

AGREEMENT FOR EMPLOYMENT OF CITY MANAGER

THIS AGREEMENT is made and entered into this 1st day of February 2023, by and between the City of Arcata, a California general law municipal corporation of the State of California, hereinafter referred to as “Employer” and Karen T. Diemer, hereinafter referred to as “Employee”.

SECTION 1. EMPLOYMENT

A. Appointment of Employee.

1. The City Council of the City of Arcata hereby appoints Karen T. Diemer to the position of City Manager, to perform the functions and duties specified under the laws of the State of California, the Municipal Code of the City, the ordinances, resolutions, plans and programs of the City, and to perform such other duties and functions as the City Council shall from time to time assign. Employee shall be vested with the powers, duties, and responsibilities set forth in Title II, Chapter 2, Article 1 of the Arcata Municipal Code, the terms of which are incorporated herein by reference.
2. This is an at-will employment and Employee shall serve at the pleasure of the City Council.

B. Hours of Work.

Employee is expected to devote necessary time outside normal office hours to the business of the Employer, including but not limited to attending City Council meetings and study sessions, and other meetings as requested by the Mayor. To that end, Employee shall be allowed flexibility in setting their own office hours but shall be expected to be generally available during ordinary business hours.

C. Outside Professional Activities.

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 Council 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 by the City.

SECTION 2. TERM OF AGREEMENT

The term of this Agreement, unless terminated earlier as provided in this Agreement, shall be for a term of three (3) years, commencing on February 1, 2023, and expiring on January 31, 2026.

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 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 Employer 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 PERS; or
4. By motion to terminate Employee carried by four (4) affirmative votes of the City Council of the City, with or without cause. Provided that in the event of a single Council member vacancy, a motion to terminate Employee shall not be effective unless carried by three (3) affirmative votes of the City Council.

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 Office of City Manager or the Employer.
6. Willful violations of Employer policies of a serious nature, including for example, Employer's Sexual Harassment or "Drugs in the Work Place" policies.

C. Severance.

1. In the event Employee is terminated without cause, Employer agrees to pay Employee a lump sum cash severance payment equal to the total of the Employee's

then current aggregate salary, benefits, and deferred compensation 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, holidays, and other accrued benefits to date, excepting that earned sick leave will be compensated according to the same provisions applicable to Senior Management employees.

2. Notwithstanding the severance amounts specified in Sections 3.C.1 and 3.C.2, 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.
4. In the event Employee is terminated for cause or conviction, Employer shall have no obligation to pay the aggregate severance sum designated in Section 3.C.1 or 3.C.2.

D. Disability. In the event Employee is permanently disabled or is otherwise unable to perform their duties because of sickness, accident, injury, mental capacity or health reasons for a period of three (3) consecutive months beyond any accrued sick leave, Employer may terminate this Agreement, and Employee's salary then in effect shall continue until six (6) months have elapsed from the date of the incident or onset of illness giving rise to the disability or incapacity. The amount of salary shall be reduced by an amount equal to any disability insurance proceeds then being received by the Employee. Employer shall have no obligation to pay the aggregate severance sum designated in Section 3.C.1 or 3.C.2 in the event of termination under this Section 3.D.

E. Resignation. In the event Employee voluntarily resigns their position with Employer before expiration of the previously mentioned term of employment, then Employee shall give Employer ninety (90) day advance notice, unless the parties agree otherwise. If Employee voluntarily resigns with 90-day notice, Employer shall have no obligation to pay the aggregate severance sum designated in Section 3.C.1 or 3.C.2.

SECTION 4. COMPENSATION OF EMPLOYEE

A. Salary. Employer agrees to pay Employee for their services provided under this contract. Employee shall receive automatic base salary increases on the schedule set forth in this Section, and in no event may Employee receive additional cost of living or other salary adjustments that are granted to Senior Management Employees. Effective the pay period beginning immediately on or after February 1, 2023, or beginning February 5, 2023, Employee will be compensated at a base salary of step 5A of the appointed classification salary CM100 or \$165,504. Effective the pay period that includes July 1, 2023, Employee will be moved to step 6 (\$169,541.24).

B. Benefits, Vacation, Holiday, Sick Leave, and Compensatory Time. Except as provided in Section 4.A regarding salary adjustments received by Senior Management employees, Employee shall receive such other and further benefits in such amounts and to such

extent as accorded to Senior Management employees of the Employer, including, but not limited to retirement, health insurance (including medical, dental, and vision coverage to the Employee and family), life insurance, workers compensation, short-term disability coverage, holidays, and sick, bereavement and executive leave.

C. Vehicle Use. Employee will furnish her own personal vehicle as required for her duties and obligations in performance of this Agreement, for which Employer shall provide a monthly allowance to Employee equal to Three Hundred Fifty Dollars (\$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 use of Employee's personal vehicle is not practical or feasible. Personal vehicle use for City business outside of the County shall be reimbursed in accordance with the City's travel policy.

D. Dues and Subscriptions. Employer agrees, to the extent it is financially able and with City Council approval, to budget for and to pay for professional dues and subscriptions of Employee necessary for her continuation and full participation in national, regional, state and local City Manager associations.

E. Professional Development. Employer agrees, to the extent it is financially able and with City Council approval, to budget for and to pay for travel and subsistence expenses of Employee for professional and office travel, meetings, and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official functions for Employer, including but not limited to the ICMA Annual Conference, the League of California Cities Annual Conference and the annual City Manager's Department meeting and the annual renewal requirements of the ICMA Credentialed Manager Program, and such other national, regional, state, and local governmental groups and committees thereof which Employee serves as a member. Employer also agrees, to the extent it is financially able, to budget for and to pay for travel and subsistence expense of Employee for short courses, institutes, and seminars that are necessary for her professional development and for the good of the Employer.

SECTION 5. PERFORMANCE EXPECTATIONS

A. Performance Evaluation.

1. Schedule of reviews. The City Council shall review and evaluate the performance of the Employee at least once each contract year on or near the contract anniversary date, February 1.
2. Performance criteria. Said review and evaluation shall be in accordance with specific written goals and performance objectives developed jointly by Employer and Employee, as outlined in Section 3.A.2, below. Said goals and objectives may be added to or deleted from as the Council may from time to time determine, in consultation with the Employee. Based on these criteria, the City Council and Employee shall develop written performance expectations and goals for Employee, which shall be used in part as guidelines to frame the annual performance review under this Agreement.
3. Written summary of review. The Mayor shall provide the Employee with a written summary statement of the findings of the City Council within fifteen (15) working

days after completion of the City Council's evaluation of Employee. The City Council shall provide adequate opportunity for the Employee to discuss Employee's evaluation with the City Council in closed session.

B. Performance Objectives and Criteria. In conjunction with each annual performance evaluation, the City Council and Employee shall define in writing performance goals and objectives for the following year that they determine necessary for the proper operation of the City and consistent with the City Council's policy objectives. The City Council and Employee may establish a relative priority among those various goals and objectives. They shall generally be attainable within the time limitations as specified and the annual operating and capital budgets and appropriations provided.

SECTION 6. MISCELLANEOUS PROVISIONS

- A. The text herein shall constitute the entire Agreement between the parties.
- B. If any provision, or 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. 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.
- D. This Agreement shall be governed by the laws of the State of California.
- E. The parties agree that any ambiguity in this Agreement shall not be construed or interpreted against, or in favor of either party.
- F. This Agreement contains the full agreement of the parties. Any modification or change in this Agreement shall not be binding on either party unless such change or modification is in writing and signed by both parties.
- G. Employer shall defend, hold harmless, and indemnify Employee 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 during Employee's employment under this Agreement, including without limitation, claims arising out of personnel actions taken by Employee. Employer shall defend, compromise and settle any such claim or suit, and shall pay the amount of any settlement or judgment rendered hereon.

IN WITNESS WHEREOF, the Employer has caused this Agreement to be signed and executed in its behalf by its Mayor and duly attested to by the City Clerk, and Karen T. Diemer has signed and executed this Agreement on the day and year first above written.

EMPLOYEE:

EMPLOYER:

Karen T. Diemer

By: Sarah Schaefer, Mayor

Attest:

Bridget Dory, City Clerk

Approved as to form:
(At Employee's Option)

Approved as to form:

Name:

Nancy Diamond, City Attorney