

CITY MANAGER EMPLOYMENT AGREEMENT

This City Manager Employment Agreement ("Agreement") is entered into as of the 6th day of November, 2024 (the "Effective Date"), between the City of San Bernardino (hereinafter referred to as the "City") and Rochelle Clayton (hereinafter referred to as the "City Manager" or the "Employee"). City and City Manager/Employee are sometimes referred to in this Agreement as "Party" and collectively as "Parties."

RECITALS

WHEREAS, it is the desire of the Mayor and City Council of the City to retain the services of Employee as City Manager; and

WHEREAS, Employee is competent, trained and qualified for the position of City Manager; and

WHEREAS, it is the desire of the Mayor and City Council to provide certain benefits, establish certain conditions of employment and to set certain working conditions of the City Manager.

NOW, THEREFORE, the above named Parties hereby mutually agree and promise as follows:

1. Duties, Acceptance of Appointment, Hours of Work, Regional

Liaison. 1.1 Duties.

The City Manager shall perform those duties and have those responsibilities that are commonly assigned to a city manager of a city in California, and as may be further set forth in the City's Charter and Municipal Code. City Manager shall perform such other legally permissible and proper duties and functions consistent with the Office of the City Manager, as the Mayor and City Council shall from time to time assign. It is expected that City Manager shall abide by the ICMA Code of Ethics. City Manager is encouraged to participate in community and civic affairs.

1.2 Acceptance of Appointment.

City Manager hereby accepts the appointment as City Manager of the City of San Bernardino subject to all terms and conditions set forth in this Agreement.

1.3 Hours of Work

It is recognized that City Manager devotes a great deal of time outside the normal office hours-schedule, and to that end, Employee shall be allowed to establish an appropriate work schedule recognizing the normal City work schedule and community meetings.

1.4 Devotion to City Business

The City Manager's position is full-time. City Manager shall not engage in any business, educational, professional, charitable, or other activities that would conflict or materially interfere with performance of her City Manager duties, except as may be specifically authorized by the Mayor and City Council.

2. Term.

This Agreement shall be deemed effective on October 2, 2024 ("Commencement Date") and shall continue unless terminated earlier in accordance with Section 11.

3. Compensation.

3.1 Salary

City agrees to pay City Manager, and City Manager agrees to accept from City, as compensation for services rendered by City Manager pursuant to this Agreement, an annual base salary, commencing on the Commencement Date, the annual base salary shall be in the amount of Three Hundred and Twenty Five Thousand Dollars (\$325,000.00) (hereinafter "Annual Base Salary"), payable in installment payments in the same manner and at the same times as salaries of other executive managers of the City are paid.

Commencing October 2, 2025 and each year thereafter, said Annual Base Salary shall be automatically increased by the percentage change to the Consumer Price Index for All Urban Consumers (CPI-U) for the Riverside-San Bernardino-Ontario area for the preceding 12 months ending in July (subject to a 5% maximum cap) ("CPI Increase").

The term "Annual Base Salary" as used in this Agreement shall also include any such adjustments approved by the Mayor and City Council other than payments not eligible to be added to the City Manager's Annual Base Salary pursuant to the terms of any applicable salary resolution of City.

Any salary adjustment shall be memorialized by an amendment to this Agreement.

3.2 Benefits

Except for such benefits as are inconsistent with this Agreement (including, for example any CPI Increase) or the position of City Manager, City Manager shall receive all such other benefits and compensation that are generally applicable to new Executive employees of the City as set forth in the Executive Compensation and Benefits Plan approved by Resolution No. 2022-59 (as amended by the Side Letter executed October 18, Final Version 10/30/2024 (SRC)

2022), as the same may be modified from time to time after the date of this Agreement, including but not limited to CalPERS retirement benefits, health insurance, life insurance, holidays, administrative leave, vacation leave, executive leave, and sick leave. In the event the City Manager's employment is terminated, either voluntarily or involuntarily, the City Manager shall be compensated for accrued leave in accordance with the Executive Compensation and Benefits Plan.

4. Performance Evaluation.

The Mayor and Council shall review the City Manager's job performance at least once annually. The City Manager shall remind the Mayor and Council of its obligations under this Section each year and shall work with the Mayor and Council in finding an appropriate time to place her annual evaluation on the agenda. The Mayor and Council shall in writing and in accordance with criteria established by the Mayor and Council in consultation with the City Manager, develop the annual performance reviews and evaluations. The Mayor and Council shall provide the City Manager a reasonable and adequate opportunity to discuss the City Manager's evaluation with the Mayor and Council.

The annual performance reviews and evaluations shall be reasonably related to the City Manager's written job description and shall be based, in whole or in part, on goals for the City Manager's performance that are jointly developed and adopted by the Mayor and Council and the City Manager.

5. Bonds.

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

6. Vehicle Allowance.

City agrees to pay to the City Manager, during the term of this Agreement and in addition to other salary and benefits herein provided a vehicle allowance as provided in Resolution No. 2024-034 (currently at \$775.00 per month) or as amended or its successor.

7. Relocation Benefit.

As an incentive for City Manager to relocate her primary residency to location within the boundaries of the City of San Bernardino, City shall pay City Manager a one-time relocation benefit of \$10,000. The relocation benefit shall be available until October 2, 2026. If City Manager has not relocated to the City within said period of time the relocation benefit shall expire. If City Manager relocates as provided under this Section, City shall process payment of the relocation payment within 30-days of the City Manager showing proof of relocation as demonstrated by a change of voter registration, an address on a California driver's license or proof of residential utilities in her name at an address within the City.

8. General Business Expenses

8.1 City agrees to budget and pay for professional dues and subscriptions for City Manager necessary for Employee's continuation and participation in national, regional, state and local boards, task-forces, conferences and meetings, associations and organizations desirable for City Manager's continued participation, professional growth, and advancement, and for the benefit of the City.

8.2 City agrees to budget and pay for travel and subsistence expenses of City Manager for professional and official travel, board and task-force meetings, conferences, and occasions to adequately continue the professional development of City Manager and to pursue necessary official functions for City.

8.3 City recognizes that the City Manager may incur expenses of a non-personal, job-related nature that are reasonably necessary to the City Manager's service to the City. The City agrees to either pay such expenses in advance or to reimburse the expenses, so long as the expenses are incurred and submitted in accordance with the City's normal expenditure reimbursement procedures. To be eligible for reimbursement, all expenses must be supported by documentation meeting the City's normal requirements and must be submitted within time limits established by the City.

9. Abuse of Office or Position.

Pursuant to Government Code Sections 53243, 53243.1 and 53243.2, if City Manager is convicted of a crime involving an abuse of Employee's office or position, all of the following shall apply: (1) if Manager is provided with administrative leave pay pending an investigation, City Manager shall be required to fully reimburse City such amounts paid; and (2) if City pays for the criminal legal defense of City Manager (which would be in its sole discretion, as it is generally not obligated to pay for a criminal defense), City Manager shall be required to fully reimburse City such amounts paid; and (3) if this Agreement is terminated, any Severance Pay and Severance Benefits related to the termination that City Manager may receive from City shall be fully reimbursed to City or void if not yet paid to City Manager. For purposes of this Section, abuse of office or position means either: (1) an abuse of public authority, including waste, fraud, and violation of the law under color of authority; or (2) a crime against public justice, including, but not limited to, a crime described in Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

10. Notices.

Any notice required or permitted by this Agreement shall be in writing and shall be personally served upon the other Party, or sent by United States Postal Service, postage prepaid and addressed to the appropriate Party as follow:

If to City: Attn: Mayor and City Council
City of San Bernardino

If to City Manager: Personal Address on File
City Manager

Notice shall be deemed given as of the date of personal service or upon the date of deposit in the course of transmission with the United States Postal Service.

11. Termination.

11.1 At-Will Employee

City Manager shall serve at the will and pleasure of the Mayor and City Council. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Mayor and City Council to suspend from duty, remove from office or otherwise terminate the services of City Manager at any time, at the sole discretion of the Mayor and City Council. This Agreement may be terminated as follows.

11.2 Termination – Mayor and Council Vote

The Mayor and City Council may remove the City Manager with or without cause by motion adopted by five (5) affirmative votes of the Mayor and City Council. If the City Manager is terminated without cause she shall be entitled to a severance payment as provided for in Section 11.7.

11.3 Resignation

City Manager may voluntarily resign her position as City Manager, after giving City at least sixty (60) days written notice prior to the effective date of such resignation, unless such notice is waived in whole or part by the Mayor and City Council. In the event the City Manager resigns from her employment with City, the City Manager shall not be entitled to any Severance Pay.

11.4 Death

If, during the Term or any extended Term, the City Manager dies, the City Manager's estate shall receive Accrued Salary and Benefits, but shall not be entitled to any additional compensation or payment, including Severance Pay.

11.5 Disability

In the event the City Manager is permanently disabled or is otherwise unable to perform her duties because of sickness, accident, injury, or mental incapacity

for a period of six (6) consecutive months, the City may terminate the City Manager's employment and this Agreement.

11.6 For Cause Termination

The City Council may remove the City Manager For Cause at any time without prior notice by motion adopted by the affirmative votes of a majority of the City Council. "For Cause" for purposes of this Agreement shall mean any of the following:

- (a) Conviction of, or plea of guilty or *nobo contendre* to, any crime or offense (other than minor traffic violations or similar offenses) which is likely to have a material adverse impact on the City or on the City Manager's reputation;
- (b) Gross misconduct which is likely to have a material adverse impact on the City or on the City Manager's reputation;
- (c) Proven failure of the Manager to observe or perform any of her duties and obligations, if that failure continues for a period of thirty (30) days from the date of his receipt of notice from the City Council specifying the acts or omissions deemed to amount to that failure; or
- (d) Any other action or inaction by the City Manager that materially and substantially impedes or disrupts the performance of the City and its organizational component units, is detrimental to employee or public safety, violates properly established rules or procedures, or adversely affects the reputation of the City, its officers, or its employees. Examples, include, but are not limited to lying, knowingly making misrepresentations or failing to disclose information to the City Council.

11.7 Severance Pay

In the event this Agreement is terminated, without cause, pursuant to Section 11.2 of this Agreement, the City Manager shall receive a severance payment, in a lump sum, equal to six (6) months of City Manager's then monthly Base Salary or, if lesser, an amount equal to the Annual Base Salary remaining on the unexpired term of the contract ("Severance Pay"). Such severance payment shall be City Manager's sole remedy for termination without cause under Section 11.2 of this Agreement. The Severance Pay shall only be paid after the City Manager executes a waiver and release agreement prepared by the City Attorney in a form substantially similar to that one set forth as Exhibit "A" to this Agreement.

City Manager shall not be eligible for Severance Pay if this Agreement is terminated for any reason other than, without cause, pursuant to Section 11.2 of this Agreement.

12. General Provisions.

12.1 This writing constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior oral or written representations or written agreements on the subject matter hereof, which may have been entered into between the parties. No modification or revision to this Agreement shall be of any force or effect, unless the same is in writing and executed by the Parties hereto.

12.2 Each Party agrees and acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any Party, which are not embodied herein and that any agreement, statement, or promise not contained in this Agreement shall not be valid or binding on either Party.

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

12.4 This Agreement shall be governed by and construed in accordance with the law of the State of California. Venue shall be in San Bernardino County.

12.5 This Agreement shall be construed as a whole, according to its fair meaning, and not in favor or against any Party. By way of example and not in limitation, this Agreement shall not be construed in favor of the party receiving a benefit or against the Party responsible for any particular language in this Agreement.

12.6 City Manager acknowledges that he has had an opportunity to consult legal counsel in regard to this Agreement, that he has read and understands this Agreement, that he is fully aware of its legal effect, and that he has entered into it freely and voluntarily and based on his own judgment and not on any representations or promises other than those contained in this Agreement.

12.7 In any dispute arising out of this Agreement, the prevailing party shall recover its reasonable attorneys' fees and costs.

13. Other Terms and Conditions of Employment

The City, only upon written agreement with City Manager, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the City Manager, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City Code, or any other law, ordinance or City Resolution.

14. Indemnification

14.1 City shall defend, hold harmless and indemnify City Manager against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of any alleged act or omission occurring in the performance of City Manager's duties or resulting from the exercise of her judgment or discretion in connection with the performance of her duties, unless the act or omission involved unlawful conduct. City shall not unreasonably refuse to provide for legal representation at City's expense. Legal representation, provided by City for City Manager, shall extend until a final determination of the legal action including any and all losses, damages, judgment, interests, settlements, fines, court costs, and the reasonable costs and expenses of legal proceedings, including appeals, and including attorneys' fees, and expert witness fees and all other trial and appellate costs, and other liabilities incurred, imposed upon, or suffered by such City Manager in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of City Manager's duties.

14.2 City agrees to pay all reasonable litigation expenses of City Manager throughout pendency of any City-related litigation to which City Manager is a party, witness or advisor to the City. Such expense payments shall continue beyond City Manager's employment with the City as long as litigation is pending. Post-employment, City agrees to pay City Manager for reasonable consulting fees, travel expenses and other costs, when City Manager serves as a witness, advisor or consultant to City regarding pending litigation.

IN WITNESS WHEREOF, the parties have executed this City Manager Employment Agreement on this 6th day of November, 2024.

EMPLOYEE/CITY MANAGER

CITY OF SAN BERNARDINO

Rochelle Clayton, City Manager

Helen Tran, Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk

City Attorney

Exhibit "A"

GENERAL WAIVER AND RELEASE

I, the undersigned, do hereby acknowledge and attest that I have read and understood Section 11.7 of my Employment Agreement with the City of San Bernardino and hereby agree that by accepting Severance Pay in the amount of twelve (12) months' or, if lesser, an amount equal to the Annual Base Salary remaining on the unexpired term of the Agreement, I agree to waive all rights to further claims, remedies, or legal action against the City of San Bernardino, its officers and employees.

In exchange for receipt of the Severance Pay, and all other salary and benefits owing, I and my representatives, heirs, successors, and assigns do hereby completely release and forever discharge the City of San Bernardino and its related entities and their present and former officers, directors, council members, agents, employees, attorneys, and successors (collectively, "Released Parties") from all claims, rights, demands, actions, obligations, liabilities, and causes of action of every kind and character, known or unknown, mature or unmatured, which I may have now or in the future arising from any act or omission or condition occurring on or prior to the date this General Waivers and Release is signed whether based on tort, contract (express or implied), or any federal, state, or local law, statute, or regulation (collectively, the "Released Claims"). Released Claims shall also include, but not be limited to, claims for wages or other compensation due, severance pay, bonuses, sick leave, vacation pay, life or health insurance, or any other fringe benefit. This General Waivers and Release specifically releases and waives any and all claims arising out of my employment and separation from employment with the City of San Bernardino, including but not limited to claims arising under the California Fair Employment and Housing Act ("FEHA"), the California Labor Code, the California Family Rights Act ("CFRA"), the California Constitution, federal Title VII of the Civil Rights Act of 1964, as amended, the federal Age Discrimination in Employment Act ("ADEA"), the federal Equal Pay Act ("EPA"), the federal Americans with Disabilities Act ("ADA"), the federal Fair Labor Standards Act ("FLSA"), the federal Family and Medical Leave Act ("FMLA"), tort and contract claims, privacy claims, and any other applicable state, federal, local or other laws that may apply.

I knowingly and voluntarily waive any and all rights or benefits that I may now have, or in the future may have, under the terms of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

EXHIBIT A – TEMPLATE WAIVER AND RELEASE

I acknowledge that I have read and understand this waiver and voluntarily and knowingly am waiving my right under Section 1542 to pursue unknown or unanticipated claims, rights, demands, actions, obligations, liabilities, and causes of action of any kind that may have materially affected this General Waivers and Release.

Unless otherwise required by law, I shall not file any claim, sue or initiate an action against any Released Party or participate in any compliance review, action, or proceeding, individually or as a member of a class, under any contract (express or implied), or any federal, state, or local law, statute, or regulation pertaining in any manner to the Released Claims.

By signing this Agreement, I certify that Employee has read all of this Agreement, understands its terms and conditions, and knowingly and voluntarily consents to such terms. Employee acknowledges that the Company has advised Employee in writing to consult with an attorney before signing this Agreement. Employee certifies that Employee has been given at least twenty-one (21) days to consider this Agreement, and that Employee's signature below indicates either that Employee has taken twenty-one (21) days to consider this Agreement, or has knowingly and voluntarily waived some or all of this consideration period. In addition, Employee has seven (7) days from the date of signing this Agreement to revoke the Agreement, after which the Agreement will become final and binding (which shall be deemed the "Effective Date" of this Agreement). If Employee does not execute and return this Agreement upon expiration of the twenty-one (21) day period, the Agreement and any severance payment offer it contains shall be deemed rescinded and no longer offered to Employee.

Approved and Agreed to By:

City Manager

CITY OF SAN BERNARDINO

Mayor

**[DO NOT SIGN]
[FOR TEMPLATE PURPOSES ONLY]**