

EMPLOYMENT AGREEMENT
CITY CLERK/CITY MANAGER SERVICES

This Employment Agreement City Clerk/City Manager Services is made and entered into as of March 9, 2016 (the "Agreement"), by and between the CITY OF ADELANTO, a Charter City of the State of California ("City"), and CYNTHIA M. HERRERA, and individual ("Herrera") (City and Herrera, interchangeably and collectively, "Party" or "Parties," as appropriate). This Agreement shall reiterate, supersede and amend the Employment Agreement between the Parties dated October 28, 2015.

The above named parties hereby mutually agree and promise as follows:

1. **TERM**

- A. The City hereby appoints Herrera to the position of City Manager, *effective immediately*. The appointment shall be effective until either Party terminates this Agreement, as more fully set forth below.
- B. If for any reason the City Council terminates this appointment, upon expiration of the term, the City Manager may return to her prior position of City Clerk at the annual base salary of \$95,000, plus longevity pay to which Herrera is entitled under current City rules and policies.
- C. Herrera represents the necessary qualifications required to perform the highly responsible, confidential and complex administrative duties.
- D. City Manager's term commenced on March 9, 2016.
- E. City Manager will receive a performance review three (3) months after commencement of term as City Manager.

2. **COMPENSATION**

- A. Herrera shall be compensated at the annual base salary of \$138,300 plus longevity pay per year for an average of 40 hours of work per week. Payment will be made by the City bi-weekly on regular pay dates of the City, by direct deposit as directed by Herrera except as set forth below. Herrera's performance pursuant to this Agreement shall assure the City a minimum of 160 hours of work per month, taking into consideration Herrera's desire to have time off for vacation and the potential need to take time off for illness.

B. Herrera shall be entitled to receive the same benefits provided to the City's Management employees as set forth in the current resolutions and policies pertaining to Management employees. In addition to, or in lieu of, the benefits provided under the current resolution; Herrera shall receive all benefits provided in this Agreement.

C. Herrera shall be entitled to the sum of nine hundred dollars (\$900.00) per month, as "out of class pay," commencing July 1, 2016.

3. CONTINUATION OF DUTIES

It is understood that Herrera shall still retain her position as City Clerk. Any benefits Herrera earned or accrued as City Clerk prior to entering this Agreement, including vacation, shall not be affected by this Agreement and shall continue to accrue as if there were no lapse in service.

4. DUTIES

Herrera shall perform the duties of the City Manager, as set forth herein above and in the City's Charter, personnel rules and regulations and job descriptions. In addition to the powers and duties expressly set forth and incorporated herein, Herrera shall have such powers and duties which are delegated to her by the City Council. Herrera shall execute all powers and duties in accordance with the policies adopted by the City Council, and applicable State and Federal laws.

5. EVALUATION

Herrera shall meet with the City Council in Closed Session on an annual basis or as otherwise determined by the City Council to review Herrera's performance, to discuss the City Council's evaluation of said performance, and to consider any adjustments in Herrera's duties and compensation pursuant to this Agreement, as deemed appropriate by the City Council.

6. TERMINATION

Herrera shall serve at the will and pleasure of the City Council and, notwithstanding provisions in the Municipal Code to the contrary, may be terminated at any time without prior notice upon the City Council's determination, in its sole discretion, with or without cause. For purpose of this Agreement, "cause" shall be defined as any act of dishonesty, fraud, misrepresentation, or other act of moral turpitude or any illegal, unlawful or improper act committed by employee that would prevent the effective performance of her duties; the willful failure to comply with the lawful order or directive of the City Council; or any willful violation of any term or

provisions of this Agreement. Such termination shall take effect immediately, without the necessity of a hearing or other process.

7. VOLUNTARY RESIGNATION

Herrera may voluntarily resign by delivering a letter of resignation to the City Council effective immediately upon date of resignation. In the event Herrera exercises her rights to terminate, provided Herrera remains ready, willing and able to perform pursuant to this Agreement, Herrera shall be entitled to her salary and benefits as outlined until the effective date of her termination.

Promptly after the effect date of resignation, the City shall pay to Herrera all salary and benefit amounts both accrued and owing under this Agreement. Upon the effective date of resignation, Herrera may continue her function as City Clerk at the annual base salary of \$90,000 plus longevity pay to which Herrera is entitled under current City rules and policies.

8. SEVERANCE

In the event of termination by the City without cause, Herrera shall be entitled to severance, as a single lump sum payment at Herrera's then current monthly salary and benefits, as follows:

- A total of six (6) months' salary and benefits if terminated during the first three (3) years of employment.
- A total of nine (9) months' salary and benefits if terminated after the third year of employment.

9. AUTOMOBILE

Herrera will use her own vehicle for her exclusive use for carrying out and conducting the business of the City. However, a City vehicle will be provided to Herrera for the attendance of conferences, meetings, workshops, etc., on behalf of the City.

10. PROFESSIONAL DEVELOPMENT

The City acknowledges its interest in the continuing professional development and agrees to allow and pay all expenses associated with attendance at annual conferences of League of California Cities. Further, the City agrees to continue paying for all memberships, conferences, quarterly SCCCA meetings, workshops that have previously been paid for the position of City Clerk. The City acknowledges the right of City

Manager to engage in other professional activities as long as they do not interfere or conflict with duties as City Manager.

11. INDEMNIFICATION

The City shall defend, hold harmless and indemnify City Manager against any tort, professional liability claim, 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 to the City. In its sole discretion, the City may compromise and settle any such claim or suite and pay the amount of any settlement or judgment rendered therefrom.

12. RIGHTS OF PARTIES

Unless expressly set forth in this Agreement, nothing in this Agreement shall abrogate any rights, responsibilities, benefits or privileges to which either party would otherwise be entitled. The rights and obligations of the parties to this Agreement shall be governed by the laws of the State of California.

13. AMENDMENT OF AGREEMENT

This Agreement may be amended in writing by mutual agreement of the parties.

14. FAILURE TO ACT OR DELAY OF ACTION

No failure to exercise and no delay in exercising any right, remedy or power set forth in this Agreement shall operate as a waiver to the exercise of that right, remedy or power in the future.

15. ENTIRE AGREEMENT

This Agreement contains the entire Agreement between the parties. No promise, representation, warranty, or covenant not included in this Agreement has been or is relied upon by either party to this Agreement.

16. SEVERABILITY

Should any paragraph, subparagraph, sentence, clause, phrase or word included in this Agreement be found invalid by a court of competent jurisdiction, the balance of this Agreement shall remain in full force and affect.

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17. GOVERNMENT CODE SECTIONS 53243-53243.4

- (a) In the event that the City provides paid leave to City Manager pending an investigation of a crime involving abuse of his office or position covered by Government Code Section 53243.4 and should that investigation lead to a conviction, the City Manager shall fully reimburse the City for any salary provided for that purpose.
- (b) In the event that the City provides funds for the legal criminal defense of the City Manager pending an investigation of a crime involving abuse of his office or position covered by GC Section 53243.4, and should that investigation lead to a conviction, the City Manager shall full reimburse the City for any funds provided for that purpose.
- (c) In the event that the City provides a cash settlement related to the termination of the City Manager as defined in the terms of this Agreement, and the City Manager subsequently is convicted of a crime involving abuse of his office or position covered by GC Section 53243.4, the City Manager shall fully reimburse the City for any funds provided for that purpose.

IN WITNESS HEREOF, the Parties hereto have executed this Agreement effective on the day and year first written above.

CITY OF ADELANTO

Rich Kerr, Mayor

Cynthia M. Herrera
City Clerk/City Manager

ATTEST:

Brenda Lopez, Deputy City Clerk

APPROVED AS TO FORM:

Julia Sylva, Interim City Attorney