

~~AMENDMENT TO HAYWARD CITY MANAGER~~ AMENDED EMPLOYMENT AGREEMENT

THIS AMENDMENT, dated for convenience the _____ day of June 2021, is by and between **KELLY RUTH McADOO**, an individual (“Employee”) and the **CITY OF HAYWARD**, a public body of the State of California (“Employer”) and amends and replaces the Agreement between Employee and Employer which was entered into on December 3, 2018 (“Agreement”).

RECITALS:

WHEREAS, pursuant to the previous agreement between the City of Hayward and the City Manager, the City Manager was entitled to a 2% cost-of-living adjustment (COLA) for the pay period including July 1, 2020; and

WHEREAS, the City Manager forewent a two percent (2%) COLA originally due to the City Manager effective the pay period including July 1, 2020, because of a projected revenue shortfall resulting from impacts of the COVID-19 pandemic; and

WHEREAS, as Fiscal Year 2021 comes to a close, the City of Hayward has determined that actual revenues have exceeded projections; and

WHEREAS, the City of Hayward is agreeable to restoring the foregone two percent (2%) COLA effective July 1, 2021; and

WHEREAS, the City Council also agrees to a one-time, lump sum cash payment in an amount equal to two percent (2%) of base salary effective the pay period including July 1, 2021 to repay the amount of the forgone COLA in 2020 due to the impacts of the COVID-19 pandemic; and

WHEREAS, the City Council and City Manager have agreed to two one-time cash payments in an amount equal to two percent (2%) of Employee’s annual base salary each (total of 4%), the first to be issued effective the pay period including July 1, 2021, and the second to be issued the pay period including January 1, 2022; and

WHEREAS, the City Council and City Manager have also agreed to modify the ability for Employee to cash out additional leave up to 120 hours annually.

NOW, THEREFORE, in consideration of the covenants and conditions hereinafter recognized, Employee and Employer agree to the following:

Section 1 Term

The Term of this Agreement is December 1, 2018, through June 30, 2023. This Agreement shall be renewed subject to annual performance reviews as outlined in Section 13.

Section 2 Duties and Authority

Employer agrees to employ Employee as City Manager to perform the functions and duties specified in Article VII sections 700 et seq. of the Hayward City Charter and such other lawful and appropriate duties and functions as directed by the City Council. Employee shall be a member in good standing of the International City/County Management Association (ICMA) and shall adhere to ICMA principles and tenets and Employer shall not give the Employee any order or direction that would require the Employee to violate the ICMA Code of Ethics. Employee shall maintain current her ICMA Credentialed Manager standing for the Term of employment.

Section 3 Compensation

As of December 1, 2018, Employee's Base Salary was \$254,072.00. Effective the pay period that included January 1, 2019, Employee received a 7% market equity adjustment. Effective the pay period that included January 1, 2020, Employee received a 7% market equity adjustment and a 2% COLA. Effective the pay period that includes July 1, ~~2020~~2021, Employee shall be eligible to receive a 2% COLA originally due to Employee effective the pay period including July 1, 2020, but which Employee forewent to offer cost savings due to the COVID-19 pandemic. Thereafter and subject to an evaluation of performance, Employer may increase Employee's salary by resolution.

In March of 2021, the Parties agreed to complete a market total compensation survey to be used to inform the Council and considered along with performance evaluations and other factors to set salary should the Council desire to offer additional salary adjustments.

During the Term of this Agreement, Employer agrees to pay Employee on the same schedule as other City of Hayward employees, which is currently bi-weekly.

Section 4 One-Time Lump Sum Payments

Employee shall receive a one-time, lump sum payment equal to two percent (2%) of Employee's base salary effective the pay period including July 1, 2021 to restore the COLA originally due to employee the pay period including July 1, 2020.

Employee shall receive two additional one-time, lump sum payments equal to two percent (2%) of Employee's base salary each (4% total), which shall be issued the pay periods including July 1, 2021 and January 1, 2022 as the Employee's compensation adjustment for FY 2022.

Section 4.5 Health, Disability, Life Insurance, and Other Benefits

Upon commencing employment, Employer agrees to provide and to pay the premiums for health, hospitalization, surgical, vision, dental, and comprehensive medical insurance for Employee and

her dependents equal to that which is provided to all unrepresented management employees of Employer.

Similarly, Employer agrees to obtain and to make required premium payments for short term and long-term disability insurance coverage for Employee while this Agreement is in effect.

Employer shall also pay for term life insurance for Employee in an amount equal to Employee's gross annual Base Salary (including all salary increases during the life of this Agreement) or Employer's maximum allowable amount of term life insurance coverage under Employer's contract with its insurer, if said amount is less than Employee's gross annual Base Salary. Employee shall have the right to choose the beneficiary on such policies.

In addition to the benefits set forth herein, all actions taken by the City Council relating to benefits for Unrepresented Management Employees shall be considered actions granting the same level of benefits to Employee, unless mutually agreed otherwise between Employer and Employee.

Employer provides employees with access to a deferred compensation plan. Employer will not provide an employer contribution to the deferred compensation plan.

Section 56 Vacation and Sick Leave

Upon commencing employment, Employee shall be credited with the existing sick and vacation leave hours of accrued leave as reflected in the existing City of Hayward account for Employee from her previous position as Assistant City Manager. Employee shall continue to accrue sick and vacation leave on an annual basis at her current rate and in accordance with the Salary and Benefits Resolution for Unrepresented Management Employees, unless and until this Agreement is amended.

Employee shall be entitled to eighty (80) hours of management leave annually as provided in the Salary and Benefits Resolution for Unrepresented Executive Employees. Employee may cash out up to ~~forty (40)~~one-hundred twenty (120) hours Management Leave and/or Vacation Leave each fiscal year.

Employee shall not take more than fifteen (15) workdays of said leave at any one time, exclusive of holidays recognized by Employer, to which Employee shall also be entitled. Upon approval of the Council, leave may be extended beyond the fifteen (15) workday limit established above.

~~Employee may cash out up to forty (40) hours vacation time each fiscal year.~~

In the event of termination, either voluntarily or involuntarily, Employee, or if the case of her death, Employee's heirs, shall be compensated for all accrued sick and vacation time as of the date of termination as provided in the Salary and Benefits Resolution for Unrepresented Management Employees and consistent with City policies.

Section 67 Personal Equipment and Automobile Allowance /Health and Wellness Reimbursement

Employee shall receive a \$450 per month stipend for the use of personal equipment and automobile, payable bi-weekly at the rate of \$207.69 per pay period. Personal equipment includes, but is not limited to cell phone, iPad, laptop, printers, etc. Employee may be reimbursed for mileage expenses incurred for non-routine meetings and conferences if vehicle travel exceeds fifty (50) miles one-way. Non-routine meetings are those that do not occur at a regular interval i.e.: weekly, monthly, annually, and/or where participation in the meeting is not a required part of the position. Employer agrees to provide Employee mileage reimbursement for qualified expenses at the same level as provided for Unrepresented Management employees. The City will reimburse the employee the equivalent of a maximum of one hundred dollars (\$100.00) per month for expenses associated with health and wellness programs. This reimbursement may be used for the purchase of or recurring monthly fees associated with gym or health club memberships, fitness class (such as yoga, Zumba, or similar), personal trainers, weight loss programs (such as Weight Watchers, Jenny Craig, or similar), or other health and wellness related expenses. Requests must be made in writing and submitted with proof of enrollment and receipt(s).

Section 78 Professional Development and Business Expenses

Employer acknowledges its mutual interest in the continuing professional development of Employee. Employee agrees to devote all professional time and attention to the City's business during the Term of this Agreement.

Employer agrees to allow and pay for professional dues and subscriptions of Employee for continuation and full participation in national, regional, state, and local associations, including but not limited to ICMA, the League of California Cities, and such other organizations necessary and desirable for Employee's continued professional participation, growth, and advancement and for the good of the Employer.

Employer agrees to pay travel and subsistence expenses of Employee for conferences in a manner consistent with the treatment of other Executive employees and consistent with the City's policies and procedures for travel and training reimbursement. Employer agrees to reimburse Employee for reasonable business expenses to conduct non-conference related City business including meals, travel, and lodging.

Employee will present a proposed budget for professional development and business expenses to the Council Appointed Officers Committee for review and approval at the beginning of each fiscal year.

Section 89 Retirement

Employee shall be required to pay the full Cal PERS Employee contribution rate of eight percent (8%). In addition to the 8% employee rate, the Employee shall continue contributing five percent (5%) toward the Employer contribution rate.

Section ~~9~~10 Employee Savings Commitment

All previously agreed cost savings measures remain in effect. In the event additional cost savings measures are implemented during the Term of this agreement, the Employee shall contribute equivalent to the same percentage as the Executive members of the Unrepresented Executive Employees, unless and until this Agreement is amended. Furthermore, any employee cost savings achieved through increased employee contributions towards PERS retirement contributions or medical plan premiums shall be credited towards the overall percentage cost savings established for the Unrepresented Management Employees.

Section ~~10~~11 Termination

Termination of this Agreement may occur under any of the following circumstances:

- A. If after proper meeting notice, a majority of the governing body votes to terminate Employee at a duly authorized public meeting;
- B. If Employer, citizens, or Legislature acts to amend any provisions of the Charter, Ordinances, or appropriate enabling legislation pertaining to the role, powers, duties, authority, and responsibilities of Employee's position, and such amendment substantially changes the form of government, Employee shall have the right to declare that such amendment constitutes termination;
- C. If Employee resigns following an offer by Employer to accept resignation, whether such offer is formal or informal, then Employee may declare a termination as of the date of Employee's acceptance of such formal or informal offer;
- D. If either party fails to cure a breach of contract as declared by either Employer or Employee within a 30-day period after the declaration of such breach of contract, provided written notice of such breach of contract is provided in accordance with provisions of Section 21;
- E. If Employee is convicted of a felony or misdemeanor involving moral turpitude, or if it is established that Employee's performance constitutes malfeasance or gross dereliction of duty;
- F. If Employee fails or refuses to follow a direct, lawful, and material order by Employer, representing the direction of a majority of the Council; and
- G. If Employee violates one or more tenets or ethical principles of ICMA.

Employee shall not be removed during the 90-day period preceding or following any City election for membership on the City Council, or during the 90-day period following any change in membership of the City Council, except upon an affirmative vote of at least six of the seven members of the City Council. Employee will be eligible for Severance Pay as outlined in Section 11 if this Agreement is terminated for this reason.

Section ~~11~~-12 Severance

- A. Except as expressly provided herein, Severance shall be paid to Employee when employment is terminated in Section 10. If Employee is terminated, Employer shall provide a minimum Severance payment equal to one-hundred eighty (180) days salary and benefits at the then-current rate of pay. This Severance shall be paid in a lump sum unless otherwise agreed to by Employer and Employee. Severance does not include life insurance. Employee shall also be compensated for all accrued sick leave, vacation time, all paid holidays and administrative leave as provided in the Salary and Benefit Resolution for the Unrepresented Management Employees.
- B. If Employee is terminated under any of the circumstances set forth in items E, F, or G of the preceding Section 10, Employer is not obligated to pay Severance.

Section ~~12~~-13 Resignation

In the event that Employee voluntarily resigns her position with Employer, Employee shall provide a minimum of ninety (90) days' notice, unless the parties agree otherwise, and shall receive no Severance.

Section ~~13~~-14 Performance Review

Employer will review the performance of the Employee under this Agreement in April of 2019, and annually thereafter. Performance reviews will include at least the identification of mutually agreed upon goals to be achieved by Employee in the ensuing year, as well as a review of compensation for the coming year.

Section ~~14~~-15 Hours of Work

Employee shall be an exempt employee under FLSA. Employee does not have set hours of work but is expected to engage in those hours of work necessary to fulfill the obligations of the City Manager's position. Employer recognizes that the Employee must devote a great deal of time to business of the City outside of the City's customary office hours and Employee's schedule of work each day and week may vary in response to the requirements of the work to be performed. Employee is required to maintain a regular on-site presence during normal business hours that is sufficient to properly administer and oversee the activities of the City and its employees, to

provide accessibility to City Council members, Department Heads, citizens, and other persons or firms who have business with the City and to generally ensure that the City functions appropriately on a day-to-day basis. Employee is expected to be available at all times, except for time taken on personal matters, such as vacations; Employer expects Employee to make prudent and reasonable arrangements for such personal time off, such as reasonable notice and arrangements, for example, for acting City Managers.

Section ~~15~~-16 Outside Activities

The employment provided for by this Agreement shall be Employee's sole employment, unless otherwise agreed to by Employer prior to Employee engaging in any such other employment.

Section ~~16~~-17 Residency and Housing Assistance

Employer and Employee both agree that it is desirable for Employee to live in Hayward. Employer has provided Employee with a housing assistance loan in accordance with the terms set forth in Employee's previous Employment Agreement. A Home Loan Agreement has been fully executed by the Parties.

Section ~~17~~-18 Indemnification

Beyond that required under Federal, State or Local Law, Employer shall defend, save harmless and indemnify Employee against any tort, professional liability claim, or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as City Manager or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities unless the act or omission involved willful or wanton conduct. Employer shall indemnify Employee against any and all losses, damages, judgments, interest, settlements, fines, court costs, and other costs and expenses of legal proceedings including attorneys' fees, and any liabilities incurred by, imposed upon, or suffered by such Employee 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 her duties. Any settlement of any claim must be made with prior approval of Employer in order for indemnification, as provided in this Section, to be available.

Section ~~18~~-19 Abuse of Office or Position

If Employee is convicted of a crime involving an abuse of her office or position, all of the following shall apply: (1) if Employee is provided with administrative leave pay pending an investigation, Employee shall be required to fully reimburse City such amounts paid; (2) if City pays for the criminal legal defense of Employee (which would be in its sole discretion, as it is generally not obligated to pay for a criminal defense), Employee 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 Employee may receive from City shall be fully reimbursed to City or shall be void if not yet paid to Employee. 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.

Section ~~19~~20 Bonding

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

Section ~~20~~21 Other Terms and Conditions of Employment

Employer may set such other terms and conditions of employment, as it may determine from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Hayward City Charter, or any other law.

Section ~~21~~22 Notices

Notice pursuant to this Agreement shall be given by depositing in the custody of the United States Postal Service postage prepaid addressed as follows:

- (1) EMPLOYER: Mayor of the City of Hayward
City Hall
777 B Street
Hayward, CA 94541

- (2) EMPLOYEE: Kelly Ruth McAdoo
Address on File

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

Section ~~22~~23 General Provisions; Integration; Severability

This Agreement sets forth and establishes the entire understanding between Employer and Employee relating to the employment of the Employee by the Employer. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The parties by mutual written agreement may amend any provision of this

ATTACHMENT III

Agreement during the life of the Agreement. Such amendments shall be incorporated into and made a part of this Agreement.

The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

IN WITNESS WHEREOF, Employee has executed this Amendment, and Employer, by and through its Mayor, duly authorized to act, has executed this Amendment.

Dated: June ____, 2021

Executed by:

Barbara Halliday
Mayor, City of Hayward

Kelly Ruth McAdoo
Employee (City Manager)

ATTEST:

Miriam Lens
City Clerk

APPROVED AS TO FORM:

Michael S. Lawson
City Attorney