

RESOLUTION NO. 21-04-28-02

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO SANTA MARGARITA, CALIFORNIA, RATIFYING AND IMPLEMENTING CHANGES TO THE SALARY AND COMPENSATION OF THE CITY MANAGER, AN UNREPRESENTED EMPLOYEE, AND APPROVING AMENDMENT NO. 2 TO THE AMENDED AND RESTATED CITY MANAGER EMPLOYMENT AGREEMENT

The City Council of the City of Rancho Santa Margarita, California, hereby finds, determines, declares, and resolves as follows:

WHEREAS, pursuant to Government Code Section 54957(b)(1), the City Council convened in closed session on March 24, 2021 and April 14, 2021 for the purpose of commencing, conducting, and completing the annual performance evaluation of the City Manager, an unrepresented employee, in accordance with Section 4 of the Amended and Restated City Manager Employment Agreement, dated December 1, 2014, ("Employment Agreement"); and

WHEREAS, Section 5(B) of the Employment Agreement provides that increases in the City Manager's annual base salary may be effective at any time in the sole discretion of the City Council; and

WHEREAS, Section 5(B) of the Employment Agreement further provides that salary increases approved by the City Council do not require amendment to the Employment Agreement to be effective, and any increases in the City Manager's annual base salary may be set forth in an annual salary resolution or minute action approved by the City Council and ratified by resolution; and

WHEREAS, following completion of the annual performance evaluation of the City Manager during closed session on April 14, 2021, the City Council reconvened in open session and by minute action unanimously voted as follows: (1) to approve a 5% increase to the current annual base salary of the City Manager, effective July 1, 2021; (2) to approve and authorize a higher education tuition allowance of up to \$18,000 per fiscal year, effective immediately, which shall be used to reimburse the City Manager for her out-of-pocket tuition costs associated with her completion of a Graduate University Doctoral of Political Science Program, with an emphasis in Public Policy, contingent upon the City Manager's continued employment with the City for the next five (5) years; and, (3) to direct the City Attorney to prepare a Resolution and any other applicable authorizations ratifying this minute action for consideration and final approval by the City Council at its next regularly scheduled City Council meeting to be held on April 28, 2021; and,

WHEREAS, pursuant to the terms of the Employment Agreement, and pursuant to Government Code Section 36506, the City Council hereby ratifies and implements the minute action taken by the City Council on April 14, 2021 to change the salary and compensation of the City Manager.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RANCHO SANTA MARGARITA, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. The above recitals are true and correct and are incorporated herein by reference.

SECTION 2. Effective July 1, 2021, the City Manager's annual base salary shall be increased by 5%, from \$243,052 to \$255,205.

SECTION 3. The City Council hereby approves and authorizes a higher education tuition allowance of up to \$18,000 per fiscal year, effective immediately, which shall be used to reimburse the City Manager for her out-of-pocket tuition costs associated with her completion of a Graduate University Doctoral of Political Science Program, with an emphasis in Public Policy, in furtherance of her professional development, contingent upon the City Manager's continued employment with the City for the next five (5) years.

SECTION 4. The City Council hereby approves and authorizes the Mayor to execute Amendment No. 2 to the Employment Agreement, which amends the Employment Agreement by changing the salary and compensation of the City Manager as follows: (1) approving and authorizing a 5% increase in the City Manager's current annual base salary, effective July 1, 2021; and (2) approving and authorizing a higher education tuition allowance of \$18,000 per fiscal year, effective immediately, which shall be used to reimburse the City Manager for tuition costs associated with her enrollment in a Graduate University Doctoral of Political Science Program, with an emphasis in Public Policy ("Program"), contingent upon the City Manager's continued employment with the City for the next five (5) years. The total tuition allowance and reimbursement provided to the City Manager for this Program shall not exceed \$54,000. Amendment No. 2 to the Employment Agreement is attached hereto as Exhibit "A" and is incorporated herein by reference.

PASSED, APPROVED, AND ADOPTED THIS 28<sup>th</sup> DAY OF APRIL 2021.

  
\_\_\_\_\_  
L. ANTHONY BEALL, MAYOR

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, Amy Diaz, City Clerk of the City of Rancho Santa Margarita, California, hereby attest to and certify that the foregoing resolution is the original resolution adopted by the Rancho Santa Margarita City Council at its regular meeting held on the 28<sup>th</sup> day of April 2021, by the following vote:

AYES: Council Members Gamble, Holloway, McGirr, Mayor Pro Tempore Figueroa and Mayor Beall (5)

NOES: None (0)

ABSTAIN: None (0)

ABSENT: None (0)

  
\_\_\_\_\_  
AMY DIAZ, CITY CLERK

**EXHIBIT "A"**

AMENDMENT NO. 2

TO

AMENDED AND RESTATED CITY MANAGER

EMPLOYMENT AGREEMENT

**AMENDMENT NO. 2**  
**TO**  
**AMENDED AND RESTATED CITY MANAGER**  
**EMPLOYMENT AGREEMENT**

THIS SECOND AMENDMENT TO THE AMENDED AND RESTATED CITY MANAGER EMPLOYMENT AGREEMENT ("Amendment No. 2") is made and entered into to be effective the 28<sup>th</sup> day of April 2021, by and between the CITY OF RANCHO SANTA MARGARITA, a municipal corporation organized and existing under the laws of the State of California, (hereinafter referred to as "City") and JENNIFER M. 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 "Parties".

**RECITALS**

A. City and Cervantez previously entered into that certain Amended and Restated City Manager Employment Agreement, which was made and entered into on December 1, 2014 (the "Employment Agreement"), and which may be duly amended in writing from time to time by the Parties.

B. Pursuant to Government Code Section 54957(b)(1), the City Council convened in closed session on March 24, 2021 and April 14, 2021 for the purpose of commencing, conducting, and completing the annual performance evaluation of the City Manager, an unrepresented employee, in accordance with Section 4 of the Employment Agreement.

C. Following completion of the annual performance evaluation of the City Manager during closed session on April 14, 2021, the City Council reconvened in open session and by minute action unanimously voted as follows: (1) to approve a 5% increase to the current annual base salary of the City Manager, effective July 1, 2021; (2) to approve and authorize a higher education tuition allowance of up to \$18,000 per fiscal year, effective immediately, which shall be used to reimburse the City Manager for her out-of-pocket tuition costs associated with her completion of a Graduate University Doctoral of Political Science Program, with an emphasis in Public Policy, contingent upon the City Manager's continued employment with the City for the next five (5) years; and, (3) to direct the City Attorney to prepare a resolution and any other applicable authorizations ratifying this minute action for consideration and final approval by the City Council at its next regularly scheduled City Council meeting to be held on April 28, 2021.

D. Pursuant to the terms of the Employment Agreement, and pursuant to Government Code Section 36506, the City Council hereby ratifies and implements the minute action taken by the City Council on April 14, 2021 to change the salary and compensation of the City Manager.

E. The Parties now desire to enter into this Amendment No. 2 to the Employment Agreement for the purpose of (1) approving and authorizing a 5% increase in the City Manager's

current annual base salary, effective July 1, 2021, and (2) approving and authorizing a higher education tuition allowance of up to \$18,000 per fiscal year, effective immediately, which shall be used to reimburse the City Manager for her out-of-pocket tuition costs associated with her completion of a Graduate University Doctoral of Political Science Program, with an emphasis in Public Policy, in furtherance of the City Manager's professional development, contingent upon the City Manager's continued employment with the City for the next five (5) years.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein, the Parties agree as follows:

## AGREEMENT

1. Amendment to Section 5(A), entitled "Salary" of the Employment Agreement. Section 5(A) of the Employment Agreement is hereby amended and restated in its entirety to read as follows:

"A. As compensation for the services to be performed hereunder, effective July 1, 2021, City agrees to pay City Manager an annual base salary of \$255,205 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."

2. Amendment to Section 6, entitled "Benefits and Leaves of Absence," of the Employment Agreement. Section 6 of the Employment Agreement is hereby amended to include new section 6(H), which shall read as follows:

### "H. Higher Education Tuition Allowance

To support City Manager's furtherance of her professional development, effective April 28, 2021, City Manager shall receive: (1) a higher education tuition allowance of \$18,000 per fiscal year for participation in a Graduate University Doctoral of Political Science Program, with an emphasis in Public Policy ("Program"); and (2) reimbursement for tuition costs for such Program incurred by City Manager to date. The total tuition allowance and reimbursement provided to City Manager for this Program shall not exceed \$54,000. The benefits conferred in this Section 6.H are contingent upon the City Manager's continued employment as City Manager until at least April 28, 2026.

In the event City Manager resigns from her employment as City Manager and terminates this Agreement prior to April 28, 2026, pursuant to Section 7.D below, City Manager shall fully reimburse City such tuition allowance within thirty days from separation of employment.

In the event City terminates this Agreement (thereby terminating City Manager's employment) with cause prior to April 28, 2026, pursuant to Section 7.B below, City Manager shall fully reimburse City such tuition allowance within thirty days from date of termination.

In the event City terminates this Agreement (thereby terminating City Manager's employment) without cause or for reasons other than "cause" as defined in Section 7.B below prior to April 28, 2026, pursuant to Section 7.A below, City Manager shall not be required to reimburse City for any tuition allowance paid to date, nor shall City Manager be entitled to any further tuition reimbursement."

3. Full Force and Effect. This Amendment No. 2 is supplemental to the Employment Agreement and is by reference incorporated into said Agreement. All of the terms, conditions, and provisions, thereof, unless specifically modified herein, shall continue in full force and effect. In the event of any conflict or inconsistency between the provisions of this Amendment No. 2 and any provisions of the Employment Agreement, the provisions of this Amendment No. 2 shall in all respects govern and control.
4. Recitals. The foregoing recitals are true and correct and are hereby incorporated into this Amendment No. 2 as though fully set forth herein.
5. Authority. Each of the undersigned represents and warrants that (i) the Party for which he/she is executing this Amendment No. 2 is duly authorized and existing, (ii) he/she is duly authorized to execute and deliver this Amendment No. 2 on behalf of the Party for which he/she is signing, (iii) by so executing this Amendment No. 2, the Party for which he/she is signing is formally bound to the provisions of this Amendment No. 2, and (iv) the entering into this Amendment No. 2 does not violate any provision of any other agreement to which the Party for which he/she is signing is bound.

*[SIGNATURES ON NEXT PAGE]*

IN WITNESS WHEREOF, the Parties have executed and entered into this Amendment No. 2 to the Employment Agreement as of the date first written above.

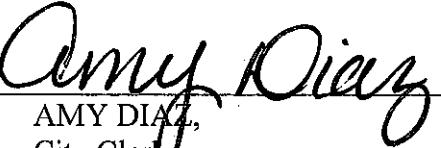
"CITY"

**CITY OF RANCHO SANTA MARGARITA**, a California municipal corporation

By: 

L. ANTHONY BEALL,  
Mayor

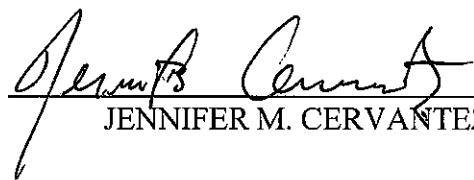
ATTEST:

By:   
AMY DIAZ,  
City Clerk

APPROVED AS TO FORM:

By:   
GREGORY E. SIMONIAN,  
City Attorney

"CITY MANAGER"

  
JENNIFER M. CERVANTEZ