

RESOLUTION NO. 19-067

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SARATOGA
APPROVING AMENDED AGREEMENT FOR EMPLOYMENT OF CITY
MANAGER**

WHEREAS, James Lindsay (“Lindsay”) was hired in the position of City Manager on July 2, 2014 pursuant to an employment agreement of that date and the agreement was amended effective July 1, 2015 and further amended July 2018; and

WHEREAS, the City Council and Lindsay wish to further amend the employment agreement; and

WHEREAS, the Third Amended Agreement For Employment Of City Manager (“Agreement”) attached hereto and made a part hereof supersedes all prior agreements between Lindsay and the City effective July 1, 2019; and

WHEREAS, this Council finds that the provisions and agreements contained in Agreement are fair and proper and in the best interest of the City and in compliance with California Government Code sections 3511.1 and 3511.2; and

NOW, THEREFORE BE IT RESOLVED, by the City Council of the City of Saratoga the Agreement attached as Exhibit A to this resolution is hereby adopted.

The above and foregoing resolution was passed and adopted by the Saratoga City Council at a regular meeting held on the 18th day of December, 2019, by the following vote:

AYES: Mayor Howard A. Miller, Vice Mayor Mary-Lynne Bernald, Council Members Yan Zhao, E. Manny Cappello, Rishi Kumar

NOES:

ABSENT:

ABSTAIN:



Howard A. Miller, Mayor

ATTEST:



Debbie Bretschneider
City Clerk

DATE: 12/20/2019

**THIRD AMENDED AGREEMENT
FOR EMPLOYMENT OF CITY MANAGER
(EFFECTIVE DATE OF JULY 1, 2019)**

This Agreement is made and entered effective the 1st day of July, 2019, by and between the City of Saratoga (the "City"), a general law city, and James Lindsay ("Employee"). This Agreement for employment of Employee supersedes all prior discussions and all prior agreements including the employment agreement effective July 2, 2014 as amended effective July 2015 and further amended July 2018, between Employee and the City.

Employee is hired in the position of City Manager. Employee assumed the powers and duties of the City Manager beginning on Wednesday, July 23, 2014.

This Agreement complies with AB 1344 (Government Code sections 3511.1 and 3511.2), which provides for greater transparency of local agency executives' contracts.

In consideration of the mutual covenants contained herein, the parties agree as follows:

I. EMPLOYMENT

The City Council of the City hereby appoints Employee to the position of City Manager to perform the functions and duties specified under the laws of the State of California, the Saratoga City Code, the Ordinances and Resolutions of the City, and this Agreement, and to perform such other duties and functions as the City Council shall assign. Employee shall serve at the pleasure of the City Council. (See Section 2-20.010 of the Municipal Code and Agreement section V.A.).

II. POWERS, DUTIES AND RESPONSIBILITIES.

A. Employment Duties.

Employee shall function as the City Manager of the City and shall be vested with the powers, duties and responsibilities set forth in Article 2-20 of the Municipal Code and California law as they now exist and may be amended hereafter, the terms of which are incorporated herein by reference. In addition, Employee shall perform such other duties as may be assigned by the City Council to ensure effective and productive functioning of City operations, services, and work and which are consistent with the position of City Manager, without additional compensation because the City Manager is an overtime-exempt executive position. Such duties shall include, but not be limited to, the following:

1. Assemble and explain pertinent facts and prepare committee and Council reports as required;
2. Prepare agendas for Council meetings and advise Council on appropriate priorities and required actions;
3. Direct City Clerk in preparation for City Council meetings, maintenance of official records, conduct of municipal elections and execution of related functions;
4. Represent the City Council in relationships with other governmental and private agencies;

5. Confer with and direct all department heads in the formation and implementation of administrative policies and practices;
6. Prepare and submit the annual budget;
7. Represent City to press and other information media as required;
8. Meet with individual citizens and groups to discuss complaints and explain City policy and actions;
9. Administer any bonds approved by the voters of the City; and
10. Supervise City operations and oversee all work and services performed by City staff.

B. Hours of Work.

Employee is expected to devote necessary time outside normal office hours to business of the City. To that end, Employee shall be allowed flexibility in setting his own office hours, provided that Employee shall work as necessary during customary business hours to satisfactorily perform his City Manager duties and responsibilities and be available to other City staff during customary business hours. As of the effective date of this Agreement, the City's customary business hours are based on a 9/80 work schedule where a full-time work week constitutes 40 hours within seven consecutive 24-hour days and where the City is closed every other Friday.

Employee shall schedule any appointments for medical treatment, industrial injury medical treatment, or other personal appointments so as to minimize the inconvenience to fellow employees and the impact on his ability to perform his job.

III. COMPENSATION AND BENEFITS OF EMPLOYEE.

A. Salary.

1. Employee's salary effective July 1, 2019 is Two Hundred Forty Nine Thousand Eight Hundred Eight Dollars (\$249,808.00) per year. The salary shall be paid in regular payroll periods, which are bi-weekly installments. (Future changes to compensation are addressed in Section IV.)
2. In light of Employee's sustained record of high performance, in the event the City, at any time during the term of this Agreement, either
 - (1) reduces the total of the compensation components listed in Section A.3 to a level below that paid to the highest paid City employee; or,
 - (2) reduces Employee's salary to a level below the average city manager salary (determined by a salary survey using the comparison cities in the Personnel Rules),

then Employee may, at his option, be deemed to be "terminated" by the City Council within the meaning of Section V.A.4 of this Agreement as of the date of such reduction, unless Employee has agreed to the lower pay or benefits in a written document signed by Employee.

3. The compensation components referenced in section III.A.2.(1), above, are annual compensation in:
 - (i) salary;
 - (ii) car allowance;
 - (iii) deferred compensation payments by the City; and
 - (iv) the number of hours of paid time off multiplied by the employee's hourly pay rate.

B. Benefits.

Employee shall be entitled to the following benefits:

1. Health, Dental, Vision, and Employee Assistance Program (EAP): The City provides Employee with health benefits, dental benefits, an employee assistance program (EAP), and voluntary vision benefits (paid by Employee). The voluntary vision benefits' premium is paid by Employee. The City pays the full premium for dental insurance and the EAP. The City pays a monthly health insurance contribution toward the premium as follows:

The City will provide a monthly health insurance contribution for Employee's selected level of coverage as follows in the chart below:

Employee	Employee Plus One	Employee Plus Two (Family)
\$816.00	\$1,632.00	\$2,122.00

The City's monthly health insurance contribution will be adjusted annually as follows:

1. Prior to the beginning of the CalPERS open enrollment period, the City will compare the average monthly cost of all plans offered in the next calendar year for each level of coverage (Employee, Employee + 1, and Employee +2) with the current year average monthly costs for each level of coverage. The average will be calculated by adding the cost for each plan at the same level of coverage and then dividing by the number of plans.
2. If the average cost for a level of coverage in the next calendar year will exceed the average cost for the same level in the current year, then the City's monthly contribution for that level of coverage will be increased by 50% of the difference of the two yearly averages.
3. If the average cost for a level of coverage in the next calendar year is below the average cost for the same level in the current year, then the City monthly contribution for that level of coverage will not change.

The adjusted City contribution for each level of coverage for the next calendar year will be provided to Employee prior to the beginning of the open enrollment period and become effective on January 1 of each year.

If Employee selects a health insurance plan with a monthly premium above the City contribution, Employee will pay the amount above the City contribution as a pre-tax payroll deduction.

2. Cash-in-Lieu: If Employee completes and submits required documents (1) to prove that Employee has other health insurance coverage and (2) to waive City-provided health insurance coverage, Employee will receive a payment per month of \$400.00 as additional taxable wages. Effective July 2, 2014, if Employee completes and submits required documents (1) to prove that Employee has other dental insurance coverage and (2) to waive City-provided dental insurance coverage, Employee will receive a payment per month of \$25.00 as additional taxable wages. Employee must complete and submit any required documents and provide proof of other health or dental insurance coverage at the time that employment begins and during open enrollment each year (in or around October) to be eligible for the cash-in-lieu payment beginning the following January.
3. 457 Plan: The City provides Employee the opportunity to contribute to an IRS Section 457 deferred compensation plan. Employee may contribute up to the maximum allowed by law. Contributions may come from Employee's regular earnings (through payroll deductions). The City will contribute monthly to a deferred compensation account 4% (four percent) of Employee's total monthly salary.
4. Car Allowance and Organization Dues: Employee shall receive a \$375.00 monthly car allowance to be used to attend to local City business and shall be entitled to reimbursement of \$1,000 per year for dues and meal expenses incurred in the course of participating in Saratoga-based civic organizations which require membership as an individual.
5. Life Insurance: The City shall pay 100% of the premium cost for life insurance coverage for Employee with a death benefit of \$150,000.
6. Disability Coverage: The City shall provide disability coverage, consisting of short-term disability payments and long-term disability insurance as described below, to provide Employee with income protection if he becomes unable to perform the functions of his position due to a serious health condition or disability.

a. Short-term Disability Payments

The City will pay 75% of Employee's monthly salary after Employee has used all accrued paid time off (PTO) and will maintain existing insurance benefits for six months from the date of injury/illness. Short-Term Disability payments will commence only after 12 continuous working days during which Employee is totally disabled, or when all accrued PTO is exhausted, whichever is later.

Short-term disability payments are reported to PERS as salary earned.

(2) Martin Luther King's Birthday	3rd Monday in January
(3) President's Day	3rd Monday in February
(4) Memorial Day	Last Monday in May
(5) Independence Day	July 4
(6) Labor Day	1st Monday in September
(7) Columbus Day	2nd Monday in October
(8) Veteran's Day	November 11
(9) Thanksgiving Day	4th Thursday in November
(10) Day after Thanksgiving	Friday after Thanksgiving
(11) Christmas Eve	December 24
(12) Christmas Day	December 25
(13) New Year's Eve	December 31

If a holiday falls on a Saturday, the preceding Friday will be observed. If a holiday falls on a Sunday, the following Monday will be observed. In those years in which one of the Christmas and/or New Year's holidays falls on a weekend, the Friday preceding the weekend and the Monday following the weekend shall be observed as holidays. If a holiday falls on an off-Friday when the City offices are closed, the preceding Thursday will be observed. If the preceding Thursday is already a holiday, the off-Friday holiday will be observed on the first weekday after Christmas that is not already an observed holiday.

If a holiday occurs when Employee is using PTO, the holiday will not be charged against Employee's PTO balance. In order to receive holiday pay, Employee must be on the payroll on the last regularly scheduled workday preceding the holiday and the first regularly scheduled work day following the holiday except if Employee is on Family and Medical Care Leave, he shall only be entitled to receive holiday pay within the six-month period after the date of injury/illness. If Employee is using PTO when the holiday occurs, payment for the holiday shall be prorated to the amount of PTO being used in the pay period in which the holiday occurs. If Employee is receiving Short-Term Disability payments in the pay period when the holiday occurs, payment for the holiday shall be at 75% of Employee's regular rate of pay.

14. Jury Duty: If Employee is called for jury duty he will continue to receive full pay and benefits for that period of absence. The employee is required to waive the daily jury duty fee by completing the court form (or by telling court staff that the employee is paid full compensation and benefits by the City).
15. PTO: Employee accrues 32 days (256 hours) per year of paid time off.

- a. PTO Cash-Out: A PTO Cash-Out Option will not be made other than at the time of termination, except for the optional PTO cash-out described as follows:

Employee must use at least 80 hours of accrued PTO and/or administrative leave in each fiscal year.

If Employee has used the required minimum of 80 accrued hours of PTO and/or administrative leave in the prior fiscal year, Employee is eligible to cash out up to a maximum of 200 accrued hours of PTO per fiscal year on approximately

September 1 and/or March 1. Employee must maintain a minimum balance of 200 hours of accrued PTO after the cash out.

- a. PTO Accruals: The PTO accrual cap in the Personnel Rules will be enforced. Under no circumstances can Employee accrue more than the accrual PTO cap at any point in time. Once Employee reaches the accrual cap, no additional PTO will accrue until Employee uses his or her accrued PTO and reduces the balance to less than the accrual cap. Thereafter, PTO benefits will continue to accrue on a prospective basis only until Employee reaches the cap. No retroactive credit will be given for the time when accrued PTO was at the cap.
- b. PTO Increments: PTO must be taken by Employee only in increments of one (1) hour or more in a workday.
- c. PTO Upon Separation:
 - 1) Upon retirement from City service, Employee may choose to use all of his accrued paid time off as sick leave for the purpose of service credit if allowed to do so by PERS. If Employee uses less than 100% of his paid time off toward PERS service credit, the City will pay the balance of Employee's accrued paid time off at Employee's regular rate of pay.
 - 2) Upon separation from City service other than retirement, the City will pay 100% of Employee's accrued paid time off at Employee's regular rate of pay.

IV. COMPENSATION CHANGES AND PERFORMANCE EVALUATION.

- A. CPI Increase: Cost of Living Adjustment – For each year of this Agreement, Employee shall receive an annual cost-of-living adjustment (COLA) to his salary on each July 1 of the actual COLA but no greater than two and one-half percent (2.5%). The COLA will be based on the California CPI for Urban Wage Earners and Clerical Workers based upon the annual average for the 12 month period of January 1 to December 31 as calculated by the Department of Industrial Relations as authorized by AB 1344 (Gov. Code 3511.1 and 3511.2). If the COLA increases above two and one-half percent (2.5%) in any year, Employee shall nevertheless receive a maximum two and one-half percent (2.5%) cost-of-living adjustment for that year.
- B. Evaluation: The City Council shall review and evaluate annually the performance of Employee in or around June through August. Employee will timely cause to be placed on the City Council agenda each year a “closed session” for the purpose of the performance evaluation. Said review and evaluation shall be in accordance with specific criteria developed by the City Council after consulting with Employee. Those criteria may be added to or deleted from as the City Council may from time to time determine after consultation with Employee.
- C. Evaluation and Compensation: In or around June through August of each year, contingent upon Employee receiving a fully satisfactory performance evaluation including accomplishment of Council goals and objectives, the Mayor will document the fully satisfactory performance evaluation by a memo to the Finance and Administrative Services

Director, with a copy to Human Resources and Employee. The Employee or the Finance and Administrative Services Director shall timely cause to be placed on the City Council's regular meeting agenda the City Council's consideration of an increase in salary and/or benefits. The total increase in any year shall not exceed the COLA/CPI increase (in IV.A.) and an additional amount, if any, based on performance and a salary survey (using the comparison cities in the Personnel Rules) up to and not to exceed the higher of:

- (1) a salary ten percent above the average salary determined by the salary survey; or,
- (2) a total of the compensation components listed in Section III.A.3 ten percent above that paid to the highest paid city employee.

The City Council meetings for performance evaluations will occur in or around June through August, and a salary increase, if any is granted, will be effective on the date Council specifies, which typically will be on or around July 1 of the same calendar year as the vote. If the limits specified above are exceeded after any COLA/CPI increase is calculated the salary/benefits item will not be placed on the agenda and Council will not consider any increase to Employee's salary or benefits.

V. TERM OF AGREEMENT.

A. Term of Agreement.

1. The Agreement shall continue until terminated by City or Employee as discussed below.
2. Nothing in this Agreement shall prevent, limit or otherwise interfere with the rights of the City under Section 2-20.080 of the Municipal Code to terminate Employee and this Agreement without cause at any time (except for 90 days after a council member is elected as provided in 2-20.080), or the right of Employee to resign at any time from his position.
3. Employee may terminate this Agreement by giving the City thirty (30) days' written notice in advance of resignation, at the end of which period, this Agreement will terminate, unless the City and Employee otherwise agree.
4. In the event of termination pursuant to section V.A.2, and if Employee has completed a full year of working for the City, Employee shall be entitled to a severance payment if Employee signs and agrees to be bound by a written general release agreeing not to sue and waiving claims and recovery against the City and all City representatives and agents. Starting on the one-year anniversary of the date of initial hire with the City, which was as a Director, Employee shall be eligible for a general release agreement with (A) a severance payment equal to three (3) months' salary; and (B) health insurance and dental insurance benefits specified in this Agreement for a three-month period after termination. The severance payment and continuation of benefits shall be increased by one (1) month for each year on the Employee's anniversary date of Employee's initial hire date, up to a maximum of six (6) months' severance pay and benefits, but in no case can this amount exceed the limits in Government Code section 53260 or other applicable law.

At Employee's discretion, the severance payment shall be paid either in a lump sum, or in bi-weekly payments, beginning within fourteen (14) days of the effective date of termination or within fourteen (14) days of the effective date of the signed general release, whichever is later. If Employee selects bi-weekly payments, Employee may later choose to receive a lump sum payment for the balance of the monthly severance payments. The change from bi-weekly payments to a lump sum payment for the balance will be processed as soon as reasonably feasible and by no later than four weeks after Employee chooses to change to a lump sum payment for the balance. The severance payment shall be based on Employee's then monthly salary.

Such severance pay and health and dental benefits shall not be due or payable if Employee is terminated for conduct that: (1) is determined to be dishonest or fraudulent conduct by the City Council; or (2) results in a conviction of a felony or a conviction of a misdemeanor involving moral turpitude, dishonesty, or fraud; or (3) is an abuse of his office or position, including (a) an abuse of public authority, including, but not limited to, waste, fraud, and violation of the law under color of authority; or (b) is a crime against public justice. (See Government Code § 53243-53243.4 and Agreement V.A.5. below).

5. AB 1344 and Public Accountability Provisions

The parties agree to fully comply with the following Government Code sections that are part of AB 1344 (and as subsequently amended), and to fully comply with other applicable law. AB 1344, as subsequently amended, includes Government Code sections 53243-53243.4.

VI. MISCELLANEOUS PROVISIONS.

- A. Administration. This Agreement shall be administered by the City Attorney of the City of Saratoga ("Administrator"). All correspondence from Employee to the City shall be directed to or through the Administrator or his or her designee.
- B. Notices. Any written notice to Employee shall be sent to:

Employee
c/o City Hall
13777 Fruitvale Avenue
Saratoga, CA 95070

(Or to Employee's home address on file with the City's Human Resource Department. Employee is required to update his home address with the City's Human Resource Department within three business days of moving.)

Any written notice to City shall be sent to:

Richard S. Taylor
City Attorney of City of Saratoga
Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102

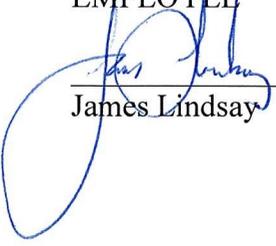
(Or such other address as the City Attorney may have at the time of the notice.)

- C. Conflict of Interest. Employee warrants that he presently does not have and will not acquire any direct or indirect financial interest that would conflict with his performance of this Agreement.
- D. Assignment Prohibited. No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.
- E. Documents. All documents provided to Employee by the City and all reports and supporting data prepared by Employee for the City are the sole property of the City and shall be delivered to the City upon termination of this Agreement or at the City's written request. All confidential reports, information, exhibits and data, including but not limited to electronic data, prepared or assembled by Employee while he serves as City Manager are confidential until released by the City to the public, and Employee shall not make any of these unreleased documents or information available to any individual or organization, other than the City Attorney without prior written consent signed by the City Council.
- F. Effect of Waiver. The failure of either party to insist on strict compliance with any of the terms, covenants or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant or condition, and no waiver or relinquishment of any right or power on any given occasion shall be deemed a waiver of relinquishment of that right or power on any subsequent occasions.
- G. Entire Agreement. The text in this Agreement shall constitute the entire Agreement between the parties. This Agreement incorporates the entire understanding between Employee and the City, recites the sole considerations for the promises exchanged herein, and fully supersedes any and all prior discussions, agreements, or understandings, written or oral or implied, between the parties pertaining to the subject matter hereof. In reaching this Agreement, no party has relied upon any representation or promise except those expressly set forth herein. This Agreement cannot be modified by the parties except in a writing that is signed by both parties, ratified by City Council, and that expressly states that it intends to modify this Agreement. Rules and policies apply to the Employee, but if a provision in other rules or policies actually contradicts an express provision of the Agreement, the Agreement will control.
- H. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of the parties.
- I. Severability. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.
- J. Attorneys' Fees. In the event that either party to this Agreement brings a lawsuit to enforce or interpret any provisions of this Agreement, each party shall bear its own attorneys' fees, expenses and costs.
- K. Governing Law. This Agreement shall be governed by the laws of the State of California.

- L. Interpretation. The parties agree that any ambiguity in this Agreement shall not be construed or interpreted against, or in favor of, either party. The parties agree that ambiguities concerning matters addressed in this Agreement should be resolved in a manner consistent with the City's personnel rules and procedures to the extent those rules and procedures are not inconsistent with this Agreement.

In witness whereof, the City has caused this Agreement to be signed and executed on its behalf by its Mayor and duly attested by its City Clerk, and Employee has signed and executed this Agreement effective July 1, 2019.

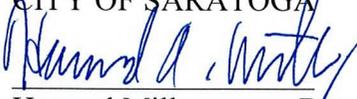
EMPLOYEE



James Lindsay

12/20/19
Date

CITY OF SARATOGA



Howard Miller
Mayor

12/20/2019
Date

ATTEST:



Debbie Bretschneider
City Clerk

12/20/2019
Date

APPROVED AS TO FORM:



Richard S. Taylor
City Attorney

12/18/19
Date

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