

Employment Agreement

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ICMA



Leaders at the Core of Better Communities

ICMA advances professional local government worldwide. Its mission is to create excellence in local governance by developing and advancing professional management of local government. ICMA, the International City/County Management Association, provides member support; publications, data, and information; peer and results-oriented assistance; and training and professional development to more than 9,000 city, town, and county experts and other individuals and organizations throughout the world. The management decisions made by ICMA's members affect 185 million individuals living in thousands of communities, from small villages and towns to large metropolitan areas.

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Introduction

This Agreement, made and entered into this ____ day of January, 2020 by and between the City of Newberg, Oregon, a municipal corporation, (hereinafter called "Employer") and Dan Weinheimer, (hereinafter called "Employee") an individual who has the education, training and experience in local government management and who, as a member of the International City/County Management Association (ICMA), is subject to the ICMA Code of Ethics, both of whom agree as follows:

Section 1: Term

A. This agreement shall remain in full force and effect from January __, 2020 until terminated by the Employer or Employee as provided in Section 9, 10 or 11 of this agreement.

Section 2: Duties and Authority

A. Employer agrees to employ Employee as City Manager to perform the functions and duties specified in the City of Newberg Charter and the Newberg Municipal Code and separately adopted job description to perform other legally permissible and proper duties and functions without interference.

B. Employee is the chief executive officer of the Employer and shall faithfully perform the duties as prescribed in the job description and as may be lawfully assigned by the Employer and shall comply with all lawful governing body directives, state and federal law, Employer policies, rules and ordinances as they exist or may hereafter be amended.

C. Specifically, it shall be the duty of the Employee to employ on behalf of the Employer all other employees of the organization consistent with the policies of the governing body and the ordinances and charter of the Employer.

D. It shall also be the duty of the Employee to direct, assign, reassign and evaluate all of the employees of the Employer consistent with policies, ordinances, charter, state and federal law.

E. It shall also be the duty of the Employee to organize, reorganize and arrange the staff of the Employer and to develop and establish internal regulations, rules and procedures which the Employee deems necessary for the efficient and effective operation of the Employer consistent with the lawful directives, policies, ordinances, state and federal law.

F. It shall also be the duty of the Employee to accept all resignations of employees of the Employer consistent with the policies, ordinances, state and federal law, except the Employee's resignation which must be accepted by the governing body.

G. The Employee shall perform the duties of City Manager of the Employer with reasonable care, diligence, skill and expertise.

H. All duties assigned to the Employee by the governing body shall be appropriate to and consistent with the professional role and responsibility of the Employee.

I. The Employee cannot be reassigned from the position of City Manager to another position without the Employee's express written consent.

J. The Employee or designee shall attend, and shall be permitted to attend, all meetings of the governing body, both public and closed, with the exception of those closed meetings devoted to the subject of this Agreement, or any amendment thereto or the Employee's evaluation or otherwise consistent with state law.

K. The governing body, individually and collectively, shall refer in a timely manner all substantive criticisms, complaints and suggestions called to their attention to the Employee for study and/or appropriate action.

Section 3: Compensation

A. Base Salary: Employer agrees to pay Employee an annual base salary of \$160,000 payable in installments at the same time that the other management employees of the Employer are paid.

B. This agreement shall be automatically amended to reflect any salary adjustments that are provided to other non-represented employees as an annual cost-of-living adjustment.

C. In addition, consideration shall be given on an annual basis to an increase in compensation based upon meritorious performance and/or competitive market conditions.

Section 4: Health, Disability and Life Insurance Benefits

A. The Employer agrees to provide and to pay the premiums for health, hospitalization, surgical, vision, dental and comprehensive medical insurance for the Employee and his/her dependents, at a minimum, equal to that which is provided to all other non-represented employees of the City of Newberg. In the event no such plan exists, Employer agrees to provide coverage for the Employee and dependents in a manner mutually agreed upon by Employer and Employee.

B. The Employer agrees to put into force and to make required premium payments for short-term and long-term disability coverage for the Employee.

C. The Employer shall pay the amount of premium due for term life insurance in the amount of two (2) times the Employee's annual base salary, including all increases in the base salary during the life of this agreement. The Employee shall name the beneficiary of the life insurance policy.

Section 5: Vacation, Sick, and Military Leave

A. Upon commencing employment, the Employee shall be credited with 240 (two hundred forty) accrued sick leave hours, 80 (eighty) accrued vacation leave hours and 80 (eighty) administrative leave hours; all usable consistent with the City's employee handbook rules. In addition, beginning the first day of employment, Employee shall accrue sick leave and vacation leave on an annual basis, at a minimum, at the rate provided or available to any other ten-year (10) tenured employees, under the same rules and provisions applicable to other employees. Upon five (5) years of service, Employee shall be deemed to be a fifteen-year (15) employee for purposes of leave accruals and so forth.

Section 6: Automobile

Monthly Vehicle Allowance

The Employer agrees to pay to the Employee, during the term of this Agreement and in addition to other salary and benefits herein provided, the sum of \$500 per month, payable monthly, as a vehicle allowance to be used to purchase, lease, or own, operate and maintain a vehicle. The Employee shall be responsible for paying for liability, property damage, and comprehensive insurance coverage upon such vehicle and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of said vehicle. The Employer shall reimburse the

Employee at the IRS standard mileage rate for any business use of the vehicle beyond the greater metropolitan area. For purposes of this Section, use of the car within the greater metropolitan area is defined as travel to locations within a one-hundred (100) mile radius of the local government limits.

Section 7: Retirement

The Employer agrees to enroll the Employee into the Oregon Public Employers' Retirement System (PERS) and to make all the appropriate contributions on the Employee's behalf consistent with contributions made to other non-represented City of Newberg employees, which includes the pick-up of the Employee 6% share.

In addition to the Employer's payment to the PERS, Employer agrees to execute and keep in force all necessary agreements provided by ICMA Retirement Corporation [ICMA-RC] or any other Section 457 deferred compensation plan for Employee's continued participation in said supplementary retirement plan.

Section 8: General Business Expenses

A. Employer agrees to budget and pay for professional dues, including but not limited to the International City/County Management Association, and subscriptions of the Employee necessary for continuation and full participation in national, regional, state, and local associations, and organizations necessary and desirable for the Employee's continued professional participation, growth, and advancement, and for the good of the Employer.

B. Employer agrees to budget and pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions to adequately continue the professional development of Employee and to pursue necessary official functions for Employer, including but not limited to the ICMA Annual Conference, the state league of municipalities, and such other national, regional, state, and local governmental groups and committees in which Employee serves as a member.

C. Employer also agrees to budget and pay for travel and subsistence expenses of Employee for short courses, institutes, and seminars that are necessary for the Employee's professional development and for the good of the Employer.

D. Employer recognizes that certain expenses of a non-personal but job-related nature are incurred by Employee and agrees to reimburse or to pay said general expenses. Such expenses may include meals where Employer business is being discussed or conducted and participation in social events of various organizations when representing the Employer. Such expenditures are subject to annual budget constraints as well as state and Employer ethics and purchasing policies.

E. The Employer acknowledges the value of having Employee participate and be directly involved in local civic clubs or organizations. Accordingly, Employer shall pay for the reasonable membership fees and/ or dues to enable the Employee to become an active member in local civic clubs or organizations.

F. Recognizing the importance of constant communication and maximum productivity, Employer shall provide Employee, for business and personal use, a laptop computer, software, mobile phone and tablet computer for business and personal use.

Section 9: Termination

A. For the purpose of this agreement, termination shall occur when:

1. The majority of the governing body votes to terminate the Employee in accordance with law at a properly posted and duly authorized public meeting.
2. If the Employer, citizens or legislature acts to amend any provisions of the Charter pertaining to the role, powers, duties, authority, responsibilities of the Employee's position that substantially changes the form of government, the Employee shall have the right to declare that such amendments constitute termination.
3. If the Employer reduces the base salary, compensation or any other financial benefit of the Employee, unless it is applied in no greater percentage than the average reduction of all department heads, such action shall constitute a breach of this agreement and will be regarded as a termination.
4. If the Employee resigns following an offer to accept resignation, whether formal or informal, by the Employer as representative of the majority of the governing body that the Employee resign, then the Employee may declare a termination as of the date of the suggestion.
5. Breach of contract declared by either party with a 30-day cure period for either Employee or Employer. Written notice of a breach of contract shall be provided in accordance with the provisions of Section 20.

Section 10: Severance

Severance shall be paid to the Employee when employment is terminated as defined in Section 9.

- A. If the Employee is terminated, the Employer shall provide a severance payment equal to twelve (12) months' salary at the then current rate of pay. This severance shall be paid in a lump sum or in a continuation of salary on the existing monthly basis, at the Employee's option.
- B. The Employee shall also be compensated for all sick leave, vacation leave, and all paid holidays.
- C. For a period of one year following termination, the Employer shall pay the cost to continue the following benefits:
1. Health insurance for the employee and all dependents as provided in Section 4A, after which time, Employee will be provided access to health insurance pursuant to the Consolidated Omnibus Budget Reconciliation Act ("COBRA").
 2. Life insurance as provided in Section 4D
 3. Short-term and long-term disability as provided in Section 4B
- D. If the Employee is terminated because of a felony conviction, then the Employer is not obligated to pay severance under this section.

Section 11: Resignation

In the event that the Employee voluntarily resigns his position with the Employer, the Employee shall provide a minimum of 30-days' notice unless Employer and Employee agree otherwise.

Section 12: Performance Evaluation

A. Employer shall annually review the performance of the Employee in March subject to a process, form, criteria, and format for the evaluation which shall be mutually agreed upon by the Employer and Employee.

The annual evaluation process, at a minimum, shall include the opportunity for both parties to: (1) conduct a formulary session where the governing body and the Employee meet first to discuss goals and objectives of both the past twelve (12) month performance period as well as the upcoming twelve (12) month performance period, (2) following that formulary discussion, prepare a written evaluation of goals and objectives for the past and upcoming year, (3) next meet and discuss the written evaluation of these goals and objectives, and (4) present a written summary of the evaluation results to the Employee. The final written evaluation should be completed and delivered to the Employee within 30 days of the initial formulary evaluation meeting.

B. Unless the Employee expressly requests otherwise in writing, the evaluation of the Employee shall at all times be conducted in executive session of the governing body and shall be considered confidential to the extent permitted by law. Nothing herein shall prohibit the Employer or Employee from sharing the content of the Employee's evaluation with their respective legal counsel.

C. In the event the Employer deems the evaluation instrument, format and/or procedure is to be modified by the Employer and such modifications would require new or different performance expectations, then the Employee shall be provided a reasonable period of time to demonstrate such expected performance before being evaluated.

D. In the event the Employee is an ICMA Credentialed Manager, the multi-rater evaluation tool will be utilized at a minimum of every five years. Employer agrees to budget and pay for the use of a mutually satisfactory multi-rater evaluation tool.

Section 13: Hours of Work

It is recognized that the Employee must devote a great deal of time outside the normal office hours on business for the Employer, and to that end Employee shall be allowed to establish an appropriate work schedule. The schedule shall be appropriate to the needs of the Employer and shall allow Employee to faithfully perform his or her assigned duties and responsibilities.

Section 14: Ethical Commitments

Employee will at all times uphold the tenets of the ICMA Code of Ethics, the State of Oregon Ethics laws and the ethics requirements of the City of Newberg.

Section 15: Outside Activities

The employment provided for by this Agreement shall be the Employee's primary employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to the Employer and the community, the Employee may elect to accept limited teaching, consulting or other business opportunities with the understanding that such arrangements must neither constitute interference with nor a conflict of interest with his or her responsibilities under this Agreement. Acceptance of outside work activities shall be in conformance with the City of Newberg Employee Handbook.

Section 16: Moving and Relocation Expenses

The Employer shall pay a up to \$25,000 to the Employee to cover relocation costs inclusive of temporary housing of up to three months during relocation.

Section 17: Reserved

Section 18: Indemnification

Beyond that required under Federal, State or Local Law, Employer shall defend, save harmless and indemnify Employee against any obligation to pay money or perform or no perform action, including without limitation, any and all losses, damages, judgments, interests, settlements, penalties, fines, court costs and other reasonable costs and expenses of legal proceedings including attorney's fees, and any other liabilities arising from, related to, or connected with any tort, professional liability claim or demand or any other threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigation, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as [job title] or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act or omission involved willful or wanton conduct. The Employee may request, and the Employer shall not unreasonably refuse to provide independent legal representation at Employer's expense and Employer may not unreasonably withhold approval. Legal representation, provided by Employer for Employee, shall extend until a final determination of the legal action including any appeals brought by either party. The Employer shall indemnify Employee against any and all losses, damages, judgments, interest, settlements, penalties, fines, court costs and other reasonable costs and expenses of legal proceedings including attorney's fees, and any other liabilities incurred by, imposed upon, or suffered by such Employee in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of his or her duties. Any settlement of any claim must be made with prior approval of the Employer in order for indemnification, as provided in this Section, to be available.

Employee recognizes that Employer shall have the right to compromise and unless the Employee is a party to the suit which Employee shall have a veto authority over the settlement, settle any claim or suit; unless, said compromise or settlement is of a personal nature to Employee. Further, Employer agrees to pay all reasonable litigation expenses of Employee throughout the pendency of any litigation to which the Employee is a party, witness or advisor to the Employer. Such expense payments shall continue beyond Employee's service to the Employer as long as litigation is pending. Further, Employer agrees to pay Employee reasonable consulting fees and travel expenses when Employee serves as a witness, advisor or consultant to Employer regarding pending litigation.

Section 19: Bonding

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

Section 20: Reserved

Section 21: Notices

Notice pursuant to this Agreement shall be given by depositing in the custody of the United States Postal Service, postage prepaid, and addressed as follows:

EMPLOYER: City Attorney
City of Newberg
address
Newberg, Oregon

EMPLOYEE: Dan Weinheimer

Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice in the course of transmission in the United States Postal Service.

Section 22: General Provisions

A. Integration. This Agreement sets forth and establishes the entire understanding between the Employer and the Employee relating to the employment of the Employee by the Employer. Any prior discussions or representations by or between the Employer and Employee are merged into and rendered null and void by this Agreement. The Employer and Employee by mutual written agreement may amend any provision of this agreement during the life of the agreement. Such amendments shall be incorporated and made a part of this agreement.

B. Binding Effect. This Agreement shall be binding on the Employer and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.

C. Effective and Start Dates. This Agreement shall become effective on January 6, 2020. Start date for Employee shall be February 24, 2020.

D. Severability. The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both Employer and Employee subsequent to the expungement or judicial modification of the invalid provision.

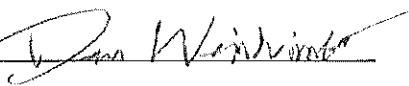
E. Precedence. In the event of any conflict between the terms, conditions and provisions of this Agreement and the provisions of Council's policies, or Employer's ordinance or Employer's rules and regulations, or any permissive state or federal law, then, unless otherwise prohibited by law, the terms of this Agreement shall take precedence over contrary provisions of Council's policies, or Employer's ordinances, or Employer's rules and regulations or any such permissive law during the term of this Agreement.

City of Newberg

By: 
Rick Rogers, Mayor

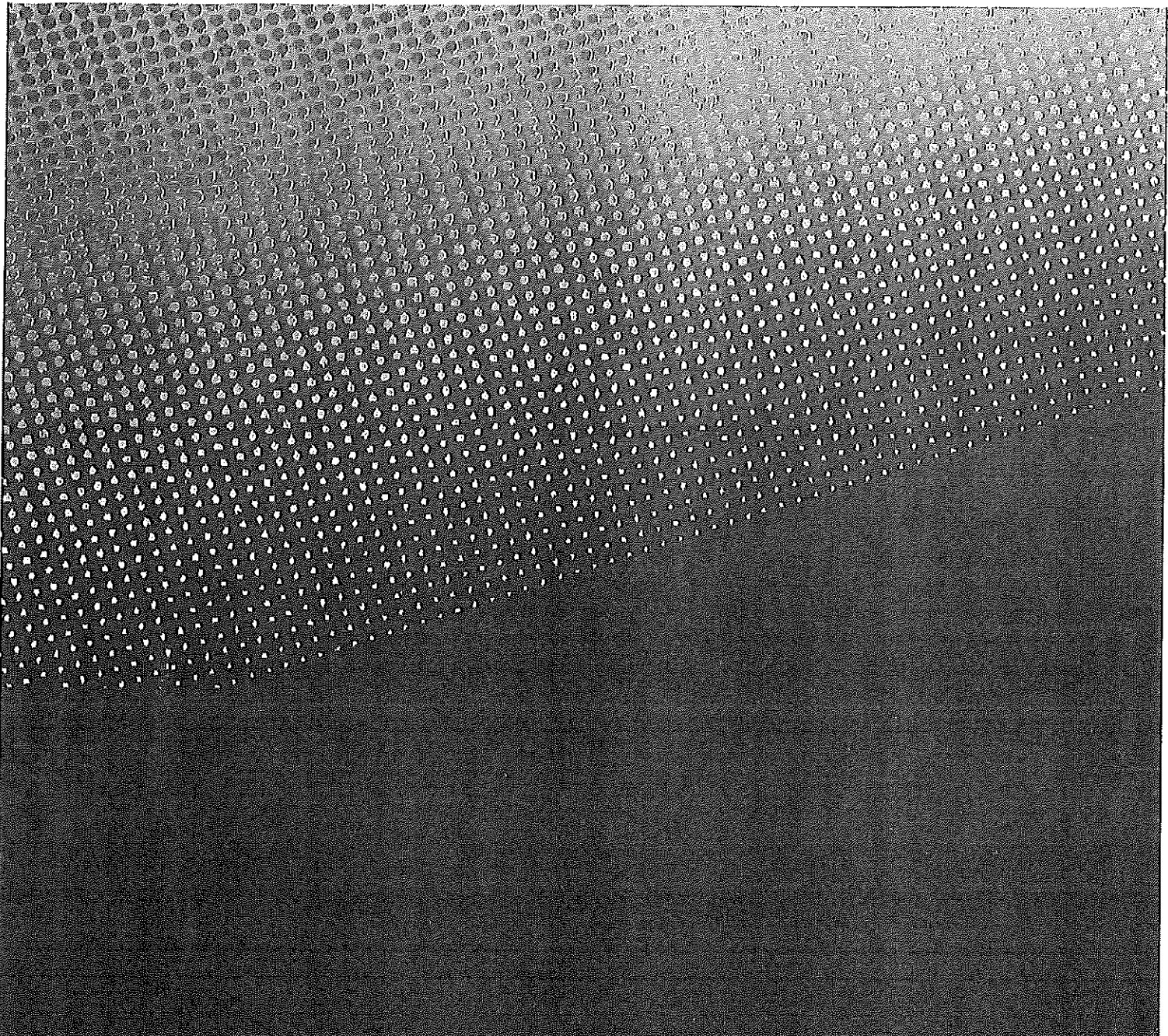
Executed this the 6th day of January 2020.

Dan Weinheimer, Employee

Signature: 

Executed this the 5th day of January 2020.

Appendix 1: Reserved



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