

RESOLUTION NO. 21-105

Resolution Of The City Council Of The City Of Emeryville Approving And Consenting To An Agreement Of Employment Between The Management Of Emeryville Services Authority (MESA) And Christine S. Daniel As City Manager And Authorizing The Chair Of The Board Of Directors To Execute Said Agreement On Behalf Of MESA

WHEREAS, on January 20, 1998, the City of Emeryville and Emeryville Redevelopment Agency adopted a Joint Powers Agreement to create the Management of Emeryville Services Authority ("MESA"); and

WHEREAS, on June 2, 1998, the City of Emeryville and MESA entered into an Operating Agreement whereby certain non-public safety classifications of employees of the City of Emeryville, including that of City Manager, were transferred to MESA and thereafter have been employees of MESA; and

WHEREAS, the MESA employees within the classifications delineated in Section 2 of the Operating Agreement, including that of City Manager, provide certain management, administrative, special or general personnel services to the City; and

WHEREAS, the position of City Manager of the City of Emeryville also fulfills duties as City Manager for the City of Emeryville Successor Agency, Executive Director of the Emeryville Public Financing Authority, Executive Director of the Emeryville Community Development Commission, and Executive Director of the Management of Emeryville Services Authority (MESA); and

WHEREAS, Section 4.F of the Operating Agreement between MESA and the City of Emeryville provides that the City shall "provide all hiring, disciplinary and general personnel administration for MESA and its employees"; and

WHEREAS, the City Council of the City of Emeryville and the MESA Board of Directors, through their designated representatives, and Christine S. Daniel, have negotiated the terms of an Agreement of Employment for a two-year term commencing September 25, 2021, as set forth in Exhibit A attached hereto; now, therefore, be it

RESOLVED, that the City Council of the City of Emeryville hereby approves and consents to an Agreement of Employment between the Management of Emeryville Services Authority and Christine S. Daniel as City Manager, for a two (2) year period commencing September 25, 2021, in the form attached hereto as Exhibit A.

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ADOPTED, by the City Council of the City of Emeryville at a regular meeting held Monday, September 13, 2021, by the following vote:

AYES:	<u>4</u>	Mayor Martinez, Vice Mayor Donahue, and Council Members Bauters and Medina
NOES:	<u>0</u>	
ABSTAIN:	<u>0</u>	
ABSENT:	<u>0</u>	

DocuSigned by:

Dianne Martinez

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MAYOR

ATTEST:

DocuSigned by:

Sheri Hartz

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CITY CLERK

APPROVED AS TO FORM:

DocuSigned by:

Andrea Visveshwara

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INTERIM CITY ATTORNEY

AGREEMENT OF EMPLOYMENT BETWEEN THE MANAGEMENT OF EMERYVILLE SERVICES AUTHORITY AND CHRISTINE S. DANIEL

THIS AGREEMENT OF EMPLOYMENT ("Agreement") is entered effective the 25th DAY OF SEPTEMBER 2021 (THE "EFFECTIVE DATE"), by and between the MANAGEMENT OF EMERYVILLE SERVICES AUTHORITY, hereinafter referred to as the "Authority", and CHRISTINE S. DANIEL, hereinafter referred to as the "City Manager", each a "Party," and collectively the "Parties."

Section 1. Duties

The Authority agrees to employ Christine S. Daniel to serve as the City Manager of the City of Emeryville, City Manager of the City of Emeryville Successor Agency, Executive Director of the Emeryville Public Financing Authority, Executive Director of the Emeryville Community Development Commission, and Executive Director 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, Community Development Commission and Authority shall from time to time assign. The City Manager agrees that, to the best of her ability and experience, she will, at all times, loyally and conscientiously perform all of the duties and obligations required of her, either expressly or implicitly by the terms of the Agreement.

Section 2. Term

City Manager shall be retained by the Authority to perform the duties described in Section 1 above for a two (2) year period, commencing September 25, 2021, and agrees to remain in the employ of the Authority during the term of this Agreement. 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.

Section 3. At-Will

City Manager understands and acknowledges that she 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 affirmative votes of the Board of Directors of the Authority. Notwithstanding the foregoing, it is also understood and agreed that the City Manager shall be retained for a minimum of three (3) 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 Manager's performance. In the event the City Manager is terminated by the Board of Directors before expiration of the term of employment and during such time that the City Manager is willing and able to perform her duties under this Agreement, then in that event the Authority agrees to pay the City Manager 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 Manager's leave balance; and (iii) the cash value of sixty percent (60%) of accrued, but unused, sick leave credited to the City Manager's leave balance. Said cash payments shall be paid, at the option of the City Manager, 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 Manager or Expiration of Term. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City Manager to resign at any time from her position upon giving sixty (60) days prior written notice to the Authority. In the event the City Manager resigns from her position with the Authority or the term of this Agreement expires and no successor agreement is entered into between the Authority and City Manager, then in that event the Authority agrees to pay the City Manager 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 Manager's leave balance; plus (ii) the cash value of sixty percent (60%) of accrued, but unused, sick leave credited to the City Manager's leave balance. Said cash payments shall be paid, at the option of the City Manager, 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 Authority and City Manager shall use good faith efforts to meet on or about the annual anniversary date of this Agreement in a closed session for the purpose of evaluating the performance of the City Manager in meeting agreed upon goals and objectives. The second annual performance evaluation shall coincide with the negotiation and consideration of a new contract 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 member of the Authority which could give rise to discipline or dismissal of the City Manager or which amount to complaints or charges against the City Manager to be brought to the attention of the Authority and City Manager first in a closed session as provided by California Government Code Section 54957.

Section 6. Salary

The Authority agrees to pay the City Manager for her services rendered a base salary of Nineteen Thousand Three Hundred Seventy Seven Dollars (\$19,377) per month, payable in installments at the same time as other employees of the Authority

are paid. In recognition of accomplishment of objectives, as a component of the annual evaluation of the performance of the City Manager, the Authority may grant the City Manager an increase to said base salary.

Section 7. Expenses

The Authority shall pay the City Manager 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 Manager commencing September 25, 2021, 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 Manager. 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 Manager shall accrue four (4) weeks of vacation leave and three (3) weeks of sick leave per year; additionally, the City Manager shall be credited with eighty (80) hours of administrative leave July 1st of each fiscal year with no carry-over provision.

Section 10. Public Employees Retirement System

The Authority will provide for participation of the City Manager 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 Manager is a "classic member" as provided by the Public Employee Retirement Law ("PERL"). If the City Manager is determined to be a "new member" under the PERL, the Authority will provide for participation of the City Manager 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 Manager 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 Manager. 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 Manager and credited to the City Manager'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 City related business expenses of the City Manager. This shall include, but not necessarily be limited to, City Manager's necessary membership dues, travel and living expenses while representing the Authority at the International City/County Management Association and League of California Cities conferences, conferences of the City Manager's Department of the League of California Cities and conferences and meetings of committees or commissions upon which the City Manager 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 Manager to carry out her professional responsibilities.

Section 12. Group Insurance Coverage

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

Section 13. Indemnification

The Authority shall defend, hold harmless and indemnify the City Manager 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 Manager's duties.

Section 14. Bonding

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

Section 15. Abuse of Office.

If the Authority provides (i) paid leave salary to the City Manager pending an investigation, (ii) funds for the legal criminal defense of the City Manager, or (iii) severance pay to the City Manager in accordance with Section 4.A.(i) hereof, then in the event the City Manager is convicted of a crime involving an abuse of her office or position as defined in California Government Code Section 53243.4, all such sums paid by the Authority to the City Manager or for the City Manager's benefit shall be fully reimbursed to the Authority by the City Manager.

Section 16. Other Terms and Conditions of Employment

The Board of Directors, in consultation with the City Manager, 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 Manager, 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 17. 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 Manager.

Section 18. 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 19. Mediation

The Parties agree that if a dispute arises between them that in any way related 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, each Party shall be responsible for their own attorney fees, costs and expenses.

Section 20. General Provisions

A. The text herein shall constitute the entire Agreement between the Parties.

B. This Agreement is executed by the parties as of the date noted below and effective as of the date set forth above.

Management of Emeryville Services Authority

Date: September ____, 2021


Dianne Martinez, Chair of Board of Directors

City Manager

Date: September ____, 2021

Christine Daniel

Approved As To Form:

DocuSigned by:

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Andrea Visveshwara

Interim General Counsel