

CITY OF SAN LEANDRO

AGREEMENT FOR EMPLOYMENT OF ASSISTANT CITY MANAGER

This Employment Agreement (“Agreement”) is made and entered into the 28th day of September, 2020, by and between the City of San Leandro under the authority of and through its City Manager (“City”), a charter City of the State of California, and Elizabeth Warmerdam (“Assistant City Manager”). City and Assistant City Manager are together the “Parties.”

RECITALS

WHEREAS, the City desires to employ, as an “at-will” employee, the services of an Assistant City Manager for the City in accordance with applicable provisions of the San Leandro City Charter, Municipal Code and the terms of this Agreement; and

WHEREAS, Assistant City Manager desires to be employed as the at-will Assistant City Manager for the City in accordance with applicable provisions of the City Charter, Municipal Code and the terms of this Agreement; and

WHEREAS, the classification of Assistant City Manager shall be unrepresented; and

WHEREAS, it is the desire of the City to provide certain compensation and benefits, and establish certain conditions of employment for the position of Assistant City Manager through this Agreement.

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

TERMS

1. Appointment

The City Manager hereby appoints Elizabeth Warmerdam to the position of Assistant City Manager in and for the City of San Leandro, California. Elizabeth Warmerdam hereby accepts such appointment under the terms and conditions of this Agreement.

2. Term of Agreement

This Agreement will become effective on September 1, 2020. The Agreement will expire on December 31, 2022, unless extended or terminated as provided herein. The Parties may terminate this Agreement pursuant to the provisions of Section 5.

3. At-Will Employment

Assistant City Manager is an “at-will” employee who shall serve at the pleasure of the City Manager per City Charter Article IV, Section 420. Accordingly, the City Manager may terminate Assistant City Manager’s employment under this Agreement at any time with or without cause.

4. Duties and Responsibilities

a. Assistant City Manager shall serve the City and perform the functions and duties of the position of Assistant City Manager as specified in the City's Charter, Administrative Code and Municipal Code; the Ordinances and Resolutions of the City; and any other legally permissible and proper duties and functions as the City Manager may from time to time assign.

b. Assistant City Manager shall be responsible for and shall report to the City Manager for the proper performance of all duties and functions assigned to Assistant City Manager.

5. Termination of Employment and Severance

a. This Agreement may be terminated with or without cause by the City Manager. In the event Assistant City Manager is terminated for cause, moved from the Assistant City Manager to a different position within the City such that this agreement becomes unnecessary or inapplicable, or voluntarily resigns from her employment with CITY, she shall not be entitled to severance. For purposes of this Agreement, the phrases "for cause," "with cause" and "without cause" relate only to Assistant city Manager's potential entitlement to severance, and do not alter the Assistant City Manager's at-will status.

b. Without Cause. Eligibility for severance is established if the Assistant city Manager is terminated without cause. If the City terminates this Agreement without "cause" before December 31, 2022, Assistant City Manager shall be compensated for all unused vacation leave; and paid a lump sum amount equal to Assistant City Manager's annual base salary; and provided health benefits for a period of six (6) months from receipt of written termination notice. Said payment of severance pay shall be conditioned upon Assistant City Manager signing an agreement to waive and release any and all claims against the City in a form acceptable to the City. Assistant City Manager shall receive the severance payment in a lump sum payment, less all applicable deductions, within fifteen (15) business days after execution of the waiver and release agreement.

c. For Cause. If Assistant City Manager is terminated "for cause," City shall not owe any severance under this Agreement. The determination of whether Assistant City Manager is terminated "for cause" shall be made in the complete discretion of the City. A termination "for cause" may include, but shall not be limited to, the following:

- (i) Violation of administrative policies and procedures;
- (ii) Failure to properly perform assigned duties;
- (iii) Theft of CITY property;
- (iv) Insubordination
- (v) Conviction of a felony;
- (vi) Conviction of a misdemeanor relating to Assistant City Manager's fitness to perform assigned duties;
- (vii) Conviction of a crime involving an abuse of office or position, as defined in Government Code Section 53243.4;
- (viii) Unauthorized absence from employment;
- (ix) Improper use of City funds or property;
- (x) Willful misconduct or malfeasance;
- (xi) Any act of moral turpitude or dishonesty;
- (xii) Other failure of good behavior either during or outside of employment such that the Assistant City Manager's conduct causes discredit to the City.

d. Resignation. Assistant City Manager shall provide forty-five (45) days notice in the event of a voluntary resignation unless the City agrees otherwise.

6. Compensation and Benefits

a. Salary. Assistant City Manager's initial annual base salary shall be \$225,432 (\$18,786 per month), which is step 5 of the Assistant City Manager publicly available salary schedule attached. Salary shall be payable on the City-established payroll cycle. There shall be no salary increase through December 31, 2021. Thereafter, Assistant City Manager salary increases shall reflect those provided to Department Heads as included in the San Leandro Management Organization Memorandum of Understanding.

b. Benefits. City agrees to provide to Assistant City Manager the same benefits provided to members of the San Leandro Management Organization (SLMO) pursuant to its current Memorandum of Understanding, in consideration for the services provided pursuant to this Agreement. In addition to these benefits, Assistant City Manager shall be eligible to receive retiree medical and/or dental benefits after two (2) year of continuous service with the City.

7. Indemnification & Professional Liability

The City shall defend, hold harmless, and indemnify Assistant City Manager from all demands, claims, suits, actions, errors, or other omissions in legal proceedings, whether groundless or otherwise, brought against the Assistant City Manager in her individual capacity or in her official capacity, provided the incident arose while the Assistant City Manager was acting within the course and scope of her employment, in accordance with the provisions of California Government Code Section 825 and the City will provide a defense in accordance with Government Code Sections 995 – 999.6. The City may decline to defend and/or indemnify Assistant City Manager only as permitted by the California Government Code.

8. Miscellaneous

- a. The text herein shall constitute the entire agreement between the Parties. This Agreement may not be modified, except by written agreement executed by both Parties.
- b. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.
- c. This Agreement shall be governed by the laws of the State of California.
- d. The Parties agree that any ambiguity in this Agreement shall not be construed or interpreted against, or in favor of, either party.
- e. This Agreement may be executed in counterparts containing original signatures.

9. Notices

Notices pursuant to this Agreement shall be in writing and served by mailing via the United States Postal Service, first class postage prepaid, addressed as follows:

- a. The CITY:
 City Manager
 City of San Leandro
 Civic Center
 835 East 14th Street
 San Leandro, California 94577

- b. ASSISTANT CITY MANAGER:

 Elizabeth Warmerdam
 HAND DELIVERED

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial process. Notice shall be deemed given as of the date of personal service or as of the date of mailing of such written notice, postage prepaid, with the United States Postal Service.

IN WITNESS WHEREOF, the City has caused this Agreement to be signed and executed in its behalf by its City Manager, and Assistant City Manager has signed and executed this Agreement, on the day and year written below.

ASSISTANT CITY MANAGER

DATED: _____

 ELIZABETH WARMERDAM

CITY

DATED: _____

 JEFFREY KAY
 CITY MANAGER

APPROVED AS TO FORM:

 RICHARD D. PIO RODA
 CITY ATTORNEY

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