

## EMPLOYMENT AGREEMENT

**THIS AGREEMENT**, is made and entered into this 19<sup>th</sup> day of ~~July~~, May, 2014 by and between the CITY OF BRISBANE, a municipal corporation ("City"), and CLAYTON L. HOLSTINE ("Employee"), who agree as follows:

### WITNESSETH:

**WHEREAS**, City desires to continue to employ Employee for the position of City Manager and to establish certain terms and conditions of employment as hereinafter set forth, including the incorporation of amendments to the prior agreement; and

**WHEREAS**, employee desires to accept such employment as City Manager, pursuant to the terms and conditions of this Agreement,

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, the parties agree as follows:

#### 1. Duties.

City hereby agrees to employ Employee as City Manager of City, to perform the functions and duties of the City Manager specified in the Brisbane Municipal Code, and as provided by state or federal law, and to perform such other duties, functions, and responsibilities as may from time to time be assigned to Employee by the Brisbane City Council.

#### 2. Hours of Work.

It is recognized that Employee must devote time outside the normal office hours to conduct business of the City. Accordingly, Employee agrees to devote his full time and attention to the performance of Employee's responsibilities as City Manager and shall not engage in any other employment or the conduct of any other business during the term of this Agreement without prior approval having been granted by the Brisbane City Council.

#### 3. Term.

(a) The term of this agreement shall commence on July 1, 2014. This agreement will be of indeterminate length subject to the termination clause in Section 12.

(b) Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Brisbane City Council, acting for City, to terminate the services of Employee at any time subject only to the applicable provisions set forth in Sections 12(a) of this Agreement.

(c) Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign at any time from his position as City Manager, subject only to Section 12(b) of this agreement.

#### **4. Salary.**

Commencing on July 1, 2014 the bi-weekly base salary will be \$8,270.19.

The City Council will annually consider a cost-of-living adjustment for the employee to be effective with the first full pay period after July 1st of each ensuing year.

Additionally, commencing no later than March 30, 2016 the City shall conduct a survey of salaries for the City Manager or Chief Administrative Officer of selected cities in the San Francisco Bay Area. Cities will be chosen based on comparability with Brisbane and will be mutually agreed upon by the City and Employee. Criteria for selecting comparable cities will consist of the following; size of the City, residential and commercial; provision of a full array of city services; relevant issues such as planning, financial challenges, etc. The City and the Employee will use this data as well as other criteria such as job performance and experience to negotiate appropriate salary adjustment. This evaluation will take place every two years commencing in 2016. The parties agree to negotiate in good faith and implement a salary adjustment to be effective by January 1, 2017 and January 1, 2019 based on this process as is appropriate.

#### **5. Performance and Salary Reviews.**

(a) Employee and City Council shall meet annually in closed session to conduct a performance evaluation. Employee shall provide a written report to the Council prior to the session. The written report shall outline performance criteria and accomplishments, the status of the organization, organizational issues including but not limited to departmental performance, staffing, budgetary, planning and other issues the employee or the Council in consultation with the employee believe need to be addressed and/or discussed.

(b) As part of providing policy direction and leadership to the City and the City Manager, the City Council agrees to participate in an annual goal setting and priority identification workshop with the City Manager.

#### **6. Vacation and Leave Time.**

Employee shall be entitled to the same vacation, administrative, holidays, longevity and sick leave as provided to full-time department heads of the City of Brisbane, in accordance with the Memorandum of Understanding as negotiated from time to time between such department heads and the City. For the purposes of accounting, for sick leave and vacation these hours will be merged into one bank of time called personal leave.

#### **7. Insurance, Retirement Benefits and Management Incentive.**

(a) Coverage. Employee shall be provided with the same dental, vision, employee assistance program, long-term disability, and life insurance coverage, as well as the same management incentive plans provided to full-time department heads of the City of Brisbane, in accordance with the Memorandum of Understanding as negotiated from time to time between such department heads and the City.

(b) Medical Benefits. City shall make the monthly contributions for Employee's health insurance coverage in an amount equal to the cost of the medical plans he selects under the CalPERS Health Benefits Programs Coverage shall include Employee's eligible dependents if he so elects. If Employee selects the "No Plan" option, City shall contribute a sum equal to "employee only" contribution for the least expensive plan offered by the CalPERS Health Benefits Program".

(c) Public Employees' Retirement System. City shall make the employer contributions on behalf of Employee to the California Public Employees' Retirement System, pursuant to the 2.7% at 55 formula retirement plan. In the event CalPERS offers an improved retirement program and such program is adopted by City for department heads (the non-safety employee group), the same benefit shall be provided to the Employee.

(d) Supplemental Retirement Benefits. The City contracted with Public Agency Retirement Services (PARS) in 2005 for a benefit that provides a 1% at 63 formula for the Employee, and the City will pay all required contributions to the PARS Plan for Employee.

(e) Supplemental Stipend. In recognition of long-term service with the City of Brisbane, Employee upon retirement will be paid a stipend that is equal to the premium rate charged the City by the lowest cost PPO plan. All of the following conditions shall be met for the employee to be eligible to receive this benefit:

- (i) The Employee has a total of 10 years or more municipal government experience with the City of Brisbane. The Employee retires from service with the City of Brisbane.
- (ii) The effective date of retirement is within one hundred and twenty (120) days of separation from the City of Brisbane.

In addition, it is agreed that the Employee will no longer be eligible for such stipend should the Employee elect to be covered by another medical plan other than that provided at the time of retirement. Medicare for the purposes of this Article is not considered another medical plan except at the time the retired Employee is covered by Medicare, the stipend will be equal to the cost the City would need to pay for Medicare part B coverage. In addition, the Employee that is participating in a medical plan through PERS Health may elect during the annual open enrollment another health plan through PERS Health without losing their eligibility for such stipend. Furthermore, it is agreed that should the Employee waive his participation in the supplemental stipend program, it shall be irrevocable.

## **8. Place of Residence, City Loans.**

(a) It is understood and agreed between the parties that Employee will maintain his permanent place of residence within the City of Brisbane.

(b) The City has provided a housing loan to the employee since 2008. The loan consists of two parts. First is an amortized loan that was initially issued for \$300,000 and as of July 4, 2014 has a balance of \$257,411, with an interest rate of 2.25%. The second part is a 20% equity share in the employee's home. The equity share value was \$200,000 at the time of

the loan. The employee has guaranteed repayment of no less than the \$200,000 loan regardless of the value of the home. All of the amortized loan, except for \$30,000 is secured by the property. That \$30,000 along with the 20% equity/\$200,000 is secured by the employees 457 Plan retirement funds (held in trust by the City) as well as the employees PARS plan (also held in trust by the City).

The employee may pay part or all of these loans off at any time without penalty. If the equity share is paid off at the time of a sale of the property then the sale price will determine the calculation for the 20% value. If it is paid off prior to sale of the house then the parties will mutually select an appraiser and agree to use the appraisal number. All loans and equity shares shall be paid in full within 6 months of the end of the employees employment with the City. If the City terminates the employee then the employee has one year to make full payment.

The City Attorney shall prepare and negotiate any required loan documents with the employee. Loan documents shall be maintained in the City Clerks office.

#### **9. Dues and Subscriptions.**

Subject to prior budgetary approval by City, City agrees to pay for the professional dues and subscriptions of Employee necessary for full participation in national, regional, state, and local organizations necessary and desirable for continued professional participation, growth, and advancement, and for the good of the City. This includes membership in the International City and County Managers Associations.

#### **10. Professional Development.**

(a) Subject to prior budgetary approval by City, City agrees to pay the travel and subsistence expenses of Employee for professional and official travel, meetings and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official and other functions for City.

(b) Subject to prior budgetary approval by City, City agrees to pay for the travel and subsistence expenses of Employee for short courses, institutes and seminars that are necessary for his professional development and for the good of the City, consistent with the City's adopted policies related to travel and per diem expenses.

#### **11. Suspension.**

After consultation with Employee, City may suspend Employee with full pay and benefits at any time during the term of this Agreement. Such suspension shall not exceed 90 days.

#### **12. Termination and Severance Pay.**

(a) If the Employee is terminated by the City, the City shall provide a minimum severance payment equal to one year salary at the current rate of pay. This severance shall be paid in a lump sum unless otherwise agreed to by the City and the Employee.

The Employee shall also be compensated for all accrued personal leave time, all paid holidays, longevity leave and administrative leave.

For a minimum period of one year following termination, the City shall pay the cost to continue the following benefits:

- (i) Health, Dental and Vision Insurance for the Employee.
- (ii) Employee Assistance Program.
- (iii) Life Insurance.
- (iv) Long-term disability.
- (v) Out placement services should the Employee desire them in an amount not to exceed \$15,000.

If the Employee is terminated because of a conviction of a felony, then the City is not obligated to pay severance or benefit costs under this section.

(b) The employee may voluntarily resign his position at any time providing that he shall provide at a minimum 30 days notice. The employee will endeavor to provide as much additional notice as he may deem appropriate. The employee shall be compensated for all accrued personal leave time, all paid holidays and administrative leave.

### **13. Disability.**

If Employee is permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or health for a period of three (3) consecutive months, or sixty (60) working days over a ninety (90) working day period, City shall have the option to terminate this Agreement, subject to the City's compliance with the Family and Medical Leave Act and Americans With Disabilities Act. Termination pursuant to this Section would not subject City to payment of severance benefits as specified under Section 12 above. However, employee shall be compensated for any accrued leave time and other accrued benefits on the same basis as any other department head of the City pursuant to the applicable Memorandum of Understanding or the adopted Personnel Rules of the City.

### **14. Other Terms and Conditions of Employment.**

The City Council, in consultation with Employee, shall establish such other terms and conditions of employment as it may determine from time to time relating to the performance or compensation of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Brisbane Municipal Code, or any applicable state or federal law.

**15. Notices.**

Any notice required or permitted to be given pursuant to this Agreement shall be either personally delivered or given by deposit in the U.S. Mail, postage prepaid, addressed as follows:

EMPLOYER: Mayor and Members of the City Council  
City of Brisbane  
50 Park Lane  
Brisbane, CA 94005

EMPLOYEE: Clayton L. Holstine  
273 Santa Clara Street  
Brisbane, CA 94005

Notice shall be deemed given as of the date of personal delivery or three (3) business days after the date of deposit of such written notice in the United States Mail.

**16. General Provisions.**

(a) The text herein shall constitute the entire Agreement between the parties.

(b) This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, personal representatives, successors and assigns of the parties.

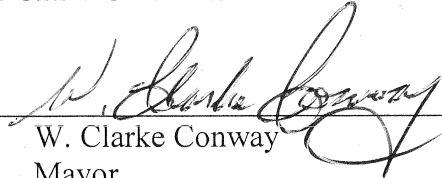
(c) This Agreement shall become effective on July 1, 2014.

(d) If any provision, or any portion thereof contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

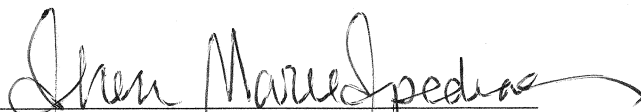
**IN WITNESS WHEREOF**, the City of Brisbane has caused this Agreement, to be signed and executed in its behalf by its Mayor, and duly attested by its City Clerk and Employee has signed and executed this Agreement, both in duplicate, the day and year first above written.

**THE CITY OF BRISBANE**

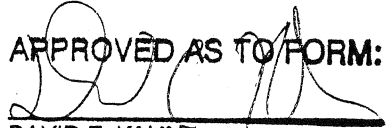
By: \_\_\_\_\_

  
W. Clarke Conway  
Mayor

ATTEST:

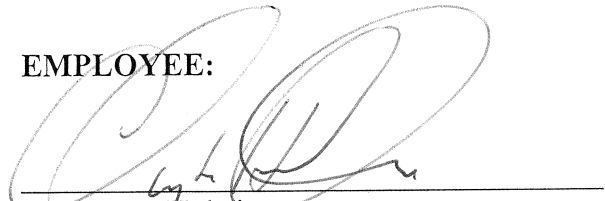
  
Sheri Marie Spediacci, City Clerk

**APPROVED AS TO FORM:**



DAVID E. KAHN  
CITY ATTORNEY

**EMPLOYEE:**



Clayton L. Holstine

<u>Agency</u>	<u>Salary Adjustments</u>
Belmont	Ranged from 2%-10% from FY2011-2014
Burlingame	Ranged from 1%-3% from FY 2011-2014
Half Moon Bay	5% increases in FY2012 and FY2013
Hillsborough	Ranged from 1.5%-2.75% for FY 2015
Redwood City	3% in FY 2015
San Bruno	3% in FY 2015
San Carlos	3% in FY 2014 and FY2015
San Mateo	Ranged from 0.75%-4% for FY 2015
San Mateo Harbor District	2.6% for FY 2015