

ResolutionNo. 2020-01-14-1402

STOCKTON CITY COUNCIL

RESOLUTION APPOINTING HARRY EUGENE BLACK AS CITY MANAGER FOR THE CITY OF STOCKTON AND AUTHORIZING THE MAYOR TO EXECUTE THE EMPLOYMENT AGREEMENT

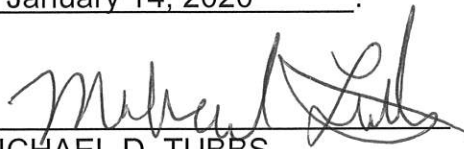
On January 14, 2020, the City Council met in Closed Session and deliberated regarding the appointment of Harry Eugene Black as City Manager of the City of Stockton, now, therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:



1. Harry Eugene Black is appointed as City Manager of the City of Stockton and the Mayor is authorized, on behalf of the City Council, to enter into an Agreement, a copy of which is attached as Exhibit 1, setting forth the terms and conditions of employment with Harry Eugene Black, effective February 18, 2020.

2. The Interim City Manager is authorized to take such other actions as are necessary and appropriate to carry out the purpose and intent of this Resolution

PASSED, APPROVED, and ADOPTED January 14, 2020.


MICHAEL D. TUBBS
Mayor of the City of Stockton

ATTEST:



ELIZA R. GARZA, City Clerk
City Clerk of the City of Stockton

EMPLOYMENT CONTRACT FOR CITY MANAGER

This Employment Contract is made and entered into on January 14, 2020 by and between the CITY OF STOCKTON, STATE OF CALIFORNIA, a municipal corporation, by and through its City Council (EMPLOYER), and HARRY EUGENE BLACK (EMPLOYEE).

RECITALS:

1. EMPLOYER is a Chartered City of the State of California;
2. EMPLOYER, in accordance with the provisions of Article XII, Section 1200, of the Charter, desires to employ the services of EMPLOYEE as the City Manager;
3. EMPLOYEE desires to accept employment as the Stockton City Manager;
4. It is the desire of both EMPLOYER and EMPLOYEE to set forth in this Employment Contract the terms and conditions of said employment;

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

ARTICLE I TERM OF EMPLOYMENT

Section 1.01 Term: EMPLOYER hereby employs EMPLOYEE as the City Manager and EMPLOYEE hereby accepts said employment for an initial term of five (5) years commencing on February 18, 2020, and continuing until February 18, 2025 (the initial "Termination Date"). This Contract shall automatically renew as provided herein unless the City gives Employee timely notice of non-renewal at least twelve (12) months prior to the initial Termination Date or any succeeding Termination Date. Unless such notice of non-renewal is timely given, this Contract shall automatically renew for an additional five (5) year term, and a new Termination Date shall accordingly be established.

Section 1.02 At Will Employee: EMPLOYEE serves at the pleasure of EMPLOYER and may be terminated at the will of EMPLOYER, subject only to section 1200 of the City Charter and the notice and severance provisions set forth in Section 5.02 of this Employment Contract. In like manner, nothing in this Contract shall prevent, limit, or otherwise interfere with the right of EMPLOYEE to resign at any time as City Manager, subject only to the notice provisions set forth in Section 5.02 of this Employment Contract. EMPLOYEE further acknowledges that EMPLOYER has made no implied, expressed, or written assurances of continued employment with the City of Stockton other than as specifically set forth in this Contract.

ARTICLE II
DUTIES AND OBLIGATION OF EMPLOYEE

Section 2.01 **Duties:** EMPLOYER shall employ EMPLOYEE as City Manager of the City of Stockton to perform the functions and duties as specified in the City Charter, Ordinances of the City, California Constitution, and California Statutes, and to perform such other legally permissible and proper duties and functions as EMPLOYER shall from time to time assign to EMPLOYEE which are reasonably related to the duties and functions of a City Manager.

Section 2.02 **Devotion to Duties:** EMPLOYEE shall devote his entire productive time, ability, and attention to the business of EMPLOYER during the term of this Employment Contract. EMPLOYEE shall not engage in any other public or private employment during the term of this Contract. Notwithstanding the prior sentence, EMPLOYEE may, as authorized by EMPLOYER, teach or provide limited services to charitable or professional organizations where such teaching or services do not conflict or interfere with EMPLOYEE's duties as City Manager. This Contract shall not be interpreted nor intended to prohibit EMPLOYEE from making passive personal investments.

Section 2.03 **Community Outreach:** EMPLOYEE acknowledges the benefits of being engaged in the community as a means to provide information to, and gain the confidence of, the community. This outreach is separate and distinct from political outreach and provides EMPLOYEE insights and perspectives to effectively advise the City Council on policy matters. EMPLOYEE shall create and implement an outreach strategy to specifically capture these benefits.

Section 2.04 **Performance Evaluation Procedures:** The City Council shall review and evaluate the performance of EMPLOYEE approximately six months following the date of initial employment. The evaluation shall include consideration of EMPLOYEE's performance and shall include the presentation of a proposed work plan by the EMPLOYEE. The work plan will be based on an appraisal of the current status or conditions in the City, specific major work program objectives necessary to achieve the City Council's goals, and the resource capability of the City organization. The work plan shall be approved as submitted or as modified by the EMPLOYER, at the sole discretion of the EMPLOYER, and may be altered at any time by the EMPLOYER with input from EMPLOYEE. EMPLOYER shall conduct subsequent evaluations no less frequently than annually and shall include a review and evaluation of the performance of EMPLOYEE in accordance with the approved work plan together with the other duties and functions assigned to EMPLOYEE. As part of the evaluation process, EMPLOYER and EMPLOYEE shall discuss changes and additions to the work plan. If either EMPLOYER or EMPLOYEE requests it, a professional facilitator may be hired to assist in the performance evaluation process.

ARTICLE III COMPENSATION

Section 3.01 **Annual Base Salary:** EMPLOYER shall pay EMPLOYEE for services rendered by him pursuant to this Employment Contract an annual base salary of **\$270,000.00**, payable in installments at the time as other employees of EMPLOYER are paid. EMPLOYER, in its sole and absolute discretion, may adjust the annual base salary of EMPLOYEE at such times and to such extent as EMPLOYER may determine. In exercising its discretionary authority, EMPLOYER shall act fairly and in good faith with EMPLOYEE. In no case shall EMPLOYEE's annual base salary be decreased unless such decrease is a percentage consistent with a decrease applicable to employees of EMPLOYER generally.

ARTICLE IV EMPLOYEE BENEFITS

Section 4.01 **Automobile Expense Reimbursement; Insurance:** During the term of this Employment Contract, EMPLOYEE, to the extent necessary to perform his duties, shall use his own personal vehicle. EMPLOYEE shall be responsible for the payment of all operating expenses of the vehicle, including, but not limited to, gasoline, oil, service and repair, and, if necessary, the replacement of his automobile; provided, however, EMPLOYER shall pay to EMPLOYEE a monthly auto allowance of \$750.00. EMPLOYEE shall procure and maintain, at his expense, a comprehensive automobile liability insurance policy on the vehicle being used by him in connection with this Employment Contract, in an amount consistent with City policy. EMPLOYER shall be named as a co-insured by an endorsement to that policy. Any expense related to this endorsement shall be the sole responsibility of EMPLOYER. During the course of this Employment Contract, EMPLOYEE shall provide EMPLOYER with written documentation that said insurance policy is in full force and effect, upon request. Said policy shall also include a provision notifying EMPLOYER prior to the cancellation thereof.

Section 4.02 **Deferred Compensation, Health Coverage, Life Insurance, Disability, and Holidays:** Except as otherwise provided herein, EMPLOYEE shall be entitled to receive those benefits provided by EMPLOYER to other department heads of the City of Stockton, including those appointed by EMPLOYER, which benefits consist of health, dental, and vision coverage, retirement benefits, life insurance, disability, a voluntary deferred compensation plan and holidays. The benefits so provided are subject to modification during the course of this Employment Contract at the sole and absolute discretion of EMPLOYER at such times and to such extent as EMPLOYER may deem appropriate, provided, however, there shall be no reduction in benefits unless EMPLOYER implements the same reduction of benefits to all other department heads of the City of Stockton.

Section 4.03 **Vacation and Sick Leave:** EMPLOYEE shall be credited with thirty (30) days of vacation as of the commencement of employment as City Manager and shall receive thirty (30) days of annual vacation leave annually. Annual vacation

leave shall be administered in the same manner as vacation is administered for department head employees of EMPLOYER with regard to timing of credits and buyback policy. Maximum vacation accrual is ninety (90) days including the initial vacation credits and existing vacation accrual balances. EMPLOYEE shall be credited with fifteen (15) days of sick leave as of the commencement of employment as City Manager and shall accrue fifteen (15) days of sick leave annually with unlimited accumulation. Sick leave may be used in accordance with policies applicable to department head employees of EMPLOYER.

Section 4.04 Professional Dues and Subscriptions : EMPLOYER shall pay for professional dues and subscriptions of EMPLOYEE necessary for his continuation and full participation in national, state, and city manager associations (e.g., International City Managers' Association, National League of Cities, League of California Cities, California Public Employer Relations Association, California Association for Local Economic Development, California City Managers' Foundation, Society for Human Resource Management, etc.), subject to budget limitations and prior review and approval by EMPLOYER.

Section 4.05 Expenses: EMPLOYEE shall be entitled to reimbursement for all reasonable expenses necessarily incurred by him in the performance of his duties upon presentation of vouchers indicating the amount and purpose thereof, and further provided that such expenses are in accordance with policies established from time to time by EMPLOYER and consistent with budget allocations adopted by EMPLOYER for that purpose during the term of this Contract.

Section 4.06 Professional Development: EMPLOYER shall pay travel and subsistence expenses of EMPLOYEE for professional and office travel, meetings, and occasions adequate to continue the professional development of EMPLOYEE and to adequately pursue necessary official functions for EMPLOYER, including, but not limited to, the annual conference, departmental meetings, and policy committees of the International City Management Association, League of California Cities, California City Management Foundation, California Public Employers Labor Relations Association, California Association for Local Economic Development, and such other national, regional, state, and local government groups and committees thereof which EMPLOYEE serves as a member, provided provisions for such costs are contained in the annual budget. EMPLOYER also shall pay tuition, travel, and subsistence expenses of EMPLOYEE for short courses, institutes, and seminars that are necessary for his professional development and for the good of the City (i.e., Harvard Kennedy School for Senior Executives in State and Local Government, University of Virginia Senior Executives Institute, etc.), subject to budget limitations.

Section 4.07 Technology Allowance: EMPLOYER shall pay to EMPLOYEE a technology allowance of \$400.00 per month. EMPLOYEE shall purchase and maintain his own cellular/smart phone and home/travel computer and related telecommunications and broadband services at EMPLOYEE's expense.

Section 4.08 **Deferred Compensation (401(a))**: EMPLOYER hereby agrees to contribute to EMPLOYEE's 401(a), or equivalent, deferred compensation plan an amount equal to ten (10) percent of EMPLOYEE's annual salary.

Section 4.09 **Moving Expenses**: EMPLOYER shall reimburse EMPLOYEE for reasonable and necessary moving expenses incurred in moving his residence to within the City of Stockton up to a maximum of \$18,000.00. EMPLOYEE will establish Stockton Residency within two (2) months of his start date and his family will relocate within EMPLOYEE's first year of service. These expenses shall be limited to the costs of packaging, moving, and the temporary storage of household goods and furnishings; packing and transportation of personal auto(s), (where possible, EMPLOYER will direct pay expenditures); expenses for up to three (3) family (wife/daughter) pre-relocation visits to Stockton, and up to three months of temporary housing for EMPLOYEE to be directly paid by the City. EMPLOYEE shall obtain three (3) quotations for such moving services, and EMPLOYER shall have the right to approve the service vendor or vendors to be used.

ARTICLE V SUSPENSION, RESIGNATION AND TERMINATION

Section 5.01 **Suspension**: EMPLOYER may suspend EMPLOYEE with full pay and benefits at any time during the term of this Contract, but only if the required number of affirmative votes of a majority of members of the City Council, as specified in the Charter, agree that it is necessary for the good of the City to suspend EMPLOYEE's providing services in order to allow EMPLOYER time to consider whether or not it wishes to permanently terminate EMPLOYEE's services. If EMPLOYER acts to suspend EMPLOYEE's services hereunder for any period or combination of periods in excess of a total of thirty (30) work days during the Initial Term or any subsequent term of this Employment Contract, EMPLOYEE may declare, at his option, that he has been terminated within the meaning and context of the herein severance pay provision.

Section 5.02 **Resignation, Termination, and Severance Pay**: In the event EMPLOYEE is terminated by EMPLOYER and during such time as EMPLOYEE is able and willing to perform his duties under this Employment Contract, EMPLOYER shall (1) provide EMPLOYEE with notice at least one (1) month in advance of the final date of employment and further, (2) pay EMPLOYEE as severance pay (a) a lump sum cash payment in an amount equal to nine (9) months of EMPLOYEE's then current salary and deferred compensation contributions, (b) any vacation leave accrued as of the date of termination and, (c) to continue in full force and effect, at the same EMPLOYER contribution level as if employment continued, for nine (9) months the life insurance and medical, dental and vision insurance coverages then being provided by EMPLOYER to EMPLOYEE, and his dependents; provided, however, that if EMPLOYER terminates EMPLOYEE for cause, EMPLOYER shall have no obligation to provide any severance pay. As used in this section, "cause" shall mean willful failure to implement Council policy, abandonment of his duties, conviction of a felony or misdemeanor in the course of his official duties or continued abuse of non-prescription drugs or alcohol that

materially affects the performance of his duties. In the event EMPLOYER terminates EMPLOYEE for cause, EMPLOYER may terminate this Contract immediately, and EMPLOYEE shall be entitled only to the compensation and accumulated vacation accrued up to the date of termination and such other payments and benefits provided by this Contract or by law.

Notwithstanding any other provision of this Employment Contract, beginning on the first six-month anniversary of the effective date of this Employment Contract the length of severance compensation provided for herein shall be extended one month from nine (9) months to ten (10) months, and said increase shall continue in like amount semi-annually until severance compensation has reached a maximum amount of twelve (12) months.

Under no circumstances will the EMPLOYEE be able to contest the nature of the EMPLOYEE's at-will status, nor will the EMPLOYEE be able to raise any remedy of reinstatement in any legal forum.

In the event EMPLOYEE voluntarily and without the official request of EMPLOYER resigns as City Manager, EMPLOYEE shall give written notice to the EMPLOYER at least forty-five (45) days in advance of the final date of employment, unless the parties otherwise agree. Such resignation shall not be deemed to be a "termination" within the meaning and context of the herein severance pay provision.

Section 5.03 Disability: If, for a period of four (4) successive weeks beyond the expiration of any accrued sick leave and vacation, EMPLOYEE is disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity, or ill health, EMPLOYER shall have the option to terminate this Employment Contract. If EMPLOYER exercises this option, EMPLOYEE shall nonetheless be compensated for any accrued leave time and other accrued benefits, including, but not limited to, long-term disability insurance benefits for which EMPLOYEE is eligible; however, EMPLOYEE shall not receive the severance pay described in Section 5.02 above.

ARTICLE VI MISCELLANEOUS

Section 6.01 Interference With Duties: Because the failure to comply with this provision would potentially have a material negative effect on the ability of EMPLOYEE to perform his duties, both parties acknowledge the role of EMPLOYEE as Chief Administrative Officer and further agree that the City Council, as a whole or individual City Council members, pursuant to section 408 of the City Charter will refrain from interfering with EMPLOYEE's ability to perform his duties as set forth in section 1201 of the City Charter including, but not limited to, directing any member of the City staff whose reporting structure includes EMPLOYEE.

Section 6.02 Ongoing and Active Participation in Facilitated Team

Development Activities: A cordial, professional, and respectful relationship is a key component of a healthy organization and is in the best interest of the City's residents, employees, and stakeholders. Both parties shall make all reasonable efforts to create and maintain a positive working relationship between the Mayor, each member of the City Council, and EMPLOYEE. To facilitate the process, EMPLOYER specifically will meaningfully participate in organizational team development activities as proposed by EMPLOYEE.

Section 6.03 Other Terms and Conditions of Employment: EMPLOYER, after consultation with EMPLOYEE, shall fix any such other terms and conditions of employment as EMPLOYER may determine from time to time, relating to the performance of EMPLOYEE, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Employment Contract, the City Charter, Municipal code, or any other law.

Section 6.04 Notices: Notices pursuant to this Employment Contract shall be served in person, or otherwise in the same manner as is applicable to civil judicial practice.

Section 6.05 Bonding: EMPLOYER shall bear the full cost of any fidelity or other bonds required of EMPLOYEE under any law or ordinance.

Section 6.06 Indemnification: EMPLOYER shall defend, save harmless and indemnify EMPLOYEE against any tort, professional liability claim or demand, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of EMPLOYEE's duties as City Manager. If EMPLOYER compromises or settles any such claim or suit, EMPLOYER shall pay the amount of any settlement, or if the claim or suit results in a judgment against EMPLOYEE, EMPLOYER shall pay any such judgment. This indemnification does not apply to any act, action, or omission arising out of the gross negligence, willful misconduct on the part of EMPLOYEE, or acts of EMPLOYEE outside the course and scope of his employment duties.

Section 6.07 General Provisions:


- A. The text herein shall constitute the entire agreement between the parties.
- B. This Employment Contract shall be binding upon and insure to the benefit of the heirs at law and executors of EMPLOYEE.
- C. This Employment Contract may only be modified upon the written consent of the EMPLOYER and EMPLOYEE.
- D. In any action to enforce the terms of this Employment Contract, the prevailing party shall be entitled to recover its attorney's fees and court costs and other non-reimbursable litigation expenses, such as expert witness fees and investigation

expenses.

Section 6.08 **Severability:** If any provision, or any portion thereof, contained in this Employment Contract is held unconstitutional, invalid or unenforceable, the remainder of this Employment Contract shall be deemed severable, shall not be affected, and shall remain in full force and effect.

IN WITNESS WHEREOF, EMPLOYER has caused this Contract to be signed and executed in its behalf by its Mayor, and duly attested by its City Clerk, and EMPLOYEE has signed and executed this Contract, both in duplicate, the day and year first above written.

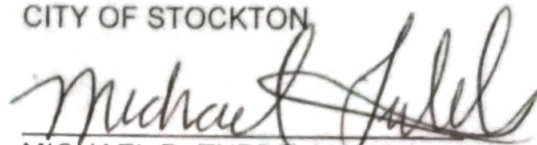
ATTEST:



ELIZA R. GARCIA
CITY CLERK

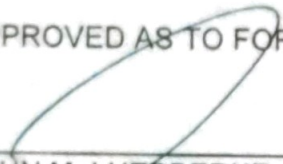


CITY OF STOCKTON




MICHAEL D. TUBBS, MAYOR
"EMPLOYER"

APPROVED AS TO FORM:



JOHN M. LUEBBERKE
CITY ATTORNEY

AGREED:



HARRY EUGENE BLACK
"EMPLOYEE"