

## **AGREEMENT FOR EMPLOYMENT OF CITY MANAGER**

THIS AGREEMENT is made and entered into this 17th day of July 2024, by and between the City of Arcata, a California general law municipal corporation of the State of California, hereinafter referred to as "Employer" and Merritt Perry, hereinafter referred to as "Employee".

### **SECTION 1. EMPLOYMENT**

#### **A. Appointment of Employee.**

1. The City Council of the City of Arcata hereby appoints Merritt Perry 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 August 19, 2024, and expiring on August 19, 2027.

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 exchange for the Employee's general release of all claims against the City (including its present and former officers, officials, employees, agents, volunteers,

and insurers), in the form attached as Exhibit A and made a part hereof, severance shall be paid to the Employee if Employee's employment is terminated without cause. The City will not be obligated to pay severance unless and until the general release attached as Exhibit A has been signed by Employee. The release of all claims contained in Exhibit A will not become effective until the severance is paid by the City.

2. In the event Employee is terminated without cause and a signed release is received by the Employer as per Section C1, 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 six (6) 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.
3. 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, an initial annual base salary of \$169, 541.24 (Salary Grade CM100, Step 1), payable in installments at the same time as the Senior Management employees are paid. In no event may

Employee receive additional cost of living or other salary adjustments that are granted to Senior Management Employees. At each annual performance review, Employee will have an opportunity to receive a 5% merit increase based upon meeting the performance objectives and criteria outlined by the City Council.

**B. Benefits, Vacation, Holiday, Sick Leave, and Compensatory Time.**

1. In addition to base salary, Employee shall receive the following benefits:

- a) Employer contribution into the City's 457 deferred compensation account on Employee's behalf in the maximum amount allowed by the IRS annually which is currently \$23,000 for 2024.
- b) Medical health insurance opt out payment of \$10,000 annually paid out biweekly each pay period in the amount of \$385.62 ( $X26 = \$10,000$  annually) in lieu of health insurance.
- c) A one-time lump sum of fourteen (14) days of management leave accrual bank upon hire without proration and thereafter accrued fourteen (14) days at the start of each new fiscal year.
- d) A one-time lump sum of eighty (80) hours of vacation accrual bank upon hire and thereafter accrued fourteen (14) hours per month which equals 6.46 hours accrued each biweekly pay period.

2. Except as provided in Section 4.B.1, 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, life insurance, workers compensation, short-term disability coverage, holidays, and sick leave.

**C. Vehicle Use.** Employee will furnish his own personal vehicle as required for his 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 his 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 his 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, August 19.
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 below in Section 5.B. 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.

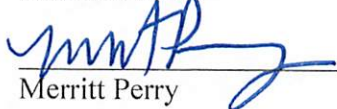
E. The parties agree that any ambiguity in this Agreement shall not be construed or interpreted against, or in favor of either party.

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 Merritt Perry has signed and executed this Agreement on the day and year first above written.

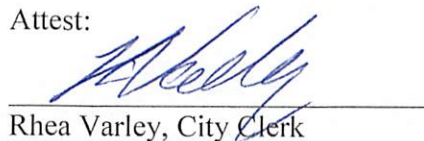
**EMPLOYEE:**

  
Merritt Perry

**EMPLOYER:**

  
By: Meredith Matthews, Mayor

Attest:

  
Rhea Varley, City Clerk

## SEPARATION AGREEMENT AND GENERAL RELEASE

This Separation Agreement and General Release ("Separation Agreement") is entered into by \_\_\_\_\_ ("Employee") and City of Arcata ("City") effective on \_\_\_\_\_ Employee and City may be referred to collectively as "parties."

### RECITALS

- A. Employee's employment by City, and the contract under which Employee was employed, terminated effective \_\_\_\_\_, 20\_\_.
- B. Employee is informed that Employee has 21 days from receipt of this Agreement to consider it ("21-Day Consideration Period"). City advises Employee to consult with an attorney before signing this Agreement. Employee may sign this Agreement before the end of the 21-Day Consideration Period, but is under no obligation to do so. Signing the Agreement prior to the expiration of the 21- Day Consideration Period will constitute a waiver of the remainder of the 21-Day Consideration Period.
- C. Employee acknowledges that for a period of seven days following the signing of this Separation Agreement ("Revocation Period"), Employee may revoke this Separation Agreement. If not revoked during the Revocation Period, this Separation Agreement shall become enforceable immediately upon expiration of the Revocation Period.
- D. Employee acknowledges that the Salary Payment referenced in paragraph 1 below represents all compensation, including salary and accrued leave and benefits, due and payable to Employee through the date of termination. Employee also acknowledges that City has made this Salary Payment without regard to whether Employee signs this Separation Agreement. The Salary Payment does not constitute consideration for this Separation Agreement.
- E. Employee acknowledges that the Severance Pay referenced in paragraph 2 below is in addition to all amounts that are due and owing to Employee as a result of Employee's employment by City.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. Receipt of Salary Payment. Employee hereby acknowledges receipt of a check for all salary, benefits, and accrued leave owing ("Salary Payment") from City.
2. Severance Pay. Following return to City of this Separation Agreement signed by Employee, and upon expiration of the Revocation Period without revocation by Employee, City shall pay in addition to the Salary Payment the following amount as Severance Pay: a lump sum

Exhibit A

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 six (6) months.

3. General Release. In consideration of the Severance Pay to be given to Employee, and other good and valuable consideration, Employee hereby releases and discharges City and its past and present elected and appointed officials and officers, employees, representatives, agents and attorneys, from all rights, claims, causes of action, and damages, both known and unknown, in law or in equity, concerning and/or arising out of Employee's employment with City which Employee now has, or ever had, including but not limited to any rights, claims, causes of action, or damages arising under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Fair Labor Standards Act of 1938, the Americans with Disabilities Act, the Meyers-Milias Brown Act, the Vocational Rehabilitation Act of 1973, the Family and Medical Leave Act of 1993, the California Moore-Brown-Roberti Family Rights Act, the California Unruh Civil Rights Act, the California Fair Employment and Housing Act, the California Labor Code, under any other federal, state, or local employment practice legislation, or under federal or state common law, including wrongful discharge, breach of express or implied contract, breach of public policy, and/or violation of due process rights.

Employee specifically waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of California. Employee understands and acknowledges the significance and consequences of this specific waiver of Section 1542. Section 1542 of the Civil Code of California states as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

Notwithstanding the protections of Section 1542, and for the purpose of implementing a full and complete release and discharge of City and its past and present elected and appointed officials and officers, employees, representatives, agents and attorneys, Employee expressly acknowledges that this General Release is intended to apply to all claims which Employee has including any claims that Employee does not know about or suspect to exist.

Employee further acknowledges that Employee has read this General Release, understands that this is a general release, and intends to be legally bound by the same.

4. Specific Waiver of Claims Under ADEA and OWBPA. Employee acknowledges that Employee is knowingly and voluntarily waiving and releasing any rights or claims Employee may have under the Age Discrimination in Employment Act of 1967, as amended by the Older Workers Benefits Protection Act. Employee further acknowledges that:

- (a) This waiver/release is written in a manner understood by Employee;
- (b) Employee is aware of, and/or has been advised of, Employee's rights under the ADEA and OWBPA, and of the legal significance of Employee's waiver of any possible



Exhibit A

claims Employee may have under the ADEA, OWBPA and/or similar age discrimination laws;

(c) Employee is entitled to a reasonable time of at least 21 days within which to review and consider this Agreement and the waiver and release of any rights Employee may have under the ADEA, the OWBPA and similar age discrimination laws; but has the discretion to sign or reject this Agreement at any time before the expiration of the 21 days;

(d) Employee has been advised by this writing that Employee should consult with an attorney prior to executing this Agreement;

(f) Employee has discussed this waiver and release with Employee's counsel of choice or at least had the opportunity to do so, and Employee represents by signing this Agreement that Employee does not need any additional time within which to review and consider this Agreement;

(g) Employee has seven days following Employee's execution of this Agreement to revoke the Agreement;

(h) Any notice of revocation must be provided in writing to City within the seven day revocation period; and

(i) This Agreement shall not be effective until all parties have signed the Agreement and seven days have passed since Employee's execution of same.

5. No Admission. This Agreement shall not be construed as an admission of liability by either party.

6. Partial Invalidity. In the event that any provision of this Agreement is found to be illegal, invalid, or unenforceable, such provision, if possible, shall be construed so as to render the provision legal, valid, and enforceable. If a provision cannot be construed so as to render it legal, valid, and enforceable, the invalidity of such provision shall in no way affect any other term, covenant, condition, or provision and the remainder of this Agreement shall still be effective.

7. No Assignment. Employee represents that Employee has not assigned, transferred, or purported to assign or transfer any claim Employee may have against the City.

8. Counterparts. This Agreement may be executed in one or more originals, each of which shall, for all purposes, be deemed a legally enforceable original representative of the full and complete agreement of the parties.

9. Taxes. Employee understands and agrees that Employee shall be exclusively liable for the payment of any and all taxes for which Employee may be responsible as a result of Employee's receipt of the consideration referred to in Paragraph 2 above. In addition, Employee agrees fully to indemnify and hold City harmless for payment of tax obligations as may be

Exhibit A

required by any federal, state or local taxing authority, at any time, as a result of the payment of the consideration set forth in Paragraph 2 above.

10. Prevailing Party's Right to Fees and Costs. Employee and City agree that in the event of litigation relating to this Separation Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

11. Notice. Any notice required under this Agreement shall be by certified or registered United States mail, or by personal delivery, at the noticing party's discretion, and addressed to the parties as set forth in this paragraph. Notices shall be deemed, for all purposes, to have been given and/or received on the date of personal service or three consecutive calendar days following deposit of the same in the United States mail. Notice to the City shall be delivered to 736 F Street, Arcata CA 95521 and notice to Employee shall be delivered to the Employee's home address on file with the City.

12. Complete Agreement. This is the entire agreement between Employee and City with respect to the subject matter hereof and this Separation Agreement supersedes all prior and contemporaneous oral and written agreements and discussions. It may only be amended in writing.