

MEETING June 4, 2024
DATE:

SUBJECT: Resolution Approving Employment Agreement Between the City of Berkeley and LaTanya Bellow for the position of Interim City Manager

CEQA: Does not constitute a Project per California Environmental Quality Act Guidelines Section 15378

RECOMMENDATION

1. Motion to adopt Resolution approving Employment Agreement between the City of Berkeley and LaTanya Bellow for the position of Interim City Manager.
2. Alternative action based on the direction of the City Council related to this subject matter.

DISCUSSION

On May 10, 2024, the City Council appointed Mayor Jesse Arreguin as the Labor Negotiator, with duties to engage in negotiation with an Interim City Manager candidate.

Following a diligent negotiation, the City Council will discuss and consider for potential Council action a decision to appoint current Deputy City Manager LaTanya Bellow as the Interim City Manager for the City of Berkeley, subject to the parties' execution of an Employment Agreement and approval of a related Resolution.

The proposed Resolution approving such Employment Agreement and related Employment Agreement are provided as Attachment 1.

The Employment Agreement provides, among other material terms and subject to certain terms and conditions, that Ms. Bellow will receive the same rate of pay as the current City Manager Dee Williams-Ridley, who presently receives an annualized salary of \$401,722.10, that Ms. Bellow's employee benefits shall remain the same as her present benefits as Deputy City Manager, that she will commence such role effective July 11, 2024, that her role in such position shall conclude the day before the next City Manager's first day of City employment, and that upon such conclusion, she will return to her role as Deputy City Manager.

OPTIONS

1. Adopt the proposed Resolution.
2. Do not adopt the proposed Resolution.
3. Some other action or inaction related to this subject matter at the direction of the City Council.

FINANCIAL IMPACT

Ms. Bellow's compensation is a pro-rated rate of pay based on an annual rate of \$401,722.10, with additional employee benefits as stated in the Employment Agreement.

Attachments

Written Public comments.

1. Resolution Approving City Manager Employment Agreement Between City and LaTanya Bellow.

RESOLUTION NO. #####-N.S.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY APPROVING
INTERIM CITY MANAGER EMPLOYMENT AGREEMENT

WHEREAS, on May 6, 2024, the City Council for the City of Berkeley announced its receipt of notice from existing City Manager Dee Williams-Ridley of her intent to resign her City employment effective July 10, 2024; and

WHEREAS, the City currently employs LaTanya Bellow as Deputy City Manager (“Employee”); and

WHEREAS, to ensure continuity in leadership and management of the City during this period of transition, the City Council desires to appoint an Interim City Manager to serve in such role between Ms. Williams-Ridley’s resignation date through the date of commencement of employment for next City Manager; and

WHEREAS, Employee has agreed to serve as the Interim City Manager during said period, subject to the terms and conditions of a related Employment Agreement; and

WHEREAS, said Employment Agreement provides, without limitation, terms pertaining to Employee’s reversion to her role as Deputy City Manager once the City Manager commences employment; and

WHEREAS, the City Council hereby takes action to adopt said Employment Agreement, attached hereto as Attachment A, to codify such terms and conditions.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that:

Section 1. The City Council determines that the above findings are true and correct, and by reference incorporates those findings as an integral part of this Resolution.

Section 2. Employee is hereby appointed to the position of Interim City Manager effective July 11, 2024, at a prorated rate of pay based on an annualized salary of \$401,722.10 for the period of service in this role.

Section 2. All other benefits for the position of Interim City Manager shall be as provided for in the Interim City Manager Employment Agreement.

Section 3. The Interim City Manager Employment Agreement, attached hereto as Attachment A, is hereby approved.

Section 4. The City Clerk shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the Office of the City Clerk.

ATTACHMENT A: Interim City Manager Employment Agreement

**INTERIM CITY MANAGER
EMPLOYMENT AGREEMENT BETWEEN
THE CITY OF BERKELEY AND LATANYA BELLOW**

This Interim City Manager Employment Agreement (“Agreement”) is made by and between the City of Berkeley (“City”) and LaTanya Bellow (“Employee”). City and Employee are hereinafter collectively referred to as the “Parties.”

RECITALS

- A. Employee is currently employed with the City as a Deputy City Manager, and the City and Employee have the mutual desire to temporarily appoint Employee as Interim City Manager during the appointment process to hire a full-time City Manager.
- B. On June 4, 2024, the Berkeley City Council (“Council”) appointed Employee as the Interim City Manager, with the expectation that she will begin such service on July 11, 2024 or as otherwise directed by the Council (hereinafter referred to as “Start Date”).
- C. Employee has specialized skills to perform the work of the City's Interim City Manager for a limited duration during the pendency of the appointment process for a new City Manager. Employee desires to accept the position of Interim City Manager consistent with certain terms and conditions of said employment as set forth in this agreement.
- D. The Council and Employee desire to memorialize in this Agreement certain benefits, terms, and conditions of employment of Employee.

OPERATIVE PROVISIONS

1. Position and Duties.

1.1 Position. Employee agrees to serve as the City’s Interim City Manager and shall perform all functions, duties, and services set forth in Section 1.2 of this Agreement. Employee shall provide services at the direction and under the supervision of the City Council. Employee’s employment as Interim City Manager of the City shall commence on July 11, 2024, to serve at the pleasure of the City Council subject to the terms and conditions set forth in this Agreement.

1.2 Duties. Employee shall serve as the Interim City Manager and shall for the Term of the Agreement be vested with the powers, duties, and responsibilities of the City Manager as set forth in Section 28 of the Berkeley City Charter, the terms of which are incorporated herein by reference. Employee shall provide services at the direction and under the supervision of the City Council. It is the intent of the parties that the Interim City Manager shall keep the City Council fully apprised of all significant ongoing operations of the City. Toward that end, Employee shall report directly to the City Council and will periodically, or as maybe otherwise specifically requested by the City Council, provide status reports to the City Council on her activities and those of the City. It is the intent of the City Council for the Interim City Manager to function as the chief executive officer of the City’s organization. Without additional

compensation, Employee shall provide such other services as are customary and appropriate to the position of City Manager, including assisting with a smooth transition of City Manager duties to the next City Manager, together with such additional services assigned from time to time by the City Council as may be consistent with California law, the City Charter, Municipal Code, any other source of local law, memorandums of understanding, collective bargaining agreements and other contracts to which the City may be bound, and City policy, as determined in the Council's discretion. Employee shall devote her best efforts and attention to the performance of these duties.

1.3 Hours of Work. Employee shall devote the time necessary to adequately perform her duties as Interim City Manager. The parties anticipate that Employee will work a sufficient number of hours per week allocated between regular business hours and hours outside of regular business hours including, without limitation, attendance at regular and special City Council meetings. Toward that end, Employee shall be allowed reasonable flexibility in setting her own office hours, provided the schedule of such hours provides a significant presence at City Hall and other City facilities, reasonable availability to the City Council, City staff, and members of the community during regular City business hours and for the performance of her duties and of City business. Employee may perform work off site as appropriate. For purposes of this Agreement, regular City business hours are 8:00 a.m. to 5:00 p.m. Employee agrees to be reachable by telephone for consultation and advice when she is not physically working in the City. Employee also agrees to respond to the City for emergency situations.

2. Term. This Agreement shall become and remain effective on July 11, 2024 subject to the following conditions: (1) the City Council's approval of the Agreement; (2) transition by current City Manager Dee Williams-Ridley from active status as a full time City employee to inactive status while she exhausts her administrative leave benefits in accordance with the terms of her separation agreement on July 1, 2024; (3) Employee's agreement to serve as the Acting City Manager, while maintaining her official position as Deputy City Manager, between July 2, 2024 and July 10, 2024, and the City's agreement to provide Employee acting pay for such service in accordance with existing City policy; (4) Williams-Ridley's resignation from City employment as of July 10, 2024 and her and the City's complete execution of her separation agreement; and (5) lack of revocation of Williams-Ridley's separation agreement on or before July 17, 2024. Should any of these conditions not come to fruition, then the City Council reserves its right to nullify this Agreement, notwithstanding the City's right to terminate this Agreement in accordance with Section 8 below. Employee shall commence work as Interim City Manager on July 11, 2024 ("Commencement Date") or such date and time as directed by the City Council. This Agreement shall expire when a new City Manager assumes office or as otherwise provided in this Agreement.

3. At-Will. Employee acknowledges that she is an at-will employee of the City who shall serve at the pleasure of the City Council at all times during the period of her service hereunder. Employee expressly acknowledges and agrees that this appointment to Interim City Manager does not confer upon Employee any right to any property interest in continued employment, or any due process right to a hearing before or after a decision by the City Council or City generally to terminate her employment, in this position or otherwise. Employee expressly acknowledges and agrees that nothing in this Agreement is intended to, or does, confer upon Employee any right to any property interest in continued employment, or any due process right to a hearing before or after a decision by the City Council to remove her from this position or to terminate her City employment generally, except as is expressly provided in Section 2 or Section

8 of this Agreement. Nothing contained in this Agreement shall in any way prevent, limit, or otherwise interfere with the right of the City to terminate the services of Employee, as provided in Section 2 or Section 8. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of Employee to resign at any time from her role as Interim City Manager or as a Deputy City Manager, subject only to the provisions set forth in Section 2 or Section 8 of this Agreement. This at-will employment shall be expressly subject to the rights and obligations of the City and Employee, as set forth in Section 2 or Section 8 below.

4. Return Rights to Previous Position. Employee will return to the position of Deputy City Manager, subject to the provisions in Section 3, if this Agreement is terminated or expires pursuant to Sections 2 or 8 of this Agreement, notwithstanding the otherwise at-will nature of her City employment generally. The Council retains discretion to return Employee to her prior position before appointment of a permanent City Manager. If/when Employee returns to the Deputy City Manager classification, Employee shall earn her previous annual salary, including any eligible cost-of-living adjustments provided by the Council for all City management employees under any successor Management Compensation Resolutions. The Council agrees that her position of Deputy City Manager will not be filled with a permanent replacement during Employee's service as the Interim City Manager under this Agreement. This paragraph will survive the termination of this Agreement.

5. Compensation.

5.1 Rate of Pay. For all services performed by Employee as the Interim City Manager under this Agreement, the City shall pay Employee compensation, on a bi-weekly basis, at an hourly rate of \$193.136 based upon a pro-rated annualized salary of \$401,722.10. The Interim City Manager position is exempt from the overtime provision of the Fair Labor Standards Act and is not eligible for overtime pay.

5.2 Benefits. In addition to the salary set forth in Section 5.1 of this Agreement, Employee shall be entitled to at least the same employment benefits she receives as Deputy City Manager.

6. Reimbursement. The City shall reimburse Employee for authorized, reasonable, and necessary travel expenses incurred by Employee in the performance of her duties as Interim City Manager pursuant to this Agreement. Employee shall document and claim said reimbursement for such travel in the manner and forms required by the City and subject to approval of the City Council, the Mayor, or other designee as appointed by the Council. All reimbursements shall be for actual expenses and shall be subject to and in accordance with California and federal law and the City's adopted reimbursement policies. Such reimbursements shall not be reported to CalPERS. Other than as specifically provided herein, Employee shall receive no other compensation or reimbursements for expenses incurred by her in performance of this Agreement.

7. Professional Development. Employee shall be entitled to the same degree of reimbursement that she currently receives as Deputy City Manager in connection with participation in any professional development activities that may take place during her period of service as Interim City Manager.

8. Termination of Agreement.

8.1 By City. This Agreement may be terminated by the City for any reason after providing written notice to Employee of such termination. The City's only obligation in the event of such termination will be payment to Employee of all compensation then due and owing in her role as Interim City Manager as set forth in Section 5.1 up to and including the effective date of termination of the Agreement.

8.2 By Employee. This Agreement may be terminated by Employee for any reason fourteen (14) calendar days after providing written notice to the City of such termination, absent extenuating personal circumstances. The City shall have the option, in its complete discretion, to make Employee's termination effective at any time prior to the end of such period, provided the City pays Employee all compensation owed as Interim City Manager as set forth in Section 5.1 then due and owing her through the last day actually worked.

8.3 No Notice for Expiration. Nothing in this Section 8 shall be construed to require either party to give advance written notice in order for the Agreement to expire as set forth in Section 2. When the Council hires a permanent City Manager, this Agreement shall naturally expire at 11:59 p.m. the day prior to the permanent City Manager's start date.

8.4 City Property. Employee agrees that all property, including, without limitation, all equipment, tangible Proprietary Information (as defined in Section 10), documents, records, notes, contracts, and computer-generated materials furnished to or prepared by Employee incident to her service as Interim City Manager, belongs to the City and shall be returned promptly to the City upon cessation of her service as Interim City Manager to the extent she would not otherwise have a City-business related reason to maintain such property in connection with her duties as Deputy City Manager. Employee's obligations under this subsection shall survive the termination of her employment and the expiration of this Agreement.

9. Conflicts of Interest. Employee represents and warrants to the City that she presently has no interest, and represents that she will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or interfere in any way with performance of her services under this Agreement.

10. Proprietary Information. "Proprietary Information" is all information and any ideas pertaining in any manner to the business of the City (or any City affiliate), its employees, clients, consultants, or business associates, which was produced by any employee of the City in the course of their employment or otherwise produced or acquired by or on behalf of the City. Proprietary Information shall include, without limitation, trade secrets, product ideas, inventions, processes, formulae, data, know-how, software and other computer programs, copyrightable material, marketing plans, strategies, sales, financial reports, forecasts, and customer lists. All Proprietary Information not generally known outside of the City's organization, and all Proprietary Information so known only through improper means, shall be deemed "Confidential Information." During her employment with the City, Employee shall use Proprietary Information, and shall disclose Confidential Information, only for the benefit of the City and as is, or may be, necessary to perform her job responsibilities under this Agreement. Employee shall not use any Proprietary Information for any non-City-business related reason and shall not disclose any Confidential

Information, except with the express written consent of the City. Employee's obligations under this Section shall survive the termination of her employment and the expiration of this Agreement.

11. Indemnification. Subject to, in accordance with, and to the extent permitted by the California Government Claims Act, Government Code Section 810 et seq., the City will indemnify, defend, and hold Employee harmless from and against any action, demand, suit, monetary judgment, or other legal or administrative proceeding, and any liability, injury, loss, or other damages, arising out of any act or omission occurring during Employee's tenure as Interim City Manager, except that this provision shall not apply with respect to any intentional tort or crime committed by Employee, or any actions outside the course and scope of her employment as Interim City Manager.

12. General Provisions.

12.1 Entire Agreement. This Agreement contains the final, complete, and exclusive agreement and understanding between the parties. Any amendment, modifications, or variations from the terms of this agreement shall be in writing and shall be effective only upon approval of such amendment, modification, or variation by the City Council and Employee.

12.2 Interpretation. This Agreement shall be construed as a whole, according to its fair meaning, and not in favor of or against any party. By way of example and not in limitation, this Agreement shall not be construed in favor of the party receiving a benefit nor against the party responsible for any particular language in this Agreement. Captions are used for reference purposes only and should be ignored in the interpretation of the Agreement. This Agreement may be altered, amended, or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, cancelled, superseded, or changed by any oral agreement, course of conduct, waiver, or estoppel. It is the intent of the Council that this Agreement and the appointment of Employee as Interim City Manager are in accordance with the requirements and provisions of the City Charter. Wherever possible, the provisions of this Agreement shall be construed in a manner consistent with the Charter. If any provision of this Agreement conflicts with the Charter, the Charter shall control to the fullest extent permitted by law.

12.3 Severability. The terms of this Agreement are contractual and not a mere recital. Should any provision or part of any provision or application thereof be held invalid, the invalidity shall not affect any other provisions or applications of the Agreement which can be given effect without the invalid provision or application, and to this end, the provisions of this Agreement are declared to be severable.

12.4 Attorneys' Fees. In any legal action, brought to enforce or interpret the terms of this Agreement, reasonable parties shall bear their own attorneys' fees and costs.

12.5 Governing Law. This Agreement, and the rights and obligations of the parties, shall be construed and enforced in accordance with the laws of the State of California. Venue shall be in the Alameda County Superior Court.

12.6 Amendment. This Agreement may not be amended except in a written

document signed by Employee, approved by the City Council and signed by the City's Mayor with the approval and delegation from the Council.

12.7 Acknowledgment. Employee acknowledges that she has had the opportunity to consult legal counsel regarding this Agreement, that she has read and understands this Agreement, that she is fully aware of its legal effect, and that she has entered into it freely and voluntarily and based on her own judgment and not on any representations or promises other than those contained in this Agreement.

12.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute together one and the same instrument.

12.9 Electronic Signatures. The parties may execute this Agreement by electronic signature, subject to the terms and conditions set forth in Government Code section 16.5.

[SIGNATURES TO FOLLOW]

ON BEHALF OF THE CITY:

Mayor Jesse Arreguín

_____, 2024

EMPLOYEE:

LaTanya Bellow

_____, 2024

APPROVED AS TO FORM:

Farimah F. Brown
City Attorney

_____, 2024