

STATE OF TEXAS §

COUNTY OF DENTON §

**First Amendment to City Manager
Employment Agreement**

This First Amendment to the Employment Agreement (this “Agreement”), dated for convenience the _____th day of September, 2022, was made, entered, and effective as of the 26th day of July, 2022, by and between the City of Sanger, Texas, a Texas municipal corporation (the “Employer”) and John Noblitt (the “Employee”), with the Employer and the Employee sometimes being referenced collectively in this Agreement as the “Parties.”

WHEREAS, the Employment Agreement was originally made and entered into on the 26th day of July, 2021, by and between the City of Sanger, Texas, a Texas municipal corporation, and John Noblitt; and

WHEREAS, after the contractual employment review by Council of the Employee for the preceding year wherein the Employee either did meet or exceed expectations; and

WHEREAS, it is the desire of the Employer to (1) secure and retain the services of the Employee and to provide an inducement for the Employee to remain in such employment; (2) make possible full work productivity by assuring the Employee’s morale and peace of mind with respect to future security; and (3) adequately compensate the Employee for the services provided to the Employer; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Agreement is amended by the Parties as follows:

SECTION 3. TERM

- A. The Amended Term of this Agreement is from the beginning of the Commencement Date, on July 26, 2022, and ending on July 27, 2024.
- B. This Agreement may be terminated before the expiration of its Term and on or before the expiration of any subsequent Extended Term by the Employer or the Employee

under applicable provisions of this Agreement. If the Employer terminates this Agreement, it must do so either by:

- (1) following the procedures set forth in Section 4 of this Agreement;
- (2) or providing a notice of non-renewal in accordance with Section 3.D of this Agreement.

- C. The Employee may terminate this Agreement by providing at least 90 days written notice to the Employer before the date designated by the Employee for termination.
- D. Unless the Council – at least 90 days before the expiration of any Extended Term once commenced – gives the Employee written notice of nonrenewal, the terms of this Agreement shall automatically renew for an additional two (2) year Term. There is no limitation on the number of Extended Terms that may occur.

SECTION 5. SEPARATION AND SEVERANCE PAY

- A. Upon Involuntary Separation occurring during any term of the Agreement, the Employee shall be entitled to a lump-sum severance payment:
 - (1). An amount equal to but not to exceed (a) the remainder of the term of the two-year agreement calculated using Employee's then-current base salary at the time of termination as set forth in **SECTION 6 A.** or as amended by the City Council, plus (b) any accrued but unused vacation days, computed on an hourly basis determined by dividing Employee's then-current base salary by 2080 hours, plus (c) the sum of six (6) months premium payments for health insurance benefits under existing City plan at the date of termination. In addition to the severance payment set forth within this paragraph, Employee shall also receive any accrued but unpaid salary prorated from the date of his last payroll check; up to and including his date of termination; unless
 - (2). If terminated within the last six months of any contractual two-year term (a) an amount equal to the amount of six (6) months of Employee's then-current base salary at the time of termination as set forth in **SECTION 6 A.** or as amended by the City Council. Plus (b) an additional one (1) month for each full year of service up to a maximum of twelve (12) months. Plus (c) any

accrued but unused vacation days, computed on an hourly basis determined by dividing Employee's then-current base salary by 2080 hours, plus (d) the sum of six (6) months premium payments for health insurance benefits under existing City plan at the date of termination. In addition to the severance payment set forth within this paragraph, Employee shall also receive any accrued but unpaid salary prorated from the date of his last payroll check; up to and including his date of termination.

- (3). Such severance payment shall be the sole remedy of Employee and acceptance shall constitute a waiver of existing claims Employee may have which may arise by virtue of employment with or resignation or removal from the City, including, without limitation, any claims against the City, its officers and employees, agents, affiliates and subsidiaries including, but not limited to, breach of contract, tort, First and Fourteenth Amendment to the U.S. Constitution, 42 U.S.C. Section 1983, and any and all other claims which might arise under local, state, or federal fair employment practices or employment benefit laws, workers' compensation law, rights and claims arising under the Age Discrimination in Employment Act, Texas Payday & Whistleblower Laws, Title VII of the Civil Rights Act, the Americans with Disabilities Act, and the Texas Commission on Human Rights Act.

B. Notwithstanding Section 5.A. or any other provision of this Agreement, the Employer shall not be obligated to pay and the Employee shall not be entitled to receive any amount as severance payment if the Employee's separation from employment is for cause or the Employee committing an act involving: (1) moral turpitude; (2) an illegal act(s) resulting in personal gain to the Employee; or (3) conviction of a felony or Class A misdemeanor.

C. Neither this Section 5, nor any other provision to this Agreement, shall be construed to entitle Employee to a lump sum severance payment in the event of: (1) Employee's voluntary and unilateral resignation of the position prior to the end date of any term of the Agreement, pursuant to the terms of Section 3.B., above; (2) agreed rescission of the Agreement prior to the end date specified for any term of Agreement, under

negotiated terms mutually agreeable to Employer and Employee; or (3) non-renewal of the Agreement by either party, upon expiration of any term of Agreement, conditioned, however, upon the non-renewing party providing the other party with not less than ninety (90) days advance written notice of non-renewal.

SECTION 6. SALARY/BENEFITS

- A. For the services rendered as the Employer's City Manager, the Employer agrees to pay Employee an annual Base Salary of \$156,600.00 and as set year to year by the City Council in future years, payable in installments at the same time as other employees of the Employer are paid.
- B. Employer agrees to credit Employee with 17 hours of vacation per month. In addition, if Employee chooses not to participate in the City health insurance program, he may direct those budgeted funds into a city sponsored health savings account or the city sponsored deferred compensation plan.
- C. All other provisions of the City Charter, City Code, and Council-adopted Rules and Regulations relating to sick leave, retirement and pension system contribution, holidays, and other fringe benefits and working conditions as they now exist or hereafter may be amended, shall apply to Employee as they would to other employees of the City, which benefits include short term and long-term disability insurance and retirement as defined in Section 12 of this agreement.

SECTION 11. OUTSIDE ACTIVITIES

Employee is entitled to devote whatever amount of time the Employee feels is appropriate under the circumstances to the pursuit of teaching, counseling, consulting, writing or other non-employer connected business outside of normal business hours of the Employer, provided that this does not conflict or interfere with the Employee's duties as City Manager, and provided that Employee first notifies the Mayor that Employee intends to engage in such activity, including the amount of time the Employee intends to devote to this activity.

SECTION 12. RETIREMENT

- A. Employer shall provide and pay for Employee’s participation in the retirement plan of his choice of the Texas Municipal Retirement System or a Mission Square (ICMA-RC) plan in a manner and rate consistent with all employees of the City of Sanger.
- B. If the Employee retires pursuant to a qualified retirement plan, or is permanently disabled during the term of this Agreement, the Employee shall be compensated for vacation leave, holidays, and other benefits then accrued or credited to the Employee in accordance with Employer’s current policies for compensation for these benefits, and, at the Employee’s option, shall be permitted to continue to participate in the City’s health insurance plan on the same basis as other retirees from the City are permitted to do so, or, if such other retirees are not permitted to do so, at the cost of the Employee.

This Agreement shall take effect on _____, 20____.

IN WITNESS WHEREOF, the Mayor as duly authorized by the Council and on behalf of the City of Sanger, has signed and executed this Agreement and the Employee has signed and executed this Agreement, both in duplicate, the day and year first above written.

CITY OF SANGER

ATTEST:

THOMAS E. MUIR, MAYOR

KELLY EDWARDS, CITY SECRETARY

APPROVED AS TO FORM:

APPROVED AND ACCEPTED

HUGH COLEMAN, CITY ATTORNEY

JOHN C. NOBLITT