

CITY OF SANTA ANA

FIRST AMENDMENT TO CLERK OF THE COUNCIL
EMPLOYMENT AGREEMENT

This First Amendment to the Clerk of the Council Employment Agreement (“Agreement”) is entered into as of the 2nd day of September, 2014 (the “Effective Date”), between the City of Santa Ana (hereinafter referred to as the “City”) and Maria D. Huizar (hereinafter referred to as the “Clerk of the Council” or the “Employee”). City and Clerk of the Council/Employee are sometimes referred to in this Agreement as “Party” and collectively as “Parties.”

RECITALS:

WHEREAS, in July, 2009 the City Council of the City appointed and employed Employee as Clerk of the Council pursuant to the Charter of the City of Santa Ana (“City Charter”), and

WHEREAS, the appointment and terms of employment are set forth in Resolution No. 2009-038, and

WHEREAS, in July, 2012 the City Council and Employee desired, and did in fact commence setting forth certain benefits, established certain conditions of employment and set certain working conditions of the Clerk of the Council in an Employment Agreement rather than a Resolution.

WHEREAS, the City and Clerk of the Council desire to amend certain provisions of the Agreement as set forth herein.

WHEREFORE, in consideration of the covenants contained in said Agreement, and subject to all the terms and conditions of said Agreement, the Parties hereto agree as follows:

Section 1, TERM, shall be deleted in its entirety and replaced with the following:

1. Term.

This Agreement shall be deemed effective for a term beginning on the Employee’s anniversary date, August 17, 2014, and shall remain in effect, unless terminated earlier in accordance with Section 9 of the agreement.

Section 2.1, SALARY shall be deleted in its entirety and replaced with the following:

2.1 Salary

City agrees to pay Clerk of the Council, and Clerk of the Council agrees to accept from City, as compensation for services rendered by Clerk of the Council pursuant to this Agreement, an annual base salary, commencing on August 17, 2014 set at Step 15 of EM 33 and payable in installment payments in the same

manner and at the same times as the salaries of other executive managers of the City are paid.

Section 2.2.1 Deferred Compensation shall be deleted in its entirety and replaced with the following:

2.2.1 Payment for Unused Sick Leave.

City agrees to pay Clerk of the Council for unused sick leave upon cessation of employment on the same basis as unrepresented management employees of the City.

Section 3.1 Management Performance Based Evaluation System shall be added as follows:

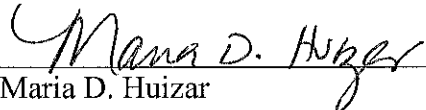
3.1 Management Performance Based Evaluation System.

City shall establish for the Clerk of the Council a management performance-based evaluation system, same as unrepresented Executive Management (EM), the provisions of which are set forth in Resolution No. 1991-066 and as amended from time-to-time.

Except as hereinabove amended, all terms and conditions of said Agreement shall remain in full force and effect.


IN WITNESS WHEREOF, the Parties have executed this First Amendment to Clerk of the Council Employment Agreement as of the 2nd day of September, 2014.

EMPLOYEE




Maria D. Huizar
Clerk of the Council

CITY OF SANTA ANA



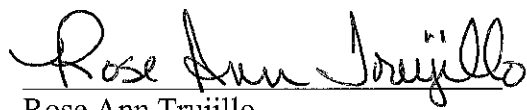
Miguel A. Pulido
Mayor

APPROVED AS TO FORM:



Sonia R. Carvalho, Best, Best & Krieger
City Attorney

ATTEST:



Rose Ann Trujillo,
Sr. Deputy Clerk of the Council

CITY OF SANTA ANA

CLERK OF THE COUNCIL EMPLOYMENT AGREEMENT

This Clerk of the Council Employment Agreement (“Agreement”) is entered into as of the 17th day of September, 2012 (the “Effective Date”), between the City of Santa Ana (hereinafter referred to as the “City”) and Maria D. Huizar (hereinafter referred to as the “Clerk of the Council” or the “Employee”). City and Clerk of the Council/Employee are sometimes referred to in this Agreement as “Party” and collectively as “Parties.”

RECITALS

WHEREAS, on July 20, 2009 the City Council of the City appointed and employed Employee as Clerk of the Council pursuant to the Charter of the City of Santa Ana (“City Charter”), and

WHEREAS, the appointment and terms of employment are set forth in Resolution No. 2009-038, 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 Clerk of the Council in an Employment Agreement rather than a Resolution.

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

1. Term.

This Agreement shall be deemed effective for a term beginning on August 17, 2009 , and shall remain in effect, unless terminated earlier in accordance with the provisions of this Agreement. The term reflected herein reflects Employee’s appointment and all terms of employment as set forth in Resolution No. 2009-038.

2. Compensation.

2.1 Salary

City agrees to pay Clerk of the Council, and Clerk of the Council agrees to accept from City, as compensation for services rendered by Clerk of the Council pursuant to this Agreement, an annual base salary, commencing on the Effective Date, set at Step 10 of EM-28 and thereafter adjusted upward annually three (3) steps on the first day of the first pay period following the anniversary of the incumbent’s appointment until the top step is achieved, unless a

lesser number of steps (not less than one) are approved by the City Council upon a performance evaluation conducted in accordance with Chapter 705 of the City Charter as as specified in Resolution No. 2009-038 and payable in installment payments in the same manner and at the same times as salaries of other executive managers of the City are paid.

Commencing on August 18, 2013 and each year thereafter, employee shall be entitled to receive any upward salary adjustment received by the executive management of the City and as approved by the City Council.

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 Clerk of the Council'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 Clerk of the Council's Annual Base Salary as defined herein.

2.2 Benefits

In addition, and except as otherwise specified herein, Clerk of the Council shall receive all such other benefits that are applicable to executive managers of the City as of the Effective Date of this Agreement, as the same may be modified from time to time after the date of this Agreement, including but not limited to medical insurance, long term disability insurance, life insurance, sick leave, holidays, vacation, bereavement and family illness leave, and participation in retirement system. The Clerk of the Council is entitled to accrue all unused leave, without limit, and in the event the Clerk of the Council's employment is terminated, either voluntarily or involuntarily, the Clerk of the Council shall be compensated for all accrued vacation time, all paid holidays, all executive leave and all other benefits to the termination date. For purposes of continuing participation in the City's retiree medical health subsidy program, the Clerk of the Council shall receive the same benefit as other City executive managers.

The Clerk of the Council shall accrue vacation at a rate as though her date of appointment with the City of Santa Ana was April 6, 1998. The Clerk of the Council shall be entitled to unlimited accumulation of unused vacation. Additionally, upon leaving employment with the City said Clerk of the Council shall be able to convert unused sick leave as though her date of appointment was April 6, 1998.

2.2.1 Deferred Compensation

Clerk of the Council shall receive as additional compensation deferred compensation as allowed by Government Code Section 53214 in the maximum annual amount permitted pursuant to Section 457 of the Internal Revenue Code at the time of adoption of Resolution No. 2009-038 , excluding any permitted catch up contribution. Said deferred compensation shall appear as part of the Clerk of the Council's bi-monthly compensation payment.

3. Performance Evaluation.

The Mayor and the City Council are responsible for setting performance goals on an annual basis in consultation with the Clerk of the Council. The City Council shall review and discuss Clerk of the Council's performance in or around July of each year commencing in 2013. However, Employee acknowledges and accepts the fact that the City Council as Employer has the right to schedule and an evaluation session at any time in accordance with the notice and all other requirements of the Brown Act.

4. Bonds.

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

5. Transportation and General Business Expenses.

5.1 Car Allowance

City shall provide Clerk of the Council with the same car allowance as unrepresented executive management employees of the City.

5.2 General Business Expenses

A. City agrees to budget and pay for professional dues and subscriptions for Clerk of the Council necessary for her continuation and participation in national, regional, state and local boards, task-forces, conferences and meetings, associations and organizations desirable for Clerk of the Council'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 Clerk of the Council for professional and official travel, board and task-force meetings, and occasions to adequately continue the professional development of Clerk of the Council and to pursue necessary official functions for City.

C. City shall provide Clerk of the Council with the necessary technology tools, including and not limited to computer, software, cell phone and such other technologies as required by Clerk of the Council to perform her 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 Clerk of the Council is convicted of a crime involving an abuse of her office or position, all of the following shall apply: (1) if Clerk of the Council is

provided with administrative leave pay pending an investigation, Clerk of the Council shall be required to fully reimburse City such amounts paid; (2) if City pays for the criminal legal defense of Clerk of the Council (which would be in its sole discretion, as it is generally not obligated to pay for a criminal defense), Clerk of the Council 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 Clerk of the Council may receive from City shall be fully reimbursed to City or void if not yet paid to Clerk of the Council. 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 Clerk of the Council: Maria D. Huizar
Clerk of the Council
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 Clerk of the Council of the City of Santa Ana to perform the functions and duties specified in the City Charter of the City of Santa Ana, and to perform such other legally permissible duties and functions as the City Council may from time to time assign.

8.2 Hours of Work

It is recognized that Clerk of the Council devotes a great deal of time outside the normal City Hall office-hours schedule, and to that end, he shall be allowed to establish her work schedule, taking into consideration that she 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 Clerk of the Council 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 701 of the Charter, the City Council may remove the Clerk of the Council by motion adopted by the affirmative votes of at least two-thirds (2/3) of the members of the City Council.

9.3 Termination - Change in Form of Government

If any of the governing policies pertaining to the role, power, duties, authority, or responsibilities of the Clerk of the Council are amended to substantially change the Clerk's role, power, duties, authority or responsibilities as the same exist at the time of the commencement of this Agreement, , either by action of the City Council, a duly passed initiative measure or state legislation, Clerk of the Council shall have the right to terminate this Agreement.

9.4 Reduction of Salary or Benefits

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

9.5 Resignation

Clerk of the Council may voluntarily resign her position as Clerk of the Council, 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 Clerk of the Council resigns from her employment with City, the Clerk of the Council shall not be entitled to any Severance Pay.

9.6 Severance Pay

In the event this Agreement is terminated pursuant to any one of sections 9.2, 9.3 or 9.4 of this Agreement, the Clerk of the Council shall receive a severance payment, in a lump sum, equal to six (6) months of the Clerk of the Council's then monthly PERS reportable income, plus the value of all City provided pension and medical benefits. Said lump sum shall be payable on the last day of employee's employment. In lieu of receiving the cash equivalent of medical insurance benefits, Clerk of the Council may elect continuing medical insurance benefits from the City for a period of six months from and after the last day of employment. This Severance Pay payment shall be the sole remedy for termination under sections 9.2, 9.3 or 9.4 of this Agreement. The Severance Pay shall only be paid after the Clerk of the Council executes a waiver and release of claims agreement prepared by the City Attorney in a form substantially similar to that one set forth as Exhibit "A" to this Agreement.

Notwithstanding the foregoing, if the Clerk of the Council is terminated for Cause, then Clerk of the Council shall not receive any form of severance and the provisions of Section 9.6 shall not apply.

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 she has had an opportunity to consult legal counsel in regard to 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.

11. Communications in the Event of Termination

11.1 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 shall make any written, oral, or electronic statement to any member of the public, the press, or any city employee concerning the basis for 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.

12. Indemnification

12.1 City shall defend, hold harmless and indemnify Clerk of the Council against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of any alleged act or omission by the Clerk occurring in the course and scope of Clerk of the Council's duties or resulting from the exercise of her judgment or discretion in connection with the performance of her duties, unless the act or omission involved unlawful conduct. City shall not unreasonably refuse to provide for legal representation at City's expense. Legal representation, provided by City for Clerk of the Council, shall extend until a final determination of the legal action. Indemnification shall include 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 Clerk of the Council 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 Clerk of the Council's duties.

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

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Clerk of the Council
Employment Agreement as of the 17th day of September, 2012.

EMPLOYEE/CLERK OF THE COUNCIL

Maria D. Huizar
Maria D. Huizar

CITY OF SANTA ANA

Miguel A. Pulido
Miguel A. Pulido
Mayor

Approved as to Form:

Sonia R. Carvalho
Sonia R. Carvalho, Best Best & Krieger
City Attorney

ATTEST:

Rose Ann Inuijillo,
Sr. Deputy Clerk

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 either six (6) months Severance Pay in the amount of \$ _____ [6 x current monthly compensation], 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:

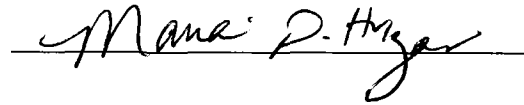
A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

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.

MA
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:

A handwritten signature in black ink, appearing to read "Maria P. Hrycaj", is written over a horizontal line.

**EMPLOYMENT CONTRACT APPROVED
BY RESOLUTION IN 1999**

RESOLUTION NO. 2009-038

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA ANA APPOINTING MARIA D. HUIZAR AS CLERK OF THE COUNCIL AND ESTABLISHING THE COMPENSATION FOR SAID OFFICIAL.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SANTA ANA:

1. That Maria D. Huizar is hereby appointed to the office of Clerk of the Council for the City of Santa Ana. The appointment shall be effective August 17, 2009.
2. That the salary rate for the office of Clerk of the Council for the City of Santa Ana shall remain fixed and established at EM-28 in accordance with the City of Santa Ana Schedule of Salary Ranges for unrepresented Executive Classes effective as of the date of this Resolution. The salary shall be paid in the same manner and at the same times as other monthly salaries of the City are paid.
3. That the beginning salary for the official shall be set at Step 10 of EM-28. The salary step shall thereafter be adjusted upward annually three (3) steps on the first day of the first pay period following the anniversary of the incumbent's appointment until the top step is achieved, unless a lesser number of steps (not less than one) are approved by the City Council upon a performance evaluation conducted in accordance with Chapter 705 of the City Charter.
4. In addition to the salary hereinabove fixed and established for said Office, said officer shall receive, as additional compensation, the following employee benefits:
 - a) Retirement. The terms of the existing contract between the City and the California Public Employees' Retirement System (CalPERS) governing the retirement benefits for affected employees, as amended, are incorporated herein by reference, and the City shall continue to make contributions to CalPERS in accordance with said contract for said officer at the same rate the City provides for Executive Management.
 - b) Deferred Compensation. Said officer shall receive as additional compensation deducted from her salary pursuant to Government

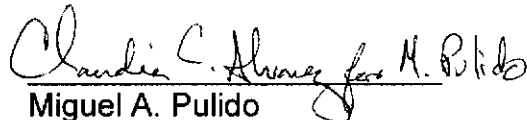
Code Section 53214, deferred compensation in the maximum annual amount permitted pursuant to Section 457 of the Internal Revenue Code at the time of adoption of this resolution, excluding any permitted catch up contribution.

- c) Health and Dental Insurance. Said officer shall be entitled to receive the same health, dental and similar benefits, upon the same terms and conditions, as provided for Executive Management.
- d) Disability Insurance. The City shall pay the full premium for a long-term disability insurance plan for said officer as provided for Executive Management.
- e) Life Insurance. The City shall provide the same life insurance coverage for said officer, upon the same terms and conditions as provided for Executive Management.
- f) Holidays. Said officer shall receive the same holidays, upon the same terms and conditions, as provided for Executive Management.
- g) Vacation. Said officer shall receive the same vacation benefits, including vacation pay option as for Executive Management. The officer shall accrue vacation at a rate as though her date of appointment with the City of Santa Ana was April 6, 1998. Additionally, said officer shall be entitled to unlimited accumulation of unused vacation.
- h) Sick Leave Credit. Said officer shall receive a credit of 400 hours to her sick leave bank in consideration of the sick leave hours she accumulated in her prior position. Additionally, upon leaving employment with the City, said officer shall be able to convert unused sick leave as though her date of appointment was April 6, 1998.
- i) Other Benefits. In addition to the benefits specified in subparagraphs (a) through (h) above, said officer shall receive any and all employee benefits accorded unrepresented executive management employees of the City who are miscellaneous members of CalPERS , including automobile allowance, except said officer shall not qualify for the management Performance-Based Salary Adjustments.
- j) Severance Pay. In the event said officer is terminated from employment by action of the City Council, said officer shall receive as severance benefits six months of full salary, including retirement and medical benefits, payable on the last day of employment. In lieu of receiving the cash equivalent of six months of medical insurance benefits, the terminated officer may elect continuing medical insurance

benefits from the City for a period of six months from and after the last day of employment. In the event the City Council reduces the base salary, compensation or other financial benefits of said officer, other than in conjunction with a commensurate across-the-board reduction for all Executive Management employees, such action shall be deemed to be a termination, at the option of the officer, triggering the severance pay benefit.

5. The City shall indemnify, defend and hold harmless the officer against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission of the officer in the performance of her duties. The City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment resulting therefrom.

ADOPTED this 20th day of July, 2009.


Miguel A. Pulido
Mayor

APPROVED AS TO FORM:

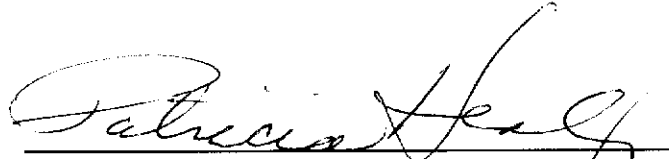

Joseph W. Fletcher
City Attorney

AYES:	Councilmembers:	<u>Alvarez, Benavides, Bustamante, Martinez (4)</u>
NOES:	Councilmembers:	<u>None (0)</u>
ABSTAIN:	Councilmembers:	<u>None (0)</u>
NOT PRESENT:	Councilmembers:	<u>Pulido, Sarmiento, Tinajero (3)</u>

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, PATRICIA E. HEALY, Clerk of the Council, do hereby attest to and certify the attached Resolution No. 2009-038 to be the original resolution adopted by the City Council of the City of Santa Ana on July 20, 2009.

Date: 7/23/09


Clerk of the Council
City of Santa Ana