

RESOLUTION NO. 2022-XX

RESOLUTION NO. 2022-XX – A RESOLUTION OF THE CITY OF FULLERTON, CALIFORNIA, APPROVING AN AGREEMENT RETAINING CINDY COLLINS AS AN INTERIM EXECUTIVE IN ACCORDANCE WITH GOVERNMENT CODES SECTIONS 7522.56 AND 21221(h)

WHEREAS, Government (Gov.) Code section 21221(h) of the Public Employees' Retirement Law permits the governing body to appoint a CalPERS retiree to a vacant position requiring specialized skills during recruitment for a permanent appointment, and provides that such appointment will not subject the retired person to reinstatement from retirement or loss of benefits so long as it is a single appointment that does not exceed 960 hours in a fiscal year; and

WHEREAS, the City of Fullerton desires to appoint Cindy Collins as an interim appointment retired annuitant to the vacant position of Deputy City Manager for the City of Fullerton under Gov. Code section 21221(h), effective January 22, 2022; and

WHEREAS, the Deputy City Manager is an executive level position in Administration and is critical to the day-to-day operations of this department; and

WHEREAS, the City of Fullerton desires Cindy Collins to provide oversight of the Parks and Recreation Department which is above and beyond the functions of a Deputy City Manager; and

WHEREAS, by functioning as the Deputy City Manager, as well as providing oversight of the Parks and Recreation Department, including support to said department's management staff, Cindy Collins is performing duties in two distinct departments beyond what is expected of a Deputy City Manager or department director; and

WHEREAS, the City of Fullerton and Cindy Collins certify that Cindy Collins has not and will not receive a Golden Handshake or any other retirement-related incentive; and

WHEREAS, an appointment under Gov. Code section 21221(h) requires the retiree is appointed into the interim appointment during recruitment for a permanent appointment; and

WHEREAS, a recruitment process for a Deputy City Manager is underway but expected to take a number of months to complete; and

WHEREAS, Cindy Collins has expressed a desire to serve as an Interim Executive during the recruitment period; and

WHEREAS, Cindy Collins has the specialized skills to perform the duties of a Deputy City Manager as well oversight of the Parks and Recreation Department as given her training and background as an Assistant City Manager and Department Director; and

WHEREAS, the compensation paid to retirees cannot be less than the minimum nor exceed the maximum monthly base salary paid to other employees performing comparable duties, divided by 173.333 to equal the hourly rate; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Fullerton does approve the attached City of Fullerton Employment Agreement retaining Cindy Collins as Interim Executive.

PASSED, APPROVED, AND ADOPTED this 18<sup>th</sup> day of January 2022.

---

Fred Jung, Mayor

ATTEST:

---

Lucinda Williams, MMC  
City Clerk

CITY OF FULLERTON  
AGREEMENT RETAINING CINDY COLLINS  
AS INTERIM EXECUTIVE

THIS INTERIM EMPLOYMENT AGREEMENT ("Agreement") is entered into by and between the City of Fullerton, a California municipal corporation, (the "City") and Cindy Collins, an individual, (hereinafter referred to as "Collins") to be effective the 22<sup>nd</sup> day of January 2022 ("Effective Date"). The City and Collins are sometimes hereinafter individually referred to as "party" and are hereinafter collectively referred to as the "parties."

A. The City desires to retain and appoint on an interim basis Collins as an Interim Executive of the City pending the completion of the ongoing recruitment process for Deputy City Manager and determination of staffing needs for Parks and Recreation, including appointment of a regular Parks and Recreation Director.

B. Collins, a retired CalPERS annuitant, desires to serve as a duly appointed Interim Executive of the City pending the City's selection of a permanent Deputy City Manager following completion of the ongoing recruitment, and Collins understands that she shall hold office at the pleasure of the City Manager. Collins has approximately six years of experience as an Assistant City Manager and six years as a department director. She has recently served as the Parks and Recreation Director for the Jurupa Community Services District and Interim City Manager for the City of San Marino. She has the knowledge and experience required to serve as an Interim Executive pursuant to this Agreement.

NOW, THEREFORE, the parties agree as follows:

1.0 Appointment

1.1 The City hereby retains and appoints Cindy Collins as an Interim Executive of the City, and Collins hereby accepts such employment and appointment with the City to perform the functions and duties of an Interim Executive as set forth in the Class Specification for Interim Executive. This interim appointment is subject at all times to the terms and conditions of this Agreement and to perform other permissible and proper duties and functions consistent with the position of an Interim Executive as the City Manager may, from time to time, assign. However, the appointment shall not exceed Collins working more than 960 hours in the 2021-22 fiscal year as set forth in California Government Code Sections 7522(d) and 21221(h) unless an exception applies.

1.2 Collins hereby agrees to perform fully and faithfully the functions and duties of an Interim Executive, as a duly appointed Interim Executive, as specified above and in accordance with the terms and conditions set forth herein.

2.0 Term of Agreement

The term of this Agreement shall commence on the Effective Date set forth above and shall continue in full force and effect through June 30, 2022, unless sooner terminated with or without cause or notice by the City Manager, or by Collins with fourteen (14) calendar days' advanced written notice to the City Manager provided in accordance with Section 10.2 of this Agreement.

### 3.0 Compensation

3.1 Collins shall maintain time records in the City's timekeeping system for the services rendered pursuant to this Agreement.

3.2 Collins will receive compensation at the rate of \$85.00 per hour for all hours worked pursuant to this Agreement, minus any applicable payroll taxes required by state and federal law, payable in accordance with the City's established protocols and procedures used for City employees. Collins shall not be entitled to any additional compensation or any severance pay upon termination of this Agreement.

3.3 Subject to Section 4.0, Collins is entitled to receive compensation for hours worked, which includes all time spent on City related business, regardless of when or where performed and includes travel to and from business related meetings. Collins may not invoice the City for travel to and from home to the City, or work unrelated to her work for the City, whether personal or professional, even if performed while at the City and during regular business hours of the City.

3.4 Collins shall not be entitled to receive any benefits of employment provided to City's regular full-time or management employees, including, but not limited to, group health or medical benefits, life insurance, and vacation and other leave accruals. Collins specifically acknowledges that her employment by the City under this Agreement is intended to be temporary and of limited duration, and that she will not be entitled to be a member of or accrue benefits under the California Public Employees Retirement System (CalPERS). Notwithstanding the foregoing, Collins may elect to participate in any salary deferral program under Internal Revenue Code section 457 that is maintained by the City and for which Collins is eligible, without contribution from the City.

### 4.0 Hours of Work

The parties hereby expressly understand and agree that Collins's hours will not exceed 960 hours in the Fiscal Year 2021-22 in accordance with California Government Code section 21221 unless an exception applies. Collins shall be responsible for tracking her hours and ensuring that she does not exceed the CalPERS fiscal year limits for a retired annuitant. The City shall regularly audit Collins's hours to ensure compliance with Government Code section 21221. Collins is expected to work approximately 30 hours a week, including attendance at City Council meetings as needed.

### 5.0 General Expenses

Collins is not entitled to receive reimbursement for general expenses incurred, nor shall she be expected to incur such expenses, in the performance of her duties pursuant to this Agreement. Notwithstanding the foregoing, if Collins incurs an extraordinary expense related to the performance of her obligations pursuant to this Agreement and wishes to seek reimbursement from the City for such expense incurred, she shall do so by submitting a request for reimbursement to the Director of Human Resources for approval. Any such request must be accompanied by a brief description of the expense and copies of receipts substantiating the expense.

## 6.0 Indemnification

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 Collins 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 Interim Executive pursuant to and to the extent required by Government Code sections 825 and 995. Pursuant to Government Code section 825(a), City reserves its rights not to pay a judgment, compromise, or settlement until it is established that the injury arose out of an act or omission occurring within the scope of Collins's employment under this Agreement.

## 7.0 Other Terms and Conditions

The City Manager, in consultation with Collins, shall fix any such other terms and conditions, as it may determine from time to time, relating to the performance of Collins, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, or any other applicable law.

## 8.0 Compliance with Law

Collins shall comply with all applicable laws, ordinances, codes, and regulations of federal, state, and local government in the performance of the duties and obligations that are the subject of this Agreement.

## 9.0 Governing Law and Venue

This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. Any legal action arising under or related to this Agreement shall be brought and prosecuted in the Orange County Superior Court.

## 10 General Provisions

10.1 This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, arrangements, agreements, representations, and understandings, if any, made by or among the parties with respect to the subject matter hereof. No amendments or other modifications of this Agreement shall be binding unless executed in writing by both parties hereto, or their respective successors, assigns, or grantees. To the extent that other oral or written agreements exist or City Personnel Rules may apply to the relationship between City and Interim Executive, this Agreement supersedes all others.

10.2 Any notices required by this Agreement shall be either given in person or mailed by first class mail with the postage prepaid and addressed as follows:

IF TO CITY:

303 W. Commonwealth Ave.  
Fullerton, CA 92832  
Attention: Human Resources Director

IF TO INTERIM  
EXECUTIVE

Cindy Collins  
[Address on file with HR Department]

10.3 If any provision, or any portion thereof, contained in this Agreement is held to be invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severed, shall not be affected and shall remain in full force and effect.

10.4 The provisions of this Agreement are subject to CalPERS rules and regulations regarding the employment of CalPERS retirees. Any provision, or any portion thereof, determined by CalPERS to be inconsistent with such rules and regulations shall be deemed struck from this Agreement and shall not affect the validity or enforceability of any other provision of this Agreement.

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

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

10.7 The foregoing recitals are true and correct and are incorporated herein by reference.

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the date first written above.

**CITY OF FULLERTON**

\_\_\_\_\_  
Jeff Collier, Acting City Manager

**ATTEST:**

\_\_\_\_\_  
Lucinda Williams, MMC  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Richard D. Jones, City Attorney

\_\_\_\_\_  
**CINDY COLLINS**