

**CITY OF CLOVERDALE
CITY COUNCIL**

RESOLUTION NO. 036-2022

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CLOVERDALE APPROVING AN AT-WILL EMPLOYMENT AGREEMENT WITH MICHAEL MALONEY FOR THE CITY OF CLOVERDALE CITY CLERK AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY

WHEREAS, the City Council recognizes that the City Clerk is a critical role in the City’s function and day to day operations; and

WHEREAS, Section 2.03.010 of the Cloverdale Municipal Code states: “The city clerk shall be appointed by the city manager, and shall hold office at the pleasure of the city manager;” and

WHEREAS, the City Clerk position may be compensated and receive benefits in accordance with an individual at-will agreement and salary as approved by the City Council; and

WHEREAS, the City initiated recruitment for a new City Clerk and top applicants were invited to interview with a Professional Panel consisting of Assistant City Manager/Community Development Director Thompson, and Finance & HR Analyst Peterson; and

WHEREAS, the Panel recommended the top candidate to the City Manager, and after an informal interview with the top candidate, the City Manager selected Mr. Maloney to fill the position of City Clerk; and

WHEREAS, Mr. Maloney is prepared to execute an individual at-will employment agreement at the salary, benefits, and conditions approved by the City Council; and

WHEREAS, the City Manager recommends that the City Council approve the at-will employment agreement and authorize the City Manager to execute the agreement.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Cloverdale hereby approves an at-will Employment Agreement with Michael Maloney as Cloverdale City Clerk, attached hereto as Exhibit A, in a form approved by the City Attorney, and authorizes the City Manager to execute the Employment Agreement.

REGULARLY PASSED AND ADOPTED by the City Council of the City of Cloverdale on this 27th day of April, 2022 by the following vote:

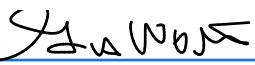
AYES: (3) Vice Mayor Wolter and Councilmembers: Bagby, Palla

NOES: (0)

ABSTAIN: (0)

ABSENT: (2) Mayor Lands and Councilmember Cruz

APPROVED:


Gus Wolter (Jun 21, 2022 16:37 PDT)
Gus Wolter, Vice Mayor

ATTEST:



David Kelley (Jun 21, 2022 16:46 PDT)
David Kelley, City Manager

Exhibit A – Employment Agreement



AT WILL EMPLOYMENT AGREEMENT

This **EMPLOYMENT AGREEMENT** (this "Agreement"), is made and entered into this _____, 2022, by and between the **CITY OF CLOVERDALE**, a general law City (the "**City**"), and Michael Maloney ("**Employee**"), collectively referred to as "**Parties.**"

RECITALS

The City desires to employ Mr. Maloney as City Clerk of the City of Cloverdale.

Mr. Maloney desires to serve as City Clerk of the City of Cloverdale.

The City Manager, through his appointing power, and Mr. Maloney, desire to agree in writing to the terms and conditions of Mr. Maloney 's employment as City Clerk.

AGREEMENT

1. DUTIES.

- a. The City agrees to employ Employee as City Clerk of the City to perform the functions and duties specified in the position description, and in the ordinances and resolutions of the City, and to perform other legally permissible and proper duties and functions as the City Manager may from time to time assign.
- b. Employee shall perform the job duties to the best of Employee's ability in accordance with the highest professional and ethical standards of the profession, and shall comply with all general rules and regulations established by the City.
- c. Employee shall not engage in any activity, which is or may become a conflict of interest, prohibited contract, or which may create an incompatibility of office as defined under California law, or that is otherwise prohibited by law. Prior to performing any services under this Agreement, and annually thereafter, Employee must complete disclosure forms required by the Political Reform Act (CA Government Code section 81000, et seq.).

2. TERM.

- a. The term of this Agreement shall be from May 2, 2022, until terminated by either Party in accordance with the provisions set forth in Section 3, or until terminated by the event of the death or permanent disability of Employee.
- b. Employee agrees to remain in the exclusive employment of the City during the term of this Agreement. Employee shall not engage in any other employment, or enter into any contract for services, paid or unpaid, or receive any compensation for work performed from any other employer other than the City, without prior authorization of the City Manager.

3. CONDITIONS OF EMPLOYMENT.

- a. Employee may resign at any time with or without cause. Employee agrees to give the City thirty (30) days' advance written notice of the effective date of Employee's resignation or retirement as provided herein, unless the Parties mutually agree otherwise.
- b. The Parties recognize and affirm that: (1) Employee is an "at will" Employee whose employment may be terminated by the City without cause; and (2) there is no express or implied promise made to Employee for any form of continued employment. This Agreement is the sole and exclusive basis for an employment relationship between Employee and the City.
- c. Termination: The City may, at any time, terminate Employee with or without cause. If the circumstances permit, the City will provide Employee with at least thirty (30) days' notice of the termination.
- d. Wages, Hours and Working Conditions:
 - i. Salary: The base compensation will be Ninety-Three Thousand, Nine Hundred, Two Dollars, and Thirty Cents (\$93,902.30) annually. This is step 1 in the adopted City Clerk Salary Schedule. Employee will receive his first performance evaluation on or by November 2, 2022, approximately six (6) months from the commencement of his employment with the City ("Initial Performance Evaluation"). At the Initial Performance Evaluation, the City Manager will determine whether to set compensation at step 2 based on a positive evaluation. After the Initial Performance Evaluation, Employee will be subject to the standard merit system (performance evaluations) and position pay schedule for future step increases, as may be modified from time to time by the City Council. Employee's salary will be reviewed during the Initial Performance Evaluation and thereafter approximately on or by the November 2nd of each year in conjunction with an annual performance evaluation.
 - ii. Work Week: A normal workweek will be a total of at least forty (40) hours. The City Manager, at his/her sole discretion, may set and modify the normal work weekly schedule without an amendment to this Agreement. Vacation, sick, holiday, administrative, and bereavement leaves will be calculated consistent with the number of days in Employee's normal workweek. If Employee's normal workweek is revised, leave accruals may be recalculated.
 - iii. Other Pay:
 1. Longevity Pay: Upon the eighth (8th) year anniversary date of employment with the City, Employee shall be entitled to a five percent (5%) increase.
 2. Retirement: The City shall provide retirement benefits under the Public Employees' Retirement System ("**PERS**") Plan two percent (2%) at fifty-five (55) for miscellaneous employees, and will pay one hundred percent (100%) of Employee contribution and "the highest twelve (12) consecutive month" benefit. Employee will pay one hundred percent (100%) of the cost of the after-added benefits of Employee's PERS Plan in existence as of July 1, 2011. This equates to two-point fifty-one percent (2.51%) of PERSable salary. All applicable provisions of the California Public Employees' Pension Reform Act ("**PEPRA**") shall apply to this Agreement.

iv. Sick Leave:

1. Accruals – Employee shall accrue sick leave at ten (10) hours for each month of service, assuming Employee’s typical work schedule is four (4), ten (10)-hour shifts per week. Accumulation of sick leave shall be limited to sixteen hundred (1,600) hours. To the extent provided by PERS regulations, any unused sick leave upon retirement may be converted to years of service for PERS purposes.
2. Incentive – Employee’s use of sick leave within a calendar year (January to December) may qualify for conversion of unused sick leave to annual leave, based upon the following utilization schedule:
 - a. Usage of 0 – 10 hours: May convert up to forty (40) hours of existing balance.
 - b. Greater than 10 and less than 20 hours: May convert up to twenty (20) hours of existing balance.
 - c. 20+ hours: May not convert hours to annual leave.

v. Vacation Leave:

1. Accruals – Vacation time shall be accrued at twenty (20) days per year (7.69 hours per pay period).
2. Accumulation – Employee shall be permitted to accumulate up to thirty-six (36) days (360 hours) of vacation time.
3. Sell-back – Employee may sell back up to forty (40) hours per year provided that, after the sell-back, a balance of at least fifty (50) hours remains.

vi. Administrative Leave:

1. Accruals: Employee is exempt from the Fair Labor Standards Act (“FLSA”) and is not eligible for overtime. Administrative leave of eighty (80) hours per calendar year will be provided in recognition for the time required for evening and weekend work. Upon employment, Employee will receive a prorated amount of administrative leave for the 2022 calendar year. Starting on January 1, 2023, Employee shall be credited the eighty (80) hours of administrative leave annually on January 1st.
2. Accumulation: Employee shall be permitted to accumulate up to eighty (80) hours of administrative leave per calendar year. The yearly allocation of administrative leave will not result in Employee going above the eighty (80) hour accumulation limit. For example, if Employee has twenty (20) hours accrued on the date of the annual disbursement of administrative leave, as specified in Section 3(d)(vi)(1) above, Employee’s accrual will only be brought up to the permitted eighty (80) hours, therefore only sixty (60) hours will be added.

vii. Holiday Leave:

1. Observed Holidays – The City offices are closed on eleven (11) observed holidays (see below). If Employee, by nature of the job, must work on a regularly scheduled holiday, Employee may convert the holiday into a floating holiday to be used, as approved by the City Manager at Employee’s discretion, within the current fiscal year. If an observed holiday occurs on Employee’s regularly

scheduled day off, Employee will make every effort to take an alternate day off during the same workweek. If this is not possible, the observed holiday will be converted into a floating holiday, as defined in section 2 below.

Holiday	Observance
New Year's Day	January 1 – Full Day
Martin Luther King, Jr. Day	3 rd Monday in January – Full Day
President's Day	3 rd Monday in February – Full Day
Memorial Day	Last Monday in May – Full Day
Independence Day	July 4 – Full Day
Labor Day	1 st Monday in September – Full Day
Veteran's Day	November 11 – Full Day
Thanksgiving Day	4 th Thursday in November (if 4 th Thursday is the last day of the month, Thanksgiving falls on Nov. 23) – Full Day
Day after Thanksgiving	Full Day
Christmas Eve	December 24 - Full Day
Christmas Day	December 25 – Full Day

2. Floating Holidays – In addition to the observed holidays, Employee shall receive four (4) floating holidays that are credited at the following times. Employee may use the floating holidays at Employee's discretion upon City Manager's approval. Floating holidays may be banked for future use, or may be converted to a dollar value based upon Employee's then current hourly rate, and paid out on a regular payroll. Employee may not carry more than eighty (80) hours of floating holiday time; hours above this limit will be paid at the next regular payroll.

Former Holiday	Floating Holiday Accrual
Lincoln's Birthday	February 12 – Full Day
Admission Day	September 9 – Full Day
Columbus Day	2 nd Monday in October – Full Day
Floating Holiday	Employee's Discretion – Full Day

- viii. Bereavement Leave: Employee shall be allowed a leave of absence with full pay for up to three (3) work days due to the death of a member of Employee's immediate family. The City Manager may grant up to three (3) additional work days' leave. For the purposes of this provision, immediate family shall include spouse, domestic partner, child (including legally adopted child), parent, grandparent, grandchild, step-parent, stepchild, sibling, step-sibling, uncle, aunt, nephew, niece, father-in-law, mother-in-law, sister-in-law, brother-in-law, son-in-law or daughter-in-law of the eligible employee. Requests for bereavement leave for persons not listed above may be granted at the discretion of the City Manager or his/her designee.

ix. Insurance:

1. Health – The City shall pay health and welfare insurance coverage as provided to all City employees through the Redwood Empire Municipal Insurance Fund,

including, but not limited to, vision care and dental care. Employee shall pay five percent (5%) of the cost of the annual medical insurance premium.

2. Long-Term Disability – The City shall provide, at the City’s expense, a long-term disability insurance benefit. Said Plan will provide a monthly benefit of sixty percent (60%) of Employee’s base salary, up to Ten Thousand Dollars (\$10,000) per month, and will provide a ninety (90) day waiting period before benefits commence.
 3. Life – The City shall provide, at the City’s expense, a term life insurance benefit to Employee in the amount of One Hundred Thousand Dollars (\$100,000).
 - x. Acting in Capacity: Employee may be called upon on an ad hoc basis to serve as Acting City Manager in City Manager’s absence. If Employee is Acting City Manager for a continued period for thirty (30) days or more, the City will pay Employee ten percent (10%) incentive pay in addition to base salary on the regular work days during which Employee is Acting City Manager.
 - xi. Mobile Phone Reimbursement: The City will reimburse Employee up to Fifty Dollars (\$50) per month for Employee’s mobile phone monthly charges. Employee must submit all appropriate forms to the Finance Director for reimbursement.
- e. Severance:
- i. Employee is an at-will employee who shall serve at the pleasure of the City Manager. The City Manager may terminate Employee’s employment at any time, for any reason or no reason. Nothing in this Agreement is intended to, or does confer upon Employee any property interest in continued employment. In the event termination occurs without cause under this Agreement, the City agrees to pay Employee as severance payment of three (3) months’ base salary. Severance shall be paid in a lump sum. Employee shall also be compensated for all earned vacation, holidays, and administrative leave accrued, but not taken as of the effective date of the termination. This severance payment is conditioned upon Employee executing a general release of all claims against the City (including its present and former officers, officials, employees, agents, volunteers, and insurers) in a form acceptable to the City. Employee shall not receive any severance if she resigns, is terminated for cause, or if a waiver and release agreement, attached hereto as Exhibit A, is not executed by the Parties.
 - ii. This provision does not confer any property rights on Employee, as she remains an at-will employee. The phrase “termination for cause” only pertains to Employee’s eligibility for severance as described in this Section. A “termination for cause” for purposes of severance may include, but shall not be limited to, the following:
 1. Violation of any policies or procedures;
 2. Failure to properly perform assigned duties;
 3. Theft of City property;
 4. Insubordination;
 5. Conviction of a felony or misdemeanor relating to Employee’s fitness to perform assigned duties;

6. Unauthorized absence from employment;
 7. Failure to maintain satisfactory working relationships with other employees or the public;
 8. Improper use of City funds;
 9. Unauthorized use of City property;
 10. Willful misconduct or malfeasance;
 11. Any act of moral turpitude or dishonesty; and/or
 12. Other failure of good behavior either during or outside of employment such that Employee's conduct causes discredit to the City.
- iii. Pursuant to Government Code section 53243.2, any cash settlement related to the termination of this Agreement received by Employee from the City shall be fully reimbursed to the City if Employee is convicted of a crime involving an abuse of her office or position as defined in California Government Code section 53243.4.
 - iv. Abuse of Office: Government Code sections 53243, 53243.1, 53243.2, and 53243.3 are incorporated by this reference as if fully set forth herein.

4. INDEMNIFICATION FOR ACTS OR OMISSIONS WITHIN THE SCOPE OF EMPLOYMENT.

The City shall provide for the defense of Employee in any action or proceeding alleging an act or omission within the scope of Employee's employment in accordance with California Government Code sections 825, 995 et seq., and other applicable law. Notwithstanding anything to the contrary in this Agreement, in accordance with California Government Code section 825, subdivision (a), the City reserves the right to not pay any judgment, compromise or settlement subject to that section until it is established that the injury arose out of an act or omission occurring within the scope of Employee's employment pursuant to this Agreement. Further, notwithstanding anything to the contrary in this Agreement, the City reserves the right to refuse to provide for the defense of Employee for the reasons set forth in California Government Code section 995.2 or other applicable provisions of law. Any City funds provided for the legal criminal defense of Employee shall be fully reimbursed in accordance with California Government Code section 53243.1 if Employee is convicted of a crime involving an abuse of her office or position as defined in California Government Code section 53243.4.

5. PROFESSIONAL DEVELOPMENT.

- a. Professional Memberships – The City will pay the annual membership dues to both the International Institute of Municipal Clerks and City Clerks Association of California, or other mutually agreed upon association(s), up to a maximum of One Thousand Dollars (\$1,000) per year.
- b. Certification/Continuing Education – The City will reimburse Employee up to a maximum of Two Thousand Dollars (\$2,000) per year for costs associated with coursework for professional certifications or other relevant professional courses related to the City Clerk position. Proof of the successful completion of the course must be provided in order to be eligible for reimbursement.
- c. Professional Conferences – The City will pay up to a maximum of Two Thousand Dollars (\$2,000) per year for attendance at one (1) annual conference related to the City Clerk position, including registration fees, travel, lodging and meals. With prior supervisory

approval, Employee may attend the conference on regular paid time. The City will consider funding other proposals on a case-by-case basis.

Funding for the professional development provisions is subject to availability.

6. OTHER TERMS AND CONDITIONS OF EMPLOYMENT.

The City Manager, in consultation with Employee, shall fix any other terms and conditions of employment, as may be determined from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with provisions of this Agreement or law, or otherwise defined in Chapter 2.08.090 of the Cloverdale Municipal Code. Certain terms and conditions of employment are subject to approval by the City Council.

7. NOTICES.

Any notices required by this Agreement shall be in writing and either given in person or by first class mail with the postage prepaid and addressed as follows:

TO CITY:

City Manager
124 N. Cloverdale Blvd
P.O. Box 217
Cloverdale, CA 95425

TO EMPLOYEE:

Michael Maloney


8. ENTIRE AGREEMENT.

This Agreement is the final expression of the complete agreement of the Parties with respect to the matters specified herein, and supersedes all prior oral or written understandings. Except as prescribed herein, this Agreement cannot be modified except by written mutual agreement signed by the Parties.

9. ASSIGNMENT.

This Agreement is not assignable by either the City or Employee.

10. SEVERABILITY.

In the event that any provision of this Agreement is finally held or determined to be illegal or void by a court having jurisdiction over the Parties, the remainder of this Agreement shall remain in full force and effect unless the parts found to be void are wholly inseparable from the remaining portion of this Agreement.

11. COUNTERPARTS.

This Agreement shall be executed simultaneously in three (3) counterparts, which shall be identified by number, and each of which shall be deemed an original, but all of which together shall constitute one (1) and the same instrument.

IN WITNESS WHEREOF, the City has caused this Agreement to be signed and executed in its behalf by its City Manager, and duly attested by the Acting City Clerk. It has also been executed by Employee.

David Kelley, City Manager

Michael Maloney, Employee

ATTEST:

Lori Frontella, Acting City Clerk

**APPROVED AS TO FORM
ON BEHALF OF THE CITY
OF CLOVERDALE:**

Jose M. Sanchez, City Attorney

EXHIBIT A
Termination without Cause
Template of General Release of All Claims against City

RELEASE OF ALL CLAIMS

This Release of All Claims is entered into by ["NAME"] and the CITY OF CLOVERDALE ("CITY") on _____.

RECITALS

WHEREAS, [NAME] is presently employed by CITY as its [TITLE], an at-will position, and may be terminated by the CITY at any time with or without cause; and

WHEREAS, the CITY has decided to terminate the employment of [NAME], or [NAME] has resigned [NAME]'s employment in lieu of termination, effective on _____, 20__; and

WHEREAS, the provisions of the employment contract between the CITY and [NAME] provide for payment of severance benefits in certain circumstances including [NAME]'S release of all claims against CITY and CITY's present and former agents, servants, employees, officials and insurers; and

WHEREAS, the CITY is under no obligation to pay severance to [NAME] without [NAME]'s full release of all claims against CITY and CITY's present and former agents, servants, employees, officials and insurers;

WHEREAS, the CITY is willing to pay said severance benefits to [NAME] upon execution of this release agreement by [NAME].

NOW THEREFORE, THE PARTIES AGREE, to enter into the following terms and agreements.

TERMS AND AGREEMENTS

1. [NAME] hereby resigns in lieu of termination (or is discharged), (herein referred to as "termination") from [NAME]'s position with the CITY effective _____, 20__.

2. For and in consideration of the terms herein described, [NAME] does hereby release and forever discharge CITY and CITY's present and former officers, officials, employees, agents, volunteers and insurers (herein referred to as "releasees") of and from all claims, demands, actions and causes of action (herein referred to as "claims") arising out of, or in any way connected with [NAME]'s employment with the CITY or the termination of [NAME]'s employment.

3. It is understood and agreed that this is a full and final release of any and all claims arising out of [NAME]'s employment with the CITY and termination of [NAME]'s employment, including any and all potential claims. [NAME] agrees as further consideration and inducement for this compromise settlement, to waive the provisions of the California Civil Code, Section 1542, which provides as follows:

"A general release does not extend to the claims which the creditor does not know or suspect to exist in [her] favor at the time of executing the release, which if known by [her] must have materially affected [her] settlement with the debtor."

4. [NAME] recognizes the possibility that [NAME] may have sustained injuries or losses in connection with [NAME]'s employment and/or termination which are not yet known, suspected or anticipated. However, in consideration as described herein, [NAME] hereby releases the aforesaid releasees of any and all claims based on such possible future developments.

5. [NAME] recognizes that this settlement is intended to, and warrants that it will, dispose of all liability of releasees to [NAME], [NAME]'s heirs, assigns, and any other person or entity that might now or in the future have a claim as a result of any injury to [NAME] as described in this release. Should any further claims be made by any person or entity for which releasees might be liable, directly or indirectly, [NAME] on behalf of [NAME] and [NAME]'s heirs and assigns agrees to and will hold harmless and indemnify releasees of and from any and all liability for such claims, including all costs, expenses and attorney's fees in defense of such claims.

6. This Agreement constitutes a comprehensive, general release of any and all claims including, without limitation, Age Discrimination in Employment Act ("ADEA") claims against releasees. [NAME] understands and acknowledges that [NAME] has been given at least 21 days to consider this release of claims under the ADEA, and that [NAME] expressly waives this 21 day notice provision. [NAME] acknowledges that [NAME] has seven days from the date [NAME] executes this settlement agreement to revoke this release under the ADEA; provided, however, that should [NAME] revoke this release, CITY may in its sole discretion rescind this entire agreement and obtain all amounts paid hereunder.

7. In exchange for the agreements and promises made in this agreement and release, CITY will pay severance to [NAME] in the amounts and types described in the contract of employment between the parties dated _____, 20__.

Dated: _____

CITY OF CLOVERDALE

By _____
Mayor

Dated: _____

[NAME]

036-2022

Final Audit Report

2022-06-21

Created:	2022-06-21
By:	Mike Maloney (Mmaloney@ci.cloverdale.ca.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAACKKF5yG9pf17QvHTNYSMTe_iTrS65ysM

"036-2022" History

-  Document created by Mike Maloney (Mmaloney@ci.cloverdale.ca.us)
2022-06-21 - 9:20:55 PM GMT
-  Document emailed to gwolter@ci.cloverdale.ca.us for signature
2022-06-21 - 9:23:20 PM GMT
-  Email viewed by gwolter@ci.cloverdale.ca.us
2022-06-21 - 11:35:59 PM GMT
-  Document e-signed by Gus Wolter (gwolter@ci.cloverdale.ca.us)
Signature Date: 2022-06-21 - 11:37:13 PM GMT - Time Source: server
-  Document emailed to David Kelley (dkelley@ci.cloverdale.ca.us) for signature
2022-06-21 - 11:37:15 PM GMT
-  Email viewed by David Kelley (dkelley@ci.cloverdale.ca.us)
2022-06-21 - 11:45:48 PM GMT
-  Document e-signed by David Kelley (dkelley@ci.cloverdale.ca.us)
Signature Date: 2022-06-21 - 11:46:15 PM GMT - Time Source: server
-  Agreement completed.
2022-06-21 - 11:46:15 PM GMT