

AGREEMENT OF EMPLOYMENT BETWEEN THE MANAGEMENT OF EMERYVILLE SERVICES AUTHORITY AND JOHN KENNEDY

THIS AGREEMENT OF EMPLOYMENT (“Agreement”) is entered into effective the 2nd day of March 2024 (the **“Effective Date”**), by and between the **MANAGEMENT OF EMERYVILLE SERVICES AUTHORITY and THE CITY OF EMERYVILLE CITY COUNCIL**, hereinafter referred to as the **“Authority”**, and **JOHN KENNEDY**, hereinafter referred to as the **“City Attorney,”** and collectively the **“Parties.”**

Recitals

Whereas, the Authority and the City of Emeryville wish to retain the services of City Attorney pursuant to this Agreement of Employment effective March 2, 2024, for a two-year term ending March 1, 2026;

Now therefore, the Parties agree as follows:

Section 1. Duties

The Authority agrees to employ JOHN KENNEDY to serve as the City Attorney of the City of Emeryville, City Attorney of the City of Emeryville Successor Agency, General Counsel of the Emeryville Public Financing Authority, General Counsel of the Emeryville Community Development Commission, and General Counsel of the Authority to perform the functions and duties as specified by the ordinances of the City of Emeryville as such ordinances may be amended from time to time, and to perform other legally permissible and proper duties and functions as the City Council, Successor Agency, Financing Authority, Development Commission and Authority shall from time to time assign. The City Attorney agrees that, to the best of his ability and experience, he will, at all times, loyally and conscientiously perform all of the duties and obligations required of him, either expressly or implicitly by the terms of the Agreement.

Section 2. Term and Reopener

City Attorney shall be retained by the Authority to perform the duties described in Section 1 above for a two-year period, commencing March 2, 2024, and expiring on March 1, 2026, and agrees to remain in the employ of the Authority during the term of this Agreement. This Agreement can be extended for up to an additional six months, until August 31, 2026, by mutual agreement of the Parties. The Parties agree to renegotiate the terms of this Agreement, in good faith, at least three (3) months prior to the expiration of the Agreement.

If, during the term of this Agreement, the California Public Employee Retirement System (“CalPERS”) makes changes to the City Attorney’s retirement

benefits due to CalPERS' determination(s) regarding the City Attorney's status as an employee of the Authority, the Authority agrees to reopen this Agreement to address the City Attorney's compensation provided by this Agreement and to fully mitigate the impacts on the City's Attorney's retirement benefits caused by CalPERS' determination(s).

Section 3. At-Will

The City Attorney understands and acknowledges that he is an at-will employee of the Authority and therefore may be terminated by the Authority without cause.

Section 4. Termination and Severance Pay

- A. Termination By Authority. Termination of this Agreement shall require three (3) affirmative votes of the Board of Directors. Notwithstanding the foregoing, it is also understood and agreed that the City Attorney shall be retained for a minimum of four (4) months following any municipal election, where at least one new Director is elected, thereby allowing the new Board of Directors adequate time to assess the City Attorney's performance. In the event the City Attorney is terminated by the Board of Directors before expiration of the term of employment and during such time that the City Attorney is willing and able to perform his duties under this Agreement, then in that event the Authority agrees to pay the City Attorney a cash payment equal to: (i) one (1) months' aggregate salary in the amount set forth in section 6 below, multiplied by the number of whole months and pro-rated portions of months left on the unexpired term of employment under this Agreement, but in no event shall such cash payment exceed six (6) months' aggregate salary; plus (ii) the cash value of all (i.e. 100%) accrued, but unused, vacation and administrative leave credited to the City Attorney's leave balance; and (iii) the cash value of thirty percent (30%) accrued, but unused, sick leave credited to the City Attorney's leave balance up to 120 days. Said cash payments shall be paid, at the option of the City Attorney, in: (a) lump sum upon date of termination; (b) lump sum on January 1 of the year following termination; (c) twelve (12) equal monthly payments; or (d) any combination of the foregoing.

- B. Termination By City Attorney or Expiration of Term. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City Attorney to resign at any time from her position upon giving sixty (60) days prior written notice to the Authority. In the event the City Attorney resigns from his position with the Authority or the term of this Agreement expires and no successor agreement is entered into between the Authority and City Attorney, then in that event the Authority agrees to pay the City Attorney a cash payment equal to: (i) the cash value of all (i.e. 100%)

accrued, but unused, vacation and administrative leave credited to the City Attorney's leave balance; plus (ii) the cash value of thirty percent (30%) of accrued, but unused, sick leave credited to the City Attorney's leave balance up to 120 days. Said cash payments shall be paid, at the option of the City Attorney, in: (a) lump sum upon date of termination; (b) lump sum on January 1 of the year following termination; (c) twelve (12) equal monthly payments; or (d) any combination of the foregoing.

Section 5. Evaluations; Discipline/Dismissal and Complaints

The Board of Directors and City Attorney shall use good faith efforts to meet on or about the anniversary date of this Agreement in a closed session for the purpose of evaluating the performance of the City Attorney. Any second-year performance evaluation shall coincide with the negotiation and consideration of a new agreement in accordance with Section 2 above. Furthermore, the Authority shall make good faith efforts to have all issues, matters or concerns of an individual Board of Director which could give rise to discipline or dismissal of the City Attorney or which amount to complaints or charges against the City Attorney to be brought to the attention of the Authority and City Attorney first in a closed session as provided by California Government Code Section 54957.

Section 6. Salary

During the first year of this Agreement, the Authority agrees to pay the City Attorney for his services rendered a base salary of \$20,370 per month, payable in installments at the same time as other employees of the Authority are paid.

Effective the first full pay period including March 1, 2025, the Authority agrees to pay the City Attorney for his services rendered a base salary of \$21,287 per month, payable in installments at the same time as other employees of the Authority are paid.

The City Attorney will recommend a salary adjustment following any second-year performance review. Additionally, in recognition of accomplishment of objectives, the Authority may grant the City Attorney an increase to the base salary.

Section 7. Expenses

The Authority shall pay the City Attorney a compensated expense allowance in the amount of Five Hundred Dollars (\$500.00) per month, payable in installments at the same time all other employees of the Authority are paid.

Section 8. Deferred Compensation

The Authority shall contribute Fourteen Thousand Dollars (\$14,000.00) annually into a deferred compensation plan as directed by the City Attorney payable in installments at the same time all other employees of the Authority are paid.

Section 9. Sick Leave, Holidays and Vacation

All provisions of the rules, regulations and ordinances of the Authority relating to vacation, sick leave, administrative leave, retirement, pension system contributions, holidays and other fringe benefits and working conditions as they now exist, or hereafter may be amended, to the extent not inconsistent with the terms of this Agreement, shall apply to the City Attorney. To the extent any rules or regulations of the Authority are inconsistent with the terms of this Agreement, the terms of this Agreement shall control. The City Attorney is hereby specifically granted a total of five (5) weeks of vacation per year, three (3) weeks of sick leave per year, and two (2) weeks of administrative leave per year. The City Attorney may elect to either (1) cash out up to 70 hours of administrative leave per year or (2) direct that an equivalent amount be deposited into a deferred compensation plan as directed by the City Attorney at the end of each fiscal year.

Section 10. Public Employees Retirement System

The Authority will provide for participation of the City Attorney in the California Public Employees' Retirement System ("PERS") under the PERS Miscellaneous Employee 2% @ 60 (average highest compensation earnable over a continuous three-year period) retirement formula plan, provided the City Attorney is a "classic member" as provided by the Public Employee Retirement Law ("PERL"). If the City Attorney is determined to be a "new member" under the PERL, the Authority will provide for participation of the City Attorney in the California Public Employees' Retirement System ("PERS") under the PERS Miscellaneous Employee 2% @ 62 (average highest compensation earnable over a continuous three-year period) retirement formula plan.

The City Attorney shall contribute to the Public Employees' Retirement System each pay period the entire employee contribution rate required by PERS. Contributions made pursuant to this paragraph shall be reported to PERS as "employee contributions being made by the contracting agency."

The Authority shall implement the provisions of section 414(h)(2) of the Internal Revenue Code by making "employee contributions" pursuant to California Government Code Section 20691 to the California Public Employees' Retirement System on behalf of the City Attorney. As used in this paragraph "employee contributions" shall mean the contribution to the California Public Employees' Retirement System which is deducted from the salary of the City Attorney and

credited to the City Attorney's account pursuant to California Government Code Section 20691.

Section 11. Business Expenses

The Authority agrees to annually budget and allocate sufficient funds to pay for the City related business expenses of the City Attorney. This shall include, but not necessarily be limited to, City Attorney's necessary travel and living expenses while representing the Authority at the Annual League of California Cities Conference, conferences of the City Attorney's Department of the League of California Cities and conferences and meetings of committees or commissions upon which the City Attorney serves as a member, said membership of said committees or commissions being subject to the approval of the Authority, and for such other official meetings and/or travel as are reasonably necessary for the City Attorney to carry out her professional responsibilities. In addition, the Authority agrees to pay City Attorney dues as required to maintain membership status in the State Bar of California, which membership is required to perform the work in accordance with this Agreement, as well as tuition of Mandatory Continuing Legal Education courses.

Section 12. Group Insurance Coverage

The Authority agrees to put into force and make required premium payments for the City Attorney, his spouse and dependents for medical, dental and other health care benefits generally given to or provided for unrepresented Department Head employees.

Section 13. Indemnification

The Authority shall defend, hold harmless and indemnify the City Attorney 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 during the course and scope of the performance of the City Attorney's duties.

Section 14. Bonding

The Authority shall bear the full cost of any fidelity or other bonds required of the City Attorney under any law or ordinance.

Section 15. Other Terms and Conditions of Employment

The Authority, in consultation with the City Attorney, shall fix any such other terms and conditions of employment as it may determine from time to time, relating to the performance of the City Attorney, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, City ordinances, or any other law.

Section 16. No Reduction of Benefits

The Authority shall not, at any time during the term of this Agreement, unilaterally reduce the salary or benefits of the City Attorney.

Section 17. Notices

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid. Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

Section 18. Mediation

The parties agree that, if a dispute arises between them that in any way relates to this Agreement, the terms of this Agreement, or the performance by either party under this Agreement, such dispute shall, after the claims procedures that may be applicable under the California Government Tort Claims Act are exhausted, be submitted to mediation. If such dispute proceeds to litigation, the prevailing party shall be entitled to reasonable attorney fees and costs. The exclusive venue for any litigation instituted pursuant to this Agreement shall be the State of California Superior Court for the County of Alameda or the United States District Court for the Northern District of California.

Section 19. Dissolution of Authority

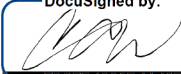
If, at any time during the term of this Agreement, the MESA is dissolved, this Agreement shall continue to remain in effect as an Agreement between the City of Emeryville and the City Attorney.

Section 20. General Provisions

- A. The text herein shall constitute the entire Agreement between the Parties.
- B. This Agreement shall become effective upon execution by the Parties hereto.

Date: 03/06/2024, 2024

**Management of Emeryville Services
Authority/City of Emeryville City Council**

DocuSigned by:


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COURTNEY WELCH Chair of Board of
Directors/Mayor

Date: 02/29/2024, 2024

City Attorney
DocuSigned by:
John Kennedy

JOHN KENNEDY