

**AMENDED AND RESTATED CITY MANAGER
EMPLOYMENT AGREEMENT
CITY OF RANCHO SANTA MARGARITA**

THIS AMENDED AND RESTATED EMPLOYMENT AGREEMENT (the "Agreement") is effective December 1, 2014, by and between the CITY OF RANCHO SANTA MARGARITA, a California municipal corporation organized and existing under the laws of the State of California (hereinafter referred to as "City"), and JENNIFER MALKOWSKI CERVANTEZ, an individual (hereinafter referred to as "Cervantez" or "City Manager"). City and Cervantez are sometimes hereinafter individually referred to as "party" and are hereinafter collectively referred to as the "parties."

RECITALS

A. In order to ensure that its governmental responsibilities are met at all times, City wishes to continue to retain in its employment Jennifer M. Cervantez who, since commencing her employment with the City on July 9, 2012 has demonstrated an exceptional degree of knowledge, experience, technical ability, professionalism, and leadership qualities in performing the duties of the City Manager, consistent with the needs of the City and the City Council.

B. In order to retain in its employment the current city manager who demonstrates these exceptional qualities and the experience necessary to continue to fulfill the City's immediate and long-term goals and policy objectives, the City Council of the City has determined that it is advisable to enter into this Amended and Restated Employment Agreement. All City actions referred to in this Agreement shall mean actions taken by a majority of the City Council.

C. It is the desire of the City Council to continue to retain the professional services of Jennifer M. Cervantez to serve as City Manager of the City of Rancho Santa Margarita and to provide for increases in and amendments to compensation and benefits, establish conditions of employment, and set working conditions for such services.

D. City and Cervantez, therefore, desire to enter into this Agreement in order to specify the terms and conditions of Cervantez' employment with the City.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

Section 1: Term

City hereby continues to retain Cervantez to serve as City Manager of the City of Rancho Santa Margarita and Cervantez hereby accepts such continued employment with City beginning on December 1, 2014, and continuing until City Manager or City Council terminates this Agreement. City Manager is employed by City in an "at-will" capacity serving at the pleasure of the City Council. Either the City Council or City Manager may terminate this Agreement at any time with or without cause and in its or her sole discretion, as set forth in this Agreement. The term of this Agreement is two years from the Effective Date, and shall automatically be extended for one additional twelve month period on each annual anniversary of the Effective Date with the first one year renewal occurring on December 1, 2015.

Section 2: General Duties

Cervantez shall serve as the City Manager of the City. In that capacity, City Manager shall perform the duties specified by the Rancho Santa Margarita Municipal Code and applicable state law and to perform the functions and duties as the administrative head of the government of the City of Rancho Santa Margarita. City Manager shall also perform such other functions and duties, not inconsistent with the terms of this Agreement, as the City, by and through its City Council, may legally assign.

Section 3: Devotion to City's Business and Hours of Work

A. Cervantez' position as City Manager is considered a full-time position. City Manager shall devote her time, ability, and attention to the business of City during the term of this Agreement.

B. City Manager shall not engage in any other business, educational, or professional pursuits whatsoever, or directly or indirectly render any service of a business, commercial, or professional nature to any other person or organization, whether for compensation or otherwise, without the prior consent of the City Council. However, the expenditure of reasonable amounts of time for educational, charitable, personal, or professional activities shall not be deemed a breach of this Agreement if those activities do not conflict or materially interfere with the professional services required under this Agreement; such limited activities shall not require the prior consent of the City Council.

C. Nothing in this Agreement prohibits City Manager from making passive personal investments or conducting private business affairs, if those activities are not deemed to be a conflict of interest under state law or conflict or materially interfere with the professional management services required under this Agreement.

D. City Manager's duties may involve expenditures of time in excess of the

regularly established workday or in excess of a forty hour workweek and may also include time outside normal office hours (including attendance at City Council meetings). City Manager is classified as an exempt employee under the Fair Labor Standards Act ("FLSA") and shall not be entitled to any additional compensation for hours worked in excess of forty in a work week.

Section 4: Performance Evaluation

The City Council, in closed session, shall review and evaluate the performance of the City Manager at least once each year during the term of this Agreement. Upon execution of this Agreement by both parties, the City Council shall schedule time, and allocate the funds if necessary, to develop mutually agreeable goals, objectives, and performance standards which will be applied during such annual performance evaluations. The review and evaluation is to be completed in accordance with specific criteria developed jointly by the Mayor and City Council and the City Manager. Such review is to include a written statement of the findings provided to the City Manager, and an adequate opportunity for the City Manager to discuss this evaluation with the Mayor and City Council. The City Council may retain, at its sole discretion, the services of a professional facilitator or qualified labor negotiator to assist the City Council in completing this annual performance evaluation process. Failure of the City Council to review and evaluate the performance of the City Manager pursuant to this section shall not affect the right of the City to terminate the City Manager's employment and shall not be considered a breach of this Agreement. Following the performance evaluation, City Manager may be entitled to a performance bonus, at the sole discretion of the City Council, equal to 0 – 10% of her then-current annual base salary which, if awarded, must be approved by minute action and ratified by resolution.

Section 5: Salary

A. As compensation for the services to be performed hereunder, effective December 1, 2014, City agrees to pay City Manager an annual base salary of \$202,240.50, subject to deductions and withholdings of any and all sums required for federal or state income tax, other deductions or withholdings required by then current state, federal or local law, and paid biweekly in accordance with the City's established accounting and payroll practices at the same time and in the same manner as other employees of the City are paid. The City shall also deduct from her annual base salary any applicable sums that City Manager is obligated to pay because of participation in plans or programs described in Section 6 of this Agreement.

B. Any increases in the annual base salary of City Manager, to the extent provided, may be made effective at any time and shall be made in the sole discretion of the City Council. Increases in City Manager's annual base salary approved by the City Council shall not require an amendment to this Agreement to be effective. Such increases may be set forth in an annual employee salary resolution or minute action approved by the City Council and ratified by resolution.

C. City Manager's compensation as discussed under this Section 5 is not tied to the compensation of any other City employee or group of City employees, except as expressly

provided in this Agreement.

Section 6: Benefits and Leaves of Absence

A. Flexible Benefits

City Manager shall receive the same benefits that are provided to all other regular full-time City employees, including but not limited to Flexible Benefits contribution currently established at \$1,471.00 per month, for medical, dental, vision insurance and Comprehensive Annual Leave. This provision shall be automatically amended whenever the City Council adopts a new resolution or takes action to modify these benefits for all other regular full-time City employees.

B. Retirement Benefits

1. City Council has authorized enrollment in the California Public Employment Retirement System ("PERS") in the retirement plan of 2% at 60 for all regular full-time City employees including City Manager. City is responsible for paying the entire employer cost of City Manager's benefit in accordance with the rate determined by the PERS actuarial. City Manager is responsible for paying the employee/member contribution toward her PERS retirement benefit (currently set at 7% of salary). City Manager shall always be responsible for full payment of the employee/member contribution as may be amended from time to time by the PERS actuarial.

2. City Manager is also entitled to participate in the International City Managers Association ("ICMA") 457 deferred compensation plan.

C. Personal Vehicle Business Mileage Reimbursement

City shall reimburse City Manager for personal vehicle mileage at the applicable IRS standard mileage rate for city business related transportation and travel expenses for all miles of business use (i.e., IRS business standard mileage reimbursement rate), excluding travel to and from work, which reimbursement requests shall be supported by accurate record keeping submitted monthly to the City's Accounting and Budget Supervisor.

D. Professional Development

City acknowledges its interest in the continuing professional development of City Manager and agrees to pay all reasonable and appropriate expenses associated with professional dues and subscriptions and/or attendance at conferences, training opportunities, and meetings of organizations concerned with the city manager / public administration profession. Such expenses shall be approved in advance by the City Council during its annual budget process.

E. General Business Expenses

The City recognizes that City Manager may incur expenses of a non-personal, job-

related nature that are reasonably necessary to City Manager's service to the City. The City agrees to either pay such expenses in advance or to reimburse the expenses, so long as the expenses are incurred and submitted according to the City's normal expense reimbursement procedures or such other procedure as may be designated by the City Council. To be eligible for reimbursement, all expenses must be supported by documentation meeting the City's normal requirements and must be submitted within time limits established by the City.

F. Administrative Leave Pending an Investigation

Because City Manager is an "at-will" employee, the City is not obligated to pay City Manager pending an investigation into any alleged misconduct by the City Manager. Notwithstanding the foregoing, in the event that the City Council determines, in its sole discretion, that it is in the best interest of the City for City Manager to be placed on paid administrative leave pending such an investigation, City Manager shall fully reimburse any salary provided for that purpose if the misconduct for which the City Manager was under investigation results in the City Manager being convicted of a crime involving an abuse of her office or position as defined in Section 7.A.2 of this Agreement. City Manager shall fully reimburse such salary no later than six months after such conviction.

Section 7: Termination and Separation Pay

A. Termination By City For Reasons Other Than "Cause"

1. If City terminates this Agreement (thereby terminating City Manager's employment) without cause or for reasons other than "cause" as defined in Paragraph B below, and if City Manager timely executes and delivers to City an original "Separation Agreement and General Release" in the form attached hereto as Attachment 1, and does not thereafter timely exercise her right to revoke said Separation Agreement and General Release, the City shall pay City Manager a lump sum severance benefit equal to the monthly salary of Employee at the time of separation multiplied by the number of months left on the unexpired term of the contract, not to exceed nine months of pay. In addition, City shall continue to pay for nine months the monthly Flexible Benefits contribution as provided under the then applicable resolution (such severance benefits to be referred to collectively as "Separation Pay"), beginning on the date that the revocation period for the Separation Agreement has expired.

2. Such Separation Pay is considered a cash settlement related to the termination of City Manager and shall therefore be fully reimbursed to the City by City Manager if the City Manager is convicted of a crime involving an abuse of her office or position. Abuse of office or position shall have the meaning set forth in Government Code section 53243.4, as may be amended, of either (1) an abuse of public authority, including, but not limited to, 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). City Manager shall fully reimburse such Separation Pay no later than six months after such conviction.

B. Termination by City With Cause

If the City terminates this Agreement (thereby terminating City Manager's employment) with cause, City Manager shall not be entitled to any Separation Pay. As used in this Agreement, "cause" shall mean any of the following:

1. Conviction of a felony; or
2. Conviction of a misdemeanor arising out of City Manager's duties or performance under this Agreement; or
3. Misappropriation of public funds; or
4. Willful abandonment of duties consisting of the failure to report to work for five consecutive working days (for reasons not medically related) and not notifying staff and the City Council of her leave status; or
5. 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
6. Any other intentional or grossly negligent action or inaction by City Manager that: (a) materially and substantially impedes or disrupts the operations of the City or its organizational units; (b) is detrimental to employees or public safety; (c) violates properly established rules or procedures of the City causing a material and substantial adverse impact on the City; or (d) 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.

C. Termination By City After an Election for Council Membership

Notwithstanding any provision of this Agreement to the contrary, except for "cause" as defined in Section 7.B above, City shall not terminate this Agreement (thereby terminating City Manager's employment) either sixty (60) days before or within sixty (60) days after any election for membership on the City Council of the City of Rancho Santa Margarita. If the City terminates (for reasons other than "cause") within such time period, City Manager's exclusive remedy for City's breach of this provision, so long as she timely executes and delivers to City an original "Separation Agreement and General Release" in the form attached hereto as Attachment 1, and does not thereafter timely exercise her right to revoke said Separation Agreement and General Release, is a lump sum severance benefit equal to eleven (11) months of her then applicable annual base salary and City shall continue to pay for eleven (11) months the monthly Flexible Benefits contribution.

D. Termination by City Manager

City Manager may resign from her employment as City Manager and terminate this Agreement at any time upon giving at least thirty (30) days advance written notice to the City Council and City Clerk during the term of this Agreement. City Manager shall not be entitled to any Separation Pay if she resigns.

E. Payment of Comprehensive Annual Leave Upon Termination

Upon termination (regardless of the reason and the party initiating the termination or resignation), City Manager shall be compensated for all accrued but unused Comprehensive Annual Leave.

Section 8: Confidentiality

City Manager acknowledges that in the course of her employment contemplated herein, City Manager will be given or will have access to confidential and proprietary documents and information relating to the City, its residents, businesses, employees, and customers ("Confidential Information"). Such Confidential Information may include, but is not limited to, all information given to or otherwise accessible to City Manager that is not public information or would be exempt from public disclosure as confidential, protected, exempt, or privileged information. City Manager shall hold the Confidential Information in trust for the City's benefit and shall not disclose the Confidential 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.

Section 9: Indemnification

A. Except for an act of misappropriation of public funds, or an indictment, the filing of an information, a plea of guilty or a plea of nolo contendere for a crime involving moral turpitude, City shall defend, hold harmless and indemnify City Manager against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring within the scope of her employment as City Manager, using legal counsel of the City's choosing in its sole discretion, in accordance with the provisions of California Government Code section 825, applicable provisions of the Tort Claims Act, and other applicable law. In the event there is a conflict of interest between the City and City Manager in such a case such that independent counsel is required for City Manager, the City shall pay the reasonable fees of such independent counsel as determined in the sole discretion of the City Council. City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered therefrom.

B. In the event that the City provides funds for the legal criminal defense of the City Manager, City Manager shall fully reimburse said funds to the City if City Manager is convicted of a crime involving an abuse of her office or position as defined in Section 7.A.2 of this Agreement. City Manager shall fully reimburse to City such criminal legal defense fees no later than six months after such conviction.

Section 10: 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 registered or certified mail. Notices delivered personally shall be deemed communicated as of the date of actual receipt. Mailed notices shall be deemed communicated as of the date they are postmarked.

Any notices required by this Agreement shall be addressed as follows:

IF TO CITY:

City Council
ATTN: City Clerk
City of Rancho Santa Margarita
22112 El Paseo
Rancho Santa Margarita, California 92688

IF TO CITY MANAGER:

Jennifer M. Cervantez
[Address on File with Human Resources
Department]

Section 11: 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 City Manager 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.

Section 12: Modifications

Any modification of this Agreement shall be effective only if it is in writing and signed by the parties.

Section 13: 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.

Section 14: Partial Invalidity

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in anyway.

Section 15: Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California and all applicable City Codes, Ordinances, Policies and Resolutions.

Section 16: Bonding

City shall bear the full cost of any fidelity or other bonds required of the City Manager under any law or ordinance, or any insurance policies in lieu thereof.

Section 17: City's Policies and Procedures

The terms and conditions of City Manager's employment, including additional employment benefits of City Manager not specifically provided for in this Agreement, shall be governed by City's personnel policies and procedures and administrative regulations, to the extent not inconsistent with the provisions of this Agreement. In the event of any such inconsistency or conflict, the provisions of this Agreement shall govern.

Section 18: City Manager's Independent Review

City Manager acknowledges that she has had the opportunity and has conducted an independent review of the financial and legal effects of this Agreement. City Manager acknowledges that she has made an independent judgment upon the financial and legal effects of the 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. City Manager acknowledges that she has been advised to obtain, and has availed herself of, legal advice with respect to the terms and provisions of this Agreement.

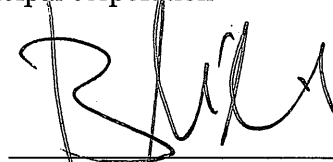
Section 19: Enforcement

The prevailing party in any action brought to enforce this Agreement or resolve any dispute or controversy arising under the terms and conditions hereof shall be entitled to payment of reasonable attorneys' fees and costs.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date reflected above.

"CITY"
CITY OF RANCHO SANTA MARGARITA,
a municipal corporation

By:



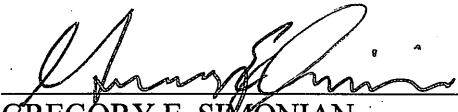
BRADLEY J. MCGIRR
Mayor

ATTEST:



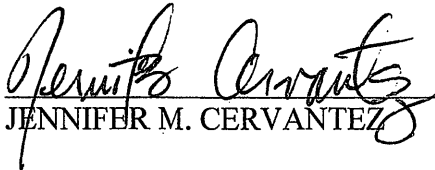
AMY DIAZ, City Clerk

APPROVED AS TO FORM:



GREGORY E. SIMONIAN,
City Attorney

"CITY MANAGER"



JENNIFER M. CERVANTEZ

ATTACHMENT 1

SEPARATION AGREEMENT AND GENERAL RELEASE

This Separation Agreement and General Release ("Separation Agreement") is entered into by Jennifer Malkowski Cervantez ("City Manager") and City of Rancho Santa Margarita ("Employer"), in light of the following facts:

RECITALS

A. City Manager's employment by Employer, and the Employment Agreement under which she was employed, have been terminated effective _____, 20__.

B. City Manager is hereby informed that she has 21 days from the effective date of the termination when she received this Agreement to consider it. Employer hereby advises City Manager to consult with an attorney before signing this Agreement.

C. City Manager acknowledges that for a period of 7 days following the signing of this Separation Agreement ("Revocation Period"), she may revoke this Separation Agreement. This Separation Agreement shall not become effective or enforceable until the Revocation Period has expired.

D. City Manager acknowledges that the Salary Payment referenced in paragraph 1 of this Separation Agreement represents all compensation, including salary and accrued Cumulative Annual Leave, due and payable to her through her termination. City Manager also acknowledges that Employer has made this Salary Payment without regard to whether she signs this Separation Agreement. The Salary Payment does not constitute consideration for this Separation Agreement.

E. City Manager acknowledges that the Separation Pay referenced in paragraph 2 of this Separation Agreement is in excess of all amounts that are due and owing to her as a result of her employment by Employer.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. **Receipt of Salary Payment.** City Manager hereby acknowledges receipt of a check for all salary and accrued leave owing ("Salary Payment") from Employer.

2. **Separation Pay.** Following return to Employer of this Separation Agreement signed by City Manager and expiration of the Revocation Period, not having been revoked by City Manager, Employer shall make the applicable Separation Pay provided for under her Employment Agreement with Employer.

3. **General Release.** In consideration of the Separation Pay to be given to City Manager, and other good and valuable consideration, City Manager hereby releases and discharges Employer and its past and present elected and appointed officials and officers, employees, representatives, agents and attorneys, from all rights, claims, causes of action, and damages, both known and unknown, in law or in equity, concerning and/or arising out of her employment with Employer which she now has, or ever had, including but not limited to any rights, claims, causes of action, or damages arising under Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Fair Labor Standards Act of 1938, the Americans with Disabilities Act, the Meyers-Milias Brown Act, the Vocational Rehabilitation Act of 1973, the Family and Medical Leave Act of 1993, the California Moore-Brown-Roberti Family Rights Act, the California Unruh Civil Rights Act, the California Fair Employment and Housing Act, or the California Labor Code, under any other federal, state, or local employment practice legislation, or under federal or state common law, including wrongful discharge, express or implied contract, breach of public policy, or violation of due process rights.

City Manager hereby waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of California. City Manager understands and acknowledges the significance and consequences of this specific waiver of Section 1542. Section 1542 of the Civil Code of California states as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of Employer and its past and present elected and appointed officials and officers, employees, representatives, agents and attorneys, City Manager expressly acknowledges that this General Release is intended to include in its effect, without limitation, all claims which she does not know or suspect to exist in her favor.

City Manager further acknowledges that she has read this General Release, that she understands that this is a general release, and that she intends to be legally bound by the same.

4. **Fees and Costs.** City Manager and Employer agree that in the event of litigation relating to this Separation Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

5. **Complete Agreement.** Except for the applicable provisions of the parties' Employment Agreement, which are referenced herein, this is the entire agreement between City Manager and Employer with respect to the subject matter hereof and this Separation Agreement supersedes all prior and contemporaneous oral and written agreements and discussions. It may only

be amended in writing.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the dates reflected below.

"CITY MANAGER"

DATED: _____

JENNIFER M. CERVANTEZ

"CITY OF RANCHO SANTA MARGARITA"

DATED: _____

By: _____