

AMENDMENT TO EMPLOYMENT AGREEMENT
BETWEEN THE CITY OF HUNTINGTON BEACH
AND LORI ANN FARRELL-HARRISON

THIS AMENDMENT is made and entered into between the City of Huntington Beach, a California municipal corporation, hereinafter referred to as "the City," and Lori Ann Farrell-Harrison, hereinafter referred to as "Farrell-Harrison."

WHEREAS, Farrell-Harrison is currently employed by the City as Assistant City Manager, and it is the desire of the City to retain the services of Farrell-Harrison as Interim City Manager until the City appoints a permanent City Manager; and

It is the desire of the City and Farrell-Harrison to amend that certain employment agreement dated September 18, 2017 entitled "Employment Agreement Between the City of Huntington Beach and Lori Ann Farrell-Harrison," hereinafter referred to as the "Original Agreement," to provide for the temporary appointment of Farrell-Harrison as the Interim City Manager; and

It is the desire of City to: (1) provide inducement for Farrell-Harrison to become the Interim City Manager and remain in City's employment; (2) make possible full work productivity by providing Farrell-Harrison with assurances regarding her employment; and (3) provide an equitable means for Farrell-Harrison to return to the current position as Assistant City Manager upon City's selection of a permanent City Manager.

In addition, by this Amendment, the City and Farrell-Harrison desire to permanently amend the Original Agreement to remove references to indemnification for "punitive damages" contained in Section 12 of the Original Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and conditions herein contained, the parties hereto agree as follows:

1. APPOINTMENT AS INTERIM CITY MANAGER

Effective May 13, 2019, City hereby appoints Farrell-Harrison as the Interim City Manager of the City of Huntington Beach to perform the functions and duties specified in the City Charter, and to perform other legally permissible duties and functions as the City Council shall from time to time assign. Farrell-Harrison is a Charter Officer and possesses the powers and is subject to the limitations of the Charter, including Sections 400 and 401.

2. TERM

Except as to Section 12 of the Original Agreement which is permanently amended as set forth herein, this Amendment shall remain in effect until a permanent City Manager is selected by the City Council, or until terminated by either party as set forth in Section 3 herein.

3. TERMINATION

A. Except as to Section 12 of the Original Agreement which is permanently amended as set forth herein, this Amendment will automatically terminate upon the City's appointment of a permanent City Manager, or as otherwise provided herein.

B. Either party may terminate this Amendment after providing the other party with a thirty-day (30) notice of intention to terminate this Agreement. Such notice can be provided at any time.

C. Upon any termination hereof, she shall be returned to her previous position as Assistant City Manager with the City pursuant to the terms and conditions contained in the Original Agreement except as to Section 12 of the Original Agreement which is permanently amended as set forth herein, a copy of which is attached hereto as Exhibit "A" and incorporated by this reference as though fully set forth herein. This Subsection C regarding returning to the previous position shall not apply in the event Farrell-Harrison is chosen as City Manager.

4. COMPENSATION

During the term of this Amendment, City agrees to pay Farrell-Harrison based upon the Non-Associated Executive Management Salary Schedule, Pay Grade NA0029, High Point, (\$122.68/hourly/\$254,317/annually) or Resolutions or Ordinances from time to time enacted that govern such compensation.

5. INDEMNIFICATION

"Section 12. INDEMNIFICATION." of the Original Agreement is hereby permanently amended to strike the provision regarding punitive damages in Section 12 AS FOLLOWS:

~~The City has not obligation to defend or indemnify any action brought against the City because of any intentional or tortious act caused by Farrell-Harrison involving punitive damages.~~

6. REAFFIRMATION

Except as specifically modified herein, all other terms and conditions of the Original Agreement shall remain unchanged, and in full force and effect.

CITY:

INTERIM CITY MANAGER:

Mayor

Lori Ann Farrell Harrison

City Clerk

APPROVED AS TO FORM:


Michael E. Gates, City Attorney 

Exhibit "A" to Amendment to Employment Agreement

**EMPLOYMENT AGREEMENT BETWEEN
THE CITY OF HUNTINGTON BEACH AND LORI ANN FARRELL-HARRISON**

THIS AGREEMENT is entered into this 19th day of SEPTEMBER, 2017, between the City of Huntington Beach, a California municipal corporation, hereinafter "City," and Lori Ann Farrell-Harrison, hereinafter "Farrell-Harrison."

WITNESSETH

The City Manager has been empowered to appoint and remove department heads; and

The City, through the City Manager, desires to employ the services of Farrell-Harrison as the **ASSISTANT CITY MANAGER** for the City of Huntington Beach; and

The City seeks to provide certain benefits, establish certain conditions of employment, and to set working conditions of Farrell-Harrison; and

The City intends to secure, retain and employ the services of Farrell-Harrison; and

Farrell-Harrison intends to accept employment as **ASSISTANT CITY MANAGER** of the City; NOW, THEREFORE, in consideration of the mutual covenants here contained, the parties agree as follows:

SECTION 1. DUTIES.

The City agrees to employ Farrell-Harrison as **ASSISTANT CITY MANAGER** of the City to perform the functions and duties of that office as set forth in the Municipal Code of the City of Huntington Beach and the City Charter, and to perform other legally permissible duties and functions as the City Manager shall from time to time assign. Farrell-Harrison shall devote her full attention and effort to the office and perform the mentioned duties and functions in a professional manner.

SECTION 2. STATUS AND TERM.

(A) Farrell-Harrison shall serve for an indefinite term at the pleasure of the City Manager and shall be considered an at-will employee of the City.

(B) Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Manager to terminate the employment of Farrell-Harrison at any time, subject only to the provisions set forth in Section 6, subparagraphs (a), (b) and (c) of this Agreement, and Section 401 of the Charter of the City of Huntington Beach.

(C) Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of Farrell-Harrison to resign at any time from her position with the City, subject only to the provisions set forth in Section 6, subparagraph (d), of this Agreement.

(D) Farrell-Harrison agrees to remain in the exclusive employ of City for an indefinite period and shall neither accept other employment or become employed by any other employer without the prior written approval of the City Manager until notice of Farrell-Harrison's resignation is given.

The term "employed" (and derivations of that term as used in the preceding paragraph) shall include employment by another legal entity or self-employment; however, shall not be construed to include occasional teaching, writing, consulting, or military reserve service performed on Farrell-Harrison's time off, and with the advance approval of the City Manager.

SECTION 3. SALARY AND COMPENSATION.

City agrees to pay Farrell-Harrison for services rendered pursuant to this Agreement based upon the Non-Associated Executive Management Salary Schedule, Pay Grade NA0592, High Point, (\$106.32/hourly/\$221,145/annually) or Resolutions or Ordinances from time to time enacted that govern such compensation.

SECTION 4. OTHER BENEFITS.

In addition to the foregoing benefits, Farrell-Harrison shall also receive all such other benefits that are generally applicable to non-associated employees (Department Heads) hired after 12/27/1997, as set forth in Huntington Beach City Council Resolution No. 2016-50, entitled "A Resolution Of The City Council Of The City Of Huntington Beach Modifying Salary And Benefits For Non-Represented Employees, a copy of which is attached hereto as **Exhibit "A"** and incorporated by

reference as fully set forth herein. The benefits provided to Farrell-Harrison pursuant to this Section may be modified by the City from time to time, upon City Council adoption of a successor Resolution.

SECTION 5. ADMINISTRATIVE LEAVE.

The City Manager may place Farrell-Harrison on Administrative Leave with full pay and benefits at any time during the term of this Agreement.

SECTION 6. TERMINATION AND SEVERANCE PAY.

(A) Except as provided in subsection (b), in the event the City Manager terminates the employment of Farrell-Harrison, and during such time that Farrell-Harrison is willing and able to perform her duties under this Agreement, then the City shall pay to Farrell-Harrison a severance payment equal to salary payments which Farrell-Harrison would have been receiving over a twelve week period at Farrell-Harrison's current rate of pay in effect on the day prior to the date of termination. In addition, for the lesser of ninety (90) calendar days after the date of termination or the time Farrell-Harrison secures health and medical insurance through comparable employment, the City shall maintain and pay for health, medical, disability, the continuation of retirement benefits and life insurance in such amounts and on such terms as have been received by Farrell-Harrison and Farrell-Harrison's dependents at the time of such termination; however, no other or additional benefits shall accrue during this ninety (90) calendar-day period.

(B)(1) Notwithstanding subsection (a) above, the following reasons shall constitute grounds to terminate the employment of Farrell-Harrison without severance pay:

- (i) a willful breach of this agreement or the willful and repeated neglect by Farrell-Harrison to perform duties that she is required to perform;
- (ii) conviction of any criminal act relating to employment with the City;
- (iii) conviction of a felony.

(B)(2) Prior to the time that the City Manager terminates Farrell-Harrison without severance pay for any of the reasons set forth in Section (b)(1) above, and only in that case, the

City Manager shall provide Farrell-Harrison with written notice of proposed termination which will include the reason and factual basis for termination. Within ten days of such notice, Farrell-Harrison may request an opportunity to respond to the reasons and factual basis provided by the City Manager. If such a request to respond is made, the City Manager shall conduct a meeting, which may be informal in nature, so that Farrell-Harrison may respond to the notice of proposed termination. At such meeting, Farrell-Harrison may be represented by an attorney of her choice and present evidence or information relevant to the reasons and factual basis set forth in the notice of proposed termination. Subsequently, the decision of the City Manager as to whether reasons set forth in Section (b)(1) exist or do not exist shall be final as between the parties.

(C) In the event the City at any time during the term of this Agreement reduces the salary of Farrell-Harrison from its current level, except as part of an across-the-board reduction for all Directors of the City, or in the event the City refuses, following written notice, to extend to Farrell-Harrison any non-salary benefit customarily available to all Directors, or in the event Farrell-Harrison resigns following a suggestion, whether formal or informal, by the City Manager that she resign, then, Farrell-Harrison may, at her option, be deemed to be "terminated". The termination date will occur then at the date of reduction or refusal to extend or such suggestion of resignation within the meaning and context of the severance pay provision in subparagraph (a) above; provided that the option to be deemed terminated is exercised by written notice from Farrell-Harrison and delivered to the City Manager within ten (10) working days of notification of such reduction, refusal to extend, or suggestion of resignation. In that event, the severance payment shall be calculated from the date Farrell-Harrison exercises the option to be deemed terminated.

(D) In the event Farrell-Harrison voluntarily resigns her position, Farrell-Harrison shall give City written notice at least thirty (30) days prior to the last workday, unless the City Manager and Farrell-Harrison otherwise agree.

(E) It is understood that after notice of termination in any form, Farrell-Harrison and the City will cooperate to provide for an orderly transition. Specific responsibilities during such transition may be specified in a written separation agreement.

SECTION 7. DISABILITY.

If Farrell-Harrison is totally medically, or physically disabled or otherwise unable to perform her duties because of sickness, accident, injury, mental incapacity or ill health, and has provided proof of the same from a qualified licensed medical professional, she shall be eligible for Disability Leave upon exhausting all accrued general leave and executive leave, and duty injury leave if applicable. Disability Leave shall be unpaid and shall be approved by the City Manager for a time period of up to three (3) months. The length of such time period of the Disability Leave shall be dependent upon the length of the disability as demonstrated by Farrell-Harrison. If Farrell-Harrison is unable to return to work at that time, the City shall have the option to terminate the employment of Farrell-Harrison, subject to the requirements imposed on City by Section 6, paragraph (A).

SECTION 8. PERFORMANCE EVALUATION.

The City Manager shall review and evaluate in writing the performance of Farrell-Harrison at least once annually, with the first performance review occurring within the initial six (6) months of employment. That review and evaluation shall be in accordance with specific criteria developed in consultation with Farrell-Harrison and the City Manager. Those criteria may be added to or subtracted from as the City Manager may from time to time determine, in consultation with Farrell-Harrison.

SECTION 9. GENERAL AND EXECUTIVE LEAVE

Farrell-Harrison shall accrue General Leave in accordance with the General Leave accrual provisions applicable to Department Heads of the City as contained in the Non-Associated Resolution (Exhibit "A"). Farrell-Harrison shall be credited 80 hours of Executive Leave on January 1 of each calendar year. Executive Leave must be used in the same calendar year it is

credited; unused Executive Leave may not be carried forward to the next calendar year or cashed out at any time. General Leave shall be accrued in accordance with the appropriate provisions of the Non-Associated Resolution. Farrell-Harrison shall provide the City Manager with reasonable notice prior to taking two (2) or more General Leave or Executive Leave days off.

SECTION 10. PROFESSIONAL DEVELOPMENT.

The City agrees to budget and pay for Farrell-Harrison's professional memberships as normally accorded to Department Heads. Farrell-Harrison shall also receive paid leave, plus registration, travel and reasonable expenses for short courses, workshops, conferences and seminars that are necessary for her professional development and, in the judgment of the City Manager, for the good of the City, and subject to budget limitations and to established travel policies and procedures.

SECTION 11. FINANCIAL DISCLOSURE.

Farrell-Harrison shall report to the City Manager any ownership interest in real property within the County of Orange, excluding personal residence. Farrell-Harrison shall also complete and file annually Financial Disclosure 700 Forms. Also, Farrell-Harrison shall report to the City Manager any financial interest greater than Ten Thousand Dollars (\$10,000) in value in a firm doing work for the City or from which the City intends to make a purchase. Such reporting shall be made in writing by Farrell-Harrison to the City Manager within ten (10) calendar days of the execution of this agreement and further within ten (10) calendar days of acquisition of that interest in real property. Additionally, Farrell-Harrison shall report in writing to the City Manager any financial interest greater than Ten Thousand Dollars (\$10,000) in value in a firm doing work for the City or from whom the City intends to make a purchase immediately upon notice of the intended work or purchase.

SECTION 12. INDEMNIFICATION.

The City shall defend and indemnify Farrell-Harrison against actions, including but not limited to any: professional liability claim or demand, or other noncriminal legal, equitable or administrative action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the

performance of Farrell-Harrison's during the discharge of her duties as an employee/officer of the City, other than an action brought by the City against Farrell-Harrison, or an action filed against the City by Farrell-Harrison. ~~The City has no obligation to defend or indemnify any action brought against the City because of any intentional or tortious act caused by Farrell-Harrison involving punitive damages.~~

In addition, the City shall pay the reasonable expenses for the travel, lodging, meals, and lost work time of Farrell-Harrison should Farrell-Harrison be subject to such, should an action be pending after termination of Farrell-Harrison. The City shall be responsible for and have authority to compromise and settle any action, with prior consultation with Farrell-Harrison, and pay the amount of any settlement or judgment rendered on that action. Farrell-Harrison shall cooperate fully with the City in the settlement, compromise, preparation of the defense, or trial of any such action.

SECTION 13. GENERAL PROVISIONS.

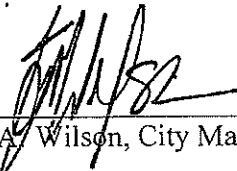
- (a) The text here shall constitute the entire Agreement between the parties.
- (b) This Agreement shall become effective commencing September 25, 2017.
- (c) If any provision, or any portion of any provision, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or any portion of it, shall be deemed severable, shall not be affected and shall remain in full force and effect.
- (d) No amendment of this Agreement shall be effective unless in writing and signed by both parties.

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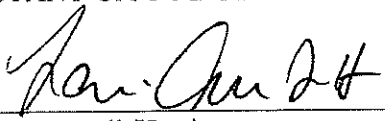
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IN WITNESS WHEREOF, the City has caused this Agreement to be signed and executed on its behalf by its City Manager, and Farrell-Harrison has signed and executed this Agreement, both in duplicate, the day and year first above written.

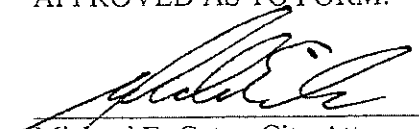
CITY:


Fred A. Wilson, City Manager

ASSISTANT CITY MANAGER:


Lori Ann Farrell-Harrison

APPROVED AS TO FORM:


Michael E. Gates, City Attorney

RESOLUTION NO. 2016-50

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HUNTINGTON BEACH
MODIFYING SALARY AND BENEFITS FOR NON-REPRESENTED EMPLOYEES
INCLUDING THE ELECTED CITY ATTORNEY, CITY CLERK, AND CITY TREASURER

WHEREAS, the City Council of the City of Huntington Beach desires to modify the salary and benefits for Non-Represented Employees upon adoption of this Resolution.

NOW, THEREFORE, the City Council of the City of Huntington Beach does hereby resolve as follows:

SECTION 1. Salaries and Benefits for Non-Represented employees shall be as reflected in Exhibit "A", attached hereto and incorporated by this reference.

SECTION 2. The salary range for the elected City Attorney, City Clerk and City Treasurer shall be modified as reflected in the Non-Associated Executive Management Salary Schedule-Exhibit 1.

SECTION 3. Benefits for the elected City Attorney, City Clerk and City Treasurer shall be as reflected in Exhibit "A", attached hereto and incorporated by this reference.

SECTION 4. Resolution 2007-6, Resolution 2010-106, and Resolution 2014-94 are hereby repealed.

SECTION 5. Any existing provisions in conflict with the foregoing, whether by minute action or resolution of the City Council, are hereby repealed.

SECTION 6. All other benefits and salary ranges established and reflected in the Non-Associated Employees Pay and Benefits Resolution 2016-50, shall continue unless modified by City Council action.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the 18th day of July, 2016.

James Ratzon
Mayor

REVIEWED AND APPROVED:

[Signature]
City Manager

APPROVED AS TO FORM:

[Signature]
City Attorney

INITIATED AND APPROVED:

[Signature]
Director of Human Resources