Hayward City Manager Employment Agreement:
July 1, 2013 through June 30, 2014

Introduction

This Agreement, entered into for convenience purposes this 25th day of June 2013, by and between the City of Hayward, a chartered California City and municipal corporation (hereinafter called "Employer"), and E. Frances David, (hereinafter called "Employee"), an individual, who has the education training and experience in local government management. The effective date of this Agreement is July 1, 2013.

Section 1 Term

Employee's current agreement with Employer shall remain in effect until June 30, 2013. The term of this Agreement is July 1, 2013, through June 30, 2014. Thereafter, this Agreement shall be renewed on or before its anniversary date for terms of one (1) year until terminated by either party or modified by mutual agreement as hereinafter provided. The anniversary date is every June 30.

Section 2 Duties and Authority

Employer agrees to employ Employee as City Manager to perform the functions and duties specified in Article VII sections 700 et seq. of the Hayward City Charter and such other lawful and appropriate duties and functions as directed by the City Council. Employee shall be a member in good standing of the International City/County Management Association (ICMA) and shall adhere to ICMA principles and tenets. Employee shall maintain current her ICMA Credentialed Manager standing for the term of employment. The Employer agrees to pay Employee's ICMA dues.

Section 3 Compensation

The Employer agrees to pay Employee an annual base salary of $222,642.86. This salary is the same as Employee's base salary during Fiscal Year 2013. During the term of this Agreement, Employer agrees to pay Employee on the same schedule as other City of Hayward employees, which is currently bi-weekly.

Section 4 Health Disability Life Insurance and Other Benefits

Upon commencing employment, Employer agrees to provide and to pay the premiums for health, hospitalization, surgical, vision, dental, and comprehensive medical insurance for Employee and her dependents equal to that which is provided to all unrepresented management employees of Employer.

Similarly, Employer agrees to obtain and to make required premium payments for short term and long term disability insurance coverage for Employee while this Agreement is in effect.

Employer shall also pay for term life insurance for Employee in an amount equal to Employee's gross annual salary (including all salary increases during the life of this Agreement) or Employer's maximum allowable amount of term life insurance coverage under Employer's contract with its insurer, if said amount is less than Employee's gross annual salary. Employee shall have the right to choose the beneficiary on such policies.

In addition to the benefits set forth herein, all actions taken by the City Council relating to benefits for Unrepresented Management Employees shall be considered actions granting the same level of benefits to Employee, unless mutually agreed otherwise between Employer and Employee.

Employer provides employees with access to a deferred compensation plan. Employer will not provide an employer contribution to the deferred compensation plan.

Section 5 Vacation and Sick Leave

Upon commencing employment, Employee was credited with the existing sick and vacation leave hours of accrued leave as reflected in the existing City of Hayward account for Employee from her previous positions as Assistant City Manager and Acting City Manager. Employee shall continue to accrue sick and vacation leave on an annual basis at the rate specified in Employee's current agreement or at the rate afforded Unrepresented Management Employees, whichever is higher, unless and until this Agreement is amended.

Employee shall be entitled to eighty (80) hours of administrative leave annually as provided in the Salary and Benefits Resolution for Unrepresented Management Employees. Employee shall be entitled to accrue a total of thirty-five (35) work days combined leave (i.e., vacation and administrative leave) annually, and shall take no more than fifteen (15) work days of said leave at any one time, exclusive of holidays recognized by Employer, to which Employee shall also be entitled. Upon approval of the Council, leave may be extended beyond the fifteen (15) work day limit established above.

In the event of termination, either voluntarily or involuntarily, Employee shall be compensated for accrued sick and vacation time as of the date of termination as provided in the Salary and Benefits Resolution for Unrepresented Management Employees.

Section 6 Automobile and Monthly Expense Allowance

Employee shall not be entitled to any additional compensation for the work-related use of her personal automobile related to the duties of City Manager; nor shall she be entitled to any cellular phone allowance. Employer agrees to provide Employee mileage reimbursement as the same level as provided for Unrepresented Management employees.

Section 7 Retirement

Employee shall be required to pay the Employee portion of the PERS contribution by paying eight percent (8%).

Section 8 Employee Savings Commitment

Effective the pay period including July 1, 2012, Employee shall contribute equivalent to the same percentage of employee cost savings as the Executive members of the Unrepresented Management Employees, unless and until this Agreement is amended. Furthermore, any employee cost savings achieved through increased employee contributions towards PERS retirement contributions or medical plan premiums shall be credited towards the overall percentage cost savings established for the Unrepresented Management Employees.

Section 9 Termination

Termination of this Agreement may occur under any of the following circumstances:

A. If a majority of the governing body votes to terminate Employee at a duly authorized public meeting;

B. If Employer, citizens, or Legislature acts to amend any provisions of the Charter, Ordinances, or appropriate enabling legislation pertaining to the role, powers, duties, authority, and responsibilities of Employee's position, and such amendment substantially changes the form of government, Employee shall have the right to declare that such amendment constitutes termination;

C. If Employee resigns following an offer by Employer to accept resignation, whether such offer is formal or informal, then Employee may declare a termination as of the date of Employee's acceptance of such formal or informal offer;

D. If either party fails to cure a breach of contract as declared by either Employer or Employee within a 30-day period after the declaration of such breach of contract, provided written notice of such breach of contract is provided in accordance with provisions of Section 17;

E. If Employee is convicted of a felony or misdemeanor involving moral turpitude, or if it is established that Employee's performance constitutes malfeasance or gross dereliction of duty;

F. If Employee fails or refuses to follow a direct, lawful order by Employer; and

G. If Employee violates one or more tenets or ethical principles of ICMA.

Section 10 Severance

A. Except as expressly provided herein, severance shall be paid to Employee when employment is terminated in Section 8. If Employee is terminated, Employer shall provide a minimum severance payment equal to ninety (90) days salary and benefits at the then-current rate of pay. This severance shall be paid in a lump sum unless otherwise agreed to by Employer and Employee. Severance does not include life insurance. Employee shall also be compensated for all accrued sick leave, vacation time, all paid holidays and executive leave as provided in the Salary and Benefit Resolution for the Unrepresented Management Employees.

B. If Employee is terminated under any of the circumstances set forth in items E, F, or G of the preceding Paragraph 8, Employer is not obligated to pay severance.

Section 11 Resignation

In the event that Employee voluntarily resigns her position with Employer, Employee shall provide a minimum of ninety (90) days' notice unless the parties agree otherwise.

Section 12 Performance Evaluation

Employer will review the performance of the Employee in December 2013, and at least annually in each succeeding year thereafter. Performance reviews will include at least the identification of mutually agreed upon goals to be achieved by Employee in the ensuing year, as well as a review of compensation for the coming year.

Section 13 Hours of Work

It is recognized that Employee must devote a great deal of time outside the normal office hours on business for Employer, and to that end Employee shall be allowed to establish an appropriate work schedule.

Section 14 Outside Activities

The employment provided for by this Agreement shall be Employee's sole employment, unless otherwise agreed to by Employer prior to Employee engaging in any such other employment.

Section 15 Indemnification

Beyond that required under Federal, State or Local Law, Employer shall defend, save harmless and indemnify Employee against any tort, professional liability claim, or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as City Manager or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities unless the act or omission involved willful or wanton conduct. Employer shall indemnify Employee against any and all losses, damages, judgments, interest, settlements, fines, court costs, and other reasonable other costs and expenses of legal proceedings including attorneys'

fees, and any liabilities incurred by, imposed upon, or suffered by such Employee in connection with or resulting from any claim, action, suit, or proceeding, actual, or threatened, arising out of or in connection with the performance of her duties. Any settlement of any claim must be made with prior approval of Employer in order for indemnification, as provided in this Section, to be available.

Section 16 Bonding

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

Section 17 Other Terms and Conditions of Employment

Employer may set such other terms and conditions of employment, as it may determine from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Hayward City Charter, or any other law.

Section 18 Notices

Notice pursuant to this Agreement shall be given by depositing in the custody of the United States Postal Service postage prepaid addressed as follows:

(1) EMPLOYER: Mayor of the City of Hayward
Hayward City Hall
777 B Street
Hayward California 94541

(2) EMPLOYEE: E. Frances David
Address on File

Alternatively, notice required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice in the course of transmission in the United States Postal Service.

Section 18 General Provisions; Integration; Severability

This Agreement sets forth and establishes the entire understanding between Employer and Employee relating to the employment of the Employee by the Employer. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The parties by mutual written agreement may amend any provision of this Agreement during the life of the Agreement. Such amendments shall be incorporated into and made a part of this Agreement.

The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

Dated June 25, 2013

Executed by:

Michael Sweeney
Mayor, City of Hayward

E. Frances David
Employee (City Manager)

ATTEST:

City Clerk of the City of Hayward

APPROVED AS TO FORM

City Attorney of the City of Hayward