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## **Agreement and General Release**

AGREEMENT AND GENERAL RELEASE (“Agreement”), dated December 28, 2023, between Donna M. Gayden, an individual currently residing at [REDACTED] and on behalf of her heirs, executors, administrators, attorneys, representatives, successors and assigns (collectively “Gayden”) and the City of Long Beach, a municipal corporation duly incorporated under Laws of the State of New York, its divisions and departments, its present and former employees, officers including appointed and elected officials, and attorneys (“City”). In this Agreement, Gayden and the City shall sometimes be referred to individually as “Party” and collectively as “Parties”.

### **Recitals**

1. Gayden and the City are parties to an employment agreement entered into on November 17, 2021, the term of which is set to expire on December 31, 2023 (“Employment Agreement”).
2. Over the course of her employment, Gayden and the City have examined/discussed the City’s organizational and operational structure, as well as the expected profile for the next City Manager.
3. As a result of these discussions, the Parties mutually agree that it is time for the City to tap into the skill set of another management professional to lead the City.
4. As a result of these discussions, the Parties have mutually agreed to terminate the Employment Agreement.
5. The Parties have extensively discussed and negotiated the terms of Gayden’s separation from service and have reached accord on same.
6. The purpose of this Agreement is to outline those terms and conditions, the resolution and release of all known and unknown claims by Gayden against the City, and Gayden’s withdrawal/discontinuance, with prejudice, of all known/unknown claims against the City.

ACCORDINGLY, the Parties agree as follows:

### **Article I: Term and Recitals**

1. The foregoing preamble and all other recitals set forth above are hereby incorporated into and made a part of this Agreement, including any and all documents referenced therein.
2. The term of this Agreement begins when all the Parties have signed it and the provisions of this Agreement shall survive Gayden’s separation from employment.

### **Article II: Separation from Service**

1. This Agreement shall constitute the Parties’ mutually accepted terms relative to Gayden’s separation from service, which shall be effective January 3, 2023. The termination of the Employment Agreement and Gayden’s separation from service (for purposes of transitioning to other employment) is final, permanent, and effective upon all Parties executing this Agreement. This Agreement shall be placed in and shall remain a permanent part of Gayden’s personnel file.
2. Gayden shall not report to work after December 23, 2022. Gayden agrees that she shall not, for any reason or to any individual or third party, represent herself to be, or hold herself out to be, a City official/employee after her effective separation from service. After that period Gayden may represent that she formerly served as City Manager of the City.
3. Gayden shall return all City property, except for her City-issued cellular phone, no later than 5 p.m. on December 23, 2022. City property includes, but is not limited to keys, identification badge, key fob(s), electronic equipment/devices, passwords for City computer systems and/or software programs, or any documents and files (whether in hard copy or electronic versions), etc. that were provided to her, or created or used by her, while employed by the City, and which are in her possession or to which she has access. Any such property as may be later discovered by her shall be returned promptly to the Corporation Counsel.

She shall return her City-issued cellular phone to the Corporation Counsel's office no later than 5 p.m. on July 31, 2023.

4. With regard to her City-issued cellular phone, Gayden shall continue to take calls from City personnel on City business and/or City action items in order to facilitate the transition within the administration. Upon receipt of a phone call on her City-issued cellular phone from a non-City entity, Gayden will immediately email the following information to the Corporation Counsel at [corp@longbeachny.gov](mailto:corp@longbeachny.gov): the date of the call; the individual spoken to; the purpose of the call; and call back information. On these calls, Gayden will advise non-City callers that she is no longer the City Manager and advise them to contact the Corporation Counsel's office for next steps. Through July 31, 2023, should the Parties need to communicate and meet on City business items previously handled by Gayden, they will communicate and meet as needed and mutually convenient.
5. Gayden understands and agrees that all emails sent to/received by her City email accounts shall be forwarded to the City Manager's office and that she will no longer have access to those emails after January 3, 2022. She will, however, be assigned a different City email account from which she will be able to email the updates to Corporation Counsel required in the preceding Article II, Section 4 of this Agreement.
6. Gayden understands and agrees that, notwithstanding the terms of Section 4 of the Employment Agreement, she hereby waives her entitlement to payment of her unused accrued time and any other benefits set forth in the Personnel Code.

### **Article III: Consideration**

1. In consideration of Gayden's promises in Article II, and her general release and waiver of any and all claims against the City, the City shall:
  - 1.1. Pay Gayden her current salary through January 22, 2023 in accordance with section 3 of the Employment Agreement.
  - 1.2. Continue Gayden's current medical coverage through January 2023.
  - 1.3. Beginning January 23, 2023, pay Gayden 6 months of salary in accordance with the schedule set forth in section 3 of the Employment Agreement, except that Gayden shall receive equal bi-weekly payments in accordance with normal payroll procedures until those 6 months have been exhausted.
  - 1.4. Continue, at no cost to Gayden (*i.e.*, the City will cover COBRA premium payments), her medical coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act effective February 1, 2023 through July 31, 2023 (valued at a total of \$7,176.72). Thereafter, Gayden may continue such coverage at her own expense up to the statutory maximum time limit (the monthly cost for calendar year 2023 is \$1,196.12).
  - 1.5. Ensure any of Gayden's personal items left on City property shall be returned to her upon request.
  - 1.6. Provide verification of employment for Gayden to outside entities upon request.

### **Article IV: Best Efforts; Non-Disparagement; Publicity; Non-Disclosure**

1. The Parties agree to undertake their best efforts, including all steps and efforts contemplated by this Agreement, and any other steps and efforts that may become necessary by order of a court or otherwise, to effectuate this Agreement.
2. The Parties shall discuss and agree upon wording for a joint press release which shall be published no later than January 3, 2023.
3. The Parties agree that they will not, during the term or after the termination or expiration of this Agreement or Gayden's employment with the City, make disparaging statements, in any form, about either Party which that Party knows, or has reason to believe, are false or misleading.
4. Each Party and their counsel agree to keep the terms and conditions of this Agreement confidential between the Parties and shall not disclose to anyone else, except as may be necessary to effectuate its terms or as otherwise required by law.

### **Article V: Representations and Warranties**

1. **The Parties represent and warrant** that they have full right, power, and authority to enter into this Agreement.

### **Article VI: Satisfaction, Waiver and General Release**

1. Gayden accepts the consideration provided herein in full and complete settlement, satisfaction and release of the Employment Agreement, as well as in full and complete settlement of any and all claims that Gayden has or may have had whatsoever, asserted or unasserted, suspected or unsuspected, with respect to her employment with the City and/or her separation from service with the City, or any other interactions of any kind with the City, Gayden freely relinquishes, releases, and waives all possible claims and causes of action against the City, its departments, successors, insurer, assigns, agents, present and former employees, officers, appointed and elected officials (both in their official and individual/personal capacities), and attorneys, that may have arisen from the beginning of time through the date of her signature on this Agreement.
2. Gayden's release and waiver includes, but is not limited to, any claims under the following: the CBA; Title VII of the Civil Rights Act of 1964; the Americans with Disabilities Act ("ADA"); Age Discrimination in Employment Act ("ADEA"); Older Workers Benefit Protection Act ("OWBPA"); Civil Rights Acts of 1866, 1871, and/or 1991; Rehabilitation Act of 1973; 42 U.S.C. §§ 1981, 1983 and/or 1985; Consolidated Omnibus Budget Reconciliation Act ("COBRA"); Employee Retirement Income Security Act ("ERISA"); Health Insurance Portability and Accountability Act ("HIPAA"); Family and Medical Leave Act ("FMLA"); New York State Human Rights Law (Executive Law); New York State Civil Service Law; New York State General Municipal Law (including GML § 207-c); New York State Labor Law; New York State Retirement and Social Security Law; New York State Public Officers Law; New York State Civil Rights Law; Nassau County Unlawful Discriminatory Practices Law; the Nassau County Civil Service Commission Rules; the City Charter; City and/or Police Department policies, practices, rules, regulations or orders; the New York State Constitution; the United States Constitution; and all other federal, state, county and local or City laws, ordinances, regulations, policies or orders.

Among other things, these laws prohibit discrimination in employment on the basis of age, race, color, religion, creed, disability, sex, sexual orientation, national origin, and marital status. This release and waiver of all claims shall also include any claims for retaliation, wages, attorneys' fees, constitutional violations, wrongful or abusive discharge, actual or constructive termination, breach of implied or express contract, negligent or intentional infliction of emotional distress, impairment of economic opportunity, defamation, libel, slander, or any other action in violation of any applicable whistleblower statute or status, or any other tort, common law or contract claim. This release and waiver includes all claims now known to Gayden, as well as all possible claims that are not now known to her.

Gayden acknowledges and understands that nothing in this waiver and release, or in this Agreement generally, prevents her from filing a claim with the Equal Employment Opportunity Commission or participating in any investigation or proceeding conducted by such agency. Gayden expressly agrees that she shall not seek, obtain, or accept any benefit, recovery or relief therefrom, and waives the right to any relief, including monetary relief or equitable relief, except to the extent expressly required by law.

Gayden agrees that the City's promises set forth in this Article II and this Agreement are sufficient and valuable consideration for her agreements and waiver and release of all claims as set forth in this Article VI and this Agreement.

3. Gayden agrees not to file any claim or bring any lawsuit for any claim waived in this Article VI, or to permit anyone else to do so on her behalf. If any portion of this commitment is unenforceable or prohibited by law, then Gayden agrees not to seek or obtain personal monetary damages or personal equitable relief from the

City in such legal proceedings. If Gayden breaches this provision, or any other provision of this Agreement, the City shall be entitled to reimbursement for any reasonable attorneys' fees and/or court costs it expends in its enforcement of this Agreement. If the City breaches this provision, or any other provision of this Agreement, Gayden shall be entitled to reimbursement for any reasonable attorneys' fees and/or court costs he expends in his enforcement of this Agreement.

4. Gayden represents and certifies by execution of this Agreement that she has had a full and fair opportunity to consult with an attorney and/or representative of her choice before signing this Agreement, and that she has read it carefully and fully understands its contents. Gayden also represents and certifies that the signing of this Agreement is voluntary; that she has not been forced or coerced in any way to do so; and that she is aware that it sets forth the entire agreement between and among herself and the City and that its effect on her is final and binding. Gayden also represents and certifies that neither the City, nor any of its officers, appointed or elected officials, employees, agents, representatives or attorneys made any representations concerning the terms and conditions of this Agreement other than those contained herein.
5. Gayden acknowledges that she has been offered up to twenty-one (21) days to carefully read and consider her release of claims under the ADEA and OWBPA, and that she fully understands and agrees to all of its terms. The City recommends that Gayden consult with an attorney on these matters. Gayden acknowledges that after consultation with her chosen attorney(s) and/or representative(s), she has decided to execute this Agreement without utilizing all of the twenty-one (21) days referenced herein.
6. Gayden may revoke only her release of claims under the ADEA and OWBPA within seven (7) days after she signs this Agreement. Revocation can be made by delivering written notice of revocation to the City's Corporation Counsel. For this revocation to be effective, written notice must be received by Corporation Counsel no later than the close of business on the seventh day after Gayden signs this Agreement, or else Corporation Counsel must be notified by telephone by that day that the written notice has been mailed. Although not required, it is recommended that such notice be sent by certified mail, return receipt requested. If Gayden revokes her release of claims under the ADEA and/or OWBPA, she agrees that the City shall, at its sole discretion, have the option of either enforcing the remaining terms of this Agreement or rescinding this Agreement in its entirety and recovering any amounts paid to Gayden under this Agreement.
7. Gayden specifically acknowledges and agrees that the City has not made any representations, guarantees or commitments regarding the treatment that the New York State and Local Retirement System, New York State Department of Taxation or Internal Revenue Service, or any other agency, may provide with regard to any salary, pension benefit, service credit, severance payment(s), or any other benefits, including any that may be set forth in this Agreement. Gayden agrees to pay federal or state taxes, if any, which are required by law to be paid by her with respect to this Agreement. Moreover, Gayden agrees to indemnify City and hold it harmless from any interest, taxes or penalties assessed against it by any governmental agency as a result of Gayden's non-payment of taxes on any amounts paid to Gayden or her attorney under the terms of this Agreement.

#### **Article VII: Non-Admission; No Past Practice**

1. The Parties agree that neither this Agreement nor the furnishing of the consideration for this Agreement shall be deemed or construed at any time for any purpose as an admission by either Party of any liability or unlawful conduct of any kind. The Parties make this Agreement solely to resolve all issues surrounding Gayden's employment and her separation therefrom, and the Parties are further desirous of resolving these issues without the burden, expense, and uncertainties involved in any further and/or potential litigation.
2. This Agreement shall not constitute a precedent or practice with regard to how similar situations may be handled in the future by the City, and it shall not be utilized, introduced, or referenced by Gayden during

any subsequent action, arbitration, or administrative proceeding, except to enforce the terms of this Agreement.

**Article VIII: Governing Law and Venue**

1. This Agreement is to be governed by and construed in accordance with the Laws of the State of New York, without regard to its conflict of law principles.
2. In the event that any Party breaches any provision of this Agreement, the Parties mutually consent to the jurisdiction and venue of the Supreme Court of the State of New York, County of Nassau.

**Article IX: Severability and Amendments**

1. If any provision of this Agreement (specific or general) is held to be illegal, void or unenforceable, then such provision shall be of no force and effect, but such shall not impair the legality or enforceability of any other provision of the Agreement, and the Parties agree, at each other's request, to execute a new release, waiver and/or covenant that is legal and enforceable to the fullest extent permitted by law.
2. This Agreement may be amended only by an agreement in writing, signed by the Parties. This Agreement may not be modified orally.

**Article X: Merger; No Sole Drafter and Headings; Miscellaneous**

1. The City shall have no obligations to Gayden other than as set forth in this Agreement. This Agreement constitutes the entire agreement among the Parties and supersedes all prior agreements, memoranda, correspondence, conversations, discussions and/or negotiations held/or which have taken place among the Parties.
2. The Parties agree that they, in consultation with their attorneys, have jointly prepared and approved the language and provisions of this Agreement and that should any dispute arise concerning the interpretation of this Agreement or any provision herein, no Party shall be deemed the sole drafter, nor shall any such language be presumptively construed in favor of or against any Party.
3. The titles and headings to the articles and/or sections of this Agreement are inserted for the convenience of reference only and shall not affect the construction of any provision of this Agreement.
4. No signatory or Party hereto is a minor or incompetent within the meaning of the laws of the State of New York; nor is any signatory or Party to this Agreement under the influence of alcohol, prescription medications, other drugs, or any other substances that would impair his exercise of judgment; nor has any signatory or Party been coerced or placed under duress so as to inhibit his free will or knowledge and understanding of the terms set forth in this Agreement.
5. This Agreement shall not become final and binding until it is fully-executed by the Parties and authorized by the City Council.

**THIS SPACE LEFT INTENTIONALLY BLANK. SIGNATURE PAGE TO FOLLOW BELOW ON  
PAGE 6.**

HAVING ELECTED TO EXECUTE THIS AGREEMENT, TO FULFILL THE PROMISES AND TO RECEIVE THE SUMS AND BENEFITS HEREIN, THE PARTIES, KNOWINGLY AND VOLUNTARILY, AND AFTER DUE CONSIDERATION AND LEGAL CONSULTATION, ENTER INTO THIS AGREEMENT INTENDING TO RESOLVE ALL CURRENT AND/OR POTENTIAL CLAIMS.

Authorizing Council Resolution Detail: #5/23

[Signature]  
Donna M. Gayden

Date: 1/4/2022

STATE OF NEW YORK )  
COUNTY OF NASSAU ) ss.:

On the 4<sup>th</sup> day of JANUARY in the year 2023, before me, the undersigned, a Notary Public in and for said State, personally appeared DONNA M. GAYDEN, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his individual capacity.

[Signature]  
Notary Public  
DENIS G. KELLY  
Notary Public, State of New York  
No. 02KE5021847  
Qualified in Nassau County  
Commission Expires Dec. 27, 2025

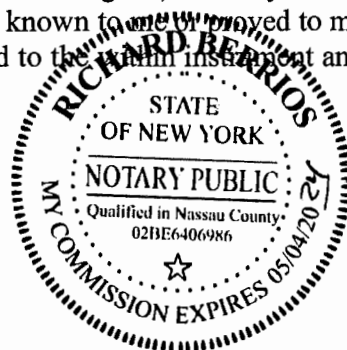
[Signature]  
Name: Ronald J. Walsh Jr  
Title: Acting City Manager  
City of Long Beach

Date: 1/4/22

STATE OF NEW YORK )  
COUNTY OF NASSAU ) ss.:

On the 4<sup>th</sup> day of JANUARY in the year 2023, before me, the undersigned, a Notary Public in and for said State, personally appeared RONALD J. WALSH, JR., personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in his individual capacity.

[Signature]  
Notary Public



January 3, 2023

Item No. 9  
Resolution No. 5/23

The following Resolution was moved by Pres. McInnis  
and seconded by Mr. Lester :

Resolution Authorizing the Execution of an Agreement  
and General Release.

WHEREAS, Section 20(3) of the Charter of the City of Long Beach provides that notwithstanding any provision of the Charter or any ordinance, the City Council may enter into a written employment agreement with the City Manager for a term not to exceed three years and upon such terms and conditions as the City Council shall agree; and

WHEREAS, Donna M. Gayden, the current City Manager, is a party to such a written employment agreement, the term of which is set to expire on December 31, 2023 ("Employment Agreement"); and

WHEREAS, over the course of the Ms. Gayden's tenure, the City Council and the City Manager have examined/discussed the City's organizational and operational structure, as well as the expected profile for the next City Manager; and

WHEREAS, to facilitate same, the City Council and the City Manager both agree that now is the time to transition towards another management professional; and

WHEREAS, the City Council and the City Manager have mutually agreed to terminate the Employment Agreement; and

WHEREAS, the City Manager and the City Council have further memorialized the terms and conditions incident to the termination of the Employment Agreement and Ms. Gayden's separation from service;

NOW, THEREFORE, be it

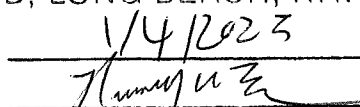
RESOLVED, by the City Council of the City of Long Beach, New York that the Acting City Manager is hereby authorized to execute an Agreement and General Release memorializing the mutual termination of the Employment Agreement.

VOTING:

- Council Member Posterli - AYE
- Council Member Lester - AYE
- Council Member Bendo - AYE
- Vice President Treston - AYE
- President McInnis - AYE

APPROVED AS TO FORM & LEGALITY:

  
Corporation Counsel-Richard Berrios

A TRUE COPY  
DATED, LONG BEACH, N.Y.  
1/4/2023  
  
CITY CLERK