter referred to as "Agreement") is made and entered into between MARK NUAIMI (hereinafter referred to as "Assistant City Manager") and the CITY OF COLTON, a municipal corporation of the State of California (hereinafter referred to as "City"), in order to provide, in writing, the terms and conditions for management services by the Assistant City Manager of City.

NOW, THEREFORE, the parties hereto agree as follows:

1. Employment

The City hereby agrees to employ the Assistant City Manager, and the Assistant City Manager agrees and does accept employment upon the terms and conditions set forth herein.

2. Duties and Obligations of Assistant City Manager

A. The Assistant City Manager hereby agrees to perform the functions and duties of Assistant City Manager as specified in the City's ordinances and municipal code and in state law, and to perform such other duties and functions as the City Manager shall from time to time assign. The Assistant City Manager further agrees to perform all such functions and duties to the best of his ability and in an efficient and competent manner.

B. The Assistant City Manager will focus his professional time, ability, and attention to City business during the term of this Agreement. The Assistant City Manager is permitted to participate in community activities associated with his position as an elected official with the city of Fontana. Said participation shall not interfere with his duties and responsibilities as Assistant City Manager with the city of Colton. The Assistant City Manager shall not engage 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, without the prior consent of the City Manager, except that:

(1) The expenditure of reasonable amounts of time not in conflict with the City's needs and interests, for educational, charitable, community, and professional activities, shall not be deemed a breach of this Agreement and shall not require prior consent.

(2) This Agreement shall not be interpreted to prohibit the Assistant City Manager from making passive personal investments or conducting private business affairs if those activities do not materially interfere with the services required under this Agreement.

C. All data, studies, reports and other documents prepared by the Assistant City Manager while performing his duties during the term of this Agreement shall be furnished to and become the property of the City, without restriction or limitation on their use.

D. 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 the Assistant City Manager in connection with the performance of this Agreement shall be held confidential by the Assistant City Manager. Such materials shall not, without the prior written consent of the City Manager, be used by the Assistant City Manager 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.

3. Salary

A. The Assistant City Manager's salary shall be Ten Thousand Two Hundred Forty One Dollars (\$10,241) per month, payable in installments at the same time as other employees of the City are paid. In addition, six percent (6%) education incentive for possessing a Master's degree is added to base salary per month. The Assistant City Manager shall receive any cost of living adjustments as are provided to the Executive Unit.

B. The City of Colton shall conduct a salary survey for the Assistant City Manager for a salary increase effective February 27, 2007. The survey will be conducted in January 2007 using neighboring cities, including those used for the Executive Memorandum of Understanding in 2005. The average of the total compensation shall be used in determining the salary. Said salary increase is subject to a satisfactory performance evaluation as is stated in Paragraph 7, *infra*.

4. Benefits

A. Except as otherwise provided herein, Assistant City Manager shall receive a fringe benefit package equivalent to that of other executive level City employees as it exists from time to time. With respect to the sick leave provided as part of the fringe benefit package, the Assistant City Manager shall accrue up to 96 hours of sick leave time per fiscal year and will be eligible to cash out up to seventy-five percent (75%) of his accrued sick leave time if terminated or if this agreement is not renewed. With respect to personal leave provided as part of the fringe benefit package, the Assistant City Manager shall accrue up to 20 hours of personal leave time per fiscal year.

B. Vacation. The Assistant City Manager shall accrue three (3) weeks (120 hours) of paid vacation per fiscal year on a pro-rata basis. Unused vacation accrued from one fiscal year may be carried over to the following fiscal year, provided however; vacation accrual may not exceed six (6) weeks. If vacation accrual reaches six weeks, accrual shall cease until Assistant City Manager reduces his accrual below six weeks by using vacation. Unused accrued vacation shall be paid off upon termination of employment at Assistant City Manager's then existing salary.

C. Executive Leave. Assistant City Manager shall receive paid executive leave of eighty (80) hours per fiscal year, which shall be credited at the beginning of each fiscal year. Assistant City Manager may be paid for up to sixty (60) hours of executive leave per fiscal year. Otherwise, executive leave shall not be carried over from fiscal year to fiscal year nor shall it be paid off upon termination of employment.

D. Business Equipment. City shall provide Assistant City Manager with a cellular telephone and personal computer for use in connection with City business. City shall be responsible for maintenance of said items.

E. Other Benefits. In addition to the benefits contained in this Agreement, the Assistant City Manager shall be entitled to all other benefits, including but not limited to paid holidays and health care benefits, which are set forth in the Memorandum of Understanding ("MOU") of the Executive Unit of the City of Colton. The MOU of the Executive Unit is incorporated herein by reference and made a part of this Agreement.

5. Term

Subject to the termination provisions in Section 6, the term of this Agreement shall commence on February 27, 2006 and shall continue for twelve (12) months thereafter through February 26, 2007 ("Initial Term"); provided, however that at the expiration of the first month of the Initial Term and any authorized Succeeding Term thereafter, as provided for herein, the Agreement shall be automatically extended for an additional one (1) month ("Succeeding Term") under the same terms and conditions, unless and until the City Manager provides written notice to the Assistant City Manager prior to the expiration of any given month of his intent not to extend the Term of this Agreement for an additional month. Following such notice by the City Manager, the term of this Agreement shall have eleven (11) months remaining

6. Termination of Agreement and Severance Pay

A. Except as provided in Sections 6.C. (2), 6.D and 6.E, the parties hereby expressly agree that the employment relationship created by this Agreement is "at will" and that the Assistant City Manager serves at the will and pleasure of the City Manager. Nothing in this Agreement, any statute, ordinance, or rule shall prevent, limit or otherwise interfere with the right of the City Manager to terminate, without cause or right of appeal or grievance, the services of the Assistant City Manager at any time. Accordingly, Assistant City Manager agrees that this Agreement sets forth the only terms and conditions applicable to the termination of his employment.

B. This Agreement, and Assistant City Manager's employment, shall automatically terminate, and the Assistant City Manager shall not be entitled to any severance payment, upon the happening of any of the following events:

(1) Upon mutual agreement in writing by both parties to terminate this Agreement.

(2) Upon sixty (60) days notice of resignation given to City by the Assistant City Manager.

(3) Upon the death of the Assistant City Manager.

(4) When the Assistant City Manager has been unable to perform all or substantially all of the essential functions of his position, with or without reasonable accommodation, due to illness or other disability for a period of three (3) months.

C. This Agreement, and Assistant City Manager's employment, may be terminated without prior notice at any time, with or without cause, by the City Manager.

(1) In the event Assistant City Manager is terminated without cause during such time that the Assistant City Manager is willing and able to perform his duties under this Agreement, the City agrees to provide Assistant City Manager with a maximum severance payment equal to the lesser of: (a) four (4) months base salary, plus one (1) month base salary for each year of service as an employee of the City, prorated to February 27, 2006; or (b) the unexpired Term of this Agreement.

(2) In the event Assistant City Manager is terminated for cause, he shall not be entitled to any severance pay or benefits. "Cause" shall include the following reasons:

(a) Any acts of fraud or misrepresentation.

(b) Conviction of a crime, whether misdemeanor or felony. For purposes of this section, a plea of nolo contendere shall also be considered a conviction.

(c) Failure to follow a legal directive of the City Manager after written notice of said failure to Assistant City Manager.

(d) The existence of an actual conflict of interest between Assistant City Manager's position as an elected official with the City of Fontana and his duties as an employee of the City of Colton and that renders him unable to perform his essential duties.

D. Upon termination for cause, the City shall deliver to the Assistant City Manager a written specification of the charges or other reasons upon which "cause" is alleged. The Assistant City Manager shall then have five (5) business days to challenge such termination for cause by delivery of a written response to such specifications. Within such five (5) day period, the Assistant City Manager may also demand a hearing upon the specifications. Failure to submit a written response or demand a hearing within the five (5) business day period shall constitute a waiver of such right, and the City Manager's determination shall be final. If a hearing is demanded, such hearing shall be held before an independent hearing officer to be mutually agreed between the parties, or if no agreement can be reached, the hearing officer shall be selected from a list provided by the State Mediation and Conciliation Service (SMCS). If a written response is submitted but no hearing is demanded, the City Manager shall review his decision based upon the Assistant City

Manager's written response. However, any determination by the City Manager after reviewing such a written response (where no hearing has been demanded) shall be final and without right of appeal.

The mutual selection of a hearing officer shall be accomplished within ten (10) calendar days following notice of the Assistant City Manager's request for a hearing. If the parties cannot mutually agree on a hearing officer within the requisite time period, then the parties shall request a list of five (5) hearing officers from SMCS. The parties shall then take turns eliminating names from the list until one remains. The remaining name shall then be the selected hearing officer. The fees of the hearing officer shall be advanced, in full, by the City. The decision of the hearing officer shall be binding and without right of appeal. The issues to be determined in the hearing shall be whether the specification(s) alleged constitute "cause" pursuant to this Agreement and whether the specifications are supported by a preponderance of the evidence.

The parties acknowledge that a requested hearing for cause shall be held at the earliest possible date, and to that extent, they shall cooperate in selecting a date for the hearing which shall be no later than sixty (60) days following the City's notice of termination for cause.

In the event the hearing officer concludes in favor of the Assistant City Manager that no cause exists, the Assistant City Manager shall be entitled only to the appropriate amount of severance pay and benefits as he would have received if terminated without cause pursuant to Section 6.C.(1), above. The Assistant City Manager shall not have any reinstatement rights.

F. Notwithstanding the other termination provisions of this Agreement, City agrees not to initiate termination of Assistant City Manager's employment within one hundred and twenty (120) days following any City general or special election.

7. Performance Review

The City Manager shall conduct a review the Assistant City Manager's performance approximately twelve (12) months after the commencement of the term of this Agreement and annually throughout the term of this agreement.

8. Bonding

The City shall bear the full cost of any fidelity or other bonds required of the Assistant City Manager, in the performance of his duties as Assistant City Manager.

9. Modification

Any modification of this Agreement will be effective only if it is in writing and signed by both parties.

10. 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.

11. Assignment

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

12. Entire Agreement

This Agreement supersedes any and all other agreements, either oral or in writing, between the City and the Assistant City Manager. This Agreement contains all of the covenants and agreements between the parties with respect to the Assistant City Manager's employment by the City in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding on either party.

13. 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.

14. Law Governing Agreement

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

15. No Presumption of Drafter

The parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the parties, and this Agreement reflects their mutual agreement regarding the subject matter of this Agreement. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any party to be the drafter of this Agreement and, therefore, no presumption for or against validity or as to any interpretation hereof, based upon the identity of the drafter shall be applicable in interpreting or enforcing this Agreement.

16. Attorney's Fees

If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover such amount as the court may award as reasonable attorney's fees and costs.

17. Notices

A. Any notice to be given hereunder by either party to the other shall be in writing and may be transmitted by personal delivery or mail, registered or certified, postage prepaid, with return receipt requested. Mailed notices shall be addressed to the following respective addresses:

Daryl J. Parrish, City Manager
City of Colton
650 N. La Cadena Drive
Colton, CA 92324

Mark Nuaimi

B. Notices delivered personally shall be deemed communicated as of the date of actual receipt. Mailed notices shall be deemed communicated as of the date of mailing, plus two (2) days.

18. Assistance of Counsel

Each party to this Agreement warrants to the other party that it has either had the assistance of counsel in negotiation for, and preparation of, this Agreement or could have had such assistance and voluntarily declined to obtain it.

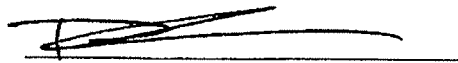
IN WITNESS WHEREOF, the parties have executed this Agreement as of the 27th day of February, 2006.

By:


Mark Nuaimi

CITY OF COLTON

By:



Daryl J. Parrish, City Manager