

**EMPLOYEE AGREEMENT BETWEEN
THE CITY OF ARCATA AND TABATHA MILLER**

THIS AGREEMENT is made and entered into this 23rd day of January 2023, by and between the City of Arcata, a municipal corporation, hereinafter called “Employer” and Tabatha Miller, hereinafter called “Employee.”

RECITALS

WHEREAS, Section 2107(c) of the Arcata Municipal Code confers the power of appointment of City employees on its City Manager;

WHEREAS, the City of Arcata desires to initiate employment of Tabatha Miller, and Tabatha Miller desires to accept employment as the Finance Director for the City of Arcata on the terms and conditions of this agreement.

WHEREAS, it is the desire of the parties to maintain certain conditions of employment within the framework of an at-will employment relationship; and

NOW THEREFORE, based on the mutual covenants, conditions and terms recited herein and made a material part hereof, the parties agree as follows:

SECTION 1. DUTIES

- A.** Under the administrative direction of the City Manager, Employer agrees to the employment of Employee for the City of Arcata to perform the functions and duties of Finance Director as set forth in the Arcata Municipal Code, resolutions, ordinances, and/or other regulations of the City, as well as the laws, rules and regulations of the State of California, and such other legal and reasonable duties as the City Manager may direct.
- B.** Neither the City Council nor its members shall interfere with the execution by Employee of their powers and duties. Except for the purpose of inquiry, the Council and its members shall deal directly with City departmental administration solely through the City Manager, and neither the Council nor its members shall give orders to Employee or any subordinate thereof, either publicly or privately.

SECTION 2. TERM OF AGREEMENT

- A.** The term of this Agreement, unless terminated earlier as provided in this Agreement, shall be for a period of five (5) years, commencing on January 23, 2023 and expiring on January 22, 2028. This Agreement shall be automatically extended one-year (expiring 2029) unless on or before ninety (90) days prior to the expiration date, the City Manager provides Employee with written notice of their election to not extend this Agreement.
- B.** Employee agrees to devote their productive time, ability, and attention to the Employer’s business during the term of this Agreement. Employee may, however, undertake limited outside consultation or other professional activities with the prior and continuing approval of the City Manager and to the extent that such activities do not in any way interfere with or adversely affect

their full-time employment with the City or the performance of their duties as provided herein. It is specifically understood and agreed that any outside consultation or other professional activities shall be secondary to this employment.

- C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employer to terminate this Agreement at any time, or the right of Employee to resign at any time from their position, subject to the provisions as set forth in Section 3 of this Agreement.

SECTION 3. TERMINATION OF EMPLOYMENT; SEVERANCE PAY

A. Termination, General.

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

1. Upon ninety (90) days' notice given to the City Manager by the Employee; or
2. Upon the death of the Employee; or
3. Upon the effective date of retirement from the Employer's service pursuant to CalPERS; or
4. Upon the Employee's permanent disability or the Employee's inability to perform the essential duties of their position; or
5. Upon the decision of the City Manager to terminate Employee for cause.

B. Termination, For Cause.

"Termination for Cause" shall include:

1. Willful breach of the Agreement, as interpreted pursuant to California Labor Code section 2924.
2. Habitual neglect of the duties required to be performed by this Agreement, as interpreted pursuant to California Labor Code section 2924.
3. Continued incapacity to perform the duties required under this Agreement, as interpreted pursuant to California Labor code section 2924.
4. Any acts of dishonesty, fraud, misrepresentation or other acts of moral turpitude.
5. Conviction of any act which would constitute a crime, whether misdemeanor or felony, and which would bring disrespect to the position of City Engineer of the City of Arcata.
6. Willful violations of Employer policies of a serious nature, including for example, Employer's Sexual Harassment or "Drugs in the Work Place" policies.
7. Any action described in the City of Arcata Personnel Rules and Regulations CHAPTER XI, DISCIPLINARY ACTION, SECTION 5 – GROUNDS FOR DISCIPLINE OF AN EMPLOYEE.

C. Severance.

1. In the event Employee is terminated without cause, Employer agrees to pay Employee a lump sum cash severance payment, or mutually agreeable payment plan, equal to the total of the Employee's then current aggregate salary that they would have been entitled to receive for a period of three (3) months under the terms of this Agreement. Employee shall also be compensated for all earned and unused vacation, floating holidays, sick leave, and other accrued benefits to date in such amounts and to such extent as accorded in the Employer's current Resolution of Supplemental Compensation and Benefits for Management and Confidential Employees.

2. Notwithstanding the severance amounts specified in Sections 3.C.1, pursuant to Government Code section 53260, the maximum cash settlement that Employee may receive upon termination shall be an amount equal to the monthly salary of the Employee multiplied by the number of months left on the unexpired term of the contract. However, if the unexpired term of the contract is greater than 18 months, the maximum cash settlement shall be an amount equal to the monthly salary of the employee multiplied by 18.
3. In the event Employee is terminated by the City Manager for cause or conviction, Employer shall have no obligation to pay the aggregate severance sum designated in Section 3.C.1.

D. Resignation. In the event Employee voluntarily resigns their position with the City of Arcata before expiration of the previously mentioned term of employment, then Employee shall give the City Manager ninety (90) days advance notice, unless the parties agree otherwise. If Employee voluntarily resigns, Employee will be compensated under the same terms and conditions for unused earned time that would be accorded to Senior Management Employees of the Employer. Employer shall have no obligation to pay the aggregate severance sum designated in Section 3.C.1.

SECTION 4. COMPENSATION OF EMPLOYEE

- A. Salary.** Employer agrees to pay Employee for their services under this Agreement an initial annual base salary of \$125,361.38 (Salary Grade M232 Step 5A) within the current compensation range for the classification payable in installments as other Senior Management employees are paid.
- B. Other Supplemental Compensation and Benefits.** Employee shall receive supplemental compensation and benefits as set forth in Resolution No. 223-11, and any successor Resolution adopted by the City Council during the term of this Agreement.
- C. Vehicle Use.** Employee will furnish their own personal vehicle as required for Employee's duties and obligations in performance of Employee's agreement, for which employer shall provide a monthly allowance to Employee equal to Three Hundred Fifty (\$350). Employee may use a City vehicle as appropriate, and in accordance with the City's vehicle travel policy when traveling for City purposes out of the County or when Employee's personal vehicle is not practical or feasible. Personal vehicle use for City business out of the County shall be reimbursed with the City's travel policy.
- D. Cellular Phone Stipend.** In recognition that Employee is required to be accessible outside of normal work hours, outside of their assigned work area during regular business hours, and in emergency situations; and is required to have wireless data and internet access, should Employee elect to use personal cellular phone, instead of a City issued cellular phone, Employer agrees to provide a monthly stipend for business-related use of Employee's personal cellular phone. The monthly stipend shall be up to and not exceed the City's current cost for a voice and data plan for City issued cellular phones. This initial maximum stipend shall be \$35 per month and will be reevaluated annually, with any applicable adjustments to be applied each July. Employee shall provide annual documentation of actual monthly cost for their personal cellular phone used for business-related purposes. Employee shall abide by and comply with all City policies and procedures as it relates to use of a personal cellular phone for City business.

SECTION 5. MISCELLANEOUS PROVISIONS

- A.** The text herein shall constitute the entire agreement between the 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.** If any provisions of the Employer’s Personnel Rules, Regulations, or Policies conflict with the at-will employment status described in this Agreement, such conflicts will be resolved in favor of the at-will status contained in this Agreement.
- D.** In the event that either party to this Agreement brings a lawsuit to enforce or interpret any provisions of this Agreement, the prevailing party shall be entitled to recover their reasonable attorneys’ fees and related expenses and costs.
- E.** This Agreement shall be governed by the laws of the State of California.
- F.** The parties agree that any ambiguity in this Agreement shall not be construed or interpreted against, or in favor of, either party.
- G.** This Agreement contains the full agreement of the parties. Any modification or changes in this Agreement shall not be binding on either party unless such change or modification is in writing and signed by both parties.
- H.** The parties agree that they will, at all times, assist each other in defending any litigation involving the City of Arcata, or Employee’s duties with the City, and Employer agrees to defend any claim or action against the Employee that arises out of an act or omission occurring within the scope of employment. The parties shall each comply with the requirements of Government Code section 825, or its successor in implementing this paragraph.

IN WITNESS WHEREOF, the parties have executed this Agreement effective on the day and year first above written.

EMPLOYEE

EMPLOYER

By: Tabatha Miller

By: Karen T. Diemer, City Manager

APPROVED AS TO FORM:

By: Nancy Diamond, City Attorney