

**First Amendment to the
City of Carlsbad Chief Operations Officer Agreement**

This First Amendment to the City of Carlsbad Chief Operations Officer Agreement ("Amendment") is entered into as of the last date signed below by and between the City of Carlsbad, California, a municipal corporation (the "City"), and Elaine Lukey (hereinafter referred to as "Lukey" or "Chief Operations Officer"). The Effective Date of this Agreement shall August 1, 2019. The City and the Chief Operations Officer are sometimes individually referred to as a "Party" and collectively as "Parties."

Recitals

A. On or about July 2, 2018, the Parties entered into the City of Carlsbad Chief Operations Officer Agreement.

B. The effective date of the City of Carlsbad Chief Operations Officer Agreement is August 1, 2018.

C. The Parties have negotiated and agreed to an increase in Lukey's annual salary.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants contained herein, the City and Lukey hereby agree as follows:

1. Section III of the City of Carlsbad Chief Operations Officer Agreement is hereby amended and superseded to provide for an annual base salary for Lukey of \$226,600 which shall be paid bi-weekly at the rate of \$8715.38 per completed pay cycle. This change in salary is effective as of August 1, 2019.

2. All other provisions of the City of Carlsbad Chief Operations Officer Agreement, as may have been amended from time to time, that have not specifically been superseded and/or amended by this Amendment shall remain in full force and effect.

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IN WITNESS WHEREOF, the City and the Chief Operations Officer have signed this Amendment on the day and year written below.

Dated: 10.9.19



Elaine Lukey, Chief Operations Officer

Dated: 9 OCT 19



Scott Chadwick, City Manager

APPROVED AS TO FORM:



City Attorney/Assistant City Attorney

**City of Carlsbad
Chief Operations Officer Employment Agreement**

This Employment Agreement is entered into as of the last date signed below by and between the City of Carlsbad, California, a municipal corporation (the "City"), and Elaine Lukey (hereinafter referred to as "Lukey" or "Chief Operations Officer"). The Effective Date of this Agreement shall be per Section XI, *infra*. The City and the Chief Operations Officer are sometimes individually referred to as a "Party" and collectively as "Parties."

RECITALS

WHEREAS, Carlsbad Municipal Code (CMC) Chapter 2.20 provides for the establishment of the position of Chief Operations Officer who shall be appointed and retained by the City Manager wholly based on his or her management ability and experience, particularly in the municipal management field and shall hold that office for and at the pleasure of the City Manager, and

WHEREAS, the City Manager desires to appoint and employ Lukey as Chief Operations Officer for City, and

WHEREAS, it is the desire of the Parties hereto to act as a deterrent against malfeasance or dishonesty for personal gain on her part; and to provide for terminating her services at such time as she may be unable to fully discharge her duties or when the City Manager may otherwise desire to terminate her employment; and

WHEREAS, this Agreement and the Term as further described below complies with Government Code sections 53260 et seq.; and

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

SECTION I – DUTIES

The City Manager hereby appoints and agrees to the employment of Lukey as Chief Operations Officer and to exercise the powers, duties and responsibilities set forth in Carlsbad Municipal Code Chapter 2.20, applicable state law, and such other applicable ordinances and resolutions now in effect or hereafter adopted by the City Council; as well as other duties as assigned. The Chief Operations Officer is subject to and shall comply with the provisions of California Government Code Title 5, Division 2, Part 1, Chapter 2, Article 2.6 entitled "Abuse of Office" (California Government Code sections 53243, et seq.).

SECTION II – TERM

Lukey is appointed as Chief Operations Officer and shall continue to fulfill the powers, functions and duties of the Chief Operations Officer and shall serve in that capacity until such time as this Agreement is terminated pursuant to Section IV below. Nothing in this Agreement shall prevent,

limit or otherwise interfere with the right of the Chief Operations Officer to resign her position at any time. The Chief Operations Officer agrees to remain in the exclusive employ of the City and neither to accept other employment or to become employed by any other employer, including self-employment, without the express written consent of the City Manager.

SECTION III – SALARY

The annual base salary for the Chief Operations Officer shall be \$220,000.00 which shall be paid bi-weekly, \$8,461.54 per completed pay cycle.

SECTION IV – SEPARATION FROM EMPLOYMENT

A. Chief Operations Officer's employment with the City is on an at-will basis. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City Manager to terminate the services of the Chief Operations Officer without cause, at any time, subject only to providing written notice to the Chief Operations Officer.

B. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Chief Operations Officer to resign at any time from her position with City, subject only to Chief Operations Officer providing thirty (30) days prior written notice to the City. Upon request by the Chief Operations Officer, the City Manager may waive the thirty (30) days advanced notice of resignation requirement. Chief Operations Officer's resignation shall be deemed accepted when received by the City Manager.

C. Notwithstanding the provision of Subsection A above, in the event the Chief Operations Officer is terminated for "cause," then City may immediately terminate this Agreement and Chief Operations Officer shall only be entitled to her compensation and benefits accrued up to the date of her termination. As used in this Subsection C, "cause" shall mean any of the following:

1. Conviction of any felony.
2. Conviction of a misdemeanor arising directly out of the Chief Operations Officer's duties as required by this Agreement or pursuant to Chapter 2.20 of the Municipal Code.
3. Conviction of any crime of moral turpitude.
4. Failure to competently perform the duties of Chief Operations Officer as determined in two consecutive sets of written findings approved by the City Manager and not less than three months apart. Examples of incompetent performance of duties include, but are not limited to: failure to meet statutory or contractual requirements or deadlines within the Chief Operations Officer's authority; negligent hiring or supervision of employees under the direct supervision of the Chief Operations Officer which may lead to civil liability; a pattern of repeated, willful, or intentional failure to carry out clear and legally constituted policy decisions of the City Council as communicated by the City Council or the City Manager to the Chief Operations Officer.

5. Abandonment of duties.

6. Insubordination.

D. In the event the City Manager terminates this Agreement during which time the Chief Operations Officer is ready, willing and able to perform the duties of the Chief Operations Officer, and the termination is without cause, as "cause" is defined in Subsection C above, then, subject to the limitations set forth in Government Code § 53260, and upon delivery to the City a fully executed separation agreement and release of all claims in a form acceptable to the City (acting through its City Attorney) within 30 days of her termination, then, the City agrees to pay the Chief Operations Officer six (6) months base salary, less payroll taxes, and health benefits (i.e. health, dental and vision) and specifically excluding all other benefits. Upon mutual agreement, City may pay Chief Operations Officer a single lump sum payment equal to six (6) months base salary.

E. City shall pay to the Chief Operations Officer, which the Chief Operations Officer would ordinarily be entitled to, her earned vacation leave balance, if any, in a single lump sum payment, less payroll taxes, via direct deposit, at the next regular payroll date following her date of separation from employment. Earned vacation leave does not include "Executive Leave Time."

SECTION V – VEHICLE ALLOWANCE

The Chief Operations Officer's functions and duties require her to have use of an automobile during her employment with the City. The City shall reimburse the Chief Operations Officer the annual sum of \$10,000 (which shall be paid bi-weekly) for the expense of owning, operating and maintaining and insuring her personal automobile. The Chief Operations Officer shall keep and maintain in full force and effect personal liability and property damage insurance in the minimum amounts of \$250,000 per person and \$500,000 per occurrence and property damage of \$100,000, and shall name the City of Carlsbad as an additional insured. The amounts received under this section are in addition to the base salary discussed in Section III, above, and shall be considered part of the total cash compensation afforded to the Chief Operations Officer.

SECTION VI – OTHER SUPPLEMENTAL BENEFITS

The Chief Operations Officer shall accrue vacation leave and sick leave as provided for under existing City policy and rules. All actions taken by the City Council relating to fringe benefits for management employees shall be considered actions granting the same to the Chief Operations Officer. As used herein, fringe benefits include but are not limited to vacation, sick leave, educational benefits as they existed on the Effective Date of this Agreement, holidays, retirement (CalPERS), benefits and payments, health insurance, dental insurance, long-term disability insurance and life insurance as set forth in the Performance Management and Compensation Plan and elsewhere.

The Chief Operations Officer may elect to participate in any of the medical programs offered by the City to management employees.

The City will contribute, on behalf of the Chief Operations Officer, \$10,000 per year to a 457 deferred compensation plan, pro-rated over the number of pay periods in the calendar year. Contributions will be retroactive to the Effective Date (see Section XI below) of the Chief Operations Officer's Employment Agreement with the City of Carlsbad. The Chief Operations Officer will be subject to plan requirements approved by the City Council, and the vesting schedule is 100% after completion of the first year of employment as the Chief Operations Officer.

SECTION VII – RETIREMENT

The Chief Operations Officer will continue to be enrolled in the miscellaneous CalPERS retirement system in accordance with her original date of hire with the City. The Chief Operations Officer will be responsible for the CalPERS employee contribution, which currently is eight percent (8%), but may change in the future.

SECTION VIII – ANNUAL REVIEW

The City Manager shall review and evaluate the performance of the Chief Operations Officer as part of the regular performance review cycle for management employees. This review and evaluation of performance and salary shall be in accordance with the criteria developed jointly by the City Manager and the Chief Operations Officer. The City Manager shall report out and authorize the Human Resources Director to make changes to the salary or other agreed benefits to this or subsequent employment contracts in accordance with all applicable laws. Notwithstanding the foregoing provision, the City Manager reserves the right to review and evaluate the performance of the Chief Operations Officer as deemed necessary.

SECTION IX – ANNUAL GOAL SETTING

Annually, the City Council, along with the City Manager, shall define such goals and performance objectives which they determine necessary for the proper operation of the City and an attainment of the City Council's policy objectives. The Chief Operations Officer shall assist the City Manager in the implementation of these various goals and objectives.

SECTION X – PROFESSIONAL AND ORGANIZATIONAL DEVELOPMENT

All normal business expenses, such as attendance at the League of California Cities, ICMA, or other association or industry association meetings and conferences as well as business lunches, dinners, etc., will be provided for separately in the operating budget of the City Manager's office. The City Manager supports and encourages continuing development and professionalism of the City organization and its employees. As such, the City Manager supports the Chief Operations Officer's organizational development efforts, including but not limited to, employee development, department development, and organization-wide development. These efforts shall support the City Council Vision and Goals and provide for the ongoing development of a high-performing organization.

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SECTION XI – EFFECTIVE DATE

The Effective Date of this Employment Agreement shall be August 1, 2018.

SECTION XII – NOTICES

Notices pursuant to this Employment Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows or as such address may be changed from time to time upon written notice to the other:

CITY
City Manager
City of Carlsbad
1200 Carlsbad Village Drive
Carlsbad, CA 92008

CHIEF OPERATIONS OFFICER
Elaine Lukey
1200 Carlsbad Village Drive
Carlsbad, CA 92008

SECTION XIII – MISCELLANEOUS

A. This Agreement may be executed in counterparts and each executed counterpart shall be construed to be an original.

B. If any part of any provision of this Employment Agreement or any other agreement, document or writing given pursuant to or in connection with this Employment Agreement shall be declared to be invalid or unenforceable under applicable law by a court of competent jurisdiction, said part shall be ineffective to the extent of such invalidity only, and the remaining terms and conditions shall be interpreted in such a manner so as to give the greatest possible effect of the original intent and purpose of the Employment Agreement.

C. This Employment Agreement constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations and other agreements. There are no representations or understandings not set forth herein. Any amendment to this Employment Agreement must be in writing and executed by both parties.

D. The Employment Agreement is made and entered into in the State of California and shall be interpreted and enforced and governed by and under the law of the State of California.

E. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Employment Agreement, and the decision of whether to seek advice of counsel with respect to this Employment Agreement is a decision which is the sole responsibility of each Party. This Employment Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Employment Agreement.

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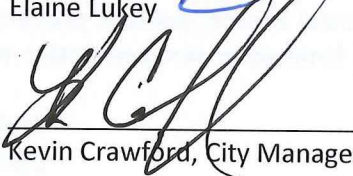
IN WITNESS WHEREOF, the City and the Chief Operations Officer have signed this Employment Agreement on the day and year written below.

Dated: 6.29.18



Elaine Lukey

Dated: 7/2/18



Kevin Crawford, City Manager

APPROVED AS TO FORM:



City Attorney/Assistant City Attorney