

**CITY OF COSTA MESA AGREEMENT FOR  
THE OFFICE OF CITY MANAGER**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of May, 2019 by and between the CITY OF COSTA MESA, State of California, a Municipal corporation, hereinafter referred to as "the City" and Lori Ann Farrell Harrison, hereinafter referred to as "Employee."

**RECITALS:**

WHEREAS, the City desires to retain the services of Employee as City Manager of the City of Costa Mesa; and

WHEREAS, the City Council of the City of Costa Mesa desires to provide certain benefits, establish certain conditions of employment and to establish working conditions for Employee; and

WHEREAS, Employee desires to provide said services as City Manager to the City under the terms and conditions hereinafter set forth; and

WHEREAS, Employee represents that she is willing and qualified to provide such services to the City;

WHEREFORE, in consideration of the respective mutual covenants and promises hereinafter contained and made subject to all of the terms and conditions hereof, the parties hereto do hereby agree as follows:

**1. DUTIES**

- (a) The City hereby agrees to retain the services of Employee as City Manager to perform the functions and duties specified in Title 2, Chapter IV, Article 2 of the Costa Mesa Municipal Code and to perform other legally permissible and proper duties and functions as designated by the City Council from time to time.
- (b) Employee shall prepare and implement an annual plan of Organizational Goals and Objectives which will be incorporated into an annual evaluation tool to assess performance.
- (c) Employee may exercise only those powers expressly granted to her as City Manager through the Costa Mesa Municipal Code, any Resolution, or any minute action of the Council.
- (d) Employee will conscientiously and loyally perform all of the duties, expressed or implied, required of her by the terms of this Agreement, the Costa Mesa Municipal Code, and the duties that may be delegated to her by the Council. Employee understands and agrees that she shall:

- (i) Devote her time, ability and attention to matters of City and the City Council of not less than the regular business hours of the City.
  - (ii) Perform her duties within the budget adopted by the Council.
- (e) The City Manager will not, without the prior consent of the Council, do or agree to do, any of the following acts:
- (i) Borrow any amount of money on behalf of the City;
  - (ii) Enter into any contract on behalf of the City in excess of the limits established by ordinance or resolution;
  - (iii) Expend any amount in excess of the amounts budgeted for expenditure by the Council except as permitted within the City's adopted ordinance, resolution or policy regarding the City Manager's budget authority;
  - (iv) Sell any assets of the City except in strict accordance with the City's adopted ordinance, resolution or policy on disposition of surplus property.

## **2. TERMS OF AGREEMENT**

- (a) Employee agrees to remain in the exclusive employment of the City and not to become otherwise employed while this Agreement is in effect. Employee agrees that any other employment engaged in by her shall not interfere with the performance of her duties under this Agreement.
- (b) The term of this Agreement shall commence on July 1, 2019, or such earlier date that Employee and City agree, and remain in effect until terminated by either party hereto as provided herein.
- (c) This Agreement in its entirety may be renegotiated at any time so long as City and Employee desire and mutually agree to such terms in writing.
- (d) City Manager and the City Council ad hoc committee shall jointly develop metrics to be used to evaluate the annual performance of the City Manager at the commencement of Employee's term of employment. The Mayor and City Council shall conduct a performance evaluation six months after commencement of Employee's term of employment, one year after commencement of Employee's term of employment, and annually thereafter by no later than June 1<sup>st</sup> in each year during the term of this Agreement. The annual performance evaluation shall include goals set forth by the Mayor and City Council, and the Mayor, City Council and City Manager shall further establish a relative priority among those various goals and objectives, said goals to be reduced to writing. These objectives shall generally be attainable within the time limitations as specified and the annual operating and capital budgets and appropriations provided, subject to and taking account of unexpected circumstances which may arise during any particular

performance period which requires an adjustment to expectations for implementation of goals and objectives and related costs, if any. The failure of the Mayor/City Council to define such goals and performance objectives, and/or to reduce them to writing shall not affect the parties' rights to terminate this Agreement. In the event the performance evaluation results so warrant, there shall be agendaized for discussion as provided for by law any pay or benefit enhancements the Mayor and City Council may feel is warranted. Any revisions to compensation, term or benefits shall be required to be considered and approved only at an open and public meeting. Future annual performance evaluations shall be measured against Employee's achievement of the goals set forth in the previous year's annual performance evaluation. In addition to the required annual performance evaluations, the Mayor and City Council may schedule performance evaluations of Employee as they may deem necessary.

### **3. TERMINATION**

- (a) This Agreement may be terminated by the City Council for cause or misconduct by Employee. After giving notice to Employee that this Agreement is terminated for cause or misconduct, the City shall have no obligation to continue the employment of Employee or to provide compensation or benefits, including severance. For purposes of termination, "cause" is defined as willful breach of duty by Employee in the course of employment or habitual neglect of duty by Employee in the course of employment or continued incapacity of Employee to perform the duties of employment as City Manager. Cause may also include Employee being charged with, or entering a guilty plea or plea of nolo contendere to, or being convicted of, an offense which is a felony or crime of moral turpitude in the State of California; Employee's willful misconduct or gross negligence; or Employee's act of material dishonesty with or theft from the City.
- (b) This Agreement may be terminated by the City Council without cause at any time. If Employee is terminated by the City Council without cause, then Employee is entitled to severance pay as follows: six (6) months' base salary. In no event shall Employee ever receive more than six months' severance pay. Employee shall also be entitled to payout of any unused accrued vacation leave, but no payout for accrued but unused sick leave or executive leave shall be made at termination.
- (c) In the event the Agreement is terminated by the City Council without cause, Employee will receive severance pay in a lump sum or, if expressly authorized by the City Council, may continue to be paid on the normal payroll schedule until all severance pay has been provided.
- (d) Employee may voluntarily terminate this Agreement any time upon thirty (30) days' written notice to the City Council and shall not be entitled to any severance pay or benefits upon such voluntary termination. City Council maintains discretion to accept Employee's resignation immediately and forego the notice period. Nothing in this section entitles Employee to 30 days' pay in lieu of notice.

- (e) Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of City Council to terminate the services of Employee at any time, at the sole discretion of City Council, in accordance with the Costa Mesa Municipal Code, as the same may be amended from time to time, and in accord with the provisions contained herein.

#### **4. COMPENSATION**

- (a) Employee shall receive, as starting salary for her performance of the duties of City Manager, the sum of \$260,000.00 per year, subject to future adjustments which may be approved by the Mayor and City Council following performance evaluations of Employee as provided for in section 2(d) above. City Council shall be mindful of preventing any unintentional salary compaction or regression.

#### **5. EMPLOYEE BENEFITS**

- (a) Except as otherwise provided herein, Employee shall be granted the same package of benefits as is being provided to City's Executive Management employees on the effective date of this Agreement. All future changes to the package of benefits provided to City's Executive Management employees shall apply to the level of benefits for Employee unless the Parties so agree. All such benefits, and the benefits described hereunder shall be deemed "fringe benefits" herein. This includes the City's continued participation and contributions of City obligations to the Public Employees Retirement System (PERS), group health, dental and related insurance programs (family coverage) in accordance with the PERS contract with City. The Employee shall be enrolled in the CalPERS 2% at 60 retirement plan, and shall pay the employee contribution percentage provided for in the current salary resolution, as same may be amended from time to time in the future.
- (b) In lieu of mileage reimbursement, City agrees to provide Employee with an automobile allowance in the amount of Five Hundred Seventy-Five Dollars (\$575.00) per month for business. Such allowance shall be paid together with customary monthly payroll practices. Employee will primarily use Employee's personal auto for City business, and will use City vehicles on an exception basis only. This provision does not in any way restrict Employee's use of her personal automobile for personal use.
- (c) Employee shall be entitled to accrue, and have credited to her personal account, vacation, executive leave and sick leave at the same rate as Executive Management employees of the City are provided pursuant to the City's current salary resolution. Employee shall be credited with a sick leave bank of eighty (80) hours upon commencement of employment. Employee shall be credited with a vacation leave bank of eighty (80) hours upon commencement of employment. This credited vacation time will not be subject to pay at separation if Employee separates from employment for any reason during the first year of

this Agreement. In recognition of the Employee's many years of public service, Employee shall accrue vacation leave at the rate of a 20+ year employee of the City. Vacation time accrual is capped at 320 hours. Employee shall also be entitled to holidays, Leave Without Pay and Bereavement Leave on the same basis as Executive Management employees of City are receiving. Any future change to the holiday or leave benefits provided to City's Executive Management employees shall apply to the level of holiday or leave benefits for Employee unless the Parties so agree.

- (d) Pursuant to the current Executive Salary Resolution, Employee shall be credited with forty (40) hours executive leave per year automatically. The Mayor and City Council exercise their discretion to award Employee an additional sixty (60) hours of executive leave in the first year of this Agreement and grant Employee an additional sixty (60) hours of executive leave upon commencement of employment. At Employee's one-year performance evaluation, the Mayor and City Council will evaluate Employee's performance and use of executive leave, and shall determine at that time, and each year thereafter of Employee's employment, the amount of executive leave beyond forty (40) hours, if any, to be granted to Employee. Executive leave is intended to allow Employee time for rest and relaxation and not intended to create a cash benefit. Employee shall not take executive leave as cash/cash out at any time.
- (e) City shall bear the full cost of any fidelity or other bonds required of Employee relating to her service as City Manager under any law or ordinance.
- (f) Should Employee choose to relocate to reside within the City of Costa Mesa, during the first two years of her employment with the City, City will reimburse Employee moving expenses up to \$12,500.00, so long as Employee is still employed for at least forty-five (45) days following her two-year employment anniversary, and provided that the moving expenses to be reimbursed are supported by appropriate documentation/receipts.

## **6. MEMBERSHIP AND SUBSCRIPTIONS.**

- (a) City agrees to budget and pay professional dues and subscriptions on behalf of Employee which are reasonably necessary for Employee's continued participation in national, regional, state or local associations and organizations necessary and desirable for Employee's continued professional participation, growth, and advancement or for the good of City including the International City/County Management Association and League of California Cities. Furthermore, City shall budget and pay for the professional dues and subscriptions to such additional organizations as approved by the City Council.
- (b) City agrees to budget and pay the travel and subsistence expenses of Employee for official travel, meetings, and occasions reasonably adequate to continue the professional development of Employee and reasonably pursued necessary official

and other functions for City, such as the annual conference of the International City/County Management Association, the League of California Cities, and other such national, regional, state and local government groups and committees of which Employee serves as a member, as approved by City Council.

- (c) City agrees to annually budget and pay for training and conference program(s) to enhance Employee's development as City Manager, up to a maximum of \$2,000 per year.
- (d) Employee shall be subject to the City's Travel and Meeting Reimbursement Policy.

**7. INDEMNIFICATION**

Subject to the provisions of Section 10 hereof, City shall defend, save harmless, and indemnify Employee against any claim for negligent tort or omissions, professional liability claim or demand, or other legal action, whether groundless or otherwise, arising out of an alleged negligent act or omission occurring in the performance of her duties as Employee in accordance with the provisions of California Government Code Section 825. Said indemnification shall extend beyond termination of employment to provide full and complete protection to Employee by City for any acts undertaken or committed in her capacity as Employee, regardless of whether the notice of filing of a lawsuit for such tort, claim, demand, or other legal action occurs during or following employment with City.

**8. NOTICES**

Any notices to be given hereunder by either party to the other shall be in writing and may be transmitted by personal delivery or by mail, postage prepaid. Mailed notices shall be addressed to the parties as follows:

If sent by Employee to City:

City Clerk  
City of Costa Mesa  
Costa Mesa, CA 92626

If sent to Employee by City:

Lori Ann Farrell Harrison  
5403 E. Wardlow Road  
Long Beach, CA 90808

Notices delivered personally shall be deemed communicated as of the date of actual receipt; mailed notices shall be deemed communicated as of the date of postmark.

**9. ATTORNEYS' FEES**

In the event any legal proceeding is instituted to enforce any term or provision of the Agreement, the prevailing party in said legal proceeding shall be entitled to recover reasonable attorneys' fees and costs from the opposing party in an amount determined by the Court to be reasonable.

## **10. REIMBURSEMENT TO CITY REQUIRED**

Notwithstanding the foregoing, the following provisions requiring reimbursement for certain compensation and/or indemnification provided to Employee by the City apply:

(a) Paid Leave:

Pursuant to Government Code section 53243, in the event that Employee is convicted of a crime involving the abuse of her office or position, as defined by Government Code section 53243.4, with the City, any paid leave or salary provided by the City for the time period in which the Employee is under investigation for such crimes shall be fully reimbursed by Employee to the City.

(b) Legal Defense:

Pursuant to Government Code section 53243.1, in the event that Employee is convicted of a crime involving abuse of her office or position, as defined by Government Code section 53243.4, Employee shall fully reimburse the City for all the costs of her legal criminal defense if a defense has been provided at City expense.

(c) Severance:

Pursuant to Government Code section 53243.2, in the event that Employee is convicted of a crime involving abuse of her office or position, as defined by Government Code section 53243.4, Employee shall fully reimburse the City for any cash settlement, including but not limited to severance pay, paid to Employee related to her termination under this Agreement.

## **11. ENTIRE AGREEMENT**

This Agreement supersedes any and all other agreements whether oral or written, between the parties hereto with respect to the subject matter hereof and contains all of the covenants and agreements between the parties with respect to said matter, and each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that any other agreement or modification of this Agreement shall be effective only if executed in writing and signed by both City and Employee.

## **12. VALIDITY**

The validity in whole or in part of any provision of this Agreement shall not void or affect the validity of any of the other provisions of this Agreement.

**13. AGREEMENT VOLUNTARY AND KNOWING**

Employee agrees and 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 representation or promises other than those contained in this Agreement. Employee agrees that this Agreement should be interpreted as if mutually prepared and without the same being construed for or against any party.

**14. GOVERNING LAW**

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

**15. 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.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement, the date and year first above written.

**CITY OF COSTA MESA:**

  
\_\_\_\_\_  
KATRINA FOLEY, MAYOR

**EMPLOYEE:**

  
\_\_\_\_\_  
LORI ANN FARELL HARRISON

**ATTEST:**

CITY CLERK, CITY OF COSTA MESA  
A Municipal Corporation of the State of California

  
\_\_\_\_\_  
BRENDA GREEN  
CITY CLERK, CITY OF COSTA MESA

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
KIMBERLY HALL BARLOW  
CITY ATTORNEY