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(Exempt from filing fees per Gov. Code § 6103)

6 Attorneys for Plaintiff,
7 City of Fowler

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF FRESNO

11 CITY OF FOWLER, a Municipal Corporation,

12 Plaintiff,

13 v.

14 DAVID L. ELIAS, an individual; and DOES 1
15 through 10, inclusive

16 Defendants.

Case No.

COMPLAINT FOR DAMAGES FOR:

- 1) **CONVERSION**
- 2) **BREACH OF CONTRACT;**
- 3) **FRAUDULENT CONCEALMENT (CIV. CODE § 1710);**
- 4) **VIOLATIONS OF THE FALSE CLAIMS ACT (GOV. CODE § 12650, et seq.); AND**
- 5) **BREACH OF FIDUCIARY DUTY**

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18
19 Plaintiff City of Fowler (hereinafter “City” or “Plaintiff”) submits the following Complaint for
20 damages:

21 **PARTIES**

- 22 1. The City is now, and was at all times herein mentioned, a municipal corporation duly organized
23 and existing under the laws and the constitution of the State of California, operated and is
24 operating within the county of Fresno, in this Court’s judicial district.
- 25 2. Defendant David L. Elias (hereinafter “Elias”) is or was, and at all times mentioned herein, an
26 individual and resident of the County of Kings or the County of Fresno, State of California.
- 27 3. The City is ignorant of the true names and capacities of the defendants sued herein as DOES 1
28 through 10, inclusive, and therefore it sues these defendants by fictitious names pursuant to Code

1 of Civil Procedure section 474. The City will amend this Complaint to allege their true names
2 and capacities when ascertained.

3 4. The City is informed and believes and on that basis alleges, that each of these fictitiously named
4 defendants is responsible in some manner for the acts or omissions alleged in this Complaint and
5 that the City's injuries and damages were proximately caused by acts or omissions of these
6 defendants.

7 5. The City is informed and believes, and upon such information and belief alleges, that at all times
8 herein mentioned, Elias and DOES 1 through 10 ("Defendants") were each the agents, servants
9 and employees of the other Defendants, and each was acting within the course and scope of
10 his/her/its agency, service and employment and with the knowledge, consent, and/or ratification
11 of each of the other Defendants.

12 JURISDICTION AND VENUE

13 6. Jurisdiction is proper in the Superior Court for the County of Fresno pursuant to Code of Civil
14 Procedure section 410.10 because it has general subject matter jurisdiction and no statutory
15 exceptions to jurisdiction exist. The amount in controversy in this action exceeds the
16 jurisdictional minimum of this Court.

17 7. Venue is proper in the County of Fresno pursuant to Code of Civil Procedure section 395
18 because Elias entered into an initial employment contract and supplemental contracts with the
19 City of Fowler in Fresno County, and a substantial portion of the events or occurrences giving
20 rise to City's losses occurred in Fresno County.

21 ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

22 8. Elias served as the City Manager for the City from 2000 to 2017. During this time, Elias served
23 the City pursuant to the City Manager Contract, which consisted of the provisions of the Fowler
24 Municipal Code sections 2-5.00 – 2-5.31 and supplemental agreements over time that delineated
25 additional terms and conditions of employment. The most recent supplemental agreement that
26 Elias and City entered into was dated June 3, 2015. (A true and correct copy of David Elias'
27 2015 City Manager Supplemental Agreement is attached hereto as **Exhibit 1.**)
28

- 1 9. As City Manager, Elias was expected to act as the chief administrative officer of the City. He
2 and Defendants, and each of them, were charged with administration of all City affairs as
3 enumerated within the Fowler Municipal Code and owed a fiduciary duty to the City. He and
4 Defendants, and each of them, were responsible for handling all matters relating to the financial
5 wellbeing of the City, personnel issues, law enforcement issues, and organization of City offices.
6 (A true and correct copy of the Fowler Municipal Code §§ 2-5.00 – 2-5.31 is attached hereto as
7 **Exhibit 2.**)
- 8 10. On about December 22, 2016, the City became aware of several personal purchases that were
9 charged to the City’s credit cards by Elias.
- 10 11. At that time, the City became aware that Elias had made requests for certain reimbursements or
11 had made charges to City credit cards for auto-related expenses, such as purchasing tires for his
12 and his wife’s personal vehicles, despite his contract indicating that he was given a vehicle
13 allowance in lieu of vehicle reimbursements.
- 14 12. On about January 24, 2017, Elias retired from the City as City Manager.
- 15 13. It was subsequently discovered that other personal purchases made by Elias and Defendants, and
16 each of them, with the City’s funds included, but were not limited to, payments to the following
17 vendors: Tommy Bahama, PayPal, Major League Baseball, Fresno Grizzlies, The Golf Mart,
18 iTunes, Starbucks, Ticketmaster, StubHub, San Francisco Giants Baseball, Crowdsurge
19 Ticketing, Nordstrom, etc.
- 20 14. On about November 9, 2017, the City retained an accounting company to conduct an audit of the
21 City’s credit card statements for any personal expenses charged by Elias.
- 22 15. On November 14, 2017, the District Attorney’s Office filed felony charges against Elias in
23 Fresno Superior Court Case No. F17906616 for fourteen counts of embezzlement pursuant to
24 Penal Code section 424, subsection (a)(1). This case is currently still pending.
- 25 16. On or about May 22, 2018, the accounting company completed its audit and concluded that Elias
26 used the City’s Costco credit card and other City credit cards for personal purchases totaling
27 more than \$55,000, for credit card statements dating from December 7, 2008 to March 10, 2017.
28

1 17. The personal purchases made by Elias and Defendants, and each of them, with the City's funds
2 were not authorized by the City or by Elias' City Manager contract.

3 18. The personal purchases made by Elias and Defendants, and each of them, with the City's funds
4 were outside of the scope of employment with the City as City Manager or employee.

5 **FIRST CAUSE OF ACTION**
6 **CONVERSION**
7 (Against David Elias and DOES 1-10.)

8 19. Plaintiff re-alleges paragraphs 1 through 18, and incorporates them by reference herein.

9 20. While Elias was employed as City Manager, he had access to the City's credit cards.

10 21. The City maintains a property right in its credit card accounts and maintains an exclusive claim
11 to the balance of said accounts.

12 22. Elias and Defendants, and each of them, substantially interfered with the City's credit card
13 accounts and City funds by assuming control over the accounts and intentionally making
14 unauthorized personal purchases.

15 23. The City alleges that Elias and Defendants, and each of them, did not return all the funds to the
16 City for the unauthorized personal purchases he made.

17 24. The City alleges that Elias and Defendants, and each of them, converted City funds in an amount
18 of more than \$55,000. Elias' and Defendants', and each of their, intentional wrongful acts were a
19 substantial factor in causing the City's harm.

20 **SECOND CAUSE OF ACTION**
21 **BREACH OF CONTRACT**
22 (Against David Elias and DOES 1-10.)

23 25. Plaintiff re-alleges paragraphs 1 through 24, and incorporates them by reference herein.

24 26. On about June 1, 2000, the City and Elias entered into an employment contract (entitled City of
25 Fowler City Manager Supplemental Agreement), appointing him as City Manager. (Attached
26 hereto as **Exhibit 3** is a true and correct copy of David Elias' 2000 City Manager Supplemental
27 Agreement.)

28 27. On about June 20, 2006, the City and Elias entered into another supplemental agreement, which
in pertinent part extended his City Manager Contract by five years, from July 1, 2006 to June 30,

1 2011. (Attached hereto as **Exhibit 4** is a true and correct copy of David Elias' 2006 City
2 Manager Supplemental Agreement.)

3 28. On about July 1, 2008, the City and Elias entered into another supplemental agreement, which in
4 pertinent part extended his City Manager Contract by a period of five years, from July 1, 2008 to
5 June 30, 2013. (Attached hereto as **Exhibit 5** is a true and correct copy of David Elias' 2008 City
6 Manager Supplemental Agreement.)

7 29. On about March 21, 2012, the City and Elias entered into another supplemental agreement,
8 which in pertinent part extended his City Manager agreement by a period of five years, from July
9 1, 2012 to June 30, 2017. (Attached hereto as **Exhibit 6** is a true and correct copy of David Elias'
10 2012 City Manager Supplemental Agreement.)

11 30. On about May 20, 2014, the City and Elias entered into an Amended City Manager
12 Supplemental Agreement. This agreement incorporated by reference all the other agreements
13 from 2006, 2008, and 2012. This supplemental agreement also added in provisions that Elias
14 would be provided a monthly vehicle stipend in lieu of being reimbursed for vehicle expenses.
15 (Attached hereto as **Exhibit 7** is a true and correct copy of David Elias' 2014 City Manager
16 Supplemental Agreement.)

17 31. The most recent supplemental agreement entered into between the City and Elias was in June of
18 2015. This supplemental agreement, in pertinent part, extended Elias' City Manager agreement
19 by a period of five years from July 1, 2015 to June 30, 2020.

20 32. Elias breached the 2014 and 2015 Supplemental Agreements by requesting reimbursements from
21 the City for vehicle repairs to both his and his wife's personal vehicle on several different
22 occasions between 2014 and 2017.

23 33. Further, as the Fowler Municipal Code is incorporated into the City Manager Contract as to the
24 duties and powers of the position, Elias and Defendants, and each of them, breached the City
25 Manager Contract by violating the terms of Fowler Municipal Code section 2-5.30 by willfully
26 misusing City funds for personal expenses from 2008 through 2017.

27 34. Elias' and Defendants', and each of their, breaches of the terms of the City Manager Contract
28 have caused damages to the City in an amount of more than \$55,000. These purchases were

1 made outside of the scope of Elias’ and Defendants’, and each of their, employment with the
2 City. Elias’ and Defendants’, and each of their, breaches of the City Manager Contract were a
3 substantial factor in causing the City harm.

4 **THIRD CAUSE OF ACTION**
5 **FRAUDULENT CONCEALMENT (CIV. CODE § 1710.)**
6 (Against David Elias and Does 1 through 10.)

- 7 35. Plaintiff re-alleges paragraphs 1 through 34, and incorporates them by reference herein.
- 8 36. The City alleges that a fiduciary relationship existed between the City and Elias in his capacity as
9 a City Manager, and between the City and Defendants, and each of them.
- 10 37. The City alleges that Elias and Defendants, and each of them, intentionally failed to disclose
11 facts relating to unauthorized personal purchases made with the City’s credit cards.
- 12 38. The City was unaware of these personal purchases being made until years after they occurred. As
13 soon as an employee of the City first brought these issues to the City’s attention, the City took
14 immediate actions to rectify the damages caused to the City by Elias and Defendants, and each of
15 them.
- 16 39. Unauthorized personal purchases were made by Elias and Defendants, and each of them, from
17 about December 2008 through March 2017. Elias and Defendants, and each of them, never
18 brought these unauthorized personal purchases to the attention of the City, despite their fiduciary
19 duty to do so.
- 20 40. Elias and Defendants, and each of them, intentionally deceived the City by concealing these
21 purchases and by continuing to make further purchases with City funds without reimbursing or
22 notifying responsible City staff.
- 23 41. When a billing statement would come in, Elias and Defendants, and each of them, would only
24 submit the total statement amount, intentionally removing documentation as to the description of
25 the purchases made. When the credit card statements were presented to the City, Elias and
26 Defendants, and each of them, would put notes on the statements mislabeling the personal
27 expenses as valid business expenses.
- 28

1 42. The City was harmed by Elias’ and Defendants’, and each of their, concealment of facts relating
2 to these unauthorized personal purchases in an amount of more than \$55,000. Concealment of
3 these facts was a substantial factor in causing the City’s harm.

4 **FOURTH CAUSE OF ACTION**
5 **VIOLATIONS OF THE FALSE CLAIMS ACT (GOV. CODE § 12650, *et seq.*)**
6 (Against David Elias and Does 1 through 10.)

7 43. Plaintiff re-alleges paragraphs 1 through 42, and incorporates them by reference herein.

8 44. Elias and Defendants, and each of them, used City credit cards to make personal purchases.

9 When a billing statement would come in, Elias and Defendants, and each of them, would only
10 submit the total statement amount, intentionally removing documentation as to the description of
11 the purchases made. When the credit card statements were presented to the City, Elias and
12 Defendants, and each of them would put notes on the statements mislabeling the personal
13 expenses as valid business expenses.

14 45. For example, Elias submitted a Costco credit card statement to the City for payment in the
15 amount of \$1,552.20. The statement did not include the pages describing the charges, but had
16 handwritten notes on the summary page to code the charges as supplies for various City
17 departments. Review of the full billing statement revealed that this payment was actually for
18 charges incurred from: The Highland Mint (sports memorabilia), SF Giants Community (sports
19 apparel), TicketMaster (Kenney Chesney concert tickets), and several PayPal accounts for other
20 personal purchases.

21 46. The credit card statements submitted by Elias and Defendants, and each of them, contained
22 charges for unauthorized personal purchases that were outside of the scope of their employment.

23 47. The funds used by the City to pay for the credit card statements submitted by Elias and
24 Defendants, and each of them, were “Political Subdivision Funds” as defined in Section 12650 of
25 the Government Code, as these were City funds.

26 48. Elias and Defendants, and each of them, knowingly presented or caused to be presented false or
27 fraudulent claims for payment or approval. He and Defendants, and each of them, concealed the
28 description of the charges in the statements and mislabeled the statement to reflect a valid
business purpose.

1 49. Elias and Defendants, and each of them, had possession or control of public funds and
2 knowingly delivered less than all of those funds back to the City.

3 50. As an employee of the City, Elias and Defendants, and each of them, knew or should have
4 known it was unlawful to knowingly submit false credit card statements for charges for personal
5 purchases to the City.

6 51. As a result of Elias and Defendants, and each of them, knowingly presenting or causing to be
7 presented the false claims, the City incurred damages, including actual damages of more than
8 \$55,000, and the cost of consultation with legal counsel regarding the false claims, including
9 attorneys' fees and costs.

10 **FIFTH CAUSE OF ACTION**
11 **BREACH OF FIDUCIARY DUTY**
(Against David Elias and Does 1 through 10.)

12 52. Plaintiff re-alleges paragraphs 1 through 51, and incorporates them by reference herein.

13 53. Elias was appointed as City Manager in June of 2000.

14 54. As City Manager, Elias was expected to act as the chief administrative officer of the City. He
15 and Defendants, and each of them, were charged with administration of all City affairs as
16 enumerated within the Fowler Municipal Code. He and Defendants, and each of them, were
17 responsible for handling all matters relating to the financial wellbeing of the City, personnel
18 issues, law enforcement issues, and organization of City offices.

19 55. As City Manager and employee, Elias and Defendants, and each of them, owed the City a
20 fiduciary duty to act with the utmost good faith, honesty, and fidelity for the benefit of the City.

21 56. Elias and Defendants, and each of them, breached their fiduciary duty to the City by converting
22 and misappropriating City's funds as their own, for their personal use and enjoyment. Elias and
23 Defendants, and each of them, took advantage of their positions with the City to acquire a
24 financial gain.

25 57. Elias' and Defendants', and each of their, breach of their duty to the City is a direct and
26 proximate cause of the damages sustained by the City in an amount of more than \$55,000.
27
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PRAYER

WHEREFORE, the City prays for judgment against all Defendants, and each of them, as follows:

Pursuant to all causes of action:

1. For compensatory damages in an amount to be determined at trial;
2. For pre-judgment interest as authorized by law;
3. For punitive and exemplary damages in an amount to be determined at trial;
4. For costs of the suit incurred herein that may be allowed by law;
5. Such other and further relief as the Court may deem proper.

Additionally as to the violations of the False Claims Act:

6. For a civil penalty of ten-thousand dollars (\$10,000) pursuant to Government Code section 12651(a) for each false claim presented to the City;
7. For three times the amount of damages sustained by the City, subject to proof at the time of trial, related to the false claims; and
8. For costs of suit and attorney's fees incurred herein under the terms of the False Claims Act.

Dated: November 26, 2019

Respectfully submitted,

LOZANO SMITH



MATTHEW M. LEAR
Attorneys for Plaintiff
City of Fowler

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Exhibit 1



**CITY OF FOWLER
SECOND AMENDED CITY MANAGER
SUPPLEMENTAL AGREEMENT
(JUNE 2015)**

This Second Amended City Manager Supplemental Agreement (“2015 Agreement”) is entered into effective July 1, 2015, between the City of Fowler, a California general law city (“Fowler”), and David Elias (“Elias”) with respect the following recitals which are a substantive part of this Agreement:

- A. On June 20, 2006, Fowler and Elias entered into a City Manager Supplemental Agreement (“2006 Agreement”) for the purposes of supplementing the City Manager’s terms of employment set forth by City ordinance (Chapter 5 of Title 2 of the Fowler Municipal Code). The Recitals from the 2006 Agreement are incorporated herein by reference.
- B. Fowler and Elias amended the 2006 Agreement in 2008, 2010, and 2012, to address the term of the 2006 Agreement and other matters.
- C. In 2014 Fowler and Elias desired to make additional amendments to the 2006 Agreement to provide for a vehicle allowance. In that regard, rather than prepare another amendment to the 2006 Agreement, Fowler and Elias entered into an Amended City Manager Supplemental Agreement incorporating all amendments into a single document (“2014 Agreement”).
- D. Fowler and Elias desire to extend the term set forth in the 2014 Agreement and to remove the 8% cap on cost of living increases made applicable to all employees. Rather than amending the 2014 Agreement, for clarity purposes it is prudent to prepare a Second Amended City Manager Supplemental Agreement.

NOW, THEREFORE, in exchange for the mutual consideration set forth herein, the parties agree as follows:

- 1. Term of Agreement. This Agreement shall be for a period of five (5) years commencing on July 1, 2015, and ending on June 30, 2020.
- 2. Residency. Elias need not be a resident of the City of Fowler. Elias shall reside within no more than an average one (1) hour driving distance to Fowler.

3. Health Insurance.

- a. Payment of Premium. Fowler shall pay the premium for Elias' selected City offered health insurance plan, including the premium to cover his spouse and dependents. The full premium shall be paid notwithstanding that the current Fowler Benefits Resolution (No. 1785G) provides for a monthly allowance to be used toward the premium.
- b. Payment of Deductibles and Co-Payments. In addition to the foregoing, Fowler shall reimburse Elias for Elias' out of pocket costs for deductibles and co-payments incurred by Elias, his spouse, or dependents, in utilizing the health insurance in each calendar year up to a maximum reimbursement of Six Thousand Dollars (\$6000.00) in any calendar year. Elias shall provide written evidence of incurring the expense prior to reimbursement. Fowler shall reimburse the expense within thirty (30) days of submittal of the written evidence. To be eligible for reimbursement, requests must be made no later than thirty (30) days following the calendar year in which the expense was incurred.
- c. Tax Consequences from Reimbursements. Elias shall be responsible for, and hold Fowler harmless from, any tax consequences to Elias, if any, associated with the reimbursements.

4. Vehicle Allowance. Elias is required to have a vehicle available to perform the duties of his position. Beginning July 1, 2014, in lieu of the use of a City vehicle, Fowler shall provide Elias with a monthly vehicle allowance of Six Hundred Dollars (\$600.00) for use of a personal vehicle on City business. Elias shall be solely responsible for all expense to use, maintain, operate and insure the vehicle. No documentation is required in order to receive this vehicle allowance and Elias shall have discretion regarding the expenditure of this allowance. Elias' receipt of this vehicle allowance shall be in lieu of any entitlement to mileage reimbursement except as follows: If Elias travels more than fifty (50) miles one way outside City limits on business, Elias may request mileage reimbursement for all miles in excess of one hundred (100) miles under the IRS rate in effect at the time the expense is incurred, or alternatively Elias may use a designated City vehicle. This allowance is not considered additional compensation for the purposes of PERS, but shall be taxable according to IRS and Franchise Tax Board regulations.

5. Termination and Severance.

- a. Termination Without Cause. Elias is an at will employee serving at the pleasure of the Council. If Elias is able and willing to perform his duties as required by Chapter 5 of Title 2 of the Fowler Municipal Code and the Council decides to terminate Elias from the position of City Manager

without cause (as defined below) and prior to expiration of this Agreement, Fowler shall provide Elias with the following severance package:

(i) Fowler shall pay to Elias a sum of money equivalent to Elias' current monthly salary (excluding benefits) on a monthly basis until Elias finds employment elsewhere as a full time City Manager, or twelve (12) months elapses, whichever occurs first. Payments shall be made once a month at the same time as the second pay period for Fowler employees. Required deductions shall be made from the payments.

(ii) Fowler shall pay Elias' monthly health insurance premium under COBRA (for Elias, his spouse, and dependents) until Elias finds employment elsewhere as a full time City Manager, until Elias finds employment which provides health insurance, or until twelve (12) months elapses, whichever occurs first.

(iii) Should Elias be terminated under this Section within the final year of this Agreement (July 1, 2019 to June 30, 2020), the monthly benefits provided under subsections (i) and (ii) shall be limited to the same number of months as are remaining under the term of this Agreement, except that in no event shall the benefits be less than that provided for under City ordinance.

(iv) Fowler and Elias agree that the damages to Elias which may result from early termination of this Agreement cannot be readily ascertained, and therefore agree that the payments made pursuant to this subsection constitute reasonable liquidated damages for Elias and fully compensates Elias for all tort, contract, and other damages of any nature whatsoever, whether in law or equity. Fowler and Elias agree that Fowler's completion of its obligations under this subsection constitutes Elias' sole remedy to the fullest extent provided by law.

- b. Termination for Cause. If Elias is terminated for cause, Elias shall not be entitled to the benefits under this Section.
- c. For Cause Defined. For cause shall mean any of the following: (i) the refusal to follow the lawful directions of the Council; (ii) failure to substantially perform any of the required duties of the City Manager; (iii) repeated unexcused absences from the City Manager's office and duties; (iv) conviction of a felony; (v) conviction of a misdemeanor crime involving acts of moral turpitude; (vi) willful misconduct as defined in Section 2-5.30 of the Fowler Municipal Code.
- d. Termination Defined. Termination shall mean removal from office, a request that the City Manager resign, and a reduction in salary.

Termination shall not mean a reduction of other benefits generally applicable to all management employees.

- e. Other Entitlements. This Agreement is supplemental to other entitlements Elias may have under Fowler's Benefits Resolution and State law upon termination from employment.
 - f. Notice of Termination. Fowler shall provide Elias with at least thirty (30) days written notice of removal from his position as the City Manager.
 - g. Relationship to Severance and Notice Provisions Under the Municipal Code. The payments made under this Section shall be in lieu of Section 2-5.06(b) of the Fowler Municipal Code, which sets forth severance pay for the City Manager upon an involuntary termination, and not as an additional benefit. This Section shall also be in lieu of the procedures set forth in Sections 2-5.09 and 2-5.25 through 2-5.28 of the Fowler Municipal Code which might otherwise require a sixty (60) days notice of removal, an opportunity for a hearing on the removal, and place a limit on removal for sixty (60) days following an election. Upon expiration of this Agreement, these Municipal Code provisions, as they may have been amended, shall apply.
 - h. Consultation After Termination. For a period of sixty (60) days after termination, regardless of the reason, Elias shall be reasonably available for consultation regarding City operations. Elias shall receive no compensation for this consultation except for the consideration provided for in this Agreement.
 - i. Conviction of Crime Involving Abuse of Office. Regardless of the term of this 2015 Agreement, if this 2015 Agreement is terminated, any cash settlement related to the termination shall be fully reimbursable to Fowler if Elias is convicted of a crime involving an abuse of his office.
6. Notice of Resigning. Elias shall provide to Fowler at least sixty (60) days written notice of his intent to voluntarily resign as the City Manager.
7. Cost of Living Adjustments. Fowler agrees that any cost of living adjustments made applicable to all employee salary schedules shall also be made to the City Manager salary schedule applicable to Elias. Nothing in this Section shall be deemed to impair Fowler's authority to revise the City Manager's salary schedule.
8. Dispute Resolution. Any disputes over the interpretation or application of this Agreement shall be submitted to mediation at least thirty (30) days prior to either party filing a claim with the City or any administrative agency or initiating litigation over the dispute. The parties shall mutually agree upon a mediator and share equally in the costs of the mediation. Either party may initiate mediation by

providing written notice to the other party. Mediation shall thereafter be conducted at the soonest feasible time. The parties shall in good faith cooperate in selecting the mediator and scheduling the mediation.

9. Supplemental Agreement. This Agreement is supplemental to the provisions of Chapter 5 of Title 2 of the Fowler Municipal Code, Fowler's Benefits Resolution, and Fowlers salary schedule for the position of City Manager. The provisions of Chapter 5, the Benefits Resolution, and the salary schedule shall control over all aspects of the City Manager position not addressed by this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates following their signature.

ELIAS



David Elias

June 3, 2015

FOWLER



David Cardenas, Mayor

June 3, 2015

Exhibit 2

Chapter 5 - CITY MANAGER

Sections:

2-5.00 - Office created.

The proper administration of the City requires the creation of the office of City Manager in order that the public business may be carried out in the most efficient, best coordinated, well-planned, and properly programmed manner with reference to both the work performed and the expense incurred. By reason thereof the position of City Manager is hereby created. Wherever in this Code the term "City Administrator" is used that term shall mean "City Manager."

(Ord. 86-3, eff. September 18, 1986, as amended by § 1, Ord. 94-2, eff. April 15, 1994)

2-5.01 - Appointment by majority vote of the Council: Qualifications.

The City Manager shall be appointed by a majority vote of the Council solely on the basis of his administrative and executive ability and qualifications and shall hold office for and during the pleasure of the Council.

(Ord. 86-3, eff. September 18, 1986, as amended by § 2, Ord. 94-2, eff. April 15, 1994)

2-5.02 - Hours of work.

The City Manager shall devote his entire employable time to his duties and the interests of the City. The office of the City Manager shall not carry a regular workweek nor overtime pay but shall involve and require that number of hours and days of work necessary to the proper performance of his duties.

(Ord. 86-3, eff. September 18, 1986, as amended by § 2, Ord. 94-2, eff. April 15, 1994)

2-5.03 - Residency.

Residence in the City at the time of the appointment of a City Manager shall not be required as a condition of appointment, but within 180 days after reporting for work (or such other time period as considered reasonable by the Council) the City Manager shall become a resident of the City, unless the Council approves his residence outside the City.

(Ord. 86-3, eff. September 18, 1986, as amended by § 2, Ord. 94-2, eff. April 15, 1994)

2-5.04 - Eligibility.

No member of the Council shall be eligible for appointment as City Manager until at least one year has elapsed after such Council member shall have ceased to be a member of the Council.

(Ord. 86-3, eff. September 18, 1986, as amended by § 2, Ord. 94-2, eff. April 15, 1994)

2-5.05 - Bond.

The City Manager shall furnish a corporate surety bond, which shall be approved by the Council in such sum as may be determined by the Council, and which shall be conditioned upon the faithful performance of his duties as prescribed in this chapter. The premium for such bond shall be a proper charge against the City.

(Ord. 86-3, eff. September 18, 1986, as amended by § 2, Ord. 94-2, eff. April 15, 1994)

2-5.06 - Compensation.

- (a) The City Manager shall receive such compensation as the Council shall from time to time determine. In addition, the City Manager shall be reimbursed for all actual and necessary expenses incurred by him in the performance of his official duties or incurred when traveling on business pertaining to the City under direction of the Council. Reimbursement shall only be made, however, when a verified itemized claim, setting forth the sums expended for which reimbursement is requested, has been presented to the Council and by the Council duty approved and allowed. The City agrees to increase the City Manager's compensation and other benefits in such amounts and to such an extent as the Council may determine that it is desirable to do so on the basis of an annual salary review of the City Manager made at the same time as similar consideration is given other employees generally. At all times, the Council reserves the option of more frequent reviews of the City Manager's salary.
- (b) On the termination of the employment of the City Manager by reasons of involuntary removal from service other than for willful misconduct in office, the City Manager shall receive cash severance pay in a lump sum equal to one month's pay for every year of continuous service, or fraction thereof, as City Manager, up to a maximum of three (3) month's pay, such to be computed at the highest salary level received by the City Manager during his service with the City.

(Ord. 86-3, eff. September 18, 1986, as amended by § 2, Ord. 94-2, eff. April 15, 1994)

2-5.07 - Semiannual performance and objectives reviews.

The Mayor and the Council agree to provide time for and participate in a semiannual review of the operating goals and objectives of the City and the performance of the City Manager on or about August 1 and February 1 of each year. The goal of such performance review shall be to maintain an optimal working

relationship and a mutual understanding and agreement on duties, responsibilities, and priorities between the City Manager and the Council.

(Ord. 86-3, eff. September 18, 1986, as amended by § 2, Ord. 94-2, eff. April 15, 1994)

2-5.08 - Acting City Manager.

The Assistant City Manager shall serve as administrator pro tem during any temporary absence or disability of the City Manager. In the event there is no Assistant City Manager, the City Manager, by filing a written notice with the City Clerk, shall designate a qualified City employee to perform the duties of City Manager during his temporary absence or disability. In the event the City Manager's absence or disability extends over a one-month period, the Council, after the one-month period, may appoint an Acting City Manager, subject, however, to such person furnishing a corporate surety bond and conditioned on the faithful performance of the duties required to be performed as set forth in Sections 2-5.10 through 2-5.22 of this chapter.

(Ord. 86-3, eff. September 18, 1986, as amended by § 2, Ord. 94-2, eff. April 15, 1994)

2-5.09 - Disability.

If the City Manager becomes permanently disabled because of sickness, physical or mental disability, or any other cause, so that it reasonably appears that he will be unable to complete his duties for the City under his agreement and applicable laws, the Council shall have the option to terminate the agreement by giving sixty (60) days' written notice to the City Manager of such termination. The decision to exercise such option shall be based upon all medical and other information made available to the Council, and the decision of the Council shall be final and conclusive thereon.

(Ord. 86-3, eff. September 18, 1986, as amended by § 2, Ord. 94-2, eff. April 15, 1994)

2-5.10 - Powers and duties.

- (a) The City Manager shall be the chief administrative officer of the City under the direction and control of the Council. He shall be responsible to the Council for the proper and efficient administration of all affairs of the City and charged with those administrative functions enumerated in this chapter and otherwise lawfully delegated to him by the Council, including all those functions normally performed by the chief administrative officer of a municipal corporation as charged under the general laws of the State, the laws of the City, and custom and usage.
- (b) To fulfill his responsibilities, the City Manager as the chief appointive administrative officer of the City, and not as a limitation thereon, shall have the powers and duties set forth in Sections 2-5.11 through 2-5.22 of this chapter.

(Ord. 86-3, eff. September 18, 1986, as amended by § 2, Ord. 94-2, eff. April 15, 1994)

2-5.11 - Authority over employees.

It shall be the duty of the City Manager, and he shall have the authority, to exercise supervision, direction, and control over departments and divisions of the City government, except for the City Attorney who is excused by law from such control, and to coordinate the efforts and activities of the same, securing special counsel as required. All department heads shall be responsible to the City Manager for the proper conduct of their respective departments and for the subordinate officers and employees within the functions of each department.

(Ord. 86-3, eff. September 18, 1986, as amended by § 2, Ord. 94-2, eff. April 15, 1994)

2-5.12 - Law enforcement.

It shall be the duty of the City Manager to recommend to the Council for adoption such measures and ordinances as he deems necessary expedient, and to see that all the laws and ordinances of the City are duly enforced, and that all franchises, permits, and privileges granted by the City are faithfully observed.

(Ord. 86-3, eff. September 18, 1986, as amended by § 2, Ord. 94-2, eff. April 15, 1994)

2-5.13 - Service as Personnel Officer.

The City Manager shall exercise control over all departments of the City government, and over all department heads and employees thereof, and recommend to the Council the appointment or removal of all department heads.

(Ord. 86-3, eff. September 18, 1986, as amended by § 2, Ord. 94-2, eff. April 15, 1994)

2-5.14 - Recommendations as to measures for health, safety, welfare, and the like.

It shall be the duty of the City Manager to recommend to the Council the adoption of such measures as he may deem necessary or expedient for the health, safety, or welfare of the community or for the improvement of administrative services.

(Ord. 86-3, eff. September 18, 1986, as amended by § 2, Ord. 94-2, eff. April 15, 1994)

2-5.15 - Administrative reorganization of offices.

It shall be the duty of the City Manager to conduct studies and effect such administrative reorganization or consolidation of the offices, positions, or units under this direction as may be indicated in the interests of the efficient, effective, and economical conduct of the City's business, subject to Council approval.

(Ord. 86-3, eff. September 18, 1986, as amended by § 2, Ord. 94-2, eff. April 15, 1994)

2-5.16 - Attendance at Council, board, and commission meetings.

Unless otherwise directed or excused by the Council, it shall be the duty of the City Manager to attend all meetings of the Council, Planning Commission, and all other advisory commissions, boards, and committees as appointed by the Council, except as delegated by the City Manager to the appropriate City officer or employee. At such commission, board, or committee meetings which the City Manager attends, he shall be heard by such bodies as to all matters upon which he wishes to address the members thereof, and he shall inform such members of the status of any matter being considered by the Council, and he shall cooperate to the fullest extent with the members of all commissions, boards, and committees appointed by the Council.

(Ord. 86-3, eff. September 18, 1986, as amended by § 2, Ord. 94-2, eff. April 15, 1994)

2-5.17 - Preparation and administration of budgets: Financial condition of the City.

It shall be the duty of the City Manager to prepare the annual budget and, together with a message describing its important features, submit it to the Council by the second meeting in May at the latest for review, revision, and final approval. The City Manager shall serve as Finance Director and be responsible for the administration of the budget following its adoption by the Council, keeping the Council advised of the financial condition and future needs of the City and making recommendations as he may deem desirable. He shall prepare and submit to the Council as of the end of each fiscal year a complete report on the finances and administrative activities of the City for the preceding year, such financial reports not to be confused with the City Clerk's reports to the State Controller.

(Ord. 86-3, eff. September 18, 1986, as amended by § 2, Ord. 94-2, eff. April 15, 1994)

2-5.18 - Annual recommendations as to pay schedules.

It shall be the duty of the City Manager to recommend to the Council annually, at the beginning of each fiscal year and in association with the submittal of the proposed annual budget, a standard schedule of pay for each appointive office and position in the City service.

(Ord. 86-3, eff. September 18, 1986, as amended by § 2, Ord. 94-2, eff. April 15, 1994)

2-5.19 - Expenditure controls: Purchasing: Emergency purchases.

It shall be the duty of the City Manager to see that no expenditures be submitted or recommended to the Council except on the approval of the City Manager or his authorized representative. The City Manager, or his authorized representative, shall serve as Purchasing Officer and be responsible for the purchase of all supplies for all the departments and divisions of the City. He shall compile and keep up-to-date a complete

inventory of all property, real and personal, owned by the City and recommend to the Council the purchase of new machinery, equipment, and supplies whenever, in his judgment, the same can be obtained at the best advantage, taking into consideration the trade-in values of machinery, equipment, and the like in use. In the case of an accident, disaster, or other circumstance creating a public emergency, the City Manager is authorized to award contracts and make purchases for the purpose of meeting such emergency. He shall file promptly with the Council a certificate showing such emergency and the necessity for taking such action, together with an itemized accounting of expenditures.

(Ord. 86-3, eff. September 18, 1986, as amended by § 2, Ord. 94-2, eff. April 15, 1994)

2-5.20 - Public buildings.

It shall be the duty of the City Manager to exercise general supervision over all public buildings, public parks, and all other public property which are under the control and jurisdiction of the Council.

(Ord. 86-3, eff. September 18, 1986, as amended by § 2, Ord. 94-2, eff. April 15, 1994)

2-5.21 - Investigations and complaints.

It shall be the duty of the City Manager to make investigations into the affairs of the City, and any department or division thereof, and any contract for the proper performance of any obligation of the City. Further, it shall be the duty of the City Manager to investigate all complaints in relation to matters concerning the administration of the City government and in regard to the service maintained by public utilities in the City.

(Ord. 86-3, eff. September 18, 1986, as amended by § 2, Ord. 94-2, eff. April 15, 1994)

2-5.22 - Additional duties.

It shall be the duty of the City Manager to provide leadership for civic movements designed to benefit the residents of the City when so authorized by the Council and to perform such other duties and exercise such other powers as may be required by the Council or delegated to him from time to time by ordinance, resolution, or other official action of the Council.

(Ord. 86-3, eff. September 18, 1986, as amended by § 2, Ord. 94-2, eff. April 15, 1994)

2-5.23 - Council-City Manager relations.

Except for matters of inquiry, the Council shall deal with the administrative services and personnel of the City through the City Manager, and neither the Council nor the members thereof shall give orders or instructions to any subordinate of the City Manager, but shall voice their policies and instructions through

him. The City Manager shall take his orders and instructions from the Council only when sitting in a duly convened meeting of the Council.

(Ord. 86-3, eff. September 18, 1986, as amended by § 2, Ord. 94-2, eff. April 15, 1994)

2-5.24 - Departmental cooperation.

It shall be the duty of all subordinate officers and the City Clerk, City Treasurer, and City Attorney to assist the City Manager in administering the affairs of the City efficiently, economically, and harmoniously.

(Ord. 86-3, eff. September 18, 1986, as amended by § 2, Ord. 94-2, eff. April 15, 1994)

2-5.25 - Removal.

The removal of the City Manager shall be effected only by a majority vote of the whole Council as then constituted, convened in a regular Council meeting, subject, however, to the provisions of Sections 2-5.26 through 2-5.28 of this chapter. In case of his intended removal by the Council, the City Manager shall be furnished with a written notice, stating the Council's intention to remove him, at least thirty (30) days before the effective date of his removal. If the City Manager so requests, the Council shall provide in writing reasons for the intended removal, which shall be provided to the City Manager within seven (7) days after the receipt of such request from the City Manager and at least fifteen (15) days prior to the effective date of such removal.

(Ord. 86-3, eff. September 18, 1986, as amended by § 2, Ord. 94-2, eff. April 15, 1994)

2-5.26 - Removal: Hearing.

Within seven (7) days after the delivery to the City Manager of such notice of intention to remove, he may, by written notification to the City Clerk, request a hearing before the Council. Thereafter, the Council shall fix a time for the hearing, which shall be held at its usual meeting place but before the expiration of the thirty (30) day period, at which the City Manager shall appear and be heard, with or without counsel.

(Ord. 86-3, eff. September 18, 1986, as amended by § 2, Ord. 94-2, eff. April 15, 1994)

2-5.27 - Removal: Suspension pending hearing.

After furnishing the City Manager with written notice of his intended removal, the Council may suspend him from duty, but his compensation shall continue until his removal by action of the Council passed subsequent to the hearing provided for in Section 2-5.26 of this chapter and subject to the provisions of Section 2-5.06 of this chapter.

(Ord. 86-3, eff. September 18, 1986, as amended by § 2, Ord. 94-2, eff. April 15, 1994)

2-5.28 - Removal: Limitations.

Notwithstanding the provisions of Sections 2-5.25 through 2-5.27 of this chapter, the City Manager shall not be removed from office, other than for misconduct in office, during or within a period of sixty (60) days next succeeding any general municipal election held in the City at which election a member of the Council is elected or when a new Councilman is appointed. The purpose of this provision is to allow any newly elected or appointed member of the Council or a reorganized Council to observe the actions and ability of the City Manager in the performance of the powers and duties of his office. After the expiration of said sixty (60) day period, the provisions of said Sections 2-5.25 through 2-5.27 as to the removal of the City Manager shall apply and be effective.

(Ord. 86-3, eff. September 18, 1986, as amended by § 2, Ord. 94-2, eff. April 15, 1994)

2-5.29 - Willful misconduct: Termination.

In the event the intended removal of the City Manager is for willful misconduct in office, written notice to the City Manager, as provided in Section 2-5.25 of this chapter, shall state that the reason for removal is willful misconduct. The procedures for a hearing and for suspension pending a hearing shall be followed as set forth in Sections 2-5.26 and 2-5.27 of this chapter. A determination of willful misconduct in office shall be evidenced by specific findings of facts constituting such willful misconduct. The determination of what constitutes willful misconduct shall be within the sole discretion of the Council, provided, however, it shall relate to the welfare of the City.

(Ord. 86-3, eff. September 18, 1986, as amended by § 2, Ord. 94-2, eff. April 15, 1994)

2-5.30 - Willful misconduct defined.

For the purposes of this chapter, willful misconduct includes conduct directly related to conduct in office and directly related to the duties of the office. It includes the refusal to follow the lawful directions of the Council. It also includes conduct not directly related to the performance of official duties of the office when such conduct has a direct and harmful effect on the welfare of the City. Evidence of such direct and harmful effect shall include, but shall not be limited to, the conviction of a felony.

(Ord. 86-3, eff. September 18, 1986, as amended by § 2, Ord. 94-2, eff. April 15, 1994)

2-5.31 - Agreements of employment.

Nothing in this chapter shall be construed as a limitation on the power or authority of the Council to enter into any supplemental agreement with the City Manager delineating additional terms and conditions of employment not inconsistent with any provision of this chapter.

(Ord. 86-3, eff. September 18, 1986, as amended by § 2, Ord. 94-2, eff. April 15, 1994)

Exhibit 3

CITY OF FOWLER

CITY MANAGER SUPPLEMENTAL AGREEMENT

THIS AGREEMENT is made and entered into effective June 1, 2000, by and between the City of Fowler ("City") and David Elias ("Elias").

RECITALS

WHEREAS, on May 16, 2000, City appointed Elias (formerly Interim City Manager and Public Works Director) as the permanent City Manager effective June 1, 2000;

WHEREAS, as the City Manager, Elias will continue to oversee the City's Public Works Department;

WHEREAS, Chapter 5 of Title 2 of the Fowler Municipal Code governs the position of City Manager;

WHEREAS, section 2-5.31 of the Fowler Municipal Code authorizes City to enter into a supplemental agreement with the City Manager delineating additional terms and conditions of employment not inconsistent with Chapter 5 of Title 2 of the Fowler Municipal Code; and

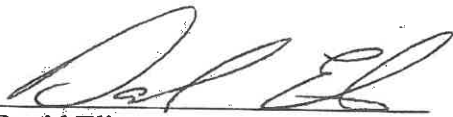
WHEREAS, City desires to provide Elias with three (3) months of severance pay upon involuntary removal from the position of City Manager.

NOW, THEREFORE, in consideration of the respective mutual covenants hereinafter contained, and subject to all the terms and conditions hereof, City and Elias agree as follows:

1. Recitals. The above recitals are true and correct.
2. Supplemental Agreement. This Agreement is supplemental to the provisions of Chapter 5 of Title 2 of the Fowler Municipal Code. The provisions of Chapter 5 shall control over all aspects of the City Manager position not addressed by this Agreement.
3. Termination of Employment as City Manager. On the termination of the employment of Elias from the position of City Manager by reasons of involuntary removal from service other than for willful misconduct in office, Elias shall receive cash severance pay in a lump sum equal to three (3) months pay to be computed at the highest salary level received by Elias during his service with the City.

IN WITNESS WHEREOF, this Agreement has been executed by the parties on the date following their signature.

"ELIAS"




David Elias

Dated: June 6, 2000

"CITY"

CITY OF FOWLER

By: 

Joe Monis, Mayor

Date: June 6, 2000

Exhibit 4

**CITY OF FOWLER
CITY MANAGER SUPPLEMENTAL AGREEMENT
(JUNE 2006)**

This Agreement is entered into effective July 1, 2006, between the City of Fowler, a California general law city ("Fowler"), and David Elias ("Elias") with respect the following recitals which are a substantive part of this Agreement:

- A. Elias has been an employee with Fowler since 1987. Elias became interim City Manager for Fowler on July 1, 1999 and regular City Manager on June 1, 2000.
- B. The position of City Manager for Fowler is governed by Chapter 5 of Title 2 of the Fowler Municipal Code. Section 2-5.31 authorizes the City to enter into a supplemental agreement with the City Manager delineating additional terms and conditions of employment not inconsistent with Chapter 5 of Title 2.
- C. Fowler and Elias desire to enter into a supplemental agreement to address City Manager residency requirements, health insurance benefits, severance benefits for a no cause termination, and notice before resigning.
- D. This Agreement is particular to Elias. Fowler is entering into this Agreement as an additional benefit for Elias in recognition of his dedication to the City and in consideration for Elias to remain with Fowler as the City Manager.

NOW, THEREFORE, in exchange for the mutual consideration set forth herein, the parties agree as follows:

- 1. Term of Agreement. This Agreement shall be for a period of five (5) years commencing on July 1, 2006, and ending on June 30, 2011. Eighteen (18) months prior to expiration, the parties shall enter into negotiations to consider a contract extension.
- 2. Residency. Elias need not be a resident of the City of Fowler. Elias shall reside within an average one (1) hour driving distance to Fowler.
- 3. Health Insurance.
 - a. Payment of Premium. Fowler shall pay the premium for Elias' selected City offered health insurance plan, including the premium to cover his spouse and dependents. The full premium shall be paid notwithstanding that the current Fowler Benefits Resolution (No. 1785E) provides for a monthly allowance to be used toward the premium.
 - b. Payment of Deductibles and Co-Payments. In addition to the foregoing, Fowler shall pay, or otherwise reimburse Elias, for Elias' out of pocket costs for deductibles and co-payments incurred by Elias, his spouse, or dependents, in utilizing the health insurance in each calendar year beginning January 1, 2006, up to a maximum reimbursement of Six Thousand Dollars (\$6,000.00) in any

calendar year. Elias shall provide written evidence of incurring the expense prior to reimbursement. Fowler shall reimburse the expense within thirty (30) days of submittal of the written evidence. To be eligible for payment or reimbursement, requests must be made no later than thirty (30) days following the calendar year in which the expense was incurred.

c. Reimbursement for Prior Deductibles and Co-Payments. Within thirty (30) days after execution of this Agreement, Fowler shall also pay to Elias the sum of One Thousand Nine Hundred Fifty Dollars and Eighty-Four Cents (\$1950.84) for deductibles and co-payments incurred by Elias during the period from July 1, 2005 through December 31, 2005.

d. Tax Consequences from Reimbursements. Elias shall be responsible for, and hold Fowler harmless from, any tax consequences to Elias, if any, associated with the reimbursements.

4. Termination and Severance.

a. Termination Without Cause. Elias is an at will employee serving at the pleasure of the Council. If Elias is able and willing to perform his duties as required by Chapter 5 of Title 2 of the Fowler Municipal Code and the Council decides to terminate Elias from the position of City Manager without cause (as defined below) and prior to expiration of this Agreement, Fowler shall provide Elias with the following severance package:

(i) Fowler shall pay to Elias a sum of money equivalent to Elias' current monthly salary (excluding benefits) on a monthly basis until Elias finds employment elsewhere as a full time City Manager, or twelve (12) months elapses, whichever occurs first. Payments shall be made once a month at the same time as the second pay period for Fowler employees. Required deductions shall be made from the payments.

(ii) Fowler shall pay Elias' monthly health insurance premium under COBRA (for Elias, his spouse, and dependents) until Elias finds employment elsewhere as a full time City Manager, until Elias finds employment which provides health insurance, or until twelve (12) months elapses, whichever occurs first.

(iii) Should Elias be terminated under this Section within the fifth (5th) year of this Agreement, the monthly benefits provided under subsections (i) and (ii) shall be limited to the same number of months as are remaining under the term of this Agreement, except that in no event shall the benefits be less than that provided for under City ordinance.

(iv) Fowler and Elias agree that the damages to Elias which may result from early termination of this Agreement cannot be readily ascertained, and therefore agree that the payments made pursuant to this subsection constitute reasonable liquidated damages for Elias and fully compensates Elias for all tort,

contract, and other damages of any nature whatsoever, whether in law or equity. Fowler and Elias agree that Fowler's completion of its obligations under this subsection constitutes Elias' sole remedy to the fullest extent provided by law.

b. Termination for Cause. If Elias is terminated for cause, Elias shall not be entitled to the benefits under this Section.

c. For Cause Defined. For cause shall mean any of the following: (i) the refusal to follow the lawful directions of the Council; (ii) failure to substantially perform any of the required duties of the City Manager; (iii) repeated unexcused absences from the City Manager's office and duties; (iv) conviction of a felony; (v) conviction of a misdemeanor crime involving acts of moral turpitude; (vi) willful misconduct as defined in Section 2-5.30 of the Fowler Municipal Code.

d. Termination Defined. Termination shall mean removal from office, a request that the City Manager resign, and a reduction in salary. Termination shall not mean a reduction of other benefits generally applicable to all management employees.

e. Other Entitlements. This Agreement is supplemental to other entitlements Elias may have under Fowler's Benefits Resolution and State law upon termination from employment.

f. Notice of Termination. Fowler shall provide Elias with at least thirty (30) days written notice of removal from his position as the City Manager.

g. Relationship to Severance and Notice Provisions Under the Municipal Code. The payments made under this Section shall be in lieu of Section 2-5.06(b) of the Fowler Municipal Code, which sets forth severance pay for the City Manager upon an involuntary termination, and not as an additional benefit. This Section shall also be in lieu of the procedures set forth in Sections 2-5.09 and 2-5.25 through 2-5.28 of the Fowler Municipal Code which might otherwise require a sixty (60) days notice of removal, an opportunity for a hearing on the removal, and place a limit on removal for sixty (60) days following an election. Upon expiration of this Agreement, these Municipal Code provisions, as they may have been amended, shall apply.

h. Consultation After Termination. For a period of sixty (60) days after termination, regardless of the reason, Elias shall be reasonably available for consultation regarding City operations. Elias shall receive no compensation for this consultation except for the consideration provided for in this Agreement.

5. Notice of Resigning. Elias shall provide to Fowler at least sixty (60) days written notice of his intent to voluntarily resign as the City Manager.

6. Cost of Living Adjustments. Fowler agrees that any cost of living adjustments made applicable to all employee salary schedules shall also be made to the City Manager salary schedule applicable to Elias, unless Elias and Fowler have entered

into a written agreement specifying Elias' salary. Nothing in this Section shall be deemed to impair Fowler's authority to revise the City Manager's salary schedule.

7. Dispute Resolution. Any disputes over the interpretation or application of this Agreement shall be submitted to mediation at least thirty (30) days prior to either party filing a claim with the City or any administrative agency or initiating litigation over the dispute. The parties shall mutually agree upon a mediator and share equally in the costs of the mediation. Either party may initiate mediation by providing written notice to the other party. Mediation shall thereafter be conducted at the soonest feasible time. The parties shall in good faith cooperate in selecting the mediator and scheduling the mediation.

8. Supplemental Agreement. This Agreement is supplemental to the provisions of Chapter 5 of Title 2 of the Fowler Municipal Code, Fowler's Benefits Resolution, and Fowlers salary schedule for the position of City Manager. The provisions of Chapter 5, the Benefits Resolution, and the salary schedule shall control over all aspects of the City Manager position not addressed by this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates following their signature.

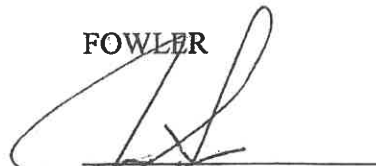
ELIAS



David Elias

June 26, 2006

FOWLER



Jim Simonian, Mayor

June 30, 2006

Exhibit 5



FIRST AMENDMENT TO:

**CITY OF FOWLER
CITY MANAGER SUPPLEMENTAL AGREEMENT
(JULY 2008)**

This First Amendment to the City of Fowler City Manager Supplemental Agreement dated June 20, 2006 ("Agreement") is entered into effective July 1, 2008, between the City of Fowler, a California general law city ("Fowler"), and David Elias ("Elias") with respect the following recitals, which are a substantive part of this Agreement:

- A. On June 20, 2006, Fowler and Elias entered into the Agreement for the purposes of supplementing the City Manager's terms of employment set forth by City ordinance (Chapter 5 of Title 2 of the Fowler Municipal Code).
- B. Section 1 of the Agreement provided for a five (5) year term, commencing July 1, 2006 and ending June 30, 2011. Fowler and Elias desire to extend the Agreement by an additional two (2) years with the effect of having a new five (5) year contract.

NOW, THEREFORE, in exchange for the mutual consideration set forth herein and in the Agreement, the Agreement shall be amended as follows:

- 1. Amendment to Section 1: Term of Agreement. Section 1 of the Agreement shall be amended to read as follows: "This Agreement shall be for a period of five (5) years commencing on July 1, 2008, and ending on June 30, 2013. Eighteen (18) months prior to expiration, the parties shall enter into negotiations to consider a contract extension."
- 2. All Other Terms Remain in Effect. All other terms of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates following their signature.

ELIAS

David Elias

July 1, 2008

FOWLER

Jim Simonian, Mayor

July 1, 2008

Exhibit 6



SECOND AMENDMENT TO:

**CITY OF FOWLER
CITY MANAGER SUPPLEMENTAL AGREEMENT
(March 2012)**

This Second Amendment to the City of Fowler City Manager Supplemental Agreement dated June 20, 2006 ("Agreement") is entered into effective July 1, 2012, between the City of Fowler, a California general law city ("Fowler"), and David Elias ("Elias") with respect the following recitals, which are a substantive part of this Agreement:

- A. On June 20, 2006, Fowler and Elias entered into the Agreement for the purposes of supplementing the City Manager's terms of employment set forth by City ordinance (Chapter 5 of Title 2 of the Fowler Municipal Code).
- B. Section 1 of the Agreement provided for a five (5) year term, commencing July 1, 2006 and ending June 30, 2011.
- C. On July 1, 2008, Fowler and Elias extended the Agreement by an additional two (2) years with the effect of having a new five (5) year contract commencing on July 1, 2008 and ending on June 30, 2013.
- D. Fowler and Elias desire to extend the Agreement by an additional four (4) years with the effect of having a new five (5) year contract.
- E. Fowler and Elias desire to make other amendments to the Agreement.

NOW, THEREFORE, in exchange for the mutual consideration set forth herein and in the Agreement, the Agreement shall be amended as follows:

1. Amendment to Section 1: Term of Agreement. Section 1 of the Agreement shall be amended to read as follows:

"This Agreement shall be for a period of five (5) years commencing on July 1, 2012, and ending on June 30, 2017."
2. Amendment to Section 4: Termination and Severance. The following subsection (i) is added to Section 4 to read as follows:
 - "i. Conviction of Crime Involving Abuse of Office. Regardless of the term of this Agreement, if this Agreement is terminated, any cash settlement related to the termination shall be fully reimbursable to Fowler if Elias is convicted of a crime involving an abuse of his office."


3. Amendment to Section 6: Cost of Living Adjustments. Section 6 of the Agreement shall be amended to read as follows:

“Fowler agrees that any cost of living adjustments made applicable to all employee salary schedules shall also be made to the City Manager salary schedule applicable to Elias, except that in no event shall the total cumulative adjustments for Elias exceed eight percent (8%) over the term of this Agreement. Nothing in this Section shall be deemed to impair Fowler’s authority to revise the City Manager’s salary schedule.”

4. All Other Terms Remain in Effect. All other terms of the Agreement shall remain in full force and effect.


IN WITNESS WHEREOF, the parties have executed this Agreement on the dates following their signature.

ELIAS


David Elias

March 21, 2012

FOWLER


David Cardenas, Mayor

March 21, 2012

Exhibit 7



**CITY OF FOWLER
AMENDED CITY MANAGER SUPPLEMENTAL AGREEMENT
(MAY 2014)**

This Amended City Manager Supplemental Agreement ("2014 Agreement") is entered into effective June 1, 2014, between the City of Fowler, a California general law city ("Fowler"), and David Elias ("Elias") with respect the following recitals which are a substantive part of this Agreement:

- A. On June 20, 2006, Fowler and Elias entered into a City Manager Supplemental Agreement ("2006 Agreement") for the purposes of supplementing the City Manager's terms of employment set forth by City ordinance (Chapter 5 of Title 2 of the Fowler Municipal Code). The Recitals from the 2006 Agreement are incorporated herein by reference.
- B. Fowler and Elias amended the 2006 Agreement in 2008, 2010, and 2012, to address the term of the 2006 Agreement and other matters.
- C. Fowler and Elias desire to make additional amendments to the 2006 Agreement to provide for a vehicle allowance.
- D. Rather than prepare another amendment to the 2006 Agreement, it is prudent to prepare an Amended City Manager Supplemental Agreement incorporating all amendments into a single document.

NOW, THEREFORE, in exchange for the mutual consideration set forth herein, the parties agree as follows:

1. Term of Agreement. This Agreement shall be for a period of five (5) years commencing on July 1, 2012, and ending on June 30, 2017.
2. Residency. Elias need not be a resident of the City of Fowler. Elias shall reside within no more than an average one (1) hour driving distance to Fowler.
3. Health Insurance.
 - a. Payment of Premium. Fowler shall pay the premium for Elias' selected City offered health insurance plan, including the premium to cover his spouse and dependents. The full premium shall be paid notwithstanding that the current Fowler Benefits Resolution (No. 1785G) provides for a monthly allowance to be used toward the premium.

- b. Payment of Deductibles and Co-Payments. In addition to the foregoing, Fowler shall reimburse Elias for Elias' out of pocket costs for deductibles and co-payments incurred by Elias, his spouse, or dependents, in utilizing the health insurance in each calendar year up to a maximum reimbursement of Six Thousand Dollars (\$6000.00) in any calendar year. Elias shall provide written evidence of incurring the expense prior to reimbursement. Fowler shall reimburse the expense within thirty (30) days of submittal of the written evidence. To be eligible for reimbursement, requests must be made no later than thirty (30) days following the calendar year in which the expense was incurred.
 - c. Tax Consequences from Reimbursements. Elias shall be responsible for, and hold Fowler harmless from, any tax consequences to Elias, if any, associated with the reimbursements.
4. Vehicle Allowance. Elias is required to have a vehicle available to perform the duties of his position. Beginning June 1, 2014, in lieu of the full-time use of a City vehicle, Fowler shall provide Elias with a monthly vehicle allowance of Six Hundred Dollars (\$600.00) for use of a personal vehicle on City business. Elias shall be solely responsible for all expense to use, maintain, operate and insure the vehicle. No documentation is required in order to receive this vehicle allowance and Elias shall have discretion regarding the expenditure of this allowance. Elias' receipt of this vehicle allowance shall be in lieu of any entitlement to mileage reimbursement except as follows: If Elias travels more than fifty (50) miles one way outside City limits on business, Elias may request mileage reimbursement for all miles in excess of one hundred (100) miles under the IRS rate in effect at the time the expense is incurred, or alternatively Elias may use a designated City vehicle. This allowance is not considered additional compensation for the purposes of PERS, but shall be taxable according to IRS and Franchise Tax Board regulations.
5. Termination and Severance.
- a. Termination Without Cause. Elias is an at will employee serving at the pleasure of the Council. If Elias is able and willing to perform his duties as required by Chapter 5 of Title 2 of the Fowler Municipal Code and the Council decides to terminate Elias from the position of City Manager without cause (as defined below) and prior to expiration of this Agreement, Fowler shall provide Elias with the following severance package:
 - (i) Fowler shall pay to Elias a sum of money equivalent to Elias' current monthly salary (excluding benefits) on a monthly basis until Elias finds employment elsewhere as a full time City Manager, or twelve (12) months elapses, whichever occurs first. Payments shall be made once a month at

the same time as the second pay period for Fowler employees. Required deductions shall be made from the payments.

(ii) Fowler shall pay Elias' monthly health insurance premium under COBRA (for Elias, his spouse, and dependents) until Elias finds employment elsewhere as a full time City Manager, until Elias finds employment which provides health insurance, or until twelve (12) months elapses, whichever occurs first.

(iii) Should Elias be terminated under this Section within the final year of this Agreement (July 1, 2016 to June 30, 2017), the monthly benefits provided under subsections (i) and (ii) shall be limited to the same number of months as are remaining under the term of this Agreement, except that in no event shall the benefits be less than that provided for under City ordinance.

(iv) Fowler and Elias agree that the damages to Elias which may result from early termination of this Agreement cannot be readily ascertained, and therefore agree that the payments made pursuant to this subsection constitute reasonable liquidated damages for Elias and fully compensates Elias for all tort, contract, and other damages of any nature whatsoever, whether in law or equity. Fowler and Elias agree that Fowler's completion of its obligations under this subsection constitutes Elias' sole remedy to the fullest extent provided by law.

- b. Termination for Cause. If Elias is terminated for cause, Elias shall not be entitled to the benefits under this Section.
- c. For Cause Defined. For cause shall mean any of the following: (i) the refusal to follow the lawful directions of the Council; (ii) failure to substantially perform any of the required duties of the City Manager; (iii) repeated unexcused absences from the City Manager's office and duties; (iv) conviction of a felony; (v) conviction of a misdemeanor crime involving acts of moral turpitude; (vi) willful misconduct as defined in Section 2-5.30 of the Fowler Municipal Code.
- d. Termination Defined. Termination shall mean removal from office, a request that the City Manager resign, and a reduction in salary. Termination shall not mean a reduction of other benefits generally applicable to all management employees.
- e. Other Entitlements. This Agreement is supplemental to other entitlements Elias may have under Fowler's Benefits Resolution and State law upon termination from employment.

- f. Notice of Termination. Fowler shall provide Elias with at least thirty (30) days written notice of removal from his position as the City Manager.
 - g. Relationship to Severance and Notice Provisions Under the Municipal Code. The payments made under this Section shall be in lieu of Section 2-5.06(b) of the Fowler Municipal Code, which sets forth severance pay for the City Manager upon an involuntary termination, and not as an additional benefit. This Section shall also be in lieu of the procedures set forth in Sections 2-5.09 and 2-5.25 through 2-5.28 of the Fowler Municipal Code which might otherwise require a sixty (60) days notice of removal, an opportunity for a hearing on the removal, and place a limit on removal for sixty (60) days following an election. Upon expiration of this Agreement, these Municipal Code provisions, as they may have been amended, shall apply.
 - h. Consultation After Termination. For a period of sixty (60) days after termination, regardless of the reason, Elias shall be reasonably available for consultation regarding City operations. Elias shall receive no compensation for this consultation except for the consideration provided for in this Agreement.
 - i. Conviction of Crime Involving Abuse of Office. Regardless of the term of this 2014 Agreement, if this 2014 Agreement is terminated, any cash settlement related to the termination shall be fully reimbursable to Fowler if Elias is convicted of a crime involving an abuse of his office.
6. Notice of Resigning. Elias shall provide to Fowler at least sixty (60) days written notice of his intent to voluntarily resign as the City Manager.
7. Cost of Living Adjustments. Fowler agrees that any cost of living adjustments made applicable to all employee salary schedules shall also be made to the City Manager salary schedule applicable to Elias, except that in no event shall the total cumulative adjustments for Elias exceed eight percent (8%) over the term of this Agreement. Nothing in this Section shall be deemed to impair Fowler's authority to revise the City Manager's salary schedule."
8. Dispute Resolution. Any disputes over the interpretation or application of this Agreement shall be submitted to mediation at least thirty (30) days prior to either party filing a claim with the City or any administrative agency or initiating litigation over the dispute. The parties shall mutually agree upon a mediator and share equally in the costs of the mediation. Either party may initiate mediation by providing written notice to the other party. Mediation shall thereafter be conducted at the soonest feasible time. The parties shall in good faith cooperate in selecting the mediator and scheduling the mediation.

9. Supplemental Agreement. This Agreement is supplemental to the provisions of Chapter 5 of Title 2 of the Fowler Municipal Code, Fowler's Benefits Resolution, and Fowlers salary schedule for the position of City Manager. The provisions of Chapter 5, the Benefits Resolution, and the salary schedule shall control over all aspects of the City Manager position not addressed by this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates following their signature.

ELIAS



David Elias

May 20, 2014

FOWLER



David Cardenas, Mayor

May 20 2014