

**CITY OF FULLERTON
DIRECTOR OF PUBLIC WORKS
EMPLOYMENT AGREEMENT**

This Employment Agreement ("Agreement") is made and entered into this 16th day of September, 2023 by and between the City of Fullerton, a California municipal corporation (hereafter "City"), and Stephen Bise (hereinafter referred to as "Bise").

RECITALS

WHEREAS, the City desires to retain the services of Bise as the Director of Public Works to serve at the direction of the City Manager, (hereinafter referred to as "City Manager"); and

WHEREAS, Bise desires to perform the services of the Director of Public Works; and

WHEREAS, the City desires to provide certain benefits, establish certain conditions of employment, and set certain working conditions of the Director of Public Works; and

WHEREAS, the City and Bise desire to enter into this Agreement to specify the terms and conditions of Bise's employment with the City.

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

1. Duties

City hereby agrees to employ Bise as Director of Public Works beginning September 16, 2023 (hereinafter "Appointment Date") to perform the functions and duties of the Director of Public Works as set forth in the Class Specification for Director of Public Works 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 the Director of Public Works as the City Manager may from time to time assign.

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 apply to Bise, including, but not limited to, Resolution No. 2023-065, Compensation for Executive Employees (hereinafter "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Resolution”) as it currently exists or may hereafter be amended or superseded or as modified herein.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 Bise with respect to the City’s disciplinary and appeals procedures. Bise serves at the pleasure of the City Manager and may be discharged without cause provided that he is given six (6) months written notice. As an alternative to such notice, Bise shall receive a lump sum cash payment equal to six (6) months of his then-current base salary and the City shall pay for the first six (6) months of COBRA coverage under any City sponsored medical, dental or vision plan in which Bise and his dependents are covered at the time of his separation. This requirement shall not apply if Bise is discharged for cause. As used in this Agreement, Cause shall mean any of the following:
1. Indictment, conviction, or plea of nolo contendere to any felony or other crime involving moral turpitude;
 2. Material breach of City policy or this Agreement, which breach Bise has not cured, to the extent curable, to the satisfaction of the City Manager within sixty (60) days after receiving notice of such breach;
 3. Fraud, embezzlement, misappropriation of funds or disclosure of confidential information;
 4. Misconduct or gross negligence that results, or reasonably could be expected to result, in financial damage to the City;
 5. Failure to cooperate with an official investigation authorized by the City Manager, or initiated by a governmental authority, in either case related to the City, its business, Council members or City employees; or
 6. Acceptance of employment from another source which is inconsistent with full time employment as Director of Public Works and/or in violation of this Agreement.
- C. If Bise voluntarily resigns or retires, 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 Bise 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 Bise 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

Bise will work a standard work schedule. The precise daily schedule is subject to determination by the Director of Public Works based on the City's business needs.

4. Salary

City agrees to compensate Bise for services rendered, no less than \$208,000 per year (approximately \$100.00 per hour). After completion of six (6) months of service with a performance rating of average or above, Bise's compensation shall be evaluated for a possible increase of up to 5%. After the initial six (6) month evaluation, all subsequent evaluations and pay increase shall be done annually on the promotional anniversary, in conformity with the Executive Compensation Resolution.

5. CalPERS

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

6. Retiree Medical

In lieu of Bise's eligibility for a City contribution to health insurance after retirement from the City, the City agrees to make contributions of \$100 each pay period that this Agreement is in effect into a retiree health savings account in a plan to be implemented by the City as soon as possible following the Effective Date of this Agreement.

Pursuant to Section 19: Healthy Lifestyle Practices in the Executive Compensation Resolution, Bise has the option to convert the \$750 annual medical exam benefit into a City contribution to Bise's retiree health savings account in the amount of \$28.85 per pay period.

7. Vacation Accrual

Bise shall accrue vacation time at the rate of an 13-year employee, 152 hours per year. For the purposes of vacation accrual rate calculation only, Bise will be treated as having 13 years of service upon the Appointment Date. Bise's accrual rate will follow the Executive Compensation Resolution in effect at the time of completing each year of service. In addition, Bise shall retain all remaining accrued vacation time earned prior to the Appointment Date.

8. Sick Leave

Bise shall accrue sick leave at the rate of 3.69 hours per pay period. In addition, Bise shall retain all remaining accrued City sick leave earned prior to the Appointment Date.

9. Executive Leave

Bise shall accrue Executive Leave at the rate of 81 hours per year in accordance with the Executive Compensation Resolution. As Bise is currently an Executive employee and has already earned his Executive Leave for Fiscal Year 2023-24, Bise shall retain his current Executive Leave balance and shall be eligible for a new bank of 81 hours effective Fiscal Year 2024-25.

10. Other benefits

Except as noted in this provision, Bise 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 towards coverage in such plans, vehicle allowance, and paid holidays.

11. 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 Bise 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.

12. Indemnification

City shall defend, hold harmless and indemnify Bise against any tort, professional liability claim or demand or other legal action, arising out of any alleged act or omission occurring within the scope of his employment as the City Engineer/Assistant Director of Public Works in accordance with the provisions of California Government Code section 825. At its sole discretion, City may

compromise, settle, assign legal counsel, determine litigation strategy, or pay judgment rendered in any such claim or suit.

Bise shall cooperate fully in the investigation and defense of any such liability claim, demand, or legal action.

Bise acknowledges and agrees that City's agreement to defend, hold harmless and indemnify him does not constitute an agreement to pay any punitive damages awarded against Bise in any such liability claim, demand or legal action. In that regard, Bise acknowledges and agrees that per subdivision (b) of Government Code Section 825, 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.

13. Other Terms and Conditions of Employment

The Director of Public Works, in consultation with Bise, shall establish any other terms and conditions of employment as he/she may determine from time to time, relating to the performance of Bise, 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.

14. 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 Bise:

Stephen Bise
Address on record with the
Human Resources Department

15. General Provisions

- A. This Agreement constitutes the entire agreement between parties.
- B. If any provision or portion thereof contained in this Agreement is held unlawful, the remainder of this Agreement, or portion thereof, shall be deemed severable and shall not be affected and shall remain in full force and effect.

- C. In the event of any legal action between the parties hereto to enforce the provisions of this Agreement, each party shall bear their own legal fees and costs.
- D. This Agreement is intended to secure the individual services of Bise and is not assignable or transferrable by Bise to any third party.
- E. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.
- F. Bise acknowledges that she has been represented by independent legal counsel of her own choosing, or if not, has been advised to obtain independent legal counsel and has freely and voluntarily waived and relinquished the right to legal counsel. Further, if Bise has not obtained independent legal counsel, she acknowledges that the failure to have independent legal counsel will not excuse her failure to perform under this Agreement or any agreement referred to in this Agreement.
- G. This Agreement may be executed in counterparts containing original signatures.

{SIGNATURES ON FOLLOWING PAGE}

City of Fullerton
Employment Agreement – Stephen Bise

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

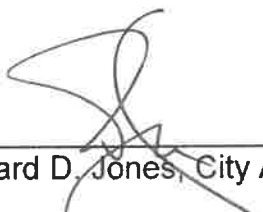
By: 
Eric Levitt, City Manager

Date: 9/22/23

By: 
Stephen Bise

Date: 9/20/23

Approved as to Form:


Richard D. Jones, City Attorney

Dated: 9.20.23