

## **EMPLOYMENT AGREEMENT**

This Agreement ("Agreement") is made between Jennifer Ott ("Ott"), an individual, and the CITY OF ALAMEDA, CALIFORNIA (the "City"), a California charter city and municipal corporation.

### **RECITALS**

WHEREAS, the City desires to employ the professional services of Ott as City Manager of Alameda; and,

WHEREAS, Ott agrees to serve as the City Manager of Alameda in accordance with the City Charter of Alameda; and,

WHEREAS, both the City and Ott wish to set forth in writing the terms and conditions of Ott's employment as City Manager for Alameda.

NOW, THEREFORE, in consideration of the mutual covenants set forth below, the City and Ott agree as follows:

### **AGREEMENT**

#### **INTRODUCTION AND TERM**

1. EMPLOYMENT

The City shall employ Ott in accordance with the terms and conditions set forth below, and Ott accepts the offer of such employment. During the term of this Agreement, the City will pay Ott the compensation provided for in this Agreement.

2. TERM

This Agreement shall commence on January 3, 2023 and continue indefinitely, subject to termination as set forth in Sections 16, 17 and 18 below.

#### **DUTIES AND PROFESSIONAL RESPONSIBILITIES**

3. DUTIES

Ott shall serve as the City Manager for the City of Alameda and shall be vested with the authority granted to the City Manager in the Alameda City Charter. Ott shall perform such duties as are necessary for her to exercise the authority vested in the City Manager under the Alameda City Charter. Also, Ott shall perform such duties and undertake such activities as may be assigned from time to time by the City Council, and which are

consistent with the position of City Manager.

4. HOURS OF WORK

Ott shall be an exempt employee under Fair Labor Standards Act (FLSA). Ott is expected to devote necessary time outside normal office hours to the business of the City. Ott's schedule of work each day and week may vary in response to the requirements of the work to be performed. Ott is expected to be present and available during regular City business hours and in the case of emergencies and spend sufficient hours at Alameda City Hall or other City facilities to perform her duties.

5. OUTSIDE AND OTHER PROFESSIONAL ACTIVITIES

Ott shall devote her professional time and attention to the City's business during the term of this Agreement. The City acknowledges a mutual interest with Ott in having Ott, on occasion, undertake limited outside activities, including serving as an officer or a board member of municipal government organizations, or other related activities, provided that such activities do not distract Ott from the performance of her duties as City Manager for Alameda.

When consistent with the City's travel policy, the City shall pay for reasonable travel expenses incurred by Ott for official travel associated with the pursuit of Alameda's interests including, but not limited to, such other national, regional, state and local government groups or committees upon which Ott may serve as a member or attend on behalf of the City such as the League of California Cities.

Subject to prior approval of the City Council, Ott may accept limited teaching or other business opportunities provided that such opportunities do not materially interfere with Ott's duties under this Agreement, create a financial or other conflict of interest and are not incompatible with Ott's duties as City Manager.

**COMPENSATION TO OTT**

6. SALARY

Ott shall receive an annual base compensation of \$305,000 beginning January 3, 2023. Salary is to be paid bi-weekly. The City Council shall not decrease Ott's compensation unless and except in the case of an across the board salary or other compensation decrease (including furloughs) applicable to all employees covered by the Executive Management Compensation Plan. Commencing July 1, 2023 and thereafter, Ott shall receive the same percentage of salary or wage increase, in the same manner and time, as provide to miscellaneous employees in the Executive Management Compensation Plan.

7. DEFERRED COMPENSATION (MONEY PURCHASE PENSION PLAN)

Ott is eligible to participate in the deferred compensation plan (money purchase pension plan) to the same extent as City Department Heads. Ott must participate in the plan to receive the annual deferred compensation plan contribution described in Section 4.3; however, any voluntary contributions from Ott to such plan are at Ott's sole discretion. Notwithstanding the one-year waiting period as set forth in the Executive Management Compensation Plan, Ott shall be eligible to receive the 1% match upon commencement of employment without having to complete one year of service.

**EVALUATIONS**

8. EVALUATIONS

During the first year of Ott's employment, and after completion of approximately six months, Ott and the City Council shall jointly establish objective, verifiable measures of her performance to be completed during the first year and the City Council shall provide Ott with a six month's performance evaluation and thereafter an annual performance evaluation. For each subsequent year during the term of this Agreement, the parties shall endeavor to establish prospective objective, verifiable measures of performance for the ensuing year. Ott shall not have any right to a compensation increase due to a particular rating on a performance evaluation; rather, any decision to increase salary, provide a lump sum payment based on performance or enhance any other element of compensation during the term of this Agreement, or the timing of any such increase or enhancement, shall be in the discretion of the City Council.

**RETIREMENT, HEALTH AND OTHER BENEFITS**

9. RETIREMENT

Ott will be covered by the City's "miscellaneous" 2% at 55 PERS plan during her employment. Ott will pay both the 7.0% employee contribution for this benefit and an additional 1.868% of the employee's PERSable earnings toward the employer retirement contribution. This 8.868% contribution by Ott shall be in accordance with Section 414(h)(2) of the Internal Revenue Code under which employee contributions shall be tax deferred and not subject to taxation until the time of constructive receipt.

10. VACATION

Ott shall accrue 25 days (200 hours) of paid vacation annually. Vacation shall be accrued bi-weekly. Ott may carry over accrued but unused vacation time from one year to the next; provided, however, she may not accrue a vacation balance higher than 50 days (400 hours). Upon separation from the City, Ott, or in the case of her death Ott's heirs, shall be paid for all unused and accrued vacation time. Accumulated vacation balances shall

be paid at Ott's base salary rate at the effective date of her separation from employment with the City.

Notwithstanding the prior paragraph, for the first seven pay periods of Ott's employment, Ott will not accrue paid vacation but, instead, effective January 3, 2023, the City shall provide her with 53.8461 hours of paid vacation. After the first seven pay period as provided in the prior paragraph, Ott will accrue paid vacation as provided in the prior paragraph.

11. OTHER LEAVES

Except as provided in Section 10 above and in the following sentence, Ott shall receive the same paid holidays, floating holidays and sick leave benefits as provided in the Executive Management Compensation Plan. Floating holidays for calendar year 2023 will accrue effective January 3, 2023. Notwithstanding the amount of administrative leave that is provided on an annual basis to other City Department Heads under the Executive Management Compensation Plan, Ott shall receive 8 days of administrative leave annually, and for fiscal year 2022-2023 the 8 days of administrative leave shall accrue effective January 3, 2023.

12. OTHER FRINGE BENEFITS

Ott shall be provided medical coverage, disability benefits, and dental coverage at the same levels and under the same conditions that are provided to other non-safety City Department Heads.

13. MEMBERSHIP DUES

Unless provided otherwise in the City's adopted budget and subject to review and approval by the Mayor, the City shall pay up to a cap of \$2,500 for the professional dues necessary to ensure Ott's participation in such programs that enhance both Ott's standing and the City's reputation, including national, regional, state and local associations and organizations.

14. [reserved]

**SEPARATION FROM EMPLOYMENT**

15. RESIGNATION/RETIREMENT

Ott shall give the City at least forty five (45) days written notice of the effective date of

Ott's resignation or retirement.

#### 16. TERMINATION OF AGREEMENT

The purpose of this Section 16 is to allow the parties to terminate this Agreement as expeditiously and smoothly as possible so that in exchange for the City's providing the severance described in this Section, Ott will release the City from any claims against the City.

The City, through a majority vote of its City Council and in either closed or open session, may terminate this Agreement, at its sole and absolute discretion, with or without cause. The City Council may request Ott's resignation and, if Ott so agrees, the resignation shall be considered a termination of employment without cause. The term "cause" is defined, for the purposes of this Agreement, as set forth in Section 18 below.

If the City terminates this Agreement without cause, Ott will be paid a severance amount equal only to her full salary (Section 6), deferred compensation (Section 7), and medical and dental coverage for a period of six (6) months from Ott's receipt of written notice of termination or her agreement to resign as set forth in the previous paragraph. In exchange for the payment of severance, Ott shall release the City from all claims against the City, its officials, employees and agents, and, as part of the consideration for Ott's receiving the severance, Ott shall cooperate with and provide assistance to the City in the transition of her duties to an acting, interim or new City Manager, the terms of such transition to be mutually agreed upon at the time of the transition.

If the City terminates this Agreement with cause, the City shall have no obligation to continue the employment of Ott or to pay any salary, deferred compensation or medical and dental coverage as provided in the preceding paragraph.

#### 17. CAUSE

For purposes of this Agreement, "cause" shall mean: (1) indictment, conviction or plea of nolo contendere to any felony or other crime involving moral turpitude; (2) material breach of City policy or this Agreement, which breach Ott has not cured, to the extent curable, to the satisfaction of the City Council within sixty (60) days after receiving notice of such breach; (3) fraud, embezzlement, misappropriation of funds or disclosure of confidential information; (4) misconduct or gross negligence that results, or reasonably could be expected to result, in financial damage to the City; (5) failure to cooperate with an official investigation authorized by the City Council or City Attorney, or initiated by a governmental authority, in either case related to the City, its business, Council members or City employees; or (6) acceptance of employment from another source which is inconsistent with full time employment as Alameda's City Manager.

### **MISCELLANEOUS PROVISIONS**

#### 18. REIMBURSEMENT

Ott is entitled to reimbursement for all sums necessarily and reasonably incurred and paid by her in the performance of her duties. Ott shall submit a claim form to the City for any such claims in the same form and manner as is required by the City's policy or by custom and practice among other employees in the City's Executive Management Compensation Plan.

19. BONDS

The City shall pay the full cost of any bonds, fidelity or otherwise, required of Ott under any applicable state or local law or ordinance relative to her performance of her duties as City Manager.

20. INDEMNIFICATION

City shall defend, hold harmless, and indemnify Ott against any claims, demands, or legal actions, whether specious, frivolous, or otherwise, arising out of an alleged action or omission, direct or indirect, occurring within the scope and during the course of Ott's employment with the City. City shall indemnify Ott against any and all losses, damages, judgments, interest, settlements, fines, court costs, and other costs and expenses of legal proceedings including attorneys' fees, and any liabilities incurred by, imposed upon, or suffered by Ott in connection with or resulting from any claim, action, suit, or proceeding, actual, or threatened, arising out of or in connection with the performance of her duties, as authorized by law. Ott will cooperate in good faith with the City with respect to the defense of such claims, demands or legal actions.

21. SEVERABILITY

In the event that any term of this Agreement is finally held or determined to be illegal or void by a court having jurisdiction over the City and Ott, the remainder of this Agreement shall remain in full force and effect unless the term or terms held to be illegal or void are wholly inseparable from the remaining portions of the Agreement. If any part of this Agreement is determined to be illegal or void by a court of competent jurisdiction, the parties shall meet and confer to re-negotiate such illegal or void term(s).

22. PARITY IN CONSTRUING AGREEMENT

Both the City and Ott have had the opportunity to participate in the drafting of this Agreement. Consequently, terms, conditions, or provisions of this Agreement shall not be construed against one party and in favor of the other based upon who actually drafted the Agreement.

23. INTEGRATION CLAUSE

The City and Ott acknowledge that this Agreement constitutes the sole and entire

agreement of the parties in this matter and that any modifications may be made only in writing signed by both the City and Ott. The City and Ott agree that there are no representations, agreements, arrangements or understandings, whether written or oral, between the parties relating to the subject matter of this Agreement which are not fully set forth in this Agreement.

24. NOTICES

Notice pursuant to this Agreement shall be in writing given by (a) personal delivery with acknowledgement of receipt; or (b) by deposit in custody of the United States Postal Service, postage prepaid, and addressed as follows:

To the City: Mayor and City Council  
City of Alameda  
City Hall  
2263 Santa Clara Avenue Alameda, CA 94501

To Ott: Jennifer Ott  
Address on File

*Signatures on following page*

CITY OF ALAMEDA

JENNIFER OTT

By: \_\_\_\_\_  
Marilyn Ezzy Ashcraft  
Mayor

\_\_\_\_\_

Attest:

By: \_\_\_\_\_  
Lara Weisiger  
City Clerk

Approved as to form:

By: \_\_\_\_\_  
Yibin Shen  
City Attorney