

C: Orig - Paul Walters 10/29/12 RT

CITY OF SANTA ANA

CITY MANAGER EMPLOYMENT AGREEMENT

This City Manager Employment Agreement ("Agreement") is entered into as of the 4th day of June, 2012 (the "Effective Date"), between the City of Santa Ana (hereinafter referred to as the "City") and Paul M. Walters (hereinafter referred to as the "City Manager" or the "Employee"). City and City Manager/Employee are sometimes referred to in this Agreement as "Party" and collectively as "Parties."

RECITALS

WHEREAS, it is the desire of the City Council of the City to retain the services of Employee as City Manager pursuant to the provisions of Section 500 of the Charter of the City of Santa Ana ("City Charter"), and

WHEREAS, it is the desire of the City Council to provide certain benefits, establish certain conditions of employment and to set certain working conditions of the City Manager.

NOW, THEREFORE, the above named Parties hereby mutually agree and promise as follows:

1. Term.

1.1 Initial Term and Subsequent Terms

This Agreement shall be deemed effective for an initial term beginning on June 4th, 2012, and continuing through June 4th, 2015 ("Initial Term"), and shall remain in effect for the Initial Term and any Subsequent Term, unless terminated earlier in accordance with Section 9. Unless City gives written notice of non-renewal to City Manager at least thirteen (13) months prior to the expiration of the Initial Term or a Subsequent Term, this Agreement shall automatically renew for two (2) separate one-year terms ("Subsequent Term") without further action of the City Council. For example, if notice of non-renewal is not provided on or before May 4th 2014, this Agreement shall be extended for one year until June 4th 2016, and so on for a maximum term of June 4th 2017.

1.2 Effect of Non-Renewal

Employee may elect to treat the action of non-renewal by the City Council as a termination that entitles him to a Severance Payment under Section 9.2 of this Agreement, if Employee gives written notice of such election to the City within thirty (30) days after the action of non-renewal.

## 2. Compensation.

### 2.1 Salary

City agrees to pay City Manager, and City Manager agrees to accept from City, as compensation for services rendered by City Manager pursuant to this Agreement, an annual base salary, commencing on the Effective Date, in the amount of two hundred sixty-five thousand dollars (\$265,000) (hereinafter "Annual Base Salary"), payable in installment payments in the same manner and at the same times as salaries of other executive managers of the City are paid.

Commencing in May, 2013 and each year thereafter, said Annual Base Salary shall be eligible for upward adjustments subject to the same procedures by which the salaries of other executive managers of City are adjusted for meritorious performance, except that any such adjustments shall be at the sole discretion of the City Council and approved by amendment to this Agreement.

The term "Annual Base Salary" as used in this Agreement shall also include any such adjustments approved by the City Council other than payments not eligible to be added to the City Manager's Annual Base Salary pursuant to the terms of any applicable salary resolution of City. The term "Monthly Base Salary" as used in this Agreement shall mean a sum of money equal to one-twelfth (1/12) of City Manager's Annual Base Salary as defined herein.

### 2.2 Benefits

In addition, and except as otherwise specified herein, City Manager shall receive all such other benefits and compensation that are generally applicable to executive managers of the City as of the Effective Date of this Agreement, as the same may be modified from time to time after the date of this Agreement, including but not limited to medical insurance, long term disability insurance, life insurance, sick leave, holidays, vacation, bereavement and family illness leave, physical examinations, and participation in retirement system. The City Manager is entitled to accrue all unused leave, without limit, and in the event the City Manager's employment is terminated, either voluntarily or involuntarily, the City Manager shall be compensated for all accrued vacation time, all paid holidays, all executive leave and all other benefits to the termination date, except for the special sick bank time established under section 2.3 herein. For purposes of continuing participation in the City's retiree medical program, the City Manager shall receive the same benefit as other City executive managers.

### 2.3 Supplemental Sick Leave Bank

In addition to the accrual of regular sick leave, upon commencing employment the City Manager shall have sole access to a bank of 180 sick hours to be used in the case of serious medical conditions. This leave can only be used to provide coverage during the waiting period between the onset of illness or disability and the point at which short or long-term disability coverage takes effect. Under no condition can the balance of this special sick time account be cashed in under section 2.2 of this Agreement. Any unused sick days in this bank, at the date of termination of employment under this Agreement, shall be forfeited to the City.

**3. Performance Evaluation.**

The Mayor and the City Council are responsible for setting performance goals on an annual basis in consultation with the City Manager. Either the City Council or City Manager may request to use a "facilitator" to support the process. The facilitator will be selected by the City Manager and approved by the City Council. All fees and expenses for a facilitator shall be paid by the City. The City and City Manager acknowledge that periodic performance evaluations are an important means by which the City Council and the City Manager may ensure effective communications regarding expectations and performance. Toward this end, the City Council shall review and discuss City Manager's performance in or around May of each year commencing in 2013.

**4. Bonds.**

City shall bear the full cost of any fidelity or other bonds required of City Manager under any law or ordinance.

**5. Transportation and General Business Expenses.**

5.1 City Vehicle

City Manager's duties require that he shall have the exclusive use of a fully equipped vehicle during his employment with City. City shall be responsible for paying all liability, property damage and comprehensive insurance and for all purchase, operation, fuel, maintenance, repair and regular replacement of said vehicle when required by City policy.

5.2 General Business Expenses

A. City agrees to budget and pay for professional dues and subscriptions for City Manager necessary for his continuation and participation in national, regional, state and local boards, task-forces, conferences and meetings, associations and organizations desirable for City Manager'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 City Manager for professional and official travel, board and task-force meetings, and occasions to adequately continue the professional development of City Manager and to pursue necessary official functions for City.

C. City shall provide City Manager with the necessary technology tools, including and not limited to computer, software, cell phone and such other technologies as required by City Manager to perform his duties and to maintain communications.

**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 City Manager is convicted of a crime involving an abuse of his office or position, all of the following shall apply: (1) if Manager is provided with administrative leave pay pending an investigation, City Manager shall be required to fully reimburse City such amounts paid; (2) if City pays for the criminal legal defense of City Manager (which would be in its sole discretion, as it is generally not obligated to pay for a criminal defense), City Manager 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 City Manager may receive from City shall be fully reimbursed to City or void if not yet paid to City Manager. 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 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 City Manager:        Paul M Walters  
                                         City Manager  
                                         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 City Manager 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, consistent with the provisions of section 11 hereof.

**8.2 Acceptance of Appointment**

Employee hereby accepts the appointment as City Manager of the City of Santa Ana subject to all terms and conditions set forth in this Agreement.

### 8.3 Hours of Work

It is recognized that City Manager devotes a great deal of time outside the normal City Hall office-hours schedule, and to that end, he shall be allowed to establish his work schedule.

### 8.4 Police Commissioner and Regional Liaison

As authorized in Section 700 of the City Charter, the City Council shall establish a classification of Police Commissioner and on the Effective Date of such established classification City shall appoint employee, to the additional duties of Police Commissioner and he shall maintain his peace officer powers as provided under applicable California law.

Police Commissioner duties include acting as the City's intermediary with regional, state and federal agencies and special law enforcement task forces. The City Manager shall maintain his close working relationships with regional, state and federal directors of the FBI, ATF, DEA, ICE, BNE and the United States Attorney to develop, implement, operate and maintain regional strategies.

The City Manager currently has an FBI security clearance and serves as the chair and board member of numerous regional, state and national boards and interagency task forces. The City Manager shall maintain his FBI clearance and continue his service on the above mentioned boards and task forces.

## 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 City Manager 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 500 of the Charter, the City Council may remove the City Manager by motion adopted by the affirmative votes of at least two-thirds (2/3) of the members of the City Council. At least thirty(30) days before such removal shall become effective, the City Council shall by resolution adopted by the affirmative votes of at least two-thirds(2/3) of the members of the City Council state the reasons in writing for the removal of the City Manager.

### 9.3 Termination - Change in Form of Government

If any of the governing policies pertaining to the role, power, duties, authority, or responsibilities of City Manager are amended to substantially change City's form of government, either by action of the City Council, a duly passed initiative measure or state legislation, City Manager shall have the right to terminate the Agreement.

### 9.4 Reduction of Salary or Benefits

If the City Council reduces the Annual Base Salary or any other financial benefit of the City Manager in a percentage that is greater than the average reduction of base salary for all executive managers of the City, such action shall constitute a termination of this Agreement.

### 9.5 Resignation

City Manager may voluntarily resign his position as City Manager, 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. In the event the City Manager resigns from his employment with City, the City Manager shall not be entitled to any Severance Pay.

### 9.6 Revert to Former Position

As required in Charter Section 1002-Civil Service, if City Manager resigns as City Manager, or if his employment as City Manager is terminated pursuant to any one of sections 9.2, 9.3 or 9.4 of this Agreement, he shall have the option to revert to his former civil service position of Chief of Police without loss of any rights or privileges and upon the same terms and conditions as if he had remained in said position continuously.

### 9.7 Severance

In the event this Agreement is terminated pursuant to any one of sections 9.2, 9.3 or 9.4 of this Agreement, the City Manager shall have the option to elect one of the following options: (a) receive a severance payment, in a lump sum, equal to twelve (12) months of City Manager's then monthly Base Salary ("Severance Pay") in accordance with the provisions of this section; (b) revert to employment in his former position of full-time Chief of Police; or (c) receive a City-paid service credit for City Manager, of his U.S. Air Force Military active duty service time of three (3) years and eight (8) months as allowed under current regulations of the California Public Employees Retirement System (PERS) ("Military Credit"), provided that PERS allows such purchase and further provided that the maximum cost to the City shall not exceed the equivalent cost to provide the Severance Pay.

If the City Manager chooses option (a) or (c), Severance Pay or Military Service Credit, such payment shall be his sole remedy for termination under sections 9.2, 9.3 or 9.4 of this Agreement. The Severance Pay or Military Credit shall be paid after the City Manager

executes a waiver and release 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 City Manager is terminated for Cause, as set forth in the City Charter, then City Manager shall not be permitted to elect any one of the three foregoing options 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 he has had an opportunity to consult legal counsel in regard to this Agreement, that he has read and understands this Agreement, that he is fully aware of its legal effect, and that he has entered into it freely and voluntarily and based on his own judgment and not on any representations or promises other than those contained in this Agreement.

## **11. Other Terms and Conditions of Employment**

The City, only upon agreement with City Manager, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the City Manager, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City Charter, or any other law, ordinance or City Resolution.

Except as otherwise provided in this Agreement, City Manager shall be entitled to the highest level of benefits that are enjoyed by other appointed officials, appointed employees, department heads, or general employees of the City as provided in the Charter, Municipal Code, Personnel Rules and regulations, or by practice.

## **12. Communications in the Event of Termination**

12.1 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 or employees directly employed by 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 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.

## **13. Indemnification**

13.1 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 any alleged act or omission occurring in the performance of City Manager's duties or resulting from the exercise of his judgment or discretion in connection with the performance of his 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 City Manager, shall extend until a final determination of the legal action including 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 City Manager 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 City Manager's duties.

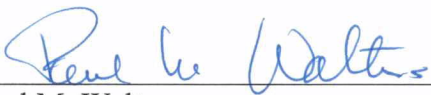
13.2 City agrees to pay all reasonable litigation expenses of City Manager throughout pendency of any City-related litigation to which City Manager is a party, witness or advisor to the City. Such expense payments shall continue beyond City Manager's employment with the City as long as litigation is pending. Post-employment, City agrees to pay City Manager for reasonable consulting fees, travel expenses and other costs, when City Manager serves as a witness, advisor or consultant to City regarding pending litigation.

[SIGNATURES ON FOLLOWING PAGE]

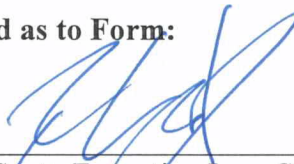


IN WITNESS WHEREOF, the Parties have executed this City Manager Employment Agreement as of the 4<sup>th</sup> day of June, 2012.


**EMPLOYEE/CITY MANAGER**

  
\_\_\_\_\_  
Paul M. Walters


**Approved as to Form:**

  
\_\_\_\_\_  
R. Craig Scott, Executive Law Group, Inc.  
Employee's Legal Counsel

**CITY OF SANTA ANA**

  
\_\_\_\_\_  
Miguel A. Pulido  
Mayor

**Approved as to Form:**

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

**ATTEST:**

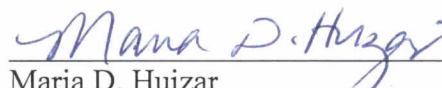
  
\_\_\_\_\_  
Maria D. Huizar  
Clerk of the Council

Exhibit "A"

**WAIVER AND RELEASE**

I, the undersigned, do hereby acknowledge and attest that I have read and understood section 9.7 of my Employment Agreement with the City of Santa Ana and hereby agree that by accepting either twelve (12) months Severance Pay in the amount of \$ \_\_\_\_\_ [12 x current monthly compensation], or a City-paid service credit, 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 Payment, or the service credit, 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 he 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 he or she has read and understands this waiver and voluntarily and knowingly is waiving his 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

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:

---