

INSURANCE NOT REQUIRED
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CLERK OF COUNCIL

CITY OF SANTA ANA

CITY MANAGER EMPLOYMENT AGREEMENT

DATE: OCT 31 2017
D: Perc (1)
Ed Payer

This City Manager Employment Agreement ("Agreement") is entered into as of the 17th day of October, 2017 (the "Effective Date"), between the City of Santa Ana (hereinafter referred to as the "City") and Raul Godinez (hereinafter referred to as the "City Manager" or the "Employee"). City and City Manager/Employee are sometimes referred to in this Agreement as "Party" and collectively as "Parties."

RECITALS

WHEREAS, the City Council of the City desires to appoint and employ Employee as City Manager pursuant to the Charter of the City of Santa Ana ("City Charter"), and

WHEREAS, the Employee desires to accept the appointment as the City Manager of the City, and

WHEREAS, it is the desire of the City Council and Employee to set forth certain benefits, establish certain conditions of employment and to set certain working conditions of the City Manager in an Employment Agreement.

NOW, THEREFORE, the above named Parties hereby mutually agree and promise as follows:

1. Term/Automatic Annual Renewal.

This Agreement shall be deemed effective for a three (3) year term beginning on November 1, 2017 and terminating on November 1, 2020, unless terminated earlier in accordance with Section 9 hereof. This initial three (3) year term will, pursuant to the provisions below, automatically extend from year to year unless City Council takes action to prevent the automatic extension. In the event the City Council does not want this Agreement to automatically extend, it will provide written notice to City Manager that the Agreement will not be extended and consequently will terminate as of the end of the current term.

If action is not taken by City Council within three (3) months before the expiration of the initial term of this Agreement on November 1, 2020, this Agreement shall on November 1, 2020, automatically extend for one (1) year from November 1, 2020 until November 1, 2021. For each succeeding year that the City Council does not take action to extend or terminate this Agreement by three (3) months before the then current end of the Agreement, the Agreement shall automatically extend for an additional year. For example, if action is not taken by the City Council to extend or terminate this Agreement by November 1, 2021, the Agreement shall on that date automatically extend for one (1) year from November 1, 2021, to November 1, 2022, and if the City Council doesn't take action to extend or terminate this Agreement by November 1, 2022, it will automatically extend for one (1) year from November 1, 2022 to November 1, 2023.

2. Compensation.

2.1 Annual Salary

City agrees to pay City Manager, and City Manager agrees to accept from City, as compensation for services rendered by City Manager pursuant to this Agreement, an annual base salary, commencing on the Effective Date, in the amount of two hundred and eight five thousand dollars (\$ 285,000.00) (hereinafter "Annual Base Salary"), payable in installment payments in the same manner and at the same times as salaries of

other executive managers of the City are paid.

The term "Annual Base Salary" as used in this Agreement shall also include any such adjustments approved by the City Council other than payments not eligible to be added to the City Manager's Annual Base Salary pursuant to the terms of any applicable salary resolution of City. The term "Monthly Base Salary" as used in this Agreement shall mean a sum of money equal to one-twelfth (1/12) of City Manager's Annual Base Salary as defined herein.

2.2 Benefits

2.2.1 Intentionally Left Blank.

2.2.2 Sick Leave Bank

City Manager shall accrue Sick Leave at a monthly rate equal to 96 hours per year.

2.2.3 Sick Leave Accrual

City Manager will accrue 8 hours of sick leave per month.

2.2.4 Vacation Allowance

Upon employment with City, City Manager shall be awarded a bank of 80 hours of vacation leave and shall accrue monthly rate equal to 160 hour per year. City manager shall accumulate 100 hours per year of management vacation.

2.2.5 CalPERS Membership

As a classic member under CalPERS, City Manager will be enrolled in the 2.7% at age 55 benefit formula and shall be responsible for paying the corresponding employee contribution per Cal PERS requirements as they exist today or as may be amended by the legislature. As of the effective date of this Agreement the applicable contribution rate for miscellaneous classic members is 8%.

2.2.6 Life Insurance

City will purchase life insurance for City Manager in the amount of five hundred thousand dollars (\$500,000).

3. Performance Evaluation.

The Mayor and the City Council are responsible for setting performance goals on an annual basis in consultation with the City Manager. The City Council shall review and discuss City Manager's performance in or around November of each year commencing in 2018. However, Employee acknowledges and accepts the fact that the City Council as Employer has the right to schedule an evaluation session at any time in accordance with the notice and all other requirements of the Brown Act. City has agreed to engage and pay for a professional consultant to administer the evaluation at the request of City Manager.

4. Bonds.

City shall bear the full cost of any fidelity or other bonds required of City Manager under any law or ordinance.

5. Transportation and General Business Expenses.

5.1 Vehicle Provision

City shall provide City Manager with a vehicle, as well as fuel, maintenance and liability insurance for said vehicle, for City Manager's use in commuting, in the performance of his employment duties and for incidental personal use or in the alternative a monthly allowance of \$500.

5.2 General Business Expenses

A. City agrees to budget and pay for professional dues and subscriptions for City Manager necessary for his continuation and participation in national, regional, state and local boards, task-forces, conferences and meetings, associations and organizations desirable for City Manager's continued participation, professional growth, and advancement, and for the benefit of the City.

B. City agrees to budget and pay for travel and subsistence expenses of City Manager for professional and official travel, board and task-force meetings, and occasions to adequately continue the professional development of City Manager and to pursue necessary official functions for City.

C. City shall provide City Manager with the necessary technology tools, including and not limited to computer, software, cell phone and such other technologies as required by City Manager to perform his duties and to maintain communications.

6. Abuse of Office or Position.

Pursuant to Government Code Sections 53243, 53243.1 and 53243.2, which became effective on January 1, 2012, if City Manager is convicted of a crime involving an abuse of his office or position, all of the following shall apply: (1) if Manager is provided with administrative leave pay pending an investigation, City Manager shall be required to fully reimburse City such amounts paid; (2) if City pays for the criminal legal defense of City Manager (which would be in its sole discretion, as it is generally not obligated to pay for a criminal defense), City Manager shall be required to fully reimburse City such amounts paid; and (3) if this Agreement is terminated, any Severance Pay and Severance Benefits related to the termination that City Manager may receive from City shall be fully reimbursed to City or void if not yet paid to City Manager. For purposes of this Section, abuse of office or position means either: (1) an abuse of public authority, including waste, fraud, and violation of the law under color of authority; or (2) a crime against public justice, including, but not limited to, a crime described in Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

7. Notices.

Any notice required or permitted by this Agreement shall be in writing and shall be personally served upon the other Party, or sent by United States Postal Service, postage prepaid and addressed to the appropriate Party as follows:

If to City: City Attorney
City of Santa Ana
20 Civic Center Plaza
Santa Ana, CA 92702

If to City Manager: Raul Godinez II
City Manager
City of Santa Ana
20 Civic Center Plaza
Santa Ana, CA 92702

Notice shall be deemed given as of the date of personal service or upon the date of deposit in the course of transmission with the United States Postal Service.

8. Duties, Acceptance of Appointment, Hours of Work, Regional Liaison.

8.1 Duties

City hereby agrees to employ Employee as City Manager of the City of Santa Ana and the Executive Officer of affiliated entities to perform the functions and duties specified in the City Charter of the City of Santa Ana, and to perform under the title of City Manager or such other legally permissible duties and functions as the City Council may from time to time assign, consistent with the provisions of section 11 hereof.

8.2 Acceptance of Appointment

Employee hereby accepts the appointment as City Manager of the City of Santa Ana subject to all terms and conditions set forth in this Agreement.

8.3 Hours of Work

It is recognized that City Manager devotes a great deal of time outside the normal City Hall office-hours schedule, and to that end, City Manager shall be allowed to establish his work schedule, taking into consideration that he is responsible for the supervision of employees and has responsibilities to serve all departments of the City.

9. Termination.

9.1 At-Will Employee

Employee shall serve at the will and pleasure of the City Council. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Council to suspend from duty, remove from office or otherwise terminate the services of City Manager at any time, at the sole discretion of the City Council, as provided in the City Charter. This Agreement may be terminated as follows.

9.2 Termination - Council Vote

As required in Section 500 of the City Charter, the City Council may remove the City Manager by motion adopted by the affirmative votes of at least two-thirds (2/3) of the members of the City Council. At least thirty(30) days before such removal shall become effective, the City Council shall by resolution adopted by the affirmative votes of at least two-thirds(2/3) of the members of the City Council state the reasons in writing for the removal of the City Manager, unless such notice and resolution are waived by City Manager in writing.

9.3 Termination - Change in Form of Government

If any of the governing policies pertaining to the role, power, duties, authority, or responsibilities of City Manager are amended to substantially change City's form of government, either by action of the City Council, a duly passed initiative measure or state legislation, City Manager shall have the right to terminate the Agreement.

9.4 Reduction of Salary or Benefits

If the City Council reduces the Annual Base Salary or any other financial benefit of the City Manager in a percentage that is greater than the average reduction of base salary for all executive managers of the City, such action shall constitute a termination of this Agreement.

9.5 Resignation

City Manager may voluntarily resign his position as City Manager, after giving City at least sixty (60) days written notice prior to the effective date of such resignation, unless such notice is waived in whole or part by the City Council. In the event the City Manager resigns from his employment with City, the City Manager shall not be entitled to any Severance Pay.

9.6 Severance

In the event this Agreement is terminated pursuant to any one of sections 9.2, 9.3 or 9.4 of this Agreement, the City Manager shall receive a severance payment, in a lump sum, equal to twelve (12) months of City Manager's then monthly Base Salary and benefits ("Severance Pay") in accordance with the provisions of this Agreement. A Severance Pay payment shall be City Manager's sole remedy for termination under sections 9.2, 9.3 or 9.4 of this Agreement. The Severance Pay shall be paid after the City Manager executes a waiver and release agreement prepared by the City Attorney in a form substantially similar to that one set forth as Exhibit "A" of to this Agreement.

9.7 Termination in Proximity to an Election

The City Council shall not issue notice of termination, unless it is a notice of termination for cause pursuant to section 9.8 herein, or reduce Employee's salary or benefits or actually terminate Employee, unless for cause, during or within six months (180 days) before or after the date of a regularly scheduled municipal election at which members of the City Council are elected.

9.8 Termination for Cause

Notwithstanding any provision of this Agreement to the contrary, City may terminate City Manager's employment for cause at any time and without prior notice, and if City Manager is terminated for cause, City Manager shall not be entitled to payment of severance compensation or any other compensation or damages. "Cause" shall include the following reasons:

(a) Conviction of a crime, whether misdemeanor or a felony, involving moral turpitude. For purposes of this paragraph, a plea of nolo contendere shall also be considered a conviction.

(b) City Manager is determined by a court of competent jurisdiction or the State of California Fair Political Practices Commission to have knowingly and unlawfully participated in a governmental decision in which he had a conflict of interest as defined in Government Code Section 87100, *et seq.* or Government Code Section 1090 *et seq.*

(c) Failure to follow a lawful directive of the Council after written notice of said failure is provided to City Manager approved by five (5) or more affirmative notes of its seven (7) members.

(d) Continued abuse of drugs or alcohol that materially affects the performance of the City Manager's duties.

(e) Repeated and protracted unexcused absences from the City Manager's office and duties.

(f) A public or private censure by the International City Manager's Association for a violation of its ethical standards.

10. General Provisions.

10.1 This writing constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior oral or written representations or written agreements on the subject matter hereof, which may have been entered into between the parties. No modification or revision to this Agreement shall be of any force or effect, unless the same is in writing and executed by the Parties hereto.

10.2 Each Party agrees and acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by any Party, or anyone acting on behalf of any Party, which are not embodied herein and that any agreement, statement, or promise not contained in this Agreement shall not be valid or binding on either Party.

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

10.4 This Agreement shall be governed by and construed in accordance with the law of the State of California.

10.5 This Agreement shall be construed as a whole, according to its fair meaning, and not in favor 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.

10.6 Employee acknowledges that he has had an opportunity to consult legal counsel in regard to this Agreement, that he has read and understands this Agreement, that he is fully aware of its legal effect, and that he has entered into it freely and voluntarily and based on his own judgment and not on any representations or promises other than those contained in this Agreement.

11. Intentionally Left Blank

12. Communications in the Event of Termination

12.1 In the event the City terminates Employee for any reason or no reason, the City and Employee agree that no member of the City Council or City employees acting on behalf of the City shall make any written, oral, or electronic statement to any member of the public, the press, or any city employee concerning the Employee's termination except in the form of a joint press release or statement, which is mutually agreeable to the City and the Employee. The joint press release or statement shall not contain any text or information that is disparaging to either Party. Either Party may verbally repeat the substance of the joint press release or statement in response to any inquiry.

13. Indemnification

13.1 City shall defend, hold harmless and indemnify City Manager against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of any alleged act or omission occurring in the performance of City Manager's duties or resulting from the exercise of his judgment or discretion in connection with the performance of his duties. City shall not unreasonably refuse to provide for legal representation at City's expense. Legal representation, provided by City for City Manager, shall extend until a final determination of the legal action including any and all losses, damages, judgments, interests, settlements, fines, court costs, and the reasonable costs and expenses of legal proceedings, including appeals, and including attorneys' fees, and expert witness fees and all other trial and appellate costs, and other

liabilities incurred, imposed upon, or suffered by such City Manager in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of City Manager's duties.

13.2 City agrees to pay all reasonable litigation expenses of City Manager throughout pendency of any City-related litigation to which City Manager is a party, witness or advisor to the City. Such expense payments shall continue beyond City Manager's employment with the City as long as litigation is pending. Post-employment, City agrees to pay City Manager for reasonable consulting fees, travel expenses and other costs, when City Manager serves as a witness, advisor or consultant to City regarding pending litigation.

IN WITNESS WHEREOF, the Parties have executed this City Manager Employment Agreement as of the 20th day of October, 2017.

EMPLOYEE / CITY MANAGER

[Signature]
Name

CITY OF SANTA ANA

Approved as to Form:

[Signature]
Miguel A. Pulido Michelle Martinez
Mayor Pro-tem

[Signature]
Sonia R. Carvalho
City Attorney

ATTEST:


[Signature] 
Maria D. Huizar
Clerk of the Council

Exhibit "A"

WAIVER AND RELEASE

I, the undersigned, do hereby acknowledge and attest that I have read and understood section 9.6 of my Employment Agreement with the City of Santa Ana and hereby agree that by accepting twelve (12) months' Severance Pay in the amount of \$_____ [12 x current monthly base salary and benefits] I agree to waive all rights to further claims, remedies, or legal action against the City, its officers and employees.

In exchange for receipt of the Severance Payment I and my representatives, heirs, successors, and assigns do hereby completely release and forever discharge the City of Santa Ana and its related entities and their present and former officers, directors, council members, agents, employees, attorneys, and successors (collectively, "Released Parties") from all claims, rights, demands, actions, obligations, liabilities, and causes of action of every kind and character, known or unknown, mature or unmatured, which I may have now or in the future arising from any act or omission or condition occurring on or prior to the date this waiver is signed whether based on tort, contract (express or implied), or any federal, state, or local law, statute, or regulation (collectively, the "Released Claims"). Released Claims shall also include, but not be limited to, claims for wages or other compensation due, severance pay, bonuses, sick leave, vacation pay, life or health insurance, or any other fringe benefit.

Employee knowingly and voluntarily waives any and all rights or benefits that he may now have, or in the future may have, under the terms of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

By initialing below, the Employee acknowledges that he or she has read and understands this waiver and voluntarily and knowingly is waiving his right under Section 1542 to pursue unknown or unanticipated claims, rights, demands, actions, obligations, liabilities and causes of action of any kind.



Initials of Employee

Employee shall not file any claim, sue or initiate, against any Released Party, any compliance review, action, or proceeding, or participate in the same, individually or as a member of a class, under any contract (express or implied), or any federal, state, or local law, statute, or regulation pertaining in any manner to the Released Claims.

Approved and Agreed to By: