

FOURTH AMENDMENT TO EMPLOYMENT AGREEMENT BETWEEN THE CITY OF SAN CLEMENTE AND JAMES MAKSHANOFF

This Fourth Amendment is made and entered into between the City of San Clemente, a California general law municipal corporation, hereinafter referred to as "City" and James Makshanoff, hereinafter referred to as "Makshanoff," in order to modify in writing the terms and conditions of the employment of Makshanoff by the City, effective November 20, 2018.

WHEREAS, the City and Makshanoff entered into an Employment Agreement between the City of San Clemente and James Makshanoff (the "Employment Agreement") for City Manager services on September 29, 2014; and

WHEREAS, the Employment Agreement was amended in part in 2015, 2016, and 2018 with the First through Third Amendments to the Employment Agreement, which, in addition to the 2014 Employment Agreement are attached hereto as Exhibit "A"; and

WHEREAS, concurrent with Makshanoff's anniversary of service with the City, the City Council completed its annual evaluation of Makshanoff; and

WHEREAS, as a result of the evaluation, the City and Makshanoff desire to amend certain provisions of the Employment Agreement, including the provision of consideration to which the City Manager is entitled under San Clemente Municipal Code Chapter 2.08, as set forth herein, while leaving all other terms of the Employment Agreement the same.

NOW THEREFORE, IT IS HEREBY AGREED as follows:

Section 1. The City and Makshanoff mutually desire to amend Subsection 3A of the Employment Agreement in its entirety as follows:

"3. Term:

- A. Effective November 20, 2018, the term of this Agreement shall be for two (2) years, from November 20, 2018 through November 19, 2020, unless terminated in accordance with the terms of this Agreement, On November 19, 2019, the term of this Agreement shall automatically be extended through November 19, 2021. On November 19, 2020 and on each succeeding November 19 while this Agreement is in effect, this Agreement shall be automatically extended for one additional year unless prior to such date by a majority vote of the entire City Council, the City declares its intention not to extend this Agreement for one additional year. Such decision shall not constitute a termination for purposes of Section 17 of this Agreement. In any event, during the 120-day period immediately following the date of a regular or special municipal election, the Council shall take no action, whether immediate or prospective, to remove, suspend, request the resignation of, or reduce the salary of Makshanoff."

Section 2. The City and Makshanoff mutually desire to amend Section 6 of the Employment Agreement in its entirety as follows:

“6. Performance Evaluation.

The City Council shall evaluate Makshanoff’s performance during the month of May of each calendar year. Makshanoff will be provided a written performance evaluation in a dedicated closed session of a regular or special City Council meeting.”

Section 3. If any provision of this Fourth Amendment to the Employment Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this First Amendment unless elimination of such provision materially alters the rights and obligations set forth herein.

Section 4. This Fourth Amendment to the Employment Agreement shall affect only the sections referred to herein, and all other terms and conditions of the Employment Agreement between the City and Makshanoff shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the 20 day of November, 2018.

BY CITY:

BY MAKSHANOFF:

Tim Brown
Mayor

James Makshanoff

APPROVED AS TO FORM:

Scott C. Smith
City Attorney

EXHIBIT "A"
EMPLOYMENT AGREEMENT AND AMENDMENTS 1-3