RESOLUTION NO. 3777-22

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WINDSOR APPOINTING JONATHAN DAVIS AS TOWN MANAGER AND AUTHORIZING MAYOR SAM SALMON TO EXECUTE A TOWN MANAGER EMPLOYMENT AGREEMENT ON BEHALF OF THE TOWN

WHEREAS, former Town Manager Kenneth MacNab retired on December 31, 2021; and

WHEREAS, the Town Council has determined to appoint Jonathan Davis as the Town of Windsor's new Town Manager; and

WHEREAS, the Town Council authorized Interim Town Manager Mark Linder to negotiate a Town Manager Employment Agreement, which the Town Council has reviewed.

NOW, THEREFORE BE IT RESOLVED that the Town Council of the Town of Windsor, as the appointing authority, hereby appoints Jonathan Davis as Town Manager of the Town of Windsor, General Manager of the Town of Windsor Water District, Executive Director of the Windsor Redevelopment Successor Agency, and Executive Director of the Windsor Joint Powers Financing Authority, effective August 15, 2022; and

BE IT FURTHER RESOLVED that the Town Council approves the Town Manager Employment Agreement, attached to the accompanying agenda report, between Jonathan Davis and the Town of Windsor and authorizes Mayor Sam Salmon to execute the agreement on behalf of the Town.

PASSED, APPROVED, AND ADOPTED this 3rd day of August 2022, by the following vote:

AYES:	**COUNCILMEMBERS FUDGE, REYNOZA, WALL, VICE MAYOR LEMUS AND MAYOR SALMON**
NOES:	**NONE**
ABSTAIN:	**NONE**
ABSENT:	**NONE**

SAM SALMON, MAYOR

ATTEST:

IRENE CAMACHO-WERBY, TOWN CLERK

Attachment:

- **Exhibit A -** Town Manager Employment Agreement

TOWN MANAGER
EMPLOYMENT AGREEMENT

This agreement ("Agreement") is between the TOWN OF WINDSOR ("Employer" or "Town"), acting for itself and on behalf of the Town of Windsor Water District and the Windsor Redevelopment Successor Agency, and Jonathan Davis ("Employee"), and is entered into as of August 15, 2022 ("Effective Date"). Employer and Employee are referred to collectively herein as the "Parties" and individually as a "Party."

Recitals

Employer desires to employ the services of Employee as Town Manager.

Employee desires to accept employment as Town Manager.

The Town Council, as appointing authority power, and Jonathan Davis, in consideration of the mutual covenants herein contained and in accordance with the terms and conditions described in this Agreement, agree in writing as follows:

1. Duties

A. Employer agrees to employ Employee as Town Manager, and Employee agrees to perform the functions and duties specified in the general laws, the ordinances, and the resolutions of the Town of Windsor, and other legally permissible and proper duties and functions as the Town Council may from time to time assign.

B. Employee shall perform his duties to the best of his ability in accordance with the highest professional and ethical standards of the profession and shall comply with all general rules and regulations established by the Town.

C. Employee shall not engage in any activity that is or may become a conflict of interest or a prohibited contract or that may create an incompatibility of office as defined under California law. Prior to performing services under this Agreement and annually thereafter, the Employee must complete disclosure forms required by law.

D. Employee shall be an exempt employee under the Fair Labor Standards Act. Employee is expected to devote necessary time outside normal office hours to the business of the Town. To that end, Employee shall be allowed flexibility in setting his own office hours.

2. Term

A. The term of this Agreement shall be from the Effective Date and shall be for a five (5) year term, unless earlier terminated by either Party in accordance with the provisions set forth in Section 3 or until terminated by the event of the death or

permanent disability of Employee.

B. Employee agrees to remain in the exclusive employ of the Town during the term of this Agreement. Subject to prior approval of the Town Council, which approval will not be unreasonably withheld, this Agreement shall not be construed to preclude incidental and occasional teaching, writing, or consulting performed by Employee on Employee's time off.

3. Resignation and Termination

A. Employee may resign at any time with or without cause and agrees to give Town at least thirty (30) days advance written notice of the effective date of his resignation. During the notice period, all of the rights and obligations of the Parties under this Agreement shall remain in full force and effect.

B. Employer may terminate Employee with or without cause, at any time, upon thirty (30) days advance written notice.

C. The Town may not terminate Employee ninety (90) days prior to the seating of a new Town Councilmember or ninety (90) days after the seating of a new Town Councilmember, whether by election or appointment; provided, however, that this limitation does not apply to termination for cause.

D. The Parties recognize and affirm that:

1. Employee is an "at will" employee whose employment may be terminated by the Employer without cause.

2. There is no express or implied promise made to Employee for any form of continued employment. Nothing in this Agreement is intended to, or does, confer upon Employee any right to any property interest and continued employment or any due process right to a hearing before or after the decision to terminate his employment for cause.

3. The Town shall not be obligated to pay severance under the provisions of this Agreement if Employee is terminated for cause. For purposes of this Agreement, "cause" is defined as:

a. Violation of any policies or procedures;

b. Failure to perform assigned duties;

c. Theft of Town property;

d. Insubordination;

e. Conviction of a felony or misdemeanor relating to Employee's fitness to perform assigned duties;

f. Unauthorized absence from employment;

g. Failure to maintain satisfactory working relationships with other employees or the public;

h. Improper use of Town funds;

i. Unauthorized use of Town property;

j. Willful misconduct or malfeasance;

k. Any act of moral turpitude or dishonesty; and/or

l. Other failures of good behavior either during or outside of employment such that Employee's conduct causes discredit to the Town.

4. This Agreement is the sole and exclusive basis for an employment relationship between Employer and Employee.

4. Severance Pay

Except as set forth below, if Employee is terminated by the Town Council while still willing and able to perform the duties of Town Manager, Employer agrees to pay Employee a cash payment equal to six (6) months' salary as specified in Section 5(A), plus all accrued vacation, sick, management, and holiday leave as of the date of termination. Said cash payments, subject to customary withholding, shall be paid at the option of the Employee in a lump sum, installment, monthly, or bi-weekly payments. Such payment will release Employer from any further obligations under this Agreement.

Payment of severance under this Section shall be in exchange for the Employee's general release of all claims against the Town (including its present and former officers, officials, employees, agents, volunteers, and insurers), executed in a form approved by the Town. Severance shall be paid to the Employee if Employee's employment is terminated without cause. The Town will not be obligated to pay severance unless and until a general release is signed by Employee in a form approved by the Town. The release of all claims will not become effective until the severance is paid by the Town.

The Town is not obligated to pay severance under this Agreement if Employee is terminated for cause, as defined in Section 3(D)(3).

If Employee is terminated due to a conviction of any criminal offense involving moral turpitude, then Employer shall have no obligation to provide thirty (30) days advance written notice or to pay severance set forth in this Section. Furthermore, pursuant to Government Code section 53243.2, if this Agreement is terminated, any severance that Employee may receive from Employer shall be fully reimbursed to Employer if Employee is convicted of a crime involving abuse of his office or position. (California Government Code sections 53243, 53243.1, 53243.2, 53243.3, related to abuse of office, are incorporated by this reference as if fully set forth herein.)

Any severance under this Section is subject to the restrictions set forth in Government Code section 53260, including, without limitation, that the maximum amount of severance pay that Employee may receive shall not exceed an amount equal to the monthly base salary multiplied by the number of months left on this unexpired Agreement.

5. Salary

A. Effective August 15, 2022, Employer agrees to pay Employee for his services rendered pursuant to this Agreement as Town Manager a base salary of Two Hundred Thousand and Eight Hundred Eighty Dollars ($200,880) per annum, payable in bi-weekly installments at the same time as other employees of the Town are paid and subject to customary withholding.

B. Effective July 1, 2023, Employee's then current base salary will be increased by three and one-quarter percent (3.25%), and effective July 1, 2024, Employee's then current base salary will be increased by three and one-quarter percent (3.25%). The salary increases under this Section are in addition to any compensation increase the Town Council grants the Employee.

C. In addition to the compensation increase in Section 5(B), the Town Council shall evaluate Employee's performance at least annually and may consider increasing Employee's salary pursuant to Section 9 of this Agreement. Any increases in Employee's salary, other than the increases in Section 5(B), must be approved by a resolution of the Town Council.

6. Automobile

Employee's duties require that he have the use of an automobile at all times during his employment with the Town. Reimbursement for said use is included in Employee's annual salary specified in Section 5(A). In addition to such base salary, Employee shall receive an automobile allowance of Five Hundred Dollars ($500) per month. Employee understands the importance of procuring and using an electric vehicle to reduce greenhouse gas impacts. The employee will strive to purchase or lease an electric vehicle within twelve (12) months of the Effective Date.

7. Benefits

A. Cellular Phone Expense: Employee's duties require that he have the use of a cellular phone at all times during his employment with the Town. Employer shall provide Employee with a monthly stipend of Sixty-five Dollars ($65) toward owning and maintaining cellular phone service.

B. Leave: Employee shall be eligible for the same holiday, management, vacation, sick, jury duty, and bereavement leave as provided to the executive management employees of the Town and as may be amended from time to time, except that: (i) Employee shall accrue vacation time of two hundred (200) employee hours per year, and (ii) Employee shall be eligible for eighty (80) hours of management leave annually.

C. Health and Welfare Insurance: Employee shall be eligible for the same medical, dental, vision, life, long-term disability, and employee assistance program coverages and Employer paid premiums for Employee and eligible dependents as currently provided to the executive management employees of the Town, and as may be amended from time to time.

D. Retirement: The Town has determined that Employee is a "classic" employee and not a "new" employee as those terms are used and defined in the California Pension Reform Act (Government Code section 7522 *et seq.*), effective January 1, 2013, and subsequent California Public Employees Retirement System ("CalPERS") implementing regulations; provided, however, that Town's determination is subject to CalPERS review and concurrence.

E. General: All actions taken by the Employer relating to benefits for the executive management employees of the Town shall be considered actions granting the same benefits to Employee. As used herein, benefits include but are not limited to vacation, sick leave, management leave, family and medical leave, holidays, retirement benefits, health, dental, vision, and life insurance.

8. Professional Development

The Parties agree that it is in the best interest of the Town that Employee maintain membership in professional associations and engage in professional activities related to Town management and public administration. Employer shall be granted the same professional development benefits, at Employer expense, as provided to the executive management employees of the Town. Employee shall also be reimbursed by the Town for membership in the International City/County Management Association ("ICMA"), the California City Management Foundation ("CCMF"), and for Executive Coaching.

9. Performance Evaluation

The Town Council shall evaluate Employee's performance at least annually and will set goals and objectives for the Employee for the ensuing year. As a part of the Employee's annual performance evaluation, the Town Council may consider increasing, but shall not be required to increase, Employee's salary.

10. General Expenses

All reasonable travel or other expenses incurred by Employee in the performance of his official duties shall be reimbursed by Employer upon submittal of a receipt or other verification of such expenses.

11. Indemnification

Employer shall provide for the defense of Employee in any action or proceeding alleging an act or omission within the scope of Employee's employment in accordance with California Government Code sections 825, 995, et seq., and other applicable law. Notwithstanding anything to the contrary in this Agreement, in accordance with California Government Code

section 825, subdivision (a), Employer reserves the right to not pay any judgment, compromise, or settlement subject to that Section until it is established that the injury arose out of any act or omission occurring within the scope of Employee's employment pursuant to this Agreement. Further, notwithstanding anything to the contrary in this Agreement, Employer reserves the right to refuse to provide for the defense of Employee for the reasons set forth in California Government Code section 995.2 or other applicable provisions of law. Any Employer funds provided for the legal criminal defense of Employee shall be fully reimbursed in accordance with California Government Code section 53243.1 if Employee is convicted of a crime involving an abuse of his office or position as defined in California Government Code section 53243.4.

12. Bonding

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

13. Compatibility with State Law

This Agreement is made subject to all applicable law of the State of California, specifically including but not limited to Sections 36506 and 3511.2 of the Government Code. In the event of any conflict between the provisions of this Agreement and any such state law, the provisions of state law shall apply.

14. Notices

Any notices required by this Agreement shall be in writing and either given in person or by first class mail with postage prepaid and addressed as follows:

To Employer: Mayor
Town of Windsor
P.O. Box 100
Windsor, CA 95492-0100

To Employee: Jonathan Davis
[Address on file]

15. General Provisions

A. Any controversy or claim arising out of or pertaining to this Agreement, or the breach thereof, shall be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be enforced as provided by California law. Employer shall be responsible for all costs of any arbitration proceeding described herein, except for Employee costs of his own representation.

B. This Agreement is the final expression of the complete agreement of the Parties with respect to the matters specified herein and supersedes all prior oral or written understandings. Except as prescribed herein, this Agreement cannot be modified except by a written mutual agreement signed by both Parties.

C. Employee shall not be required to live within the Windsor Town limits.

D. This Agreement shall not be assignable by either Employer or Employee.

E. In the event that any provision of this Agreement is finally held or determined to be illegal or void by a court having jurisdiction over the Parties, the remainder of the Agreement shall remain in full force and effect unless the parts found to be void are wholly inseparable from the remaining portion of the Agreement.

F. The terms of this Agreement may be reviewed jointly by the Employer and Employee on a periodic basis in order to make amendments agreeable to both Parties and approved by resolution of the Town Council.

G. This Agreement shall become effective immediately upon execution by the Parties.

IN WITNESS WHEREOF, the Employer has caused this Agreement to be signed and executed in its behalf by its Mayor and duly attested by the Town Clerk. It has also been executed by the Employee.

Sam Salmon, Mayor
Town of Windsor

Jonathan Davis
Employee

Attest:

Irene Camacho-Werby, Town Clerk

08/11/2022
Date

Approved as to Form:

Jose M. Sanchez, Town Attorney