

Chief Executive Officer

Melbourne City Council

and

Alison Leighton

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Contract of Employment

Dated 4 July 2023

Parties

Name	Melbourne City Council
Address	90-120 Swanston Street, Melbourne VIC 3000
Email	lordmayor@melbourne.vic.gov.au
Contact	Lord Mayor Sally Capp
Short name	Council

Name	Alison Leighton
Address	[REDACTED]
Email	[REDACTED]
Short name	Officer

Background

- A. Council wishes to appoint and employ the Officer as its Chief Executive Officer for a maximum term in accordance with the Act.
- B. The Officer wishes to accept this appointment and employment for that maximum term, in accordance with this Agreement.
- C. The parties acknowledge that the appointment is made in accordance with the Act and the parties acknowledge and agree that the Officer has been appointed on the basis of merit.
- D. The parties intend this Agreement to take effect as a contract of employment for the purposes of the Act.

The Parties Agree

1. Definitions

The definitions at Schedule 4 apply.

2. Term

This Agreement commences on 4 July 2023 and by entering into this Agreement the parties have agreed that the Officer's employment relationship with Council, as well as this Agreement, expires on 3 July 2027 unless terminated earlier in accordance with its terms.

3. Place of Work

- 3.1 Subject to any State government pandemic-related orders, the Officer's role as Chief Executive Officer is based, and the Duties will be primarily performed, at Council's offices at 90-120 Swanston Street, Melbourne VIC 3000. The Officer may be permitted to work from other locations from time to time in accordance with any applicable flexible work arrangements.
- 3.2 The Officer may be required to be based in a different location within the municipality.
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4. Agreement

Council must employ the Officer and the Officer must serve Council as its Chief Executive Officer subject to the terms of this Agreement.

5. Reappointment

- 5.1 The parties expressly acknowledge that:
- 5.1.1 if the Officer is re-appointed, the process for doing so must be in accordance with the Chief Executive Officer Employment and Remuneration Policy and the terms and conditions of that appointment must be agreed upon before the Expiry Date, failing which the Officer's appointment and employment will terminate on the Expiry Date;
 - 5.1.2 the terms of this Agreement do not contain or create an option for renewal exercisable by either party.
- 5.2 For the avoidance of doubt, any Council decision regarding reappointment must be made by way of Council resolution.

6. Requirements of position

6.1 Officer's responsibilities

The Officer must:

- 6.1.1 carry out and perform the Duties lawfully and to the best of the Officer's ability and judgment and to the satisfaction of Council;
- 6.1.2 devote the Officer's whole time and attention to the Duties during the hours reasonably required to properly perform the Duties;
- 6.1.3 discharge the responsibilities and perform the functions required of the Officer under the Act;
- 6.1.4 be accountable to Council;
- 6.1.5 carry out all lawful instructions and directions of Council;
- 6.1.6 promote the aims and objectives of Council;
- 6.1.7 subject to any relevant law, immediately disclose to Council any matter that is likely to affect the reputation of Council, including any actual or potential serious misconduct by any senior employees of Council, upon that matter becoming known to the Officer;
- 6.1.8 disclose to Council any facts, information or circumstances which may give rise to a conflict between the Officer's interests and the interests of Council;
- 6.1.9 at all times comply with the provisions of the Act and any other legislation applying to matters within the scope of the Officer's employment;
- 6.1.10 attend all meetings of Council (and Council committees as may be necessary or as directed by Council) other than when on approved leave. When attending Council meetings, the Officer must ensure that there is minimum disruption to the Officer's duties and responsibilities, and to those employees whom the Officer manages;
- 6.1.11 comply with Council's Code of Conduct and Governance Rules;
- 6.1.12 not use Council's IT Systems:
 - (a) for excessive or unreasonable personal use;
 - (b) to view or distribute unlawful material, or material which may be regarded as offensive or inappropriate; or
 - (c) to copy, disclose or use material in breach of this Agreement;
- 6.1.13 become familiar with and comply with all policies of Council in place or as varied or replaced that are intended to apply to the Officer and have been provided or made available to the Officer.

6.2 Conflict of interests

The Officer must not engage in any additional business, personal relationships, employment or activity which conflicts with the interests of Council, the requirements of the position of Chief Executive Officer of Council or the Officer's ability to perform the Duties. If there is any risk of such a conflict occurring, the Officer must immediately notify Council and obtain

Council's written consent to engage or continue to engage in that additional business, relationship, employment or activity.

6.3 Qualifications held

The Officer confirms that all qualifications that were represented by the Officer to Council as held by the Officer, are held by the Officer.

6.4 Variation to Duties

The Officer acknowledges that the Duties may be varied from time to time by Council in accordance with the needs of Council. Such variation does not constitute a termination of this Agreement or of the Officer's employment or a redundancy of the Officer's position.

6.5 Working hours

The Officer's ordinary hours of work are 38 hours per week to be worked between Monday to Friday 8.30am to 5.00pm less an unpaid meal break together with reasonable additional hours which may be necessary for the performance of the Duties.

7. Powers and resources of Officer

7.1 Statutory duties not limited

Clause 6 will not be construed as limiting the exercise by the Officer of the Officer's statutory duties, functions or powers as Chief Executive Officer under the Act or any other relevant legislation.

7.2 Subject to legislation

This Agreement will be read subject to any legislation affecting Council so as not to exceed the power of Council. Where any clause of this Agreement would, but for this sub-clause, have been construed as exceeding Council's powers, both the Agreement and the clause are valid to the extent to which they are not in excess of that power.

7.3 Support staff

Council must provide such support staff and office facilities as are reasonably necessary for the Officer to perform the Duties.

8. Remuneration Package and other benefits

8.1 Remuneration Package

8.1.1 The Officer is entitled to the Salary per annum (less applicable taxation), which must be paid in fortnightly equal instalments or otherwise as agreed.

8.1.2 In addition to the Salary, Council will make contributions from time to time to a complying superannuation fund in order to avoid a charge. The rate of contributions is set at the superannuation guarantee percentage rate mandated under the Superannuation Guarantee Legislation.

8.1.3 Details of the Remuneration Package are set out in Schedule 3.

8.2 What the Remuneration Package includes

The Officer's Remuneration Package as set out in Schedule 3 includes:

- 8.2.1 payment for ordinary hours of work under the FW Act;
- 8.2.2 payment for all other hours worked or attendances at meetings or functions outside Council's usual office hours, being the reasonable additional hours required and agreed to by the Officer;
- 8.2.3 the amount Council is required to contribute from time to time to a complying superannuation fund in order to avoid a charge under the Superannuation Guarantee Legislation;
- 8.2.4 all entitlements to overtime, loadings, allowances, penalty rates and any other like payments to which the Officer may otherwise be entitled under any Industrial Instrument; and
- 8.2.5 the cost to Council of all fringe benefits taxes levied on any part of the Remuneration Package, or on any other benefit provided to the Officer under this Agreement.

8.3 Salary packaging

The Officer may salary package any part of the Remuneration Package, provided it does not increase the cost to Council of the Remuneration Package. At all times, Council's contribution to superannuation will be calculated on the Officer's ordinary time earnings (as that term is defined in the *Superannuation Guarantee (Administration) Act 1992 (Cth)*). Details of any salary package arrangements are set out in Schedule 3.

8.4 Telephone and computer costs

Council must reimburse the Officer:

- 8.4.1 for the reasonable cost of a mobile telephone and reasonable usage costs; and
- 8.4.2 for the reasonable cost of a home computer and Internet usage costs.

8.5 Additional expenses payable by Council

- 8.5.1 Council must meet the following expenses:
 - (a) reimbursement or payment of membership fees and subscriptions payable by the Officer to professional associations or bodies nominated and approved by Council, the membership of which is in the opinion of Council reasonably necessary or desirable for the Officer to perform the Duties;
 - (b) reimbursement or payment of the reasonable costs of the Officer attending conferences, seminars, in-service training courses and study as approved by Council as reasonably necessary to enable the Officer to perform the Duties; and
 - (c) reimbursement or payment of the reasonable costs necessarily incurred by the Officer as a result of the Officer's performance of the Duties, to the limit determined by Council from time to time.
- 8.5.2 Council may require reasonable documentary evidence of expenses before meeting the expenses in clause 8.5.1.

8.6 Credit or charge card

If Council issues a credit or charge card to the Officer, then the card must be used in accordance with Council's policy from time to time. If the card is lost or stolen, the Officer must immediately inform the card provider and Council. The Officer must return the card to Council on request.

8.7 Review of Remuneration Package

Council must review the Remuneration Package annually having regard to the matters set out in the Chief Executive Officer Employment and Remuneration Policy.

9. Leave entitlements

9.1 Details of entitlements

9.1.1 The Officer is entitled to:

- (a) annual leave, personal/carer's leave, compassionate leave, community service leave, parental leave, family and domestic violence leave and Public Holidays in accordance with the FW Act; and
- (b) long service leave in accordance with the *Local Government (Long Service Leave) Regulations 2021 (Vic)*.

9.1.2 The Officer's entitlement to leave under this clause is:

- (a) provided in satisfaction of, and not in addition to, entitlements under the National Employment Standards; and
- (b) subject to the notice and evidence requirements set out in the FW Act.

9.1.3 If a provision of any Industrial Instrument, or any other applicable legislation, is more favourable than the entitlements under this Agreement, the provision under the Industrial Instrument or applicable legislation applies.

9.1.4 All leave will be administered in accordance with applicable Council policies as amended from time to time.

9.1.5 Council may request the Officer to work on a Public Holiday, and the Officer must work unless the refusal to work is on reasonable grounds under applicable laws.

10. Medical examination

10.1 Council may, at any time during the Officer's employment, require the Officer to undergo a medical examination by a medical practitioner selected and paid for by Council.

10.2 The Officer authorises the medical practitioner to provide a written report of the examination to Council or its authorised representatives, and to discuss the contents of the report with Council or its authorised representatives.

11. Confidential Information

11.1 Duty not to disclose or misuse Confidential Information

The Officer must:

11.1.1 not disclose Confidential Information, except:

- (a) as required by law;
- (b) when exercising the Officer's workplace right to disclose the Officer's remuneration or any terms and conditions of the Officer's employment that are reasonably necessary to determine the Officer's remuneration outcomes, such as hours of work;
- (c) in the performance of the Duties; or
- (d) as permitted or required by Council;

11.1.2 not misuse Confidential Information; and

11.1.3 take whatever measures are reasonably necessary to prevent the disclosure or misuse of Confidential Information.

11.2 Continuing obligations

The Officer's obligations under clause 11.1 survive the termination or expiry of this Agreement and the termination of the Officer's employment.

11.3 Publication of Agreement

11.3.1 The parties agree that a full copy of this Agreement will be published on the Council's website in accordance with a prior resolution of Council.

11.3.2 This clause is subject to the Officer's workplace right not to disclose the Officer's remuneration or any terms and conditions of the Officer's employment that are reasonably necessary to determine the Officer's remuneration outcomes, such as hours of work in accordance with Division 4 of Part 2-9 of the *Fair Work Act 2009*.

12. Intellectual property and Moral Rights

12.1 Intellectual property

12.1.1 The Officer acknowledges that this Agreement is a 'contract of service' for the purposes of s 35(6) of the Copyright Act.

12.1.2 The Officer acknowledges that Council owns all right, title and interest in or derived from the Intellectual Property Rights created by the Officer in the course of the Officer's employment with Council in connection with or related to the performance of the Duties as varied from time to time (whether or not in writing), and whether or not:

- (a) created during normal business hours;
- (b) using Council's premises or equipment;
- (c) under the control of a manager; or

- (d) as the subject of a specific direction.
- 12.1.3 To the extent that Council is not the owner of the Intellectual Property Rights described in clause 12.1.2, the Officer hereby assigns those rights to Council
- 12.1.4 The Officer undertakes to execute any and all documents and do all acts and things necessary to give effect to the ownership or assignment of Intellectual Property Rights in clauses 12.1.2 and 12.1.3 to Council, including after the termination of the Officer's employment.
- 12.1.5 During the course of the Officer's employment with Council or at any time afterwards, the Officer is not permitted to make use of any Intellectual Property Rights for the Officer's own personal benefit or for the benefit of other persons.
- 12.1.6 The Officer must not use any material which the Officer knows, or should have known, would infringe the Intellectual Property Rights of a third person during the Officer's employment with Council.

12.2 Moral Rights

- 12.2.1 The Officer acknowledges that under Part IX of the Copyright Act the Officer has moral rights in any original Works of which the Officer is the author and in which copyright subsists and which are:
 - (a) the right to attribution of authorship of the Works;
 - (b) the right not to have authorship of the Works falsely attributed; and
 - (c) the right to integrity of authorship, that is, not to have the Works subjected to derogatory treatment,(together, **Moral Rights**).
- 12.2.2 The Officer consents, for the purposes of the Copyright Act, to Council doing any act or thing, or omitting to do any act or thing (whether occurring before or after the date of this Agreement), which may otherwise infringe a Moral Right of the Officer. This consent is given in relation to all Works made or to be made by the Officer in the course of the Officer's employment.
- 12.2.3 The Officer acknowledges that:
 - (a) the Officer understands the legal significance and effect of giving this consent;
 - (b) this consent has been freely and genuinely given; and
 - (c) the Officer has not been subjected to any duress in connection with the giving of this consent.

13. Performance Review and termination for unsatisfactory performance

13.1 Performance Review

The Officer's performance must be reviewed in accordance with the Chief Executive Officer Employment and Remuneration Policy.

13.2 Review of Position Description and Performance Criteria

The Position Description and the Performance Criteria may be reviewed and amended by Council, in consultation with the Officer, from time to time.

13.3 Unsatisfactory performance

If Council considers that areas of the Officer's performance have not been satisfactory, Council may take disciplinary action against the Officer (which may include dismissal upon the minimum amount of notice required by the FW Act or any Industrial Instrument, (whichever is the greater) or payment in lieu of such notice).

13.4 Monitor performance

Without necessarily conducting the Performance Review, Council may monitor the Officer's performance on an ongoing basis.

14. Immediate termination

14.1 Grounds for immediate termination

The Officer's employment may be immediately terminated before the end of the Term by Council if the Officer:

- 14.1.1 is declared bankrupt or fails to immediately notify Council in the event that the Officer is declared bankrupt;
- 14.1.2 fails to immediately notify Council in the event that the Officer is charged with or found guilty of any criminal offence;
- 14.1.3 is charged with or found guilty of any criminal offence which in the reasonable opinion of Council brings Council into disrepute or affects the Officer's ability to carry out the Duties properly;
- 14.1.4 is negligent in carrying out the Duties;
- 14.1.5 fails or refuses to obey any reasonable and lawful instruction regarding the performance of the Duties;
- 14.1.6 commits an act of serious misconduct;
- 14.1.7 commits an act of improper conduct, as defined in the *Public Interest Disclosures Act 2012*;
- 14.1.8 seriously or persistently breaches a term of this Agreement;
- 14.1.9 is precluded from working in Australia for any reason;
- 14.1.10 breaches Council's policies applicable to the Officer from time to time in relation to matters including occupational health and safety, privacy, anti-discrimination or use of Council's IT systems; or
- 14.1.11 engages in conduct that causes or may cause imminent and serious risk to the health and safety of a person.

14.2 Suspension of Officer

If Council considers that the Officer may have committed any act or omission which may warrant immediate termination pursuant to clause 14.1, Council may suspend the Officer, with pay, pending an investigation into the matter.

14.3 No compensation

If the Officer's employment is terminated immediately in accordance with clause 14.1, the Officer will not be entitled to notice or payment in lieu of notice. The Officer will only be entitled to remuneration to the time of termination of employment and accrued entitlements to annual leave and long service leave (if any), but to no other compensation as a result of termination in these circumstances.

15. Termination by Council

15.1 Notwithstanding any other clause in this Agreement, but in addition to and without derogating from them, Council may terminate this Agreement and the Officer's appointment and employment for any reason provided that Council provides the Officer the lesser of:

15.1.1 6 months' written notice or payment in lieu of all or part of such notice calculated on the Remuneration Package; or

15.1.2 payment of the remaining value of the Remuneration Package which would have been paid had the Officer continued in employment until the end of the Term.

15.2 Any such payment is inclusive of, and not in addition to, any other payment in lieu of notice that may otherwise be due under or pursuant to this Agreement, the FW Act or any Industrial Instrument.

15.3 This clause does not apply in cases of redundancy, when clause 18 will apply.

16. Termination by agreement

In addition to any other right of termination, and without derogating from any right available under this Agreement, the Officer's employment may at any time be terminated by the mutual agreement of the parties on whatever notice or terms upon which the parties then agree.

17. Resignation by Officer

The Officer may terminate this Agreement by giving 12 weeks' notice to Council at any time during the Term, in which case the Officer is entitled to be paid the Officer's accrued entitlements (if any) only in relation to long service leave and annual leave upon termination.

18. Redundancy during Term

18.1 Council may terminate employment

Council may terminate the employment of the Officer during the Term on the ground of redundancy where Council no longer requires the Officer's job to be performed by anyone.

18.2 Officer's entitlements on redundancy

18.2.1 If a redundancy occurs during the Term in accordance with clause 18.1, the Officer's entitlements will be in accordance with and subject to the requirements of:

- (a) any Industrial Instrument; or
- (b) the FW Act,

whichever provides the greater entitlement.

18.2.2 For the avoidance of doubt, this Agreement does not create any entitlement to redundancy benefits where none exists under any Industrial Instrument or the FW Act.

18.3 Variation does not constitute redundancy

The Officer acknowledges that a variation to the Duties, in accordance with the terms of this Agreement, does not constitute a redundancy or entitle the Officer to any benefits under this clause.

19. Dispute Settlement

19.1 Mediation

Any dispute between the parties in relation to this Agreement may be settled by any agreed process or, failing agreement as to a process, may be referred to the President of the Institute of Arbitrators and Mediators Australia (or any successor body) for mediation by the President's nominee.

19.2 No prejudice

During this process, no party shall be prejudiced as to the final resolution of the dispute. The parties will co-operate to ensure that the steps required to reach a resolution are carried out as expeditiously as possible for the benefit of all concerned.

19.3 Commercial Arbitration Act 2011

For the avoidance of doubt, and to the extent permissible, the *Commercial Arbitration Act 2011* (Vic) does not apply to disputes arising under this Agreement.

20. Termination of employment on Expiry Date

20.1 The Officer acknowledges that the Officer's appointment, and the employment relationship between the Officer and Council, will terminate on the Expiry Date unless the Officer has been reappointed under a new contract under clause 5.

20.2 Under no circumstances will the Officer's employment or appointment be continued beyond the Expiry Date unless Council offers and the Officer accepts a new contract.

20.3 Upon expiry of this Agreement on the Expiry Date, under no circumstances will Council be liable to pay (whether under clause 18.2 or otherwise) severance monies as if the position were redundant.

21. Understanding

The Officer understands and agrees that:

- 21.1 by signing this Agreement, the Officer voluntarily agrees to the termination of the Officer's appointment, and the termination of the employment relationship between the Officer and Council, on the Expiry Date; and
- 21.2 the Officer's agreement to the termination and expiry provisions has not been produced by duress or coercion on the part of Council or its agents.

22. Employment during the notice period

- 22.1 If notice is given to terminate the Officer's employment, then Council may:
 - 22.1.1 direct the Officer not to perform any duties, or to perform specified duties;
 - 22.1.2 direct the Officer to remain away from Council's premises;
 - 22.1.3 direct the Officer to have no contact with any employee, client, customer, contractor, volunteer or supplier of Council, including via social networking websites;
 - 22.1.4 appoint another person to perform some or all of the Officer's duties; and
 - 22.1.5 change the title of the Officer.
- 22.2 If the Officer is directed not to perform duties under clause 22.1.1, the Officer will remain bound by all the terms of this Agreement.

23. Requirements following termination of employment

23.1 Return of Council Property

Upon termination or expiry of this Agreement, unless the Officer has entered into a new contract of employment with Council, the Officer must return to Council in good condition (subject to fair wear and tear) any Council Property which is in the Officer's possession or under the Officer's control.

23.2 Officer's assistance with legal proceedings

The Officer agrees that, after the employment terminates, the Officer will assist Council in any threatened or actual legal or other proceedings in which Council is involved, for which the Officer will be reimbursed all reasonable costs approved in advance by Council.

24. General

24.1 Changes to law

If Council's obligations under any applicable law (including the Act or any regulations made pursuant to the Act) change after the Commencement Date, then Council may in its discretion vary the corresponding provisions of this Agreement or add a new provision.

24.2 Chief Executive Officer Employment and Remuneration Policy

If Council's obligations under the Chief Executive Officer Employment and Remuneration Policy require Council to vary the corresponding provisions of this Agreement or add a new provision, then this Agreement is varied to the extent required to comply with the Chief Executive Officer Employment and Remuneration Policy.

24.3 Amendment

Subject to clauses 6.4 and 24.1, and 24.2, this Agreement may only be varied or replaced by a document duly executed by the parties.

24.4 Entire understanding

24.4.1 This Agreement:

- (a) constitutes the entire agreement between Council and the Officer; and
- (b) supersedes and cancels any contract, deed, arrangement, related condition, collateral arrangement, condition, warranty, indemnity or representation imposed, given or made by Council or the Officer (or an agent of either of them) prior to entering into this Agreement.

24.4.2 The Officer has not been subjected to any duress in connection with entering into, and has genuinely agreed to, this Agreement.

24.4.3 The Officer acknowledges that in accepting employment with Council the Officer has not relied on any representations regarding the Officer's employment made by Council (or its agents or employees) other than matters expressly set out in this Agreement.

24.5 Legal costs and expenses

Each party must pay its own legal costs and expenses in relation to the negotiation, preparation and execution of this Agreement and other documents referred to in it, unless expressly stated otherwise.

24.6 Waiver and exercise of rights

24.6.1 A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.

24.6.2 No party will be liable for any loss or expenses incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

25. Notices

25.1 Delivery of notice

25.1.1 A notice or other communication given to a party under this Agreement must be in writing and in English, and must be delivered to the party by:

- (a) delivering it personally to the party; or
- (b) leaving it at the party's address set out in the notice details; or

- (c) posting it by prepaid post to the party at the party's address set out in the notice details; or
- (d) facsimile to the party's facsimile number set out in the notice details; or
- (e) email to the party's email address set out in the notice details.

25.1.2 If the person to be served is Council, the notice or other communication may be served at Council's registered office.

25.2 Notice details

25.2.1 The notice details of each party are set out on page 1 of this Agreement under the heading 'Parties' (or as notified by a party to the other parties according to this clause).

25.2.2 Any party may change its notice details by giving notice to the other parties.

25.3 Time of service

25.3.1 A notice or other communication is taken to be delivered:

- (a) if delivered personally or left at the person's address, upon delivery;
- (b) if posted within Australia to an Australian address:
 - (i) using express post, 2 Business Days after posting; and
 - (ii) using any other prepaid post, 6 Business Days after posting;
- (c) if delivered by facsimile, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the recipient's facsimile; and
- (d) if delivered by email, at the time the email left the sender's email system, unless the sender receives notification that the email was not received by the recipient.

25.3.2 Despite clause 25.3.1, a notice or other communication which is received after 5.00pm or on a non-business day (each in the place of receipt), is taken to be delivered at 9.00am on the next business day in the place of receipt.

26. Interpretation

26.1 Governing law and jurisdiction

This Agreement is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria and waives any right to object to proceedings being brought in those courts.

26.2 Industrial Instruments

The terms of any Industrial Instrument are not incorporated as terms of this Agreement and the parties agree that no express term of this contract is intended to give them contractual effect.

26.3 Council's policies

The terms of Council's policies are not incorporated as terms of this Agreement and are not intended to create any legally enforceable rights on the part of the Officer, but the Officer must abide by them because they are lawful and reasonable directions of Council.

26.4 This Agreement, clauses and headings

In this Agreement:

- 26.4.1 words denoting the singular include the plural and vice versa;
- 26.4.2 the word 'includes' in any form is not a word of limitation;
- 26.4.3 a reference to any legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it, and any such legislation is not incorporated as a term or condition of this Agreement;
- 26.4.4 a reference to any instrument (such as a deed, agreement or document) is to that instrument (or, if required by the context, to a part of it) as amended, novated, substituted or supplemented at any time and from time to time;
- 26.4.5 a reference to this Agreement is to this Agreement as amended from time to time;
- 26.4.6 a reference to '\$' is a reference to Australian dollars;
- 26.4.7 a reference to a clause, schedule or appendix is a reference to a clause, schedule or appendix in or to this Agreement; and
- 26.4.8 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Agreement.

26.5 Severance

- 26.5.1 If a provision in this Agreement is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.
- 26.5.2 If it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Agreement.

26.6 Execution

Each party consents to the signing of this Agreement and any variations to it, either by physical or, to the extent permitted by law, electronic means.

26.7 Counterparts

- 26.7.1 This Agreement may be executed in any number of counterparts all of which taken together constitute one instrument.
- 26.7.2 If any party signs this Agreement electronically, then either an electronic form or a physical form of this Agreement bearing the party's electronic signature will constitute an executed counterpart.

26.8 Business day

If a payment or other act is required by this Agreement to be made or done on a day which is not a business day, the payment or act must be made or done on the next business day.

Schedules

Schedule 1

Position Description

The Chief Executive Officer (CEO) reports directly to the Melbourne City Council (Council). This position is responsible for approximately 1650 staff.

Position No: 60062
Classification: Exec 5

Positions directly reporting into the CEO:

- General Manager Finance and Corporate/CFO
- General Manager Property, Infrastructure and Design
- General Manager Community and City Services
- General Manager Strategy, Planning and Climate Change
- General Manager City Economy and Activation
- Chief of Staff (Lord Mayor's Office)
- Director Governance
- Director People, Culture and Leadership
- Director Strategic Communications
- Head of Executive Services (Office of the CEO)

Culture and Values

CoM aspires to a culture which is humanistic and encouraging, self-actualising, affiliative and achievement focused. We focus on culture because we know that a constructive culture is good for our wellbeing as well as our ability to deliver high quality outcomes.

We measure our performance against the desired culture using the Human Synergistics tool, the "Organisational Culture Inventory" (OCI).

Our ICARE values (integrity, courage, accountability, respect and excellence) are the foundation for our behaviour for ourselves and our teams.

 INTEGRITY Be honest and reliable, have integrity	 COURAGE Speak up, have courage, make things happen	 ACCOUNTABILITY Act with accountability, be responsible for what you do and how you do it	 RESPECT Be inclusive, stay open, value every voice, establish respect and collaborate	 EXCELLENCE Display excellence, work with energy and passion achieving the best results
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Position purpose

The CEO will be the primary advisor to the Council in leading and managing the corporate obligations of Council. The CEO will have primary authority and accountability for establishing and maintaining an appropriate executive management team, structures, systems, human resources, finances, assets and the service management of the City of Melbourne.

As a holder of one of the most influential and important roles in local government in Australia, the CEO will continue to identify and develop innovative initiatives, programs and strategies for consideration and adoption by Council.

The CEO will continually promote innovation and leadership to ensure that the organisation remains at the forefront of the local government sector.

Position accountabilities

Strategic Leadership:

This position is responsible for providing effective communication to and between the Lord Mayor, Deputy Lord Mayor, Councillors, Administration, community, and rate payers of the City of Melbourne.

The CEO is expected to demonstrate compelling leadership, direction and people management competencies, with appropriate technical expertise in order to drive the required business outcomes for the City of Melbourne.

The provision of timely and strategic advice to Council on policy matters, issues and proposals affecting the future development and position of Melbourne is an integral component of this role. The CEO will deliver effective democratic advice to Council on its statutory obligations, powers and limitations and ensure all processes are administered in accordance with governing instruments which are appropriately supported.

The CEO is expected to facilitate and foster productive internal and external relationships and partnerships necessary for Council to achieve its business and community goals. Acting on Council's behalf, the CEO will negotiate and achieve the resolution of major issues which affect the management, planning and development of the City.

Functional and Operating Responsibility:

In consultation with relevant key stakeholders the CEO will maintain the highest quality of services and activities. This will be underpinned by the effective implementation of Council policies and programs aligned with Council's budget and in accordance with the levels of authority defined in the *Local Government Act 1989*.

Financial and Human Resource Management:

The CEO will provide effective leadership to senior management and staff in the achievement of corporate objectives through the deployment of best practise human resource management strategies.

The CEO will ensure that the organisation's financial position is extremely sound, and continues to lift the bar in terms of business prosperity, cultural vitality, major events, urban design, architecture, parks and gardens, innovation and sustainability. It is vital that the CEO develops and maintains financial capability to enable the organisation to discharge its statutory financial functions, organise and manage funding requirements and account for the proper receipt of all monies.

In collaboration with the Deputy CEO and General Managers, the CEO will monitor and control organisational performance in achieving plans aligned with adequate human, physical and financial resources. The recruitment, appointment, training and appraisal of staff will be conducted in line with Human Resource best practice.

The CEO will foster a service delivery culture, promoting the values within management and employees of Council and its service providers. The CEO will embrace the development and pursuit of a constructive corporate culture that promotes accountability, initiative, creativity, diversity and transparency, by coaching, mentoring and empowering direct reports, having performance conversations and ensuring an effective balance of people leadership and management

competencies.

In consultation with key stakeholders the CEO will identify and drive change management initiatives and strategies for the organisation, initiating reviews of services and functions and fostering an environment that encourages continuous improvement.

Strategic Performance Objectives

The CEO will deliver against:

- Council Plan
- Annual Plans
- 10 year Financial Strategy

In addition to providing support to the Council, the quality and effectiveness of managing the interface with the Australian and Victorian Government in regard to Council Policy must be maintained.

Occupational Health and Safety:

The CEO is ultimately responsible for the safe work practices at the City Of Melbourne. The CEO will:

- Set the organisational direction for Occupational Health and Safety
- Drive the Occupational Health and Safety Policy
- Sign off on the Occupational Health and Safety Statement
- Review health and safety performance of direct reports

Selection criteria

Experience

- Proven successful leadership and change management achievements at a CEO or Executive Management level in a large, complex, multi-disciplinary organisation.
- Demonstrated ability and experience in leading and managing major change initiatives, including talent (leadership development and succession planning), and reviewing work practices to enhance the quality, effectiveness and efficiency of service delivery together with a flair for innovation and strategic thinking.
- Demonstrated success in advocacy, and development and implementation of public policies which engage the broader community and serve to simplify and streamline related processes.
- While experience in local government is not mandatory, direct knowledge of and experience working with government at some level is required.

Attributes

- Inspiring leadership and interpersonal skills.
- People management and stakeholder engagement skills.
- Strategic thinking with an ability to articulate a vision for civic leadership.
- Highly developed commercial acumen and entrepreneurial skills which can be applied to maximise financial sustainable growth opportunities for City of Melbourne.
- Conceptual ability – demonstrated insight and the ability to establish innovative solutions to complex issues.
- An ability to work effectively within a political environment, manage conflict appropriately and negotiate effectively.
- Highly developed communication, presentation and negotiation skills.

Critical Competencies

- **Engagement** – The CEO will demonstrate an uncanny ability to build relationships and inspire confidence at all levels in an environment that is constantly changing. He/she must possess a successful track record of strong collaboration with partners, staff and key stakeholders. The CEO must show the ability to balance all sides of the equation and take action that is both strong and fair. He/she must demonstrate charismatic and inspirational leadership that resonates with

Melbourne City Councillors, the employees of the Council at all levels, the CEO's of adjacent, and broader Melbourne councils, the Victorian Government, the business community and industry associations, traders and retailers and, importantly the city's residents.

- **Business Acumen** - The CEO will demonstrate not only a passion for this opportunity but also a strong understanding of the operational and fiscal goals necessary to support success. He/she should demonstrate a track record of successfully executing a fiscal strategic plan in concert with an overall strategic plan. The successful candidate will show superior analytical skills in addition to strategic skills with the ability to effectively solve complex, multi-faceted problems. He/she will be willing to make tough or unpopular decisions if it will allow City of Melbourne to continue to meet its objectives in the long term.
- **Leadership** - The CEO will demonstrate the ability to build a superior team of professionals, with significant focus on leadership development, team effectiveness and succession-planning in an environment where history and tradition are highly-valued. He/she will create a sense of urgency for embracing the opportunities which lie ahead and show an ability to implement a thoughtful and strategic human resources plan. The CEO must excel in a team-based environment and must be able to balance organisational culture and heritage with the need to develop the next generation.

Inherent Physical Requirements

The reference to the Inherent Physical Requirements for this position is DM# 9234862.

The Way We Work

Our leaders are core to realising our vision of a leading organisation for a leading city. CoM leaders drive a workplace that is stimulating, constructive, flexible, diverse and inclusive and enables achievement of high quality outcomes for the Council, customers and our community. We recognise that a constructive culture brings out the best in our people. We strive to meet the demands of our employees' professional lives while they can accomplish their priorities outside of work and have a positive work life balance.

Our leaders strive to make our organisation agile, with the ability for our work teams to adapt and change based on the evolving needs of CoM. To keep pace with our customers and our changing city, we need a resilient, adaptable, accountable, diverse and inclusive workforce that reflects our community and is committed to excellence.

We establish challenging but realistic goals, develop plans to reach those goals, pursue them with enthusiasm, and are accountable for their achievement. We want our employees to get enjoyment from their work, develop themselves, and take on new and interesting activities whether they are within CoM or outside of CoM. We want our workforce to be supportive, helpful and open in their dealings with each other, through open communication, cooperation, and the effective coordination of activities.

Schedule 2

Performance Criteria

Performance Criteria are to be determined and documented by Council (in consultation with the Officer) within 3 months of the Commencement Date, for the purposes of measuring the Officer's performance under clause 13.1.

Schedule 3

Remuneration Package

Salary	\$507,601.20
Superannuation contribution (the amount Council is required to contribute to avoid a charge under the Superannuation Guarantee Legislation)*	\$27,398.80
Total Remuneration Package	\$535,000.00

*Council will apply the applicable superannuation guarantee percentage in accordance with the Superannuation Guarantee Legislation up to the maximum superannuation contribution base. For the period 1 July 2023 to 30 June 2024, that percentage is 11% and the maximum super guarantee contribution that an employer must pay is 11% of \$249,080 per year, or \$27,398.80. Any increase will be paid by Council in addition to and not deducted from the Salary, but will form part of the Remuneration Package.

For the avoidance of doubt, the individual components of the Remuneration Package set out above may be varied by Council due to:

- (a) any change in the cost to Council of all fringe benefits taxes levied on part of the Remuneration Package, or on any other benefit provided to the Officer under this Agreement; or
- (b) any other legislative change, with the exception of the superannuation contribution required under Superannuation Guarantee Legislation which may increase at Council's cost,

provided the total Remuneration Package above and in clause 8.1 remains the same.

Schedule 4

Definitions

Act means the *Local Government Act 2020 (Vic)*, or any successor legislation.

Agreement means this contract of employment, including any schedules.

Business Day means a day other than a Saturday, Sunday or a Public Holiday in Victoria.

Chief Executive Officer Employment and Remuneration Policy means any applicable Chief Executive Officer Employment and Remuneration Policy required by the Act to be developed, adopted and kept in force by Council.

Code of Conduct means the code of conduct developed and implemented in accordance with section 49 of the Act.

Commencement Date means the date specified in clause 2 as the date on which this Agreement commences.

Confidential Information means any confidential information relating to the business of Council that comes to the knowledge of the Officer and includes without limitation:

- (a) confidential information as that term is defined at section 3 of the Act;
- (b) financial, budgetary, marketing, research and business plan information;
- (c) the position of Council or of any Councillor or Council employee on any confidential matter;
- (d) the terms of any contract, agreement or business arrangement with third parties;
- (e) trade secrets, licences, know-how and related information;
- (f) third party information disclosed in confidence; and
- (g) any other information the disclosure or use of which may be detrimental to the interests of Council or of any other person who has provided it to Council on a confidential basis,

but does not include information in the public domain (unless in the public domain due to a breach of confidentiality by any person).

Copyright Act means the *Copyright Act 1968 (Cth)*, or any successor legislation.

Council Property means Council's physical and digital property and Intellectual Property Rights, including without limitation documents, records, Council information including Confidential Information, keys, access pass, vehicles, computers, computer systems, machinery, tools, mobile telephones, hard drives, thumb drives and other equipment and property of Council.

Council's IT Systems means all electronic data, computers, data communications, telecommunications, internet services and printing systems owned, controlled or licensed by Council.

Duties means the responsibilities, duties and functions of the Officer specified in this Agreement and in any relevant instrument of delegation from Council to the Officer pursuant to the Act.

Expiry Date means the date specified in clause 2 as the date on which this Agreement expires.

FW Act means the *Fair Work Act 2009* (Cth).

Governance Rules means the Governance Rules developed and adopted by Council in accordance with section 60 of the Act.

Industrial Instrument means an enterprise agreement or any modern award made under the FW Act which covers and applies to the Officer.

Intellectual Property Rights means all intellectual property rights (whether or not registered including all applications and the right to apply for registration) which are owned by or licensed to Council including, without limitation:

- (a) any processes, technology, systems, reports, specifications, blue-prints, patents, trade marks, service marks, trade names, domain names, designs, design rights, brands and company names, trade secrets, copyright works, URLs, drawings, discoveries, inventions, improvements, technical data, research data, formulae, computer programs, software, know-how, logos, symbols and similar industrial or intellectual property rights; and
- (b) the right to keep Confidential Information confidential.

Lord Mayor means the person holding the position of Lord Mayor of Council from time to time.

National Employment Standards means, collectively, the minimum terms and conditions of employment set out in Part 2-2 of the FW Act.

Performance Criteria means the performance criteria set out in Schedule 2, as amended from time to time in accordance with clause 13.2.

Performance Review means the annual performance review required under clause 13.1.

Position Description means the position description set out in Schedule 1, or as amended from time to time in accordance with clause 13.2.

Public Holiday has the meaning given in s 115 of the FW Act.

Remuneration Package means the total gross remuneration package paid to or on behalf of the Officer in clause 8.1 and Schedule 3 as varied from time to time.

Salary means the salary specified in Schedule 3 as varied from time to time.

Superannuation Guarantee Legislation includes the *Superannuation Guarantee Charge Act 1992* (Cth) and the *Superannuation Guarantee (Administration) Act 1992* (Cth).

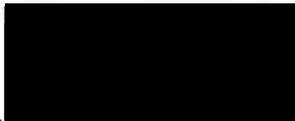
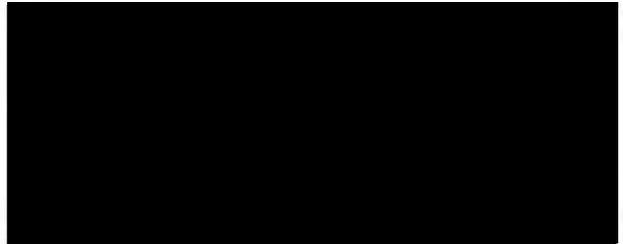
Term means the period of employment specified in clause 2.

Works means a literary work, a dramatic work, a musical work, an artistic work or a cinematograph film as those terms are defined in Part IX of the *Copyright Act 1968* (Cth).

Signing Page

Executed by the parties

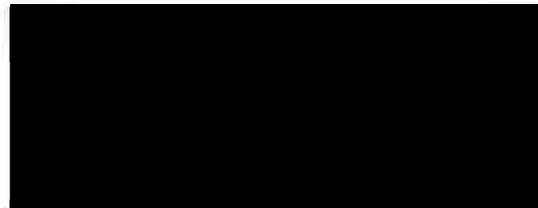
Signed for and on behalf, and with the authority, of **Melbourne City Council** by **Lord Mayor Sally Capp**, in accordance with the Council resolution made on 4 July 2023 in the presence of:



.....
Witness

Signed by Alison Leighton in the presence of:

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Witness