

APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY'S OFFICE

TRACY CITY COUNCIL
RESOLUTION NO. 2023-254
INTRODUCED BY CITY COUNCIL

APPOINTING MIDORI LICHTWARDT AS THE NEW CITY MANAGER, EFFECTIVE DECEMBER 19, 2023, AND APPROVING AN AT-WILL EMPLOYMENT AGREEMENT BETWEEN MS. LICHTWARDT AND THE CITY OF TRACY FOR A BI-WEEKLY SALARY OF \$11,406.34

WHEREAS, the City Council appointed Midori Lichtwardt to serve as Interim City Manager effective May 30, 2023; and

WHEREAS, Prior to her appointment, Ms. Lichtwardt was the City's Assistant City Manager and has been employed with the City of Tracy for over 20 years; and

WHEREAS, The City Council desires to appoint Ms. Lichtwardt as the new City Manager of the City of Tracy and enter into an at-will employment agreement for a bi-weekly salary of \$11,406.34, along with the terms and conditions set forth in the Employment Agreement between Midori Lichtwardt and the City of Tracy attached hereto as **Attachment A** and made a part hereof ("Employment Agreement"); and


WHEREAS, Ms. Lichtwardt desires to be employed by the City of Tracy as its City Manager subject to the terms and conditions set forth in the Employment Agreement; now, therefore, be it

RESOLVED: That the City Council of the City of Tracy hereby appoints Midori Lichtwardt as the City Manager, effective December 19, 2023: and be it


FURTHER RESOLVED, That the City Council approves the At-Will Employment Agreement between Midori Lichtwardt set forth in **Attachment A**.

The foregoing Resolution 2023-254 was adopted by the Tracy City Council on 19th day of December 2023 by the following vote:

AYES:	COUNCIL MEMBERS: ARRIOLA, BEDOLLA, EVANS, DAVIS, YOUNG
NOES:	COUNCIL MEMBERS: NONE
ABSENT:	COUNCIL MEMBERS: NONE
ABSTENTION:	COUNCIL MEMBERS: NONE



NANCY D. YOUNG
Mayor of the City of Tracy, California



ATTEST:
ADRIANNE RICHARDSON
City Clerk and Clerk of the Council of the
City of Tracy, California

EMPLOYMENT AGREEMENT
BETWEEN
MIDORI LICHTWARDT AND THE CITY OF TRACY
TO SERVE AS CITY MANAGER

This Employment Agreement ("Agreement") is made and entered into between the City of Tracy, a municipal corporation ("Employer") and Midori Lichtwardt, an individual ("Employee"). City and Lichtwardt are sometimes referred to herein collectively as "Parties."

RECITALS:

WHEREAS, Lichtwardt currently serves as the Interim City Manager; and

WHEREAS, City desires to employ Lichtwardt as its City Manager for the City of Tracy and Lichtwardt desires to accept employment as City Manager; and

WHEREAS, Parties seek to establish the terms and conditions of employment in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants set forth below, the Parties hereto agree as follows:

Section 1. Employment.

- A. City agrees to employ Lichtwardt as City Manager to perform the functions and duties of a City Manager in accordance with Tracy Municipal Code (TMC), including Chapter 2.08 of Title 2 of the TMC, and applicable state law, and to perform other legally permissible and proper duties and functions as the City Council shall from time-to-time assign. Lichtwardt shall serve at the will and pleasure of City Council, pursuant to the terms and limitations of this Agreement.
- B. Employee shall be the administrative head of the Employer and faithfully perform the City Manager's lawfully prescribed and assigned duties with reasonable care, diligence, skill, and expertise in compliance with all applicable, lawful governing body directives; state, local, and federal laws; and Employer policies, rules, and ordinances as they exist or may hereafter be amended.
- C. Except as may be provided otherwise by applicable law, regulation, or Employer's agreement with any other person, Employee shall have the ultimate supervisory and managerial authority and responsibility to hire, direct, assign, reassign, evaluate, change the terms and conditions of employment, and terminate the employment of all other employees of Employer consistent with the policies of the governing body and the ordinances of the Employer, which authority may be delegated by Employee to such other employees as Employee deems appropriate.
- D. Except as may be provided otherwise by applicable law, regulation, or Employer's agreement with any other person, Employee shall have the authority to establish internal regulations, rules, and procedures which the Employee deems necessary for the efficient and effective operation of the Employer.
- E. Employee shall attend and be permitted to attend, whether personally or through a designee of Employee's choosing, all meetings of Employer's governing body, both public and closed, with the exception of those closed meetings devoted to the subject of this Agreement, or any amendment thereto, or the Employee's evaluation, unless otherwise provided by applicable law, regulation, or Employer's agreement with any other person.

- F. Employer agrees to promptly communicate and provide Employee a reasonable opportunity to cure all substantive criticisms, complaints, and suggestions with respect to Employee's performance of services pursuant to this Agreement.
- G. Except as may be provided otherwise by applicable law, regulation, or this Agreement, Employee shall carry out Employer's lawful policy directives, goals, and objectives, as communicated to Employee by Employer's governing body.

Section 2. Term.

Except as otherwise stated in this Agreement, the term of this Agreement shall be effective on December 19, 2023, and shall be for an indefinite period of time. However, 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 City Manager position with the City provided Employee gives the Employer 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. During the term of this Agreement, Employee shall receive a base salary of \$11,406.34 bi-weekly.
- B. Cost of Living Adjustments. Employer 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 Benefits Plan.
- C. Merit Increases in Compensation. Employer may also increase the base salary and/or other benefits of Employee in the amount and to the extent as the Employer 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. Employee is entitled to receive the same health, 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 \$700 per month, prorated per pay period.
- F. Cell Phone Allowance. For the duration of Lichtwardt's Employee's employment with the City, Employee shall be entitled, at Lichtwardt'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 Lichtwardt'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. Vacation Accrual. Employee shall accrue 9.23 hours of vacation per pay period based on years of City service as contained in the most currently adopted Department Head Compensation and Benefits Plan.
- I. Sick Leave Accrual. Lichtwardt shall accrue 3.69 hours of sick leave per pay period with no limit, as provided for in the most currently adopted Department Head Compensation and Benefits Plan.
- J. 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.
- K. Use of Leave. Employee is entitled to accrue all leave, without limit, and if Lichtwardt's employment is terminated, either voluntarily or involuntarily, Employee 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.
- L. Annual Executive Physical. Employer agrees to provide for the cost and time to attend an annual executive physical examination, if desired and requested.
- M. Deferred Compensation. City shall contribute 5% of Employee's base salary to Employee's 401 Plan deferred compensation.
- N. Benefits. Employee shall receive the same rights and benefits as those conferred to department heads in the most currently adopted Department Heads Compensation and Benefits Plan. City shall contribute to Employee's retirement in accordance with the appropriate California Public Employees' Retirement System (CalPERS) formula as required by CalPERS.
- O. Professional Development. Employer expects the Employee to continue to develop the professional technical and leadership skills and knowledge necessary to serve as City Manager. To that end, Employee is expected to continue membership with the community and professional organizations included, but not limited to International City Managers Association, 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 Manager job description. The City will allow Employee reasonable time away to participate in these professional development opportunities and Employer shall pay for these training opportunities as provided for in this subsection subject to City Council's budget approval.
- P. 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 Employer. When seeking approval, Employee shall disclose all costs associated with executive coaching.

Section 4. Performance Evaluation.

- A. 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, Lichtwardt and the City Council will meet to discuss and establish performance goals for Lichtwardt. A facilitator selected by Lichtwardt and agreeable to the City Council may facilitate the discussion. The fees for the facilitator shall be paid by the City.

- B. In recognition of time served in the Interim City Manager position since May 2023, Council shall review Employee's performance in September 2024 and annually thereafter. The City Council shall provide Lichtwardt with a written performance evaluation in such format as the City Council may determine. If the City Council concludes Lichtwardt'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.
- C. Unless the Employee expressly requests otherwise in writing, the evaluation of the 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 Employer or Employee from sharing the content of the Employee's evaluation with their respective legal counsel.
- D. In the event the Employer deems the evaluation instrument, format, and/or procedure is to be modified by the Employer and such modifications would require new or different performance expectations, then the Employee shall be provided a reasonable period of time to demonstrate such expected performance before being evaluated.

Section 5. General Business Expenses.

City agrees to budget for and to pay for professional dues and subscriptions of Lichtwardt 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.

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 provide a 30-day notice of resignation is an additional consideration for various benefits provided herein to Employee. Employee shall be entitled to no further compensation after the date of termination.
- B. For the purpose of this Agreement, termination shall occur upon the occurrence of any of the following events:
 - (i) The death of Employee
 - (ii) Loss by Employee of legal capacity
 - (iii) Conviction of a felony
 - (iv) The willful breach of material duty by the Employee in course of Employee's employment
 - (v) Repeated and protracted unexcused absences from the City Manager's Office and duties
 - (vi) Conviction of an illegal act involving personal gain to the Employee; or

- (vii) Is found to have committed an unethical act involving personal gain to Employee resulting in expulsion from the International City Management Association (ICMA)
 - (viii) If the governing body votes to terminate the Employee at a properly posted and duly authorized meeting in accordance with the Tracy Municipal Code.
 - (ix) If the Employer reduces the base salary, compensation or any other financial benefit of the Employee, unless it is applied to no greater percentage than the average reduction of all department heads, such action shall constitute a breach of this Agreement and will be regarded as a termination.
 - (x) If the Employee resigns following an offer to accept resignation, whether formal or informal, by the Employer as representative of the majority of the governing body that the Employee resign, then the Employee may declare a termination as of the date of suggestion.
 - (xi) If a breach of contract, declared by either party, is not cured within 30 days of written notice describing the conduct that constitutes a breach.
- C. In the event of the termination of this Agreement for one of the causes enumerated in Paragraph B (i-vii) above, 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.
- D. Employee may not be removed from office within a period of 120 days immediately following a general municipal election held in the City at which a member of the City Council is elected (TMC 2.08.080(b).)
- E. Employee's refusal to comply with a directive that violates the ICMA Code of Ethics shall in no event serve as cause for termination.
- F. Communications Upon Termination. In the event the Employer terminates the Employee for any reason or no reason, the Employer and Employee agree to undertake reasonable efforts to issue a joint press release or statement, the content of which is mutually agreeable to the Employer and Employee. The joint press release or statement shall not contain any text or information that is reasonably considered to be disparaging to either party. For purposes of this subdivision only, "party" includes City Council members in office at the time of termination and miscellaneous unrepresented executive employees. If the parties are able to agree on a joint statement, either party may verbally repeat the substance of the joint press release or statement in response to any inquiry.

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 EMPLOYEE's 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 i-vii) above, Employee is entitled to nine 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 employer 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 15 working days after the effective date of Employee's involuntary resignation or termination. 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 Manager, City will compromise and settle any such claim or suit and pay the amount of any settlement or judgement 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

MIDORI LICHTWARDT - EMPLOYEE

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

Midori Lichtwardt
(Address on File)

With a copy to:

City Attorney
333 Civic Center Plaza
Tracy, CA 95376

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

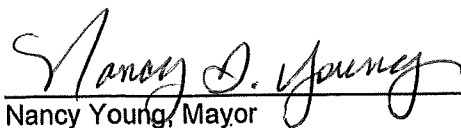
- D. Entire Agreement. This Agreement sets forth and establishes the entire understanding between the CITY and EMPLOYEE relating to the employment of EMPLOYEE by the CITY. Any prior discussions or representations by or between the parties are merged into this Agreement. Each party to this Agreement acknowledges 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 EMPLOYEE's 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.
- J. Representation by Counsel. Lichtwardt and City acknowledge that they each did, or had the opportunity to, consult with legal counsel of their respective choices with respect to the subject matter of this Agreement prior to signing it.
- K. Applicable Law. This Agreement is signed and delivered in the State of California and the rights and obligations of the parties under this Agreement shall be construed and enforced in accordance with the laws of the State of California.
- L. Interpretation. This Agreement is deemed to have been drafted jointly by the parties to this Agreement. Any uncertainty or ambiguity shall not be construed for or against any party based upon attribution of drafting to any party.
- M. Counterparts. This Agreement may be executed in several counterparts and shall be admissible in counterparts. All executed copies are duplicate originals and are equally admissible in evidence.

CITY OF TRACY (EMPLOYER)

MIDORI LICHTWARDT (EMPLOYEE)



Nancy Young, Mayor

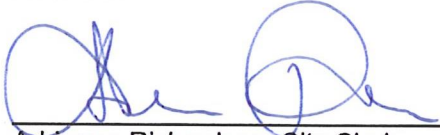


Midori Lichtwardt

Dated: 12-28-2023

Dated: 12/08/2023

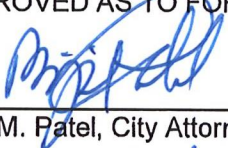
ATTEST:



Adrienne Richardson, City Clerk

Dated: 12/28/2023

APPROVED AS TO FORM:



Bijal M. Patel, City Attorney

Dated: 12/21/2023