

CITY OF BALDWIN PARK
CHIEF DEPUTY CITY CLERK
EMPLOYMENT AGREEMENT

This CHIEF DEPUTY CITY CLERK EMPLOYMENT AGREEMENT (“Agreement”) is entered into and made effective the 1st day of March 2023, by and between the CITY OF BALDWIN PARK, a municipal corporation (“City”) and Shirley A. Quinones, an individual (“Employee”).

RECITALS

WHEREAS, pursuant to Baldwin Park Municipal Code Section 31.03 the Chief Executive Officer has the authority, upon consultation and concurrence by the City Council, to appoint certain department heads and managers; and

WHEREAS, pursuant to Baldwin Park Municipal Code Section 33.05, all Unclassified Service Employees, including the Chief Deputy City Clerk, are At-Will and may be terminated from employment at any time without cause or without right of appeal or hearing, and not covered by the City’s Personnel System; and

WHEREAS, at the regular City Council meeting of March 1, 2023, the Chief Executive Officer secured the concurrence of the City Council to execute an employment agreement with Shirley A. Quinones, to serve as Chief Deputy City Clerk, which position shall be At-Will and serve at the pleasure of the City Council and Chief Executive Officer; and

WHEREAS, Employee desires to perform and assume responsibility for the provision of services as the Chief Deputy City Clerk to the City and its related agencies; and

WHEREAS, the parties wish to establish the terms and conditions of Employee’s services as the Chief Deputy City Clerk to the City and its related agencies through this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, City and Employee hereby agree as follows:

AGREEMENT

1.0 EMPLOYMENT & DUTIES

1.1 **Duties.** City hereby employs Shirley A. Quinones as the Chief Deputy City Clerk to perform the functions and duties as specified in the job description for this position attached hereto as Exhibit “A”, and to perform such other legally permissible and proper functions and duties as the Chief Executive Officer shall, from time-to-time, direct or assign. Employee shall perform these functions and duties in an efficient, competent, and ethical manner and shall devote her best efforts and full-time attention thereto.

1.2 **Work Schedule.** It is recognized that Employee is expected to engage in the hours of work that are necessary to fulfill the obligations of the position, must be available at

all times, and must devote a great deal of time outside the normal office hours to the business of the City. Employee acknowledges that proper performance of the duties of the Chief Deputy City Clerk will require Employee to generally observe normal business hours, as set by the City and may be duly revised from time-to-time (currently 7:30 a.m. to 6:00 p.m., Monday through Thursday), and will also often require the performance of necessary services outside of normal business hours. 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.

1.3 Other Activities. Employee shall focus their professional time, ability, and attention to City business during the term of this Agreement. Employee shall not engage, without the express prior written consent of the Chief Executive Officer, in any other business duties or pursuits whatsoever, or directly or indirectly render any services of a business, commercial, or professional nature to any other person or organization, whether for compensation or otherwise, that is or may be competitive with the City, that might cause a conflict-of-interest with the City, or that otherwise might interfere with the business or operation of the City or the satisfactory performance of the functions and duties of Chief Deputy City Clerk.

1.4 Employment Status. Upon appointment to the Chief Deputy City Clerk position, Employee shall serve at the will and pleasure of the Chief Executive Officer and understands that she shall be an "At-Will" employee without recourse to bumping or other demotion rights and shall be subject to summary dismissal without any right of notice or hearing, including any so-called due process pre-disciplinary *Skelly* hearing, except as expressly provided in this Agreement. The City may terminate Employee at any time in accordance with Section 3.4 below.

1.5 City Documents. All data, studies, reports and other documents prepared by Employee while performing her duties during the term of this Agreement shall be furnished to and become the property of the City, without restriction or limitation on their use. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other materials either created by or provided to Employee in connection with the performance of this Agreement shall be held confidential by Employee to the extent permitted by applicable law, except as may be required by any governmental agency or court of competent jurisdiction. Such materials shall not be used by Employee, without the prior written consent of the Chief Executive Officer, for any purposes other than the performance of her duties. Additionally, no such materials may be disclosed to any person or entity not connected with the performance of services under this Agreement, except as required by (a) law, (b) any governmental agency, (c) subpoena, or (d) an order issued by a court of competent jurisdiction.

1.6 Exclusion from Competitive Service. Employee understands, acknowledges and agrees that she is exempt from the City's competitive (Civil Service) system, and as such remains an At-Will employee serving at the pleasure of the Chief Executive Officer.

1.7 FLSA Exempt Status. Employee agrees that her position is that of an exempt employee for the purposes of the Fair Labor Standards Act.

2.0 COMPENSATION AND REIMBURSEMENT

2.1 Compensation. For the services rendered pursuant to this Agreement, Employee's initial base compensation shall be \$6,172.30 per month ("Salary"), Step 2 of the City of Baldwin Park's Salary Schedule, to be paid on a pro-rated basis bi-weekly at the same time as other employees of the City are paid. Such Salary shall be adjusted for state and federal tax withholdings.

2.2 Annual Salary Review. The Chief Executive Officer and Employee agree to conduct an annual salary review concurrently with the annual performance evaluation set forth in Section 6.2. Upon conclusion of such review, the Chief Executive Officer may, within his discretion, increase Employee's Salary as he deems appropriate not to exceed the maximum of the Chief Deputy City Clerk salary range in accordance with the City's Salary Schedule.

2.3 Cost of Living Adjustment. Employee shall not be entitled to any cost of living adjustment ("COLA"), except Employee shall be entitled to a COLA when specifically approved for the Chief Deputy City Clerk position by action of the Baldwin Park City Council.

3.0 TERM

3.1 Commencement & Effective Date. Employee shall commence their services hereunder at 12:01 a.m. Pacific daylight savings time on March 6, 2023 or such earlier date upon which the Chief Executive Officer and Employee may mutually agree, in either event such date will also be deemed the effective date of this Agreement ("Effective Date").

3.2 Term. The City hereby employs Employee until their services are terminated as provided for herein.

3.3 Termination by Employee. Employee may terminate this Agreement at any time, provided Employee provides the Chief Executive Officer with at least thirty (30) days' advance written notice, unless the parties agree to an alternative timeframe. In the event Employee terminates this Agreement, Employee expressly agrees that she shall not be entitled to any severance pay.

3.4 Termination by City. The Chief Executive Officer or someone acting in the capacity as Chief Executive Officer may terminate this Agreement at any time with or without cause, by providing written notice of the reason(s). The Chief Executive Officer's right to terminate Employee pursuant to this Section 3.4 shall not be subject to or in any way limited by the City's Personnel Rules or past City practices related to the employment, discipline, or termination of the City's employees. Employee expressly waives any rights provided for department heads and certain managers under the City's Personnel Rules, Municipal Code, or under other state or federal law to any other form of pre- or post-termination hearing, appeal, or other administrative process pertaining to termination. Nothing herein, however, shall be construed to create a property interest, where one does not exist by rule of law, in the position of Chief Deputy City Clerk. Upon appointment to the Chief Deputy City Clerk position, Employee remains an At-Will employee serving at the pleasure of the Chief Executive Officer.

(a) Termination by City for Cause. The City may terminate this Agreement for cause at any time by providing Employee with five (5) business days' written notice of the termination for cause and the facts and grounds constituting such

cause. The term "cause" shall be defined to include any misconduct materially related to performance of official duties, including but not be limited to any of the following: 1) Breach of this Agreement, 2) Willful or persistent material breach of duties, 3) Résumé fraud or other acts of material dishonesty, 4) Unauthorized absence or leave, 5) Conviction of a misdemeanor involving moral turpitude (i.e., offenses contrary to justice, honesty, or morality) or conviction of a felony under California law, 6) Violation of the City's anti-harassment policies and/or a finding that legally prohibited personal acts of harassment against a City official or employee or legally prohibited personal acts of discrimination against a City official or employee has occurred, 7) Violation of the Municipal Code, Ordinances, Rules, and Regulations, including but not limited to the City's Personnel Rules, 8) Use or possession of illegal drugs, 9) Engaging in conduct tending to bring embarrassment or disrepute to the City, 10) Any illegal or unethical act involving personal gain, 11) A pattern of repeated, willful, and intentional failure to carry out materially significant and legally constituted direction of the Chief Executive Officer or the policy decisions of the City Council, 12) Gross misfeasance or gross malfeasance, and 13) "abuse of office or position" as defined in Government Code Section 53243.4 (i.e., waste, fraud, and violation of the law under color of authority and crimes against public justice, including crimes involving bribery and corruption). For any of the foregoing, the City may, in its discretion, place Employee on paid or unpaid administrative leave until resolution. If the City terminates for cause this Agreement and the services of Employee hereunder, the City shall have no obligation to pay severance.

(b) Termination by Chief Executive Officer Without Cause. By providing Employee at least thirty (30) days' prior written notice thereof, the City may terminate Employee without cause. In the event Employee is terminated without cause, Employee expressly agrees that they shall not be entitled to any severance pay as the result of the termination of this Agreement except as provided in Section 4.1 below.

4.0 SEVERANCE AND WAIVER AND RELEASE

4.1 Severance Pay. In the event the Chief Executive Officer terminates Employee's employment as Chief Deputy City Clerk without cause pursuant to Section 3.4(b) of this Agreement, and if Employee is not otherwise in breach of the terms of this agreement, and if Employee executes a written waiver of any and all claims the Employee may have against the City, including but not limited to, a Civil Code Section 1542 waiver, then and only then the City shall pay a lump sum cash payment equal to three (3) months base salary, with no benefits included in the severance calculation ("Severance Pay") to Employee. Only base salary will be used to calculate the three months' severance. However, the City shall be relieved of its obligation to pay Severance Pay if Employee is terminated for malfeasance in carrying out the duties obligated under this Agreement or if the Employee is convicted of any illegal act involving moral turpitude or personal gain or if Employee refuses to sign a complete waiver releasing the City of any and all claims the Employee may have against the City. Employee shall also be entitled to any accrued compensable leave as Employee may have accumulated, subject to Section 6 of this Agreement and consistent with the Unclassified Managers Benefits Matrix and/or City Personnel Rules.

4.2 No Severance Pay if Termination for Cause or Initiated by Employee. As provided in Section 3.4(a), should Employee be terminated for cause, the City shall have no obligation to pay the severance provided for in Section 4.1 above. As provided in Section 3.3, should Employee initiate termination of this Agreement, the City shall have no obligation to pay the severance provided for in Section 4.1 above.

4.3 Sole Rights. The severance rights provided in this Section 4.0 shall constitute the sole and only entitlement of Employee with respect to severance pay in the event of the termination, other than for cause. Employee expressly waives any and all other rights with respect to severance pay except as provided herein.

5.0 PERFORMANCE EVALUATIONS

5.1 Purpose. The performance review and evaluation process set forth herein is intended to provide review and feedback to Employee so as to facilitate a more effective management of the City's personnel. Nothing herein shall be deemed to alter or change the employment status of Employee (as set forth in Section 1.3 above), nor shall this Section 5.0 be construed as requiring "cause" to terminate this Agreement, or the services of Employee hereunder.

5.2 Annual Evaluation. The Chief Executive Officer shall review and evaluate the performance of Employee, annually within thirty (30) days after each anniversary of the Effective Date. In addition, Employee shall submit for the Chief Executive Officer's consideration at those times established by the Chief Executive Officer, but at least annually, Employee's proposed performance goals and objectives and incorporate the Chief Executive Officer's suggestions. Such review and evaluation shall be conducted concurrently with an annual salary review, and in accordance with the purpose noted in Section 5.1 above.

5.3 Written Summary. The Chief Executive Officer may, at his/her sole discretion, elect to provide a written summary of each performance evaluation to Employee within two (2) weeks following the conclusion of the review and evaluation process, and may, at his sole discretion, schedule at least one (1) closed personnel session with Employee to deliver and discuss the evaluation.

6.0 BENEFITS

6.1 Provision of Benefits. The Employee shall receive all fringe benefits as are defined in the City of Baldwin Park's Unclassified Manager's Benefits Matrix, Effective July 1, 2021, as approved by the City Council, attached as "Exhibit" C.

6.2 Changes to Benefits. To the extent the benefits enumerated in this Section 6.0 are increased, decreased, modified, or eliminated by the City Council, said increase, decrease, modification or elimination of said benefits shall be applicable to Employee at the time it becomes effective.

7.0 PROFESSIONAL DEVELOPMENT

7.1 Membership. The City encourages Employee's continued professional development and shall provide payment of appropriate related costs for such activities, including membership in relevant professional organizations, as approved by the Chief Executive Officer.

7.2 Out-of-Town Meetings & Seminars. The City agrees to reimburse Employee the actual cost for registration, travel, lodging, meals, and other expenses incurred by Employee while attending overnight, out-of-town meetings or seminars related to her employment with the City, in accordance with the City's policies for expense reimbursement. Moreover, to be eligible Employee must have budgeted funds available for same; provided, however, that the Chief Executive Officer may, in his/her sole discretion, approve such unbudgeted expenditures if s/he deems it in the best interests of the City.

7.3 Local Meetings & Seminars. The City agrees to reimburse Employee the actual cost of registration, meals, and other expenses necessarily incurred while in attendance at local meetings or seminars related to her employment with City in accordance with the City's policies for expense reimbursement.

7.4 Incidental Expenses. The City agrees to reimburse Employee the actual cost of those incidental expenses necessarily incurred by Employee while engaged in the business of the City upon the presentation of an appropriate receipt therefor, in accordance with the City's policies for expense reimbursement.

7.5 Approval by Chief Executive Officer. To be eligible to receive reimbursement for the memberships and travel and other expenses incurred pursuant to this Section 8.0, Employee shall obtain advance approval of the Chief Executive Officer or his/her designee.

8.0 BONDS AND INDEMNIFICATION

8.1 Indemnification. To the extent mandated by the California Government Code, the City shall defend, hold harmless, and indemnify Employee against any tort, professional liability, claim or demand, or other legal action arising out of an alleged act or omission occurring in the performance of Employee's services under this Agreement. This section shall not apply to any intentional tort or crime committed by Employee, to any action outside the course and scope of the services provided by Employee under this Agreement, or any other intentional or malicious conduct or gross negligence of Employee.

8.2 Bonds. City shall bear the full cost of any fidelity or other bonds, which may be required in the performance of Employee's services under this Agreement.

9.0 GENERAL PROVISIONS

9.1 Entire Agreement. This Agreement represents the entire agreement between the parties and supersedes any and all other agreements, either oral or in writing, between the parties with respect to Employee's employment by the City and contains all of the covenants and agreements between the parties with respect to such employment. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or

otherwise, have been made by either party, or anyone acting on behalf of either party, which are not embodied herein, and that no other agreement, statement or promises not contained in this Agreement shall be valid or binding upon either party.

9.2 Amendment. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing, which amendment shall require City Council approval, except where Chief Executive Officer approval is expressly authorized herein.

9.3 Notices. Any notice required or permitted by this Agreement shall be in writing and shall be personally served or shall be sufficiently given when served upon the other party as sent by United States Postal Service, postage prepaid and addressed as follows:

To City:
Chief Executive Officer (CEO)
City of Baldwin Park
14403 E. Pacific Avenue
Baldwin Park, California 91706

To Employee:
Shirley A. Quinones
[On file with Human Resources Division.]

Notices shall be deemed given as of the date of personal service or upon the date of deposit in the course of transmission with the United States Postal Service.

9.4 Conflicts Prohibited. During the term of this Agreement, Employee shall not engage in any business or transaction or maintain a financial interest which conflicts, or reasonably might be expected to conflict, with the proper discharge of Employee's duties under this Agreement. Employee shall comply with all requirements of law, including but not limited to, Sections 87100 et seq., Section 1090 and Section 1125 of the Government Code, and all other similar statutory and administrative rules.

9.5 Effect of Waiver. The failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

9.6 Partial Invalidity. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

9.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, which are in full force and effect as of the date of execution and delivery by each party hereto.

9.8 AB 1344. Assembly Bill 1344, which was subsequently enacted as Government Code §§ 53243 - 53243.4, sought to provide greater transparency in local government and institute certain limitations on compensation paid to local government executives. These statutes also require that contracts between local agencies and its employees include provisions

requiring an employee who is convicted of a crime involving an abuse of her office or position to provide reimbursement to the local agency for the following forms of payment: (i) paid leave salary; (ii) criminal defense costs; (iii) cash settlement payments; and (iv) any non-contractual settlement payments. Accordingly, the Parties agree that it is their mutual intent to fully comply with these Government Code sections and all other applicable law as it exists as of the date of execution of this Agreement and as such laws may be amended from time to time thereafter. Specifically, the following Government Code sections are called out and hereby incorporated by this Agreement:

§53243. Reimbursement of paid leave salary required upon conviction of crime involving office or position.

§53243.1. Reimbursement of legal criminal defense upon conviction of crime involving office or position.

§53243.2. Reimbursement of cash settlement upon conviction of crime involving office or position.

§53243.3. Reimbursement of noncontractual payments upon conviction or crime involving office or position.

§53243.4. "Abuse of office or position" defined.

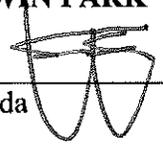
Employee represents that Employee has reviewed, is familiar with, and agrees to comply fully with each of these provisions if any of these provisions are applicable to Employee, including that Employee agrees that any cash settlement or severance related to the termination that Employee may receive from the City shall be fully reimbursed to the local agency if Employee is convicted of a crime involving an abuse of her or her office or position. The Government Code provisions referenced in this section are attached hereto in Exhibit "B".

9.9 Independent Legal Advice. The City and Employee represent and warrant to each other that each has received legal advice from independent and separate legal counsel with respect to the legal effect of this Agreement, or had the opportunity to do so, and the City and Employee further represent and warrant that each has carefully reviewed this entire Agreement and that each and every term thereof is understood and that the terms of this Agreement are contractual and not a mere recital. This Agreement shall not be construed against the party or its representatives who drafted it or who drafted any portion thereof.

[Signatures on following page]

IN WITNESS WHEREOF, the City of Baldwin Park has caused this Agreement to be signed and executed on its behalf by its Chief Executive Officer, and duly attested by its officers thereunto duly authorized, and Employee has signed and executed this Agreement, all in triplicate.

CITY OF BALDWIN PARK

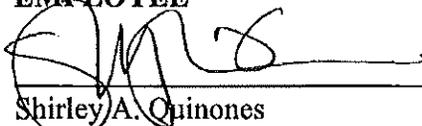


Emmanuel J. Estrada
Mayor

Date

3/1/23

EMPLOYEE



Shirley A. Quinones

Date

02/22/2023

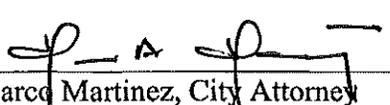
ATTEST



Christopher Saenz, City Clerk

Date

APPROVED AS TO FORM



Marco Martinez, City Attorney

Date

March 3, 2023

EXHIBIT A

[Chief Deputy City Clerk Job Description on following page]

EXHIBIT B

GOVERNMENT CODE SECTION 53243-53243.4 and 53260(a)

53243. On or after January 1, 2012, any contract executed or renewed between a local agency and an officer or employee of a local agency that provides paid leave salary offered by the local agency to the officer or employee pending an investigation shall require that any salary provided for that purpose be fully reimbursed if the officer or employee is convicted of a crime involving an abuse of his or her office or position.

53243.1. On or after January 1, 2012, any contract executed or renewed between a local agency and an officer or employee of a local agency that provides funds for the legal criminal defense of an officer or employee shall require that any funds provided for that purpose be fully reimbursed to the local agency if the officer or employee is convicted of a crime involving an abuse of his or her office or position.

53243.2. On or after January 1, 2012, any contract of employment between an employee and a local agency employer shall include a provision which provides that, regardless of the term of the contract, if the contract is terminated, any cash settlement related to the termination that an employee may receive from the local agency shall be fully reimbursed to the local agency if the employee is convicted of a crime involving an abuse of his or her office or position.

53243.3. On or after January 1, 2012, if a local agency provides, in the absence of a contractual obligation, for any of the payments described in this article, then the employee or officer receiving any payments provided for those purposes shall fully reimburse the local agency that provided those payments in the event that the employee or officer is convicted of a crime involving the abuse of his or her office or position.

53243.4. For purposes of this article, "abuse of office or position" means either of the following:

(a) An abuse of public authority, including, but not limited to, waste, fraud, and violation of the law under color of authority.

(b) A crime against public justice, including, but not limited to, a crime described in Title 5 (commencing with Section 67) or Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

53260. (a) All contracts of employment between an employee and a local agency employer shall include a provision which provides that regardless of the term of the contract, if the contract is terminated, the maximum cash settlement that an employee may receive 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.

EXHIBIT C

UNCLASSIFIED MANAGERS
BENEFITS MATRIX