

## EMPLOYMENT AGREEMENT

THIS AGREEMENT is made and entered into as of the 11<sup>th</sup> day of March 2019, by and between the CITY OF LA HABRA HEIGHTS, California, a Municipal Corporation, hereinafter called the "City", and FABIOLA HUERTA, hereinafter called "Employee."

### RECITALS

A. City desires to employ the services of Employee in the position of City Manager/City Clerk, and Employee desires employment as City Manager/City Clerk of City; and

B. The City Council desires to encourage the highest standards of fidelity and public service on the part of Employee and provide a just means for terminating Employee's employment and this Agreement when City may desire to do so; and

C. The parties further desire to establish Employee's conditions of employment.

**NOW, THEREFORE**, in consideration of the mutual covenants hereinafter contained the parties agree as follows:

**1. Duties** City hereby employs Employee as City Manager/City Clerk of City to perform the functions and duties of the City Manager/City Clerk as specified in City's Municipal Code and to perform such other legally permissible and proper duties and functions as the City Council may from time to time assign to Employee. Employee agrees to devote Employee's full time and effort to the performance of this Agreement and to remain in the exclusive employ of City. Additional employment must be approved by the City Council.

The City Manager shall be the Chief Executive Officer of the City. As such, the City Manager shall have the responsibility for implementing City Council policy, whereas the City Council shall retain the responsibility for formulating and adopting said policy. The City Council and its members shall deal with the administrative services of the City only through the Employee, except for the purpose of inquiry. Neither the City Council nor any member thereof shall give orders to any subordinate of the Employee. Employee shall take direction only from a majority of the City Council as expressed at a duly noticed Brown Act meeting. Employee shall not be required to take direction from individual City Councilmembers or less than a majority of Councilmembers.

The City Manager (or her designee) shall: (1) review all policies proposed to the City Council and make appropriate recommendations to the City Council; (2) periodically evaluate employees as provided for by California law and City policy; (3) advise the City Council of possible sources of funds that might be available to implement present or contemplated City programs or services; (4) maintain and improve her professional competence by available means; (5) establish and maintain an appropriate community relations program; and (6) serve as liaison between the City Council and as its designated representatives with respect to all employer-employee matters, and make recommendations to the Council concerning those matters. Notwithstanding that a designee of the City Manager may perform said duties, the City Manager

shall be the person ultimately responsible to the Council for the proper implementation of the duties and responsibilities described in this Agreement.

2. **Hours of Work** Employee's duties may involve expenditures of time in excess of eight (8) hours per day and/or forty (40) hours per week, and may also include time outside normal office hours such as attendance at City Council meetings. Employee shall not be entitled to additional compensation for such time. Employee shall be exempt from paid overtime compensation.

3. **Term** This Agreement shall be effective March 15, 2019 and will remain in force and effect for three (3) years unless terminated as provided herein. Upon expiration of this Term, this Agreement shall automatically renew for a period of one (1) year unless written notice expressing one party's intention to terminate this Agreement is provided to the other party no less than 120 days prior to the end of the Term. Following this initial automatic renewal period, this Agreement shall be automatically renewed for additional one-year periods on an ongoing basis unless written notice expressing one party's intention to terminate this Agreement is provided to the other party no less than 120 days prior to the expiration of whichever one year period is in effect at that time.

4. **Salary** City shall pay Employee an annual salary of One Hundred Thirty-Five Thousand Dollars (\$135,000) for the performance of Employee's duties as City Manager/City Clerk, less customary and legally required payroll deductions. Salary adjustments shall be considered by the City Council annually in conjunction with Employee's annual performance evaluation pursuant to paragraph 9 of this Agreement and will only be granted by merit.

5. **Retirement and Deferred Compensation** Employee shall pay Employee cost of membership in the Public Employees Retirement System (PERS) during the term of this Agreement. City shall match annually based on anniversary date a maximum of Four Thousand Dollars (\$4,000) in a City 457 deferred compensation account.

6. **Medical, Dental and Vision Insurance** City shall provide the monthly premiums for medical, dental and vision insurance ("insurance plans") at the same rate of benefits provided to other City employees. Amount in excess of total flexible benefit plan amount is paid out-of-pocket by Employee. Rates are set by insurance plans and shall be adjusted annually according to PERS Monthly Premiums for Contracting Agencies, City provides coverage for employee and one (1) dependent for health, dental and vision in Calendar Year (CY) 2019 as follows:

Health	Kaiser HMO	\$	1,237.28
Dental	Delta DPO	\$	76.61
Vision	VSP	\$	34.26
CY 2019 Total Flexible Benefit Plan Amount		\$	1,348.15 per month

**7. Other Benefits**

(A) Employee shall be entitled to vacation leave of eighty (80) hours per year with a maximum accrual of 300 hours. Employee shall cease to accrue additional vacation leave until Employee's accumulated vacation leave falls below 300 hours.

(B) Employee shall be entitled to sick leave of eight (8) hours per calendar month for a total of ninety-six (96) hours per year. Employee may accumulate a maximum of 480 hours of sick leave but shall only be entitled to a payout of a maximum of 120 hours. Employee shall cease to accrue additional sick leave until Employee's accumulated sick leave falls below 480 hours.

(C) Employee's already-accrued leave from her pre-existing employment with the City shall not be reduced as a result of this agreement and shall continue to carry over.

(D) Employee shall be entitled to management leave of forty (40) hours per year upon execution of this agreement.

(E) Employee shall be provided with a monthly cell phone allowance of Fifty Dollars (\$50) per month.

(F) Because Employee is on-call twenty-four (24) hours per day and expected to be available for City business at all hours, Employee shall be provided with exclusive use of a City-owned vehicle. As per Section 21 of City's Personnel Rules and Regulations, use of City-owned vehicles shall be relied upon as the primary means of vehicle usage for City business as it provides City the greatest control over operating costs, usage, maintenance, inspection and insurance. Use of the vehicle assigned to the Employee on a permanent basis is limited to daily commuting to and from the City and for City business only. Personal use of the vehicle shall be limited to only to uses that are *de minimis* and incidental to Employee's commute, such as minimal personal errands or childcare pick-ups/drop-offs. Employee shall be responsible for all applicable income taxes resulting from personal use of the vehicle.

City will provide insurance and maintenance of the City-owned vehicle. Although City is provided automobile liability coverage for all City vehicles under the California JPIA Memorandum of Coverage, Employee will abide by insurance requirements as stated in City's Personnel Rules and Regulations. Employee shall promptly provide insurance and driver license information at the beginning of this Agreement and must comply with all training and other reporting requirements of City's Vehicle Usage Policy.

**8. General Expenses** City recognizes that certain expenses of a non-personal and job-related nature may be incurred by Employee. City agrees to reimburse Employee for reasonable expenses which are submitted to the City Council for approval and which are supported by expense receipts and statements, and audit thereof in like manner as other demands against City.

9. **Performance Evaluation** The City Council shall review and evaluate Employee's performance at least once annually on or before Employee's anniversary date. The City Council and Employee shall develop mutually agreeable performance goals and criteria which the City Council shall use in reviewing Employee's performance. It shall be Employee's responsibility to initiate this review each year.

10. **Non-Assignment of Agreement** This Agreement is intended to secure the individual services of Employee and is not assignable or transferable by Employee to any third party.

11. **Governing Law/Venue** This Agreement shall be interpreted according to the laws of the State of California. Venue for any action or proceeding regarding this contract shall be in Los Angeles County.

12. **Enforceability** If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

13. **Conflict of Interest** Employee agrees that during the term of this Agreement, she will not maintain any financial interest or engage in any other contract employment, occupation, work, endeavor, or association, whether compensated for or not, that would in any way conflict with or impair Employee's ability to perform the duties described in this Agreement.

14. **Indemnification** City shall defend, hold harmless and indemnify Employee against any claim, demand, judgment, or action of any type or kind arising within the course and scope of her employment to the extent required by Government Code §§ 825 and 995.

15. **Other Terms and Conditions of Employment**

(A) The City Council may from time to time fix other terms and conditions of employment relating to the performance of Employee provided such terms and conditions are not inconsistent with or in conflict with the provision of this Agreement, the Municipal Code, or other applicable law.

(B) The provisions of City's Personnel Rules and Regulations ("Rules") shall apply to Employee to the extent they explicitly apply to the position of City Manager/City Clerk, except that if the specific provisions of this Agreement conflict with the Rules, the terms of this Agreement shall prevail. Without limiting the generality of the exception noted in the previous sentence, however, no provision of the Rules or this Agreement shall confer upon Employee a property right in her employment, a right to be discharged only upon cause during tenure as City Manager/City Clerk, or a right to any additional benefit or any consideration other than provided in this Agreement. At such times as Employee is serving as City Manager/City Clerk, Employee is an at-will employee serving at the pleasure of the City Council and may be dismissed at any time with or without cause and with or without notice, subject to the provisions of this Agreement.

**16. General Provisions**

(A) This Agreement constitutes the entire agreement between the parties. City and Employee hereby acknowledge that they have neither made nor accepted any other promise or obligation with respect to the subject matter of this Agreement. This Agreement may be amended only by a writing signed by Employee, approved by the City Council, and executed on behalf of City.

(B) If any provision or any portion of this Agreement is held to be unconstitutional, invalid or unenforceable, the remainder of the Agreement shall be deemed severable and shall not be affected and shall remain in full force and effect.

(C) This Agreement may be terminated by either party with or without cause subject to the requirements of paragraph 17 below regarding severance. Employee must provide City with forty five (45) days' written notice prior to the effective date of termination of this Agreement, but this notice requirement can be waived at City's discretion. Notice of termination to City shall be given in writing to City, either by personal service or by registered or certified mail, postage prepaid, addressed to City as follows:

Mayor  
City of La Habra Heights  
1245 North Hacienda Road  
La Habra Heights, CA 90631

A copy of the notice of termination shall concurrently be provided to the City Attorney, at the City Attorney's business address.

Any notice to Employee shall be given in a like manner, and, if mailed, shall be addressed to Employee at the address then shown in City's personnel files. For the purpose of determining compliance with any time limit stated in this Agreement, a notice shall be deemed to have been duly given on the date of delivery, if served personally on the party to whom notice is to be given, or on the second (2<sup>nd</sup>) calendar day after mailing in the manner provided in this section.

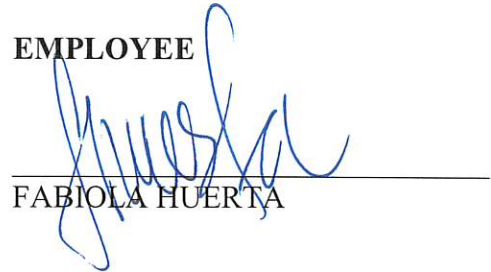
**17. Severance** If City terminates this Agreement without cause, as defined in this paragraph, then City shall pay Employee severance equal to up to four (4) months' salary in the amounts in effect at the time the notice of termination is given. Such severance pay shall be paid in installments coinciding with the City's usual payroll until paid in full or until Employee becomes entitled to new employment, whichever occurs first. In addition, City is a member of the California Joint Powers Insurance Authority (CJPIA). The CJPIA provides its members a Chief Executive Separation Payment, under which Employee is eligible subject to the terms and conditions set forth in the CJPIA's Memorandum of Liability Coverage. City shall have cause to terminate Employee without payment of severance under this paragraph if Employee is found by the City Council to have engaged in criminal conduct involving dishonesty or moral turpitude or other willful misconduct that would be a basis for discharge for cause under City's personnel rules regarding disciplinary action.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

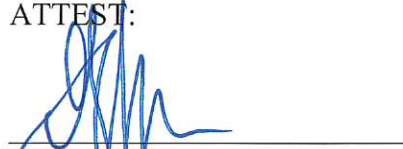
**CITY OF LA HABRA HEIGHTS**

  
\_\_\_\_\_  
BRIAN BERGMAN  
MAYOR


**EMPLOYEE**

  
\_\_\_\_\_  
FABIOLA HUERTA

ATTEST:

  
\_\_\_\_\_  
GRACE ANDRES  
DEPUTY CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
MICHAEL J. MAURER  
CITY ATTORNEY