



# STAFF REPORT

**TO:** City Council  
**FROM:** City Manager  
**FOR MEETING:** Aug 23 2022

**SUBJECT:** City Manager Contract Amendment.

## RECOMMENDATION:

The City Council Subcommittee (Mayor O'Gilvie and Mayor Pro Tem Wright) recommend the adjustments to the City Manager's contract totaling \$5,837 or 2.0% with the details below:

1. An increase of 3.5% for Cost of Living Adjustment (COLA) or \$7,032;
2. An increase of \$3,000 towards deferred compensation or 50%;
3. A decrease of \$5,457 opting out of medical insurance or 64.5%;
4. An increase of \$879 towards PERS contribution;
5. An increase of \$281 towards Workers' comp;
6. An increase of \$102 towards Medicare;

## ORDER OF PROCEDURE:

Request Staff Report (City Council Subcommittee Presenting)  
Council Questions of Staff  
Request Public Comment  
Council Discussion  
Motion/Second  
Discussion of Motion  
Call the Question

## ATTACHMENTS:

- [City Manager Contract](#)
- [Contract History](#)

## BACKGROUND:

The City Manager, Frank J. Luckino, was appointed as City Manager on March 23rd, 2015. The City Council reviews the City Manager annually. The City Council met on June 14, 2022 in closed session to review the performance and gave the City Manager a positive review. The last salary adjustment was on February 22, 2021. The Council formed a personnel committee consisting of Mayor O'Gilvie and Mayor Pro Tem Wright that have recommended the above adjustments to the compensation package.

The adjustments will be effective on August 8, 2022.

## ENVIRONMENTAL:

Not Applicable

## ALTERNATIVES:

The City Council could choose to add/change/delete any of the recommendations.

**FISCAL IMPACT:**

The total cost for this proposed adjustment is \$5,837 inclusive of wage and benefits.

## **RESTATED AND AMENDED CITY MANAGER EMPLOYMENT AGREEMENT**

This AGREEMENT (“Agreement”) is entered into so as to be effective as of August 23, 2022 (the “Effective Date”), by and between the CITY OF TWENTYNINE PALMS, a California municipal corporation (“City”) and FRANK LUCKINO (“City Manager”) and is intended to restate and amend the Agreement between the parties dated March 23, 2015.

### **RECITALS**

A. The City requires the services of a City Manager and has determined that City Manager has the necessary education, experience, skills and expertise to serve as the City’s City Manager; and

B. The City Council of the City (the “City Council”) desires to employ the City Manager to serve as the City Manager of the City; and

C. The City Manager desires to be employed by and serve as the City Manager of the City; and

D. The Parties mutually desire to enter into this Agreement setting forth the terms and conditions of the City Manager’s appointment and employment as the City Manager of the City.

NOW THEREFORE, in consideration of the facts recited above, and the covenants, conditions and provisions below, the Parties agree as follows:

### **COVENANTS**

#### **SECTION 1. DUTIES.**

1.1 The City hereby appoints and employs City Manager as the City Manager of the City, to perform the functions and duties specified in the ordinances and resolutions of the City, and to perform the legally permissible and proper duties and functions as the City Council may from time-to-time assign.

1.2 The City Manager shall be the chief executive officer of the City and shall be responsible to the City Council for the proper administration of all affairs of the City.

1.3 The Parties acknowledge that the City Council may also designate the City Manager as the chief executive officer of other City-related governmental entities, including but not limited to the Successor Agency to the Dissolved Twentynine Palms Redevelopment Agency, or any financing authority, nonprofit corporation or joint powers authority created by the City or to which the City is a party, but City Manager will receive no additional compensation or benefits other than those provided in this Agreement.

1.4 The City Manager shall perform his duties to the best of his ability and in accordance with the highest professional and ethical standards of the profession. The City Manager shall comply with all rules and regulations established by the City Council or State law

and shall not engage in any activity which is or may become a conflict of interest, prohibited by contract, or which may create an incompatibility of office as defined under California law.

1.5 City Manager shall remain in the exclusive employ of the City during the term of this Agreement. However, City Manager may engage in occasional teaching, writing or consulting performed outside of the City's normal business hours, so long as such activities do not interfere with the City Manager's performance of his duties under this Agreement, or conflict with the City Manager's obligations to the City.

1.6 The Parties acknowledge that the City Manager is an exempt employee who is expected to engage in those hours of work that are necessary to fulfill the obligations of the City Manager's position. The City Manager does not have set hours of work as the City Manager is expected to be available at all times. However, it is also recognized that the City Manager devotes a great deal of time outside the normal business hours to the business of the City and, to that end, the City Manager's schedule of work each day and week shall vary in accordance with the work required to be performed.

1.7 The City shall bear the full cost of any fidelity or other bonds required of the City Manager.

## SECTION 2. COMPENSATION AND BENEFITS.

The City shall provide the following compensation to the City Manager during the term of this Agreement:

### 2.1 Salary.

The City shall pay the City Manager salary in the amount of Two Hundred and Seven Thousand Nine Hundred Sixty Dollars (\$207,960) per annum for his services, payable in installments at the same time and in the same manner as the City pays other employees of the City. City Manager's salary shall be subject to customary withholding for taxes and other required deductions.

2.1.1 Subject to performance evaluations in accordance with Section 3, and except as noted in 2.1.3, the City may increase, but not decrease, the City Manager's salary by minute action without the need to amend this Agreement.

### 2.2 Benefits.

2.2.1 The City Manager shall be entitled to all of the benefits, rights and privileges accorded across the board to all executive management employees (department heads) including but not limited to paid holidays, vacation, sick leave, retirement benefits and payments, deferred compensation, health insurance, vision insurance, dental insurance, long term disability and life insurance, except as otherwise provided in this Agreement. In the event of any conflict

between this Agreement and any resolution fixing compensation and benefits for executive management employees of the City, this Agreement shall control.

(a) Unused Sick time DOES NOT have any cash value.

- 2.2.2 City Manager shall accrue vacation time at the rate of 160 hours per annum.
- 2.2.3 City Manager shall be allocated a maximum of eighty (80) hours of administrative/personal leave each year. Accrued but unused administrative/personal leave may not be rolled over to the next year and may not be sold back to the City.
- 2.2.4 Acknowledging that City Manager's duties require that he always have the use of an automobile during his employment with the City. The City shall reimburse the City Manager Five Hundred Dollars (\$500.00) per month for the expenses of owning, maintaining, and insuring a personal automobile. The amount of the reimbursement shall be evaluated each fiscal year and, if appropriate, adjusted to reflect increased costs.
- 2.2.5 The City shall provide City Manager a monthly cell phone allowance equal to One Hundred Dollars (\$100) per month.
- 2.2.6 The City Manager shall pay the City Manager's share of the contribution, currently 8%, under the City's defined contribution retirement plan for non-public safety employees under the Public Employees Retirement System ("PERS"), or such other retirement program in which the City may be participating.
- 2.2.7 City agrees to deposit Seven Hundred Fifty Dollars (\$750.00) per month as deferred compensation into Manager's International City Management Association Retirement Corporation (ICMARC) Section 401 Money Purchase Plan or Section 457 Deferred Compensation Plan or such other qualified retirement plan as may be designated by City Manager as permitted by law.
- 2.2.8 In addition to the amounts set forth in Section 2.2.7, City agrees to deposit an additional Two Hundred Fifty Dollars (\$250.00) per month as deferred compensation into Manager's Section 457 Deferred Compensation Plan or such other qualified retirement plan as may be designated by City Manager as permitted by law for each month that City Manager has elected to opt out of the City's medical insurance program, beginning August 1, 2017. In the event City Manager elects to opt back into the City's medical insurance program, the additional compensation set forth in this paragraph shall cease, and City Manager shall be provided with health

insurance benefits at same level as other employees (currently the PERS lowest single plan).

2.2.9 City shall pay up to Two Thousand Five Hundred Dollars (\$2,500.00) annually for the cost of membership in relevant professional organizations and/or the cost of relevant training, career development or educational programs. City Manager shall annually provide to the City Council an accounting of the expenditures as set forth in this Section.

2.2.10 City agrees to contribute \$1,500 annually towards the City Manager's Flex Spending or equivalent for the benefit of out-of-pocket medical expenses.

2.2.11 All the provisions of this Section 2 are subject to the provisions and limitations of the Internal Revenue Code and its related regulations as amended from time to time. No requirement of any provision of this Section 2 shall be effective if it would violate any provision of the Internal Revenue Code or its related regulations, and the inability of the City to effectuate such requirement shall not constitute a breach of this Agreement.

### SECTION 3. PERFORMANCE EVALUATIONS.

3.1 The Parties mutually acknowledge that periodic performance evaluations are an important means by which the City Council and the City Manager may ensure effective communications regarding expectations and performance. In this regard, the City Council recognizes that, for the City Manager to respond to its needs and to grow in the performance of the City Manager's position, the City Manager requires evaluation from the City Council regarding his performance.

3.2 The City Council shall conduct an evaluation of the City Manager's performance annually each year during the term of this Agreement. In addition, the City Council may periodically review the City Manager's performance, and the City Manager may periodically request feedback from the City Council regarding his performance.

3.3 In conjunction with each performance review during the term of this Agreement, the City Council shall develop goals or other performance objectives as it determines necessary for the proper operation of the City and for the attainment of the City Council's policy goals and objectives; and the City Council shall establish a relative priority among these goals and performance objectives. In addition, the City Council shall develop specific criteria for the conduct of the City Manager's performance evaluation. These established goals, performance objectives and criteria shall serve as the basis for the City Manager performance evaluations.

3.4 In connection with each performance review, the City Manager shall prepare and distribute to the City Council a written description outlining the previous period's accomplishments relative to the goals and performance objectives established for that period. The City Council shall consider the City Manager's written description in conducting its performance

evaluation. Upon the conclusion of the performance evaluation, the City Council shall meet with the City Manager to discuss the results of the evaluation, and the City Council shall take any action as may be necessary because of the performance evaluation. As part of the performance evaluation, the City Council shall establish goals and performance objectives for the following period based upon the results of the just-completed performance evaluation.

#### SECTION 4. SEPARATION.

4.1 Resignation. The City Manager may resign at any time but shall endeavor to give the City at least thirty (30) days advance notice of the effective date of his resignation. Manager is not entitled to Severance pay as set herein upon his voluntary resignation.

4.2 Termination Without Cause. A City Manager is an at-will employee serving at the pleasure of the City Council as provided in Government Code § 36506 and Section 2.01.010 of the Twentynine Palms Municipal Code.

4.2.1 By majority vote, the City Council may terminate the City Manager's appointment and remove the City Manager at any time. As used in this Section, "termination" shall include actual termination, a request that the City Manager resign, or the elimination of the City Manager's position. Notice of termination shall be provided to the City Manager in writing.

4.2.2 The City Manager shall not be removed without cause during the 120-day period immediately following any City election for membership on the City Council.

4.2.3 If the City Council terminates the City Manager's appointment without cause pursuant to this paragraph 4.2 while the City Manager is willing and able to perform the duties of City Manager, the City shall pay to the City Manager a cash payment equal to three months' salary compensation then in effect as provided in paragraph 2.1.1 above [as well as 2.1.4 if applicable], (hereinafter, "Severance"). The Severance amount shall increase by one month's salary, per Section 2.1.1 and 2.1.4 if applicable, for each full year of service rendered by City Manager, but in no event shall the Severance amount exceed 6 months' salary.

4.2.4 In addition to the Severance, the City shall extend to the City Manager the right to continue health insurance as may be required by and pursuant to the terms and conditions of the Consolidated Omnibus Budget Reconciliation Act of 1986 ("COBRA").

4.2.5 In addition to the Severance and COBRA (Consolidated Omnibus Budget Reconciliation Act) benefits, the City Manager shall be entitled upon termination without cause to all compensation accrued up to the date of termination, such as payment of unused vacation and sick leave, and such other termination benefits in accordance

with City's Personnel Rules and Regulations, or as may be required by law.

4.3 Termination for Cause.

4.3.1 By majority vote, the City Council may terminate the City Manager at any time, for cause. As used in this Agreement, "cause" shall mean only one or more of the following:

(a) Conviction of a felony or a misdemeanor that either involves moral turpitude or that adversely affects the City's or the City Manager's reputation.

(b) Malfeasance, which shall mean and refer to wrongful or unlawful acts committed by the City Manager, which the City Manager has no legal right or authority to perform, and which interrupts, interferes with or are contrary to the performance of his official duties.

(c) Continued abuse of non-prescription drugs or alcohol that materially affects the performance of the City Manager's duties; or

(d) Repeated and protracted unexcused absences from the City Manager's office and duties.

4.3.2 Notice of Termination for cause shall be provided to the City Manager in writing.

4.3.3 If the City terminates City Manager for cause, the City Manager shall be entitled only to the compensation accrued up to the date of termination, payments of all unused accrued vacation and sick leave, and such other termination benefits and payments as may be in accordance with City's Personnel Rules and Regulations, or as may be required by law. The City Manager shall not be entitled to any Severance benefits provided by paragraphs 4.2.3 in the event of a termination for cause.

4.4 Investigations. If the City provides paid leave to City Manager pending an investigation of a crime involving abuse of his office or position covered by Government Code section 53243.4 and should the investigation lead to a conviction, City Manager shall fully reimburse the City for any salary provided for that purpose, as required by Government Code section 53243.

SECTION 5. MISCELLANEOUS.

5.1 Business Expenses. The City shall reimburse the City Manager for all reasonable City-related business expenses incurred by the City Manager in accordance with City policy.



5.2 Other Conditions of Employment. After consultation with the City Manager, the City Council, by resolution, may fix any other terms and conditions of the City Manager's employment as the City Council may from time to time determine, provided such terms and conditions are not inconsistent with the provisions of this Agreement or law.

5.3 Indemnification. The City shall defend, hold harmless and indemnify the City Manager against any claim, demand or other legal action, whether groundless or otherwise, arising out of any alleged act or omission occurring in the performance of the City Manager's duties as City Manager. The City shall pay the amount of any settlement or judgment thereon, provided that the City Manager cooperates in the defense of the claim, demand, or action; in this regard, the City shall have the discretion to compromise or settle any such claim, demand or action and pay the amount of any settlement or judgment rendered thereon. Notwithstanding the foregoing, the City shall have no duty to indemnify, defend, or hold the City Manager harmless from any criminal proceeding, or about any civil, criminal, or administrative proceeding initiated by the City Manager.

5.4 Conflict of Interest. The City Manager shall not engage in any business or transaction or have a financial or other personal interest or association, direct or indirect, which conflicts with the proper discharge of his official duties or which would tend to impair the independence of his judgment or action in the performance of his official duties. The City Manager shall also be subject to the conflict-of-interest provisions of the California Government Code and any conflict-of-interest codes applicable to the City Manager's employment with the City.

5.5 Notices. Any notice required by this Agreement shall be in writing and shall be either given in person or by first class mail with the postage prepaid, addressed as follows:

To City: Twentynine Palms City Council  
c/o Mayor  
City of Twentynine Palms  
6136 Adobe Road  
Twentynine Palms, CA 92277

To City Manager: Frank Luckino  
City Manager  
City of Twentynine Palms  
6136 Adobe Road  
Twentynine Palms, CA 92277

5.6 Construction and Interpretation. This Agreement shall be construed in accordance with the laws of the State of California and as if drafted jointly by both parties. In this regard, the City and the City Manager each represent to the other that it has had the opportunity to consult with legal counsel regarding the terms and conditions in this Agreement prior to its execution.

5.7 Integration and Amendment. This Agreement represents the entire understanding of the City and the City Manager as to those matters contained herein, and no prior oral or written understanding shall be of any force or effect with respect to those matters covered

by this Agreement. Except as specifically authorized by this Agreement, this Agreement may not be modified, altered or amended, except in writing approved by the City Council and the City Manager, and signed by the City Manager and the Mayor of the City.

5.8 Assignment; Personal Contract. This Agreement is not assignable by either the City or the City Manager. The Parties acknowledge that this Agreement is the personal services agreement, for the personal services of the City Manager.

5.9 Severability. If any provision of this Agreement is held or determined to be illegal, invalid or void by reason of any final, non-appealable judgment, order or decision of a court having authority over the parties, the remainder of the Agreement shall remain in full force and effect unless the parts found to be illegal, invalid, or void are inseparable from the remaining portion of the Agreement.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first written above.

CITY OF TWENTYNINE PALMS

By: \_\_\_\_\_  
Karmollette O'Gilvie  
Mayor

ATTEST:

\_\_\_\_\_  
Cindy Villescas  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
A. Patrick Muñoz  
City Attorney

CITY MANAGER

By: \_\_\_\_\_  
Frank J Luckino

**City Manager Contract(s)**

	<b>Guzzetta 2013</b>	<b>Luckino 2015</b>	<b>Luckino 2016</b>	<b>Luckino 2017</b>	<b>Luckino 2018</b>	<b>Luckino 2019</b>	<b>Luckino 2020</b>	<b>Luckino Feb 2021</b> 96.60	<b>Luckino July 2022</b> 99.98	<b>Dif</b>
Base Salary	\$ 184,000.00	159,000/19,000	165,420/15,025	172,947/10,889	182,257/6,565	\$ 192,795.00	No Increase	\$ 200,928.00	\$ 207,960.08	\$ 7,032.08
Deferred Comp	\$ 6,000.00	\$ 6,000.00	\$ 6,000.00	\$ 6,000.00	\$ 6,000.00	\$ 6,000.00		\$ 6,000.00	\$ 9,000.00	\$ 3,000.00
Medical	Declined	\$ 6,000.00	\$ 6,300.00	\$ 3,000.00	\$ 3,000.00	\$ 3,000.00		\$ 8,457.00	\$ 3,000.00	\$ (5,457.00)
Vehicle	\$ -	\$ 6,000.00	\$ 6,000.00	\$ 6,000.00	\$ 6,000.00	\$ 6,000.00		\$ 6,000.00	\$ 6,000.00	\$ -
Cell Phone	\$ -	\$ 1,200.00	\$ 1,200.00	\$ 1,200.00	\$ 1,200.00	\$ 1,200.00		\$ 1,200.00	\$ 1,200.00	\$ -
Memberships	not negotiated	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00		\$ 2,500.00	\$ 2,500.00	\$ -
FSA					\$ 1,500.00	\$ 1,500.00		\$ 1,500.00	\$ 1,500.00	\$ -
EMPC 8%	\$ 14,720.00	0	0	0	0	0		0	0	
<b>Total</b>	<b>\$ 204,720.00</b>	<b>199,700.00</b>	<b>202,445.00</b>	<b>202,536.00</b>	<b>207,522.00</b>	<b>212,995.00</b>		<b>226,585.00</b>	<b>231,260.06</b>	<b>\$ 4,575.08</b>
Admin	80 HR	40 HR	40 HR	80 HR	80 HR	80 HR		80 HR	80 hr	
Vacation	40 HR + 6.15 PP	4.62 PP	4.62 PP	4.62 PP	4.62 PP	4.62 PP		6.15 PP	6.15 PP	
Sick	40 HR + 3.69 PP	3.69 PP	3.69 PP	3.69 PP	3.69 PP	3.69 PP		3.69 PP	3.69 PP	