

**EMPLOYMENT AGREEMENT  
FOR CITY MANAGER**

This Agreement is entered into, effective this **16th day of September, 2021**, by and between the **City of Manteca**, a municipal corporation (hereinafter called the "CITY") and **Toby Wells** (hereinafter called "WELLS") (together the "Parties", individually a "Party").

**R E C I T A L S**

WHEREAS, the City Council of the City of Manteca is desirous of employing WELLS to act as and perform the duties of the City Manager;

WHEREAS, WELLS represents that he is qualified to perform the duties and services of the position of City Manager, and is agreeable to filling that position, subject to the terms and conditions set out below;

WHEREAS, the CITY has established and set forth the duties, conditions, and responsibilities of the position of City Manager;

WHEREAS, it is the desire of the CITY and WELLS to enter into this employment agreement ("Agreement") concerning compensation, benefits, terms, and conditions of his employment as the City Manager, effective September 16, 2021;

WHEREAS, the Parties agree, acknowledge, and recognize that the position of City Manager is an at-will employee who shall serve at the behest and pleasure of the City Council; and

WHEREAS, the Parties agree that the CITY reserves a fair and just means of (i) terminating the employment of WELLS as City Manager in the event that WELLS, for any reason, becomes unable or unwilling to discharge fully the duties of the office of City Manager, or as set out in this Agreement; or (ii) terminating the employment of WELLS as City Manager in the exercise of the right of the City Council to fill the position of City Manager as the City Council sees fit.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

**1. EMPLOYMENT AND TERM:**

CITY hereby employs WELLS, and WELLS hereby accepts employment with the CITY in the position of City Manager, on the terms and conditions and for the compensation set forth herein. The term of this agreement shall be **three (3) years**. The term shall begin on September 16, 2021 and conclude on September 15, 2024. The Parties may mutually agree in writing to extend the term of this Agreement, subject to City Council approval.

**2. DUTIES:**

CITY hereby agrees to employ WELLS as City Manager, to perform the duties of the City

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Manager as set forth in the City Manager's current job description and Manteca Municipal Code Chapter 2.08 that are both made a part of this Agreement by reference.

- a. WELLS has the authority to recruit employees in conjunction with the Employee Services & Engagement Department, and discipline employees in conjunction with the Employee Services & Engagement Department and City Attorney's Office, subject to City personnel rules, procedures, and policies, and state and federal law. In addition, WELLS has the authority to direct the workforce subject to City personnel rules, procedures, and policies, and state and federal law. Included within the functions of the City Manager are that he be the Chief Administrator of the City, Executive Director of the Manteca Successor Agency and the Manteca Housing Authority, Personnel Officer, Emergency Operations Center Director, and Purchasing Officer.

In addition, WELLS shall serve as the Municipal Employee Relations Officer, Chief Administrative Officer of the Manteca Financing Authority, and such other offices and duties as are normally associated with the office of the City Manager.

WELLS shall perform his obligations and responsibilities diligently within the time parameters indicated and set out by the City Council, applying the highest degree of professionalism, ethics, integrity, and competency to the discharge of every aspect of his obligations.

- b. WELLS shall not engage in any activity that is, appears to be, or may become a conflict of interest; neither shall WELLS enter into or enter the CITY into a prohibited contract, nor shall WELLS create an incompatibility of office as defined under California law. WELLS shall comply fully with his reporting and disclosure obligations under regulations promulgated by the Fair Political Practices Commission ("FPPC").
- c. WELLS agrees to remain in the exclusive employ of the CITY during the term of this Agreement. WELLS shall dedicate his full energies and qualifications to his employment as the City Manager, and shall not engage in any other employment except as may be specifically approved in writing in advance by the City Council.
- d. WELLS shall devote his full time to his position as City Manager and shall generally work normal office hours. WELLS will work a 4/10 schedule or 9/80 schedule consistent with the CITY guidelines. It is recognized that WELLS must devote a great deal of time outside the normal office hours to business or related business activities, meetings, and functions of the CITY, and to that end, WELLS will need to exercise a flexible work schedule.
- e. WELLS shall not spend any time consulting and/or working for any other non-CITY connected business without the prior approval of the City Council. Such outside activities shall not interfere with the performance of WELLS's duties under this Agreement.
- f. In general, WELLS shall perform all duties and functions specified in the CITY's Municipal Code, ordinances, resolutions, policies, and the responsibilities set out in the job description for City Manager.
- g. Consistent with the CITY Municipal Code, WELLS shall report to and be managed by the City Council as an at-will employee.

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- h. WELLS acknowledges that consistent with the Municipal Code he will live within thirty (30) miles of CITY's administrative offices within six (6) months after the effective date noted above, or subject to any change approved by the City Council.

### 3. COMPENSATION AND BENEFITS:

- a. Salary: WELLS's compensation shall be \$230,000.00 annually. WELLS shall be paid that compensation at the same intervals and in the same manner as regular City employees. WELLS shall not be entitled to any other compensation than expressly stated in this paragraph and this section.
- b. Salary Review: The City Council and WELLS agree to conduct, at a minimum, an annual salary review concurrently with the annual performance evaluation set forth in Section 4 hereof.
- c. Salary Adjustment: Following the annual performance evaluation set forth in Section 4 hereof, and the annual Salary review set forth above in Section 3(b), the City Council, in its sole discretion, may increase WELLS's base salary based on the results of the reviews and subject to the salary ordinance. Any adjustments following the annual evaluation shall be at the sole discretion of City Council and may be made retroactive to the anniversary date of the evaluation.
- d. Benefits: Other elements of WELLS's compensation package ("Benefits") are outlined in the Executive Management Summary of Salaries and Benefits, except as noted herein, and shall remain unchanged through the term of this Agreement, unless the City Council amends the compensation package for all Executive Management City employees. The following benefits shall be provided to WELLS by the CITY:
  - 1) Sick Leave bank of 40 hours effective his first day of employment with the CITY;
  - 2) Vacation bank of 40 hours effective his first day of employment with the CITY; and
  - 3) A 4% deferred compensation contribution by the CITY (paid on a monthly basis).
- e. Car Stipend: CITY shall provide WELLS a car stipend of \$300/month.
- f. Electronics: CITY shall provide WELLS a City-issued laptop, cell phone, and iPad, which WELLS shall surrender to the CITY following the end of his term and/or the end of this Agreement (whichever occurs earlier), or as ordered by the City Council. When using and/or utilizing these items WELLS shall be subject to all related City rules, policies, and regulations.
- g. Professional Development: Subject to available funding, the CITY agrees to budget and to pay the professional dues and subscriptions, such as the International City/County Manager Association (ICMA), on behalf of WELLS that are reasonably necessary for WELLS's continuation and participation, and other professional associations as the City Council deems necessary and desirable for WELLS's continued professional participation, growth and advancement, or for the good of the CITY. Subject to available funding, CITY shall budget and pay for the professional dues and subscriptions. Subject to available funding, the CITY agrees to budget and to pay the travel and subsistence expenses of WELLS for official travel, meetings, and occasions reasonably adequate to

continue the professional development of WELLS and reasonably attend necessary official and other functions for the CITY.

#### **4. PERFORMANCE EVALUATIONS:**

On or before six months from the effective date of this Agreement, and every one year anniversary thereafter, the City Council shall conduct an evaluation of WELLS's performance. During that evaluation, the City Council shall establish performance goals and objectives to be met by WELLS during the following year. WELLS will request and schedule such reviews, as appropriate, or as otherwise directed by the City Council. As part of the evaluation process, the City Council will review WELLS's salary and benefits for potential adjustment. Nothing in this paragraph is intended to limit additional interim evaluations or to limit the normal communications process between the City Council and WELLS, nor is anything herein a guarantee that WELLS's salary shall be adjusted.

#### **5. TERMINATION:**

Notwithstanding anything to the contrary stated herein, the City Council has the right to terminate WELLS at any time during the term of this Agreement with or without cause, and nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City Council to terminate the services of WELLS at any time without cause. The Parties agree that WELLS serves at the will of the City Council and that this Agreement contains all of the terms and conditions of WELLS's employment. It is intended that Chapter 2.08.100 through 2.08.140 of the Manteca Municipal Code will apply if the City Council elects to remove WELLS from office.

##### **a. Termination, General**

This Agreement shall terminate upon the occurrence of any of the following events:

- i. Upon (30) thirty days' notice given to CITY by WELLS; or
- ii. Upon the death of WELLS; or
- iii. Upon the effective date of retirement from the CITY's service pursuant to CalPERS; or
- iv. By motion to terminate WELLS by a majority vote of the City Council, with or without cause.

##### **b. Termination Without Cause**

- i. In the event that the City Council terminates WELLS's employment for any reason other than for cause, WELLS shall receive, in addition to any accrued vacation and administrative leave, a lump sum severance of six (6) months, subject to the limits in Government Code Section 53260.
- ii. In the event that the City Council terminates WELLS's employment for any reason other than for cause, the CITY shall give WELLS notice that his employment shall terminate upon a date certain at least thirty (30) days after delivery of said termination notice, subject to the procedures outlined in Chapter 2.08.100 through 2.08.140 of the Manteca Municipal Code.

c. Termination for Cause.

- 1) The City Council shall have the right to terminate WELLS's employment as City Manager for cause. If WELLS is terminated by the City Council for any or all of the reasons stated below, WELLS shall not be entitled to any severance pay (or related benefits) as described in Subsection 5(b). For purposes of this Agreement, cause for termination shall include the following:
  - a. Employee's mental incapacity or inability to perform his duties hereunder due to physical or mental disability, as determined by a medical doctor;
  - b. Willful destruction, theft, misappropriation, or misuse of CITY property;
  - c. Intoxication on duty, whether by alcohol or non-prescriptive drugs;
  - d. Conviction of a felony; provided that WELLS may instead be placed on administrative leave without pay should he be charged with such a crime or crimes;
  - e. Dishonesty, fraud, and/or misconduct in office or in securing this appointment;
  - f. Violation of any conflict of interest laws, policies, or regulations;
  - g. Violation of State or federal discrimination laws concerning race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, sexual orientation, sex or age concerning either members of the general public or CITY employees;
  - h. Willful or unlawful retaliation against any other CITY official 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 directly related thereto; or
  - i. Violation of the CITY's ethics policy, civility policy, and/or harassment policy as determined by a judgment, results of an internal or external investigation, admission, or any criminal conviction; or any other violation of any personnel or employment policy, rule, or procedures.
- 2) As with the process applicable to a termination without cause, if the CITY terminates WELLS for cause, the CITY shall give WELLS notice that his employment shall terminate upon a date certain at least thirty (30) days after delivery of said termination notice, subject to the procedures outlined in Chapter 2.08.100 through 2.08.140 of the Manteca Municipal Code.

**6. RESIGNATION:**

If WELLS voluntarily resigns from the position of City Manager, he will provide the CITY with a minimum of thirty (30) days advance written notice. During the thirty (30) day period

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subsequent to said written notice of resignation, WELLS shall continue to discharge his duties as City Manager to the best of his ability, unless the City Council opts, in its sole discretion, to place WELLS on paid leave during all or any portion of said thirty (30) day period.

### 7. LIABILITY:

Subject to the terms and limitations of the Government Claims Act (Government Code sections 810 *et seq.*), CITY agrees to indemnify, hold harmless and defend at its expense WELLS from any and all claims, actions, losses, damages, charges, and expenses, including attorneys' fees to which WELLS may be subject to, arising out of, or resulting from the performance of this Agreement and WELLS's duties hereunder. This section shall not apply to liability incurred by WELLS for actions that are outside the scope of services or which result from willful or malicious conduct or gross negligence.

### 8. NO PROPERTY RIGHT IN EMPLOYMENT:

WELLS understands and agrees that the term of his employment is governed only by this Agreement and that no right of regular employment for any specific term is created by this Agreement. WELLS further understands that he acquires no property interest in his employment by virtue of this agreement, that the employment is "at will" as defined by the laws of the State of California (meaning that he can be terminated at any time for any reason or for no reason), and that he is not entitled to any pre- or post-deprivation administrative hearing or other due process upon termination or any disciplinary action, except for those that are specifically included in Chapter 2.08.100 through 2.08.140 of the Manteca Municipal Code.

### 9. NOTICE:

Notices required pursuant to this Agreement shall be given by personal service upon the Party to be notified or by delivery of same to the custody of the United States Postal Service, or its lawful successor, postage prepared and addressed as follows:

<p>If to CITY:</p> <p>City of Manteca 1001 W. Center Street Manteca, CA 95337 Attention: City Attorney's Office</p>	<p>If to WELLS:</p> <p>WELLS (address on file)</p>
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### 10. NON-ASSIGNMENT OF AGREEMENT:

This Agreement is intended to secure the individual services of WELLS and is not assignable and/or transferable by WELLS to any third party.

**11. GOVERNING LAW AND VENUE:**

This Agreement shall be interpreted according to the laws of the State of California. The exclusive venue to resolve any disputes related to this Agreement shall be the Superior Court for the County of San Joaquin, California.

**12. ENFORCEABILITY AND SEVERABILITY:**

If any term, covenant, condition, section, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**13. CONFLICT OF INTEREST:**

WELLS agrees that during the term of this Agreement, he will not maintain any financial interest or engage in any other contract employment, occupation, work, endeavor, advisory role, or association, whether compensated or not, that would in any way conflict with, or impair WELLS's ability to perform the duties described in this Agreement. Any work performed for the CITY outside the terms of this Agreement must be approved in advance in writing by the City Council. WELLS agrees to disclose whether he is performing work for any other CalPERS public agency employer as required by this Agreement. WELLS further agrees not to hire and/or appoint any individual to the CITY whose appointment and/or hire results in or that may potentially lead to a conflict of interest for the CITY and/or WELLS.

**14. ENTER AGREEMENT, APPLICABILITY, AND MODIFICATION:**

This Agreement constitutes the entire understanding of the Parties hereto. This Agreement supersedes any previous contracts, agreements, negotiations, or understandings, whether written or oral, between the Parties. WELLS shall be entitled to no other compensation or benefits than those specified herein, and WELLS acknowledges that no representation, inducements or promises not contained in this Agreement have been made to WELLS to induce WELLS to enter into this Agreement. No changes, amendments, or alterations hereto shall be effective unless in writing and signed by both Parties. WELLS understands that no oral modifications of this Agreement made by any officer, agent, or employee of CITY is effective. WELLS specifically acknowledges that in entering into and executing this Agreement, he relies solely upon the provisions contained herein and no others. To the extent applicable and/or permitted by law, this Agreement shall apply retroactively.

**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, based upon the identity of the drafter, shall be applicable in interpreting or enforcing this Agreement.

**16. ASSISTANCE OF COUNSEL:**

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

**17. BONDING:**

The CITY shall bear the full cost of any fidelity or other bond required of WELLS as the City Manager under any law or ordinance.

**18. COMPLIANCE WITH AB 1344:**

Notwithstanding any other provision of this Agreement, CITY and WELLS agree to fully comply with the Government Code sections that are part of AB 1344, as it became effective on January 1, 2012 ("AB 1344"), and to fully comply with other applicable law as it exists as of the date of execution of this Agreement, and as the Agreement may be amended from time to time thereafter. In that regard, the following Government Code sections are hereby incorporated into the terms of this Agreement:

§53243. Reimbursement of paid leave salary required upon conviction of crime involving office or position,

§53243.1. Reimbursement of legal criminal defense upon conviction of crime involving office or position,

§53243.2. Reimbursement of cash settlement upon conviction of crime involving office or position,

§53243.3. Reimbursement of non-contractual payments upon conviction or crime involving office or position and

§53243.4. Abuse of office or position defined.

WELLS has reviewed, is familiar with, and agrees to comply fully with each of those provisions if any are ever applicable to WELLS, including that WELLS agrees that any cash settlement or severance WELLS may receive as a result of any termination shall be fully reimbursed to the City if WELLS is convicted of a crime involving an abuse of his office or position.

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IN WITNESS WHEREOF, the above Parties have executed this Agreement as of the date first written above:

CITY OF MANTECA

TOBY WELLS

By: \_\_\_\_\_  
Benjamin Cantu, Mayor

By:  \_\_\_\_\_  
Toby Wells

Date: \_\_\_\_\_

By:  \_\_\_\_\_  
Mike Harden, Interim City Manager

ATTEST

APPROVED AS TO FORM

\_\_\_\_\_  
Cassandra Candini-Tilton, City Clerk

 \_\_\_\_\_  
L. David Nefouse, City Attorney

REVIEWED AS TO FORM:

 \_\_\_\_\_  
for Aaron Slater, Director of Employee Services & Engagement

 \_\_\_\_\_  
Jared Hansen, Acting Finance Director