

EMPLOYMENT AGREEMENT

THIS AGREEMENT is between the City of Clayton, a municipal corporation of the State of California (the “City”) and Kris Lofthus (“Employee”). It is made effective as of the first date of Employee’s employment with the City.

This Agreement is entered into on the basis of the following facts, among others:

- A. The City desires to employ the qualified professional services of Employee as City Manager of the City of Clayton, as provided by the Clayton Municipal Code.
- B. Employee desires to accept employment by the City as its City Manager.
- C. The City Council and Employee desire to establish this employment relationship, subject to the terms and conditions set forth in this Agreement pertaining to compensation and benefits, performance evaluations, and related matters.

BASED UPON THE FOREGOING, THE CITY AND EMPLOYEE AGREE AS FOLLOWS:

- 1. Employee Appointed. The City appoints and employs Employee as City Manager, and Employee accepts the appointment and employment. Employee will commence work on September 16, 2024 (the “Effective Date”).
- 2. Duties of Employee. Employee shall perform the duties established for the City Manager by State law, the Clayton Municipal Code, the City Manager job description, the directions of the City Council, or as otherwise provided by law, ordinance, or regulation.
 - (a) Full Energy and Skill. Employee shall faithfully, diligently, and to the best of Employee's abilities, perform all duties that may be required under this Agreement. Employee agrees that Employee has a duty of loyalty and a general fiduciary duty to the City. Employee shall devote the whole of Employee's working time, skill, experience, knowledge, ability, labor, energy, attention, and best effort exclusively to the City’s business and affairs.

(b) No Conflict. Employee shall not engage in any employment, activity, consulting service, or other enterprise, for compensation or otherwise, which is actually or potentially in conflict with, inimical to, or which interferes with the performance of Employee's duties for the City. Further, Employee shall not, during the term of this Agreement, individually, as a partner, joint venture, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of the City of Clayton.

(c) Outside Activities. Employee shall not spend more than eight (8) hours per month in teaching, consulting, expert witness testimony, speaking, or other non-City connected business for which compensation is paid without express prior consent of the City Council. Employee will take personal leave (i.e. vacation time) for all outside activities of this nature.

3. Hours of Work. Employee is an exempt employee and is expected to engage in those hours of work that are necessary to fulfill the obligations of the City Manager's position. Employee does not have set hours of work as Employee is expected to be available at all times. It is recognized that Employee must devote a great deal of time to the business of the City outside of the City's customary office hours, and to that end Employee's schedule of work each day and week shall vary in accordance with the work required to be performed and in accordance with any specific direction provided by the City Council.

4. Term. The term of this Agreement shall be for three (3) years from the Effective Date through September 16, 2027, unless terminated earlier by either party in accordance with the provisions set forth in Section 9.

5. Annual Evaluation. On or about six months of September 16, 2024 and then each year on or about September 16 thereafter or (Employee's anniversary date), the City Council shall conduct an evaluation of Employee's performance and provide guidance and direction regarding the

City Council's goals and objectives which Employee shall be tasked with implementing. At the time of the evaluation, Employee shall be eligible to receive an increase in base salary, as determined by the City Council in its sole discretion. Employee shall be eligible for the first increase on Employee's first anniversary date, and then annually with the performance evaluation thereafter. Employee is not automatically entitled to any increase, which is subject to the sole discretion of the Council. While a formal evaluation will be conducted annually, the Council, at more frequent intervals and at times selected by the Council, can also conduct an informal review and/or provide other input to Employee regarding Employee's job performance.

6. Compensation. Employee shall receive the base annual salary of Two Hundred Forty Thousand Dollars (\$240,000), payable on a pro-rata basis on established paydays and in accordance with payroll in the same manner as all full time City employees, and subject to all applicable payroll taxes and withholdings. In accordance with Section 5, provided that Employee receives overall satisfactory marks from the City Council on his first annual evaluation (conducted on or about the completion of his first year), Employee's salary will be increased to Two Hundred Fifty Thousand Dollars (\$250,000) effective on Employee's first anniversary date. Any increases awarded thereafter will be in accordance with Section 5.

7. Regular Benefits and Allowances. Employee shall be entitled to those employee benefits (in the form of health insurance and retirement benefits), adopted by Employer for department manager employees from time to time, subject to applicable qualification requirements and regulatory approval requirements, if any. Employer agrees to provide and pay the City allowance for vision, dental, and medical insurance for Employee and his dependents, if any, equal to that which is provided to department manager employees of Employer. Similarly, Employer agrees to enroll Employee in the City-provided disability insurance program and to obtain a life insurance policy in the amount of

\$50,000, for which Employee can designate the beneficiary(ies). All benefits provided to Employee are subject to change consistent with City policy, Council approval, and applicable law.

8. Additional Benefits and Allowances. In addition to the benefits specified in Section 7, Employee shall receive the following additional benefits and allowances.

(a) Vacation; Sick Leave; Administrative Leave

(i) Vacation. Employee shall accrue one hundred sixty (160) hours of vacation each year, earned on a pro rata basis each pay period, and subject to use in accordance with the vacation policy established for all full-time City employees.

(ii) Sick Leave. Employee shall be allowed to accrue and use paid sick leave in accordance with the sick leave policy established for all full-time City employees. As a one-time award, in addition to accruing sick leave on a monthly basis as hours are worked, Employee shall be provided with forty (40) hours of sick leave on his date of hire, available for use in accordance with the City's sick leave policy applicable to full-time City employees.

(iii) Administrative Leave. Employee will be granted up to a maximum of one hundred twenty (120) hours of paid Administrative Leave each fiscal year. This amount is awarded to Employee on July 1 of each fiscal year. If Employee has any amount of Administrative Leave remaining at the conclusion of the fiscal year, on July 1, the Employee will be awarded with however many hours are necessary to bring the total number of Administrative Leave hours to 120. (For example, if Employee has 80 hours of Administrative Leave remaining on June 30, 2024, Employee will be awarded with 40 hours on July 1, 2024, so that the total Administrative Leave equals 120 hours). Unused Administrative Leave will not be paid in cash or any other form of compensation upon separation from City employment. It remains available to Employee only to use in connection with active employment. On the Effective Date of this Agreement, Employee will be awarded one hundred

(120) hours of Administrative Leave, on account of commencing employment part-way through the current fiscal year.

(b) Automobile. Employee shall receive a monthly vehicle allowance of Four Hundred Dollars (\$400.00) per month. The parties intend for this taxable allowance to be in lieu of reimbursement on an itemized basis for mileage, gas, maintenance of a vehicle, etc. Employee shall not be separately reimbursed for mileage driven in a personal vehicle.

(c) Retirement.

(i) CalPERS: Employer agrees to enroll Employee into the California Public Employees Retirement System (“CalPERS”) and shall pay the PERS Employer share subject to this section. Employee shall be responsible for paying the PERS Employee share.

(ii) Deferred Compensation: Employer maintains a deferred compensation plan pursuant to Internal Revenue Code Section 457 (“the Plan”). Employer shall provide a monthly contribution of \$400, paid directly into the Plan on Employee’s behalf. In addition, Employee shall be allowed to make contributions from his own wages to the Plan, subject to limitations and restrictions imposed by the Plan and applicable law.

(d) Technology Allowance. Employee shall receive a \$50 monthly taxable technology allowance to use towards his personal discretionary technological purchases and expenses in furtherance of City employment (e.g. cellular phone, tablet, data plan, laptop computer). The parties intend this allowance to cover all technology-related costs that Employee incurs in the course and scope of employment with the City.

9. Termination of Employment.

(a) No Property Interest. Employee understands and agrees that Employee has no constitutionally-protected property or other interest in Employee’s employment as City Manager.

Employee understands and agrees that Employee works at the will and pleasure of the City Council, and that Employee may be terminated, or asked to resign, at any time, with or without cause, by a majority vote of its members. Notice of termination shall be provided to Employee in writing. "Termination," as used in this Agreement, shall also include 1) a request that Employee resign; 2) a reduction in salary or other financial benefits provided by the City in a significant amount which is inconsistent with a reduction in salary or financial benefits for employees in the executive management unit; or 3) the elimination of the City Manager's position.

(b) Termination Immediately Before or Following City Council Election. No action by the City Council to terminate Employee, other than for gross mismanagement or an act of moral turpitude (as described in Section 9(f)), will be made within ninety (90) days either before a City Council election or immediately following a City Council election. Nothing in this paragraph alters the "at will" status of Employee's employment with City.

(c) Notice Required Of Employee. Employee may voluntarily terminate employment at any time by giving not less than sixty (60) days notice.

(d) Severance Pay. If Employee is asked to resign or is terminated as City Manager, then Employee shall be eligible to receive a cash payment equivalent to the sum of Employee's then-current monthly salary multiplied by three (3) (or by the remaining number of months in the Agreement, whichever is less) and the cash value, as determined by the City, of Employee's monthly non-salary COBRA-eligible benefits multiplied by three (3) (or [pursuant to Government Code section 53260] by the remaining number of months in the Agreement, whichever is less). Notwithstanding the above, if in or around September 2025, Employee receives a positive annual performance evaluation, as determined in the sole discretion of the City Council, then the amount of severance Employee is eligible to receive under this paragraph shall be equivalent to the sum of the Employee's then-current monthly salary multiplied by

six (6) (or by the remaining number of months in the Agreement, whichever is less) and the cash value, as determined by the City, of Employee's monthly non-salary COBRA-eligible benefits multiplied by six (6) (or [pursuant to Government Code section 53260] by the remaining number of months in the Agreement, whichever is less). This cash payment will be made on a pro-rated, monthly basis over the number of months involved, subject to termination of the severance requirement set forth below. Employee shall also be paid for any accrued, but unused, vacation leave, but not accrued sick leave. Eligibility for such severance payment is expressly conditioned upon Employee's execution of (i) a waiver and release of any and all of Employee's claims against City, and (ii) a covenant not to sue. All normal payroll taxes and withholdings as required by law shall be made with respect to any amounts paid under this section. Employee expressly agrees to provide notice to the City within two (2) business days of accepting employment elsewhere, and the City's obligation to pay any remaining severance benefits to Employee shall terminate upon Employee's acceptance of such alternative employment.

(e) Long-Term Disability. If Employee is unable to perform assigned duties because of sickness, accident, injury, mental incapacity or health for a period of four consecutive months (with or without reasonable accommodation), Employer shall have the option to terminate this Agreement. Employee agrees that, due to the importance of Employee's position with the City, an inability to perform duties for a period in excess of four consecutive months could not be reasonably accommodated. If Employee is terminated because of long-term disability, Employee shall be compensated in a lump sum for any accrued and unused vacation. Employer shall have no further responsibility to make, and Employee shall be deemed ineligible for, severance payments pursuant to subdivision (d). Eligibility for such severance payment is expressly conditioned upon Employee's execution of (i) a waiver and release of any and all of Employee's claims against Employer, and (ii) a covenant not to sue in a form provided by Employer.

(f) Ineligibility for Severance Under Certain Conditions. If the termination of Employee is the result of “good cause,” Employee shall not be paid any severance pay. For purposes of this section, “good cause” includes: (i) gross neglect of duties which has a negative impact on City operations; (ii) gross mismanagement which has a negative impact on City operations, and/or (iii) an act or acts of moral turpitude determined to have a negative impact on City operations or the Employee’s ability to serve the City. If Employee disagrees with the City’s determination of “good cause,” Employee’s sole remedy shall be a judicial action in declaratory relief to determine whether there was evidence of “good cause” as established above. If the court determines there was not substantial evidence of “good cause,” Employee shall receive the severance pay provided in this subsection, but no other damages.

10. Statutory Requirements. This Agreement shall be deemed to incorporate by reference the provisions of Sections 53243 *et seq.* of the Government Code, as it may be amended or renumbered.

11. Payment of Expenses of Employment. The City shall pay to Employee the usual and customary employment expenses incurred while performing the duties described in this Agreement, which may include travel, meals, lodging expenses, and parking fees, consistent with the City’s reimbursement policies. Employee shall submit a receipt and a description of the expenses to the City’s Finance Manager within thirty (30) days of the date each expense is incurred as a condition of obtaining reimbursement. In addition to these expenses, the City shall pay:

(a) The cost of any fidelity or other bonds required by law for the City Manager.

(b) Subject to Section 12 of this Agreement, the cost to defend and indemnify Employee to the full extent of the law as provided by the California Government Claims Act (Government

Code §810 *et seq.*), or otherwise. Notwithstanding the foregoing, City's obligation to defend and indemnify Employee shall extend only to the entry of a final judgment by the trial court, and shall not extend to providing defense or indemnity in connection with an appeal of the judgment, unless otherwise specifically provided by law. City will determine, in its sole discretion, whether to compromise and settle any such claim or suit against Employee and the amount of any settlement or judgment rendered thereon.

(c) Reasonable dues for Employee's membership in the International City Management Association ("ICMA"). The City will allow Employee reasonable time away from the City to participate in the annual conference of this organization.

(d) Subject to budget approval, the cost of attending conferences or other events (i.e. retirement dinners, out-of-town meetings, professional seminars, etc.) necessary for the proper discharge of Employee's duties. The City will not reimburse Employee for any expenses related to membership in service clubs.

12. Miscellaneous.

(a) Notices. Notices given under this Agreement shall be in writing and shall be:

- (i) served personally; or
- (ii) sent by facsimile (provided a hard copy is mailed within one (1) business day); or
- (iii) delivered by first-class United States mail, certified, with postage prepaid and a return receipt requested; or
- (iv) Sent by Federal Express, or some equivalent private overnight delivery service.

Notices shall be deemed received at the earlier of actual receipt or three (3) days following deposit in the United States mail, postage prepaid. Notices shall be directed to the addresses shown below, provided that a party may change such party's address for notice by giving written notice to the other party in accordance with this subsection.

CITY:

City of Clayton
Attn: Mayor
6000 Heritage Trail
Clayton, CA 94517
Phone: (925) 673-7300
Fax: (925) 672-4917

EMPLOYEE:

Kris Lofthus
(Address in Employee's Personnel File)

(b) Compliance with Government Code §§53243, 53243.1, & 53243.2. If

Employee is convicted of a crime involving an abuse of his office or position, all of the following shall apply:

(i) if Employee is provided with administrative leave pay pending an investigation, Employee shall be required to fully reimburse the City for such amounts paid;

(ii) if the City pays for the criminal legal defense of Employee (which would be in its sole discretion, as it is not generally required to pay for a criminal defense), Employee shall be required to fully reimburse City such amounts paid; and

(iii) if this Agreement is terminated, any cash settlement related to the termination that Employee may receive from the City shall be fully reimbursed to the City or void if not yet paid to Employee.

For this subsection, "abuse of office or position" means either (1) an abuse of public authority, including waste, fraud, and violation of the law under color of authority, or (2) a crime against

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

(c) Entire Agreement/Amendment. This Agreement constitutes the entire understanding and agreement between the parties as to those matters contained in it, and supersedes any and all prior or contemporaneous agreements, representations and understandings of the parties. This Agreement may be amended at any time by mutual agreement of the parties, but any such amendment must be in writing, dated, and signed by the parties and attached hereto.

(d) Attorney's Fees. If any legal action or proceeding is brought to enforce or interpret this Agreement, each party shall bear their own fees, including such fees and costs as may be incurred in enforcing any judgment or order entered in any such action.

(e) Severability. In the event any portion of this Agreement is declared void, such portion shall be severed from this Agreement and the remaining provisions shall remain in effect, unless the result of such severance would be to substantially alter this Agreement or the obligations of the parties, in which case this Agreement shall be immediately terminated.

(f) Waiver. Any failure of a party to insist upon strict compliance with any term, undertaking, or condition of this Agreement shall not be deemed to be a waiver of such term, undertaking, or condition. To be effective, a waiver must be in writing, signed and dated by the parties.

(g) Representation by Counsel. The parties acknowledge and agree that they were, or had the opportunity to be, represented individually by legal counsel with respect to the matters that are the subject of this Agreement and that they are fully advised with respect to their respective rights and obligations resulting from signing this Agreement.

(h) Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Employee and City agree that venue for any dispute shall be in Contra Costa County, California.

(i) Section Headings. The headings on each of the sections and subsections of this Agreement are for the convenience of the parties only and do not limit or expand the contents of any such section or subsection.

(j) No Assignment. Employee may not assign this Agreement in whole or in part.

Dated: August 20, 2024


CITY OF CLAYTON



Jim Diaz, Mayor


Dated: August 21, 2024

EMPLOYEE



Kris Lofthus

Attest:



Stephanie Cabrera-Brown, City Clerk

Approved as to Form:



Mala Subramanian, City Attorney