

ORIGINAL

MEMORANDUM OF AGREEMENT

THIS AGREEMENT is between the County of El Dorado ("County") and Donald Ashton ("CAO"), and has an effective date ("Effective Date") of February 15, 2020.

RECITALS

On May 24, 2016, the Board of Supervisors of El Dorado County appointed Donald Ashton as Chief Administrative Officer of the County effective May 25, 2016. As part of this action, the County and CAO subsequently entered into an employment agreement pursuant to El Dorado County Ordinance Code section 2.13.025 (the "Original Agreement"), which set forth the compensation, benefits, and other terms of employment for CAO.

Following a positive performance evaluation on May 9, 2017, the County entered into a new Memorandum of Agreement with Mr. Ashton. That Memorandum of Agreement was effective May 23, 2017, and superseded the Original Agreement.

The County and Mr. Ashton entered into a subsequent Memorandum of Agreement, effective November 7, 2017, to better align Mr. Ashton's compensation package with market trends for similarly situated administrative heads of county governments. That Memorandum of Agreement expires by its own terms on November 7, 2021, at which point Mr. Ashton will become an at-will employee without the severance compensation provided by that Memorandum of Agreement. In furtherance of the County Charter's directive to "retain the best qualified officers and employees," the County and Mr. Ashton wish to extend the term and expiration date of that Memorandum of Agreement.

Accordingly, the parties desire to set forth in this Memorandum of Agreement ("Agreement") the terms of employment, and the compensation and benefits to be provided to CAO as part of that employment.

AGREEMENT

1. PRIOR AGREEMENTS.

This Agreement shall supersede and replace all prior employment agreements between the County and CAO. Any such prior agreements, and any amendments thereto in effect as of the Effective Date of this Agreement, shall be deemed terminated as of the Effective Date of this Agreement by mutual agreement of the parties.

2. DUTIES.

(a) County agrees to employ Donald Ashton as Chief Administrative Officer of El Dorado County to perform the functions and duties specified in the charter, ordinances, resolutions, and policies of County, and to perform all other legally permissible and proper duties and functions as the Board of Supervisors may from time to time assign.

(b) CAO shall perform his duties to the best of his ability in accordance with the highest professional and ethical standards of the profession, and shall comply with all applicable laws, and the general rules, regulations, and policies established by the County.

(c) CAO shall not engage in any activity which is or may become a prohibited contract, or which may create an incompatibility of office as defined under California law.

(d) CAO shall not engage in any other business or occupation without the prior approval of the Board of Supervisors.

3. TERM.

This Agreement shall commence on the Effective Date set forth above and shall remain in effect for a period of four (4) years from that Effective Date or until terminated by either party in accordance with the provisions set forth in Paragraph 4 or until terminated by death or permanent disability of CAO. One year after the Effective Date and each year thereafter (the "Anniversary Date"), the term of this Agreement shall be automatically extended for one year. For purposes of this Agreement, termination of or resignation from employment shall constitute termination of this Agreement. This provision in no way alters the at-will nature of the employment.

4. RESIGNATION AND TERMINATION.

(a) CAO may terminate this Agreement upon 60 days advance written notice to the County, as provided for in Paragraph 10.

(b) County may terminate this Agreement, without cause, effective immediately upon written notice, as provided for in Paragraph 10.

(c) The parties expressly agree that: 1) County intends to and does employ CAO as an "at will" employee whose employment may be terminated by County at any time for any reason, or for no reason, without any cause whatsoever; 2) CAO is appointed pursuant to the provisions of Section 302 of the Charter of the County of El Dorado and serves at the pleasure of the Board of Supervisors; and, 3) County makes and has made no representation, assurance, or promise to CAO, be it oral or written, express or implied, of any form of continued employment. Nothing in this Agreement shall affect in any way CAO's status as an at-will employee.

5. SALARY; COMPENSATION; BENEFITS.

Effective the first full pay period following the Effective Date of this Agreement, County shall pay CAO an annual salary of \$237,182.40, payable biweekly and subject to customary withholding. This represents a salary that is eight percent below the median total compensation salary of the top administrative officer for the comparator agencies used by the current version of the El Dorado County Compensation Study. CAO shall be entitled to future salary increases consistent with increases for appointed department heads by using the total compensation salary of the top administrative officer for the comparator agencies used by El Dorado County. This comparison data shall be performed by the Director of Human Resources or his/her designee, and the results shall be reported to the Board of Supervisors for final action. In consideration of the foregoing and the other compensation and benefits provided under this Agreement, CAO hereby waives and releases any vested rights to receive longevity pay pursuant to the Salary & Benefits Resolution for Unrepresented Employees in the future, and CAO shall not receive any such

longevity pay during the term of his employment with the County. This waiver and release with respect to longevity pay shall survive the expiration or termination of this Agreement.

Except as otherwise specifically provided for in this Agreement, CAO shall receive all other compensation and benefits, with the exception of any contributions to deferred compensation plans and longevity pay, provided to appointed department heads pursuant to the Salary & Benefits Resolution for Unrepresented Employees as it presently exists or as may be modified by the Board of Supervisors and in accordance with other adopted County policies related to appointed department heads, including, but not limited to, management, vacation, and sick leave accruals.

CAO compensation and benefits shall be subject to the terms and conditions of the Salary & Benefits Resolution for Unrepresented Employees.

In lieu of any contributions to deferred compensation plans provided for in the Salary & Benefits Resolution for Unrepresented Employees, the County shall instead contribute \$18,000 on an annual basis to the County's 457 deferred compensation plan account for the CAO, payable in equal installments over twenty-six (26) pay periods each year.

6. COST REIMBURSEMENTS.

CAO shall be entitled to reimbursement for job related travel, conference attendance, professional development, and similar costs not currently addressed in the Salary & Benefits Resolution for Unrepresented Employees, and not addressed by any resolution expressly applicable to the CAO, in accordance with adopted County policy. Such reimbursements shall be allowed only for activities that are related to County business or activities subject to budget availability.

7. OTHER TERMS AND CONDITIONS OF EMPLOYMENT.

The Board of Supervisors, by resolution, shall fix any other terms and conditions of employment, as it may determine from time to time, relating to the performance of CAO, provided such terms and conditions are not inconsistent with provisions of this Agreement or law.

8. ANNUAL PERFORMANCE REVIEW

The Board of Supervisors shall perform an annual review of the CAO's performance. The review shall take place every year during the currency of this Agreement during the same month that this Agreement was executed. The CAO shall be apprised of the results of the performance review.

9. SEVERANCE COMPENSATION.

If County terminates this Agreement, CAO shall be entitled to severance compensation equal to the lesser of (i) the base salary payable over the remaining term of the contract or (ii) eighteen (18) months' base salary, unless CAO is charged or convicted of commission of any felony or of any crime of moral turpitude or of any crime in the performance of, or related to, CAO's duties; or commits misfeasance or malfeasance in CAO's official duties; or is otherwise terminated for reasonable cause as that term is defined by County of El Dorado Personnel Rule 1203. The reference to County of El Dorado Personnel Rule 1203 is for illustrative purposes of the types of conduct that would constitute reasonable cause and is not intended to alter or modify the at-will

status of the CAO or to create any "for cause" standard of employment. CAO shall not be entitled to severance compensation under any other circumstances, including, but not limited to, resignation of the CAO. For purposes of this paragraph, "base salary" shall mean the monthly proration of the annual salary specified in Paragraph 5 above, less applicable tax withholding. As a condition to receipt of severance compensation, CAO shall execute a release of all claims against County in a form deemed satisfactory to County and approved by County Counsel. Any severance to be paid pursuant to this Agreement shall be paid on a monthly basis in equal installments over either the remaining term of the contract or eighteen (18) months, as applicable.

10. NOTICES.

Any notices required by this Agreement shall be in writing and either given in person or by First Class mail with the postage prepaid and addressed as follows:

To County: Board of Supervisors
County El Dorado
330 Fair Lane
Placerville, CA 95667

To CAO: Donald Ashton, Chief Administrative Officer
County of El Dorado
330 Fair Lane
Placerville, CA 95667

All notices shall be deemed given upon their dispatch.

11. ENTIRE AGREEMENT.

This Agreement is the final expression of the complete Agreement of the parties regarding County's employment of CAO and supersedes all prior oral or written understandings. This Agreement cannot be modified except by written mutual amendment signed by both parties.

12. ASSIGNMENT.

This Agreement is not assignable by either County or CAO.

13. SEVERABILITY.


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 to the maximum extent permitted by law, and shall be interpreted to effectuate the parties' intent to the maximum degree possible.

14. CONTRACT ADMINISTRATOR.

The Chair of the Board of Supervisors is designated as the person with responsibility for administering this Agreement pursuant to Section 602 of the Charter of the County of El Dorado.

IN WITNESS WHEREOF, the parties have executed this Agreement as follows:

Date: Feb. 4, 2020


Don Ashton

Date: 2-4-20


Chair of the Board of Supervisors

ATTEST
KIM DAWSON
Clerk of the Board of Supervisors

By: 
Deputy Clerk

APPROVED AS TO FORM:


David A. Livingston, County Counsel