

RESOLUTION NO. R23-001

RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A FIRST AMENDED CITY MANAGER EMPLOYMENT AGREEMENT PROVIDING FOR AMENDMENTS TO ARTICLES III AND VI OF THE AGREEMENT; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

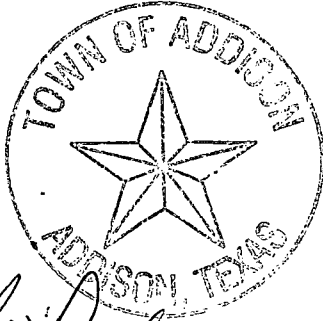
WHEREAS, the City Council desires to amend and restate the current City Manager Employment Agreement by amending Articles III and VI of the Agreement; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

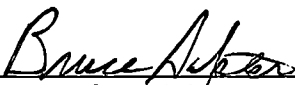
SECTION 1. The City Council hereby approves the First Amended City Manager Employment Agreement, a copy of which is attached to this Resolution as **Exhibit A**. The Mayor is hereby authorized to execute the same.

SECTION 2. This Resolution shall take effect from and after its date of adoption.

DULY RESOLVED AND ADOPTED by the City Council of the Town of Addison, Texas, on this the **9th** day of **JANUARY 2024**.

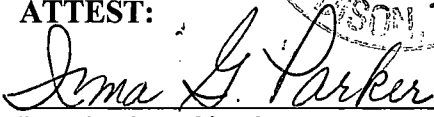


TOWN OF ADDISON, TEXAS



Bruce Arfsten, Mayor

ATTEST:



Irma Parker, City Secretary

**TOWN OF ADDISON
FIRST AMENDED CITY MANAGER
EMPLOYMENT AGREEMENT**

This City Manager Employment Agreement ("Agreement") is made by and between the Town of Addison, Texas, a Texas home-rule municipal corporation (the "Town") and David Gaines, individually ("Manager"), both of whom agree as follows:

RECITALS:

WHEREAS, the City Council of the Town (the "Council") and Manager believe that an employment agreement negotiated between the Council, on behalf of the Town, and Manager can be mutually beneficial to the Town, Manager, and the community they serve; and

WHEREAS, when appropriately structured, the Council and Manager believe an employment agreement can strengthen the Council-Manager relationship by enhancing the excellence and continuity of the management of the Town for the benefit of its citizens; and

WHEREAS, the Council, on behalf of the Town, desires to employ the services of Manager, as the City Manager of the Town ("City Manager"), pursuant to the terms, conditions and provisions of this Agreement; and

WHEREAS, Manager has agreed to accept employment as the City Manager, subject to the terms, conditions and provisions of this Agreement.

NOW, THEREFORE, the Town and Manager, for and in consideration of the terms, conditions and provisions hereinafter established have agreed, and do hereby agree as follows:

**Article I
Term**

1.1 Term. Manager's employment as City Manager for the Town shall commence on January 3, 2023 (the "Effective Date") and shall continue indefinitely until terminated in conformance with the provisions of this Agreement.

1.2 Employment At-Will; Manager Resignation. Nothing in this agreement is intended, nor shall prevent, limit or otherwise interfere with (i) the right of the City Council to terminate the services of the City Manager at any time in accordance with Section 3.02 of the Town Charter, or (ii) the right of Manager to resign the position of City Manager at any time, subject to the provisions set forth in Article VI, below.

**Article II
City Manager's Duties and Responsibilities**

2.1 Duties of the City Manager. Manager shall serve as the chief executive officer of the Town and shall faithfully perform the duties of the City Manager as set forth in this Agreement and as set forth in the Town Charter ("Charter"), the code of ordinances (herein, the "City Code") and all such other duties as may be lawfully assigned by the Council from time to time (collectively referred to herein as the "duties" of the City Manager). Manager shall perform the duties of the City Manager with reasonable care, diligence, skill and expertise, and in conformance with all applicable state and federal laws, the Charter, the City Code, and all Town policies, rules and regulations as they exist or may hereinafter be adopted or amended; together with all lawful Council orders or directives (collectively "Applicable Law"). In addition to the general duties of the City Manager, Manager (or their authorized designee) shall:

- (a) employ all other employees of the Town, except as otherwise provided by Applicable Law;
- (b) direct, assign, reassign and evaluate all employees of the Town;
- (c) organize, reorganize and arrange the staff of the Town;
- (d) develop and establish such internal regulations, rules and procedures which Manager deems necessary for the efficient and effective operation of the Town; and
- (e) accept resignations of all employees of the Town, except for those persons for whom the City Council must accept such resignations by Applicable Law.

2.2 Council Meetings. Manager or their authorized designee shall attend, and shall be permitted to attend, all meetings of the Council, both public and closed, unless otherwise prohibited by Applicable Law. Notwithstanding the foregoing, Manager shall not be entitled to attend any closed meeting wherein the Council will discuss or consider (i) any action (or lack of action) concerning the subject matter of this Agreement, (ii) amendment of this Agreement, (iii) the Manager's evaluation, or (iv) resolution of conflicts between individual Council members related to the subject matter of this Agreement.

2.3 Hours of Work; Outside Employment. Manager acknowledges the proper performance of the City Manager's duties require Manager to generally observe normal business hours and will also often require the performance of necessary services outside of normal business hours. Manager agrees to devote such additional time as is necessary for the full and proper performance of the City Manager's duties and that the compensation herein provided includes compensation for the performance of all such services. Manager will devote full time and effort to the performance of the City Manager's duties, and shall remain in the exclusive employ of the Town during the term of this Agreement and shall not undertake, nor accept, any outside or other employment which would in any way limit Manager's performance of their duties hereunder or their availability for performance of their duties hereunder without the prior consent of the Council. The term "outside or other employment" means any services provided to third parties for which Manager is compensated and which are performed outside of normal business hours or on Manager's time

2.4 Standards of Conduct; Code of Ethics. The Town expects Manager to adhere to the highest professional standards. Manager's actions will always comply with those standards. Manager agrees to follow the Code of Ethics of the International City/County Management Association (ICMA) and the ethics rules, regulations, and laws of the State of Texas, as the same may be amended from time to time. The ICMA Code of Ethics (herein "Code") can be found on the ICMA website, icma.org. Consistent with the standards outlined in the Code, Manager shall not endorse candidates, make financial contributions, sign or circulate petitions, or participate in fundraising activities for individuals seeking or holding elected office, nor seek or accept any personal enrichment or profit derived from confidential information or misuse of public time. Neither the Council nor any individual member thereof acting in their official capacity, shall request Manager to endorse any candidate, make any financial contribution, sign or circulate any petition, or participate in any fundraising activity for individuals seeking or holding elected office, nor to handle any matter of personnel on a basis other than fairness, impartiality, and merit.

2.5 Other Terms and Conditions of Employment. The Council may, upon consent of Manager (which shall not be unreasonably withheld) fix any such other terms and conditions of employment as it may determine from time-to-time, relating to the performance of Manager, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement or Applicable Law

2.6 Reassignment; Demotion. The Council may not reassign or demote Manager from the position of City Manager to another position without Manager's written consent.

2.7 Indemnification. TO THE EXTENT IT MAY BE PERMITTED TO DO BY LAW, INCLUDING, BUT NOT LIMITED TO TEXAS CIVIL PRACTICE & REMEDIES CODE CHAPTER 102, THE TOWN DOES HEREBY AGREE TO DEFEND, HOLD HARMLESS, AND INDEMNIFY MANAGER FROM ANY AND ALL DEMANDS, CLAIMS, SUITS, ACTIONS, JUDGMENTS, EXPENSES AND ATTORNEYS' FEES INCURRED IN ANY LEGAL PROCEEDINGS BROUGHT AGAINST MANAGER IN MANAGER'S INDIVIDUAL OR OFFICIAL CAPACITY AS AN EMPLOYEE AND AS CITY MANAGER, PROVIDED THAT THE INCIDENT(S), WHICH IS (ARE) THE BASIS OF ANY SUCH DEMAND, CLAIM, SUITS, ACTIONS, JUDGMENTS, EXPENSES AND ATTORNEYS' FEES, AROSE OR DOES ARISE IN THE FUTURE FROM AN ACT OR OMISSION OF MANAGER, AS AN EMPLOYEE OF THE TOWN, ACTING WITHIN THE COURSE AND SCOPE OF MANAGER'S EMPLOYMENT WITH THE TOWN; excluding, however, any such demand, claim, suits, actions, judgments, expenses and attorneys' fees for those claims or any causes of action where it is determined that Manager committed official misconduct, or committed a willful or wrongful act or omission, or an act or omission constituting gross negligence; and excluding any costs, fees, expenses or damages that are recovered or paid under an insurance contract held by the Town. The selection of Manager's legal counsel shall be with the mutual agreement of Manager and the Town, provided, that the Town does not select the city attorney to defend the same. A legal defense may be provided through insurance coverage, in which case Manager's right to agree to legal counsel provided for them will depend on the terms of the applicable insurance policies. To the extent this Section 2.7 exceeds the authority provided and limitations imposed by Texas Civil Practice & Remedies Code, Chapter 102, it shall be construed and modified accordingly. The provisions of this Section 2.7 shall survive the termination of this Agreement and/or Manager's employment with the Town.

Article III Compensation

3.1 Salary. The Town shall provide Manager with an annual salary in the sum of Three Hundred and Eight Thousand Dollars (\$308,000.00), paid in equal installments on the same schedule as other Town employees, net of any applicable withholding or deductions.

3.2 Adjustments to Salary; Cost of Living. At any time during the term of this Agreement, the Council may, in its discretion, review and adjust the salary of Manager, but in no event shall Manager be paid less than the annual salary set forth in Paragraph 3.1, above, except by mutual agreement of the parties. All such discretionary adjustments shall be made by Council resolution amending this Agreement, which shall be approved by a vote of at least four (4) members of the Council. Notwithstanding the foregoing, this Agreement shall be automatically amended to reflect any salary increases that are provided or required by the Town's compensation policies to apply to the position of City Manager, including all cost of living adjustments (COLA) to all full-time employees.

3.3 Vehicle Allowance. Manager's duties require that they have continuously available transportation for business purposes. Manager shall provide their own vehicle and/or alternate transportation, which shall be available for their exclusive and unrestricted use in the performance of Manager's duties under this Agreement. Manager shall be paid a vehicle allowance in the amount of six-hundred fifty (\$650) dollars per month, paid at the same time as their annual salary. Manager shall at all times maintain comprehensive insurance policies on all vehicles used by Manager, in whole or in part, in connection with Manager's duties under this Agreement. Manager shall further be responsible for all other expenses related such vehicle(s), including, without limitation, the purchase, operation, maintenance, repair, and regular replacement of the same.

3.4 Paid Leave; Holidays. Except as otherwise provided herein, Manager shall be entitled to the same number of hours of vacation, sick leave and personal leave authorized for other administrative employees of the Town, which may be taken in a single period or at different times; provided, that any

vacation leave will be taken at such time(s) as will least interfere with the performance of the City Manager's duties. Further, Manager shall observe the same legal holidays as provided by the Town for its administrative employees. On the Effective Date hereof, Manager shall be credited with 40 hours of annual leave and 40 hours of sick leave. In recognition of Manager's 14 years of public service experience, Manager shall also accrue annual leave at the accrual rate attributed to Town employees with 14 years of service and will continue to earn additional annual leave in conformance with the Town's established leave schedules.

3.5 Other Benefits: Retirement. Unless expressly provided otherwise in this Agreement, Manager shall be entitled to the same benefits that are enjoyed by any other administrative employees of the Town pursuant to Applicable Law. Without limiting the foregoing, the Town shall pay the premiums for health, hospitalization, vision, dental and comprehensive medical insurance for Manager pursuant to the group health care plan provided by the Town to the same extent as other administrative employees of the Town. The Town further agrees to enroll Manager into the applicable state or local retirement system and to make at least the same level of contributions for Manager or on Manager's behalf as the Town does for its other administrative employees consistent with Applicable Law.

3.6 Reimbursement of Expenses. The Town shall pay or reimburse Manager for reasonable expenses incurred by Manager in the continuing performance of Manager's duties under this Agreement. The Town agrees to pay the actual and incidental costs incurred by Manager for travel in connection with Town business. Such actual or incidental costs may include, but are not limited to, gasoline, hotels and accommodations, meals, rental car, and other expenses reasonably incurred in the performance of the business of the Town. Manager shall comply with all procedures and documentation requirements in accordance with Applicable Law.

3.7 Bonds. The Town shall bear the full cost of any fidelity or other bonds required of Manager under Applicable Law.

3.8 Appropriation. The Council has appropriated, set aside and encumbered, and does hereby appropriate, set aside, and encumber, available and otherwise unappropriated funds of the Town in an amount sufficient to fund and pay all financial obligations of the Town pursuant to this Agreement.

Article IV Professional Development

4.1 Professional Dues and Subscriptions. Manager is encouraged to participate in community and civic organizations and activities that will benefit the Town. Accordingly, the Town agrees to budget and to pay the reasonable costs incurred by Manager for membership in the following professional and civic organizations and subscriptions of Manager necessary for their continuation and full participation in national, regional, state and local associations and organizations necessary and desirable for continued professional participation, growth and advancement for the good of the Town. The parties contemplate that such organizations will, at a minimum, include the following:

- (a) International City/County Management Association
- (b) Texas City Management Association
- (c) North Texas City Management Association
- (d) Two (2) additional civic clubs/professional organizations

4.2 Professional Development Travel. The Town agrees to budget for and to pay for reasonable travel and subsistence expenses incurred by Manager for professional and official travel and meetings to adequately continue the professional development of Manager and to pursue necessary official functions for the Town, including but not limited to the ICMA Annual Conference, the Texas Municipal

League, the Texas City Management Association, and such other national, regional, state and local governmental groups and committees in which Manager is a member.

4.3 Professional Continuing Education. The Town also agrees to budget for and to pay for reasonable travel and subsistence expenses incurred by Manager for short courses, institutes, and seminars that are necessary and/or desirable for the good of the Town through Manager's professional development.

Article V Performance Evaluations

5.1 Evaluation Process. The Council shall review Manager's job performance at least once annually with the first review being in April 2023, and subsequent annual reviews to occur during the month of January of each year thereafter unless the parties agree otherwise. The annual performance reviews and evaluations shall be in writing and in accordance with criteria and format developed jointly by the Council and Manager. The Council shall provide Manager a reasonable opportunity to discuss with the Council and/or respond to Manager's evaluation. Based on Manager's overall job performance, the Council may (in its sole discretion) increase Manager's compensation under this Agreement in connection with the annual performance review.

5.2 Confidentiality. Unless Manager expressly requests otherwise in writing, evaluation of Manager's performance under this Agreement shall at all times be conducted in closed session of the Council and such information shall be considered confidential to the fullest extent permitted by law. Nothing herein shall prohibit the Council or Manager from sharing the content of Manager's evaluation with their respective legal counsel.

5.3 Modification Of Evaluation Process. In the event the Council decides to modify the evaluation instruments, format and/or procedures, and such modifications would require new or different performance expectations, then Manager shall be provided a reasonable period of time to demonstrate such expected performance before being evaluated.

Article VI Termination and Severance

6.1 Termination Events. This Agreement shall terminate immediately upon the occurrence of any one or more of the following events:

- (a) mutual written agreement of the Council and Manager;
- (b) death of Manager;
- (c) termination of Manager's employment for "good cause" (as defined in Paragraph 6.2, below);
- (d) unilateral termination by Town (as set forth in Section 6.3, below); or
- (e) resignation of Manager (as set forth in Section 6.8, below).

6.2 Good Cause. For the purposes of this Agreement, the term "good cause" is defined as follows:

Ethics violations as described in the Town of Addison Employee Handbook, Code of Ethics or the ICMA Code of Ethics, integrity compromises, violations of law other than Class C misdemeanors or minor traffic violations, violations of Town of Addison Employee Handbook, gross negligence, insubordination, willful and serious misconduct, or misappropriation of City assets. In the event of such termination, the City shall not pay the Employee any severance pay as described in paragraph 6.5. Examples may include:

- (a) any willful, knowing, grossly negligent, or negligent breach, disregard or habitual neglect of any provision of this Agreement;
- (b) failure to fulfill duties or responsibilities of Manager set forth under the terms and conditions of this Agreement;
- (c) insubordination or failure to comply with lawful written Council directives;
- (d) failure to comply with the Town's Charter, City Code or employment policies;
- (e) misappropriation of Town assets;
- (f) conviction of a felony or crime involving moral turpitude;
- (g) failure to meet the Town's adopted code and/or standards of professional conduct;
- (h) failure to comply with reasonable professional development requirements regarding advanced course work or professional development as requested by the Council;
- (i) assault on any person;
- (j) knowingly falsifying records or documents related to Town business;
- (k) intentional misrepresentation of facts to the Council or other Town officials in the conduct of Town business; or
- (l) any other reason constituting "good cause" pursuant to Texas law.

6.3 Termination for Good Cause. If Manager's employment is terminated for good cause, then the Town shall not be obligated to pay any portion of the Severance (as defined in Section 6.5) of this Agreement but may be required to recognize and pay benefits that have vested and to which Manager is entitled under the Town's personnel policies or Applicable Law.

6.4 Termination by Town. In conformance with Section 3.02 of the Town Charter, the Council may end the employment relationship and terminate this Agreement at the will and pleasure of the Council at any time, with or without cause, upon written notice to Manager. Notwithstanding, the parties mutually agree that as a part of the mutual consideration of the parties given under this Agreement, the Council will provide Manager not less than thirty (30) days prior written notice of its intent to unilaterally terminate this Agreement if such termination is without "good cause".

6.5 Severance. In the event this Agreement is unilaterally terminated by Council without "good cause" pursuant to Section 6.4, above, the provisions of this section shall apply and Manager shall be entitled to receive severance consisting of the severance amount and severance benefits defined in this section (collectively, the "Severance"). The "severance amount" shall be an amount equal to (i) the value of twelve (12) months of Manager's then current salary, plus (ii) the value of any accrued but unused vacation and other compensable leave days, which shall be computed on an hourly basis determined by dividing Manager's then current annual salary by 2080 hours. In addition, the Town will provide continued health insurance benefit pursuant to Paragraph 3.5 of this Agreement, for a period equal to the lesser of (i) six (6) months following the effective date of Manager's termination, or (ii) the date upon which Manager obtains other full-time employment and coverage through a group health insurance plan from another employer.

6.6 Payment of Severance. In the event Manager is entitled to receive Severance pursuant to this Agreement, the parties shall execute a mutual written separation agreement in which the Manager request that the Town to pay the Severance in any lawful manner (e.g., lump sum, periodic payment, etc...), provided that there shall be no limitations on the Town making all deductions and withholdings required by law and the total severance amount shall be paid in full on or before the first (1st) anniversary of the effective date of Manager's termination.

6.7 Waiver, Release and Non-Disparagement. Upon termination of Manager in conformance with this Article VI, Manager expressly waives and releases Manager's rights to continued employment with the Town, as well as the right to have a hearing on the issue of good cause through arbitration or any other legal proceeding. In the event of termination under Section 6.5, above, the parties agree not to make disparaging comments or statements about each other and shall include a mutual 'non-disparagement' clause in the written separation agreement.

6.8 Resignation of Manager. In the event Manager voluntarily resigns the position of City Manager during the term of this Agreement, then Manager shall give the Town sixty (60) days' advance written notice (unless the parties mutually agree otherwise), and Manager shall not under any circumstances be entitled to receive any portion of the Severance set forth in this Article.

Article VII Residency; Moving Expenses

7.1 Manager's Residency. Manager intends to establish residence within the corporate boundaries of the Town of Addison, within six (6) months of the Effective Date of this Agreement ("Residency Deadline"), and thereafter to maintain a primary residence within the corporate boundaries of the Town throughout the term of this Agreement. Recognizing that current market conditions and limited housing inventory may affect Manager's ability to timely obtain satisfactory housing within the Town, the parties agree that Manager may request to extend the Residency Deadline under this section by submitting a written request to Council on or before said deadline, providing the basis for such extension. Council agrees it will promptly review the same and negotiate a reasonable extension with Manager based upon the facts and circumstances presented.

7.2 Moving Expenses. The Town agrees to reimburse Manager for the expenses of moving Manager and their family and personal property. Said moving expenses include packing, moving, storage costs, unpacking, and insurance charges (but exclude any costs related to the rental, lease, purchase and sale, closing or financing of Manager's residence, including, without limitation, any fees associated with brokers, realtors, inspectors, banks, escrow agents or title companies). Manager shall submit receipts for actual expenses incurred within twelve (12) months of establishing residency and the Town shall reimburse Manager for qualifying expenses in an aggregate amount not to exceed \$10,000.00.

Article VIII Miscellaneous

8.1 Entire Agreement. This Agreement sets forth and establishes the entire understanding between the parties relating to the employment of Manager by the Town. Any prior discussions or representations by or between the parties (or their representatives) are merged into and rendered null and void by this Agreement. The parties by mutual written signed agreement may amend any provision of this Agreement during the term of this Agreement; such amendments shall be incorporated and made a part of this Agreement.

8.2 Binding Effect. This Agreement shall be binding on the Town and Manager as well as their heirs, assigns, executors, personal representatives and successors in interest.

8.3 Party Representations. Each party verifies, confirms, represents, warrants, acknowledges, and agrees that they:

- (a) have freely and willingly executed this Agreement and it embodies the complete agreement between the parties hereto and their successors and assigns;
- (b) have had the opportunity to consult with separate, independent counsel of their choice prior to executing this Agreement;
- (c) were not in a significantly disparate bargaining position with the other party;
- (d) have carefully read this Agreement and that they fully understand all provisions, terms and conditions contained here; and
- (e) SPECIFICALLY DISCLAIM RELIANCE ON ANY STATEMENTS, REPRESENTATIONS, OR PROMISES MADE BY THE OTHER PARTY PRIOR TO THE EXECUTION OF THIS AGREEMENT.

8.4 Savings. If any term or provision of this Agreement, as applied to any party or to any circumstance, is declared by a court of competent jurisdiction hereof to be illegal, unenforceable or void in any situation and in any jurisdiction, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending provision in any other situation or in any other jurisdiction. The parties agree that the court or arbitrator making such determination shall have the power to reduce the scope, duration, area or applicability of the term or provision, to delete specific words or phrases or to replace any illegal, unenforceable or void term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision.

8.5 Conflicts. In the event of any conflict between the terms, conditions and provisions of this Agreement and Applicable Law, then, unless otherwise prohibited by law, the terms of this Agreement shall take precedence over the contrary provisions of the Applicable Law during the term of this Agreement.

8.6 Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Texas and shall be performable in the state district courts of Dallas County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said courts.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK -
SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the Effective Date.

For Town:

For Manager: DAVID GAINES

TOWN OF ADDISON, TEXAS

By: Bruce Aristen
Bruce Aristen
Mayor

By: David Gaines
David Gaines


Date: January 11, 2024

Date: January 11, 2024

Notice Address:

Notice Address:

Town of Addison
Attn: Mayor
P.O. Box 9010
Addison, Texas 75001
E: barfsten@addisontx.gov


Addison, TX 75001
E: _____

RESOLUTION NO. R24-001
JANUARY 9, 2024