

EMPLOYMENT AGREEMENT

THIS AGREEMENT, entered into this 1st day of July, 2019, by and between THE CITY OF UNION CITY ("CITY") and JOAN MALLOY ("MALLOY") (collectively the "PARTIES").

RECITALS

CITY desires to employ MALLOY as City Manager of the City of Union City, California, and Executive Director of the Successor Agency to the Community Redevelopment Agency of the City Of Union City ("Successor Agency"); and MALLOY desires to serve in such capacity.

The City Council, as appointing authority, and MALLOY desire to agree in writing on the terms and conditions of MALLOY's employment.

NOW THEREFORE, in consideration of the mutual covenants, promises, and representations hereinafter set forth, the PARTIES hereto do now agree as follows:

SECTION I **DUTIES**

(a) CITY hereby agrees to employ MALLOY as City Manager of the CITY and Executive Director of the Successor Agency to perform the functions and duties specified by the general laws of the State of California and by the Union City Municipal Code and other ordinances and resolutions of the CITY, and to perform other legally permissible and proper duties and functions as the City Council or the Successor Agency may from time to time assign.

(b) MALLOY commenced her duties on July 1, 2019.

(c) MALLOY agrees to devote her productive time, ability, and attention to the CITY's business during the term of this Agreement. MALLOY shall not hold secondary employment, and shall be employed exclusively by the CITY. However, the CITY recognizes that MALLOY may actively participate in community affairs and shall be permitted to volunteer time, energy and expertise, and from time-to-time, to serve and hold office in charitable, non-profit, public service, service club, religious, and/or community area organizations. In addition this Agreement shall not be construed to preclude incidental and occasional teaching, writing, or consulting performed by MALLOY.

SECTION II **TERM**

The term of this Agreement shall be from the date approved by the City Council until terminated by either party in accordance with the provisions of Section III. MALLOY shall serve at the pleasure of the City Council.

The PARTIES recognize and affirm that: 1) MALLOY is an "at will" employee whose employment may be terminated by the CITY with or without cause; 2) there is no express or

implied promise made to MALLOY for any form of continued employment; and 3) this Agreement is the sole and exclusive basis for an employment relationship between MALLOY and the CITY.

SECTION III

TERMINATION OF EMPLOYMENT AND SEVERANCE

City Manager is an at-will employee serving at the pleasure of the City Council as provided in Government Code Section 36506. The position of City Manager is an FLSA-exempt position. MALLOY's employment as City Manager may be terminated by one of the following means:

- (a) Voluntary Resignation: MALLOY may voluntarily resign by delivering a letter of resignation to the City Council not less than 60 days prior to the effective date of resignation.
- (b) Termination or Forced Resignation by City Council: The City Council may terminate the employment of MALLOY in accordance with the provisions of the Union City Municipal Code and State law, by giving written notice not less than 60 days prior to the effective date of termination, or by causing MALLOY's resignation by a majority of the City Council requesting MALLOY to resign and MALLOY then volunteering to resign after such action by the City Council. If MALLOY is terminated from employment or caused to resign, she shall be entitled to the benefits of subparagraph (c).
- (c) Severance: In the event MALLOY is terminated from employment by the CITY Council without cause, or is caused to resign by the City Council pursuant to subsection (b) above without cause, and contingent upon MALLOY's execution of a comprehensive general release and waiver of all claims of any nature, known or unknown, by MALLOY against the CITY, MALLOY shall be entitled to six (6) month's severance pay of her annual total compensation, including salary and the value of her benefits. In no event will MALLOY be entitled to a severance agreement absent execution of a comprehensive general release and waiver of claims. Such severance shall be paid in full upon the effective date of her termination. MALLOY may elect to receive continued medical/health insurance benefits, in lieu of cash payment for equivalent value thereof.
- (d) Release for Cause: This provision does not confer any property rights on MALLOY, as she remains an at-will employee. The phrase "termination for cause" only pertains to MALLOY's eligibility for severance as described in this Section. A "termination for cause" may include, but shall not be limited to, the following:
 - (i) Purposefully violate administrative policies and procedures;
 - (ii) Failure to properly perform assigned duties;
 - (iii) Theft of CITY property;

- (iv) Insubordination;
 - (v) Conviction of a felony or misdemeanor with a nexus to the workplace;
 - (vi) Unauthorized absence from employment;
 - (vii) Failure to maintain satisfactory working relationships with other employees or the public;
 - (viii) Improper use of CITY funds;
 - (ix) Unauthorized use of CITY property;
 - (x) Willful misconduct or malfeasance;
 - (xi) Any act of moral turpitude or dishonesty; and
 - (xii) Other failure of good behavior either during or outside of employment such that the Manager's conduct causes discredit to the City.
- (e) Abuse of Office: Pursuant to Government Code section 53243.2, any cash settlement related to the termination of this Agreement received by MALLOY from the CITY shall be fully reimbursed to the CITY if MALLOY is convicted of a crime involving an abuse of her office or position as defined in California Government Code section 53243.4.

SECTION IV **DISABILITIES**

If MALLOY is permanently disabled or is otherwise unable to perform her duties because of sickness, accident, injury, mental incapacity or health for a period of four (4) successive weeks beyond any accrued sick leave, the CITY shall have the option to terminate this Agreement, subject to the severance pay requirements of Section III, Paragraph (c).

SECTION V **COMPENSATION**

(a) Effective beginning July 1, 2019, CITY agrees to pay MALLOY for her services rendered at an annual base salary of \$245,000, which sum shall be payable in installments at the same time as other employees of the CITY are paid, and subject to customary withholdings. MALLOY shall also receive longevity pay as provided to the CITY's Department Heads.

In addition, CITY agrees to consider adjusting said base salary and other benefits of MALLOY, in the CITY's sole discretion, subject to the performance evaluation process described in Section VI of this Agreement, which shall be merit based. Provided that MALLOY receives a satisfactory performance evaluation pursuant to Section VI of this Agreement, the

CITY will endeavor, in order to avoid compaction, to maintain a minimum of a five percent differential in annual base salary between Department Heads, including the Chief of Police, and MALLOY. Any action to increase salary or benefits shall comply with Government Code Section 3511.2(a), Government Code Section 54953(c)(3), and Government Code Section 54956(b).

(b) MALLOY shall be entitled to receive the same benefits as the CITY's Department Heads, except for the Chief of Police, as approved by the City Council. Any discrepancy or conflict between the Department Heads compensation and this Agreement shall be assumed to be intended and this Agreement shall take precedence.

(c) MALLOY may receive a City-owned vehicle to use in discharging her duties as City Manager and for her personal use. CITY shall provide for all maintenance, repairs, fuel, insurance, and periodic replacement necessary for said City-owned vehicle. MALLOY may also receive other equipment necessary to perform her duties including a City-issued cellular phone and laptop computer which can be used for discharging her duties and for her personal use.

(d) CITY shall contribute an additional \$600 per month in MALLOY's name to the ICMA/RC or Valic STARS deferred compensation program.

SECTION VI **EVALUATION OF PERFORMANCE**

The City Council shall review and evaluate the performance of MALLOY annually or more frequently if requested by the City Council in its sole discretion. Said review and evaluation shall be in accordance with specific criteria developed by the City Council with consultation from MALLOY. Said criteria may be added to or deleted from as the City Council may from time to time determine, in consultation with MALLOY. Further, the City Council shall provide MALLOY with a summary written statement of the findings of the City Council and provide an adequate opportunity for MALLOY to discuss her evaluation with the City Council.

City Council and MALLOY shall not later than December 31, 2019, hold a facilitated meeting to define such goals and performance objectives which they determine necessary for the proper operations of the CITY and in the attainment of the City Council's policy objectives, and shall further establish a relative priority among those various goals and objectives, said goals and objectives to be reduced to writing. They shall generally be reasonably attainable within the time limitations as specified in the annual operating and capital budgets and appropriations provided. Annually thereafter, the City Council and MALLOY shall meet to engage in the same discussion.

SECTION VII **PHYSICAL EXAMINATION**

It is recognized to be in the best interest of both PARTIES that MALLOY maintain good health and the physical ability to fulfill her duties as City Manager. To this end, the CITY will pay the cost of one complete physical examination conducted annually by the physician of MALLOY's choice.

SECTION VIII
PROFESSIONAL DEVELOPMENT

CITY acknowledges its interest in the continuing professional development of MALLOY and agrees to pay reasonable expenses associated with attendance at professional conferences, continuing education, professional memberships, books and dues. CITY acknowledges MALLOY's right to engage in other professional activities so long as they do not interfere or conflict with MALLOY's duties as City Manager and are done during time in which MALLOY is on leave or during normal nonworking hours.

SECTION IX
HOLD HARMLESS AND INDEMNIFICATION

CITY shall defend, hold harmless, and indemnify MALLOY against any tort, professional liability claim or demand, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission of MALLOY made in the course of her performance of duties as City Manager. CITY shall pay the amount of any settlement or judgment rendered therefrom, to the extent specified in the California Government Code.

SECTION X
MISCELLANEOUS

(a) Binding Agreement: This Agreement shall be binding on the heirs, successors and assigns of the PARTIES.

(b) The Rights of PARTIES: Unless expressly set forth in this Agreement, nothing in this agreement shall abrogate any rights, responsibilities, benefits, or privileges to which either party would otherwise be entitled.

(c) Amendment: This agreement may be amended only in writing by mutual agreement of the PARTIES.

(d) State Law: The rights and obligations of the PARTIES shall be governed by the laws of the State of California.

(e) Abuse of Office: Government Code sections 53243, 53243.1, 53243.2, and 53243.3 are incorporated by this reference as if fully set forth herein.

(f) Recitals: Recitals are incorporated by reference into this agreement.

(g) Failure to Act: Failure to exercise any right or remedy shall not act as a waiver to exercise that right.

(h) Entire Agreement: This Agreement contains the entire agreement between the PARTIES and supersedes any prior agreement.

(i) Severability: Should any paragraph, subparagraph, sentence clause or word included in this Agreement be found invalid by a court of competent jurisdiction, the balance of this Agreement shall remain in full force and effect.

(j) Attorneys' Fees: The prevailing party of any dispute over the terms and conditions of this Agreement is entitled to attorney fees.

(k) Assignment: This Agreement is not assignable by either CITY or MALLOY.

IN WITNESS WHEREOF, the PARTIES hereto have hereunto affixed their signatures as of the date and year first above written.

CITY OF UNION CITY

By: _____
CAROL DUTRA-VERNACI
Mayor

ATTEST:

ANNA M. BROWN
City Clerk

APPROVED AS TO FORM:

KRISTOPHER J. KOKOTAYLO
City Attorney

JOAN MALLOY
City Manager

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