

EMPLOYMENT AGREEMENT

Michelle Sutherland – Administrative Services Director

THIS AGREEMENT is entered into as of the ___ day of September 2023, by and between the CITY OF TUMWATER, a non-charter optional municipal code city, hereinafter referred to as “City”, and Michele Sutherland, hereinafter referred to as “Employee”. For the mutual benefits to be derived, City and Employee hereby agree as follows:

WHEREAS, the City desires to employ the services of the Employee as the Administrative Services Director for the City of Tumwater, as provided by Tumwater Municipal Code (TMC) 2.10.100 and the Revised Code of Washington 35A.12.020, and as hereafter amended, respectively; and

WHEREAS, it is the desire of the Council and Mayor of the City of Tumwater to provide certain benefits, establish benefits, establish certain conditions of employment, and set working conditions of the City; and

WHEREAS, it is the desire of the City to: 1) secure and retain the services of the Employee and provide inducement for Employee to remain in such employment; 2) ensure Employee’s peace of mind with future security; 3) promote high standards for ethical behavior; and 4) provide a just means for termination of Employee services at such time as Employee may be unable to fully discharge Employee’s duties or when the City desires to terminate Employee’s employment; and

WHEREAS, the Employee desires to accept employment as the Administrative Services Director for the City of Tumwater, Washington;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the City and Employee agree to as follows:

Section 1. Commencement of Employment. The City hereby agrees to employ Employee as the Administrative Services Director, and Employee hereby agrees to accept employment in accordance with the terms and provisions of this Agreement hereinafter set forth. Employee agrees to commence employment with the City on October 2, 2023.

Section 2. Duties. Employee shall perform all duties of the Administrative Services Director as set forth in the job description (attachment “A”), the City’s Personnel/Operating Policies, and other duties as may be assigned from time to time by the City Administrator or Mayor.

Section 3. Term. Although employment is “at will” and nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City to terminate the services of Employee at any time for just cause, it is the intent of both parties that the initial term of this Agreement be three (3) years. This Agreement shall be effective as specified herein upon signature by the Mayor and shall continue until terminated as provided by law or by provisions of this Agreement. After the initial term of the Agreement, the Employee and the City agree to have the option to renegotiate the terms and conditions of this Agreement; however, if neither party exercises that option, the terms and conditions of this Agreement shall remain in effect.

Section 4. Separation.

A. Employment is “at will”, and this Agreement is for an indefinite term of employment, with no guaranteed tenure.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City to terminate the services of the Employee at any time.

C. Employee’s employment under this agreement may be terminated upon the occurrence of any one of the following:

1. If Employee has been permanently disabled or is otherwise unable to perform their duties because of illness, accident, injury, mental incapacity or health or other disability and is unable to perform their normal duties for a four (4) month period (unless a longer time period is otherwise agreed to by the Mayor) provided; however, this provision shall not be construed to obligate the CITY to compensate Employee during any period of incapacity beyond accumulated sick leave and vacation time, per the City of Tumwater Policy Manual. In the event of disability or inability to perform under this section the provision of 4(D) shall not apply.

2. By the Employee upon thirty (30) days advance written notice to the City. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Employee to resign at any time from their position, subject only to the provisions set forth in this Agreement. In the event of a resignation under this subsection, the provisions of 4(D) shall not apply.

3. Immediately by City for cause. For purposes of this subparagraph, “cause” means Employee’s conviction of any criminal act, or the occurrence of any of the events as set forth in City of Tumwater Policy Manual, Personnel Policy Section 4.07.01(1). In the event of termination for cause, the provision of Section 4(D) shall not apply.

4. Upon City's written notice of termination to Employee, City may implement such termination as a matter of right without cause, provided that the severance provisions of Section 4(D) shall apply.

D. In the event Employee is terminated by the Mayor pursuant to the provisions of 4(C)(4) of this Agreement, City shall at its option, maintain Employee's employment status for three (3) months or, alternatively, immediately relieve Employee of duty and pay Employee a lump sum cash payment equal to three (3) months' pay. The City agrees to pay Employee any unused sick leave and vacation leave consistent with City policy. Employee agrees to immediately return to City all the City's property of any kind which may be in Employee's possession.

Section 5. Salary – Performance Review. The starting salary for Employee shall be a monthly salary of Eleven Thousand Nine Hundred and Four Dollars (\$11,904.00) (Grade 80, Step 4), which salary shall be paid in accordance with the normal and usual procedure for payment of employees of the City. Employee shall be entitled to receive annual cost-of-living increases based on the percentage of increase provided to other exempt employees. Employee's performance evaluation will be conducted jointly by the Employee and City Administrator or Mayor, at least annually and more frequently if required by the City Administrator or Mayor, or if requested by Employee. Employee will be eligible for annual step increases (if the salary range for the Employee's position would allow) on the Employee's anniversary date upon the completion of a satisfactory performance evaluation.

Section 6. Hours of Work. Employee's work schedule shall be a minimum of forty (40) hours per week. Employee is an exempt employee under the terms of the Fair Labor Standards Act and shall not be compensated for overtime work. Employee's schedule of work each day and week shall vary in accordance with the work required to be performed including such time as may be necessary outside normal office hours. Therefore, Employee will be allowed administrative leave during normal hours subject to approval by the City Administrator or Mayor.

Section 7. Benefits. The following benefits shall be provided to Employee:

A. Sick Leave. Employee shall start with forty (40) hours of banked sick leave. Employee shall be provided one (1) day of sick leave per month as provided for employees of the City in accordance with the Policy Manual and all other related documents.

B. Holidays. Employee shall be entitled to take such paid holidays as are established by the City for exempt employees (currently twelve (12) days) as identified within the City's Personnel Policy.

C. Vacation. Employee shall start with eighty (80) hours of banked vacation leave. Upon employment, Employee shall accrue vacation leave at a rate of twelve (12) hours per month and increase according to City policy.

D. Medical Benefits. The Employee will receive medical benefits as provided for employees of the City as provided in accordance with the Policy manual.

E. Retirement and Deferred Compensation. Employee shall be enrolled in the applicable retirement system available to Employee pursuant to the laws of the State of Washington. Both the City and Employee shall make the contributions that are required to be made in accordance with the applicable laws of the State of Washington. The City shall pay the Employer's contribution towards the Employee's federal social security benefits. The City shall make available to the Employee voluntary deferred compensation plans for long-term savings for retirement.

F. Work Related Expenses. Employee shall be reimbursed for work-related expenses the same as other employees as provided by the City's Personnel/Operating Policies. City shall provide and pay for a cell phone and a laptop computer for business use only.

G. Professional Development. The City agrees to pay the expenses of Employee attending professional association meetings and conferences subject to scheduling and approval by the City Administrator or Mayor and to the extent budget funds are approved by the City Council, including such meetings and conferences necessary to maintain professional certifications. The City further agrees to pay annual dues necessary to maintain professional certifications/licenses.

Section 8. Professional Liability. City agrees to defend, hold harmless, and indemnify Employee from all demands, claims, suits, acts, errors, or other omissions in legal proceedings brought against Employee in Employee's individual capacity, or in Employee's official capacity, provided the incident arose while Employee was acting within the scope of Employee's employment. This indemnity and hold harmless agreement shall not apply to any dishonest, fraudulent, criminal or malicious act of the Employee or to any act of the Employee which is not performed on behalf of the City or which is outside the scope of Employee's service or employment with the City. This promise to indemnify includes the reasonable costs of defense by counsel of the City's choosing. In the event that the City Council of the City of Tumwater adopts an indemnification ordinance of general application for City officers and employees, this provision shall be void and the ordinance shall control.

Section 9. General Provisions.

A. This Agreement constitutes the entire agreement between the parties, and both parties acknowledge that there are no other agreements, oral or otherwise.

B. The parties hereby further agree that this Agreement cannot be amended or modified without the written concurrence of both parties; provided, however, that nothing herein shall be interpreted to limit or prohibit the City from adopting personnel rules and policies and otherwise establishing standards for the Employee's performance. In the event of conflict between such rules and this Agreement, this Agreement shall control except as provided in Section 8 above.

C. If any provision of this Agreement is held to be unconstitutional or otherwise invalid for any reason, or should any portion of this Agreement be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of the Agreement or its application.

D. Notice. Any written notices required to be given by the City to Employee, or by Employee to the City, shall be delivered to the following parties at the following addresses:

1. City of Tumwater
Mayor's or City Administrator's Office
555 Israel Road SW
Tumwater, WA 98501

2. Michelle Sutherland
1752 Skyline Ridge Lane SW
Tumwater, WA 98512

Any notices may be either delivered personally to the addressee of the notice or may be deposited in the United States mails, postage prepaid, to the address set forth above. Any notice so posted in the United States mail shall be deemed received three (3) days after the date of mailing.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed and executed as of this _____ day of _____, 2023.

CITY OF TUMWATER

EMPLOYEE

Debbie Sullivan, Mayor

Michelle Sutherland

Attest:

Approved as to form:

Melody Valiant, City Clerk

Karen Kirkpatrick, City Attorney