

**CITY OF FULLERTON
FIRE CHIEF
EMPLOYMENT AGREEMENT**

This Employment Agreement ("Agreement") is made and entered into this 3rd day of May, 2022 by and between the City of Fullerton, a California municipal corporation (hereafter referred to as "City"), and Adam Loeser (hereafter referred to as "Loeser").

RECITALS

WHEREAS, Loeser was employed by the City of Fullerton from March 4, 2002 through December 28, 2018, including more than five years as a Chief Officer; and

WHEREAS, the Cities of Fullerton and Brea entered into a pilot program for shared fire command services and then entered into a formal Shared Command Agreement in 2014; and

WHEREAS, Loeser was appointed as the Fire Chief under the Shared Command Agreement, resigning from the City of Fullerton on December 28, 2018 and subsequently accepting employment with the City of Brea; and

WHEREAS, the City of Brea has provided notice to Fullerton that they wish to terminate the Shared Command Agreement; and

WHEREAS, the Cities of Fullerton and Brea have agreed to a termination date of June 30, 2022; and

WHEREAS, the City desires to retain the services of Loeser as the Fullerton Fire Chief, to serve at the direction of the City Manager (hereafter referred to as "City Manager"); and

WHEREAS, Loeser desires to perform the services of the Fire Chief; and

WHEREAS, the City desires to provide certain benefits, establish certain conditions of employment, and set certain working conditions of the Fire Chief; and

WHEREAS, the City and Loeser desire to enter into this agreement to specify the terms and conditions of Loeser's employment with the City; and

WHEREAS, certain recommended terms and conditions of Loeser's agreement fall outside the parameters of Resolution No. 2022-003, Relating to Compensation for Executive Employees (hereinafter referred to as "Executive Compensation Resolution"), which specifies the terms and conditions of employment that are within the City Manager's authority.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions herein, the parties agree as follows:

1. Duties

The City agrees to employ Loeser as Fire Chief beginning May 14, 2022 to perform the functions and duties of the Fire Chief as set forth in the Class Specification for Fire Chief, attached hereto as Exhibit "A" and incorporated herein by this reference, and to perform other permissible and proper duties and functions consistent with the position of Fire Chief as the City Manager may from time to time assign.

The parties agree that Loeser shall remain the Fire Chief for both the Cities of Fullerton and Brea under the Shared Command Agreement until the mutually agreed-upon date of termination, June 30, 2022.

2. Term and Conditions

- A. This Agreement supplements all ordinances, resolutions, policies, rules, regulations, procedures, and benefits ("City Rules") which apply to Executive employees, which shall also apply to Loeser, including, but not limited to, Executive Compensation Resolution as it currently exists or may hereafter be amended or superseded or as modified herein.
- B. Pursuant to and consistent with the Executive Compensation Resolution and Resolution No. 8485, Municipal Code Sections 2.33.010 and 2.33.020 (attached) shall not apply to Loeser with respect to the City's disciplinary and appeals procedures. Loeser serves at the pleasure of the City Manager and may be discharged without cause provided that he is given six months' written notice. As an alternative to such notice, Loeser shall receive a lump sum cash payment equal to six months of his then-current base salary and the City shall pay for the first six months of COBRA coverage under the City sponsored medical, dental or vision plan in which Loeser and his dependents are covered at the time of his separation. This requirement shall not apply if Loeser is discharged for cause, which may include but is not limited to discharge due to acts of moral turpitude or conviction of a felony.
- C. If Loeser voluntarily retires or resigns, he shall give the City ninety (90) calendar days written notice in advance, unless the parties otherwise agree in writing.
- D. Pursuant to Government Code section 53243.2, any cash settlement Loeser may receive related to the termination of this Agreement, including, but not limited to a severance payment and the cost of COBRA payments, shall be fully reimbursed to the City if Loeser is convicted of a crime involving "an abuse of office or position," as that term is defined in Government Code section 53243.4.

3. Work Schedule

Loeser will work a standard work schedule. The precise daily schedule is subject to determination by the City Manager based on the City's business needs.

4. Salary

City agrees to compensate Loeser for services rendered, no less than \$214,774 per year (approximately \$103.242 per hour).

5. CalPERS

Loeser shall be enrolled in the City of Fullerton's CalPERS plan for Fire Safety employees with the benefit formula determined by the City's contract with CalPERS. The City's contribution and Loeser's contribution towards CalPERS shall be made in accordance with the Executive Compensation Resolution or any successor resolutions.

6. Retiree Medical

Loeser shall be eligible for a City contribution to health insurance after retirement from the City pursuant to the provisions in the Executive Compensation Resolution applicable to employees hired on or before September 1, 2017.

Pursuant to the authority provided in the Executive Compensation Resolution, the City Manager also authorizes the \$750 annual medical exam benefit provided in Section 18 B of the Executive Compensation Resolution, to be converted into a City contribution to Loeser's retiree health savings account in the amount of \$28.85 per pay period.

7. Seniority

Upon Loeser's hire date as the City's Fire Chief, Loeser's seniority shall be based on his original Fullerton hire date of March 4, 2002 and will be considered as having been continuously employed by the City of Fullerton since March 4, 2002. Any calculation of Fullerton seniority shall have no bearing on retirement benefits under CalPERS. For purposes of CalPERS retirement benefits, Loeser shall receive benefits in accordance with the respective contracts between the Cities of Fullerton and Brea and CalPERS, in accordance with CalPERS statutes and regulations.

8. Vacation Accrual

Upon Loeser's hire date as the City's Fire Chief, Loeser shall accrue vacation time at the rate of a 20-year employee, 168 hours per year. An initial bank of 150 hours will be established for use by Loeser. Thereafter, Loeser's accrual rate will follow the

Executive Compensation Resolution in effect at the time of completing each year of service. Loeser's accrual rate will be based on a Fullerton hire date of March 4, 2002.

9. Sick Leave

Loeser shall accrue sick leave at the rate of 3.69 hours per pay period. An initial bank of 250 hours will be established for use by Loeser. The 250 hours in the initial bank shall have no cash value or CalPERS service credit value for Loeser.

10. Executive Leave

Loeser will accrue Executive Leave at the rate of 81 hours per year in accordance with the Executive Compensation Resolution. An initial bank of 40 hours will be established for use by Loeser.

11. Vehicle Use and Uniform Allowance

A. Vehicle Use. City agrees to provide Loeser with a City vehicle and necessary service, fuel, equipment, and maintenance. Loeser is authorized by the City to use the City vehicle for personal use to and from home and on-call purposes only in his official capacity as Fire Chief. In exchange therefor, Loeser agrees:

1. To operate City vehicle at all times in accordance with the laws of the State of California or other applicable jurisdictions within the United States.
2. To not drive or allow the City vehicle to be driven outside the jurisdiction of the United States.
3. Not to operate City vehicle while under the influence of alcohol or any controlled substance.
4. To fuel the vehicle with appropriate fuel dispensed from City fueling stations or purchased in accordance with City purchasing rules and policies.
5. To not allow any person other than a current employee of the City of Fullerton to operate City vehicle.
6. To reasonably maintain the exterior and interior condition of City vehicle and to immediately report all service and mechanical repair needs to the Public Works Fleet Division.
7. To not use or allow the use of tobacco products, e-cigarettes, or vapor devices inside City vehicle.
8. To notify the local police agency and request a report of any accident involving or damage incurred by City vehicle, except that, in the case of an accident

within the City of Fullerton, an outside police agency shall be contacted to investigate the accident.

9. To complete a City of Fullerton Incident Report form and provide it to the City Manager within 24 hours of any accident involving City vehicle.

10. City and Loeser believe the authorized personal use to and from home is not subject to taxation. In the event of changes in the law or application of the law, any resultant tax liabilities shall be the sole responsibility of Loeser.

B. Uniform Allowance. Loeser shall receive uniform allowance in the same amount as provided to employees represented by the Fullerton Fire Management Association (currently \$27.70 per pay period).

12. Other Benefits

Except as noted in this provision, Loeser shall be entitled to other benefits as provided to Executive employees within the Executive Compensation Resolution including, but not limited to, participation in City sponsored health plans and City contributions toward coverage in such plans, and paid holidays.

13. No Reduction in Benefits

City shall not at any time during the term of this agreement reduce the base salary, compensation, or other financial benefits of Loeser except on the same basis as may be applicable to all executive management employees of the City. This may be done notwithstanding the provisions of Section 4 above.

14. Indemnification

In accordance with the provisions of California Government Code Sections 995 and 995.2 as they currently exist or may hereafter be amended, City shall defend and indemnify Loeser, using legal counsel of City's choosing, against any civil action or proceeding brought against Loeser, in his official or individual capacity or both, on account of an act or omission in the scope of his employment as Fire Chief, unless such act or omission was due to actual fraud, corruption, or actual malice. In the event the City determines there is a conflict of interest between the Parties and Loeser and independent counsel is required for Loeser's defense, City shall select and pay the reasonable fees of such independent counsel for Loeser's defense. Loeser shall cooperate fully in the investigation and defense of any civil action or proceeding.

Loeser acknowledges and agrees that City reserves its rights pursuant to Government Code Section 825(a) not to pay any judgment, compromise, or settlement until it is established that the injury arose out of an act or omission occurring within the scope of his employment, and that City's agreement to defend and indemnify him does not constitute an agreement to pay any punitive damages awarded against him. In that

regard, Loeser acknowledges and agrees that pursuant to Government Code Section 825(b), City may not make a determination whether or not to indemnify an employee for an award of punitive damages until such time as the award is made.

15. Other Terms and Conditions of Employment

The City Manager, in consultation with Loeser, shall establish any other terms and conditions of employment as he/she may determine from time to time, relating to the performance of Loeser, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Fullerton Municipal Code, any ordinance or resolution of the City, or other applicable laws, rules or regulations for payout of the cash value of accrued vacation leave at the time of separation.

16. Notices

Any notice required or permitted by this Agreement shall be in writing and shall be personally served or be sufficiently given when served upon the other party as sent by the United States Postal Service, postage prepaid and addressed as follows:

To City:

City Manager
City of Fullerton
303 W. Commonwealth Ave
Fullerton, CA 92832-1775

To Loeser:


Adam Loeser
Address on file with Human Resources

17. General Provisions


- A. **Integration.** This Agreement sets forth the final, complete, and exclusive agreement between City and Loeser relating to the employment of Loeser by City. Any prior discussions or representations by or between the parties are merged into this Agreement or are otherwise rendered null and void. The Parties by mutual written agreement may amend any provision of this Agreement. Such amendments shall be incorporated and made a part of this Agreement. The foregoing notwithstanding, Loeser acknowledges that, except as expressly provided in this Agreement, his employment is subject to City's generally applicable rules and policies pertaining to employment matters, such as those addressing equal employment opportunity, sexual harassment, and violence in the workplace, as they currently or may in the future exist, and his employment is, and will continue to be, at the will of the City Council.
- B. **Binding Effect.** This Agreement shall be binding on the City and Loeser as well as their heirs, assigns, executors, personal representatives, and successors in interest.

- C. Choice of Law. This Agreement shall be interpreted and construed pursuant to and in accordance with the laws of the State of California and all applicable City Ordinances, Policies and Resolutions.
- D. Severability. If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect. If any provision is held invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.
- E. Conflict with Municipal Code. The City personnel ordinances, resolutions, rules, and policies shall apply to Loeser in the same manner as applied to other management employees, provided, however, in the event of a conflict between the provisions of this Agreement and the Municipal Code, the City Municipal Code shall prevail over this Agreement.
- F. Loeser's Independent Review. Loeser acknowledges that he has had the opportunity and has conducted an independent review of the financial and legal effects of this Agreement. Loeser acknowledges that he has made an independent judgment upon the financial and legal effects of this Agreement and has not relied upon any representation of City, its officers, agents, or employees other than those expressly set forth in this Agreement. Loeser acknowledges that he has been advised to obtain, and has availed himself of, legal advice with respect to the terms and provisions of this Agreement.

IN WITNESS WHEREOF, the City has caused this Agreement to be signed and duly executed on its behalf by its City Manager, and Loeser has signed and executed this Agreement, the date and year first written above.

By: 
Jeff Collier, Acting City Manager

Date: 5/4/2022

By: 
Adam Loeser

Date: 5/4/2022

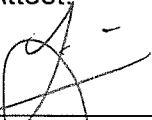
Approved as to Form:



Richard D. Jones, City Attorney

Dated: 5-3-22

Attest:



Lucinda Williams, City Clerk

Dated: _____