

**EMPLOYMENT AGREEMENT BETWEEN THE
CITY OF PLACERVILLE AND DAVE WARREN**

AGREEMENT

1. Effective Date

This Agreement shall become effective when it has been executed by the Department Director and the City Manager and duly approved by Resolution of the City Council.

2. Term of Employment

The Department Director shall serve at the pleasure of the City Manager and on an “at will” basis during the term of this Agreement, subject to the terms and provision of this Agreement as set forth below.

3. Duties; Hours of Work

A. Department Director shall perform those functions and duties as specified in job classification for Director of Finance and by direction of the City Manager. Department Director shall perform such duties in accordance with the highest professional and ethical standards of the Department Director position. Department Director shall not engage in any activity that is, or which may become, incompatible with the City of Placerville, as provided by federal, state, and local law. During the term of this Agreement, Department Director shall be exclusively employed by the City, unless prior written authorization otherwise is received from the City Manager, which authorization will not be unreasonably withheld.

B. Department Director shall maintain a regular work schedule consistent with that approved for other Department Directors of the City. Department Director’s duties may involve expenditures in time in excess of eight (8) hours per day and/or forty (40) hours per week, and may also include time outside normal office hours such as attendance at City Council and Commission meetings. Department Director shall not be entitled to additional compensation for this time.

4. Compensation

A. Department Director shall receive an annual base salary of \$91,848.00, less Mandatory Time Off (MTO) as outlined in the salary and benefit provisions for employees of the Executive Management Unit. Said salary shall be payable in bi-weekly payments or at the same time as when other employees are paid, prorated for any partial bi-weekly period of service.

B. Department Director shall receive a monthly car allowance in the amount of three hundred, twenty-five dollars (\$325.00). In the event the Department Director drives his personal vehicle on City business to a destination that exceeds one-hundred (100) miles one-way from the office, the Department Director shall receive reimbursement for all mileage of said trip using the IRS standard mileage rate.

C. Department Director’s compensation shall be reviewed with the City Manager at least annually in connection with the annual review or at any other times as may be determined by the City Manager. Further it is understood that it is the intent of the City Manager to increase salary,

or increase other benefits referred to in this Agreement, dependent upon the quality of job performance by Department Director as documented on the attached performance evaluation.

D. Salary increases may be revoked in the event Department Director receives an unsatisfactory evaluation, either at the annual evaluation or at any additional evaluation completed by the City Manager.

E. Once the MTO reduction mentioned in section 4A has been fully restored to all City employees and funds are available, the City Manager may increase Department Director base compensation provided Department Director meets the goals and objectives establish in the last evaluation. In the event such compensation exceeds five percent (5%) such increase must first be reviewed by Council in Closed Session, and such increase shall require substantiation that Department Director has achieved a substantial improvement in efficiency, savings or income to the City, beyond what is normally expected in the course of performing the expected outcomes of the job assignment.

5. Health and Related Benefits Insurance

Department Director shall receive shall receive the same medical, vision, chiropractic, dental, life insurance, and other benefits, including CalPERS retirement that are provided to employees, as set forth in current salary and benefit provisions for the Executive Management Unit.

6. Leaves and Other Benefits

All items relating to Department Director leaves and benefits shall remain the same as those currently in existence for Executive Management Unit employees prior to the execution of this Agreement, except as modified herein.

7. Annual Performance Evaluation

The City Manager shall evaluate Department Director's performance at least once annually. The City Manager and Department Director shall annually develop mutual agreeable performance goals and criteria which the City Manager shall use in reviewing Department Director's performance in the following year. It shall be Department Director's responsibility to initiate this review each year.

8. Indemnification

City shall defend, hold harmless and indemnify Department Director against any claim, demand, judgment, or action of any type or kind arising within the course and scope of Department Director's employment to the extent required by Government Code Sections 825 and 995.

9. 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 Department Director, provided such terms and conditions are not inconsistent with or in conflict with the provision of this Agreement, the Placerville Municipal Code, or other applicable law.

B. The provisions of the City's Personnel Rules and Regulations ("Rules") shall apply to Department Director to the extent they explicitly apply to the position of Department Director, except that if the specific provisions of this Agreement conflict with the Rules, the terms of this Agreement shall prevail. Without limiting the generality of the exception noted in the previous sentence, however, no provision of the Rules or this Agreement shall confer upon Department Director a property right in his or her employment or a right to be discharged only upon cause.

Department Director is not a member of the competitive/ classified service and is an at-will employee serving at the pleasure of the City Manager and may be dismissed at any time with or without cause, subject only to the provisions of this Agreement and specific policies pertaining to the Senior Executive Pay for Performance Program. Notwithstanding any other provision of this Agreement, Department Director shall not violate any policy prohibiting discrimination, harassment, retaliation, workplace violence, or other similar misconduct as set forth in the Rules and in federal, state law, and local law.

C. Department Director shall be exempt from paid overtime compensation.

10. Termination

A. Department Director is not part of the competitive (classified) service and therefore is an at-will employee. As an at-will employee, Department Director may be terminated with or without cause, and without advance notice.

B. If Department Director is terminated by the City without cause, Department Director after termination will be entitled to five (5) months of severance pay at Department Director's base salary rate. The severance pay will be paid at the time of separation from City employment.

C. If Department Director is terminated by the City for cause, Department Director is not entitled to any severance pay whether or not advance notice is provided. If Department Director is terminated for cause, Department Director must be given notice of the cause and supporting evidence. Department Director is entitled to meet with the City Manager at which time Department Director may reply orally and/or in writing to the cause and supporting evidence. The meeting is not an evidentiary hearing. There is no right to appeal the City Manager's decision. The City Manager's decision is final. The City Manager's decision is, however, subject to the arbitration provisions contained in Paragraph 14 herein.

D. Department Director may voluntarily terminate his or her employment, by resignation or retirement or some other similar manner, upon at least one month notice. In this circumstance, Department Director is not entitled to any severance pay.

11. Compliance With Law

This Agreement is subject to all applicable provisions of federal, state, and local laws, including the Placerville Municipal Code.

12. General Provisions

- A. This Agreement constitutes the entire agreement between the parties. City and Department Director hereby acknowledge that they have neither made nor accepted any other promise or obligation with respect to the subject matter of this Agreement.
- B. If any provision or any portion of this Agreement is held to be unconstitutional, invalid or unenforceable, the remainder of the Agreement shall be deemed severable and shall not be affected and shall remain in full force and effect.
- C. Any notice to City pursuant to this Agreement shall be given in writing, either by personal service or by registered or certified mail, postage prepaid, addressed as follows:

City Manager
City of Placerville
3101 Center Street
Placerville, CA 95667

Any notice to Department Director shall be given in a like manner, and, if mailed, shall be addressed to Department Director at the address shown in City's personnel records. For the purpose of determining compliance with any time limit stated in this Agreement, a notice shall be deemed to have duly given (a) on the date of delivery, if served personally, or (b) on the second (2nd) calendar day after mailing, if mailed.

- D. If an action at law or in equity is necessary to enforce or interpret this Agreement, the prevailing party in that action shall be entitled to reasonable and actual attorneys' fees and costs with respect to the prosecution or defense of the action.
- E. A waiver of any of the terms and conditions of this Agreement shall not be construed as a general waiver and either party shall be free to enforce any term or condition of this Agreement with or without notice to the other notwithstanding any prior waiver of that term or condition.

14. Arbitration:

a. Any controversy or claim arising out of or relating to this Agreement or the breach thereof, or arising out of or relating to Employee's employment or termination thereof, including but not limited to claims of employment discrimination based on federal and state law, which cannot be resolved among the parties themselves, shall, on the written request of either party served on the other within the applicable statute of limitations, be submitted and resolved by final and binding arbitration in a manner consistent with the Federal Arbitration Act, if applicable, or the California Code of Civil Procedure (including CCP Section 1283.05). Service of the written request shall be made only by certified mail, with a return receipt requested. Time is of the essence; if the request is not served within a one-year period for claims arising out of this Agreement, or within the applicable statute of limitations for the alleged federal and state law claims, the complaining party's claim(s) shall be forever waived and barred before any and all forums, including, without limitation, arbitration or judicial forums.

b. The Arbitrator shall have no authority to alter, amend, modify or change any of the terms of this Agreement unless a provision expressly conflicts with applicable federal or state laws. Any arbitrator selected under this provision shall have the express authority to consider statutory violations of federal and state law in addition to disputes involving this Agreement. The decision of the Arbitrator shall be final and binding and judgment therein may be entered in any court having jurisdiction over the dispute.

c. The Arbitration shall be conducted under the National Rules ("Rules") for the Resolution of Employment Disputes of the American Arbitration Association ("AAA") current at the time of the dispute. In the event that any of the above Rules are determined to be in conflict with federal or state law, then the arbitrator shall have the authority to amend the Rules accordingly. The City shall be responsible for paying all the AAA's administrative and arbitrator's fees. In all other respects, the parties shall bear their own attorneys' fees and costs except as otherwise required by law. The parties shall have the right to conduct discovery which provides them with access to documents and witnesses that are essential to the dispute, as determined by the arbitrator. The arbitrator's written award shall include the essential findings and conclusions upon which the award is based.

d. The parties intend that this arbitration procedure is mandatory and shall be the exclusive means of resolving all disputes whether founded in fact or law between Employee and the City and/or its officers, employees, elected officials or agents arising out of or relating to this Agreement, the parties' employment relationship and/or the termination of that relationship,

including, but not limited to, any controversies or claims pertaining to wrongful or constructive discharge, violations of the covenant of good faith and fair dealing, implied contracts, public policies, anti-discrimination statutes or any employment-related statutes. THE PARTIES EXPRESSLY WAIVE ANY CONSTITUTIONAL OR STATUTORY RIGHT TO HAVE ANY SUCH DISPUTE DECIDED IN A COURT OF LAW AND/OR BY A JURY IN A COURT PROCEEDING.

15. Amendments

This represents the entire agreement between the parties. Amendments to this agreement may be made at such times as approved by the City Manager and Department Director and shall be in writing.

Dated: _____

John Driscoll, City Manager/City Attorney

Dated: _____

Department Director