

INSURANCE NOT REQUIRED
WORK MAY PROCEED
CLERK OF COUNCIL

DATE: JUL 15 2019

(b)
D. COTD HR.
Stevens Pham

CITY OF SANTA ANA

CLERK OF THE COUNCIL EMPLOYMENT AGREEMENT

This Clerk of the Council Employment Agreement ("Agreement") is entered into as of the 2nd day of July, 2019 (the "Effective Date"), between the City of Santa Ana (hereinafter referred to as the "City") and Daisy Gomez (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, the City Council of the City desires to appoint and employ Employee as Clerk of Council pursuant to the Charter of the City of Santa Ana ("City Charter"), and

WHEREAS, the Employee desires to accept the appointment as the Clerk of Council for the City, and

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

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 July 16, 2019, and shall remain in effect, unless terminated in accordance with the provisions of this Agreement.

2. Compensation.

2.1 Salary.

(a) 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 July 16, 2019, set at Step 14 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.

(b) In the event that the City Council approves cost of living adjustment or salary increase for a majority of City Executive Management, the City Council agrees to provide the same percentage cost of living adjustment or salary increase to the Clerk of Council effective on the date

that the majority of City Executive Management receive the cost of living adjustment or salary increase.

2.2 Benefits

2.2.1 Employee Benefits

Except as expressly provided for in this Agreement (sick leave, vacation, car allowance, 457 deferred compensation), Clerk of Council shall be entitled to receive the same benefits provided to other Executive Management employees pursuant to Resolution No. 2015-026, as may be amended from time to time by the City Council. These benefits include, but are not limited, to health insurance (medical, dental, vision), holidays, retiree health savings plan, group life and disability insurance, and bereavement leave.

2.2.2 Sick Leave Accrual

Clerk of Council will accrue 8 hours of sick leave per calendar month of service.

2.2.3. Sick Leave Bank

Upon employment, Clerk of Council will be provided with a bank of 150 hours of accrued sick leave.

2.2.4 Vacation Allowance

Upon employment with City, Clerk of Council shall be awarded a bank of 200 hours of vacation leave and shall commence employment accruing vacation at the rate of a five (5) year employee. Clerk of Council shall accumulate regular and management vacation hours in the same manner as City executive managers.

2.2.5 CalPERS Membership

As a classic member under CalPERS, Clerk of Council will be enrolled in the 2.7% at age 55 benefit formula and shall be responsible for paying eight percent (8%) of CalPERS reportable compensation toward the employer cost of the 2.7% at 55 enhanced retirement formula. This payment is implemented as cost sharing pursuant to *Government Code* section 20516(f).

2.2.6 Life Insurance

City will purchase life insurance for Clerk of Council in the amount of three times the Clerk of Council's annual salary not to exceed a maximum of three hundred thousand dollars (\$300,000).

2.2.7 Deferred Compensation

Clerk of Council shall receive deferred compensation pursuant to the City's 457 plan in the amount of \$10,000 a year.

2.2.8 Relocation Expenses

Clerk of Council shall be provided reimbursement for the actual costs required to relocate to Orange County, i.e. moving expenses, not to exceed the sum of five thousand dollars (\$5,000).

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 2020. Within the first 45 days of appointment, members of the Council will meet with the Clerk of the Council to provide and agree to preliminary Department goals, objectives, and priorities. The results of these meetings shall provide a roadmap towards the Clerk of the Council annual performance evaluation commencing in or around July of each year commencing in 2020. 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.

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. 2015-026 and as amended from time-to-time.

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.

D. City agrees to conduct a workload and staffing study to determine optimal and cost-effective staffing levels that support Clerk of the Council's programs directed by the City Council and duties mandated by federal, state, and local laws. The aim of this review is intended to provide the city and public with timely, efficient, and professional services on a regular basis.

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 5, Title 6, or 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: Daisy Gomez
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.

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 nine (9) months of the Clerk of the Council's then monthly CalPERS 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 follow on the next page]

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 nine (9) months' Severance Pay in the amount of \$ Exhibit 2 [9 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 Pay 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 she 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 she has read and understands this waiver and voluntarily and knowingly is waiving her right under Section 1542 to pursue unknown or unanticipated claims, rights, demands, actions, obligations, liabilities and causes of action of any kind.

Initials of Employee: DG

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.

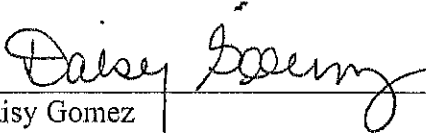
Approved and Agreed to By:

Daisy Gomez
Daisy Gomez (Name)

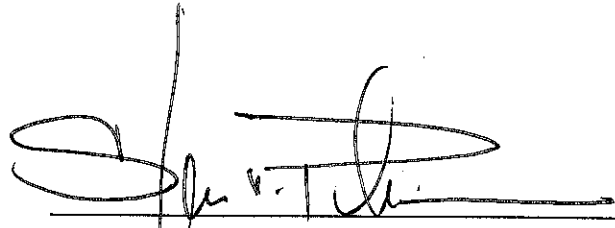
July 15, 2019 (Date)

IN WITNESS WHEREOF, the Parties have executed this Clerk of Council Employment Agreement as of 2nd day of July, 2019.

EMPLOYEE/CLERK OF COUNCIL



Daisy Gomez




Steven V. Pham
Human Resources Director

CITY OF SANTA ANA




Miguel A. Pulido
Mayor

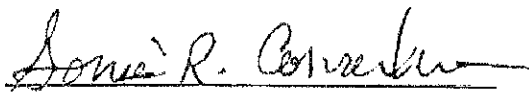
ATTEST:



Norma Mitre
Acting City Clerk



APPROVED AS TO FORM:



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

EXHIBIT 2

Estimated Cost of Proposed City Clerks Agreement

Description		FY 19-20 Annual Rates
Base Salary		168,900
Deferred Compensation		10,000
CalPERS Retirement Cost (PEPRA)		18,544
Medical/Dental Max		22,400
LTD/Life Insurance		684
Workers Compensation		8,675
Medicare		2,536
Auto Allowance		6,000
Total Annual Compensation	\$	237,739
Monthly Rate	\$	19,812
July 2019-June 2020	\$	227,833*