AMENDED Special Workshop Meeting Agenda
Fortuna City Council
Thursday, November 29, 2018 – 8:30 A.M.
621 11th Street at Fortuna City Hall

We May Disagree, but We Will Be Respectful of One Another
All Comments Will Be Directed to the Issue at Hand, and Addressed to the City Council
Personal Attacks are Unacceptable

I. CALL TO ORDER / FLAG SALUTE / ROLL CALL

II. ORAL COMMENTS FROM THE PUBLIC

Members of the Public may be heard on any item on the Special Meeting Agenda. Speakers addressing the Council will be limited to 3 minutes per speaker. Be advised, by law the City Council cannot deliberate or take action on issues presented during Oral Comments that are not shown on the Agenda.

III. CONSENT ITEMS

1. Ratification of the Approved Employment Contract for the New City Manager

IV. DISCUSSION ITEMS

A. Council Member Appointments to Boards and Commissions

IV. ADJOURN

Pursuant to Government Code Section 54957.5, any non-confidential documents or writings that the City distributes, less than 72 hours before a regular meeting, to all or a majority of the legislative body’s members must be made available to members of the public at the same time as the distribution. Documents and information related to the agenda topics are available for review at City Hall, 621 11th Street, between the hours of 8:00 AM to 5:00 PM. Members of the public are invited to come to the meeting and comment. In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk at 725-7600. Notification prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

Siana L. Emmons
City Clerk
DATE: November 29, 2018

TO: Honorable Mayor and Council Members

FROM: Siana L. Emmons, City Clerk/Human Resources Manager

THRU: Merritt Perry, Interim City Manager

SUBJECT: Ratify the Approved Employment Agreement for the New City Manager with a Start Date of December 2, 2018

STAFF RECOMMENDATION:

Ratify the approved employment agreement for the new City Manager Merritt Perry with a start date of December 2, 2018

EXECUTIVE SUMMARY

On November 19, 2018 during closed session, the City Council approved the employment agreement for the new City Manager Merritt Perry.

This agreements must now be ratified during an open and public meeting of the City Council.

RECOMMENDED ACTION:

1. Motion to ratify the approved employment agreement for the City Manager with a start date of December 2, 2018. Consent Agenda Vote.

ATTACHMENTS:

- City Manager draft Employment Agreement
CITY MANAGER AT-WILL EMPLOYMENT AGREEMENT
WITH MERRITT PERRY

THIS AGREEMENT is made and entered into this 29 day of November of 2018, and becomes effective on December 2, 2018, by and between the CITY OF FORTUNA, a California Charter City, (hereinafter "Employer or City Council"), and MERRITT PERRY, (hereinafter "Employee") both of whom understand as follows:

WITNESSES:

WHEREAS, Chapter 2.08 of the Fortuna Municipal Code, establishes the Office of the City Manager, and delineates the duties thereof; and

WHEREAS, Employer desires to obtain the services of said Employee to perform the duties of the Office of the City Manager of the City of Fortuna as provided by the Fortuna Municipal Code; and

WHEREAS, Employer desires to employ Employee and Employee desires to be employed as City Manager for the City of Fortuna on the terms and conditions set forth in this Agreement, and

WHEREAS, it is the desire of the Fortuna City Council, to provide certain benefits, to establish certain conditions of employment, and to set working conditions of said Employee within the framework of an at-will employment relationship; and

WHEREAS, it is the intention of the parties to fully comply with the provisions of the City’s Municipal Code;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

Section 1: DUTIES

Employer hereby agrees to employ Employee as City Manager of Employer to perform the functions and duties of City Manager as set forth in the Fortuna Municipal Code, resolutions, ordinances, and/or other regulations of the City, and to perform other legally permissible and proper duties and functions as the City Council shall from time-to-time assign.

Section 2: TERM

A. Employee agrees to remain in the exclusive employ of Employer until November 30, 2021 ("Termination Date"), and neither to accept other employment nor to become employed by any other employer until said termination date, unless said termination date is affected as hereinafter provided. Employee may engage
in outside consultation with the prior and continuing approval of the City Council and to the extent that such outside consultation does not interfere with the duties and responsibilities set forth in this Employment Agreement. It is specifically understood and agreed that any outside consultation is to be secondary to this employment by the City of Fortuna and shall not conflict or interfere in any way with the full-time nature of this City employment.

B. In the event written notice of non-renewal is not given by either party to this agreement to the other by September 30, 2021 this agreement shall be extended on the same terms and conditions as herein provided or as may have been subsequently amended, all for an additional period of two (2) years, to November 30, 2023. Said agreement shall continue thereafter for two-year periods unless either party hereto gives written notice by September 30 prior to the Termination Date. The Employee shall be responsible to give written notice to the Council at least 60 days prior to the September 30 renewal notice date. If the Employer gives such notice of non-renewal, Employee shall complete the remaining balance of that year of service, and he shall not be entitled to the severance pay described in Section 3 hereof. If Employee fails to provide written notice to the City as specified herein, then the City may, in the exercise of its sole discretion, terminate this Agreement effective November 30, 2021.

C. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the Council to terminate the services of Employee at any time, subject only to the provisions set forth in Section 3, paragraphs A, B and C, of this Agreement.

D. Nothing in this agreement shall prevent, limit, or otherwise interfere with the right of the Employee to resign at any time from his position with Employer, subject only to the provision set forth in Section 4 of this Agreement.

Section 3: TERMINATION AND SEVERANCE PAY

Because positive and confidential relations are necessary between the Employee and the City Council, Employee understands and agrees that he serves at the pleasure of the City Council and may be terminated at any time, at the will of the City Council, subject only to the notice of termination provisions set forth herein.

A. This Agreement shall terminate upon the occurrence of any of the following events:

1. Upon thirty (30) days notice given to the Employer by the Employee; or
2. Upon the death of the Employee; or
3. Upon the effective date of retirement from the Employer's service pursuant to PERS; or

4. By motion carried by three (3) affirmative votes of the City Council of the City, with or without cause.

Notwithstanding the provisions of Section 3.A.4, above, Employee may not be terminated (excepting a termination for cause) for a period of six (6) months following a municipal election wherein (a) new Council Member(s) is/are seated, or when (a) new Council Member(s) is/are appointed to enable such new Council Member(s) adequate time to assess Employee’s performance. "Termination for Cause" shall include:

1. Willful breach of the Agreement as interpreted pursuant to Labor Code Section 2924.

2. Habitual neglect of the duties required to be performed as City Manager as interpreted pursuant to Labor Code 2924.

3. Any act of dishonesty, fraud, misrepresentation or other act of moral turpitude.

4. Conviction of any act which would constitute a serious crime, whether misdemeanor or felony.

5. Willful violations of Employer policies of a serious nature, including for example, Employer’s Sexual Harassment or “Drugs in the Work Place” policies.

6. Inability or unwillingness to perform the duties of the position for a period of sixty (60) consecutive days.

B. In the event Employee is terminated without cause before November 30, 2021, then in that event Employer agrees to pay Employee a lump sum cash severance payment equal to the total of the Employee’s then current aggregate salary, benefits, and deferred compensation that he would have been entitled to receive for a period of six (6) months under the terms of this Agreement. Employee shall also be compensated for all earned and unused vacation, holidays, and other accrued benefits to date. Earned Sick Leave will be compensated according to the same provisions as other Unrepresented Employees. In the event Employee is terminated for cause or conviction, then, in that event, Employer shall have no obligation to pay the aggregate severance sum designated in the above paragraph.
C. In the event Employer at any time during the term of this Agreement reduces the salary or other financial benefits of Employee in a greater percentage than an applicable across-the-board reduction for all Unrepresented Employees of Employer, or in the event Employer refuses, following written notice, to comply with any other provision benefiting Employee herein, or the Employee resigns following a formal indication by the Council that he resign, then in that event the Employee may, at his option, be deemed to be terminated at the date of such reduction or such refusal to comply within the meaning and context of the herein severance pay provision and shall be entitled to Severance Pay in accordance with Section 3B above.

Section 4: RESIGNATION

In the event Employee voluntarily resigns his position with Employer before expiration of the previously mentioned term of the employment, then Employee shall give Employer a thirty-day (30) notice in advance, unless the parties agree otherwise. If Employee voluntarily resigns, employee is not entitled to Severance Pay in accordance with Section 3B above.

Section 5: City Council Commitments:

A. Except for the purpose of inquiry, the City Council and its members shall deal with all subordinate City employees, officers, contractors, and consultants solely through the Employee or the Employee’s designee, and neither the City Council nor any member thereof shall give direction to any subordinate of the Employee, either publicly or privately.

B. No member of the City Council will order the appointment or removal of any person to any office or employment under the supervision and control of the Employee.

C. Neither the City Council nor any of its members shall interfere with the execution of the powers and duties of the Employee, as specified in the City Charter, the Municipal Code, this Agreement, or any other lawfully adopted and authorized document.

Section 6: COMPENSATION

Employer agrees to pay Employee for his services rendered pursuant hereto an initial annual base salary of $126,000 payable in installments at the same time as other Unrepresented Employees of the Employer are paid.
In addition, Employer agrees to increase said salary in increments of 3 percent per year in conjunction with the performance evaluation provided that the Employee has performed in a satisfactory manner. In addition, the Council agrees to increase benefits as the Council may determine, based on periodic salary review. Said reviews will be conducted on an annual basis during the month of September each year, in conjunction with the performance evaluation.

Except as hereinafter provided, Employee shall receive such other and further benefits as are accorded other Unrepresented Employees of the Employer, including, but not limited to, holidays, sick and bereavement leaves, and executive leave days. Notwithstanding the foregoing, in no event shall Employee receive cost of living or salary adjustments provided to Unrepresented Employees.

Section 7: PERFORMANCE EVALUATION

A. The Council shall review and evaluate the performance of the Employee at least once annually during the month of September. Said review and evaluation shall be in accordance with specific criteria developed jointly by Employer and Employee. Said criteria may be added to or deleted from as the Council may from time to time determine, in consultation with the Employee. Further, the Mayor shall provide the Employee with a summary written statement of the finding of the City Council and provide an adequate opportunity for the Employee to discuss his evaluation with the City Council.

B. Annually, in conjunction with the performance evaluation, the City Council and Employee shall define such goals and performance objectives that they determine necessary for the proper operation of the City of Fortuna and in the attainment of the City Council's policy objectives, and shall further establish a relative priority among those various goals and objectives, said goals and objectives to be reduced to writing. They shall generally be attainable within the time limitations as specified and the annual operating and capital budgets and appropriations provided.

C. In effecting the provisions of this Section, the City Council and Employee mutually agree to abide by the provisions of applicable law.

Section 8: EQUIPMENT

Employer shall provide all office, computing, and communications equipment (including cellular phone), furniture, and fixtures necessary and convenient to carry out the terms of this Agreement. Such equipment, furniture and fixtures shall be deemed the property of the Employer.
Employer shall pay for the purchase, installation, and maintenance of compatible computer equipment (hardware, software and internet access) for Employee at his residence, primarily for his use in conducting City business; provided, however, that it is expressly understood that the equipment may be subject to incidental personal use by Manager so long as it does not interfere with the equipment’s primary business use.

Section 9: TELECOMMUTE

Employee shall be permitted to telecommunicate and work from home periodically provided that doing so is compatible with the interests of the City, and is not detrimental to routine City function.

Section 10: AUTOMOBILE

Employee’s duties require that he have the use at all times during his employment with Employer of an automobile. Use of the City vehicle shall be limited to City business only, and Employee shall not use the City vehicle to commute to and from his home. In addition, Employer shall provide a car allowance of four hundred dollars ($400) per month to compensate Employee for the use of his personal vehicle.

Section 11: VACATION, SICK, AND MANAGEMENT LEAVE

A. The Employee shall utilize and accrue, and have credited and removed from his personal account, vacation, holidays (including personal holidays), and sick leave at the same rate and on the same basis as other Unrepresented Employees of the City. In the event of the termination, retirement or expiration of this Agreement, the Employee shall be entitled to payment of all leave balances in accordance with this Agreement. Earned Sick Leave will be compensated according to the same provisions as other Unrepresented Employees.

B. Employee shall receive four weeks of vacation per year.

C. Employee shall be given the same holidays as other Unrepresented Employees of the City.

D. Employee shall receive 80 hours of management leave per year in recognition of the time Employee must work outside normal office hours.

E. Employee shall be credited with such vacation, sick and management leave as he has accrued prior to the commencement date of this Agreement.
Section 12: DISABILITY, HEALTH, AND LIFE INSURANCE

A. The Employer agrees to provide health insurance (including medical, dental, and vision coverage to the Employee and family), life insurance, workers compensation, and short-term disability coverage to the Employee, and to pay all premiums thereon on the same basis as other Unrepresented Employees of the City.

B. Employer’s Medicare contribution of 1.45% is matched by an Employee contribution of 1.45% of Employee’s salary for mandated Medicare coverage.

C. Employee shall have the option to “buy out” Employers health insurance coverage, and, currently, Employee elects to do so. Employee shall be paid the current rate paid to other City employees exercising this option. If, at any time in the future, Employee requests health insurance (including medical, , and vision coverage to the Employee and family), the Employer’s contribution to Employee’s deferred compensation as stated in Section 13 “Retirement” of this contract, may be re-negotiated at the Employer’s discretion.

Section 13: RETIREMENT

Employer agrees to pay the Employer’s cost, excluding the Employee’s share, into the Public Employees’ Retirement System (PERS 2.0% at 62 formulas) for the benefit of the Employee.

To the extent authorized by Internal Revenue Code Section 457 and regulations applicable thereto (“federal laws”), City agrees to pay annually, on behalf of Employee 75% of the maximum allowable contribution pursuant to applicable federal laws, into the Employee’s deferred compensation account with the City’s current deferred compensation provider.

Section 14: DUES AND SUBSCRIPTIONS

Employer agrees, to the extent it is financially able and with City Council approval, to budget for and to pay for professional dues and subscriptions of Employee necessary for his continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for his continued professional participation, growth, and advancement, and for the good of the Employer.

Section 15: PROFESSIONAL DEVELOPMENT

A. Employer hereby agrees, to the extent it is financially able and with City Council approval, to budget for and to pay for travel and subsistence expenses of Employee for professional and office travel, meetings, and occasions adequate
to continue the professional development of Employee and to adequately pursue necessary official functions for Employer, including but not limited to the League of California Cities annual Conference and the annual International City Managers Association Meeting, City Manager’s Department meeting, and such other national, regional, state, and local governmental groups and committees thereof which Employee serves as a member.

B. City recognizes that Employee may incur expenses of a non-personal, job-related nature that are reasonably necessary to Employee’s service to City. Employer agrees to either pay such expenses in advance or to reimburse the expenses, so long as the expenses are incurred and submitted according to City’s normal expense reimbursement procedures or such other procedure as may be designated by the City Council. To be eligible for reimbursement, all expenses must be supported by documentation meeting City’s normal requirements and must be submitted within time limits established by City.

C. Employee agrees to pay the professional dues and subscriptions on behalf of Employee which are necessary for Employee’s continuation or full participation in international, national, regional, state, or local associations and organizations necessary and desirable for Employee’s continued professional participation, growth and advancement, or for the good of the City, in an amount up to Three Thousand Five Hundred Dollars ($3,500.00) per year.

D. Employer agrees to pay Employee’s travel and subsistence expenses for official travel, meetings, and occasions reasonably necessary to continue Employee’s professional development, and for Employee’s reasonable participation in necessary official and other functions for the City; including, but not limited to, national, regional, state, and local conferences, and governmental groups and committees on which Employee serves as a member. Notwithstanding the above, the number of conferences or meetings City will pay for each year, and attendance at out-of-state conferences and meetings, shall be at the discretion of the City Council as set forth in the City’s budget.

Section 16: INDEMNIFICATION

Consistent with the California Government Code and local law, City shall defend, hold harmless, and indemnify Employee using legal counsel of City’s choosing, against Employer shall defend, save harmless, indemnify Employee against any tort, professional liability claim or demand or other civil legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employees duties as Employee. Legal representation, provided by City for Employee, shall extend until a final determination of the issues including any and all losses, damages, judgments, interest, settlements, fines, court costs, and the reasonable
costs and expenses of legal proceedings, including appeals, and including attorneys' fees, and expert witness fees and all other trial and appellate costs, and other liabilities incurred, imposed upon, or suffered by Employee in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened. Employer may compromise and settle any such claims or disputes and pay the amount of any settlement or judgment rendered thereon.

Notwithstanding the foregoing, Employer shall not be obligated to defend or indemnify Employee when it determines that Employees act or omission was not within the scope of employment or that Employee acted or failed to act because of actual fraud, malice or corruption.

In the event there is a conflict of interest between Employer and Employee such that independent counsel is required for Employee, Employee may engage his own legal counsel, in which event City shall indemnify Employee, including direct payment of all such reasonable costs related thereto.

Finally, in any criminal proceeding brought against Employee, Employer is not required to defend or indemnify, but in its discretion, may elect to do so.

Section 17: BONDING

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

Section 18: OTHER TERMS AND CONDITIONS OF EMPLOYMENT

A. The Council, in consultation with the Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of Employee provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City of Fortuna Charter and Municipal Code or any other law.

B. Any modifications to this Agreement shall be effective only if in writing and signed by both of the parties hereto.

C. All provisions of the City of Fortuna Charter and Municipal Code, regulations and rules of the Employer relating to vacation and sick leave, retirement and pension system contributions, holidays and other benefits and working conditions as they now exist or hereafter may be amended also shall apply to Employee as they would to other employees of the Employer, in addition to said benefits enumerated specifically for the benefit of the Employee except as herein provided.
Section 19: NOTICES

Notices pursuant to this agreement shall be given via first class mail by deposit in the custody of the United States Postal Service postage prepaid, addressed as follows:

(1) EMPLOYER: City of Fortuna, 621 11th Street, Fortuna; CA 95540

(2) EMPLOYEE: Merritt Perry, 13887 West End Rd, Arcata, CA. 95521

Alternately, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course transmission in the United States Postal Service.

Section 20: GENERAL PROVISIONS

A. The terms herein shall constitute the entire Agreement between the parties. This Agreement embodies the whole Agreement between the parties hereto, and there are no inducements, promises, terms or obligations made or enforced into by the City or Perry other than those contained herein.

B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee and may only be amended by the mutual written agreement of the parties.

C. This Agreement shall become effective commencing November 1, 2018. The “Anniversary Date” of this Agreement shall be November 1.

D. If any section or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

E. Employer and Employee agree that they will, at all times, assist each other in defending any litigation involving the City, or Employee’s duties with the City, and Employer agrees to defend Employee against any claim or action against him for an injury arising out of an act or omission occurring within the scope of his employment. The parties shall each comply with the requirements of Section 825 of the Government Code or its successor, in implementing this paragraph.

F. The parties agree that any ambiguity in this Agreement shall not be construed or interpreted against, or in favor of, either party.
IN WITNESS WHEREOF, the City of Fortuna has caused this agreement to be signed and executed its behalf by its Mayor and duly attested by its City Clerk, and the Employee has signed and executed this agreement, both in duplicate, the day and year first above written.

________________________________
Sue Long, Mayor
City of Fortuna

________________________________
Merritt Perry, Employee

ATTEST:

________________________________
Siana Emmons, City Clerk

APPROVED AS TO FORM:

________________________________
David Tranberg, City Attorney