

CITY MANAGER EMPLOYMENT AGREEMENT

This Employment Agreement (“Agreement”) is made and entered into this 15th day of August, 2023, by and between the City of Benicia (“City”), a California general law city, and Mario Giuliani (“Giuliani”), an individual, on the following terms and conditions:

RECITALS

A. The City is in need of an individual to hold the position of City Manager and the City Council is empowered pursuant to the Benicia Municipal Code to appoint a City Manager; and

B. The City must attract and retain management and leadership personnel to insure the health, welfare and safety of its residents, businesses, employees and agency are protected at all times; and

C. The City must hire a City Manager with a high degree of knowledge, integrity, technical ability, professionalism and the qualities and characteristics of leadership necessary to meet City Council objectives and goals; and

D. Mario Giuliani has been serving as the City’s Interim City Manager since March 1, 2023, during which time he has demonstrated that he has the administrative and executive abilities and qualifications to serve as City Manager; and

E. As a result of his performance as Interim City Manager, the City Council wishes to appoint Mario Guiliani as the City’s City Manager.

F. Giuliani desires to accept employment as City Manager for the City of Benicia in consideration of and subject to the terms, conditions, and benefits set forth in this Employment Agreement.

EMPLOYMENT AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and of the mutual promises, terms and conditions of this Agreement, the City and Giuliani agree as follows:

Section I. Duties and Authority

A. Duties

The City hereby agrees to employ Mario Giuliani as City Manager of City effective August 3, 2023. Giuliani shall be the chief executive officer of the City and be responsible to the City for the proper administration of all affairs of the City and agrees

to diligently and faithfully perform the duties of the Benicia City Manager. Specific duties include, but are not limited to, the functions and duties specified in Chapter 2.08 of the Benicia Municipal Code as well as other legally permissible and proper duties and functions as the City Council may, from time to time, assign. Giuliani shall provide such additional duties and functions without additional compensation, beyond the salary specified in Section IV.A Giuliani shall devote his best efforts and full-time attention to the performance of these duties.

B. Professional and Other Activity

In accordance with Government Code Section 1126, during the period of his employment, Giuliani shall not accept, without the express prior written consent of the City Council, any other employment or engage, directly or indirectly, in any other business, commercial, or professional activity to any other person or organization, whether for compensation or otherwise without the prior consent of the City Council, except for occasional teaching, writing, or consulting for compensation, performed on Giuliani's time off, provided such activities are not in conflict with his duties and this Agreement and not detrimental to the interests of the City.

C. To ensure that Giuliani is able to effectively carry out his duties in a professional and forthright manner and implement the policies of the City Council impartially and equitably, the City Council and its members agree (1) to spend time each year outside or regular meetings to work with Giuliani and staff on setting goals and priorities for the City government, and to work on issues that may be inhibiting maximal achievement of City goals, (2) to adopt a set of communication protocols to assist in maximizing the effectiveness of City Council member interaction with one another, with Giuliani, and with City staff, (3), to deal with all subordinate City employees, officers, contractors, and consultants solely through Giuliani or his designee, except for the purposes of inquiry and to not give orders to any subordinate of Giuliani, either publicly or privately, (4) to not order the appointment or removal of any person to any office or employment under the supervision and control of Giuliani, (5) that any criticism of City staff member will be done privately through Giuliani, (6) to not interfere with the execution of the powers and duties of Giuliani, and (7) that Giuliani shall take orders and instructions from the City Council only when it is sitting as a body in a lawfully held meeting.

Section II. Term

A. Giuliani's appointment as City Manager commences on August 3, 2023 ("Commencement Date"). The term of this Agreement shall be for an indeterminate period of time and is subject to termination by City as provided herein. Giuliani acknowledges that he is employed to an "at-will" position and serves at the pleasure of the City Council subject only to the restrictions imposed by local ordinance and the terms and conditions of this Agreement.

B. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City to terminate the services of Giuliani at any time, subject only to the provisions set forth in Section VI of this Agreement.

C. Nothing in this Employment Agreement shall prevent, limit, or otherwise interfere with the employee right of Giuliani to resign at any time from his position with the City, subject only to provisions set forth in Section VI of this Agreement.

D. Nothing in this Agreement is intended to, or does, confer upon Giuliani any right to any property interest in continued employment as the City Manager, or any due process right to a hearing before or after a decision by the City Council to terminate his employment as City Manager, except as is expressly provided by operation of local ordinance, State or federal law. Giuliani hereby expressly waives the right to bring claims or causes of action seeking contract-based damages relating to his employment with the City.

Section III. Hours of Work

It is recognized that the position of City Manager is an executive management position which often requires more than a conventional forty-hour week to provide the desired level of professional service. It is further recognized that to properly fulfill his duties and responsibilities, Giuliani shall devote a considerable amount of time outside normal office hours to the business of the City. Therefore, while the City shall spend sufficient hours on site to perform the City Manager's duties, Giuliani has the discretion over his work schedule and work location and will not be required to maintain a strict forty (40) hour- per-week on-site presence at City Hall, and may be occasionally absent from City Hall during normal business hours as is reasonable and appropriate. The position of City Manager shall be deemed an exempt position under state and federal wage and hour laws. Giuliani's compensation (whether salary or benefits or other allowances) is not based on hours worked and Giuliani shall not be entitled to any compensation at an overtime rate.

Section IV. Compensation

A. Base Salary

1. The City agrees to pay Giuliani for his services rendered, pursuant herein, a monthly base salary of \$19,237.25 (Annual Salary of \$230,847). Giuliani shall receive this salary according to the payroll schedule in place for City employees. Giuliani will not be entitled to receive payment or credit for, and the City shall not pay or credit Giuliani for overtime, compensated time off in lieu of overtime or other compensation except as expressly provided in this Agreement. Giuliani acknowledges that the position of City Manager is exempt from the provisions of the FLSA.

2. Notwithstanding Giuliani's annual base salary as set forth herein, the annual salary of the City Manager historically has been not less than the annual base salary (excluding overtime, other pay or and any incentive compensation) of the City's next highest paid employee. However, in consideration of the financial uncertainty facing the City, Giuliani will not be the highest salaried employee. The parties agree that in two years from the Commencement Date of the Agreement, the parties will consider amending this Agreement to provide Giuliani a salary making him the highest

salaried employee, and the City Council will likewise review and adjust the paid leaves provided for in Section IX below to reflect any adjustment in salary.

B. Deferred Compensation

Giuliani may elect monthly payroll deductions in an amount permissible under the City plan to be placed in a deferred compensation program. Such monies deposited would become tax deferred and would be subject to income taxation in the year they are withdrawn from the deferred compensation program. The City will contribute 5.5% per month of Giuliani's salary (base salary and longevity) provided Giuliani provides a minimum 1% matching share or a maximum amount as defined by federal regulation.

C. Vantage Care Retiree Health Savings Account

Giuliani may elect monthly payroll deductions in an amount permissible under the City plan to be placed in a retiree health savings account program administered at no cost to the City. Such monies deposited would become tax deferred and would be subject to income taxation in the year they are withdrawn from the health savings program. The City will contribute 5.0% per month of Giuliani's salary (base salary and longevity) provided Giuliani provides a minimum 1% matching share or a maximum amount as defined by the plan. This provision will be effective the first day of the pay period following adoption of the RHS Agreement.

SECTION V. Performance Evaluation

A. The City Council shall annually review and evaluate the performance of Giuliani. The annual review will normally be scheduled to occur during July of each year. The review and evaluation shall be in accordance with specific evaluation criteria developed jointly by City and Giuliani. Such criteria shall serve as a written memorandum of the City Council's expectations for Giuliani's performance. The criteria shall generally include, but not limited to, such performance categories as initiative, customer service, job knowledge, problem solving, communications, integrity and honesty among others. The criteria shall also include defined employee tasks, and outcomes and measures whether Giuliani in his words and actions, adequately and properly reflected demonstrated, and promoted the organizational values as established by the City Council.

B. The City and Giuliani agree that additional performance reviews, for the purpose of mid-course corrections, may occur during the year; and the parties may meet from time to time in closed session for the purpose of conducting an informal review of the progress that the City Council and Giuliani have made in achieving the established performance criteria, and organizational goals and objectives.

C. When discussing the performance of Giuliani, the City Council shall meet in closed session with or without Giuliani. Giuliani's performance evaluation may be facilitated by an outside consultant, as mutually determined by Giuliani and the City

Council. Further, the City Council shall provide Giuliani with a written summary statement of the evaluation and provide Giuliani an adequate opportunity to discuss his evaluation with the City Council in closed session and provide a written response if so desired by Giuliani. The completed performance evaluation shall be signed by the City Council and Giuliani and placed in Giuliani's personnel file, which shall be maintained in the office of the City's Human Resources Manager.

D. As a component of Giuliani's annual evaluation, the City Council may require that Giuliani undergo a 360-degree evaluation by selected members of the City's staff.

Section VI. Termination and Severance

A. It is understood by and between the parties to this Agreement that Giuliani, in performing City Manager's duties for the City, serves at the pleasure of the City Council. Giuliani may be terminated only by an affirmative vote of three (3) members of the City Council, convened in a council meeting. The City Council shall furnish Giuliani with a written notice stating the City Council's intention to terminate his employment with the City at least thirty (30) days before the effective date of his termination. Such action shall not be taken within ninety (90) days after 1) any election at which a council member has been elected or, 2) the appointment of a new council member.

B. In the event Giuliani is involuntarily terminated by the City Council during such time that Giuliani is willing and able to perform his duties under this Agreement, then, in that event, the City agrees to pay Giuliani a lump sum cash payment of six (6) months base salary, calculated at base salary in effect at the effective date of termination. The City will also provide Giuliani all compensation earned, but unpaid, for actual work performed, calculated at base pay in effect at the effective date of termination.

C. Also, in such event, and in addition to the lump sum payment, the City shall provide for continuance of Giuliani's health and other related insurance benefits provided for in this Agreement for six (6) months as provided for base salary in accordance with Section VI.B above, from and after the effective date of termination or until Giuliani obtains other employment, whichever first occurs.

D. In the event Giuliani voluntarily resigns his position with the City, then Giuliani shall give the City forty-five (45) days written notice, in advance, unless the parties otherwise agree. In such event, the City shall only pay Giuliani for all compensation earned, but unpaid, for actual work performed, calculated at base pay in effect at the effective date of termination.

E. Termination Obligations.

Giuliani agrees that all property, including, without limitation, all equipment, tangible Proprietary Information (as defined below), documents, records, notes, contracts, and computer-generated materials furnished to or prepared by him incident to his employment belongs to City and shall be returned promptly to City upon termination of Giuliani's employment. Giuliani's obligations under this subsection shall survive the termination of his employment, and the expiration of this Agreement.

F. Other Benefits upon Termination.

All benefits to which Giuliani is entitled under this Agreement shall cease upon Giuliani's termination in accordance with this Section VI, unless expressly continued under other provisions in this Agreement, under any specific written policy or benefit plan applicable to Giuliani, or unless otherwise required by law.

G. In the event this Agreement is terminated by the City or Giuliani for any reason, either voluntarily or involuntarily, the City and Giuliani agree that neither party shall make any written or oral statements to members of the public, the press, or any City employee concerning Giuliani's termination except in the form of a joint press release or statement which is mutually agreeable to both parties. The joint press release or statement shall not contain any text or information that is disparaging to the City or Giuliani. Either party may orally repeat the substance of the joint press release or statement in response to any inquiry.

Section VII. DISABILITY OR INABILITY TO PERFORM

In the event Giuliani becomes mentally or physically incapable of performing his functions and duties with reasonable recommendations and it reasonably appears such incapability will last for more than three (3) months, the City Council may terminate employment of Giuliani; however, in such instance, Giuliani shall be entitled to severance pay as provided herein. If Giuliani is terminated because of permanent disability, he shall be compensated in a lump sum for any accrued benefits, to the extent that such benefits are compensable under this Agreement. (See Section VI of this Agreement.) However, City shall have no responsibility to make severance payments pursuant to Section VI.B and C of this Agreement if, and only if, as a result of said disability, Giuliani is eligible for PERS disability retirement. If, notwithstanding said disability, Giuliani is determined not to be eligible for PERS disability retirement, then the City shall pay Giuliani severance pay from the effective date of his termination in accordance with Section VI.B and C of this Agreement.

Section VIII. RETIREMENT

Giuliani, as an existing employee hired prior to October 1, 2012, shall be provided retirement benefits through the California Public Employees Retirement System (CalPERS) as a "Classic" member in the 2.7%@55 Plan. The average of one years' salary is used for final retirement compensation calculation as well as credit for unused sick leave.

Section IX. FRINGE BENEFITS AND OTHER TERMS AND CONDITIONS OF EMPLOYMENT

A. Sick Leave

Giuliani shall accrue sick leave at the rate of one working day (8 hours) of sick leave with pay for each month or major fraction thereof employed by City. There is unlimited sick leave accrual, and it may be applied as a credit to PERS retirement. Unused sick

leave may be annually cashed out at the same time unused sick leave is annually cashed out for Senior Management employees covered by the Compensation and Benefits Resolution for Senior Management Employees. Leave of absence due to pregnancy shall be chargeable to sick leave up to the limit of total accrued sick leave. Sick leave with pay shall not be granted for any injury attributable to an occupation, for which workers compensation benefits are available.

Giuliani may sell back accrued annual sick leave hours at a rate of 100% and all hours sold back will be deducted from Giuliani's sick leave balance at the time sold consistent with the timing of the sell back for Senior Management employees covered by Compensation and Benefits Resolution for Senior Management Employees. In addition, Giuliani may sell back 100% of his sick leave upon retirement not to exceed 500 hours. Giuliani can take steps to have his cash out sick leave paid into his ICMA 457 Deferred Compensation Program, if available, up to the maximum allowed by the IRS.

Giuliani cannot cash out any sick leave at the time of separation, if Giuliani's employment terminates voluntarily and for reasons other than retirement. Upon involuntary termination of employment, 50% of Giuliani's earned unused sick leave shall be converted to cash and paid to Giuliani.

B Holiday and Personal Leave

City agrees to provide Giuliani twelve (12) holidays (96 hours) each year in accordance with the City's standard holiday schedule.

Giuliani shall also receive two (2) personal leave days (16 hours) each year. Personal leave days can be taken at any time during the fiscal year earned and it is paid out in the same manner personal leave days are paid out for Senior Management employees covered by the Compensation and Benefits Resolution for Senior Management Employees.

C. Vacation

Giuliani shall accumulate 240 hours of vacation time per fiscal year (20 hours per month). It is the policy of the City that employees take their normal vacation each fiscal year. However, Giuliani may take less than his normal vacation each fiscal year and carry over the balance of his earned vacation over to the next fiscal year. Giuliani's vacation leave accrual is capped at 640 hours of earned vacation. Giuliani shall not accumulate more than 640 hours of earned vacation.

Giuliani shall be permitted to cash out up to 200 hours of earned vacation time per fiscal year during the same month that vacation is cashed out for Senior Management Employees. Giuliani can take steps to have that cashed out earned vacation leave paid into his ICMA 457 Deferred Compensation Program, if available, up to the maximum allowed by the IRS.

Upon termination of employment (voluntary or involuntary), 100% of Giuliani's earned unused vacation shall be converted to cash and paid to Giuliani. Giuliani can elect to

have this cashed out vacation paid into his ICMA 457 Deferred Compensation Program, if available, up to the maximum allowed by the IRS.

D. Bereavement Leave

Bereavement leave shall be provided to Giuliani in the same manner and under the same terms as offered to the Senior Management employees.

E. Administrative Leave

Giuliani shall receive 20 days (160 hours) each fiscal year of administrative leave. Administrative leave may be taken in increments of one hour or more and Giuliani can elect to cash out up to 72 hours of administrative leave each fiscal year during the same month that leave is cashed out for Senior Management Employees

F. Longevity Pay

Giuliani shall receive the same longevity pay under the Compensation and Benefits Resolution for the City of Benicia and Senior Management Employees Establishing a Senior Management Benefit and Compensation Program Beginning July 1, 2021. Longevity pay is calculated based on total years of service with Benicia and Giuliani's current longevity will be at the 6.25% level.

G. Health and Other Insurance

The City agrees to make required health insurance coverage premium payments for Giuliani and his dependents, including insurance policies for accident, sickness, dental, vision, hospitalization, surgical, and comprehensive medical insurance as provided to other Senior Management employees of the City.

H. Life Insurance

The City shall provide Giuliani a term life insurance policy in the sum of \$100,000 on Giuliani's life and to pay the required premiums on the policy.

I. General Business and Work-Related Reimbursement

General business and work-related expenses, including automobile mileage, incurred by Giuliani on a routine basis that are not personal shall be reimbursed to Giuliani to the extent that they qualify for reimbursement under the adopted policies of the City and California law and do not exceed budgeted amounts. The City shall provide Giuliani a City credit card to charge appropriate and lawful business expenses.

Section X. Proprietary Information.

"Proprietary Information" is all information and any idea pertaining in any manner to the business of City (or any City affiliate), its employees, clients, consultants, or business associates, which was produced by any employee of City in the course of his employment or otherwise produced or acquired by or on behalf of City. Proprietary

Information shall include, without limitation, trade secrets, product ideas, inventions, processes, formulae, data, know-how, software and other computer programs, copyrightable material, marketing plans, strategies, sales, financial reports, forecasts, and customer lists. All Proprietary Information not generally known outside of City's organization, and all Proprietary Information so known only through improper means, shall be deemed "Confidential Information." During his employment by City, Giuliani shall use Proprietary Information, and shall disclose Confidential Information, only for the benefit of City and as is or may be necessary to perform his job responsibilities under this Agreement. Following termination of his employment, Giuliani shall not use any Proprietary Information and shall not disclose any Confidential Information, except with the express written consent of City. Giuliani's obligations under this Section shall survive the termination of his employment and the expiration of this Agreement.

Section XI. Conflict Of Interest.

Giuliani represents and warrants to City that he presently has no interest, and represents that he will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or interfere in any way with performance of his services under this Agreement.

Section XII. City Property.

Giuliani agrees that all materials, regardless of their form, that he receives, creates or produces in connection with this Agreement and/or his employment as City Manager are and will remain the exclusive property of the City. Giuliani will immediately deliver all originals and all copies of such materials that are in his possession or control to the City upon termination of this Agreement or upon any request from the Mayor and/or the City.

Section XIII Abuse of Office.

A. Pursuant to Government Code sections 53243 and 53243.3, in the event City provides paid leave salary to Giuliani pending an investigation into Giuliani, Giuliani shall fully reimburse City for any paid leave salary if Giuliani is convicted of a crime involving an abuse of his office or position.

B. Pursuant to Government Code sections 53243.1 and 53243.3, in the event City provides funds for Giuliani's legal criminal defense, Giuliani shall fully reimburse City for any such funds if Giuliani is convicted of a crime involving an abuse of his office or position.

C. Pursuant to Government Code sections 53243.2 and 53243.3, in the event City provides Giuliani with a cash settlement related to Giuliani's termination, Giuliani shall fully reimburse City for any such cash settlement if he is convicted of a crime involving an abuse of his office or position.

D. Pursuant to Government Code section 53243.4, an "abuse of office or position" means (a) an abuse of public authority, including, but not limited to, waste, fraud, and

violation of the law under color of authority, or (b) a crime against public justice, including, but not limited to, a crime described in Title 5 (commencing with Section 67), Title 6 (commencing with Section 85), or Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

Section XIV. General Provisions.

A. Notices

All notices, requests, demands and other communications under this Agreement shall be in writing and shall be effective immediately upon delivery by hand to either the City or Giuliani, or three (3) business days after deposit in the United States mail, postage prepaid, certified or registered, and addressed to City at the address below, and or at the last known address maintained in Giuliani's personnel file. Giuliani agrees to notify City in writing of any change in his address during his employment with City. Notice of change of address shall be effective only when accomplished in accordance with this Section.

City: Mayor's Office
City of Benicia
250 East L Street
Benicia, CA 94510

Giuliani: Mario Giuliani
City Hall
250 East L Street
Benicia, CA 94510

B. Indemnification.

Subject to, in accordance with, and to the extent provided by the California Government Claims Act [Government Code Section 810 *et seq.*] City will indemnify, defend, and hold Giuliani harmless from and against any action, demand, suit, monetary judgment or other legal or administrative proceeding, and any liability, injury, loss or other damages, arising out of any act or omission occurring during Giuliani's appointment as City Manager.

C. Bonding.

The City shall bear the full cost of any fidelity or other bond required of Giuliani under any law or ordinance.

D. Integration.

This Agreement supersedes all other prior and contemporaneous agreements and statements, whether written or oral, express or implied, pertaining in any manner to the employment of Giuliani and it may not be contradicted by evidence of any prior or contemporaneous statements or agreements. To the extent that the practices, policies, or procedures of City, now or in the future, apply to Giuliani during the term of this

Agreement and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control.

E. Amendments.

This Agreement may not be amended except in a written document signed by Giuliani and the Mayor.

F. Waiver.

Failure to exercise any right under this Agreement shall not constitute a waiver of such right.

G. Assignment.

Giuliani shall not assign any rights or obligations under this Agreement. City may, upon prior written notice to Giuliani, assign its rights and obligations hereunder.

H. Severability.

If a court or arbitrator holds any provision of this Agreement to be invalid, unenforceable, or void, the remainder of this Agreement shall remain in full force and effect.

I. Attorneys' Fees.

In any legal action, arbitration, or other proceeding brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

J. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

K. Interpretation.

This Agreement shall be construed as a whole, according to its fair meaning, and not in favor of or against any party. By way of example and not as a limitation, this Agreement shall not be construed in favor of the party receiving a benefit nor against the party responsible for any particular language in this Agreement. Captions are used for reference purposes only and should be ignored in the interpretation of the Agreement. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, cancelled superseded or changed by any oral agreement, course of conduct, waiver or estoppel.

L. Acknowledgment

Giuliani acknowledges that he has had the opportunity to consult legal counsel in regard to this Agreement, that he has read and understands this Agreement, that he is fully aware of its legal effect, and that he has entered into it freely and voluntarily and based on his own judgment and not on any representations or promises other than those contained in this Agreement.

M. This Agreement shall become effective immediately upon the adoption of a resolution authorizing the Mayor to execute this Employment Agreement.

IN WITNESS WHEREOF, City has caused this Agreement to be signed and executed on its behalf by its Mayor and duly attested to by its City Clerk, and Giuliani has signed and executed this Employment Agreement, as of the date first indicated above.

CITY OF BENICIA

DocuSigned by:
Mario Giuliani
95A31784A08E400...

Mario Giuliani, City Manager

DocuSigned by:
Steve Young
356772270570455...

Steve Young, Mayor

ATTEST

DocuSigned by:
Lisa Wolfe
6CF8450874A3402...

Lisa Wolfe, City Clerk

APPROVED AS TO FORM

DocuSigned by:
Ben Stock
3204F00F0AD74E0...

Benjamin Stock, City Attorney