

CITY OF CARSON
AT-WILL, TEMPORARY PURCHASING MANAGER
EMPLOYMENT AGREEMENT

This AT-WILL, TEMPORARY PURCHASING MANAGER EMPLOYMENT AGREEMENT ("Agreement") is made by and between the CITY OF CARSON ("City") and LISA NIXON ("Employee"). The City and Employee may be referred to individually as a "Party" or collectively as "the Parties."

R E C I T A L S

WHEREAS, the City's current Purchasing Manager has been on an extended leave of absence since October 18, 2017, and as a result, the position of Purchasing Manager is presently un-manned; and

WHEREAS, the City anticipates the Purchasing Manager position to continue to be vacant for a minimum of several months; and

WHEREAS, Employee is not a California Public Employees Retirement System ("CalPERS") retired annuitant and is therefore not subject to the requirements of Government Code sections 21221, 21224 and 7522 *et seq.* pertaining to the limitations on the hiring and employment of CalPERS retirees; and

WHEREAS, the City's Personnel Rules allow for limited term/ temporary employment (referred to herein only as "temporary") provided that such appointment does not extend beyond 36 months, unless authorized by the City Manager; and

WHEREAS, the City desires to hire Employee as an at-will, temporary employee for the position of Temporary Purchasing Manager, effective April 18, 2018 until the full-time Purchasing Manager position can be filled on a full-time, permanent basis or the expiration of the term of this Agreement; and

WHEREAS, the Parties wish to establish the terms and conditions of Employee's services to the City, as described in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, City and Employee hereby agree as follows:

A G R E E M E N T

Section 1: TERM

The term of this Agreement shall commence on April 18, 2018 and shall automatically terminate upon the earlier of the following to occur, unless prior terminated by either Party: (i) April 18, 2019 or (ii) the Purchasing Manager position being filled on a full-time basis by a

permanent employee ("Term"). April 18, 2018 shall be Employee's "Hire Date" for purposes of this Agreement.

Section 2: DUTIES, RESPONSIBILITIES, AND WORK HOURS

A. Employee shall be appointed to the at-will position of Temporary Purchasing Manager, the duties of which are set forth fully in Exhibit "A" to this AGREEMENT.

B. Employee acknowledges that City Hall is open Mondays through Thursdays from 7:00 a.m. to 6 p.m. Employee shall work under the direction of the Director of Finance. Subject to the Term as stated in Section 1 of this Agreement, Employee shall work the number of hours each week as directed and authorized by the Director of Finance, provided that Employee shall not work more than forty (40) hours in a single week.

C. All data, studies, reports, and other documents prepared and/or reviewed by Employee while performing her duties during the Term of this Agreement shall be furnished to and become the property of the City, without restriction or limitation on their use. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other materials either created by or provided to Employee in connection with the performance of this Agreement shall be held confidential by Employee to the extent permitted by applicable law. Such materials, without the prior written consent of the City Manager or his designee, shall not be used by Employee for any purpose other than the performance of her duties. Nor shall such materials be disclosed to any person or entity not connected with the performance of services under this Agreement, except as required by law.

Section 3: COMPENSATION AND BENEFITS

A. The City agrees to compensate Employee on an hourly basis at the rate of fifty-eight dollars and seven cents per hour (\$58.07) (\$10,065.00 per month /173.33333), which is the hourly rate of the top step of the monthly salary range for the Purchasing Manager position. Such compensation shall be adjusted for payroll taxes, workers' compensation, and other payroll-related liability costs. Employee shall be paid on a bi-weekly basis at the same time as other employees of the City are paid.

B. Employee shall not be eligible for any other benefits, incentives, compensation in lieu of benefits, or any other forms of compensation in addition to the Salary provided, however, that Employee shall be eligible for paid sick leave pursuant to Resolution No. 16-046 as required by the Healthy Workplace Healthy Family Act of 2014.

Section 4: RESIGNATION/TERMINATION

A. Employee may resign at any time; provided, however, Employee shall reasonably provide the City's Director of Finance with at least two (2) weeks advance written notice.

B. Employee is an at-will, temporary employee serving in the City's unclassified service. Employee serves at the will and pleasure of the City Manager and may be terminated at any time, with or without cause, and with or without notice, and has no due process and/or

property interest or right in her temporary employment, including the right to any so-called "Skelly" hearing.

C. After notice of resignation or termination, Employee shall cooperate with the City, as requested by the City, to effect a transition of Employee's responsibilities and duties and to ensure that the City is aware of all matters being handled by Employee.

D. Employee shall not be entitled to severance pay and Employee expressly waives any and all rights with respect to severance pay.

Section 5. NOTICES

Notices required to be served pursuant to this Agreement shall be served in person or by first-class U.S. mail addressed as follows:

City

Ken Farfsing, City Manager
City of Carson
701 E. Carson Street
Carson, CA 90745

Employee

Lisa Nixon
[Address on file with Human Resources]

Section 6: GENERAL TERMS AND CONDITIONS

The General Terms and Conditions of this Agreement are described as follows:

A. Indemnification. To the extent mandated by the California Government Code, the City shall defend, hold harmless, and indemnify Employee against any tort, professional liability, claim or demand, or other legal action arising out of an alleged act or omission occurring in the performance of Employee's services under this Agreement. This section shall not apply to any intentional tort or crime committed by Employee, to any action outside the course and scope of Employee's employment, or any other intentional or malicious conduct or gross negligence of Employee.

B. Entire Agreement. The text of this Agreement shall constitute the entire and exclusive agreement between the Parties. All prior oral or written communications, understandings, or agreements between the Parties not set forth herein shall be superseded in total by this Agreement. No amendment or modification to this Agreement may be made except by a written agreement signed by the Employee and the City Manager and approved as to form by the City Attorney.

C. Assignment. This Agreement is not assignable by either the City or Employee.

D. Severability. In the event any provision of this Agreement is finally held or determined to be illegal or void by a court having jurisdiction over the Parties, the remainder of this Agreement shall remain in full force and effect unless the parts found to be illegal or void are wholly inseparable from the remaining portions of this Agreement.

E. Effect of Waiver. The failure of either Party to insist on strict compliance with any of the terms, covenants, or conditions in this Agreement by the other Party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other time or times.

F. Governing Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of California, which are in full force and effect as of the date of execution. Any action to interpret or enforce the terms of this Agreement shall be held exclusively in a state court in Los Angeles County, California. Employee expressly waives any right to remove any such action from Los Angeles County.

G. Effective Date. This Agreement shall not become effective until the later of the following to occur: i) April 18, 2018 or ii) the date on which the Agreement has been executed by both Employee and the Mayor.

H. Effect of Agreement on Employee's Retirement Benefits. Employee represents and warrants to the City that she is not a CalPERS retired annuitant and is a Water and Power Employees' Retirement Plan retiree. The City makes no representation on the impact, if any, this Agreement shall or may have upon her retirement benefits, status, duties, and/or obligations. Employee acknowledges that in entering into this Agreement, she has not relied upon any such representations (none of which being in existence) in assessing the retirement or pension benefits-related impact of her employment. Therefore, Employee releases the City from any and all retirement and pension benefits-related claims or liabilities that may arise in connection with her employment pursuant to this Agreement.

I. Conflicts Prohibited. During the term of this Agreement, Employee shall not engage in any business or transaction or maintain a financial interest which conflicts, or reasonably might be expected to conflict, with the proper discharge of Employee's duties under this Agreement. Employee shall comply with all requirements of law, including but not limited to, Sections 1090, 1125, and 87100 *et seq.* of the Government Code, and all other similar statutory and administrative rules.

J. Independent Legal Advice. The City and Employee represent and warrant to each other that each has received legal advice from independent and separate legal counsel with respect to the legal effect of this Agreement, that each has carefully reviewed this entire Agreement, that each and every term thereof is understood, and that the terms of this Agreement are contractual and not a mere recital. This Agreement shall not be construed against the Party or its representatives who drafted it or who drafted any portion thereof.

K. Government Code §§ 53243 - 53243.4. Government Code §§ 53243 - 53243.4 sought to provide greater transparency in local government and institute certain limitations on compensation paid to local government executives. Those statutes also require contracts between local agencies and its employees include provisions requiring an employee who is convicted of a crime involving an abuse of her office or position to provide reimbursement to the local agency. Those statutes are incorporated herein by reference. Accordingly, the Parties agree it is their mutual intent to fully comply with the cited Government Code sections and all other applicable law as it exists as of the date of execution of this Agreement and as such laws may be amended from time to time thereafter. Specifically, the following Government Code sections are called out and hereby incorporated by this Agreement:

§53243. Reimbursement of paid leave salary required upon conviction of crime involving office or position.

§53243.1. Reimbursement of legal criminal defense upon conviction of crime involving office or position.

§53243.2. Reimbursement of cash settlement upon conviction of crime involving office or position.

§53243.3. Reimbursement of noncontractual payments upon conviction or crime involving office or position.

§53243.4. "Abuse of office or position" defined.

Employee represents Employee has reviewed, is familiar with, and agrees to comply fully with each of these provisions if any of these provisions are applicable to Employee.

IN WITNESS WHEREOF, the City of Carson has caused this Agreement to be signed and executed on its behalf by its Mayor, and executed by the Employee.

CITY OF CARSON,

Dated: _____

Albert Robles
Mayor

EMPLOYEE,

In signing this Agreement, Employee understands and agrees that she is an **at-will temporary employee** and that her rights to employment with the City are governed by the terms and conditions of this Agreement rather than the ordinances, resolutions, and policies of the City of Carson which might otherwise apply to classified or other employees of the City. Employee

further acknowledges that she was given the opportunity to consult with an attorney prior to signing this Agreement.

Dated: _____

Signed: _____

Lisa Nixon
Employee