

Con. 22-34

EMPLOYMENT AGREEMENT
CITY MANAGER

BETWEEN
CITY OF FOUNTAIN VALLEY

AND

MAGGIE LE-NGUYEN



This employment agreement sets forth the terms of employment between the City of Fountain Valley and Maggie Le-Nguyen for the position of City Manager.

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RECITALS

This AGREEMENT is made and entered into this 11th day of June 2022, by and between the City of Fountain Valley, a municipal corporation, (hereinafter called "CITY") and Maggie Le-Nguyen, an individual (hereinafter sometimes called "EMPLOYEE").

WHEREAS, Maggie Le-Nguyen is currently the CITY's Deputy City Manager and has provided services which have exceeded the expectations of the City Council; and

WHEREAS, it is the desire of the City Council to appoint Maggie Le-Nguyen to the position of City Manager after conducting a competitive search to find the best candidate; and

WHEREAS, it is the desire of the City Council to provide certain benefits to continue to retain Maggie Le-Nguyen as City Manager in light of her performance; and

WHEREAS, the parties desire to set forth the benefit package and other terms and conditions of employment in this AGREEMENT so that EMPLOYEE will remain in City's employ; and

WHEREAS, it is the desire of the parties to confirm the benefits and duties and to establish the respective terms and conditions of employment, as set forth herein; and

WHEREAS, the parties do hereby desire to comply with Chapter 692 of the 2011 Statutes (AB 1344); and

NOW, THEREFORE, in consideration of mutual covenants herein contained, the parties agree as follows:

ARTICLE 1 - DUTIES

Section 1.01- Employee Duties. The City Council employs EMPLOYEE as City Manager of the City of Fountain Valley to perform the functions and duties of City Manager as specified in Government Code Sections 34851 et seq., Chapter 2.16 of the Fountain Valley Municipal Code, and the job description, and to perform other legally permissible and proper duties and functions consistent with the office of the City Manager as the City Council shall from time to time assign. EMPLOYEE agrees to perform said duties in a competent, diligent, and honest manner. EMPLOYEE agrees to perform said duties on a full-time basis and agrees not to engage in other employment which is inconsistent, inimical, or incompatible with said duties.

ARTICLE 2- DEVOTION TO CITY'S BUSINESS AND HOURS OF WORK

Section 2.01 – Full-Time Employment. The City Manager position is considered a full-time position. The EMPLOYEE shall devote EMPLOYEE'S time, ability, and attention to the business of the CITY during the term of this AGREEMENT.

Section 2.02 – Other Activities. EMPLOYEE shall not engage, without the express prior written consent of the City Council, 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, that is or may be competitive with the CITY, that might cause a conflict-of-interest with the City, or that otherwise might interfere with the business or operation of the City or the satisfactory performance of the functions and duties of city manager.

Section 2.03 – Exempt (From FLSA) Status. Pursuant to the Fair Labor Standards Act, the CITY hereby determines that the City Manager position is exempt from both the minimum wage and overtime provisions of the Fair Labor Standards Act (“FLSA”) under the Executive Exemption. As an exempt employee under the FLSA, the City Manager shall not be entitled to any additional compensation for hours worked in excess of forty (40) in a work week. EMPLOYEE is expected to engage in those hours of work that are necessary to fulfill the obligations of the City Manager position.

ARTICLE 3 - TERM

Section 3.01 – Term. The AGREEMENT shall be effective June 11, 2022 and shall continue in effect until terminated as provided in Article 11 of this AGREEMENT.

Section 3.02 – At-Will Status. The City Manager is an at-will employee and serves at the pleasure of the City Council.

ARTICLE 4 - COMPENSATION

Section 4.01 – Compensation. The base salary rate for the position of City Manager, effective June 11, 2022, is Two Hundred Forty-Five Thousand Dollars (\$245,000) per year. EMPLOYEE’S compensation shall be subject to deductions and withholdings as required for federal and state income tax, Medicare, and any other deductions in accordance with federal, state, or local law.

Any increases in the annual base salary of the City Manager position, to the extent provided, may be made effective at any time and shall be made at the sole discretion of the City Council. Increases in the City Manager position’s annual base salary approved by the City Council shall not require an amendment to this AGREEMENT to be effective. Such increases shall be set forth in a Resolution approved by the City Council at a regular meeting of the City Council.

Section 4.02 – Performance Evaluation. The City Council shall, on an annual basis, define the goals and performance objectives which it deems necessary for the proper operation of the City Council’s policy objectives, and the City Council shall prioritize those goals and objectives. The annual goals and objectives shall be established on a fiscal year basis to take into consideration the funds available. The City Council shall review and evaluate EMPLOYEE’S performance of the City Manager position following the conclusion of the initial six-month period after the effective date of EMPLOYEE’S appointment (January 2023). Thereafter, the City Council shall review and evaluate EMPLOYEE annually at the conclusion of each fiscal year, beginning June 2023. Evaluations may be conducted in accordance with

specific criteria developed by the City Council and City Council may make adjustments to such criteria, if warranted, every year.

CITY and EMPLOYEE agree to conduct a salary and benefits review concurrently with the performance evaluations set forth in Section 4.02. Following each performance evaluation, City Council may provide increases in the base salary and/or benefits. Additionally, the City Council may choose to reward EMPLOYEE with non-base building merit increases to recognize outstanding accomplishments that exceed expectations.

Section 4.03 – Annual Physical. EMPLOYEE shall be entitled to one (1) of the following with respect to annual (calendar year) physical examinations:

- A. A complete physical examination conducted by the CITY’s physician or participation in a CITY-sponsored physical fitness program.
- B. Reimbursement equal to the amount the CITY pays the CITY’s physician for a comparable examination with the physical examination conducted by a physician other than the CITY’s physician. EMPLOYEE will be required to submit a summarized doctor bill to the Human Resources Department prior to the CITY issuing a reimbursement check to EMPLOYEE.

Section 4.04 – City Vehicle. The duties of the City Manager position require the use at all times during the duration of this AGREEMENT of an automobile provided by the CITY. EMPLOYEE shall be entitled to the use of such automobile for business use and personal use subject to any lease limitations. The CITY shall be responsible for paying all costs related thereto, including, but not limited to, liability, property damage, and comprehensive insurance and for the purchase, operation, maintenance, and repair of such an automobile, including gasoline. EMPLOYEE will be responsible for taxes on personal use of CITY vehicle, per IRS Publication 15-B.

Section 4.05 – Cellular Telephone and Technology. The CITY shall provide EMPLOYEE with a cellular telephone, laptop and/or iPad for business use during the duration of this AGREEMENT. The CITY shall be responsible for paying the costs for such cellular telephone, laptop, and/or iPad. Usage shall be in compliance with CITY policy regarding the same.

Section 4.06 – Matching Deferred Compensation Contribution. CITY will match up to \$250 per month into EMPLOYEE’S deferred compensation account.

ARTICLE 5 – RETIREMENT

Section 5.01 – CalPERS. EMPLOYEE shall continue to be enrolled as a member in the California Public Employees’ Retirement System (“CalPERS”), and the CITY will pay for the employer’s portion of the contribution into the system while the EMPLOYEE shall pay the employee’s portion of the contribution.

Section 5.02 – California Employees’ Pension Reform Act of 2013. Assembly Bill No. 340 (2012) established the California Public Employees’ Pension Reform Act of 2013 (“PEPRA”). The CITY is required to comply with the provisions of PEPRA.

Section 5.03 – Classic/Legacy Employees Under the California Employees’ Pension Reform Act of 2013. An individual hired on or after January 1, 2013, meeting the following criteria is designated as a Classic/Legacy Employee:

- A. Working for an employer providing CalPERS retirement benefits who begins employment with the CITY without a break in service or a break in service of less than six (6) months; or
- B. Current member of a public retirement system or plan with reciprocity with CalPERS.

EMPLOYEE, designated as a Classic/Legacy member, hired after 12/25/2010, shall be eligible for the following retirement benefits:

<u>Provision</u>	<u>Government Code Section</u>
2% at 60 Formula	21353
Three Highest Years Average Compensation	20037
Pre-Retirement Optional Settlement 2 Death Benefit	21548
Service Credit for Unused Sick Leave	20965
Fourth Level of 1959 Survivor Benefit	21574
Public Service Credit for Periods of Layoff	21022
Public Service Credit for Service Rendered to a Non-Profit Corporation	21026
Local System Service Credit included in Basic Death Benefit	21536

Section 5.04 – Contributions Towards Retirement.

- A. **Classic Tier 2 - 7% Employee Contribution.** EMPLOYEE agrees to pay on a pre-tax basis the full employee CalPERS retirement contribution of seven percent (7%). It is the intent of the parties to accommodate EMPLOYEE’S desire that said sums may be deducted on a pre-tax basis as deferred income for federal and state tax purposes. The parties believe the contribution is pre-tax because the CITY has filed the CalPERS Internal Revenue Code Section 414(h)(2) resolution. However, any income tax obligation or penalties arising from such tax treatment shall be the exclusive responsibility of the employee. In the event of any adverse tax treatment for EMPLOYEE, CITY shall not be responsible; therefore, CITY has made no representation regarding such tax treatment, and EMPLOYEE shall seek such advice from EMPLOYEE’S personal tax advisors regarding such matters.
- B. **City Contribution.** CITY agrees to pay the full employer contribution to CalPERS.

ARTICLE 6 – HEALTH AND OTHER INSURANCE

Section 6.01 – Group Medical and Dental Insurance. The CITY contracts with the CalPERS Public Employees' Medical and Hospital Care Act ("PEMHCA") for medical insurance for CITY employees. The payment of premiums towards group medical/dental/life insurance will be through the administration of a flexible benefit package.

Section 6.02 - City Contribution. The CITY shall contribute toward medical and dental insurance premiums an amount equal to the monthly premiums for EMPLOYEE plus all dependents for the plan in which EMPLOYEE is enrolled subject to the provision below. CITY's contribution shall be based on medical and dental coverage for the EMPLOYEE and EMPLOYEE'S dependents and includes the CalPERS statutory minimum employer contribution specified in Section 22892 of PEMHCA.

CITY will make contributions to EMPLOYEE'S flexible spending account based upon coverage elected. Specifically, EMPLOYEE may select from those plans offered through CalPERS PEMHCA and PPO or HMO dental with the CITY paying for the full premiums for coverage selected for EMPLOYEE and eligible dependents.

If EMPLOYEE elects not to be covered under the medical plan provided through the cafeteria plan, EMPLOYEE shall receive the CalPERS statutory minimum employer contribution specified in Section 22892 of PEMHCA as cash wages. In order to receive the statutory minimum, proof of group health coverage elsewhere is required. However, the premiums for dental and life insurance premiums, both of which are mandatory, will be deducted from CalPERS statutory minimum employer contribution specified in Section 22892 of PEMHCA with the remainder paid to EMPLOYEE as cash wages.

Section 6.03 - Cafeteria Plan. The insurance benefits provided for in this Section will be provided through the provision of a cafeteria plan adopted in accordance with the provisions of Internal Revenue Code Section 125.

The CITY will contribute to the cafeteria plan flex dollars as specified in the City Contribution section above. The CITY's flex dollar contribution includes the CalPERS statutory minimum paid by the CITY.

Section 6.04 - The Purchase of Optional Benefits through the Cafeteria Plan. The cafeteria plan offers EMPLOYEE the opportunity to purchase optional medical insurance and AFLAC insurance. Eligible employees may select from any of the medical insurance plans offered by CalPERS. If CalPERS changes any of the medical insurance plans by either adding or deleting the plan options, employees will be limited to those plan options offered by CalPERS.

EMPLOYEE may also elect any of the optional insurance options the CITY offers to employees at EMPLOYEE'S sole cost.

Section 6.05 - Designate Medical Waiver Flex Dollars towards the Employee's Contribution towards Deferred Compensation. EMPLOYEE may designate flex dollars, available after deductions for premiums for elected benefit options, towards EMPLOYEE'S

deferred compensation plan. Using cafeteria plan flex dollars towards deferred compensation contributions is binding for the entire calendar year and subject to Medicare taxes.

Section 6.06 - The Receipt of Cash through the Cafeteria Plan. EMPLOYEE will be eligible to receive cash (subject to taxation as wages) through the cafeteria plan if s/he opts out of receiving medical insurance in accordance with Section 6.02.

Section 6.07 – Term Life Insurance. The CITY shall provide EMPLOYEE with a term life insurance policy equal to \$500,000 and shall pay the full cost of the life insurance premium. No life insurance policy shall be provided after retirement.

Section 6.08 – Long-Term Disability Insurance. The CITY shall maintain in effect and pay the full premium on behalf of EMPLOYEE for a long-term disability insurance premium at two-thirds (2/3) of the existing salary, up to a maximum of \$13,333 benefit per month. EMPLOYEE shall be entitled to any benefits paid by such insurance.

A. **Eligibility.** EMPLOYEE's eligibility for long-term disability benefits depends on whether or not EMPLOYEE'S disability is industrial or non-industrial in nature. If the disability is industrially related, EMPLOYEE'S eligibility for long-term disability benefits begins on the sixty-first (61st) calendar day of continuous absence from work.

If EMPLOYEE'S disability is not industrially related, EMPLOYEE'S eligibility begins either on the sixty-first (61st) calendar day of the EMPLOYEE'S absence from work, or upon expiration of the EMPLOYEE'S sick leave, whichever period is longer.

B. **Benefits.** EMPLOYEE, who is eligible to receive long-term disability benefits, will receive two-thirds (2/3) of existing salary as of the date disability began less any deductible benefits, as provided for in the long-term disability policy.

1. EMPLOYEE who is receiving long-term disability benefits is considered in an off-payroll status, and will not accrue benefits during the time that EMPLOYEE is in such status. In addition, EMPLOYEE who is in an off-payroll status while receiving long-term disability benefits is responsible for maintaining group health insurance coverage and for paying premiums therefore.
2. Such long-term disability benefits are in lieu of all other CITY-provided compensation, such as Workers' Compensation benefits or disability retirement benefits and shall not be paid in addition to those other benefits.

Section 6.09 – Additional Flexible Spending Account. The CITY shall provide a voluntary Flexible Spending Plan (Section 125 Plan under the Internal Revenue Code) to EMPLOYEE'S. Enrollment in the plan allows employees to pay for out-of-pocket Health Care and Dependent Care costs with pre-tax dollars. Flexible Spending Account limits will be set by the City prior to open enrollment so that it does not exceed the Internal Revenue Service (IRS) limits.

At enrollment, and annually thereafter, participants must designate during open enrollment

the Flexible Spending Account election amount for the remainder of the year for new hires and for the next year for current employees. The annual amount is deducted from EMPLOYEE'S paycheck in equal installments, on a pre-tax basis, and credited to EMPLOYEE'S Flexible Spending Account. Reimbursement will be paid directly by a third-party administrator.

Federal law prohibits any change in a Flexible Spending Account during the calendar year unless the EMPLOYEE or EMPLOYEE'S dependent(s) have a qualifying "life event." A qualifying "life event" is marriage, divorce or legal separation, birth or adoption of a dependent, death of a dependent, or a change in the EMPLOYEE or EMPLOYEE'S spouse's employment status. The change in the Flexible Spending Account must be due to and consistent with the "life event" which permits the change.

An annual open enrollment period will be provided for the upcoming year's program. EMPLOYEE must affirmatively enroll in the Flexible Spending Account for each year. There is no automatic renewal.

When estimating annual expenses, EMPLOYEE is cautioned to only consider those expenses EMPLOYEE is reasonably certain s/he will incur. CITY's plan document will define all limits, terms, and conditions of the plan.

Deductions for Flexible Spending Accounts shall not reduce earnable compensation for purposes of calculating benefits or contributions for CalPERS.

The CITY maintains the right to select and change, if needed, the vendor to administer the Flexible Spending Account program.

Section 6.10 – Wellness/Fitness Reimbursement: EMPLOYEE shall receive \$500 per fiscal year wellness/fitness reimbursement with proof of membership/purchase/services.

ARTICLE 7 - MEDICAL AND DENTAL INSURANCE FOR RETIREES

Section 7.01 – City Contributions towards Premiums. Upon retirement directly from active duty, the CITY will pay the contributions as noted in Section 7.03 if the eligibility criteria in Section 7.02 are met.

Section 7.02 – Eligibility Criteria. EMPLOYEE will be eligible for CITY contributions towards retiree health insurance defined by CalPERS, and as specified in Section 7.03, if the following eligibility criteria are met:

1. Is at least fifty (50) years of age for Miscellaneous Classic and Safety members; Miscellaneous PEPRAs members must be at least fifty-two (52) years of age;
2. Has been employed by the City for at least five (5) years;
3. Is a vested member of CalPERS;

4. Has applied for and received a retirement allowance from CalPERS;
5. Must retire within 120 days from separation from the CITY and be eligible for coverage at separation;
6. Any lapse in coverage will make EMPLOYEE ineligible for participation in the dental program.

Section 7.03 – City Contribution. Only while participating in the CalPERS medical plan will the CITY pay the minimum employer contribution specified in Section 22892 of PEMHCA to CalPERS. EMPLOYEE is responsible for all dental premiums at retirement.

Section 7.04 – Retiree (City Manager) Medicare Coverage

EMPLOYEE, if eligible, enrolls at EMPLOYEE'S own expense for Medicare coverage. Retirees will be solely responsible for paying any Medicare premiums/charges and any applicable taxes resulting from these benefits.

ARTICLE 8 - LEAVES

Section 8.01 – Holidays. EMPLOYEE shall be entitled to eleven (11) paid holidays per calendar year. The eleven (11) paid holidays to which EMPLOYEE is entitled shall be as follows:

- New Year's Day
- Martin Luther King, Jr. Day
- President's Day
- Memorial Day
- Independence Day
- Labor Day
- Veterans' Day
- Thanksgiving and the day after Thanksgiving
- Christmas
- "Floating Holiday"

The exact date upon which each of the above holidays will be observed and during which City Hall will be closed shall be set by Administrative Regulation each year. Holidays will be paid at the full workday rate.

Floating Holiday. The "floating holiday" may be taken at any time during the year. The "floating holiday" must be used during the calendar year and may not be carried over from one (1) year to the next. An employee who separates from employment may not be compensated for any unused holiday.

Section 8.02 - Vacation Accrual. EMPLOYEE shall accrue vacation time at the rate specified in the table below. For purposes of calculating vacation leave accrual, EMPLOYEE's years of service shall include all EMPLOYEE's years of service as a full time employee of the CITY.

Years of Service	Hours Per Year	Hours Per Payroll Period
0 to 5 years	120	4.62
Years 6 - 8	136	5.23
Years 9 - 10	144	5.54
Years 11 - 12	152	5.85
Years 13 - 14	160	6.15
Years 15 and over	200	7.69

Upon appointment, EMPLOYEE will retain EMPLOYEE'S existing bank of accrued vacation hours.

- A. Eligibility to Use Vacation: EMPLOYEE shall check with the Mayor before taking vacation in the first six months of serving as City Manager, provided that EMPLOYEE shall be able to take vacations that were pre-arranged prior to the effective date of this AGREEMENT.
- B. Maximum Vacation Accrual: EMPLOYEE may accrue up to two hundred forty (240) hours of vacation and, with the City Council's approval, may exceed two hundred forty (240) hours for business necessity.
- C. Annual Vacation Payoff: Annually, an employee who uses forty (40) hours of vacation in a calendar year and maintains an accrual of twenty (20) hours (after vacation buy-back) may request the CITY buy-back a maximum of eighty (80) hours of vacation. EMPLOYEE will be required to submit a written request to Human Resources by a designated date in November of each year with buy-back paid during the first payroll period in December of the following year.
- D. Annual Sweep of Vacation Hours in Excess of 240 Hours: Annually, effective on the first payroll period in February, should EMPLOYEE's vacation accrual exceed the maximum vacation accrual specified above, the sum above the maximum will be swept into a qualifying plan such as a 457 or 401(A) account for EMPLOYEE. The hours exceeding the maximum will be cashed out and deposited into EMPLOYEE's account.
- E. Vacation Accrual at Separation: At separation, the monetary value of EMPLOYEE's accrued, unused vacation time will be cashed out and paid to EMPLOYEE.

Section 8.03 – Administrative Leave. The CITY agrees to provide EMPLOYEE with one (1) workday per month up to a maximum of twelve (12) workdays per calendar year of administrative leave to be used at EMPLOYEE'S discretion, subject to the needs of the organization. Said leave shall not accrue from year to year, and there is no right to be paid for any balance at the time of separation from employment with CITY. EMPLOYEE shall have the option to bank a maximum of two (2) days of administrative leave annually. Upon appointment, EMPLOYEE shall retain existing accrued administrative leave and shall accrue the difference in hours available to the City Manager.

Section 8.04 – Sick Leave Accrual Rate. EMPLOYEE shall accrue sick leave at the rate of 3.69 hours per bi-weekly pay period (one (1) eight (8) hour day per month).

Upon appointment, EMPLOYEE shall retain existing accrued sick leave and shall begin accruing sick leave at the current rate thereafter.

In accordance with California Labor Code section 245 et seq., should EMPLOYEE separate from employment with the City of Fountain Valley, and then return to CITY employment within one (1) year from the date of separation, EMPLOYEE'S accrued, unused sick leave hours at the time of separation after any sick leave payoff if any, shall be reinstated upon re-hire.

Section 8.05 - Sick Leave Usage. The first three (3) days or work hours equivalent (e.g., 30 hours for employees on a 4/10 schedule) of paid sick leave taken each 12-month period will be considered sick leave used pursuant to the Healthy Workplaces, Healthy Families Act of 2014 (California Labor Code sections 245-249). The 12-month period is July 1 through June 30.

- A. EMPLOYEE can use sick leave for EMPLOYEE'S preventative care (such as physical exams) or care of an existing health condition;
- B. EMPLOYEE can use up to a maximum of one-half of one year's annual accrued sick leave (e.g., 60 hours for employees on a 4/10 work schedule) per year for the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee's child, parent, spouse or registered domestic partner. The first three days (or work hours equivalent) of sick leave an employee uses in a 12-month period can also be used for the diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee's sibling, parents-in-law, grandparent or grandchild. Sick leave usage for family illness is separate from Family Care and Medical Leave, the provisions of which are included in Administrative Regulation No. 1050; however, sick leave usage for family illness may run concurrently with Family Care and Medical Leave; or
- C. EMPLOYEE can use sick leave for specified purposes if a victim of domestic violence, sexual assault or stalking as set forth in California Labor Code section 230(f) and 230.1(a).

Section 8.06 - Sick Leave Payoff. Upon completion of ten (10) years of continuous service with the CITY, if EMPLOYEE separates from the CITY for any reason other than termination for cause, EMPLOYEE shall be paid twenty-five percent (25%) of the present salary value of the accrued, unused sick leave balance at the time of separation. In the event of death at any time during employment with the CITY, twenty-five percent (25%) of the EMPLOYEE'S accrued, unused sick leave will be paid to EMPLOYEE'S estate. Contributions to CalPERS shall not be made on any payoff for accrued, unused sick leave.

Section 8.07 - Retirement Credit for Unused Sick Leave. Pursuant to Government Code Section 20965 and the CITY's contract with CalPERS, the EMPLOYEE who retires from the CITY may receive service credit towards EMPLOYEE'S retirement for all accrued, unused sick leave for which EMPLOYEE does not receive compensation. This provision shall apply only to an employee whose effective date of retirement is within four (4) months of separation from employment with the CITY.

Section 8.08 – Bereavement Leave. EMPLOYEE shall be entitled to a maximum of three (3) working days absence with pay, as Bereavement Leave, when EMPLOYEE is compelled to be absent from duty by reason of death of an immediate family member, or in the event of critical illness where death appears to be imminent. For purposes of bereavement leave, “immediate family member” refers to spouse, child, stepchild, grandchild, brother, sister, parent, step-parents, mother-in-law, father-in-law, grandparents, or legal guardian.

Section 8.09 – Industrial Injury Leave. EMPLOYEE shall be entitled to a maximum of ninety (90) calendar days of industrial injury leave at full salary and benefits in lieu of temporary disability benefits. EMPLOYEE who is absent from work for longer than ninety (90) calendar days due to industrial illness or injury will receive those benefits provided for in the Workers’ Compensation Law, as well as, any long-term disability benefits to which he may be entitled. EMPLOYEE will also be permitted, after exhaustion of the ninety (90) days industrial injury leave, to use accrued sick leave to supplement EMPLOYEE’S Workers’ Compensation benefits. In no case will EMPLOYEE be permitted to receive more than EMPLOYEE’S regular pay.

ARTICLE 9 – EXPENSES

In addition to the other compensation provided to EMPLOYEE, CITY agrees to reimburse EMPLOYEE’S reasonable expenses incurred in connection with EMPLOYEE’S duties and professional development related to EMPLOYEE’S CITY employment. Said expenses shall include, but not be limited to, those incurred in participation in educational programs and professional organizations, travel, lodging and attendance at seminars and conferences, dues, and related expenses. The amount available shall be subject to budget limitations. EMPLOYEE may be provided with a credit card or cash advances for such purposes. EMPLOYEE shall provide the Mayor and City Council with a brief accounting of all such expenses within thirty (30) days of being incurred.

ARTICLE 10 – HEIRS AND ASSIGNS

Any benefits due EMPLOYEE hereunder shall inure to the benefit of EMPLOYEE’S heirs, successors and assigns when appropriate.

ARTICLE 11 – SEPARATION

Section 11.01 – Resignation. EMPLOYEE may resign at any time, but shall give the CITY at least thirty (30) calendar days advance notice of the effective date of EMPLOYEE’S resignation, unless the parties otherwise agree in writing.

Section 11.02 – Termination Without Cause. EMPLOYEE is an at-will employee serving at the pleasure of the City Council as provided in Section 2.16.010 of the Fountain Valley Municipal Code.

The City Council may terminate EMPLOYEE’S appointment without cause and remove the EMPLOYEE at any time. As used in this Section, “termination” shall include actual termination, a request that the EMPLOYEE resign or the elimination of the City Manager position. Notice of termination shall be provided to EMPLOYEE in writing.

If terminated without cause, the CITY shall extend to EMPLOYEE the right to continue health insurance at the EMPLOYEE'S sole expense in accordance with the Consolidated Omnibus Budget Reconciliation Act of 1986 ("COBRA"). EMPLOYEE will also be entitled to payment for all unused vacation. EMPLOYEE may be eligible for payment for twenty-five percent (25%) of EMPLOYEE'S accrued, unused sick leave if EMPLOYEE has completed ten (10) years of continuous service with the CITY at the time of termination.

In the event the City Council determines to terminate EMPLOYEE'S employment under this AGREEMENT without cause, then CITY shall pay to EMPLOYEE six (6) months base salary as severance in an amount equal to her monthly base salary then in effect multiplied by six (6), less applicable deductions and excluding deferred compensation or the value of any other benefits. Such severance shall be paid to EMPLOYEE in a lump sum payment within 30 days of EMPLOYEE's separation. No severance pay will be provided if EMPLOYEE'S employment is discontinued because of EMPLOYEE'S conviction of a felony or of any illegal act involving personal gain to EMPLOYEE, or because of malfeasance of office. Benefits shall not accrue on said sums whether paid in a lump sum or monthly.

Section 11.03 – Termination for Cause. The City Council may terminate EMPLOYEE at any time, for cause. As used in this AGREEMENT, "cause" shall mean any of the following:

- A. Conviction of a felony or a crime involving moral turpitude that adversely affects the CITY's or the EMPLOYEE'S reputation; or
- B. Conviction of a misdemeanor arising out of the EMPLOYEE'S duties or performance under this AGREEMENT; or
- C. Misappropriation of public funds; or
- D. Willful abandonment of duties consisting of the failure to report to work for five (5) consecutive working days (for reasons not medically related) and not notifying staff and the City Council of EMPLOYEE'S status; or
- E. A willful and intentional failure to carry out materially significant and legally constituted policy decisions of the City Council made by the City Council; or
- F. Willful destruction or misuse of CITY property; or
- G. Willful violation of the federal, state, or CITY discrimination laws concerning race, religious creed, color, national origin, ancestry, physical handicap, marital status, sex, or age concerning either members of the general public or CITY employee(s) while acting in the course and scope of employment and while acting without the prior approval or direction of the City Council; or
- H. Any other intentional or grossly negligent action or inaction by EMPLOYEE that: 1) materially and substantially impedes or disrupts the operations of the CITY or its organizational units; 2) is detrimental to employees or public safety; 3) violates properly established rules or procedures of the CITY causing a material and substantial adverse

impact on the CITY; or 4) has a material and substantial adverse effect on the CITY's interests as clearly defined and delineated by properly established City Council action, policy, regulations, ordinances, or City Code provisions.

Notice of Termination for Cause shall be provided to the EMPLOYEE in writing and shall set forth the facts and grounds constituting such cause for removal.

If terminated for cause, the CITY shall extend to EMPLOYEE the right to continue health insurance at the EMPLOYEE'S sole expense in accordance with COBRA. EMPLOYEE will also be entitled to payment for compensation accrued up to the date of termination for cause including payment for unused accrued vacation. EMPLOYEE will not be entitled to payment of any sick leave nor any other pays including severance pay.

Section 11.04 – Reimbursement After Conviction of Abuse of Office. In accordance with Government Code Section 53243.2, if any cash settlement is paid as a result of termination of this AGREEMENT, the money paid shall be fully reimbursed to the CITY if EMPLOYEE is convicted of a crime involving abuse of office or position.

ARTICLE 12 – INDEMNIFICATION

City shall defend, hold harmless, and indemnify EMPLOYEE when required by the California Government Code or at any other time Council determines to do the same.

ARTICLE 13 – SEVERABILITY

If any provision of this AGREEMENT is found to be unlawful by a court of law, the parties intend that any remaining provision that may stand on its own shall be enforceable.

ARTICLE 14 – CONFLICT OF INTEREST

EMPLOYEE shall not engage in any business or transaction, or have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper discharge of EMPLOYEE'S official duties or which would tend to impair the independence of EMPLOYEE'S judgment or action in the performance of his official duties. EMPLOYEE shall also be subject to the conflict of interest provisions of the California Government Code and any conflict of interest codes applicable to the EMPLOYEE'S employment with the CITY.

ARTICLE 15 – CONFIDENTIALITY

EMPLOYEE acknowledges that in the course of EMPLOYEE'S employment, EMPLOYEE will be given or will have access to confidential and proprietary documents and information relating to the CITY, its residents, businesses, employees, and customers. Such confidential information may include, but is not limited to, all information given to or otherwise accessible to EMPLOYEE that is not public information or would be exempt from public disclosure as confidential, protected, exempt, or privileged information. EMPLOYEE shall hold the confidential information in trust for the CITY's benefit and shall not disclose such information to others without the express written consent of the CITY. All confidential information shall

be promptly returned to the CITY immediately upon the effective date of any termination or resignation.

ARTICLE 16 – NOTICES

Any notice required by this AGREEMENT shall be in writing and shall be either given in person or by first class mail with the postage prepaid, addressed as follows:

To CITY: City Council of the City of Fountain Valley
Attention: Mayor
10200 Slater Avenue
Fountain Valley, California 92708

To CITY MANAGER: Maggie Le-Nguyen
City Manager
City of Fountain Valley
10200 Slater Avenue
Fountain Valley, California 92708

ARTICLE 17 – ENTIRE AGREEMENT

This AGREEMENT supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the employment of EMPLOYEE by CITY and contains all of the covenants and agreements between the parties with respect to that employment in any manner whatsoever. Each party to this AGREEMENT acknowledges that no representation, inducement, promise, or agreement, orally or otherwise, have been made by any party or anyone acting on behalf of any party, which is not embodied herein and that no other agreement, statement, or promise not contained in this AGREEMENT shall be valid or binding on either party.

ARTICLE 18 – MODIFICATION

This AGREEMENT may only be modified in writing by the parties except to the extent that a resolution may establish or modify a benefit not otherwise specifically provided for in this AGREEMENT.

ARTICLE 19 - CITY MANAGER’S INDEPENDENT REVIEW

EMPLOYEE acknowledges that EMPLOYEE has had the opportunity and has conducted an independent review of the financial and legal effects of this AGREEMENT and has not relied upon representation of the CITY, its elected or appointed officers and officials, agents or employees other than those expressly set forth in this AGREEMENT. EMPLOYEE acknowledges that EMPLOYEE has been advised to obtain and EMPLOYEE has availed himself/herself of legal advice with respect to the terms and provisions of this AGREEMENT.

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ARTICLE 20 – STATE LAW

The rights and obligations of the parties to this AGREEMENT shall be governed by the laws of the State of California.

ARTICLE 21 – 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.

ARTICLE 22 – MANDATORY GOVERNMENT CODE PROVISIONS

Government Code §§ 53243 - 53243.4 require that contracts between local agencies and its employees include provisions requiring an employee who is convicted of a crime involving an abuse of his office or position to provide reimbursement to the local agency for the following forms of payment: (i) paid leave salary; (ii) criminal defense costs; (iii) cash settlement payments; and (iv) any non-contractual settlement payments. Accordingly, the parties agree that it is their mutual intent to fully comply with these Government Code sections and all other applicable law as it exists as of the date of execution of this AGREEMENT and as such laws may be amended from time to time thereafter. Specifically, the following Government Code sections are called out and hereby incorporated by this AGREEMENT:

- §53243. Reimbursement of paid leave salary required upon conviction of crime involving office or position.
- §53243.1. Reimbursement of legal criminal defense upon conviction of crime involving office or position.
- §53243.2. Reimbursement of cash settlement upon conviction of crime involving office or position.
- §53243.3. Reimbursement of noncontractual payments upon conviction or crime involving office or position.
- §53243.4. "Abuse of office or position" defined.

EMPLOYEE represents that she has reviewed, is familiar with, and agrees to comply fully with each of these provisions if any of these provisions are applicable to EMPLOYEE, including that EMPLOYEE agrees that any cash settlement or severance related to a termination that EMPLOYEE may receive from the City shall be fully reimbursed to the local agency if EMPLOYEE is convicted of a crime involving an abuse of EMPLOYEE's office or position.

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IN WITNESS WHEREOF, the parties have executed this AGREEMENT on June 7, 2022.

The effective start date for employment as City Manager shall be June 11, 2022.

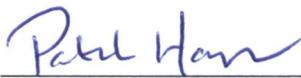
Employee

Dated: 7-11-2022



Maggie Le-Nguyen
City of Fountain Valley

Dated: 6-29-2022



Patrick Harper, Mayor

ATTEST:


Rick Miller, City Clerk Administrator

APPROVED AS TO FORM

HARPER & BURNS LLP



Colin Burns
Attorneys for the City