

THIS AGREEMENT, is made and entered into on this \_\_\_ day of November, 2021, by and between the CITY OF LONG BEACH, 1 West Chester Street, Long Beach, New York, a municipal corporation duly organized and validly existing under the laws of the State of New York (hereinafter “Employer”) and DONNA M. GAYDEN, residing at [REDACTED] Long Beach New York, 11561 (hereinafter “City Manager”), both of whom understand as follows:

WITNESSETH:

WHEREAS, the Employer desires to continue the services of Donna M. Gayden as City Manager of the City of Long Beach, as provided by Section 20 of the Charter of the City of Long Beach; and

WHEREAS, it is the desire of the City Council, the governing board of the Employer (hereinafter “Council”), to provide certain benefits, to establish and to set the working conditions of said City Manager, and to memorialize the conditions of the City Manager’s employment during the term of her employment; and

WHEREAS, this employment agreement and its terms are entered into pursuant to Section 20(3)(a) of the City Charter of the City of Long Beach which Charter provision permits the execution of an employment agreement with the City Manager providing terms and conditions of employment different than those set forth in City Charter and the City Personnel Code for appointment to a fixed rather than indefinite term; and

NOW, THEREFORE, in consideration of mutual covenants herein contained, the parties agree as follows:

**Section 1: Duties**

The Council hereby agrees to employ Donna M. Gayden as City Manager of the City of Long Beach (hereinafter the “City”) to perform the functions and duties specified in the City Charter and Personnel Code of the City as the same may be amended from time to time. The City Manager shall perform other legally permissible and proper duties and functions as the Council shall from time to time assign, or as provided in the City Charter. If additional duties and responsibilities are assigned, the same shall be in character and consistent with the position of City Manager. The City Manager shall follow and implement policy and administrative initiatives and shall adhere to the directives made by the Council. The provisions of this contract shall govern in the event of a conflict between the City Charter and this contract.

## **Section 2: Term**

- A. Except as otherwise provided herein, the City Manager's term of employment shall be from December 1, 2021, until it terminates on December 31, 2023, unless further extended or sooner terminated as hereinafter provided. During active employment the City Manager will neither accept other employment nor become employed by any other employer until said termination date unless the agreement is sooner terminated as hereinafter provided. The City Manager shall devote her full time to the duties of City Manager and to the performance of those duties.
- B. This Agreement shall continue in full force and effect for the term expressed herein unless otherwise terminated, modified or extended in accordance with its provisions or by an agreement in writing by the parties.
- C. In the event both parties desire to enter into a successor to this Agreement, they agree to negotiate such contract prior to the termination of this Agreement.

## **Section 3: Termination**

- A. This agreement and the City Manager's employment may be terminated by the Council for any reason, upon thirty (30) days written notice.
- B. In the event the Council elects to terminate pursuant to the foregoing the City Manager shall be paid as termination pay the cash equivalent of six (6) months' salary or shall be paid the cash equivalent of her salary for the period of time remaining on this contract if less than six (6) months. This payment shall be made in six (6) separate equal payments on the 15<sup>th</sup> day of each of the six (6) months next following the date of termination of employment. Any tax obligation of the City Manager arising from the aforesaid payments will be the City Manager's sole responsibility.
- C. The City Manager shall also receive any separation payments for which she is entitled to receive as authorized by the City Personnel Code.
- D. In the event that the City Manager's termination is for an act of moral turpitude or the commission of a crime the foregoing six month lump sum payment and City Personnel Code separation payment shall not be granted.
- E. All fringe benefits provided to the City Manager shall cease on the effective date of termination, subject to the City Manager's right to elect continued health care coverage under the City's health care plan pursuant to the COBRA.

#### **Section 4: Resignation**

In the event the City Manager voluntarily resigns from her position before the expiration of the term of her employment, the City Manager shall give the Council at least six months written notice in advance, unless the parties agree otherwise. In the event that the City Manager fails to give the Council the aforesaid six (6) months' notice any payments due and owing to the City Manager for the cash value of any accrued leave time as provided in the City Personnel Code will be forfeited and not paid.

#### **Section 5: Disability**

If the City Manager is permanently disabled or is otherwise unable to perform her essential duties because of sickness, accident, injury, mental incapacity or health for a period of four (4) successive weeks beyond any accrued sick leave, the Council shall have the option to terminate this Agreement and shall thereupon pay the City Manager the cash equivalent of one (1) month's wages.

#### **Section 6: Salary**

The Council agrees to pay the City Manager for her services rendered annually both a base salary commencing on the date of execution hereof of Two-hundred and Three Thousand dollars (\$203,000.00) increased by additional wages to facilitate an IRS Section 457 contribution as set forth in Section 8(E) hereof effective beginning on December 1, 2021. Both components of her annual wages shall remain in effect without increase for the entire term of this agreement. The City Manager's salary and fringe benefits for each succeeding year of this agreement and any extension hereof, shall not be diminished.

#### **Section 7: Statement of Goals**

The City Manager shall have two milestone interim review dates as set forth in detail below, subject to additional dates being added by a majority of the City Council to re-assess goals based on changing priorities.

A. Evaluation Process for the period of December 1, 2021 to November 30, 2022

1. The City Manager will provide the City Council with proposed performance goals on or before December 1, 2021, for use in the review of her performance during the period of December 1, 2021, to November 30, 2022. The Council shall discuss the proposed goals with the City Manager, including any modifications the Council wishes to make to said proposed goals, and thereafter provide the City Manager with final goals by December 15, 2021.

2. On or about June 1, 2022, the Council will meet with the City Manager to conduct an interim review of the City Manager's performance and achievement of her performance goals during the period of December 1, 2021 to May 31, 2022.
3. The Council will on or about January 15, 2023, meet with the City Manager to conduct a final evaluation of the City Manager's performance and achievement of her performance goals during the period of December 1, 2021 to November 30, 2022. The Council will provide the City Manager with a final written evaluation.

B. Evaluation Process for the period of December 1, 2022 to December 31, 2023

1. The City Manager will provide the City Council with proposed performance goals on or before December 1, 2022, for use in the review of her performance during the period of December 1, 2022, to December 31, 2023. The Council shall discuss the proposed goals with the City Manager, including any modifications the Council wishes to make to said proposed goals, and thereafter provide the City Manager with final goals by December 15, 2022.
2. On or about June 1, 2023, the Council will meet with the City Manager to conduct an interim review of the City Manager's performance and achievement of her performance goals during the period of December 1, 2022 to May 31, 2023.
3. The Council will on or about January 15, 2024, provide the City Manager with a final written evaluation the City Manager's performance and achievement of her performance goals during the period of December 1, 2022 to December 31, 2023.

**Section 8: Hours of Work**

It is recognized that the City Manager will devote a great deal of time outside the normal forty (40) office hours to business of the City and to that end the City Manager shall be allowed to establish an appropriate work schedule. There shall be no additional compensation and the City Manager shall not be entitled to compensatory time for such services.

In the event of an emergency arising from a severe weather or other urgent event, declared by the City Manager after consultation with the President of the City Council, as a result of the City Manager's responsibilities, the City Manager will be required to remain on duty within the City of Long Beach during weekends and holidays without additional compensation.

## **Section 9: Benefits**

- A. The City Manager shall be granted the benefits set forth in Chapter 19 Article II of the Personnel Code of the City of Long Beach except as modified herein.
- B. With respect to Section 19-19 (G) of the Personnel Code of the City of Long Beach, it is understood and agreed that the City Manager will be permitted to attend, during the term of her employment, two annual conferences: the Government Finance Officers Association Annual Conference, and the International City/County Management Association ("ICMA") Annual Conference at the City's reasonable expense. The City Manager shall provide the Council with appropriate verification of her expenses such as paid receipts.
- C. The City will pay or reimburse the City Manager's ICMA membership dues not to exceed the amount of \$1,400.
- D. In addition to the City Manager's annual wages set forth in Section 5 hereof, additional wages shall be paid to the City Manager in the amount of Seventeen Thousand dollars (\$17,000.00) to facilitate her contribution of said sum to an IRS §457 plan. The City will take all necessary steps to establish the aforesaid IRS §457 plan.

## **Section 10: Indemnification**

In addition to those rights provided by law, the Council agrees to provide legal counsel and to indemnify the City Manager against all uninsured financial loss arising out of any claim, demand, suit, or judgment by reason of alleged negligence or other conduct resulting in bodily or other injury to any person, or damage to the property of any person, committed while the City Manager is acting within the scope of her employment, or under the direction of the Council. This obligation shall supplement and be in addition to any rights which the City Manager may have arising under the City Charter, law and specifically under §18 of the Public Officers Law if coverage thereunder has been elected by the Council.

## **Section 11: No Reduction of Benefits**

The Council shall not at any time during the term of this Agreement reduce the City Manager's salary, except to the degree that such a reduction is made across-the-board for all "exempt" employees of the City.

**Section 12: Notices**

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

(1) COUNCIL: City Council  
City of Long Beach  
1 West Chester Street  
Long Beach, New York 11561

(2) CITY MANAGER: Donna M. Gayden  
[REDACTED]  
Long Beach, New York, 11561

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

**Section 13: Severability**

If any provision of this Agreement is determined to be contrary to law, it is understood and agreed that such provision shall be deemed deleted and the balance of this Agreement without such deleted provision, if otherwise lawful, shall remain in full force and effect. If any such deleted provision involves compensation or a money benefit, the undersigned parties agree to negotiate as part of this Agreement in place of such deleted provision, a substitute of comparable value thereto, and in the event of an impasse exceeding forty-five (45) days, either party hereto may submit the issue for final disposition, to arbitration by the American Arbitration Association pursuant to its rules, which Association shall be empowered to make an award of comparable value or compensation as reasonably implements the intent of the parties under the deleted provision.

Any claimed violation of a provision of this Agreement may be submitted to an arbitrator selected pursuant to the Rules for Voluntary Labor Arbitration of the American Arbitration Association.

**Section 14: Jurisdiction and Dispute Forum**

A. This contract will be construed in accordance with the laws of the State of New York.

B. Any claimed violation of a provision of this Agreement may be submitted to an arbitrator selected pursuant to the Rules for Voluntary Labor Arbitration of the American Arbitration Association.

**Section 15: General Provisions**

- A. The text herein shall constitute the entire Agreement between the parties.
- B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of the City Manager.
- C. This Agreement shall become effective commencing December 1, 2021.
- D. City Manager acknowledges and agrees that City Manager was provided the opportunity to have this Agreement reviewed by legal counsel of City Manager's choice.
- E. The language of all parts of this Agreement shall be construed as a whole, according to their fair meaning, and not strictly for or against either party, regardless of who drafted them.

IN WITNESS WHEREOF, the City of Long Beach of the County of Nassau, State of New York, pursuant to City Council Resolution No. \_\_\_\_\_, dated \_\_\_\_\_, 2021, attached hereto and made a part hereof, has caused this Agreement to be signed and executed in its behalf by its City Council President, and duly attested by its City Clerk and Corporation Counsel, and the City Manager has signed and executed this Agreement, both in duplicate, the day and year first above written.

CITY COUNCIL PRESIDENT OF THE  
CITY OF LONG BEACH

By: \_\_\_\_\_  
JOHN BENDO, President

Date:

CITY MANAGER OF THE CITY OF  
LONG BEACH

By: \_\_\_\_\_  
DONNA M. GAYDEN

Date:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

(Seal)

APPROVED AS TO FORM:

\_\_\_\_\_  
Corporation Counsel

\_\_\_\_\_  
Printed Name & Date