

**FIRST AMENDED AND RESTATED CITY MANAGER EMPLOYMENT
AGREEMENT No. 18-2**

This First Amended and Restated City Manager Employment Agreement No. 18-2 (the "Agreement") is made and effective this 25th day of October, 2018 by and between the City of Industry, State of California, a municipal corporation and charter city (hereinafter, the "City") and Troy Helling, an individual, (hereinafter, "Helling"). City and Helling are hereinafter collectively referred to as the "Parties" and individually as "Party."

RECITALS

The City desires to employ the services of Helling in the capacity of City Manager and further desires to assure the service of Helling by establishing herein certain salary and limited benefits, and other terms and conditions of his employment.

Helling desires to accept employment as City Manager effective on October 25, 2018, under the terms and conditions set below.

NOW THEREFORE, in consideration of the mutual covenants, promises, and representations hereinafter set forth, the Parties hereto agree as follows:

**SECTION I
DUTIES**

A. The City hereby agrees to employ Helling as City Manager conferring upon and delegating to Helling the overall responsibility for management and administration of the City as set forth in the City's Charter and Municipal Code (collectively, the "Code") and to perform such other legally permissible and proper duties and functions as the Industry City Council (hereinafter, "City Council") may from time to time assign.

B. Helling accepts employment as City Manager and agrees to serve as such commencing as of October 25, 2018. Helling shall serve as an officer of the City pursuant to the authority set forth in any applicable State law, the City's Charter and Chapter 2.08 of the Code. Helling shall be responsible for attending all regular, adjourned regular and special City Council and Successor Agency meetings or other meetings of City agencies and commissions, which are generally held on the second and fourth Thursdays of each month, all City Council agenda meetings, Department Head meetings, Oversight Board meetings and provide regularly scheduled office hours at City Hall.

C. Helling shall perform his duties to the best of his ability in accordance with the highest professional and ethical standards of the profession. He shall comply with and carry out the City's rules and regulations and he shall obey all federal, state and local laws, rules and regulations, as they apply to the performance of his duties.

D. Helling shall devote his full energies, interest, abilities and productive time to the performance of this Agreement and shall not render, without the City's prior written consent, services of any kind to others for compensation or engage in any other activity which would materially interfere with the performance of his duties under this Agreement.

E. Helling shall not engage in any activity which is or may become a conflict of interest with his obligations to the City or which might create an incompatibility of office as defined under California law. He shall also complete and file financial disclosure statements immediately upon entry into his employment and annually thereafter at the appointed times.

SECTION II TERM

This Agreement shall become effective on October 25, 2018, and terminate not later than December 1, 2021, unless otherwise terminated as set forth herein.

The City Council agrees that it shall evaluate Helling's performance annually, on or before October 1st of each year. The evaluation date may be extended upon written consent of both Parties but in no event shall it extend beyond December 1st, or as permitted under the law.

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

The Parties recognize and affirm that: 1) Helling shall serve at the will and pleasure of the City Council and Helling understands that he is "at will," subject to summary dismissal without any right of notice or hearing, including any so-called Skelly hearing; 2) there is no express or implied promise made to Helling for any form of continued employment, except as set forth in Section III of this Agreement; and 3) this Agreement is the sole and exclusive basis for an employment relationship between Helling and the City.

Helling agrees to remain in the exclusive employ of the City during the term of this Agreement. This Agreement shall not be construed to preclude incidental and occasional teaching, writing or consulting performed by Helling. Furthermore, this Agreement shall not be construed to preclude volunteer work performed by Helling, so long as the provisions set forth in Section I, paragraph E of this Agreement is not violated.

SECTION III TERMINATION AND SEVERANCE PAY

A. The City Council may terminate this Agreement for convenience in its absolute discretion at any time with or without cause and without notice to Helling, except as set forth in the applicable provisions of the City's Municipal Code. If Helling is terminated by the City Council for (1) refusing or failing to carry out the duties of the City Manager as set forth in the Government Code, the City's Code, or herein; (2) conviction of a felony; (3) conviction of any illegal act involving moral turpitude or personal gain; or (4) a plea of nolo contendere to any felony or illegal act involving moral turpitude or personal gain, the City shall have no obligation to provide any notice to Helling, and the Helling shall not be entitled to severance pay as set forth herein. Helling may terminate this Agreement at any time with or without cause, provided he gives the City Council no less than 14 days advance written notice prior to the effective date of termination, unless a shorter period is

acceptable to the City Council. Voluntary resignation by Helling will result in a loss of any and all severance pay to him by the City.

B. In the event Helling is terminated by the City Council and Helling is willing and able to perform the duties of City Manager, the City shall pay Helling a lump sum cash payment, or payment in equal installments over a twelve month period, at the option of Helling, equal to Helling's then twelve months' base salary. Such severance, as set forth herein, is contingent upon Helling signing and delivering a general release and waiver of all claims against the City (including and without limitation to its former and current elected officials, employees, officers and agents). Such severance shall be payable on the tenth (10th) day after the general release and waiver is fully executed by the City and Helling. Any severance amount paid pursuant to this Agreement shall be subject to the restrictions set forth in Government Code Sections 53260 and 53261, or any successor statutory restrictions.

SECTION V COMPENSATION

Effective as of October 25, 2018 the City agrees to pay Helling for his services rendered hereunder at an annual rate of Two Hundred Forty-Five Thousand, Two Hundred Fifty Two and 00/100 Dollars (\$245,252.00), which sum shall be considered the base salary and shall be payable in installments at the same times as the City's other employees are paid, and subject to customary withholdings.

SECTION VI AUTOMOBILE

During the term of this Agreement, the City shall pay Helling a \$600.00 per month automobile allowance. Helling shall be eligible for the monthly automobile allowance only if he possesses a valid California driver's license and maintains all legally required insurance coverage established by the State of California and, on an annual basis, provides proof of his valid license and insurance coverage to the City Clerk.

SECTION VII VACATION, SICK AND OTHER SUPPLEMENTAL BENEFITS

A. Except as modified herein, during the term of this Agreement, the City shall provide Helling with vacation, sick and holiday pay in the same manner as provided to all other City employees.

B. Helling shall accrue vacation at the rate of 14 hours per month of service with no limits on the number of hours accrued. Helling shall accrue sick leave at the rate of 10 hours per month, with no limits on the number of hours accrued. At Helling's option, Helling may receive a cash payment for any unused vacation and sick leave hours once per year. The cash payment shall be at the Helling's then current rate of pay.

C. During the term of this Agreement, as permitted under law, the City shall pay for Helling's and the City's contributions to membership in the California Public Employees Retirement System ("CalPERS").

D. Helling may elect to participate in a 457 Deferred Compensation Retirement Plan. The City, on an annual basis, shall make a contribution of no less than \$2,000.00 per month on Helling's behalf to the Helling's account with the 457 Deferred Compensation Retirement Plan of Helling's choice.

E. The City shall provide Helling other benefits as mandated by law.

F. Upon the effective date of this Agreement, Helling shall be eligible for 36 hours of management leave which may be used at Helling's discretion and upon prior written notice to the City Council. Helling's unused management leave shall not carry forward to the next year, nor is it eligible for cash payment at any time during Helling's tenure.

SECTION VIII **OUT OF POCKET EXPENSES**

The City shall reimburse Helling for reasonable out-of-pocket expenses incurred in connection with the City's business, including, but not limited to, travel, food and lodging while away from home, subject to such policies as the City may from time to time establish for its employees. The City also shall provide Helling a monthly mobile telephone allowance of \$150.00 for use of his personal mobile telephone in carrying out his duties as set forth herein and in the Code. Helling may attend, at the City's expense, the League of California Cities Annual Conference ("LOCC"), the LOCC's City Manager's Conference, the Annual California Contract Cities Association Seminar and if he is a member, the International City/County Management Association ("ICMA") Annual Conference.

SECTION IX **OTHER TERMS AND CONDITIONS OF EMPLOYMENT**

A. The City Council may from time to time fix other terms and conditions of employment relating to the performance of Helling provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, City's Code or other applicable law.

B. The provisions of the City's Code and any Industry personnel resolution(s) shall apply to Helling except where the specific provisions conflict with this Agreement, in which event the terms and conditions of this Agreement shall prevail.

SECTION X **CONFIDENTIAL INFORMATION**

Employment with the City creates a relationship of confidence and trust between Helling and the City, with respect to all Confidential Information of City. "Confidential Information" includes but is not limited to trade secrets, confidential information, client lists,

knowledge or data of the City or any of its constituent entities or members that Helling may produce, obtain or otherwise acquire or have access to during the course of Helling's employment with the City, including but not limited to personnel information, passwords, and computer security systems. Helling agrees that during and after Helling's employment with the City, Helling (i) shall keep all Confidential Information confidential and shall not directly or indirectly use, divulge, publish or otherwise disclose or allow to be disclosed any aspect of Confidential Information without prior written consent of the City, unless otherwise required by law or court order; and (ii) shall refrain from any action or conduct which might reasonably or foreseeably be expected to compromise the confidentiality or proprietary nature of the Confidential Information. Upon termination of employment for any reason, Helling agrees to return promptly to the City all writings and other tangible things in Helling's possession that contain Confidential Information.

SECTION XI WARRANTIES

Helling warrants that, as of the commencement of this Agreement, he will be able to immediately begin performance of his duties and that, by entering into this Agreement, he will not be in violation of any other contract or agreement related to his employment, or his eligibility or availability for employment that could subject him or the City to any claims or liability.

SECTION XII INDEMNIFICATION AND BONDS

A. The City agrees to defend, hold harmless and indemnify Helling, subject to the provisions and limitations set forth in Government Code Section 825 *et seq.*, against any and all claims, liabilities, expenses or damages of any nature, including reasonable attorney's fees, arising out of or in connection with Helling's performance of the course and scope of this Agreement. The City may decline to defend Helling as permitted in the California Government Code. At its sole discretion, the City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered therefrom.

B. The City shall bear the full cost of any fidelity or other bonds which may be required in the performance of Helling's services under this Agreement.

SECTION XIII GENERAL PROVISIONS

A. This Agreement is the final expression of the complete Agreement of the Parties with respect to the matters specified herein and supersedes all prior oral or written understandings. Except as prescribed herein, this Agreement cannot be modified except by written mutual agreement signed by the Parties.

B. This Agreement is not assignable by either the City or Helling.

C. In the event that any provision of this Agreement is finally held or determined to be illegal or void by a court having jurisdiction over the Parties, the remainder

of the Agreement shall remain in full force and effect unless the parts found to be void are wholly inseparable from the remaining portion of the Agreement.

D. This Agreement may be signed in any one or more counterparts all of which taken together shall be but one and the same Agreement. Any signed copy of this Agreement or of any other document or agreement referred to herein, or copy or counterpart thereof, delivered by facsimile transmission, shall for all purposes be treated as if it were delivered containing an original manual signature of the party whose signature appears in the facsimile and shall be binding upon such party in the same manner as though an original signed copy had been delivered.

E. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

F. Each of the Parties acknowledges that she or it has been represented by independent legal counsel of its own choosing, or if not, has been advised to obtain independent legal counsel and has freely and voluntarily waived and relinquished the right to legal counsel. Further, each Party who has not obtained independent legal counsel acknowledges that the failure to have independent legal counsel will not excuse such Party's failure to perform under this Agreement or any agreement referred to in this Agreement.

G. This Agreement shall be interpreted and construed according to the laws of the State of California, and venue shall be in the County of Los Angeles.

H. All notices shall be personally delivered or mailed to the addresses listed below:

Troy Helling
15625 East Stafford Street, Suite 100
City of Industry, CA 91744

Julie Gutierrez - Robles, Deputy City Clerk
City of Industry
15625 East Stafford Street, Suite 100
City of Industry, CA 91744

Courtesy copy to:
James M. Casso
Casso & Sparks, LLP
13200 Crossroads Parkway N
Suite 345
City of Industry, CA 91746

IN WITNESS WHEREOF, the Parties hereto have hereunto affixed their signatures as of the date and year first above written.

CITY MANAGER

CITY OF INDUSTRY

Troy Helling

Mark D. Radecki, Mayor

ATTEST:

Julie Gutierrez - Robles, Deputy City Clerk

APPROVED AS TO FORM

James M. Casso, City Attorney