

**CITY OF POMONA**  
**CITY MANAGER EMPLOYMENT AGREEMENT**

This EMPLOYMENT AGREEMENT (Agreement) is entered into by and between the CITY OF POMONA, a Municipal Corporation (City), and JAMES MAKSHANOFF (Makshanoff) as of December 16, 2019, and is made in regard to the following:

1.     Employment:

The City hereby employs Makshanoff as the City Manager of the City, and Makshanoff hereby accepts that employment effective January 21, 2020.

2.     Duties:

Makshanoff shall perform those duties and have those responsibilities that are commonly assigned to a City Manager of a charter city in California with a city manager form of government, and as are further set forth in the City's Charter, the Pomona Municipal Code and the City's Personnel Rules, Regulations and Procedures. Makshanoff shall also serve as Executive Director of the Successor Agency to the Pomona Redevelopment Agency, and the Executive Director of the Pomona Housing Authority and Pomona Public Finance Authority, and shall perform such other legally permissible and proper duties and functions consistent with the office of the City Manager, as the City Council shall from time to time assign.

3.     Term:

- A.     This Agreement shall be effective on January 21, 2020, and shall continue for a period of two (2) years, or until January 20, 2022, unless earlier terminated in accordance with the terms of this Agreement. On January 21, 2021 and each January 21 thereafter, subject to an overall satisfactory performance evaluation subject to Section 6 below, the Agreement shall be automatically extended for a period of two (2) years, unless terminated in accordance with the terms of this Agreement.
- B.     Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City to terminate the services of Makshanoff as City Manager as an "at-will" employee, subject to the provisions herein. The City, acting through the City Council with an affirmative vote of the majority of members in attendance at a lawfully called meeting, may terminate Makshanoff's employment without cause or reason, subject to Section 12 herein.
- C.     Makshanoff may resign from his employment as City Manager at any time upon giving sixty (60) calendar days written notice to the City Council during the term of this Agreement.
- D.     Notwithstanding any provision in this Agreement to the contrary, the City Council shall not take any action pursuant to Section 3B or otherwise to

terminate Makshanoff for a period of six (6) months before or after any City Council election, except for "good cause" as defined in Section 12.

4. Devotion to City Business:

Makshanoff's position as City Manager is considered a full-time position. Makshanoff shall not engage in any other business, educational, professional or charitable activities that would conflict or materially interfere with Makshanoff's performance of his City Manager duties.

5. Compensation and Benefits:

- A. Annual Salary. Effective upon execution of this Agreement, City agrees to pay Makshanoff for services rendered an annual salary of two hundred and seventy-five thousand dollars (\$275,000.00). Said amount shall be payable in bi-weekly installments at the same time and in the same manner as other employees of the City are paid.

Effective October 1, 2020, the annually salary shall be increased by 4%. of Makshanoff's then existing annual salary.

Effective the pay period including January 21, 2022, and subject to a satisfactory performance evaluation pursuant to Section 6 below, the annually salary shall be increased by 4%.of Makshanoff's then existing annual salary.

Effective the pay period including January 21, 2023, and subject to a satisfactory performance evaluation pursuant to Section 6 below and an extension of the term, the annually salary shall be increased by 4%. of Makshanoff's then existing annual salary.

In the event that the City faces financial hardship, Makshanoff agrees to meet with the City Council to discuss reducing or waiving the 4% increase in 2023.

- B. Except for salary increases and as specifically otherwise provided in this Agreement, Makshanoff's employment shall be subject to and governed by the Compensation Plan for Executive Management Group A and B Employees of the City of Pomona approved by the City Council on September 16, 2019 (A-B Plan), or as subsequently modified by the City Council during the term, or any extended term, of this Agreement and Makshanoff shall be entitled to receive the same CalPERS benefits contracted for on behalf of the Executive Management Group A-1 employees.

6. Performance Evaluation:

The City Council shall evaluate Makshanoff's performance between November and December of each calendar year, commencing in November 2020. Makshanoff will

be provided a written performance evaluation in closed session of a regular or special City Council meeting. City Manager shall be deemed to have received an overall satisfactory performance evaluation, unless the City Council either provides City Manager 1) a written evaluation describing areas requiring improved performance or 2) provides notice of termination within 30 days of his annual performance evaluation.

7. Allowances and Equipment:

- A. City shall provide Makshanoff with a five hundred dollar (\$500.00) per month automobile allowance, payable in bi-weekly installments at the same time and in the same manner as other employees who receive automobile allowances.
- B. City shall provide a "smart phone" for Makshanoff's use. City shall also provide Makshanoff with a City-owned laptop computer, tablet, or iPad with access to the City's computer system and the Internet, for use at his residence, primarily for conducting City business; provided, however, that it is expressly understood that the equipment may be subject to personal use by Makshanoff, so long as it does not interfere with its primary use.

8. Professional and City Business Expenses:

- A. City agrees to pay the professional dues and subscriptions on behalf of Makshanoff which are necessary for Makshanoff's continuation or full participation in international, national, regional, state, or local associations and organizations necessary and desirable for Makshanoff's professional participation, growth, or for the good of the City. Furthermore, the City shall budget and pay for the professional dues and subscriptions to such additional organizations as may be approved by the City Council.
- B. City agrees to pay the business travel and subsistence expenses of Makshanoff for official travel and attendance at meetings and occasions reasonably adequate to continue the professional development of Makshanoff, and for Makshanoff's reasonable pursuit of necessary official and other functions for the City; including, but not limited to, national, regional, state, and local conferences, community events, governmental groups and committees upon which Makshanoff serves as a member. Notwithstanding the above, the number of conferences or meetings City will pay for each year and attendance at out-of-state conferences and meetings shall be at the discretion of the City Council as set forth in the City's budget.

9. Vacation Leave:

- A. Upon commencing employment, Makshanoff shall be credited with two hundred (200) hours of vacation and provided with the same vacation accrual amounts received by Executive Management Group A and B employees with twenty-five (25) years of continuous public service.

- B. During the first year of employment Makshanoff shall be authorized to elect to sell back a maximum of one hundred and fifty (150) hours of vacation pursuant to the terms and requirements of the A-B Plan, except that Makshanoff will not be required to have three hundred (300) hours of vacation accruals at that time, subject to: (1) the submittal of an irrevocable election form to City's Finance Department within two (2) weeks of Makshanoff's hire date; and (2) the accrual of at least the number of hours of vacation that Makshanoff irrevocably elected to sell by no later than the pay period ending November 7, 2020. Payment for the vacation hours sold back will be made on December 3, 2020.
- C. After the first year of employment, Makshanoff shall be authorized to elect to sell back a maximum of one hundred and fifty (150) hours of vacation per year in accordance with the procedures and requirements of the A-B Plan.

10. Executive Leave:

- A. Makshanoff shall accrue executive leave at the same rate as the rate designated in the A-B Plan for Group A employees hired after July 1, 2011.
- B. During the first year of employment Makshanoff shall be authorized to elect to sell back a maximum of eighty-five (85) hours of executive leave per year, subject to: (1) the submittal of an irrevocable election form to City's Finance Department within two (2) weeks of Makshanoff's hire date; and (2) the accrual of at least the number of executive leave hours that Makshanoff irrevocably elected to sell by no later than the pay period ending November 7, 2020. Payment for the executive leave hours sold back will be made on December 3, 2020.
- C. After the first year of employment, Makshanoff shall be authorized to elect to sell back a maximum of eight-five (85) hours of executive leave per year in accordance with the procedures and requirements of the A-B Plan that apply to selling back accrued vacation.
- D. Upon separation from service, Makshanoff shall be compensated for fifty percent (50%) of all accrued executive leave, regardless of years of service.

11. Allowance for Attorney Review of Agreement:

City shall reimburse Makshanoff any attorney's fees incurred by Makshanoff in seeking legal review of this Agreement prior to entering into the Agreement in an amount up to one thousand dollars (\$1,000.00).

12. Acts Entitling Makshanoff to Severance Compensation:

In the event this Agreement is terminated by the City Council for any reason other than for good cause, Makshanoff shall be entitled to severance pay in an amount

equal to the sum of twelve (12) months of his annual salary as defined in Section 5.A, as adjusted from time to time as provided in Section 5 above, or the remainder of the term, or any extended term, of the Agreement, whichever is less. In addition, Makshanoff shall be entitled to continuation of his group medical, dental, and vision insurance benefits, as required under COBRA for the same period as severance payments are made. All COBRA premiums and costs shall be paid by Makshanoff. If Makshanoff elects to pay for the COBRA benefits, City shall reimburse him for all COBRA premiums and costs, up to the amount of the City contribution toward medical, dental and vision premiums in effect at the time of his separation plus the COBRA administrative fee. "Good Cause" in this Agreement means a material breach of this Agreement, misappropriation of public funds, malfeasance in office, conviction of a felony or a crime involving moral turpitude as determined by a court of competent jurisdiction, or a nolo contendere plea to any felony which adversely impacts his reputation or that of the City,

13. Provisions of Government Code Sections 53243-53244:

- A. In the event that the City provides paid leave to Makshanoff pending an investigation of a crime involving abuse of his office or position covered by Government Code section 53243.4 and should that investigation lead to a conviction, Makshanoff shall fully reimburse the City for any salary provided for that purpose.
- B. In the event that the City provides funds for the legal criminal defense of Makshanoff pending an investigation of a crime involving abuse of his office or position covered by Government Code section 53243.4 and should that investigation lead to a conviction, Makshanoff shall fully reimburse the City for any funds provided for that purpose.
- C. In the event that the City provides a cash settlement related to the termination of Makshanoff as defined in the terms of this Agreement and Makshanoff subsequently is convicted of a crime involving abuse of his office or position covered by Government Code section 53243.4, Makshanoff shall fully reimburse the City for any funds provided for that purpose.
- D. If Makshanoff is convicted by a state or federal trial court of any felony under state or federal law for conduct arising out of, or in the performance of, his official duties, Makshanoff shall forfeit any contract right or other common law, constitutional, or statutory claim against the City to retirement or pension benefits, however those benefits may be characterized, including lost compensation other than accrued rights and benefits to which he may be entitled under any public retirement system in which he is a member. The forfeiture provided herein shall be in addition to, and independent of any forfeiture of public retirement system rights and benefits pursuant to Government Code section 7522.74. Makshanoff shall notify the City of any conviction within sixty (60) days of the felony conviction.

14. Enforcement of this Agreement:

The prevailing party in any action brought to enforce this Agreement or resolve any dispute or controversy arising under the terms and conditions hereof shall be entitled to payment of reasonable attorney fees.

15. Notices:

Any notices to be given hereunder by either party to the other in writing may be effected either by personal delivery or by US Mail. Mailed notices shall be addressed to the parties as set forth below, but each party may change its address by written notice given in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated and receive as of five (5) calendar days following the date of mailing:

CITY: City of Pomona  
Attention: Mayor  
505 South Garey Avenue  
Pomona, CA 91766

MAKSHANOFF: James Makshanoff  
Home Address on File

16. Entire Agreement:

This Agreement represents the entire agreement between the parties and supersedes any and all other agreements, either oral or in writing, between the parties with respect to the employment of Makshanoff by City, and contains all of the covenants and agreements between the parties with respect to that employment. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by either party, or anyone acting on behalf of either party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding upon either party.

17. Modifications:

Any modifications to this Agreement shall be effective only if in writing and signed by both of the parties hereto.

18. Effect of Waiver:

The failure of either party to insist upon 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, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

City of Pomona City Manager Agreement Makshanoff

19. Partial Invalidity:

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

20. Governing Law:

This Agreement shall be governed by and construed in accordance with the laws of the State of California.


This Agreement is entered into as of the date first set forth above.

CITY OF POMONA

By:

  
Tim Sandoval, Mayor


By:

  
James Makshanoff

Approved as to Form:

  
City Attorney

Attest:

  
Rosalia A. Butler, MMC, City Clerk

City of Pomona City Manager Agreement Makshanoff

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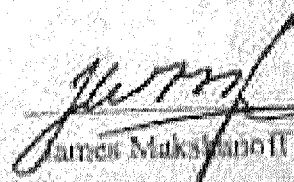
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CITY OF POMONA

By: \_\_\_\_\_

Tim Sandoval, Mayor

By: \_\_\_\_\_

  
James Makshanoff

Approved as to Form:

  
City Attorney

Attest:

\_\_\_\_\_  
Rosalia A. Butler, MMC, City Clerk