

## **EMPLOYMENT CONTRACT WITH DANIEL BARROS**

This Employment Contract ("Contract") is made and entered into by and between the Town of Colma, a municipal corporation and general law city ("Employer"), and Daniel Barros ("Employee" or "City Manager"), who are sometimes individually referred to as a "Party" and collectively as "Parties" in this Contract. For reference purposes, this Contract is effective August 21, 2023.

**1. Recitals.** This Contract is made with reference to the following facts:

- (a) Employer desires to employ the services of Employee as City Manager, as provided by the Municipal Code of the Town of Colma and by the laws of the State of California; and
- (b) Employee desires to serve as City Manager of the Town of Colma on the terms and conditions set forth herein.

**2. Employment and Duties**

- (a) Beginning August 21, 2023, Employer shall employ Employee as City Manager on the terms and conditions set forth herein, and Employee shall serve in said employment on these terms and conditions. Employment under this Contract shall continue until either party gives notice of termination as provided below.
- (b) Employee shall perform the functions and duties of a City Manager, as specified in the laws of the State of California and the ordinances and resolutions of the Town of Colma. Employee shall also perform such other legally permissible and proper duties and functions as the City Council shall, from time to time, assign.
- (c) Employee is expected to devote necessary time, within and outside normal business hours, to the business of the Town and to fulfill the duties of the City Manager, and Employee shall be allowed flexibility in setting his own office hours to accommodate such activities.
- (d) Employee has a duty of loyalty and a general fiduciary duty to the Town. Employee shall devote the whole of Employee's working time, skill, experience, knowledge, ability, labor, energy, attention and best effort exclusively to the Town's business and affairs. Employee shall remain in the exclusive employ of Employer until termination of employment as hereinafter provided
- (e) 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 or which interferes with the performance of Employee's duties to the Town. Further, Employee shall not, during the term of this Agreement, engage in any activity which is or may become a conflict of interest, prohibited contract, or which may create an incompatibility of office under California law. Employee will complete annual disclosure forms required by law.

(f) Employee is encouraged to continue his education in his role as City Manager. On reasonable notice to the City Council, Employee may, and is highly encouraged, to attend conferences, professional development meetings and conventions as a part of his duties, provided that the subject matter is related to Employee's duties and that attendance does not unduly interfere with performance of his regular duties.

(g) The City Manager shall be subject to and shall comply with the standards of conduct and ethical principles set forth in the Town's ordinances and resolutions, and with the ICMA Code of Ethics, a copy of which is attached as Exhibit A.

### **3. City Council Commitments**

(a) *Annual Strategic Plan Workshops.* The City Council recognizes that to meet the challenges facing the Town, it must exercise decisive policy leadership. As one step in carrying out this leadership responsibility, the City Council commits to spending time each year outside of regular City Council meetings to work with the City Manager and staff on creating and revisiting the Town's strategic plan, setting goals and priorities for the City government, and working on issues that may be inhibiting the maximum achievement of the Town's goals. Each year, between January 1 and March 31, the City Council and the City Manager shall meet at an Annual Strategic Plan Workshop to review the City's existing Strategic Plan, review and establish goals and priorities for the City Manager to implement prior to the City Manager's annual performance evaluation or such other dates as determined in the course of the meeting, and to establish a relative priority among those goals and objectives within the Strategic Plan.

(b) *Performance Evaluations.* After the first six months of employment, the City Council shall conduct a performance evaluation of the City Manager. In 2024, the City Council shall conduct a performance evaluation on or around the one year anniversary date of this agreement. Thereafter, beginning in 2025, the City Council shall meet with the Employee each May to evaluate his performance, discuss performance expectations and other objectives, and consider an increase in his base salary. The annual performance review and evaluation shall be in accordance with specific criteria developed jointly by the City Council and the City Manager during the strategic planning and goal setting workshops. Such criteria may from time to time be added to or deleted as the City Council determines in consultation with the City Manager.

(c) *Standards of Conduct and Ethics.* Neither the City Council nor any of its members will give the City Manager any order, direction, or request that would require the City Manager to violate the ICMA Code of Ethics or the City Council Protocols set forth in the Colma Administrative Code, subchapter 1.02, as amended from time to time.

### **4. Salary and Benefits**

(a) *Salary.* Employer shall pay Employee a salary of \$240,000 per year, or such greater amount as may hereafter be approved by the City Council, which shall be subject to all appropriate deductions and withholdings, and which shall be paid at the same time and in the same manner as salaries are usually paid to Miscellaneous Employees of the Town.

(b) *Deductions. CalPERS Contribution and Employment Taxes.* Employee shall be responsible for, and shall pay by deduction from Employee's pay check, Employee's contributions to the California Public Employees' Retirement System (Cal PERS) and all employment taxes to be paid by law by Employee including, but not limited to, the Federal Insurance Contributions Act (FICA), the Federal Unemployment Act (FUTA), and the State Unemployment Insurance Act (SUI).

(c) *No Reduction.* Employer shall not, at any time during this Contract, reduce the salary, compensation or other financial benefits of Employee except to the degree of such reduction across the board for all employees of Employer who are classified as "Local Miscellaneous Members" of the California Public Employees Retirement System.

(d) *Catch-all.* Except as specifically provided herein, Employee shall be entitled to receive all benefits of employment generally available to Employer's other executive and managerial employees when and as he becomes eligible for them. With regard to vacation leave, Employer is acknowledging Employee's years of service at other public agencies, and Employee shall accrue vacation leave at the rate of 120 hours per year from the effective date of this Agreement through the fifth year of continuous service, or through August of 2028. Employee shall not be eligible to accrue a higher amount of vacation leave until the beginning of the sixth year of service.

(e) *Bonds.* Employer shall pay the cost of any employment bonds required for Employee by Employer.

(f) *Reservation of Rights.* Employer reserves the right to modify, suspend or discontinue any and all benefit plans, policies, and practices at any time without notice to or recourse by Employee, so long as such action is taken generally across the board for all employees of Employer.

(g) *Auto Allowance.* Employer shall provide Employee an auto allowance of \$300 per month for traveling to meetings, events, conferences and workshops.

## **5. Expenses and Allowances**

(a) *Expense Policies.* Town shall pay for or provide the City Manager reimbursement for all actual business expenses consistent with Government Code section 53234 et seq., also known as "AB 1234" and subchapter 3.07 of the Colma Administrative Code.

(b) *Professional Development.* Employer shall pay for subscriptions, dues and membership fees and similar expenses to local, state and national professional associations and the International City Manager's Association (ICMA). Payment or reimbursement of reasonable travel, lodging and meals incurred in connection with attendance at professional meetings is subject to an annual limit of \$3,000.00, or such higher amount as may be approval by the City Council either through approval of the expense as a budget item or specific approval of a particular event.

(c) *Technology.* Employer shall, at Employer's expense, provide Employee with a Town-paid cell phone and laptop and Town associated phone and data plans.

**6. Personnel Policies and Procedures Manual**

(a) Except as explicitly provided to the contrary in this Contract, all provisions of the Town of Colma Personnel Policies and Procedures Manual in effect from time to time will be applicable to the City Manager.

(b) Employer may take disciplinary action relating to Employee without following the procedures set forth in the Colma Personnel Policies and Procedures Manual for imposing discipline. Nothing herein is intended to authorize any disciplinary action that would change Employee's status as an exempt employee under federal or state employment laws or as an at-will employee.

**7. City Treasurer**

(a) Employer may also appoint Employee as City Treasurer of the Town to perform the functions and duties specified in the Municipal Code of the Town of Colma and to perform other legally permissible and proper duties and functions as the City Council shall, from time to time, assign. There shall be no additional compensation for services as City Treasurer.

(b) Notwithstanding any other provision in this Contract, Employer may terminate Employee as City Treasurer at any time, and Employee shall not be entitled to any severance pay upon such termination.

**8. At-will Employment; Termination by Employer; Severance Pay**

(a) *At-will.* Notwithstanding any Town ordinance, resolution, or policy, this employment is "at-will," which may be terminated by either party, with or without notice, and with or without cause, except as expressly provided in this Contract. 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 pleasure of the Council, and that Employee may be terminated, or asked to resign, at any time, with or without cause.

(b) *Termination for Cause.* Employer may terminate this Contract at any time for cause. No severance shall be paid in the event of termination for cause.

(i) For purposes of this Contract, "cause" shall mean willful commission of a material act of dishonesty; willful disclosure of confidential information without prior authorization by the City Council; commission of an act punishable as a felony under California law; the habitual or willful neglect of duties, commission of a material act of moral turpitude; the Town has a reasonable good faith belief that Employee has engaged in theft, embezzlement, fraud, or any other material act of dishonesty in matters affecting the Town, the inability to fully perform the essential duties of this contract due to drug or alcohol abuse; repeated and extended unexcused absences from the City Manager's office and duties; or a willful and serious violation of the Town's Standards of Conduct, as set forth in subchapter 3.03 of the Colma Administrative Code.

(ii) Employer must give written notice of its intent to terminate for cause. The Town shall provide thirty (30) days' advance notice. Within three calendar (3) days after delivery to Employee of such notice of termination for cause, Employee may, by written notification to the City Council, request a name-clearing hearing before the City Council. Thereafter, the City Council shall fix a time for the hearing, which shall be held at the usual meeting place, and should be held within thirty (30) days of receipt of the written request from Employee, at which Employee shall appear and be heard, with or without counsel. The meeting shall be informal, and shall not involve the taking of testimony. The Parties agree that the purpose of this hearing is to allow Employee to present any "name-clearing" information he wishes to provide. The City Council has the sole and absolute discretion to terminate, and its action shall be final and binding and shall not depend upon any particular showing or degree of proof at the hearing.

(c) *Severance Pay.* If the City Council terminates Employee's employment without cause or requests the Employee's resignation, the Town shall pay Employee, on the effective date of termination, a lump sum cash payment equal to the Employee's base salary for six months, and shall pay COBRA premiums for medical and dental insurance for six months or until Employee becomes re-employed, whichever occurs first. The Employee's base salary shall be determined without regard to the value of any benefits provided to Employee. This Agreement shall be deemed to incorporate by reference the provisions of Sections 53260 et seq., concerning the maximum cash settlement in an employment contract, and Sections 53243 et seq. of the Government Code, limiting and/or restricting payment or continued retention of severance payments and/or legal criminal defense payments should Employee be convicted of a crime involving an abuse of office or position, as these sections may be amended or renumbered.

## **9. Termination by Employee**

(a) *Notice.* Subject to the limitation hereinafter set forth in this section, the Employee may resign at any time from the Employee's position with Employer upon giving the City Council at least thirty (30) days' notice in writing of Employee's intention to resign. No severance shall be paid in the event of Employee's voluntary resignation or retirement.

(b) *Not in May.* Notwithstanding the foregoing, Employee agrees that voluntary resignation shall not take effect during the month of May, unless the City Council expressly agrees thereto. The purpose of this restriction is to minimize disruption to year-end budget planning.

(c) *No Personal Leave.* During the 30-day period after giving notice of termination, Employee agrees not to take any vacation leave or management leave without the express consent of the City Council. Employee further agrees, during said period, to assist in transition of duties to the new City Manager as may be directed by the City Council.

(d) *No Other Restrictions.* Nothing in this Contract shall prevent, limit, or otherwise interfere with the right of the Employee to resign at any time from such position with Employer, subject only to the provisions set forth in this Contract.

**10. Notice**

Any notice required or permitted to be given under this Contract shall be sufficient if in writing and if sent by first class mail, postage prepaid, to Employee’s residence in the case of the Employee, or to the City Attorney or to the Mayor in the case of the Employer.

**11. Waiver of Terms**

A waiver of any of the terms and conditions hereof shall not be construed as a general waiver by Employer, and the Employer shall be free to reinstate such part or clause.

**12. Applicable Law**

This Contract shall be governed by and shall be construed in accordance with the laws of the State of California.

**13. Disputes**

Any dispute that arises under or relates to this Contract (whether contract, tort, or both) shall be resolved in a court of competent jurisdiction located in San Mateo County. If an action is commenced by either party in connection with this Contract the prevailing party shall be entitled to an award of reasonable attorneys' fees

**14. Investigation and Advice**

Employee acknowledges that he has fully and independently apprized himself of the facts prior to entering into this contract and that he has been given a reasonable opportunity to consult with an attorney of his own choosing. Employee acknowledges that he has not received legal advice from the City Attorney and is not relying on any statements or representations of the Town.

**15. Entire Contract**


This instrument supersedes all prior contracts between the parties and contains the entire contract of the parties. It may not be changed orally but only by an amendment in writing signed by the party (and, with respect to Employer, approved by the City Council) against whom enforcement of any waiver, change, modification, extension or discharge is sought.

**Execution.** In Witness thereof, the parties hereto have signed this Contract on the respective dates shown below.

Dated 8/16/23

  
Daniel Barros, Employee

Dated: 8/17/23

TOWN OF COLMA (Employer)  
By   
Joanne del Rosario, Mayor