CITY OF CHICO
EMPLOYMENT AGREEMENT
PUBLIC WORKS DIRECTOR – OPERATIONS AND MAINTENANCE

THIS EMPLOYMENT AGREEMENT (this "Agreement") is entered into on July 1, 2015, by and between the City of Chico, State of California, a municipal corporation (the "City") and Erik Gustafson ("Employee"). The City and Employee may be collectively referred to herein as the "Parties".

WHEREAS, Employee currently serves as the Acting Public Works Director – Operations and Maintenance of the City; and

WHEREAS, the City desires to employ Employee as Public Works Director – Operations and Maintenance of the City, and to perform such related duties and functions;

WHEREAS, Employee desires to serve as Public Works Director – Operations and Maintenance;

WHEREAS, the City and Employee desire to agree in writing to the terms and conditions of Employee's employment as Public Works Director – Operations and Maintenance.

NOW, THEREFORE, the Parties hereto agree as follows:

Section 1. EMPLOYMENT.

City agrees to employ Employee to perform the following services:

a. Employee agrees to serve as the Public Works Director – Operations and Maintenance, responsible for developing and implementing programs and services related to the Public Works Operations and Maintenance Divisions. Divisions include Airport Maintenance, Park, Facilities, Street Tress, Right of Way (ROW), Street Cleaning, Traffic Safety, Fleet Services, and the Water Pollution Control Plant (WPCP). Administering and managing the City's parks, playgrounds and recreational facilities and implement rules and regulations promulgated by City Council for their use; providing staff support for the Bidwell Park and Playground Commission and other City Boards or Commissions as required. Providing operation and maintenance services for all City property and facilities; administering and providing oversight for divisional capital improvements, budget development; and to perform related work as required.

b. Employee shall perform the duties of the position, as described in the job description for Public Works Director – Operations and Maintenance and the Chico Municipal Code. Employee shall perform the duties of his position to the best of the Employee's ability and in accordance with the professional and ethical standards of the profession and shall comply with all general rules and regulations established by the City.

c. Employee shall not engage in any activity which is or may become a conflict of interest, prohibited contract, or which may create an incompatibility of office as defined under California law. Employee shall comply fully with the reporting and disclosure obligations under regulations promulgated by the Fair Political Practices Commission (FPPC) and the City's Conflict of Interest Code.

d. Employee agrees to remain in exclusive employ of the City during the term of this agreement.

Section 2. TERM, TERMINATION

The term of this Agreement shall commence on July 1, 2015, and shall continue until terminated by either Employee or City as follows:

a. Employee may terminate this Agreement at any time upon providing fifteen (15) days advance written notice to the City.

b. The City may terminate this Agreement at any time upon the City Manager providing notice to Employee of the effective date of the termination.

Employee understands, acknowledges and agrees that the position for which City is hiring Employee is an at-will position which is not within the classified service of the City and that the City may terminate this Agreement at any time with or without advance notice and that there is no express or implied promise made to Employee for any form of continued employment.

In the event Employee's employment with the City is terminated, City shall pay employee any accrued and unpaid salary and the cash value of any accrued vacation leave, all subject to federal and state withholding requirements. Such amount shall be paid within thirty (30) days of the Employee leaving City employment.

Section 3. SEVERANCE BENEFIT.

In the event this Agreement is terminated by the City, a severance benefit of four (4) months shall be provided to Employee.

In the event this Agreement is terminated for cause, Employee shall not receive the severance provided for in this section.

Notwithstanding any other provision contained in this Agreement, the City may terminate this Agreement at any time for cause. For purposes of this Agreement, "cause" shall be deemed to include:

1) Any material act of dishonesty committed against the City by Employee;
2) The conviction of a felony;
3) The violation of any fiduciary duty or duty of loyalty owed to the City;

4) The violation of Federal laws, State laws, County and City ordinances and policies;
5) Egregious misconduct involving moral turpitude to such an extent that, in the reasonable judgement of the City Manager, such misconduct substantially impairs Employee's ability to effectively perform his/her duties under this agreement; and
6) The willful and continued failure of Employee to substantially perform his/her material duties and responsibilities under this Agreement (other than as a result of incapacity due to disability as defined in this Agreement) after written demand for substantial performance of such duties and responsibilities is delivered to Employee that identifies the manner in which the City Manager believes that Employees has not substantially performed his duties.

Section 4. PERFORMANCE EVALUATION.

The City Manager shall evaluate Employee's performance annually and may, in addition, establish goals and performance objectives to be accomplished during the next year and used as one basis for the next performance evaluation.

Section 5. SALARY.

a. Base Salary. City agrees to pay Employee an annualized base salary at the rate of one hundred twenty-five thousand dollars ($125,000), payable bi-weekly, at the same time as other employees are paid and subject to customary withholding.

b. Merit Increases. Upon the conclusion of the annual performance evaluation by the City Manager of Employee's performance, the City Manager may increase Employee's base salary in an amount not to exceed five percent (5%) per year. Such merit increases are not automatic and are at the discretion of the City Manager. The failure of the City Manager to complete an annual performance evaluation by April 10 of any year shall be deemed to be a satisfactory evaluation for that year for the purposes of granting of a merit increase.

c. Retroactive Compensation. The salary set forth above shall be effective as of July 1, 2015, and City agrees to pay Employee, retroactively, the difference between that salary and Employee's salary as the Public Works Director – Operations and Maintenance for the period of July 1, 2015, through the date of this agreement. This retroactive compensation shall be paid within the first pay period of this executed agreement.

Section 6. BENEFITS.

Employee shall be entitled to the employment benefits as set forth in Exhibit "A" hereto. As used herein, "benefits" include, but are not limited to vacation, sick leave, paid holidays, management leave, retirement benefits and payments, health insurance, dental insurance, and life insurance. The benefits provided shall be the plans generally offered by the City to employees of the City as they exist at the date this contract is entered into and as may be amended or changed from time to time.

Section 7. PROFESSIONAL DEVELOPMENT.

The City Manager shall include an amount in the proposed budget for each year, consistent with the City's policies, to allow Employee to attend professional conferences, academic course work, training programs, and to pay for Employee's dues in professional organizations and cost for certifications and certification materials.

Section 8. DEFENSE AND INDEMNIFICATION

The City shall provide a defense to Employee as to any claim, action, suit, or proceeding against Employee for any tort, professional liability claim, or other cause or demand of a civil nature, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties under this Agreement or resulting from the exercise of discretion by Employee in connection with the performance of Employee's duties and responsibilities under this Agreement, unless the act, omission, or exercise of discretion involved intentional, willful or wanton misconduct by Employee. The defense provided by the City for Employee shall continue uninterrupted until a final conclusion of the claim, action, suit or proceeding, including any appeals brought by any party.

The City shall indemnify Employee against any and all losses, damages, judgments, interest, settlements, fines, courts costs, and other reasonable costs and expenses of civil legal proceedings, including attorney's fees awarded against Employee, and any other liabilities incurred by, imposed upon, or suffered by Employee in connection with or resulting from any claim, action, suit or proceeding in which Employee is entitled to a defense by the City.

The City shall have no obligations of any kind to Employee under this Agreement as to any criminal matter in which Employee is a defendant.

Section 9. NOTICES.

Any notices required by this Agreement shall be in writing and either given in person or by first class mail with postage prepared and addressed as follows:

To City:	Mark Orme City Manager PO Box 3420 411 Main Street Chico, CA 95927	To Employee:	Erik Gustafson Public Works Director – Operations and Maintenance PO Box 3420 411 Main Street Chico, CA 95927
Copy to:	Vincent C. Ewing City Attorney PO Box 3420 411 Main Street Chico, CA 95928		

Notice shall be deemed given as of the date of personal service or as of the date of deposit in the U.S. Postal Service.

Section 10. ASSIGNMENT.

This Agreement is not assignable by either City or Employee.

Section 11. SEVERABILITY.

If any provision or any portion of the Agreement is held to be illegal or void by a court having jurisdiction over the Parties, the remainder of this Agreement shall remain in full force and effect, unless the parts found to be void are wholly inseparable from the remaining portions of the Agreement.

Section 12. ENTIRE AGREEMENT.

This Agreement is the final expression of the complete agreement of the Parties with respect to the matters set forth herein and supersedes in their entirety all prior oral or written agreements. This Agreement cannot be modified except by written mutual agreement signed by the Parties.

Section 13. COUNTERPARTS.

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall constitute one and the same instrument.

City:

Mark Orme
City Manager

Employee:

Erik Gustafson

APPROVED AS TO FORM AND CONTENT:

Vincent C. Ewing, City Attorney

Authorized pursuant to CMC § 2R.04.490

EXHIBIT A

Employee shall be entitled to the following leave benefits:

Holidays – Employee shall be entitled to observe all legal holidays recognized by the City on the days that they are observed by the City.

Sick Leave – Sick leave shall accrue, without limitation at the amount of eight (8) hours per month. Sick leave may be used for actual personal sickness of or injury to Employee or Employee's family member, and for medical, dental and vision care appointments. "Family member" includes a spouse, children, parent and any other relationship recognized by law (e.g.: step, in-law, etc.). Time off work as a result of approve job-related illness shall not be charged against accumulate sick leave.

Sick leave shall be deducted from accrued sick leave pursuant to City Administrative Procedures and Policies. If Employee utilizes all of Employee's accrued sick leave and is still unable to return to work due to illness or injury, Employee shall automatically be placed on a leave without pay, unless Employee advises the Finance Department to charge the additional sick time against accrued vacation leave.

If Employee becomes eligible to retire on an ordinary disability retirement, pursuant to the City's contract with the Public Employees' Retirement System, due to a non-job-related illness or injury, Employee shall be entitled to utilize all of employee's accrued sick leave prior to the effective date of such retirement.

Upon termination of service, no compensation for accrued sick leave shall be made except that: 1) upon retirement or termination in good standing, Employee may, depending on years of City service, convert up to 60% of accrued sick leave to cash, in an amount not to exceed $5,000 (see Attachment 1 for schedule); and 2) upon a service retirement, accumulated sick leave shall be credited to Employee's retirement account in accordance with the provisions of the retirement plan referenced herein, expect that in the event of any election to convert such sick leave to cash, the retirement sick leave credit shall be reduced commensurately.

Birth or adoption of a child – In the event of the birth or adoption of a child, Employee shall be entitled to a leave of absence with pay for a period of ten (10) consecutive days. Such leave shall only be taken within fourteen (14) days after the date of such birth or adoption.

Bereavement leave - If any member of Employee's immediate family dies, Employee shall be entitled to a period of five (5) work days of leave with pay. Such leave shall be taken within seven (7) days after the death of the family member or within seven (7) days of the date of the funeral or memorial service for the deceased. Immediate family shall include a spouse, child, parent, sibling, grandparent, grand child and any other relationship recognized by law (e.g.: step, in-law, etc.).

Vacation – As of the date of this Agreement, Employee shall accrue vacation at the rate as set forth on Attachment 1 which sets forth the rate of accrual and maximum accrual rates. Employee's prior service with the City shall be used to establish the current rate of accrual. In addition, a one-

time allocation of eighty (80) hours will be credited to the employee within one pay period of this executed agreement.

Floating Holiday – Employee shall be entitled to one (1) day of floating holiday leave per calendar year. Floating holiday leave which is not used during a calendar year shall not carry over to the next year and any floating holiday leave not taken by December 31 of any year shall be removed, without compensation.

Management Leave - In addition to the other leaves granted herein, Employee shall be entitled to ninety-six (96) hours of management leave per calendar year. Management leave which is not used during a calendar year shall not carry over to the next year and shall be removed without compensation.

INSURANCES

Life Insurance – City agrees to provide Employee with term life insurance in the amount of one thousand dollars ($1,000) per each one thousand dollars ($1,000) in salary, and Employee's spouse and minor children with term life insurance in the amount of one thousand five hundred dollars ($1,500).

Long-term disability insurance – City agrees to pay its long-term disability insurance carrier sixty percent (60%) of the monthly premium cost of the long-term disability insurance plan for Employee with a minimum contribution of one percent (1%) of Employee's salary. Employee agrees to pay the remaining 40% of such monthly premium. If the total rate for the plan is less than the one percent (1%) minimum contribution set forth above, the City's contribution shall be the actual premium amount and Employee shall not be required to make a contribution.

City shall structure the manner in which the premium is paid so that the long-term disability insurance premium is considered a post-tax employee-paid contribution so that benefits which might be received by Employee would be treated as such for tax purposes.

Vision insurance - City agrees to provide Employee with vision insurance which provides vision care benefits to Employee only. Employee may purchase vision insurance coverage for Employee's spouse and dependent children at Employee's sole cost and expense through a bi-weekly payroll deduction of the additional premium amount.

Medical and Dental Insurance - City agrees to provide a maximum contribution toward medical and dental insurance as set forth in Attachment 2.

Workers Compensation - City agrees to provide workers' compensation insurance in accordance with all applicable provisions of State law. It is recognized that, as a long standing City practice, City has provided its miscellaneous employees the same workers' compensation benefits as provided to safety employees under California Labor Code section 4850. City agrees to continue to provide such benefits to Employee provided that such Labor Code section remains applicable to City's safety employees.

FICA - Medicare Contribution - The Federal Insurance Contributions Act (FICA) mandates that employees hired after April 1, 1986, be covered by and make payroll contributions for the Medicare portion of the Act at a rate of 1.45% of their salary. The City is also required to contribute 1.45% of salary for such coverage. City agrees to pay both the City and employee contributions. If, in the future, the Federal Government mandates that all City employees shall be covered by and make payroll contributions for the Medicare portion of FICA, Employee shall be required to make the employee contribution and City's payment thereof shall terminate.

RETIREMENT PLAN

CalPERS- City will provide Employee with the retirement benefits set forth in that certain "Contract Between the Board of Administration, Public Employees' Retirement System and the City Council of the City of Chico" which was in effect as of the date of this contract, and as subsequently amended, and City shall pay the required City contribution rate as established by that contract.

City shall pay the required City contribution rate and Employee shall pay the Employee contribution rate as established by that contract.

VEHICLE ALLOWANCE

City shall pay Employee a vehicle allowance of four hundred dollars ($400) per month in lieu of any other mileage reimbursement for the purpose of owning, maintaining and insuring a personal vehicle. Employee must maintain in full force and effect a liability insurance policy covering such vehicle and Employee's use thereof, with liability limits of at least five hundred thousand ($500,000) combined single limits. The payment of this vehicle allowance shall be for full months of employment during which the requirement for maintenance of a vehicle and insurance are met.

ATTACHMENT 1

VACATION ACCRUAL

Employee shall accrue vacation leave in accordance with the following schedule:

Length of Service	Bi-weekly accrual rate	Annual accrual rate	Maximum accrual balance
7th through 96th month	4.62	120.12	320
97th through 108th month	4.93	128.18	320
109th through 120th month	5.23	135.98	340
121st through 132nd month	5.54	144.04	360
133rd through 144th month	5.85	152.10	380
145th through 156th month	6.16	160.16	400
157th through 168th month	6.47	168.22	420
169th through 180th month	6.78	176.28	440
181st through 192nd month	7.09	184.34	460
193rd through 204th month	7.39	192.14	480
205th month and forward	7.69	199.94	500

SICK LEAVE CONVERSION UPON TERMINATION

Employees may convert accrued sick leave to cash in accordance with the following schedule:

Years of City Service	Maximum Conversion %	Maximum $ Amount
0-5 years	0	0
5-10 years	15%	$1,500
10-15 years	30%	$3,000
Over 15 year	60%	$5,000

ATTACHMENT 2

MEDICAL AND DENTAL INSURANCE CARRIERS AND CONTRIBUTIONS

City shall provide Employee with medical and dental insurance through the carrier or carriers with which City contracts to supply such insurance benefits for City employees.

City Contributions - The City and Employee shall each contribute to the City's cost of the health insurance premiums, established by percentages, as set forth below.

Effective January 1, 2015

MEDICAL					
City Contribution					
	EPO	PPO 90/10	PPO 80/20	HDHP	HSA
Single	533.83	348.74	395.47	399.00	78.14
Double	1,151.76	738.24	839.92	850.00	125.02
Family	1,476.66	960.61	1,090.82	1,094.00	156.27
Employee Contribution					
	EPO	PPO 90/10	PPO 80/20	HDHP	HSA
Single	84.17	269.26	174.53	0.00	---
Double	164.24	576.76	372.08	0.00	---
Family	217.34	732.39	472.18	0.00	---

	DENTAL	VISION
City Contribution		
Single	58.95	5.47
Double	58.95	5.47
Family	58.95	5.47
Employee Contribution		
Single	19.65	0.00
Double	19.65	4.66
Family	19.65	10.24

Subsequent Premium Increases: In the event that the City's premium rates increase in the future, City and Employee shall negotiate regarding the percentage amounts of the City and Employee share of those increased premiums. In the event an agreement as to such contribution rates is not reached prior to increased rates becoming effective, the dollar amount of the City's share shall remain as set forth above and the Employee shall pay the increased amount until a different agreement is reached.

Employee not Required to Participate in City's Insurance Plan: If employee has alternative group medical insurance coverage, Employee is not required to participate in City's medical

insurance plan. In order to opt out of coverage under the City's medical insurance plan, Employee is required to provide verification of such alternative coverage to the Human Resources Office during an enrollment period and must continue to provide verification of coverage of another plan during the open enrollment period in all subsequent years that Employee chooses to opt out of City's medical insurance plan. At any time during which Employee opts out of City's medical insurance plan, Employee shall receive a payment of $200 per month.

1. Into Employee's Medical Flexible Spending Account established with the City's Section 125 Plan, or;
2. Into Employee's City deferred compensation account; or
3. As cash to the Employee.

If Employee ceases to be covered by alternative coverage at any time, Employee shall be required to immediately enroll in City's medical insurance plan.