

**EMPLOYMENT AGREEMENT BETWEEN
THE CITY OF HUNTINGTON BEACH AND SCOTT HABERLE**

THIS AGREEMENT is entered into this _____ day of _____, 2020, between the City of Huntington Beach, a California municipal corporation, hereinafter "City," and Scott Haberle, hereinafter "Haberle."

WITNESSETH

The City Manager has been empowered to appoint and remove department heads; and

The City, through the City Manager, desires to employ the services of Haberle as the head of the Fire Department, as the **Fire Chief**, of the City of Huntington Beach; and

The City seeks to provide certain benefits, establish certain conditions of employment, and to set working conditions of Haberle; and

The City intends to:

- (1) Secure, retain and employ the services of Haberle; and
- (2) Haberle intends to accept employment as **Fire Chief**, of the City;

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

SECTION 1. DUTIES.

The City agrees to employ Haberle as **Fire Chief** of the City to perform the functions and duties of that office as set forth in the Municipal Code of the City of Huntington Beach and the City Charter, and to perform other duties and functions as the City Manager shall from time to time assign. Haberle shall devote his full attention and effort to the office and perform the mentioned duties and functions in a professional manner.

SECTION 2. STATUS AND TERM.

(a) Haberle shall serve for an indefinite term at the pleasure of the City Manager and shall be considered an at-will employee of the City.

(b) Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Manager to terminate the employment of Haberle at any time, subject only to the provisions set forth in Section 6, subparagraphs (a), (b) and (c) of this Agreement, and Section 401 of the Charter of the City of Huntington Beach.

(c) Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of Haberle to resign at any time from his position with the City, subject only to the provisions set forth in Section 6, subparagraph (d), of this Agreement.

(d) Haberle agrees to remain in the exclusive employ of City for an indefinite period of time and shall neither accept other employment or become employed by any other employer without the prior written approval of the City Manager until notice of Haberle resignation is given.

The term "employed" (and derivations of that term as used in the preceding paragraph) shall include employment by another legal entity or self-employment, however, shall not be construed to include occasional teaching, writing, consulting, or military reserve service performed on Haberle time off, and with the advance approval of the City Manager.

SECTION 3. SALARY.

City agrees to pay Haberle for his services rendered pursuant to this Agreement based upon the Non-Associated Executive Management Salary Schedule, Pay Grade NA0015, High Point (\$106.31/hourly/\$221,124.80 annually) or Resolutions or Ordinances from time to time enacted that govern such compensation.

SECTION 4. OTHER BENEFITS.

Haberle shall also receive all such other benefits that are generally applicable to non-associated employees (Department Heads) hired after 12/27/97, as set forth in Huntington Beach City Council Resolution No. 2016-50, entitled "*A Resolution Of The City Council Of The City Of Huntington Beach Modifying Salary And Benefits For Non-Represented Employees Including The Elected City Attorney, City Clerk, And City Treasurer*", a copy of which is attached hereto as Exhibit "A" and incorporated by reference as fully set forth herein. Haberle shall also be eligible for a cell-phone stipend (Smartphone) in the amount of \$50.00 per month, paid bi-weekly. The benefits provided to Haberle pursuant to this Section may be modified by the City from time to time, upon adoption of a successor Resolution.

i. Holiday Pay-In-Lieu

Haberle shall receive Holiday In-Lieu Pay compensation by the City in lieu of the ten (10) listed holidays at the rate of 3.0768 hours multiplied by employee's hourly rate, payable each and every pay period. The following are the recognized legal holidays under the Non-Associated Resolution:

- New Year's Day (January 1)
- Martin Luther King Jr. Day (third Monday in January)
- President's Day (third Monday in February)
- Memorial Day (last Monday in May)
- Independence Day (July 4)
- Labor Day (first Monday in September)
- Veteran's Day (November 11)
- Thanksgiving Day (fourth Thursday in November)
- Friday after Thanksgiving Day
- Christmas Day (December 25)

Any day declared by the President of the United States to be a national holiday, or by the Governor of the State of California to be a state holiday, and adopted as an employee holiday by the City Council of Huntington Beach.

If Haberle is required to work regular shifts on the above listed holidays as set forth in this Section, Haberle shall not be entitled to time off or additional pay.

The treatment of any special pay under this provision as "pensionable compensation" shall be subject to CalPERS regulations. Where there is any conflict between the City's treatment of any special pay and CalPERS, CalPERS determination shall prevail.

ii. Uniform Allowance

Haberle shall receive an annual uniform allowance of \$1,250.00, to be paid bi-weekly, for maintenance and cleaning of uniforms. This pay shall not be considered as "pensionable compensation".

iii. City Vehicle/Auto Allowance

As Fire Chief, Haberle duties require that he shall have unrestricted use, during his employment, of an automobile provided to him by the City. Said automobile shall be used by Haberle for business use, with the understanding that the Fire Chief is on-call 24 hours a day, 7 days a week. City shall be responsible for cost of liability, property damage, and comprehensive insurance for said automobile; however, City may elect, without notice to Haberle, to provide said coverage by self-insurance. The purchase, maintenance, repair and regular replacement of said automobile shall be the responsibility of the City. Notwithstanding the above provision, the Fire Chief can opt to accept an Auto Allowance as provided for in the Non-Associated Resolution.

SECTION 5. ADMINISTRATIVE LEAVE.

The City Manager may place Haberle on Administrative Leave with full pay and benefits at any time during the term of this Agreement.

SECTION 6. TERMINATION AND SEVERANCE PAY.

(a) Except as provided in subsection (b), in the event the City Manager terminates the employment of Haberle and during such time that Haberle is willing and able to perform his duties under this Agreement, then City shall pay to Haberle a severance payment equal to salary payments which Haberle would have been receiving over a twelve week period at Haberle's current rate of pay in effect on the day prior to the date of termination. In addition, for the lesser of ninety (90) calendar days after the date of termination or the time Haberle secures health and medical insurance through comparable employment, the City shall maintain and pay for health, medical, disability, the continuation of retirement benefits and life insurance in such amounts and on such terms as have been received by Haberle and Haberle's dependents at the time of such termination; however, no other or additional benefits shall accrue during this ninety (90) calendar-day period.

(b)(1) Notwithstanding subsection (a) above, the following reasons shall constitute grounds to terminate the employment of Haberle without severance pay:

- (i) a willful breach of this agreement or the willful and repeated neglect by Haberle to perform duties that he is required to perform;
- (ii) conviction of any criminal act relating to employment with the City;
- (iii) conviction of a felony.

(2) Prior to the time that the City Manager terminates Haberle without severance pay for any of the reasons set forth in Section (b)(1) above, and only in that case, the City Manager shall provide Haberle with written notice of proposed termination which will include the reason and factual basis for termination. Within ten days of such notice, Haberle may request an opportunity to respond to the reasons and factual basis provided by the City Manager. If such a request to respond is made, the City Manager shall conduct a meeting, which may be informal in nature, that Haberle may respond to the notice of proposed termination. At such meeting, Haberle may be represented by an attorney of his choice and present evidence or information relevant to the reasons and factual basis set forth in the notice of proposed termination.

Subsequently, the decision of the City Manager as to whether reasons set forth in Section (b)(1) exist or do not exist shall be final as between the parties.

(c) In the event the City at any time during the term of this Agreement, reduces the salary of Haberle from its current level, except as part of an across-the-board reduction for all Directors of City, or in the event City refuses, following written notice, to extend to Haberle any non-salary benefit customarily available to all Directors, or in the event Haberle resigns following a suggestion, whether formal or informal, by the City Manager that he resign, then, Haberle may, at his option, be deemed to be "terminated". The termination date will occur then at the date of reduction or refusal to extend or such suggestion of resignation within the meaning and context of the severance pay provision in subparagraph (a) above; provided that the option to be deemed terminated is exercised by written notice from Haberle and delivered to the City Manager within ten (10) working days of notification of such reduction, refusal to extend, or suggestion of resignation. In that event, the severance payment shall be calculated from the date Haberle exercises the option to be deemed terminated.

(d) In the event Haberle voluntarily resigns his position, Haberle shall give City written notice at least sixty (60) days prior to the last workday, unless the City Manager and Haberle otherwise agree.

(e) It is understood that after notice of termination in any form, Haberle and the City will cooperate to provide for an orderly transition. Specific responsibilities during such transition may be specified in a written separation agreement.

SECTION 7. DISABILITY.

If Haberle is medically, physically disabled or otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or ill health, and has provided proof of the same from a medical professional, he shall be eligible for Disability Leave upon exhausting all accrued sick leave, general leave and executive leave, and duty injury leave if applicable.

Disability Leave shall be unpaid and shall be approved by the City Manager for a time period of up to three (3) months. The length of such time period of the Disability Leave shall be dependent upon the length of the disability as demonstrated by Haberle. If Haberle is unable to return to work at that time, the City shall have the option to terminate the employment of Haberle, subject to the requirements imposed on City by Section 6, paragraph (a).

SECTION 8. PERFORMANCE EVALUATION.

The City Manager shall review and evaluate in writing the performance of Haberle at least once annually, with the first performance review occurring within the initial six (6) months of employment. That review and evaluation shall be in accordance with specific criteria developed in consultation with Haberle and the City Manager. Those criteria may be added to or subtracted from as the City Manager may from time to time determine, in consultation with Haberle.

SECTION 9. GENERAL AND EXECUTIVE LEAVE

Haberle shall accrue General Leave in accordance with the General Leave accrual provisions applicable to Department Heads of the City as contained in the Non-Associated Resolution (Exhibit "A") with Haberle starting with a thirteen years of service accrual. Haberle shall be credited 80 hours of Executive Leave and 100 hours of General Leave upon his first day of employment. Thereafter, Haberle shall be credited 80 hours of Executive Leave on January 1 of each calendar year. Executive Leave must be used in the same calendar year it is credited; unused Executive Leave may not be carried forward to the next calendar year or cashed out at any time. General Leave shall be accrued in accordance with the appropriate provisions of the Non-Associated Resolution (Exhibit "A"). Haberle shall provide the City Manager with reasonable notice prior to taking two (2) or more General Leave or Executive Leave days off.

SECTION 10. PROFESSIONAL DEVELOPMENT.

The City agrees to budget and pay for Haberle professional memberships as normally accorded to Department Heads. Haberle shall also receive paid leave, plus registration, travel and reasonable expenses for short courses, conferences and seminars that are necessary for professional/personal development and, in the judgment of the City Manager, for the good of the City, and subject to budget limitations and to established travel policies and procedures.

SECTION 11. FINANCIAL DISCLOSURE.

Haberle shall report to the City Manager any ownership interest in real property within the County of Orange, excluding personal residence. Haberle shall also complete and file annually, Financial Disclosure 700 Forms. Also, Haberle shall report to the City Manager any financial interest greater than Ten Thousand Dollars (\$10,000) in value in a firm doing work for City or from which City intends to make a purchase. Such reporting shall be made in writing by Haberle to the City Manager within ten (10) calendar days of the execution of this agreement and within ten (10) calendar days of acquisition of that interest in real property. Additionally, Haberle shall report in writing to the City Manager any financial interest greater than Ten Thousand Dollars (\$10,000) in value in a firm doing work for the City or from whom the City intends to make a purchase immediately upon notice of the intended work or purchase.

SECTION 12. INDEMNIFICATION.

The City shall defend and indemnify Haberle against actions, including but not limited to any: tort, professional liability claim or demand, or other non-criminal legal, equitable or administrative action, arising out of an alleged act or omission occurring in the performance of Haberle during the discharge of his duties as an employee/officer of the City, other than an action brought by the City against Haberle, or an action filed against the City by Haberle. The City shall pay the reasonable expenses for the travel, lodging, meals, and lost work time of Haberle should Haberle be subject to such, should an action be pending after termination of Haberle. The City shall be responsible for and

have authority to compromise and settle any action, with prior consultation with Haberle, and pay the amount of any settlement or judgment rendered on that action. Haberle shall cooperate fully with the City in the settlement, compromise, preparation of the defense, or trial of any such action.

SECTION 13. GENERAL PROVISIONS.

- (a) The text herein shall constitute the entire Agreement between the parties.
- (b) This Agreement shall become effective commencing February 10, 2020.
- (c) If any provision, or any portion of any provision, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or any portion of it, shall be deemed severable, shall not be affected and shall remain in full force and effect.
- (d) No amendment of this Agreement shall be effective unless in writing and signed by both parties.

IN WITNESS WHEREOF, City has caused this Agreement to be signed and executed on its behalf by its City Manager, and Haberle has signed and executed this Agreement, both in duplicate, the day and year first above written.

CITY:

HABERLE:

Oliver, Chi City Manager

Scott Haberle

APPROVED AS TO FORM:

Michael Gates, City Attorney 