

## CITY MANAGER EMPLOYMENT AGREEMENT

This City Manager Employment Agreement (“Agreement”) is entered into on December 16, 2021, by and between the City of Sanger, a municipal corporation (“City”), and Eutimio “Tim” Chapa (“Employee”). City and Employee are referred to collectively as “Parties.”

### RECITALS

A. The City and Employee entered a written employment agreement effective January 19, 2016. That agreement has been amended from time to time.

B. The Parties have negotiated terms and conditions to the Agreement and it is in the best interest of the Parties that they enter a new written employment agreement.

C. City desires to continue to employ Employee as City Manager as an at-will employee, to provide certain benefits, and to establish certain terms and conditions of Employee’s employment on an at-will basis as City Manager through this Agreement.

D. Employee desires to be employed as an at-will City Manager for the City in accordance with and the terms of this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and covenants herein contained which are made a part of this Agreement, the Parties agree as follows:

### AGREEMENT

1. EMPLOYMENT. City shall continue to employ Employee as the City Manager. Employee will be an at-will employee serving at the pleasure of the City Council subject to the terms and conditions set forth below. Employee’s employment with the City as City Manager is at the mutual consent of both Employee and the City. There are no express or implied agreements contrary to the foregoing.

a. Employee is an “at-will” employee who shall serve at the sole will, discretion, and pleasure of the City. Accordingly, the City may suspend or terminate Employee’s employment under this Agreement at any time, with or without cause, for any reason, or for no reason at all.

b. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Employee to resign at any time from his at-will position with the City. See Section 7.

c. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City to terminate this Agreement and the services and employment of Employee at any time, at the sole discretion of the City with or without cause, for any reason, or for no reason.

d. Employee acknowledges that he shall not have any rights to a hearing or an appeal of his termination. Termination of Employee by the City shall be effected only by a majority vote of three (3) members of the City Council convened in a duly called regular or special meeting.

2. TERM. This Agreement shall be in effect for a period of three (3) years beginning on January 21, 2022, and ending January 20, 2025, unless terminated by either party in accordance with Section 6 below or extended by mutual written agreement of both parties.

3. COMPENSATION.

a. Salary. Effective January 21, 2022, Employee's salary shall be \$172,980.00 (\$14,415.00 per month). Employee's salary shall be increased by 2.5% on January 21, 2023. Employee's salary shall be increased by 2.5% on January 21, 2024. Employee's participation in any salary reductions or other cost saving measures during his employment with City shall be completely voluntary at Employee's sole discretion.

b. Certification Pay. Effective January 21, 2022, Employee is eligible to receive Certification Pay for possession of an MBA. Certification pay will be equal to 2.5% of his base salary and shall be capped at 2.5%.

c. Bilingual Pay. Employee has met requirements for Bilingual Pay and shall continue to be entitled to additional compensation at the rate of 5% of his regular base pay.

d. Longevity Pay. Effective January 21, 2022, Employee is eligible to receive longevity pay of 2.5% for 15 years of service and an additional 2.5% for 20 years of service

4. RESPONSIBILITIES.

a. Employee shall serve as the City Manager of the City in accordance with the powers, duties and responsibilities set forth in Section 2-88 of the Sanger City Code, as may be amended and applicable state laws. Employee shall perform the functions and duties as established from time to time by the City Council.

b. Employee shall be responsible to the City for the proper administration of all affairs of the City. Employee shall administer and enforce policies established by the City Council and establish rules and regulations as necessary to implement City policies set by the City Council.

c. Employee agrees to devote his productive time, ability and attention to the City's business. As an employee exempt from the overtime provisions of the Fair Labor and Standards Act, as amended, the Employee shall not receive overtime or extra compensation for work performed outside normal business hours. Employee understands that he may be required to work hours other than regular City business hours in order to accomplish the duties of Employee.

d. Employee shall adhere to the professional standards of conduct as prescribed by the International City/County Management Association (“ICMA”), and Employee will also continue his membership in ICMA. During the term of this Agreement, Employee shall be a full-time City Manager.

5. EVALUATION. Employee shall receive a performance evaluation in October of each year, or more often as may be requested by the city council or employee. Failure to evaluate shall have no effect on the rights, duties, and obligations of the parties herein.

6. TERMINATION AND SEVERANCE.

a. Termination Without Cause. The majority of the City Council may terminate this Agreement at any time (subject to the limitation in Section 8 below) without cause by providing at least thirty (30) days written notice to Employee. In the event of termination without cause, Employee shall be entitled to severance compensation as follows:

(1) Nine (9) months’ salary and health benefits if this Agreement is terminated without cause by the City Council during the first year (January 21, 2022 – January 20, 2023) of the Term; or

(2) Nine (9) months’ salary and health benefits if this Agreement is terminated without cause by the City Council during the second year (January 21, 2023 – January 20, 2024) of the Term; or

(3) Six (6) months’ salary and health benefits, or salary and health benefits for the balance of the Term, whichever is less, if this Agreement is terminated without cause by the City Council during the third year (January 21, 2024 – January 20, 2025) of the Term.

Severance and health benefit compensation shall be paid in one lump sum and in the same manner as the customary payout of earned salary.

b. Termination for Cause. The City may terminate this Agreement for cause immediately upon written notice to Employee. If Employee is terminated for cause, Employee shall not be entitled to the severance compensation under this Section.

c. For Cause Defined. Cause shall be defined to include, but shall not be limited to, any of the following: (I) the refusal to follow the lawful directions of the City Council; (ii) failure to substantially perform any of the required duties of the City Manager; (iii) repeated unexcused absences from the City Manager’s office and duties; (iv) material violation of City policy(ies); (v) conviction of a felony or a misdemeanor crime involving acts of moral turpitude under California law; (vi) use or possession of illegal drugs; or (vii) breach of this Agreement.

d. Termination Defined. Termination shall mean dismissal or removal from office or a request that Employee resign. Termination shall not mean a reduction of benefits generally applicable to all non-public safety executive management employees.

7. RESIGNATION; NOTICE. Nothing in this Agreement shall prevent, limit or otherwise interfere with Employee's right to resign from his employment with the City at any time. Employee is requested to give City at least thirty (30) days' written notice prior to the effective date of resignation. If Employee resigns voluntarily (without a request from the City Council to resign), Employee shall not be entitled to the severance compensation under Section 6 herein.

8. LIMITATION ON WITHOUT CAUSE TERMINATION FOLLOWING SEATING OF NEWLY ELECTED COUNCIL MEMBER. Notwithstanding any other provision of this Agreement, the City Council may not take any action to terminate this Agreement without cause during the period of sixty (60) days following the seating of a new city council member or mayor elected in a general municipal election. The purpose of this provision is to allow any newly elected member of the city council or a reorganized city council to have sufficient time to observe the actions and ability of the city manager in the performance of the powers and duties of his office. After the expiration of the aforementioned sixty (60) day period, there shall be no limitation on the City Council's ability to terminate without cause. Nothing herein shall limit the City's ability to terminate this Agreement for cause and serve written notice of such termination on Employee.

9. AUTOMOBILE ALLOWANCE. Employee shall, at his expense, provide an automobile for use in carrying out his duties as City Manager within a forty (40) mile radius of Sanger, and in connection therewith. City shall pay Employee an automobile allowance of \$400.00 per month. Chapa shall be entitled to reimbursement for automobile use for city business travel outside of the forty (40) mile radius.

10. RETIREMENT BENEFITS. During the Term of this Agreement, City shall enroll Employee as a classic member of the PERS 2.5% at 55 Plan, and shall pay the applicable employer contribution at the same level as provided other non-public safety executive management employees of the City. During his employment with City, Employee shall be responsible for paying the full miscellaneous employee portion of the PERS employee contribution.

11. HEALTH BENEFITS.

a. City shall provide a Health Care Plan for Employee and his dependents. The Health Care Plan shall include medical and prescriptions, vision plan, dental plan, and a Life Insurance Policy of \$100,000 for each employee.

b. City shall pay the entire premium for the life insurance plan, vision plan and dental plan costs. Employee shall pay \$45 per month toward the premium with the City paying the balance of the premium for the medical and prescription plan for dependent coverage only. Employee understands and acknowledges that such coverage may be subject to change in the future.

c. The City agrees to reimburse employee a fixed amount, as shown below, if the employee's dependents opt-out of the City's HMO or PPO plan:

Employee & Spouse	\$197.24 per month
Employee & Child(ren)	\$149.17 per month
Employee & Family	\$338.12 per month

To receive the above reimbursement, the employee must show proof that the dependents are covered on a non-City plan. Employees will be required to show proof on an annual basis.

d. Employees retiring from City service in good standing under a PERS service retirement (non-disability) may elect to continue coverage under the City's Health Plan at the retiring employee's cost, including dependent coverage. Said coverage shall continue until such retired employee becomes eligible for MEDICARE benefits.

12. VACATION, SICK LEAVE, MANAGEMENT LEAVE, HOLIDAYS, AND BEREAVEMENT. Employee shall earn vacation time, sick leave, management leave, and holiday leave as follows and shall be subject to applicable City ordinances, resolutions, rules and policies pertaining to accrual and use of vacation time, sick leave, administrative leave, and holiday leave by management employees as the same currently exist and may hereinafter be modified.

a. Vacation. Employee shall earn vacation leave calculated at following rates based upon the length of his employment with the City:

- 0-2 years with the City = 3.08 hours per pay period.
- 2-5 years with the City = 4.31 hours per pay period.
- 5-10 year with the City = 6.1562 hours per pay period.
- 10-15 years with the City = 7.093 hours per pay period.
- 15-20 years with the City = 8.0024 hours per pay period.
- 20+ years with the City = 8.62 hours per pay period.

Accrual of unused vacation leave may not exceed the accrual limit of 240 hours, and no additional hours of vacation leave may be accrued until the number of accrued hours falls below the accrual limit. Each calendar year, Employee may cash out up to (40) hours of unused vacation leave while maintaining a balance of at least eighty (80) hours. Upon retirement any accrued vacation shall be paid to the employee. City understands and acknowledges that Employee has been credited with service time accumulated with the City prior to his previous separation from the City for the limited purpose of determining his appropriate vacation accrual rate.

b. Sick Leave. Employee shall earn sick leave equal to 8 hours per month (3.6924 hours per pay period) with no limit on the number of hours accrued.

c. Management Leave. Employee shall earn 72 hours of Management Leave each fiscal year. Management Leave not used by the end of the fiscal year is lost. It shall not be compensated, purchased or converted to any other form of compensation or leave.

d. Holidays. The City currently recognizes the following holidays and Employee shall be entitled to 8 hours' of holiday leave time for each such holiday:

- (i) New Year's Day;
- (ii) Martin Luther King, Jr.'s Birthday;
- (iii) President's Day;
- (iv) Cesar Chavez Day;
- (v) Memorial Day;
- (vi) Independence Day;
- (vii) Labor Day;
- (viii) Veterans' Day;
- (ix) Thanksgiving Day;
- (x) Day after Thanksgiving;
- (xi) Christmas; and
- (xii) one floating holiday

e. Bereavement Leave. Employee shall be entitled to bereavement leave without loss of pay or charge against any other paid leave benefit, up to a maximum of forty (40) working hours for death in the immediate family. Immediate family means spouse, father, mother, step-father, step-mother, son, daughter, sister, brother, father-in-law, mother-in-law, daughter-in-law, son-in-law, sister-in-law, brother-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, registered domestic partner, guardian, or ward.

13. OTHER BENEFITS AND ALLOWANCES. During the term of this Agreement, other benefits and allowances may be set upon approval by the City Council.

14. LIFE INSURANCE. City shall pay the annual premium for a \$100,000 term life insurance policy covering Employee during the Term of this Agreement. Employee shall have the sole discretion in designating any beneficiary(ies) under such policy.

15. PROFESSIONAL MEETINGS. Employee is expected to attend appropriate professional meetings and conferences at local and state levels, including but not limited to League of California Cities and ICMA, and to periodically report to the City Council regarding meetings attended. City will pay for Employee's annual membership fees for ICMA and other appropriate professional organizations. The annual budget for such memberships and Employee's attendance at conferences shall be included in the City's adopted annual budget.

16. EXPENSE REIMBURSEMENT. City shall reimburse Employee for actual and necessary expenses incurred within the scope of employment in accordance with applicable City reimbursement schedules and policies. City shall pay for or reimburse Employee's actual and necessary travel and subsistence expenses for professional and official travel to meetings,

courses, seminars, and occasions reasonably necessary to adequately pursue official duties and other functions for the City, and to continue Employee's professional development as authorized by the City Council.

17. NOTICES. Any notices required or permitted by this Agreement shall be in writing and shall be personally served or shall be sufficiently given and deemed served upon the other party if sent by United State Postal Service, first class postage prepaid, and addressed as follows:

TO CITY:                   Sanger City Council  
                                  c/o City Attorney  
                                  City of Sanger  
                                  1700 7th Street  
                                  Sanger, CA 93657

TO EMPLOYEE:       Tim Chapa  
                                  City Manager  
                                  City of Sanger  
                                  [Address in Personnel File]

Notices shall be deemed given as of the date of personal service or upon the date of deposit in the course of transmission with the U.S. Postal Service.

18. BONDING. City shall bear the full cost of any bond(s) or insurance required of Employee to perform his duties pursuant to this Agreement under any law or ordinance.

19. GENERAL PROVISIONS.

a. Governing Law and Venue. This Agreement and the rights and obligations of the parties shall be governed by and construed in accordance with the laws of the State of California. The parties also agree that, in the event of litigation, venue shall be the state courts located in Fresno County, California.

b. Entire Agreement. This Agreement contains the entire agreement and understanding between the parties. There are no oral understandings, terms, or conditions, and neither party has relied upon any representation, express or implied not contained in this Agreement.

c. No Assignment. Employee may not assign or transfer any rights granted or obligations assumed under this Agreement.

d. Modification. This Agreement cannot be modified, amended, or supplemented orally. This Agreement may be modified, amended, or superseded only by a written instrument executed by both of the parties.

e. Severability. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provision of the Agreement shall continue in full force and effect.

f. City Council/Manager Relations. The City Council and its members shall deal with the administrative services of the City only through the City Manager, except for the purpose of inquiry, and neither the City Council nor any member thereof shall give orders or instructions to any subordinates of the City Manager. The City Manager shall take orders and instructions from the City Council only when sitting in a duly convened meeting of the City Council, and no individual Council member shall give any orders or instructions to the City Manager.

CITY OF SANGER

By:   
Eli Ontiveros, Mayor

EMPLOYEE

By:   
Eutimio Chapa

APPROVED AS TO FORM

By:   
Hilda Cantu Montoy, City Attorney