

AGREEMENT

This AGREEMENT is made and entered into by and between the City of Baldwin Park, a general law City (hereinafter "City") and Carol Averell, an individual (hereinafter "Employee").

Section 1. Duties

- a. City agrees to employ Employee as the Housing Manager with the responsibility of supervising and managing the Housing Division within the Community Development Department under the direction of the Community Development Director and Chief Executive Officer.
- b. The Employee shall perform other related and necessary duties as required by law and designated by the Community Development Director and Chief Executive Officer
- c. The Community Development Director and Chief Executive Officer shall establish performance goals and objectives to be met by the Employee as Housing Manager for each year of this agreement. Said objectives shall be established as part of the evaluation process. The Community Development Director and Chief Executive Officer agrees to conduct a performance evaluation after twelve (12) months from the date of employment, and also upon each annual anniversary date of employment. The evaluation shall be conducted in accordance with specific criteria jointly developed and finalized by the Community Development Director, Chief Executive Officer and Employee. The Chief Executive Officer, based upon said evaluation, may award a salary step increase to Employee. Salary increases may be by amendment to this contract or by Resolution of the City Council.
- d. Employee shall satisfactorily perform the duties of Housing Manager with a high degree of professionalism and shall work the schedule necessary to ensure completion of performance. Employee shall generally report to work during normal business hours except during approved leave. Employee shall not conduct any outside business, or consulting business, except that employee may engage in occasional professional teaching or related duties subject to approval of the Chief Executive Officer, which approval shall not be unreasonably withheld.
- e. Employee hereby agrees to perform faithfully and to the best of their abilities all the duties pertaining to Housing Manager as may be required by the laws of the City of Baldwin Park and the State of California relating to municipal corporations, and the rules and regulations of the City of Baldwin Park, which are now in force or which may be put in force during the term herein stated, and further shall perform such other tasks and duties as may be designated by the Community Development Director and Chief Executive Officer and

that the parties hereto agree that said position as Housing Manager shall be deemed and construed to be a full-time position.

Section 2. Terms of Employment

- a. The Employee's start date and anniversary date of employment is December 16, 2019, and the terms of this agreement shall commence on that date, and shall continue until terminated as set forth in this Agreement.
- b. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Chief Executive Officer to terminate the service of the Employee as an "at-will" Employee.
- c. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from this position with City provided Employee gives to City Two Weeks (14 days) written notice prior to the effective date of Employee's resignation, unless the parties otherwise agree.

Section 3. Compensation/Benefits

- a. Commencing December 16, 2019 the Housing Manager's salary shall be Step 7, or \$9,318.29 per month as per the salary schedule most recently adopted by the City Council. Said salary may be modified from time to time by an amendment to this Agreement, or amended salary resolution approved and adopted by the City Council.
- b. Benefits: The City shall provide to Employee all fringe benefits as are in the most recent Unclassified Manager's Benefits Matrix as approved by the City Council.

Section 4. Termination, Waiver and Severance Pay

In the event the Chief Executive Officer terminates Employee's employment as Housing Manager pursuant to 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 only, 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.

Section 5. General Provisions

1. The text herein shall constitute the entire Agreement between the parties.
2. This Agreement shall be effective upon ratification.
3. This Agreement shall only be modified in writing by the parties, except as salary may be modified by time to time by City Council Resolution.

Section 6. Arbitration

- a. Except as expressly set forth in this section, all disputes, claims, complaints, or controversies ("Claims") that Employee may have against the City and/or any of its officers, directors, employees, and/or agents, including contract claims; tort claims; discrimination and/or harassment claims; retaliation claims, claims for wages, compensation, penalties or restitution; and any other claim under any federal state or local statute, constitution, regulation, rule, ordinance, or common law, arising out of and/or directly or indirectly related to this Agreement and/or termination of this Agreement are subject to confidential arbitration pursuant to the terms of this Agreement and will be resolved by Arbitration and NOT by a Court or jury. **The parties hereby forever waive and give up the right to have a judge or jury decide any claims.**
- b. The parties will use Judicial Arbitration and Mediation Services ("JAMS") subject to its then-current employment arbitration rules and procedures (and the then-existing emergency relief procedures contained in the JAMS comprehensive arbitration rules and procedures if either party seek emergency relief prior to the appointment of an Arbitrator), available at www.jamsadr.com, unless those rules and/or procedures conflict with any express term of this Agreement, in which case this Agreement is controlling.
- c. No arbitration under this Agreement shall be subject to the JAMS Class Action Procedures.
- d. The arbitration will be heard by a single Arbitrator in the State or Territory where Contractor worked at the time the claim arose.
- e. The Arbitrator will have the authority to decide a motion to dismiss and/or a motion for summary judgment by any party and shall apply the Civil Rules of Civil Procedure governing such motions.
- f. The following claims are not covered by this Agreement:
 - a. Worker's compensation benefits, unemployment compensation benefits, claims for benefits under a plan that is governed by the Employment Retirement Income Security Act of 1974 ("ERISA"), and claims which are subject to the exclusive jurisdiction of the NLRB; and

- b. Any claim that is expressly excluded from arbitration by a governing federal law or by a state law that is not preempted by the Federal Arbitration Act ("FAA") or other federal law.

Section 7. Attorneys' Fees and Enforcement

It is understood and agreed that if, at any time, a violation of any term of this Agreement is asserted by any party hereto, that party shall have the right to seek specific performance of that term and/or any other necessary and proper relief, including but not limited to damages, from any court of competent jurisdiction, and the prevailing party shall be entitled to recover its/his reasonable costs and attorneys' fees.

CITY OF BALDWIN PARK:

EMPLOYEE:

Manuel Lozano
Mayor

Carol Averell

ATTEST:

APPROVED AS TO FORM:

Jean M. Ayala
City Clerk

Robert Tafoya
City Attorney