

CITY OF SANTA ANA
INTERIM CITY MANAGER EMPLOYMENT AGREEMENT

1. PARTIES AND DATE.

This Agreement ("Agreement") is made and entered into this 9th day of May, 2017 by and between the City of Santa Ana, a municipal corporation ("City") and Cynthia Kurtz, an individual ("Employee"), in order to provide in writing the terms and conditions of employment for interim City Manager services. City and Employee are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Employment of Interim City Manager.

City desires to employ the services of Employee as interim City Manager for the City of Santa Ana, and Employee desires to accept employment as interim City Manager. It is the desire of the Parties through this Agreement to establish conditions of employment and to set working conditions for Employee.

3. TERMS.

3.1 Duties.

3.1.1 Designated Duties. City hereby agrees to employ Employee as interim City Manager of City to perform the functions and duties in accordance with applicable state law, the City's Charter and Municipal Code, as well as the approved City job description for the position. Employee shall also perform other legally permissible and proper duties and functions as the City Council shall from time to time assign.

3.1.2 Control and Supervision. Employee shall serve at the will and pleasure of the City Council, without the employment privileges or protections provided for in the City Charter, and pursuant to the terms and limitations of this Agreement, and will be under the day-to-day supervision and direction of the City Council.

3.1.3 City Council Meetings and Presence in Santa Ana. Employee shall attend all City Council and City Council committee meetings, unless excused or directed otherwise. Employee has disclosed dates of previously scheduled commitments and City hereby excuses Employee based on those disclosures. It is recognized that Employee will devote a great deal of time outside the normal office hours-schedule, and to that end, she shall be allowed to establish an appropriate work schedule recognizing that the City is on a 9-80 work

schedule. Employee's monthly compensation will not change regardless of additional or fewer days worked in a particular month.

3.1.4 Additional Public and Private Service. City acknowledges that Employee has been appointed by the City of Pasadena to serve as a Board Member of the Metropolitan Water District of Southern California. City agrees that Employee will continue her service on the MWD Board while this Agreement is in effect. Employee will otherwise focus her professional time, ability, and attention on City business during the term of this Agreement. To the extent consistent with applicable law, Employee shall not engage in any other business duties or pursuits whatsoever or, directly or indirectly, render any services of a business, commercial or professional nature to any other person or organization, whether for compensation or otherwise, without the prior consent of the City Council, except that:

(1) The expenditure of reasonable amounts of time not in conflict with the City's needs and interests, for educational, charitable, community, and professional activities, shall not be deemed a breach of this Agreement and shall not require prior consent. Such activities may include, but are not limited to, involvement with the League of California Cities, the International City/County Management Association, and other nonprofit associations, and the completion of the occasional outside consulting project.

(2) This Agreement shall not be interpreted to prohibit Employee from making passive personal investments or conducting private business affairs if those activities do not materially interfere with the services required under this Agreement or create conflicts of interest.

3.1.5 City Documents. All data, studies, reports and other documents prepared by Employee while performing his duties during the term of this Agreement shall be furnished to and become the property of the City, without restriction or limitation on their use. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other materials either created by or provided to Employee in connection with the performance of this Agreement shall be held confidential by Employee. Such materials shall not, without the prior written consent of the City Council, be used by Employee for any purposes other than the performance of his duties. Nor shall such materials be disclosed to any person or entity not connected with the performance of services under this Agreement, except as required by law. The terms of this Section 3.1.5 shall survive termination or expiration of this Agreement.

3.1.6 Rights and Obligations of Employee and City. City and Employee shall have the rights and obligations of public entities and public employers, respectively, set forth in Division 3.6 of Title 1 of the California Government Code, commencing with Section 810.

3.2 Term; Termination; Severance Pay.

3.2.1 Term. This Agreement shall become effective on May 9, 2017 and shall continue until terminated either by the City Council or by Employee ("Initial Term").

3.2.2 Termination. The Parties understand and agree that the employment relationship created by this Agreement is “at-will” and that the Employee shall serve at the will and pleasure of the City Council. The Employee may be terminated at any time without cause, with no advance notice. Nothing in any statute, the City Charter, ordinance, or rule shall prevent, limit or otherwise interfere with the right of the City Council to terminate, without right of appeal or grievance, the employment of the Employee at any time, as provided herein. Accordingly, Employee agrees that this Agreement sets forth the only terms and conditions applicable to the termination of her employment, and that Employee shall not be entitled to severance under any conditions.

3.2.3 Automatic Termination. This Agreement, and Employee’s employment, shall automatically terminate upon the happening of any of the following events:

- (1) Upon mutual agreement in writing by both Parties to terminate this Agreement.
- (2) Upon thirty (30) days notice of resignation given to City by Employee.
- (3) Upon the death of Employee.

3.2.4 Notice for Resignation. In the event Employee voluntarily resigns her position with City, then Employee shall give City thirty (30) days notice in advance, unless the Parties otherwise agree.

3.3 Salary/CalPERS Retiree.

3.3.1 Salary. City shall compensate Employee at a monthly base salary equal to Twenty Five Thousand Dollars (\$25,000), prorated for any partial months worked. This base salary shall be payable monthly at the same time as other employees of the City are paid.

3.3.2 PERS Retiree. Employee is a CalPERS retired annuitant. City has engaged Employee in accordance with CalPERS rules and regulations which permit City to appoint annuitants who have specialized skills needed to provide service for a limited duration. Employee understands that CalPERS retired annuitants may be employed by a CalPERS public agency employer, by temporary appointment to a position not to exceed 960 hours in any fiscal year for all such employers; either (1) during an emergency to prevent stoppage of public business or (2) because the retired employee has skills needed in performing the work of limited duration. In the event Employee is providing service to any other CalPERS public agency employer during the term of this Agreement, Employee must notify the City of such employment and disclose on a periodic basis (at a frequency determined by the City) the number of hours Employee is performing for that other public agency to ensure that the maximum number of hours is not exceeded.

3.4 Fringe Benefits.

3.4.1 Leave and Insurance Benefits. City shall provide Employee no benefits of any kind, including but not limited to membership in the California Public Employees Retirement System (PERS), annual leave, health insurance, dental or optical insurance, life insurance, long-term disability coverage, or other insurance.

3.4.2 Telephone and Technology. City shall provide Employee with a cellular telephone and an Apple iPad or other device capable of receiving and sending email and accessing the Internet. City shall pay for service to these devices, which shall be returned to City upon expiration or termination of Employee's employment.

3.4.3 Vehicle. City shall provide Employee with either a City-owned, unmarked vehicle which may be used for City business and for commuting to and from work at the City or a travel allowance of Five Hundred (\$500.00) per month, but not both.

3.4.4 Dues, Meetings and Travel. City agrees to budget and pay for professional dues and subscriptions for Employee necessary for her continuation and participation in national, regional, state and local boards, task-forces, conferences and meetings, associations and organizations for the benefit of the City. 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.

3.5 Notices.

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage pre-paid, addressed as follows:

CITY: City of Santa Ana
20 Civic Center Plaza
Santa Ana, CA 92702
ATTN: City Clerk

Employee: Cynthia Kurtz
[Address on File: Confidential]

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

3.6 General Provisions.

3.6.1 Entire Agreement. The text herein shall constitute the entire agreement between the Parties.

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

3.6.3 Bonding. If applicable, the City shall bear the full cost of any fidelity or other bonds required of Employee in the performance of his duties as City Manager.

3.6.4 Modification. Any modification of this Agreement will be effective only if it is in writing and signed by both Parties.

3.6.5 Effect of Waiver. The failure of either Party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other Party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

3.6.6 Assignment. Neither this Agreement, nor any right, privilege or obligation of Employee hereunder shall be assigned or transferred by his without the prior written consent of the City Council. Any attempt at assignment or transfer in violation of this provision shall, at the option of the City Council, be null and void and may be considered a material breach of this Agreement.

3.6.7 Law Governing Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue shall be in Orange County, California.

3.6.8 No Presumption of Drafter. The Parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the Parties, and this Agreement reflects their mutual agreement regarding the subject matter of this Agreement. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any Party to be the drafter of this Agreement and, therefore, no presumption for or against validity or as to any interpretation hereof, based upon the identity of the drafter shall be applicable in interpreting or enforcing this Agreement.


3.6.9 Attorneys' Fees. If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing Party shall be entitled to recover such amount as the court may award as reasonable attorneys' fees and costs.

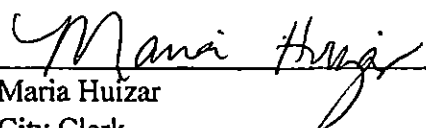
3.6.10 Assistance of Counsel. Each Party to this Agreement warrants to the other Party that it has either had the assistance of counsel in negotiation for, and preparation of, this Agreement or could have had such assistance and voluntarily declined to obtain such assistance.

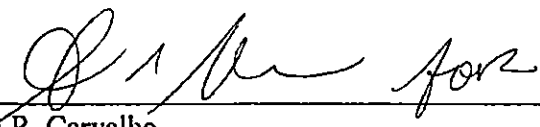
[SIGNATURES ON NEXT PAGE]

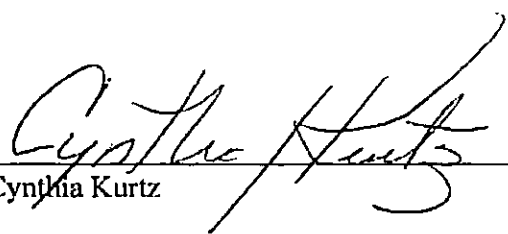
IN WITNESS WHEREOF, the City of Santa Ana has caused this Employment Agreement to be signed and executed on its behalf by its City Council, and duly attested by its City Clerk, and Employee has signed and executed this Employment Agreement, both in duplicate, effective on the day and year first above written.

CITY OF SANTA ANA

By: 
Miguel Pulido
Mayor

ATTEST:

Maria Huizar
City Clerk

APPROVED AS TO FORM:

Sonia R. Carvalho
City Attorney

EMPLOYEE
By: 
Cynthia Kurtz

IN WITNESS WHEREOF, the City of Santa Ana has caused this Employment Agreement to be signed and executed on its behalf by its City Council, and duly attested by its City Clerk, and Employee has signed and executed this Employment Agreement, both in duplicate, effective on the day and year first above written.

CITY OF SANTA ANA

By: Signed in counterpart
Miguel Pulido
Mayor

ATTEST:

Signed in counterpart
Maria Huizar
City Clerk

APPROVED AS TO FORM:

Sonia R. Carvalho for
Sonia R. Carvalho
City Attorney

EMPLOYEE

By: Cynthia Kurtz
Cynthia Kurtz