

**FIRST AMENDED AND RESTATED CITY MANAGER
EMPLOYMENT AGREEMENT**

This FIRST AMENDED AND RESTATED CITY MANAGER EMPLOYMENT AGREEMENT (hereinafter referred to as the “Agreement”) is entered into and made effective the 18th day of April 2023 by and between CITY OF BEAUMONT (hereinafter referred to as the “CITY”), and ELIZABETH GIBBS, an individual (hereinafter referred to as “EMPLOYEE”). For purposes of this Agreement, CITY and EMPLOYEE may be collectively referred to as the “Parties” or individually as a “Party.”

RECITALS

Based on EMPLOYEE’s executive and administrative qualifications and ability, the City Council of CITY (“COUNCIL”) desires EMPLOYEE to serve as the City Manager for CITY; and

EMPLOYEE desires to serve and perform the responsibilities and duties as the City Manager for CITY; and

In consideration of these recitals and performance of the mutual promises, conditions and covenants contained herein, the CITY and EMPLOYEE agree as follows:

1. POSITION, DUTIES AND TERM.

1.1 Position, Duties & Term. EMPLOYEE agrees to serve as the City Manager and shall perform all City Manager functions, duties and services as established under California law and as set forth in the City of Beaumont Municipal Code (“Municipal Code”) as may be amended from time to time. This Agreement shall terminate on July 18, 2025 and is subject to the “At-Will” provision in Section 1.2 and termination provision in Section 6. Section 2.12.060 of the Municipal Code sets forth the Powers and Duties of the Beaumont City Manager (Powers & Duties).

As City Manager, EMPLOYEE shall function as the Chief Executive Officer of the CITY and shall be responsible to the CITY and its COUNCIL for the proper, lawful and ethical administration of all affairs of the CITY. In the role of the City Manager, EMPLOYEE shall also serve at the pleasure of the COUNCIL as the Director of any sub-entities/agencies of the City of Beaumont.

1.2 Employment with CITY “At-Will”.

(a) EMPLOYEE’s employment status with CITY shall be at-will and EMPLOYEE shall serve at the pleasure of the COUNCIL. EMPLOYEE acknowledges, understands and agrees that EMPLOYEE may not avail herself of any procedures, provisions or protections set forth under CITY’s Employment Policies, as defined herein, in so far as such procedures, provisions or protections limit, restrict, modify, prohibit or regulate EMPLOYEE’s status as an “at-will” employee of CITY or the ability of the COUNCIL to terminate

EMPLOYEE's employment at any time for cause or for convenience and without cause. For purposes of this Agreement, the capitalized term "Employment Policies" means and refers to any ordinance, resolution, regulation, rule, memorandum of understanding, or other written policy of CITY as the same may be amended, modified or supplemented from time-to-time, and any written employment manual of CITY which governs, regulates or otherwise relates to employment with CITY. CITY's Employment Policies shall not apply to EMPLOYEE in so far as such Employment Policies limit, restrict, modify or regulate (or may be interpreted to limit, restrict, modify or regulate) EMPLOYEE's status as an "at-will" employee of CITY.

(b) EMPLOYEE shall not be entitled to any pre-termination notice or hearing or other similar proceeding or appeal proceeding as a precondition to any decision or action by the CITY to terminate EMPLOYEE's employment whether for cause or for convenience and without cause.

(c) Nothing in this Agreement shall confer upon EMPLOYEE any right to any property interest in continued employment with CITY.

1.3 Work Hours. The position of City Manager is an exempt position under state and federal wage and hour laws. EMPLOYEE's compensation (whether salary or benefits or other allowances) is not based on hours worked and EMPLOYEE shall not be entitled to any compensation for overtime. EMPLOYEE is expected to engage in those hours of work that are necessary to fulfill the obligations of the City Manager's position. The City Manager does not have set hours of work as the City Manager is expected to dedicate herself on a full-time basis to serving as City Manager and to be available at all reasonable and relevant times.

1.4 Non-CITY Activities. In accordance with Government Code Section 1126, during the period of EMPLOYEE'S employment, EMPLOYEE shall not accept, without the express prior written approval of three or more members of the COUNCIL, any other employment or engage, directly or indirectly, in any other business, commercial, or professional activity, whether or not to pecuniary advantage, that is or may be competitive with her duties as City Manager or that may be competitive with CITY, that might cause a conflict-of-interest with CITY, or that otherwise might interfere with the business or operation of CITY or the satisfactory performance of EMPLOYEE's duties as City Manager.

2. COMPENSATION BENEFITS AND REIMBURSEMENT.

2.1 Base Salary. Commencing on April 11, 2023, EMPLOYEE's gross annual salary shall be \$241,633.56 (hereinafter, the "Base Salary") to be paid monthly or bi-weekly installments at the same time and in the same manner as other management employees of CITY. On April 18, 2023, EMPLOYEE shall receive a one-time non-PERSable performance bonus of \$5,750.16. EMPLOYEE's salary shall be subject to customary withholding for taxes and other required deductions. In recognition of EMPLOYEE accomplishing goals and objectives identified by the COUNCIL, the COUNCIL may, in its discretion, grant EMPLOYEE merit increases in her salary, annual merit bonuses and/or benefits.

2.2 Performance Evaluation. As needed and on the annual anniversary of the commencement of EMPLOYEE'S employment with CITY, COUNCIL and EMPLOYEE shall define the goals and objectives that they determine are appropriate for the proper operation of the CITY. Concurrently with the annual establishment of the goals and objectives for the CITY, the COUNCIL and EMPLOYEE shall establish the performance goals for EMPLOYEE and any specific criteria that shall be used to evaluate EMPLOYEE'S performance. The COUNCIL may in its discretion amend said criteria from time to time, after consultation with EMPLOYEE. The failure of CITY to undertake performance evaluations shall not limit CITY's ability to terminate EMPLOYEE and this Agreement pursuant to Section 6 (Termination).

2.3 Reimbursement. CITY shall reimburse EMPLOYEE for reasonable and necessary travel, subsistence and other business expenses incurred by EMPLOYEE in the performance of EMPLOYEE'S official duties. All reimbursements shall be subject to and in accordance with any limitations or restrictions set forth under the laws of the State of California or any CITY-adopted reimbursement policies.

2.4 Vehicle Allowance. In lieu of expense reimbursement for mileage, EMPLOYEE shall receive a vehicle allowance of \$350.00 per month or alternatively the use of a take-home City vehicle. EMPLOYEE shall be responsible for payment of automobile and liability insurance, maintenance, repair, replacement costs, all taxes applicable to the vehicle allowance and shall be solely responsible for all expenses associated with her vehicle. EMPLOYEE shall be responsible for maintaining necessary records as may be required by Federal and/or State taxing authorities.

2.5 Cell Phone and Computer. CITY shall provide EMPLOYEE with a monthly cell phone allowance of \$100 and a desktop computer for official use in connection with CITY business.

2.6 Benefits. In addition to Base Salary, CITY shall also provide EMPLOYEE with the following benefits:

(a) Cafeteria Plan. CITY shall contribute up to One-Thousand Six Hundred Seventy Five Dollars (\$1,675) per month to EMPLOYEE for the cafeteria benefit plan detailed in this section.

(i) Said contribution shall be used to provide for health insurance for EMPLOYEE. EMPLOYEE shall be covered by health insurance with a CITY approved health plan unless EMPLOYEE provides proof to CITY that EMPLOYEE is covered by another acceptable health plan as determined by CITY's Human Resource Department.

(ii) The balance of the cafeteria plan contribution may be used for any of the following or any combination thereof:

(1) Health Insurance for EMPLOYEE's spouse and/or dependents;

(2) Dental Insurance for EMPLOYEE's, spouse and/or dependents;

- (3) Eye care plan for EMPLOYEE, spouse and/or dependents;
- (4) Supplemental Insurance Options.

(iii) There is no cash-back of the remaining contributions amount, if any, to EMPLOYEE after payment of the selected premiums(s). EMPLOYEE shall be responsible for the remaining payments(s) through payroll deduction, of any premiums selected which are in excess of the monthly contribution amount.

(b) Life and Short-Term Disability Insurance. CITY agrees that during the term of employment, it will pay the annual premiums for a term life insurance policy in the amount of \$50,000.00. If available, additional coverage may be purchased at EMPLOYEE's expense and costs. EMPLOYEE shall nominate the beneficiary under such term life insurance policy. Thirty days after commencement of EMPLOYEE's full time employment, CITY shall provide EMPLOYEE with short term disability insurance coverage consistent with policy terms provided to other non-sworn management level CITY employees.

2.7 Jury Duty. EMPLOYEE will receive Base Salary and benefits while responding to a jury summons or serving on a jury. Any compensation for such jury duty (except travel pay) shall be remitted to CITY.

2.8 Administrative/Personal Leave. EMPLOYEE shall be allocated a maximum of forty (40) hours of administrative/personal leave on July 1st of each CITY fiscal year. The maximum amount of administrative/personal leave that EMPLOYEE may accrue at any given time may not exceed eighty (80) hours total. Accrued but unused administrative/personal leave may not be sold back to CITY.

3. ILLNESS OR INJURY; DISABILITY AND DEATH.

3.1 Cessation of Work Due to Injury or Disability. In addition to any right of termination set forth under Sections 1.2 (Employment With CITY "At-Will") and Section 6 ("Termination"), CITY also reserves the right to terminate EMPLOYEE's employment along with this Agreement if EMPLOYEE ceases to work as a result of injury or disability which results in EMPLOYEE being unable to perform the essential duties of the City Manager position, with or without accommodation, for a period of six (6) consecutive months or more, as documented by a healthcare provider. The foregoing notwithstanding, CITY may terminate EMPLOYEE if the disability poses a direct threat to CITY, EMPLOYEE or any other employees working for CITY and any reasonable accommodation attempted by CITY would not mitigate or eliminate such a threat. CITY will not provide a severance payment if EMPLOYEE is terminated under this Section of this Agreement.

3.2 Compensation for Work-Related Illness or Injury. In the event EMPLOYEE suffers a physical or mental illness or disability arising out of the course of employment, EMPLOYEE's exclusive remedy or remedies against CITY for such illness, injury or disability shall be those legally required under the workers' compensation laws of the State of California.

3.3 Medical Examination. EMPLOYEE agrees to submit to a medical and/or psychological examination by a qualified physician or psychiatrist selected by CITY, in the event a decision must be made under Sections 3.1 through 3.2. CITY and EMPLOYEE shall receive a copy of all medical reports related to the examination.

3.4 Death of EMPLOYEE. This Agreement along with EMPLOYEE's employment shall terminate automatically upon EMPLOYEE's death.

3.5 Compensation Upon Termination. Except as otherwise provided under this Agreement, if EMPLOYEE's employment is terminated pursuant to this Section 3 (Illness or Injury; Disability and Death), CITY shall pay EMPLOYEE all Base Salary, benefits, and compensation due and owing EMPLOYEE through the last day actually worked. If termination is caused by EMPLOYEE's death, CITY shall provide the compensation and benefits otherwise due EMPLOYEE to EMPLOYEE's executor, administrator, heirs, personal representatives, successors, and assigns. CITY will not provide for severance pay if EMPLOYEE is terminated under the provisions of Section 3.1 through 3.5, above.

4. HOLIDAYS, VACATION AND SICK LEAVE.

4.1 Holidays. EMPLOYEE shall receive paid holidays in accordance with CITY's current practices as such practices may be amended or modified from time to time by CITY by action of the COUNCIL. Paid holidays will be those approved by CITY by action of the COUNCIL. Unused holiday leave time shall be accumulated and paid to EMPLOYEE in the last pay check in June of each fiscal year.

4.2 Vacation. EMPLOYEE shall accrue twenty-five (25) days of vacation per year. EMPLOYEE was credited with ten (10) days of vacation upon commencing full time employment with CITY. EMPLOYEE may convert a maximum of eighty (80) hours of accrued vacation time to cash during each year this Agreement is in effect.

4.3 Sick Leave.

(a) Sick leave shall accrue at the rate of 3.69 hours per bi-weekly pay period.

(b) CITY and EMPLOYEE agree to an accumulation cap consistent with other non-sworn management employees' accumulation cap.

(c) CITY agrees to a service credit of unused sick leave for PERS retirement when EMPLOYEE retires from CITY employment or a lump sum payment of the value of the unused sick leave, as requested by EMPLOYEE and permitted by law.

(d) EMPLOYEE may use accrued paid sick leave for the purposes set forth in Labor Code section 246.5(a).

(e) Accrued paid sick leave shall carry over to the following year, but no additional paid sick pay will accrue until EMPLOYEE's accrued paid sick leave falls below the accumulation cap.

(f) CITY will provide EMPLOYEE with written notice of the amount of paid sick leave available. The notice will be provided on the designated pay date with EMPLOYEE's payment of wages. Sick leave pay will be paid at EMPLOYEE's hourly rate of pay when sick leave is taken. Sick leave pay will be paid by the payday for the next regular payroll period after the sick leave is taken.

5. RETIREMENT.

5.1 Public Employees Retirement System (PERS). CITY shall provide EMPLOYEE with retirement benefits through the California Public Employees Retirement System (CalPERS). Such benefits are subject to applicable law and regulations, including but not limited to the Public Employees' Retirement Law (PERL), the Public Employees' Pension Reform Act (PEPRA) of 2013, and CalPERS rules. For the purpose of CalPERS retirement benefits, EMPLOYEE shall be a "classic member" under PEPRA. CITY shall pay the CITY's share of CalPERS contribution and EMPLOYEE shall pay her share for participation in CalPERS.

6. TERMINATION.

6.1 Termination by CITY for Convenience and Without Cause. EMPLOYEE is appointed and serves at the pleasure of the COUNCIL as an at will employee. COUNCIL may terminate EMPLOYEE at any time for convenience and without cause. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the COUNCIL and CITY to terminate this Agreement and the employment of EMPLOYEE, with or without cause or for convenience. At the conclusion of EMPLOYEE'S employment whether by resignation or termination either with or without cause, EMPLOYEE shall be entitled to be compensated, subject to Section 4 above, for accrued and unused vacation, sick leave and administrative leave, if any, through the effective date of termination. In the event EMPLOYEE is terminated without cause, at or during such time that EMPLOYEE is willing and able to perform her duties under this AGREEMENT, then in that event, CITY agrees to pay EMPLOYEE a severance equal to one (1) year base salary, less any and all applicable or legally required deductions, provided EMPLOYEE has executed a full and final release of any and all actual or potential claims (including Civil Code Section 1542 release) that EMPLOYEE has or could have against CITY, its officials, employees and agents, acceptable to CITY in form and content. Notwithstanding anything herein to the contrary, the maximum severance EMPLOYEE may receive under this AGREEMENT shall not exceed the limitations provided for in Government Code Section 53260-53264 or other applicable law.

6.2 Termination by EMPLOYEE. EMPLOYEE may terminate EMPLOYEE'S employment for any reason, and at any time, with or without cause, by providing CITY with written notice. In such event, CITY shall have the option, in its complete discretion, to make EMPLOYEE's termination effective upon any date preceding any notice period provided by EMPLOYEE, provided CITY pays EMPLOYEE all compensation due and owing

EMPLOYEE through the last day actually worked, plus an amount equal to the Base Salary EMPLOYEE would have earned through the balance of the notice period, which shall not exceed thirty (30) days.

6.3 Termination Obligation. EMPLOYEE agrees that all property, including without limitation, all equipment, tangible property, Proprietary Information (as defined below), documents, records, notes, contracts, and computer-generated materials furnished to or prepared by EMPLOYEE incident to EMPLOYEE'S employment are the property of CITY and shall be returned immediately to CITY upon termination of EMPLOYEE's employment. EMPLOYEE's obligations under this subsection shall survive the termination of EMPLOYEE'S employment and the expiration or early termination of this Agreement.

6.4 Benefits Upon Termination. All benefits to which EMPLOYEE is entitled under this Agreement shall cease upon EMPLOYEE's termination in accordance with this Section 6 (Termination), unless expressly continued under this Agreement or unless otherwise required by law.

7. CONFLICT OF INTEREST.

7.1 EMPLOYEE shall not, during the term of this Agreement, individually, as a partner, joint venture, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of CITY, except for stock ownership in any company whose capital stock is publicly held and regularly traded, without prior approval of the COUNCIL. EMPLOYEE shall also be subject to the conflict of interest provisions of the Government Code of the State of California, CITY's Municipal Code, and any other conflict of interest regulations applicable to EMPLOYEE's employment with CITY. For and during the Term of this Agreement and any extension term, EMPLOYEE further agrees that except for a personal residence or residential property acquired or held for future use as EMPLOYEE'S personal residence, EMPLOYEE will not invest in any other real estate or property improvements within the corporate limits of CITY without the prior consent of the COUNCIL.

8. GENERAL PROVISIONS.

8.1 Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be effective upon delivery by hand or three (3) business days after deposit in the United States mail, postage prepaid, certified or registered, and addressed to CITY at the address below or at the last known address maintained in EMPLOYEE's personnel file. EMPLOYEE agrees to notify CITY in writing of any change in EMPLOYEE'S address during EMPLOYEE'S employment with CITY. Notice of change of address shall be effective only when accomplished in accordance with this Section.

CITY's Notice Address:
City of Beaumont
550 East Sixth Street
Beaumont, CA 92223
Attn: Mayor

EMPLOYEE's Notice Address:

ELIZABETH GIBBS
[At EMPLOYEE's address on file with City]

8.2 Indemnification. Subject to, in accordance with, and to the extent provided by the California Tort Claims Act (Government Code Section 810 et seq. including, but not limited to, Sections 825, 995 and 995.2) CITY will indemnify, defend, and hold EMPLOYEE harmless from and against any action, demand, suit, monetary judgment or other legal or administrative proceeding, and any liability, injury, loss or other damages, arising out of any negligent act or omission occurring within the scope of EMPLOYEE's employment during the Term of this Agreement or any extension term. CITY shall have the discretion to compromise or settle any such claim, demand or action and pay the amount of any settlement or judgment rendered thereon. Notwithstanding the foregoing, CITY shall have no duty to indemnify, defend, or hold EMPLOYEE harmless from any criminal proceeding, or with regard to any civil, criminal or administrative proceeding initiated by EMPLOYEE.

8.3 Bonding. CITY shall bear the full cost of any fidelity or other bonds required of the City Manager under any laws or ordinance.

8.4 Entire Agreement. This Agreement is intended to be the final, complete, and exclusive statement of the terms of EMPLOYEE's employment by CITY. This Agreement supersedes all other prior and contemporaneous Agreements and statements, whether written or oral, express or implied, pertaining in any manner to the employment of EMPLOYEE, and it may not be contradicted by evidence of any prior or contemporaneous statements or Agreements. To the extent that the practices, policies, or procedures of CITY, now or in the future, apply to EMPLOYEE and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control.

8.5 Amendments. This Agreement may not be amended except in a written document signed by EMPLOYEE, approved by COUNCIL and signed by the City Attorney.

8.6 Waiver. Failure to exercise any right under this Agreement shall not constitute a waiver of such right.

8.7 Assignment. EMPLOYEE shall not assign any rights or obligations under this Agreement. CITY may, upon prior written notice to EMPLOYEE, assign its rights and obligations hereunder.

8.8 Severability. If any court of competent jurisdiction holds any provision, section or sentence of this Agreement to be invalid, unenforceable, or void, the remainder of this Agreement shall remain in full force and effect.

8.9 Governing Law. This Agreement is entered into and to be performed in Riverside County, California and shall be governed by, construed and enforced in accordance with the laws of the State of California. The Parties agree that in the event of any dispute or litigation, venue shall be in Riverside County, California.

8.10 Interpretation. This Agreement shall be construed as a whole, according to its fair meaning, and not in favor of 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. Captions are used for reference purposes only and should be ignored in the interpretation of the Agreement. This Agreement may be altered, amended or modified only by an instrument in writing; executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest, or assert that this Agreement was modified, cancelled superseded or changed by any oral Agreement, course of conduct, waiver or estoppel.

8.11 Statutory Obligations; Abuse of Office or Position. Notwithstanding anything to this Agreement in the contrary, pursuant to California Government Code Sections 53243, 53243.1 and 53243.2, which became effective on January 1, 2012, if EMPLOYEE is convicted of a crime involving an abuse of EMPLOYEE'S office or position, all of the following shall apply: (1) if EMPLOYEE is provided with an administrative leave pay pending an investigation, EMPLOYEE shall be required to fully reimburse such amounts paid by CITY; (2) if CITY pays for the criminal legal defense of EMPLOYEE (which would be in its sole discretion, as CITY is generally not obligated to pay for a criminal defense), EMPLOYEE shall be required to fully reimburse such amounts paid by CITY; and (3) if this Agreement is terminated, any cash settlement related to the termination of EMPLOYEE by CITY, said amount shall be fully reimbursed to CITY or shall be void if not yet paid to EMPLOYEE. For this Section, abuse of office or position means either: (1) an abuse of public authority, including waste, fraud, and violation of the law under the color of authority; or (2) a crime against public justice, including a crime described in Title 7 commencing with section 92 of the California Penal Code.

8.12 Incorporation of Recitals. The Parties repeat and incorporate the recitals set forth above as if fully set forth herein.

8.13. State & Federal Law. The terms of this Agreement shall be applied only as consistent with State and Federal law.

8.14 Acknowledgment. EMPLOYEE acknowledges that EMPLOYEE has had the opportunity to consult legal counsel in regard to this Agreement, that EMPLOYEE has read and understands this Agreement, that EMPLOYEE is fully aware of its legal effect, and that EMPLOYEE has entered into it freely and voluntarily and based on EMPLOYEE'S own judgment and not on any representations or promises other than those contained in this Agreement.

“CITY”

CITY OF BEAUMONT

By: _____
Julio Martinez, Mayor

“EMPLOYEE”

ELIZABETH GIBBS

By: _____
Elizabeth Gibbs

ATTEST:

By: _____
Elaine Morgan, City Clerk

APPROVED AS TO FORM:

By: _____
John O. Pinkney, City Attorney

