

AMENDMENT TO EMPLOYMENT
AGREEMENT BETWEEN
BIJAL PATEL AND THE CITY OF TRACY

This Amendment to that certain Employment Agreement dated April 25, 2022, between BIJAL PATEL ("EMPLOYEE") and the CITY OF TRACY ("CITY") (hereinafter "Agreement") is made and entered into between the parties as follows:

RECITALS:

- A. The Agreement required the parties to establish agreed upon performance goals within 90 days of its effective date.
- B. For various reasons, such goals were not established, and Employee has not received an annual performance evaluation or salary increase, as provided to other employees of the CITY and required under the Agreement.
- C. The parties have agreed to amend the terms of the Agreement to modify the date by which the performance goals shall be established, reflect a retroactive salary increase, and modify other terms to better align the Agreement with the employment agreement between the CITY and its other appointed official, the City Manager.

TERMS:

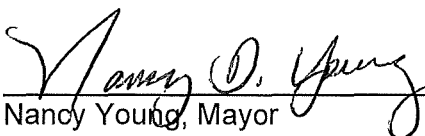
1. **Incorporation by Reference.** This Amendment incorporates by reference the Recitals as if true and correct.
2. **Base Salary.** Section 3.A of the Agreement is hereby deleted in its entirety and replaced with the following:

"CITY agrees to pay EMPLOYEE a biweekly base salary of \$10,761.81, retroactively effective on 04/23/2023, payable in accordance with a pre-determined schedule applicable to all CITY employees."

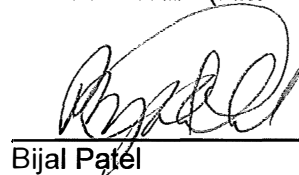
3. **Performance Evaluation.** Section 4 of the Agreement is hereby amended as expressly stated herein, these amendments shall govern over any other inconsistent terms under the Agreement, and no other terms in Section 4 are otherwise amended.
 - A. The Parties shall meet and establish performance goals and an evaluation instrument no later than April 25, 2024 (the second anniversary date of the Agreement). Once established, in the event CITY deems either the performance goals or the evaluation instrument, format, and/or procedure related to such is to be modified by CITY and such modifications would require new or different performance goals, then EMPLOYEE shall be provided a reasonable period of time to demonstrate such expected performance before being evaluated.
 - B. For the period commencing on April 25, 2022 until such time that agreed upon performance goals are established by the parties, the City Council may grant a merit or other salary increase to EMPLOYEE, based on any process it shall deem appropriate.

- C. Unless EMPLOYEE expressly requests otherwise in writing, the evaluation of EMPLOYEE shall at all times be conducted in closed session of the governing body and shall be considered confidential to the extent permitted by law. Nothing herein shall prohibit the CITY or EMPLOYEE from sharing the content of the EMPLOYEE'S evaluation with their respective legal counsel.
4. **Benefits.** The following new sections are hereby added to Section 3 of the Agreement:
- A. A new subsection K is hereby added to read as follows:
- “K. Professional Development. CITY expects the EMPLOYEE to continue to develop the professional technical and leadership skills and knowledge necessary to serve as City Attorney. To that end, EMPLOYEE is expected to continue membership with the community and professional organizations included, but not limited to the California League of Cities, subject to the City Council's budget approval. EMPLOYEE is expected to attend national, state or local regular conferences, trainings and other educational opportunities to continue to hone the skills consistent with the City Attorney job description. CITY will allow EMPLOYEE reasonable time away to participate in these professional development opportunities and CITY shall pay for these training opportunities as provided for in this subsection subject to City Council's budget approval.”
- B. A new subsection L is hereby added to read as follows:
- “L. Executive Coaching. Subject to City Council review and approval, EMPLOYEE may obtain a professional executive coach, who can provide professional advice, mentorship, guidance, and training to the EMPLOYEE during the term of this Agreement. All costs of the executive coach shall be budgeted and paid by CITY. When seeking approval, EMPLOYEE shall disclose all costs associated with executive coaching.”
5. **Severability.** If any term of this Amendment is held invalid by a court of competent jurisdiction, the Amendment shall be construed as not containing that term, and the remainder of this Amendment shall remain in effect.
6. **Modifications.** This Amendment may not be modified orally or in any manner other than by an agreement in writing signed by both parties, in accordance with the requirement of the Agreement. The terms of the Agreement which are not specifically modified by this Amendment will remain in full force and effect.
7. **Signatures.** The individuals executing this Amendment represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Amendment. This Amendment shall inure to the benefit of and be binding upon the parties and their respective successors and assigns.

CITY OF TRACY (EMPLOYER)


Nancy Young, Mayor

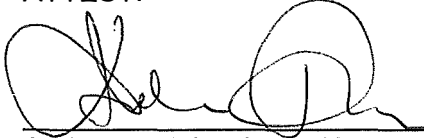
BIJAL PATEL (EMPLOYEE)


Bijal Patel

Dated: 12/28/2023

Dated: December 14, 2023


ATTEST:



Adrienne Richardson, City Clerk

Dated: 12/28/2023

APPROVED AS TO FORM:



Jeffrey Crosswhite, Assistant City Attorney

Dated: 12/8/23

EMPLOYMENT AGREEMENT
BETWEEN
BIJAL PATEL AND THE CITY OF TRACY

This Agreement (hereinafter "Agreement") is made and entered into between the City of Tracy, a municipal corporation ("CITY"), and BIJAL PATEL, an individual ("EMPLOYEE"), both of whom agree as follows:

RECITALS:

- A. The City Council has conducted an extensive recruitment process for the City Attorney position and has carefully evaluated EMPLOYEE's knowledge, experience, administrative skills and abilities and has decided to appoint EMPLOYEE to the position of City Attorney.
- B. The City desires to secure and retain the services of EMPLOYEE and to provide inducement for EMPLOYEE to remain in employment, make possible full productivity by assuring EMPLOYEE's morale and peace of mind with respect to future security, and act as a deterrent against malfeasance or dishonesty for personal gain on the part of EMPLOYEE while also providing a just means for terminating EMPLOYEE's services at such time as EMPLOYEE may be unable to fully discharge his duties due to age or disability; or when EMPLOYER may otherwise desire to terminate the EMPLOYEE.
- C. The parties have entered into this Agreement in recognition of the benefits accruing to each party. This Agreement will insure the retention of EMPLOYEE's services as City Attorney and the performance of those duties in a manner which serves the best interests of the CITY, subject to the direction of the City Council.
- D. EMPLOYEE desires employment as the City Attorney of the City of Tracy.

NOW, THEREFORE, in consideration of the faithful performance of the terms and conditions set forth below, the parties agree as follows:

Section 1: Duties.

CITY agrees to employ Bijal Patel as City Attorney of CITY as of April 25, 2022 as set forth in this Agreement, to perform the functions and duties of City Attorney.

Section 2: Term.

Except as otherwise expressly stated in this Agreement, the term of this Agreement shall be for an indefinite period of time. However, the EMPLOYEE serves at the will of City council subject to the terms of Section 6 and 8 of this agreement. EMPLOYEE may resign at any time from the EMPLOYEE's position with the CITY provided EMPLOYEE gives the CITY 30 days written notice in advance and, in which event, EMPLOYEE forgoes any right to severance pay.

Section 3: Compensation and Benefits.

- A. Base Salary. The CITY agrees to pay EMPLOYEE an annual base salary of \$241,000, payable in accordance with a pre-determined schedule applicable to all CITY employees.
- B. Cost of Living Adjustments. CITY agrees to increase the base salary automatically with any Cost of Living Adjustments provided to other employees covered by the most currently adopted Department Head Compensation and Benefit Plan.
- C. Merit Increases in Compensation. CITY may increase the base salary and/or other benefits of EMPLOYEE in the amount and to the extent as the CITY may determine that it is desirable to do so on the basis of an annual performance evaluation and salary review.
- D. Health, Disability and Life Insurance Benefits. Upon commencement of employment, EMPLOYEE is entitled to receive the same health, dental, vision, disability and life insurance benefits provided to other employees covered by the most currently adopted Department Heads Compensation and Benefits Plan.
- E. Car Allowance. EMPLOYEE is entitled to receive a car allowance of \$500 per month, prorated per pay period.
- F. Cell Phone Allowance. During the duration of EMPLOYEE's employment with CITY, EMPLOYEE shall be entitled, at EMPLOYEE's option, to either a Cellular Phone allowance of \$660 per year, prorated and allocated per pay period, or use, for City business, of a City-owned and paid for Cellular Phone.
- G. Management Benefit Plan. EMPLOYEE is entitled to receive an annual Management Benefit allowance in the amount of \$2,960 per calendar year to be used at EMPLOYEE's discretion for job related expenses or for professional development. The monies will be prorated and allocated per pay period and may be used for a wide variety of job related expenses, training, association memberships, computer hardware and software, conference registration and attendance, and other miscellaneous job expenses or professional development opportunities.
- H. Accrual and Use of Leave.
 - 1. Vacation Credit and Accrual. During the duration of employment with CITY, EMPLOYEE shall accrue vacation leave in the same amount as provided to other employees covered by the most currently adopted Department Heads Compensation and Benefits Plan.

2. Sick Leave Credit and Accrual. EMPLOYEE shall accrue sick leave at the rate of 96 hours per year, prorated per pay period.
3. Management Leave. It is recognized that EMPLOYEE must devote a great deal of time outside the normal office hours to business of the CITY, and to that end, EMPLOYEE will be allowed to accrue and use Management Leave as contained in the most currently adopted Department Heads Compensation and Benefits Plan.

Upon commencing employment, EMPLOYEE shall be credited with a prorated amount of 120 hours of management leave for the remainder of the 2022 calendar year.

4. Use of Leave. EMPLOYEE is entitled to accrue all leave, without limit, and if EMPLOYEE's employment is terminated, either voluntarily or involuntarily, she shall be compensated for all unused accrued vacation leave at the rate of pay on the date of separation. EMPLOYEE shall be entitled to "buy back" vacation and Management Leave in the same manner as permitted for other employees covered by the most currently adopted Department Heads Compensation and Benefits Plan.
 - I. Deferred Compensation. CITY shall contribute 5% of EMPLOYEE's base salary to EMPLOYEE's 401 Plan deferred compensation.
 - J. CalPERS (California Public Employees' Retirement System). EMPLOYEE shall pay the full employee contribution share under the applicable CalPERS formula.

Section 4: Performance Evaluation.

It is mutually agreed that the adopted operating budget for each fiscal year generally contains the goals and objectives developed by the CITY. Within 90 days of the date of this Agreement, or at some other mutually agreeable time, EMPLOYEE and the City Council will meet to discuss and establish performance goals for EMPLOYEE. A facilitator selected by EMPLOYEE and agreeable to the City Council may facilitate the discussion. The fees for the facilitator shall be paid by the CITY. Thereafter, the City Council and EMPLOYEE shall meet on an annual basis to evaluate EMPLOYEE's performance. The City Council shall provide EMPLOYEE with a written performance evaluation in such format as the City Council may determine. If the City Council concludes EMPLOYEE'S job performance warrants a salary increase for merit, the Council may grant a merit adjustment in an amount determined by the Council, to be

effective on a date determined by the Council. Such merit adjustments may be granted on one or more occasions during the term of this Agreement.

Section 5: General Business Expenses. CITY agrees to budget for and to pay for professional dues and subscriptions of EMPLOYEE for continuing and full participation in national, regional, state and local associations, and organizations necessary and desirable for EMPLOYEE's continued professional participation, growth, and advancement, and for the good of the CITY. CITY shall review EMPLOYEE's requests for membership, professional development, and attendant travel thereto during the normal budget review process. CITY agrees to pay all bar fees, continuing legal education fees and costs associated with maintaining the California law licenses of EMPLOYEE in good standing.

Section 6: Separation of Employment.

A. EMPLOYEE may voluntarily separate from CITY service by delivering a letter of resignation to the City Council not less than 30 days prior to the effective date of the resignation. This Agreement to provide a 30 day notice of resignation is an additional consideration for various benefits provided herein to EMPLOYEE.

B. This Agreement shall terminate immediately upon the occurrence of any of the following events:

- (i) the death of EMPLOYEE;
- (ii) the loss by EMPLOYEE of legal capacity;
- (iii) conviction of a felony;
- (iv) the willful breach of material duty by the EMPLOYEE in the course of EMPLOYEE's employment;
- (v) repeated and protracted unexcused absences from the City Attorney's office and duties; or
- (vi) conviction of an illegal act involving personal gain to EMPLOYEE; or
- (vii) is found to have committed an act resulting in disbarment or suspension from the California State Bar Association.

C. In the event of the termination of this Agreement for one of the causes enumerated in Paragraph B of this Section 6, EMPLOYEE is entitled to the compensation earned by EMPLOYEE before the date of termination as provided for in this Agreement computed pro rata up to and including that date; EMPLOYEE shall be entitled to no further compensation after the date of termination.

Section 7: Reimbursement to CITY.

In accordance with Government Code sections 53243, 53243.1 and 53243.2:

- A. If EMPLOYEE is placed on paid administrative leave pending an investigation, EMPLOYEE shall reimburse the pay to CITY if EMPLOYEE is subsequently convicted of a crime involving the abuse of his office or position;
- B. If CITY pays for EMPLOYEE's legal criminal defense, EMPLOYEE shall fully reimburse the funds to the CITY if EMPLOYEE is subsequently convicted of a crime involving an abuse of EMPLOYEE'S office or position; and
- C. If this Agreement is terminated, any cash settlement related to the termination that EMPLOYEE may receive from CITY must be fully reimbursed to CITY if EMPLOYEE is subsequently convicted of a crime involving an abuse of EMPLOYEE'S office or position.

Section 8: Severance.

If EMPLOYEE involuntarily resigns or is terminated by the City Council for reasons other than those enumerated in Sections 6(A) or (B) above, EMPLOYEE is entitled to nine (9) months of severance pay.

For the purpose of this Agreement, "severance" shall include base salary, CITY'S contribution toward health benefit premiums, city paid life insurance premium and employers CALPERS retirement contributions subject to the limitations in Government code Sections 53260 and 53261. The severance pay shall be paid in a lump sum payment to EMPLOYEE by the CITY within fifteen working days after the effective date of EMPLOYEE's involuntary resignation or termination or as agreed to by CITY and EMPLOYEE. As a prerequisite for CITY paying severance pay, EMPLOYEE shall sign and deliver to CITY a separation agreement approved by CITY.

Section 9: General Provisions.

A. Indemnification. CITY shall defend, save harmless, and indemnify EMPLOYEE against any tort, professional liability claim, or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of EMPLOYEE'S duties as City Attorney. CITY will compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered. It is expressly understood that the CITY is not responsible for any awards involving punitive damages.

B. Bonding. CITY shall bear the full cost of any fidelity or other bonds required of the EMPLOYEE under Title 2 of the Tracy Municipal Code.

C. Notices. Notices under this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

CITY OF TRACY - EMPLOYER:

City Council of the City of Tracy
Attention: Mayor
333 Civic Center Plaza
Tracy, CA 95376

With a copy to: City Manager
333 Civic Center Plaza
Tracy, CA 95376

BIJAL PATEL - EMPLOYEE:

Bijal Patel
P.O. Box 2695
Dublin, CA 94568

Alternatively, notices required under this Agreement, may be personally served in the same manner as is applicable to civil judicial practice.

D. Entire Agreement. This Agreement sets forth and establishes the entire understanding between the CITY and EMPLOYEE relating to the employment of EMPLOYEE by the CITY. Any prior discussions or representations by or between the parties are merged into this Agreement. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid and binding.

E. Amendments. The parties by mutual written agreement may amend any provision of this Agreement during the life of the Agreement. The amendments shall be incorporated and made a part of this Agreement.

F. Heirs. This Agreement is binding upon and inures to the benefit of the heirs at law and executors of EMPLOYEE. If the EMPLOYEE dies prior to the expiration of the term of employment, any monies that may be due EMPLOYEE from CITY under this Agreement as of the date of EMPLOYEE'S death shall be paid to his executors, administrators, heirs, personal representatives, successors, and assigns.

G. Severability. If any provision or portion of this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement shall be deemed severable and shall not be affected, but shall remain in effect.

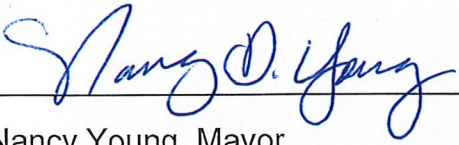
H. Written Materials. All written, printed, and electronic materials used by EMPLOYEE in performing duties for CITY are and shall remain the property of CITY. Upon termination of employment, EMPLOYEE shall return such material to CITY.

I. Waiver. The parties shall not be deemed to have waived any of their respective rights under this Agreement unless the waiver is in writing and signed by such waiving party.

EMPLOYMENT AGREEMENT
CITY OF TRACY AND BIJAL PATEL
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J. Effective Date. This Agreement shall become effective upon execution by both parties, provided however, that EMPLOYEE's first day of employment shall be April 25, 2022.


CITY OF TRACY (EMPLOYER)



Nancy Young, Mayor

Dated: 4-6-2022

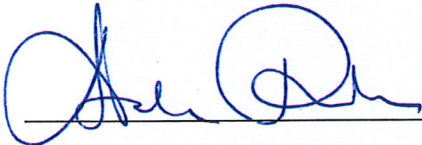
BIJAL PATEL (EMPLOYEE)



Bijal Patel

Dated: March 24, 2022

ATTEST:



Adrienne Richardson, City Clerk

Dated: 4-6-2022

APPROVED AS TO FORM:


_____ for

Gregory Rubens, Interim City Attorney

Dated: 4/6/22