

**CITY OF BELLFLOWER
EMPLOYMENT AGREEMENT
WITH MAYRA OCHIQUI
(Agreement File No. 686)**

THIS AGREEMENT is made and entered into on the 9th day of November, 2015, by and between the CITY OF BELLFLOWER, a municipal corporation and general law city (“CITY”) and MAYRA OCHIQUI, an individual (“EMPLOYEE”). CITY and EMPLOYEE agree as follows:

1. **RECITALS.** This Agreement is entered into with the following understandings and objectives:

- A. CITY desires to employ EMPLOYEE as City Clerk of CITY as provided by State law and CITY’s past practice.
- B. It is CITY’s desire to provide certain benefits, establish certain conditions of employment and set working conditions of EMPLOYEE.
- C. It is CITY’s desire to secure and retain EMPLOYEE and to provide inducement to remain in such employment; deter against malfeasance or dishonesty for personal gain on EMPLOYEE’s part; and permit a reasonable means of terminating EMPLOYEE’s services.
- D. EMPLOYEE desires to accept employment as City Clerk, pursuant to the terms and conditions herein set forth.

2. **DUTIES:** EMPLOYEE is appointed as CITY’s City Clerk. CITY agrees to employ EMPLOYEE to perform the functions and duties specified by statute and relevant CITY ordinances and resolutions for a City Clerk, and to perform such other legally permissible and proper duties and functions as CITY may from time to time assign.

3. **TERM:**

- A. This Agreement will become effective on December 12, 2015.
- B. Nothing in this Agreement prevents, limits, or otherwise interferes with the right of CITY to terminate EMPLOYEE’s services at any time in accordance with this Agreement.

- C. Nothing in this Agreement prevents, limits, or otherwise interferes with the right of EMPLOYEE to resign at any time from her position with CITY in accordance with this Agreement.

4. **TERMINATION AND SEVERANCE PAY:**

- A. EMPLOYEE serves at the City Council's pleasure and may be terminated at any time, with or without cause, in accordance with this Agreement. Except as otherwise provided in this Agreement, in the event EMPLOYEE and/or this Agreement is terminated by the City Council during such time that EMPLOYEE is willing and able to perform duties of City Clerk, then in that event CITY agrees to
 - i. Pay EMPLOYEE a lump sum cash payment equal to three months base salary as severance;
 - ii. The lump cash payment may be paid, at EMPLOYEE's option, in either one lump sum upon date of termination or in three equal monthly installments. Employee cannot earn or accrue benefits other than PERS benefits based on the lump cash payment. Notwithstanding the foregoing, the maximum severance payable cannot exceed the amount permitted by Government Code § 53260.
- B. Should EMPLOYEE be terminated for cause including, without limitation, the willful breach or habitual neglect of the duties that EMPLOYEE is required to perform under the terms of this Agreement; conviction of any felony; conviction of any crime involving moral turpitude; or removal from office by the Grand Jury; then, in that event, CITY has no obligation to pay any severance designated in this Section except benefits which otherwise vested in EMPLOYEE.
- C. In the event CITY, at any time during the term, reduces the salary or other financial benefits of EMPLOYEE in a greater percentage than an applicable across-the-board reduction of all CITY employees, or in the event CITY refuses, following written notice, to comply with any other provision benefiting EMPLOYEE herein, or EMPLOYEE resigns

following a formal written request by a majority of the City Council that she resign; then, in that event, EMPLOYEE may, at her option, be deemed “terminated” at the time of such reduction, or after the next City Council meeting after such suggestion is made, in which case, EMPLOYEE is entitled to be paid severance pay and receive the other severance benefits described in this Section.

- D. CITY does not have the right or power to terminate EMPLOYEE during the 90 day period following a general or special election for City Council or following the appointment of a new Council, except for willful misconduct.
- E. In the event EMPLOYEE voluntarily resigns EMPLOYEE’s position with CITY before expiration of the term, the EMPLOYEE must give CITY a minimum of six months prior written notice. In that event, EMPLOYEE is not entitled to severance.

5. **EFFECT OF PAYMENT OF SEVERANCE/RELEASE:**

- A. This section applies only to the following matters: (1) any rights of EMPLOYEE to receive severance benefits under this Agreement, (2) any right of employee to continued employment with CITY, and (3) any claim, demand, or cause of action or damages for wrongful termination (collectively the “Released Matters”).
- B. This Section does not otherwise affect, waive, nor release any other rights EMPLOYEE may have under this Agreement, or applicable law.
- C. Upon CITY’s full payment of severance benefits to EMPLOYEE, EMPLOYEE (1) releases and discharges CITY and its elected officials, appointed officers, employees, sub-contractors, agents, accounts, attorneys, successors and all other persons acting for, under, or in concert with CITY both past and present from any and all personal claims, demands, actions, causes of action, obligations, damages, liabilities, losses, costs and expenses, including attorney’s fees of any kind or nature whatsoever, past, present and future, arising from, relating to or in connection with the Released Matters, and (2) agrees to waive any and all

claims, demands, actions, causes of action, obligations, liabilities, claims of credits or offsets, costs and expenses, including attorney's fees, of any kind or nature whatsoever as to the Released Matters. As to the Released Matters only, EMPLOYEE acknowledges that she has read and understands California Civil Code § 1542 which states:

“A general release does not extend to the claims which a creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him, must have materially affected his settlement with the debtor.”

The parties agree that full payment of the severance benefits in this Agreement must act as a complete and total release of all future claims which may arise out of the Released Matters whether such claims are currently known or unknown, foreseen or unforeseen, contingent or absolute; and as to the Released Matters the parties intentionally and specifically waive any rights they may have under the provisions of Civil Code § 1542, as well as under any other statutes or common law principles of similar effect, and each party assumes full responsibility for such injuries, damages, losses or liabilities that any of them may hereafter incur with respect to the Released Matters.

6. **HOURS OF WORK**: EMPLOYEE is expected to work at least 40 hours per week, including devoting necessary time outside normal office hours to the business of CITY. This position is exempt from the overtime provisions of the Fair Labor Standards Act.
7. **ADMINISTRATIVE LEAVE**: Beginning December 12, 2015, EMPLOYEE will be provided with forty (40) hours of administrative leave per year. Administrative Leave hours will be prorated for the remainder of the current fiscal year.
8. **DUES AND SUBSCRIPTIONS**: To the extent feasible, CITY agrees to budget and to pay the professional dues and subscriptions of EMPLOYEE necessary for her continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for her continued professional participation, growth, and advancement, and for the good of CITY.

9. **PROFESSIONAL DEVELOPMENT:**

To the extent feasible, CITY agrees to budget and pay the travel and subsistence expenses of EMPLOYEE for professional and official travel, meetings, and occasions adequate to continued professional development of EMPLOYEE and to adequately pursue necessary official and other functions for CITY including, without limitation, the League of California Cities, community based service organizations and clubs, and regional, state, and local governmental groups and committees on which EMPLOYEE serves as a member. Such reimbursement must be according to such travel reimbursement policies as are then in effect for other CITY employees. CITY also agrees that, to the extent feasible, and with City Council approval, it will budget and pay for the travel and subsistence expenses for EMPLOYEE for short courses in institutes and seminars that are necessary for her professional development and for the good of CITY.

10. **SUPPLEMENTAL BENEFITS:** Except for a transportation allowance, which EMPLOYEE specifically agrees will not be part of her benefits, CITY will provide EMPLOYEE the same type and extent of benefits as provided to the CITY's Executive Management Employees, as such benefits may be amended from time to time. All actions taken by CITY relating to benefits for Executive Management Employees will be considered actions granting the same benefits to EMPLOYEE. "Benefits" include, without limitation, paid holidays, vacation, sick leave, retirement benefits and payments, health insurance, dental insurance, life insurance and disability insurance.

11. **SALARY:**

- A. Beginning December 12, 2015, CITY agrees to pay EMPLOYEE for her services rendered pursuant to this Agreement an annual salary of \$95,000 which is EMPLOYEE's payable in equal installments at the same time as other employees of CITY are paid.
- B. Annually in each year following 2015, EMPLOYEE will request a Public Employee Performance Evaluation by the City Council and only if CITY's City Council first gives EMPLOYEE a positive performance evaluation, CITY agrees to consider adjusting EMPLOYEE's salary.

- C. As an inducement to remain in employ of the CITY, the CITY will contribute each pay period to the EMPLOYEE's Deferred Compensation Plan, an amount equal to five percent (5%) of EMPLOYEES base salary.

12. **CHANGES**: This Agreement may be changed or amended by the mutual written consent of CITY and EMPLOYEE. Any benefits to EMPLOYEE under this Agreement may be increased or added to by motion of the City Council without formal amendment to the Agreement.

13. **BONDING**: CITY will pay for the cost of fiduciary bonds required of EMPLOYEE as a consequence of the exercise of her duties under this Agreement.

14. **INDEMNIFICATION**:

- A. CITY must indemnify and defend EMPLOYEE from any and all claims, demands, actions, losses, or charges arising out of, related to, or as a consequence of EMPLOYEE performing her duties as City Clerk. Further, CITY must pay all expenses, costs and attorney's fees arising out of or related to the same.
- B. The Parties agree that this Section will survive the termination of this Agreement and EMPLOYEE's employment. CITY's obligations under this Section apply whether EMPLOYEE is or is not employed by the CITY at the time any such claim, demand, action, loss or charge is made or occurs, as the case may be so long as the action giving rise to the claim occurred during the time EMPLOYEE was employed by CITY.

15. **CITY CLERK DUTIES AND ETHICS CODE**:

- A. EMPLOYEE agrees to perform the functions and duties specified in the ordinances and resolutions of the City and applicable law, and to perform such other legally permissible and proper duties and functions as the City Council may from time to time assign.
- B. EMPLOYEE must perform to the best of her ability in accordance with the highest professional and ethical standards of the profession and comply with all rules and regulations established by the City and applicable law.

16. **PERFORMANCE EVALUATION**: The City Council may evaluate EMPLOYEE at any time, and must provide a written evaluation of EMPLOYEE's performance on an annual basis. Such evaluations will become a part of EMPLOYEE's personnel file.

17. **WAIVER OF BREACH**: No waiver of the breach of any of the covenants, agreements, provisions, or conditions of this Agreement by either party will be construed to be a waiver of any succeeding breach of the same or other covenants, agreements, provisions or conditions of this Agreement. No delay or omission of CITY or EMPLOYEE in exercising any right, power, or remedy herein provided in the event of default will be construed as a waiver thereof, or acquiescence therein.

18. **ENTIRE CONTRACT**: This Agreement contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this instrument will be of no force or effect excepting a subsequent modification in writing signed by CITY and EMPLOYEE.

19. **PARTIAL INVALIDITY**: Partial invalidity of this Agreement will not affect the remainder.

20. **VENUE**: This Agreement will be interpreted in accordance with California law and venue is in Los Angeles County.

21. **BINDING EFFECT**: This Agreement is binding upon and inures to the benefit of the parties and their successors, heirs, agents and personal representatives.

22. **SEVERABILITY**: Each portion of this Agreement is separate and if any portion is found to be invalid by a court of competent jurisdiction, the remaining portions must each remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed and executed this 9th day of November 2015.

City of Bellflower,
a municipal corporation

Mayra Ochiqui,
an individual



Scott A. Larsen, Mayor



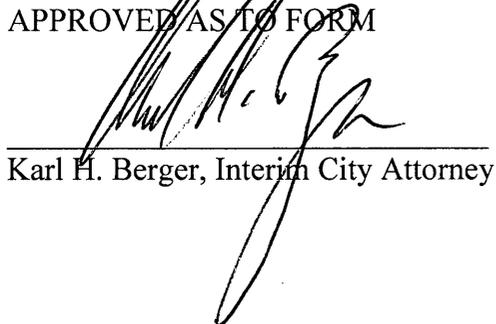
Mayra Ochiqui

ATTEST:



Debra D. Bauchop, City Clerk

APPROVED AS TO FORM



Karl H. Berger, Interim City Attorney