

**CITY OF FULLERTON
DIRECTOR OF COMMUNITY AND ECONOMIC DEVELOPMENT
EMPLOYMENT AGREEMENT**

This Employment Agreement ("Agreement") is made and entered into this 9th day of March 2023 by and between the City of Fullerton, a California municipal corporation (hereafter "City"), and Sunayana Thomas (hereinafter referred to as "Thomas").

RECITALS

WHEREAS, the City desires to retain the services of Thomas as the Director of Community and Economic Development to serve at the direction of the City Manager, (hereinafter referred to as "City Manager"); and

WHEREAS, Thomas desires to perform the services of the Director of Community and Economic Development; and

WHEREAS, the City desires to provide certain benefits, establish certain conditions of employment and set certain working conditions of the Director of Community and Economic Development; and

WHEREAS, the City and Thomas desire to enter into this agreement to specify the terms and conditions of Thomas' employment with the City.

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

1. Duties

The City agrees to employ Thomas as Director of Community and Economic Development beginning February 20, 2023 (hereinafter "Appointment Date") to perform the functions and duties of the Director of Community and Economic Development as set forth in the Class Specification for Director of Community and Economic Development attached hereto as Exhibit "A" and incorporated herein by this reference, and to perform other permissible and proper duties and functions consistent with the position of Director of Community and Economic Development as the City Manager may from time-to-time assign.

2. Term and Conditions

A. This agreement supplements all ordinances, resolutions, policies, rules, regulations, procedures, and benefits ("City Rules") which apply to Executive employees, which shall apply to Thomas, including, but not limited to, Resolution No. 2022-003, Compensation for Executive Employees (hereinafter

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“Executive Compensation Resolution”) as it currently exists or may hereafter be amended or superseded or as modified herein.

- B. Pursuant to and consistent with the Executive Compensation Resolution and Resolution No. 8485, Municipal Code Sections 2.33.010 and 2.33.020 (attached) shall not apply to Thomas with respect to the City’s disciplinary and appeals procedures. Thomas serves at the pleasure of the City Manager and may be discharged without cause subject to the Right of Reversion in Section 2 (C) below. If Thomas remains in the position of Director of Community and Economic Development for a period of twelve (12) months from the Appointment Date, the Right of Reversion will terminate and Thomas’ employment with the City will become at will. Thereafter, the City Manager may terminate Thomas without cause, provided that she is given six (6) months written notice. As an alternative to such notice, Thomas shall receive a lump sum cash payment equal to six (6) months of her then-current base salary and the City shall pay for the first six (6) months of COBRA coverage under the City sponsored medical, dental or vision plan in which Thomas and her dependents are covered at the time of her separation.
- C. During the first twelve (12) months from the Appointment Date (the “Reversion Period”) if the City Manager decides to remove Thomas from the position of Community and Economic Development Director without cause, Thomas will be entitled to revert back to her previous position as Economic Development Manager/Principal Planner (“Right of Reversion”). In the event the Right of Reversion is exercised, Thomas will be paid her prior Economic Development Manager/Principal Planner salary subject to normal increases in pay that would have occurred during the period Thomas served as Community and Economic Development Director.
- D. The requirements of Sections 2 (B)(C) shall not apply if Thomas is discharged for cause. As used in this Agreement, Cause shall mean any of the following:
 - 1. Indictment, conviction, or plea of nolo contendere to any felony or other crime involving moral turpitude;
 - 2. Material breach of City policy or this Agreement, which breach Thomas has not cured, to the extent curable, to the satisfaction of the City Manager within sixty (60) days after receiving notice of such breach;
 - 3. Fraud, embezzlement, misappropriation of funds or disclosure of confidential information;
 - 4. Misconduct or gross negligence that results, or reasonably could be expected to result, in financial damage to the City;

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5. Failure to cooperate with an official investigation authorized by the City Manager, or initiated by a governmental authority, in either case related to the City, its business, Council members or City employees; or

6. Acceptance of employment from another source which is inconsistent with full time employment as Director of Community and Economic Development and/or in violation of this Agreement.

E. If Thomas voluntarily resigns or retires, she shall give the City ninety (90) calendar days' written notice in advance, unless the parties otherwise agree in writing.

F. Pursuant to Government Code section 53243.2, any cash settlement Thomas may receive related to the termination of this Agreement, including, but not limited to a severance payment and the cost of COBRA payments, shall be fully reimbursed to the City if Thomas is convicted of a crime involving "an abuse of office or position," as that term is defined in Government Code section 53243.4.

3. Work Schedule

Thomas will work a standard work schedule. The precise daily schedule is subject to determination by the City Manager based on the City's business needs. The Director of Community and Economic Development is an exempt position; Thomas shall not be eligible for overtime.

4. Salary

City agrees to compensate Thomas for services rendered, no less than \$185,387 per year (approximately \$89.128 per hour). After completion of six (6) months of service with a performance rating of average or above, Thomas' compensation shall be evaluated for a possible increase of up to 5%. After the initial six (6) month evaluation, all subsequent evaluations and pay increase shall be done annually on the promotional anniversary, in conformity with the Executive Compensation Resolution.

5. CalPERS

Thomas shall be enrolled in the City of Fullerton's CalPERS plan for miscellaneous employees with the benefit formula determined by the City's contract with CalPERS. The City's contribution and Thomas's contribution towards CalPERS shall be made in accordance with the Executive Compensation Resolution or any successor resolutions.

6. Retiree Medical

In lieu of Thomas' eligibility for a City contribution to health insurance after retirement from the City, the City agrees to make contributions of \$100 each pay period that this Agreement is in effect into a retiree health savings account in a plan to be implemented by the City as soon as possible following the Effective Date of this Agreement.

Pursuant to Section 19: Healthy Lifestyle Practices in the Executive Compensation Resolution, Thomas has the option to convert the \$750 annual medical exam benefit into a City contribution to Thomas' retiree health savings account in the amount of \$28.85 per pay period.

7. Vacation Accrual

Thomas shall accrue vacation time at the rate of a 11-year employee, 136 hours per year. For the purposes of vacation accrual rate calculation only, Thomas will be treated as having 11 years of service effective the Appointment Date. Thomas' accrual rate will follow the Executive Compensation Resolution in effect at the time of completing each year of service. In addition, Thomas' accrued vacation leave will remain available after her appointment to Director of Community and Economic Development.

8. Sick Leave

Thomas shall accrue sick leave at the rate of 3.69 hours per pay period. In addition to any sick leave hours that Thomas has already accrued, an additional 15 hours will be added to Thomas' sick leave balance effective the Appointment Date. These additional 15 hours bank shall have no cash value or CalPERS service credit value for Thomas. In addition, Thomas' accrued sick leave will remain available after her appointment to Director of Community and Economic Development.

9. Executive Leave

Thomas will be eligible for Executive Leave at the rate of 81 hours per year in accordance with the Executive Compensation Resolution. A prorated bank of 30 hours will be established for use by Thomas effective the Appointment Date. In addition, any unused Management Leave hours as of the Appointment Date shall be converted to Executive Leave.

10. Other Benefits

Except as noted in this provision, Thomas shall be entitled to other benefits as provided to Executive employees within the Executive Compensation Resolution

including, but not limited to, participation in City sponsored health plans and City contributions toward coverage in such plans, vehicle allowance and paid holidays.

11. No Reduction in Benefits

City shall not at any time during the term of this Agreement reduce the base salary, compensation, or other financial benefits of Thomas except on the same basis as may be applicable to all executive management employees of the City. This may be done notwithstanding the provisions of Section 4 above.

12. Indemnification

City shall defend, hold harmless and indemnify Thomas against any tort, professional liability claim or demand or other legal action arising out of any alleged act or omission occurring within the scope of her employment as the Director of Community and Economic Development in accordance with the provisions of California Government Code section 825. At its sole discretion, City may compromise, settle, assign legal counsel, determine litigation strategy, or pay judgment rendered in any such claim or suit.

Thomas shall cooperate fully in the investigation and defense of any such liability claim, demand, or legal action.

Thomas acknowledges and agrees that City's agreement to defend, hold harmless and indemnify her does not constitute an agreement to pay any punitive damages awarded against Thomas in any such liability claim, demand, or legal action. In that regard, Thomas acknowledges and agrees that per subdivision (b) of Government Code section 825, City may not make a determination whether or not to indemnify an employee for an award of punitive damages until such time as the award is made.

13. Other Terms and Conditions of Employment

The City Manager, in consultation with Thomas, shall establish any other terms and conditions of employment as he/she may determine from time to time, relating to the performance of Thomas, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Fullerton Municipal Code, any ordinance or resolution of the City, or other applicable laws, rules or regulations for payout of the cash value of accrued vacation leave at the time of separation.

14. Notices

Any notice required or permitted by this Agreement shall be in writing and shall be personally served or be sufficiently given when served upon the other party as sent by the United States Postal Service, postage prepaid and addressed as follows:

To City:

City Manager
City of Fullerton
303 W. Commonwealth Ave
Fullerton, CA 92832-1775

To Thomas:

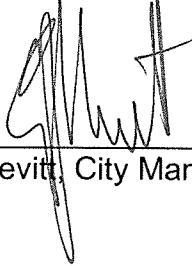
Sunayana Thomas
Address on record with the
Human Resources Department

15. General Provisions


- A. This Agreement constitutes the entire agreement between parties.
- B. If any provision or portion thereof contained in this Agreement is held unlawful, the remainder of this Agreement, or portion thereof, shall be deemed severable and shall not be affected and shall remain in full force and effect.
- C. In the event of any legal action between the parties hereto to enforce the provisions of this Agreement, each party shall bear their own legal fees and costs.
- D. This Agreement is intended to secure the individual services of Thomas and is not assignable or transferrable by Thomas to any third party.
- E. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.
- F. Thomas acknowledges that she has been represented by independent legal counsel of her own choosing, or if not, has been advised to obtain independent legal counsel and has freely and voluntarily waived and relinquished the right to legal counsel. Further, if Thomas has not obtained independent legal counsel, she acknowledges that the failure to have independent legal counsel will not excuse her failure to perform under this Agreement or any agreement referred to in this Agreement.
- G. This Agreement may be executed in counterparts containing original signatures.

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IN WITNESS WHEREOF, the City has caused this Agreement to be signed and duly executed on its behalf by its City Manager, and Thomas has signed and executed this Agreement, the date and year first written above.

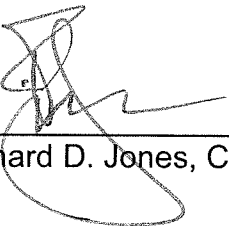
By: 
Eric Levitt, City Manager

Date: 3/23/23

By: 
Sunayana Thomas

Date: 3/15/23

Approved as to Form:


Richard D. Jones, City Attorney

Date: 3.14.23

DIRECTOR OF COMMUNITY AND ECONOMIC DEVELOPMENT

Definition:

Under general administrative direction is responsible for all activities of the Community and Economic Development Department including development/environmental review, planning, economic development, building and safety, code enforcement, community preservation and housing and community development; represents the City in negotiations related to land use and development; serves as an advisor to the Planning Commission and performs related work as required.

Essential Duties and Responsibilities:

The responsibilities and essential duties performed on a frequent and recurring basis by the Director of Community and Economic Development include the following:

Plans, organizes, directs and manages all activities of the Community and Economic Development Department including development/environmental review, planning, economic development, building and safety, zoning, code enforcement, community preservation, housing and community development.

Coordinates Community and Economic Development Department activities with those of other departments as needed

Advises the City Manager, City Council, the Planning Commission and other City departments/divisions on issues pertaining to applicable Community and Economic Development issues.

Serves as the City's representative in development and land use matters.

Serves as staff representative to the Planning Commission and as a technical advisor to the Successor Agency.

Represents the City in related issues before a variety of groups, the public and other agencies.

Develops, recommends, administers, interprets and enforces departmental policies and procedures and assists in the development and administration of the City's community and economic development related policies and regulations.

Selects and is responsible for the training, supervision and evaluation of all departmental staff.

Makes Community and Economic Development Department budget recommendations and administers the expenditure of funds.

Directs and participates in the preparation of a wide variety of surveys, plans, specifications, requests for proposals, studies, reports, contracts, agreements, agenda letters, correspondence, resolutions and ordinances in accordance with applicable state and federal laws and local codes and standards.

Formulates, recommends and implements departmental goals and develops workload indicators to measure progress towards goals achievement.

Prepares, coordinates and administers the City's General Plan.

- Oversees the development of the City's Economic Development Strategic Plan.
- Seeks, develops and makes recommendations on alternative sources of funding as appropriate.
- Develops and evaluates special programs.
- Reviews and analyzes a variety of materials, records, contracts, reports and other data and makes recommendation for change as needed.
- Makes oral and written presentations.
- Inspects construction sites and other projects as needed.
- Represents the City by attending a variety of City Council, Commission and other various public meetings and civic functions.
- Operates modern office equipment including computer equipment and specialized software application programs.
- Drives a vehicle on City business.

Other Duties and Responsibilities Include:

- Performs other projects/tasks as assigned.

Class Characteristics:

Director of Community and Economic Development is a single incumbent department head class and is a member of the City's executive team. The Director of Community and Economic Development is appointed by and reports to the City Manager and has broad responsibility for the safe, effective and efficient administration of all department activities.

Contacts and Relationships:

The Director of Community and Economic Development supervises division managers and professional/administrative support staff and through them all Community and Economic Development Department employees. The Director of Community and Economic Development establishes and maintains contact with and has continuing interaction with a variety of City staff including City Council Members, the City Manager and City department heads. Additional contact will occur with civic groups, developers, consultants and representatives of other public and private agencies. Contact with the public will occur during some work assignments.

Qualification Guidelines:

The knowledge and abilities which are required to perform the duties and responsibilities of this class include the following:

Knowledge of:

- Municipal government and community development department organization, administration and operations.
- Principles, practices and methods used in contemporary urban planning and building.

Special, social, political and economic trends and operating problems of community development organizations.

Local, state, and federal economic development programs, issues, trends, etc.

Leadership and management theory and practices, effective supervisory techniques and public sector labor relations.

Municipal budget administration and revenue sources related to area assigned.

Laws, codes, regulations, standards, rules and procedures governing environmental matters, zoning, land divisions, building and housing codes and general plan management.

Goal setting methods and the design of workload and performance indicators.

Negotiating and conflict resolution techniques.

Public relations and customer service techniques.

Effective methods of making oral and written presentations.

Modern office practices, methods, and computer equipment and applications related to work.

AND

Ability to:

Provide leadership for the City's Community and Economic Development Department staff and programs.

Recognize and integrate new trends in the environmental and economic impact of urban planning and building.

Identify and integrate a wide variety of interests in the development of land use policy.

Analyze problems and recommend and implement effective solutions.

Select, train, motivate, supervise and evaluate staff.

Initiate and carry out required procedural assignments and use independent judgment and initiative.

Work within, interpret and apply applicable laws, City and department rules and regulations.

Establish and maintain effective relationships with those contacted in the course of work.

Resolve conflict situations in a fair and amicable manner.

Think clearly, logically and rationally under pressure, adhere to multiple deadlines and handle multiple projects.

Handle job stress and maintain composure in public settings.

Communicate effectively orally and in writing; prepare clear and comprehensive reports and make effective presentations.

Prepare clear and comprehensive reports and make effective presentations.

Operate modern equipment including computer equipment and applicable and specialized software.

Meet and serve the public with professionalism, courtesy and tact.

Education and Experience:

Any combination of training and experience, which would provide the required knowledge, skills, and abilities is qualifying. A typical way to obtain the required qualifications would be:

Graduation from an accredited four-year college or university with major coursework in urban planning, regional planning or a related field. A graduate degree or some completed graduate level coursework in management, business administration, public administration, planning or a related field from an accredited college or university is desirable.

AND

Eight years of recent, continuous, progressively responsible professional community and economic development related experience, including three years at the mid-management/supervisory level in an organization comparable to Fullerton in terms of the scope of activity.

Special Requirements Include:

Valid and appropriate California Driver's License and acceptable driving record at time of appointment and throughout employment in this position.

Must be able to work flexible and extended hours to accommodate City needs.

The City of Fullerton's Conflict of Interest Code requires that the Director of Community and Economic Development file financial disclosure statements in accordance with state and local laws.

California Government Code §3100 – 3109 requires that all public employees are to be declared disaster service workers and shall take and subscribe to the related oath or affirmation as required.

Physical Tasks and Working Conditions Include the Following:

Work is performed primarily indoors with on-site work as required. When work is performed on-site there may be exposure to the elements. The incumbent uses a computer, keyboard and related equipment, drives a vehicle on City business, sits, stands, walks, reaches and grasps and may lift and carry folders and filled binders weighing 15 pounds or less. When performing inspections the incumbent may walk and stand on slippery and uneven surfaces and be exposed to vehicular traffic. The incumbent must be able to meet the physical requirements of the class and have mobility, balance, coordination, vision, hearing and dexterity levels appropriate to the duties to be performed.

Fair Labor Standards Act Designation: Exempt.

Revised September 2019 and Title Changed from Director of Community Development

Revised July 2006 and Title Changed from Director of Development Services

Revised December 2004

Revised August 1982

RESOLUTION NO. 2022-003

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FULLERTON, CALIFORNIA, RELATING TO COMPENSATION FOR EXECUTIVE EMPLOYEES AND SUPERSEDING RESOLUTION NO. 2021-69 AND AMENDMENTS THERETO

THE CITY COUNCIL OF THE CITY OF FULLERTON HEREBY RESOLVES AS FOLLOWS:

Section 1: Purpose

The City of Fullerton established the Executive Compensation Plan for the following purposes:

- A. To establish a system in which compensation serves as an effective device for promoting better job performance for employees serving in the following Executive classifications of Fire Chief, Director of Public Works, Interim Executive, Director of Community and Economic Development, Chief Information Officer, Director of Administrative Services, Director of Parks and Recreation, Director of Human Resources, Deputy City Manager, City Engineer / Assistant Director of Public Works, Library Director, Deputy Director of Community and Economic Development and Deputy Director of Parks and Recreation(hereinafter collectively Executive Employees.)
- B. To promote maximum commitment by Executive Employees to objectives of the City Council and the City Manager.
- C. To foster the identification of an executive group and an understanding of associated roles and responsibilities.
- D. To recognize the distinct character of executive jobs and incumbents as opposed to grouping them with other employees for compensation purposes.
- E. To improve the City's ability to attract and retain outstanding executives.

Section 2: Effective Date

The provisions of this Resolution shall become effective January 18, 2022, unless otherwise stated.

Section 3: City Revenues

The City of Fullerton encourages Executive Employees to shop in Fullerton.

Section 4: City Manager Authority and Individual Employment Agreements

The City Manager shall have the authority to enter into individual employment agreements (Employment Agreements) on behalf of the City with each Executive Employee, setting forth terms and conditions of employment within the discretion granted the City Manager through this Resolution. Employment Agreements with Tier 2 and 3 Executive Employees

shall also require the signature of the appropriate Appointing Authority as designated in Section 5. The City Manager has no authority to agree to terms of compensation beyond those provided within this Resolution. The City Manager shall have authority to agree to:

- A. Base salary within the applicable salary ranges in Appendix A and within the parameters provided in Section 6.
- B. Exchange of any form of cash payment or City contribution for which an Executive Employee is eligible under the terms of this Resolution for an equivalent City contribution to a Retiree Health Savings Account on behalf of the employee, as allowed by law.
- C. Appointment dates and work schedules.
- D. Use of a City owned vehicle for the conduct of City business in lieu of a vehicle use allowance or mileage reimbursement. Any Executive employee authorized by the City Manager to use a City vehicle to commute to and from work shall pay any taxes related to such benefit.
- E. Vacation accrual within the parameters provided in Section 23.
- F. Executive leave eligibility within the parameters provided in Section 24.
- G. Initial leave bank balances, so long as such balances have no cash value to the Executive Employee.
- H. Other non-monetary terms and conditions common to an appointing authority and not in conflict with any of the provisions of this Resolution.

Section 5: Appointing Authorities

Appointing Authorities may make appointments to Executive classifications only after City Council has authorized necessary funding. The following table identifies appointing authorities for each Executive classification. Tier 2 and 3 classifications require City Manager approval of the appointment. The Appointing Authorities designated herein shall have no separate authority to bind the City of Fullerton to terms of compensation other than that granted to the City Manager in Section 4.

Classification	Appointing Authority
Tier 1 Classifications	
Chief Information Officer	City Manager
Director of Public Works	City Manager
Interim Executive	City Manager
Director of Community and Economic Development	City Manager
Director of Administrative Services	City Manager
Director of Parks and Recreation	City Manager
Director of Human Resources	City Manager
Deputy City Manager	City Manager
Fire Chief	City Manager
Tier 2 Classifications	

Classification	Appointing Authority
Library Director	City Manager in conjunction with Library Board of Trustees
Tier 3 Classifications	
City Engineer / Assistant Director of Public Works	Director of Public Works
Deputy Director of Community and Economic Development	Director of Community and Economic
Deputy Director of Parks and Recreation	City Manager Designee

Section 6: Salary Ranges

City Council herein approves a salary "control point" for each Executive classification to establish salary ranges for the classification.

- A. City Council shall adjust control points shall be adjusted from time to time by resolution ensure that Executive Employees receive appropriate compensation for the level of duties and responsibilities of each position, the salary schedules of employees under their span of control and, when appropriate, in comparison to like positions in surrounding cities and agencies.
- B. The City shall then establish a salary range by subtracting 20% from the control point for the bottom of the range and adding 20% to the control point for the top.
- C. Appendix A shall contain the salary control point and salary ranges for each Executive classification.

Section 7: Performance Appraisals and Salary Determination

- A. The City Manager shall have discretion to make appointments at any point within the established range for Executive Employees.
- B. The City Manager shall establish Performance Appraisal Guidelines for use in evaluating performance of Executive Employees. These Guidelines shall include a list of objectives mutually agreed upon between the City Manager, the appointing authority (if not the City Manager) and each respective Executive Employee.

The appropriate appointing authority will evaluate each Executive's performance in achieving the established objectives in conjunction with the Executive Employee, by rating at least the following skills and behaviors, as defined in the Guidelines:

1. Communication (Oral and Written)
2. Analytical and Problem-solving
3. Decision-making
4. Planning and Organization
5. Management Control
6. Leadership

7. Interpersonal Sensitivity and Respect for Individuals
 8. Flexibility and Innovation
 9. Handling Stress
 10. Technical Knowledge
 11. Professional Integrity
 12. Collaboration, Teamwork and Conflict Resolution
 13. Commitment to Risk Management Policies and Practices to Protect the Employees, Financial and Other Assets of the City
 14. Dedication of Efforts to the Delivery of Quality Services to the Citizens, Successful Outcome of City Council and City Manager Objectives and the Overall Efficient and Effective Operations of the City of Fullerton.
- C. The City Manager shall request from City Council any suggestions, opinions and evaluations pertaining to Executive Employee performance for incorporation in the annual performance evaluation.
- The Library Board of Trustees and City Manager will make recommendations for evaluation of the Library Director's performance and setting of salary, subject to City Council approval in accordance with California Education Code Section 18921.
- The designated Appointing Authority shall evaluate the Tier 3 Executive Employee classifications after consult with the City Manager.
- D. The City Manager shall then determine each Executive Employee's salary within the established range, adjusting it primarily on the attainment of objectives and demonstration of skills and behaviors described in B above. Other considerations may include economic indicators, adjustments granted to other City employees and salary relationships with other City employees. The City Manager has discretion to increase an Executive Employee's salary within a 12-month period by 10% or less. The City Council must vote in open session at a regular City Council meeting to approve any increase to any Executive Employee's salary in excess of 10% in a 12-month period. The City Manager's shall also have discretion to decrease an Executive Employee's salary, subject to agreement by the affected employee.
- E. The City Manager shall advise City Council by written memorandum of all Executive Employee salary adjustments prior to implementing such adjustments each year.
- F. The City authorize salary adjustments by way of an Amendment to the Executive's Employment Agreement or an Amended and Restated Agreement, either in a form approved by the City Attorney. The City Manager as well as the Appointing Authority for the classification shall sign Employment Agreement Amendments for Tier 2 and Tier 3.

- A. The City's contract with CalPERS for employees shall apply to the Executive unit as follows:

Classification	CalPERS Category
Fire Chief	Fire Safety
All Others	Miscellaneous

- B. Employer-Paid Member Contributions and Employee Cost Sharing

1. The City shall pay the CalPERS normal member contribution (as defined in the California Government Code based on membership classification and formula) into each employee's account with CalPERS, pursuant to California Government Code Section 20691. The City will include this payment within the employee's compensation earnable reported to CalPERS, pursuant to California Government Code Section 20636(c)(4). Effective, October 21, 2017, the City's payment of the normal member contribution shall reduce by 2% of total compensation earnable (to 5% for Miscellaneous employees and to 7% for Safety employees), with the balance paid by the employee. Effective the first full pay period of each fiscal year thereafter, the City paid portion shall reduce by an additional 2% of total compensation earnable or the entire balance of the City paid portion, whichever is the lesser amount, until the employees pay the entire normal member contribution. The City shall continue to include the paid portion of the normal member contribution in compensation earnable per this section until such time an employee pays the full normal member contribution.

Employees ineligible for this benefit pursuant to the Public Employees' Pension Reform Act of 2013, (PEPRA) shall not be eligible for this benefit or any replacement benefit.

2. This employer-paid member contribution shall not be considered base salary, and is not taxable income, pursuant to Internal Revenue Code Section 414(h)(2). However, should any state or federal agency alter the current income tax treatment of such payment, the employees shall have sole responsibility for the consequences of such action and shall in no way alter any obligation of the City toward such employees.
3. Executive employees not considered "new members" under PEPRA shall pay the percentage of the employer rate for CalPERS as specified in the contract between the City and CalPERS.
4. Employees who are not "new members" shall contribute the applicable percent of their compensation earnable (as defined in Government Code Section 20636) toward the employer contribution rate specified as the "Employees Sharing Cost of Additional Benefits" in the agreement between the City and the California Public Employees' Retirement System. The current applicable percent for Miscellaneous employees is 5.696% and for Fire Safety employees is 8.

- C. The City shall pay the 1959 Survivor Benefits premium for employees.

- D. Credit for Unused Sick Leave, California Government Code Section 20965. An employee covered under the Miscellaneous category ineligible for benefits under Section 24(F) Payment for Unused Sick Leave upon Separation shall receive additional service credit for the balance of his/her unused sick leave upon retirement from the City, converted per the terms of the CalPERS contract amendment.
- E. Employees who are not considered “new members” under PEPRA and hired by the City into classifications covered by this resolution on December 23, 2012 or later shall be subject to amendments made prior to their hire date to the contract between the City and CalPERS including the following:
 - 1. Safety Category: Replace 3% @ 50 formula, Section 21362.2, with 3% @ 55 formula, Section 21363.1.
 - 2. Miscellaneous and Safety: Elimination of the One-Year Final Compensation, Section 20042, benefits to be replaced with the provision for calculating retirement benefits on the highest 36 months.

Employees rehired after a period of separation from the City may also be subject to these amendments in accordance with CalPERS rules.
- F. Executive Employees who are considered “new members” under PEPRA shall be entitled to the benefit formulas and final compensation period as prescribed by PEPRA.

Section 9: At Will Status and Termination of Employment

- A. Municipal Code Sections 2.33.010 and 2.33.020 related to the City's disciplinary and appeals procedures shall not apply to Executive employees. Each Executive Employee serves at the pleasure of the City Manager and may be discharged without cause.
- B. The City Manager has discretion to include in an Employment Agreement with an Executive Employee a provision requiring written notice providing that in the event the Executive Employee is discharged without cause, the Executive Employee is entitled to up to six months written notice or alternatively, at the discretion of the City Manager, a lump sum cash payment of up to six months of his/her then current base salary (to the extent allowed by law) and in addition, up to six months of COBRA coverage under any City sponsored medical, dental or vision plan in which the employee and/or thier dependents are covered by at the time of separation.
- C. An Executive Employee discharged as a result of an act of moral turpitude or conviction of a felony or as a failure to maintain licenses, certifications or bonds required for his/her position shall not be entitled to benefits of Section 8(B) above.

Section 10: Reimbursement Accounts

Each Executive may participate in the City's Reimbursement Account Program and the Business Expense Reimbursement Account Program. The City Manager shall promulgate rules and regulations governing these programs.

Each employee with a payroll deduction for medical or dental insurance premiums shall have their salary reduced by the amount of deductions on a before-tax basis upon completion of any required documentation to allow pre-tax treatment.

Section 11: Medicare

Employees hired on or after April 1, 1986 shall pay the designated employee contribution to participate in the MediCare Program, and the City shall be under no obligation to pay or "pick up" any such contributions.

Section 12: Health Insurance

A. Contributions – Employees

1. The City shall pay the following maximum base monthly contribution rates effective January 1, 2018 for Executive employees enrolled in a City sponsored plan. The base contribution rate for which an employee is eligible is dependent upon the tier of coverage selected by the employee. If the employee selects a health plan and tier with a monthly premium greater than the base contribution rate, the difference shall be paid by the employee on a pre-tax basis to the extent allowed by law:

Single	\$ 500.00
Two-Party	\$ 1,000.00
Family	\$ 1,350.00

2. Base contribution rates shall remain fixed unless and until amended by resolution of the City Council.
3. Employees selecting plans and tiers of coverage with premium less than the base contribution rates shall not be eligible to receive the difference in cash.

B. City Contributions for Medical Insurance after Retirement for Employees Hired on or Before September 1, 2017.

1. This subsection applies only to employees hired on or before September 1, 2017.
2. For each person regularly employed for 20 cumulative years or more who retires subsequent to December 31, 1995 the City shall pay the same contribution provided to active employees for employee-only coverage under the City health plan chosen by the employee, provided, however, for persons hired by the City on or after January 1, 2012, the maximum monthly contribution paid under this paragraph shall be Two Hundred Dollars

(\$200.00). With respect to an employee who retired between June 28, 1986 and December 31, 1995 the City shall pay 100% of the employee-only premium.

3. For each person regularly employed for 10 or more cumulative years, but less than 20, and retires subsequent to December 31, 1995 the City shall pay 50% of the contribution provided to active employees for employee-only coverage under the City health plan chosen by the employee, provided, however, for persons hired by the City on or after January 1, 2012, the maximum monthly contribution paid under this paragraph shall be One Hundred Dollars (\$100.00). With respect to an employee who retired between June 28, 1986 and December 31, 1995 the City shall pay 50% of the employee-only premium.
4. For each person regularly employed for five or more cumulative years, but less than 10, the City shall pay 25% of the contribution provided to active employees for employee-only coverage under the City health plan chosen by the retiree. Employees hired on or after January 1, 2012 shall not be entitled to this benefit.
5. A "retiree" as used in this Article shall mean only those former employees who receive a CalPERS retirement allowance that has been in effect since the day after official separation from City of Fullerton employment.
6. This obligation to pay health insurance premiums shall end at such time as the retiree reaches age 65 or becomes eligible to enroll, automatically or voluntarily, in MediCal or MediCare, whichever occurs first.
7. A retiree desiring to have health insurance coverage for dependents shall remit to the City a check for the amount of dependent coverage no later than the 15th of the month preceding the effective month of coverage.

C. Opt-Out

1. An employee may "opt-out" of the City's medical plan under these conditions:
 - a. The employee must sign a document stating his/her desire to waive medical insurance.
 - b. The employee must provide proof of other group coverage, which shall be confirmed by the City each year prior to open enrollment.
 - c. The employee may only re-enroll during 1) annual open enrollment or 2) upon loss of coverage in accordance with the underwriting guidelines for each of the City's health plans.
2. The employee that opts out will then receive a cash payment equal to \$50 per pay period if they sign an attestation provided by the City in accord with the following:

All employees must enroll in an available City health program unless they opt out. An employee may receive cash in lieu for opting out of the City's

health program if they provide the following: (1) proof that the employee and all individuals for whom the employee intends to claim a personal exemption deduction for the taxable year or years that begin or end in or with the City's plan year to which the opt out applies ("tax family"), have or will have minimum essential coverage through another source (other than coverage in the individual market, whether or not obtained through Covered California) for the plan year to which the opt out arrangement applies ("opt out period") and (2) the employee must sign an attestation that the employee and his/her tax family have or will have such minimum essential coverage for the opt out period. An employee must provide the attestation every plan year at open enrollment or within 30 days after the start of the plan year. The opt-out payment cannot be made and the City will not in fact make payment if the employer knows or has reason to know that the employee or tax family member doesn't have such alternative coverage, or if the conditions in this paragraph are not otherwise satisfied.

D. Retiree Health Savings Plan

The City Manager shall have discretion to negotiate as part of an Executive Employee's compensation package a City contribution in the amount of up to \$100 per pay period to an individual member account in a Retiree Health Savings Plan administered by the City. Eligibility for such a contribution must be included in the Executive Employee's Employment Agreement.

Section 13: Life Insurance

The City shall provide group life insurance equal to annual base salary for each Executive up to an annual base salary maximum of \$200,000. Each employee may purchase additional City group term life insurance.

Section 14: Long-Term Disability Insurance

- A. The City shall pay 100% of the premium for a City-owned Long-Term Disability insurance policy affording coverage to each active employee.
- B. The policy shall have an elimination period of 55 calendar days of continuous disability. Any time after the expiration of the elimination period, the employee may apply for Long-Term Disability insurance or may continue to use accrued leave pursuant to the City's policy thereon.
- C. The maximum benefit shall be at a minimum 60% of the eligible employee's pre-disability earnings as defined in the policy document, or \$6,000 per month, whichever is less. This maximum benefit shall be reduced by income from other sources as defined in the policy document.

Section 15: Dental Insurance

- A. The City shall pay up to an amount equal to the family premium rate for the prepaid dental plan for employee and dependent coverage under any group dental insurance plan administered by the City.

- B. A retiree (as defined in Section 9(B)) and their eligible dependents may subscribe to a City dental plan by paying the full premium for the coverage chosen. A retiree desiring to have dental coverage for themselves or for dependents shall remit to the City a check for the amount of the premium no later than the 15th of the month preceding the effective month of coverage.

Section 16: Vision Insurance

The City shall provide vision care insurance to employees on the Cigna medical plans, and to any dependents they have enrolled on the Cigna medical plan, and pay the lesser of the premium for such coverage or \$24.88 per month.

Section 17: Consolidated Omnibus Budget Reconciliation Act Of 1985

The City may cause employees, not entitled to the benefits set forth in Section 9(B), who are allowed to remain on a City health or dental insurance plan following separation from employment, pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), to be charged for such coverage the maximum rate permissible by law. Presently 102% of the premium for an active employee.

Section 18: Uniform Allowance

The Fire Chief, when employed by the City of Fullerton, shall receive an annual allowance for the purchase and maintenance of uniforms and equipment. The amount shall be the same as the highest amount authorized for any classification represented by the Fire Management. The payment procedures governing Fire Management shall apply.

Section 19: Healthy Lifestyle Practices

- A. Each Executive Employee is encouraged to undergo a comprehensive medical examination at least once every two years and to complete health screenings recommended by his/her medical provider. Each Executive Employee shall be eligible to be reimbursed up to \$750 per payroll year for this purpose.
- B. Funds not utilized may be carried over from one year to the next. All or part of these amounts may be converted to taxable income to pay for expenses which qualify under an IRC Section 125 Medical Reimbursement Account, with a maximum amount available of \$2,000.
- C. An Executive Employee may utilize any funds not utilized for medical exams or screening for their personal (not for dependents) enrollment in a health club or in a related "wellness" program - e.g., health condition management program, smoking cessation, stress reduction or weight control.

Section 20: Tuition Reimbursement

The tuition reimbursement program that applies to Management Association employees shall also cover executive employees. The reimbursement limit shall be \$2,500 per fiscal year. Additionally, the City Manager may approve a reimbursement for job-related

education courses, seminars or conferences for which an academic grade or units of academic credit are not given. In such cases, the costs of travel, meals and lodging associated with the course shall be eligible for reimbursement.

Section 21: Vehicle Use

Executive Employees, except the Fire Chief, may receive \$224 per pay period for the use of their personal vehicle on City business when authorized by employment contract. Those receiving this allowance shall have a personal vehicle available at their work site each day they work and shall use that vehicle for City business. The City Manager shall promulgate rules and regulations governing this program. The Fire Chief shall have use of a City vehicle under rules and regulations promulgated by the City Manager.

Section 22: Holidays

- A. The following days shall be recognized Holidays for Executive Employees:
1. January 1, New Year's Day
 2. The third Monday in February, Presidents' Day
 3. The last Monday in May, Memorial Day
 4. July 4, Independence Day
 5. The first Monday in September, Labor Day
 6. November 11, Veteran's Day
 7. Thanksgiving Day
 8. The Friday following Thanksgiving Day
 9. December 24, Christmas Eve
 10. December 25, Christmas Day
 11. December 31, New Year's Eve
- B. No other day shall be such a holiday unless it is a non-recurring holiday designated specifically by the President of the United States and/or the Governor of California and approved by the City Council.
- C. An employee who works with regard to holidays will receive holiday leave time in the amount of nine hours or the length of the employee's work shift, whichever is less, to be used when a designated City holiday occurs and employee works in a location, facility or program that is closed on the holiday, and the holiday falls on the employee's regular work day and the employee is not required to work. The hours will be paid on the day the holiday occurs except as provided in Section 22(C)(1) and (2) below. There shall be no additional cash value for holiday leave hours.
1. An employee who is required to work on a holiday will receive in addition to their normal pay for the day, holiday discretionary paid leave time in the amount of nine hours or the length of the employee's

work shift, whichever is less, to be used at a later time in accordance with rules set forth herein.

2. An employee will receive holiday discretionary paid leave time in the amount of nine hours or the length of the employee's work shift, whichever is less, when a City designated holiday falls on a day that is not a regular work day for the employee. These hours may be used at a later time in accordance with rules set forth herein.
 3. Holiday discretionary leave time received under this section must be used during the fiscal year in which it is received. Hours not used will expire. There will be no cash value associated with the holiday discretionary leave hours received under this provision.
- D. Executive Employees who were on payroll on July 4, 2020 and have not already received holiday pay for this date will receive holiday discretionary leave time in the amount of eight hours.

Section 23: Vacation

A. Accrual

1. Each employee shall accrue vacation credit with pay in accordance with the following table:

<u>Amount of Current Service</u>	<u>Number of Hours</u>	
	<u>Annually</u>	<u>Bi-Weekly</u>
< 10 Years	120	4.62
≥ 10 Years	128	4.93
≥ 11 Years	136	5.24
≥ 12 Years	144	5.54
≥ 13 Years	152	5.85
≥ 14 Years	160	6.16
≥ 20 Years	168	6.46
≥ 25 Years	176	6.77

The City Manager may authorize an employee to earn vacation credit at any of the rates described above, up to 160 hours annually.

2. Vacation credit shall accrue each pay period in which the employee has worked or used paid leave except sick leave at least one full regular work shift. An employee absent on sick leave or unpaid leave for an entire pay period shall not receive vacation credit for that pay period.

B. Accumulation Limit

An employee may accumulate vacation credits, in an amount up to twice his/her annual vacation allowance, with the following exception:

While employees are encouraged to manage their leave bank in compliance with the Annual Conversion, under special circumstances, once per calendar year, if an employee is at their maximum vacation accrual and unable to take vacation

leave, 40 hours may be converted to cash outside of the regular Annual Conversion with City Manager approval.

C. Annual Conversion

1. At the end of each payroll year, an eligible employee may convert up to 40 hours of unused vacation time into cash, payable at the base salary rate in effect at the time of conversion. Such conversions shall be made concurrently with the annual conversion of sick leave.
2. To be eligible, an employee must have completed his/her initial probation period; must have actually taken (not converted) at least 40 hours of vacation in the preceding payroll year; and must have at least 80 hours of vacation remaining after such conversion.

D. Separation From Employment

An employee who separates from employment by resignation, layoff or otherwise, shall be paid the balance of his/her accumulated vacation credit, at the base salary rate in effect on the date of separation. As soon as practical following adoption of this Resolution, the City's Retiree Health Savings Plan (RHSP) shall be modified to provide that upon a separation due to resignation, dismissal or retirement, an employee with a vacation accrual of 80 hours or more will have 50% of the cash value of the accrued hours deposited into an RHSP account established for the employee. In the event of a separation for any other reason or in the event the employee has fewer than 80 hours accrued vacation leave upon separation for any reason, the employee shall be paid the full value of the accrued leave in cash.

In the case of the employee's death while in active service, the entire balance shall be paid to the employee's designee or, if no designee, to the employee's estate.

Section 24: Sick Leave

- A. Each regular full-time employee shall earn and accumulate 3.69 hours of sick leave for each pay period in which the employee has worked at least one full regular workday. An employee absent on vacation shall receive sick leave credit, but an employee absent on sick leave or an unpaid leave of absence for an entire pay period shall not receive sick leave credit for that period.

B. Sick Leave Usage

An employee shall be allowed to use his/her accumulated sick leave as follows:

1. Absences relating to the health of the employee:
 - a. Personal illness or physical incapacity;
 - b. Medical or dental appointments;
 - c. Forced quarantine in accordance with community health regulations; and
 - d. To obtain any relief or services related to being a victim of domestic violence, sexual assault or stalking.

2. Absences relating to the health of the employee's family:

- a. Diagnosis, care, preventive care or treatment of health conditions of or medical or dental appointments for the employee's family members, as that term is defined in the California Labor Code, which includes, but is not limited to, the employee's spouse, registered domestic partner, parents, children, stepchildren, brother, sister, mother-in-law, father-in-law, parent of registered domestic partner and others as required by law in a total amount not to exceed 48 hours in a payroll year.
- b. The care of an employee's newborn child/children or the placement with an employee of a son or daughter for adoption or foster care within the first 12 months after birth or placement, for up to 96 hours.
- c. The serious health condition of a family member which qualifies under the Family and Medical Leave Act (FMLA) and/or California Family Rights Act (CFRA), provided that the employee has submitted all necessary documentation to the Human Resources Department certifying the condition qualifies for FMLA and/or CFRA.

In no event shall the total time taken pursuant to 2a, 2b and 2c of this section, exceed 480 hours in any 12-month period. This maximum limit of 480 hours shall be reduced by any time taken pursuant to the employee's own FMLA and/or CFRA qualifying condition(s) within such rolling 12-month period except as otherwise required by law.

C. Approval of Sick Leave

1. Sick leave may be taken only when an employee has sick leave credits. The first sick leave with pay may not be taken until the 90th day of employment. No payment for sick leave shall be made without the approval of the City Manager or designee.
2. Prior to resuming work after taking three or more consecutive shifts of sick leave, an employee shall submit a physician's written certification of the medical necessity for their absence from work and a written release stating that they are able to perform their normal or modified job duties. For example, an employee absent on Monday, Tuesday and Wednesday must provide this release before resuming work on Thursday.
3. If the absence of three or more consecutive shifts is for family illness (See B.2 above), the employee shall submit certification from the family member's attending physician of the medical condition during the length of absence for which paid leave is requested. The physician's certification shall verify that the family member had an illness, injury or medical procedure during the period of time for which paid leave is requested. However, the certification shall not be required to include a diagnosis or description of injury or treatment.

D. Bereavement Leave

The death of a member of the employee's immediate family shall entitle the affected employee to be absent for three shifts (not to exceed 27 hours) and such

absence shall not be charged to sick leave. Employees may also use two shifts (not to exceed 18 hours) of their accumulated sick leave per incident for bereavement purposes, and the City Manager may authorize up to an additional five shifts (not to exceed 45 hours) of sick leave usage for bereavement purposes when appropriate.

The definition of "immediate family" for the purpose of bereavement leave shall include the employee's spouse, registered domestic partner, parents, children, stepchildren, brother, sister, mother-in-law, father-in-law, parent of registered domestic partner, grandparent, grandchild, step-parent or legal guardian or others as required by law.

E. Annual Optional Conversion of Sick Leave

Employees hired on or after June 29, 1996 are not eligible for this conversion program.

1. A person who has been regularly employed by the City for the full preceding calendar year and has at least 24 hours of unused sick leave remaining from the preceding payroll year, may convert a fixed percentage of the unused portion of sick leave credits earned during the preceding payroll year to either of the following:
 - a. Up to 50% to vacation credits; or
 - b. Up to 50% to cash, to be paid at the employee's base salary rate.
2. An eligible employee who does not use sick leave during the preceding payroll year may convert up to 60% to cash or vacation to be paid at the employee's base salary rate.

F. All sick leave credits not taken as sick leave or otherwise converted shall remain within the employee's accumulated sick leave credits.

G. The City Manager may authorize a new employee to have up to 250 hours of sick leave credit. Such credit shall be available only for use as described in (B) above and shall not be available for any other use.

Section 25: Executive Leave

Each Executive shall be eligible for up to 72 hours (81 hours for employees on a synchronized 9/80 schedule) of executive leave each fiscal year. Additional time may be granted at the discretion of the City Manager.

Such leave shall not accrue past the maximum. Unused executive leave shall be lost at the end of each fiscal year and shall not be converted to any other form of compensation.

An employee who separates prior to the end of a fiscal year shall have deducted from their final paycheck or vacation balance any executive leave that would be considered advance payment.

Section 26: Jury Duty

When an employee is duly summoned to jury duty, they shall receive their regular pay for any regularly scheduled working hours spent in actual performance of such service. If the employee receives \$50 or more for such service, the employee shall remit to the City all fees and allowances payable for such service, less reimbursements from the court for meals, travel or lodging.

Employees who have the option to request call-in juror status shall exercise that option.

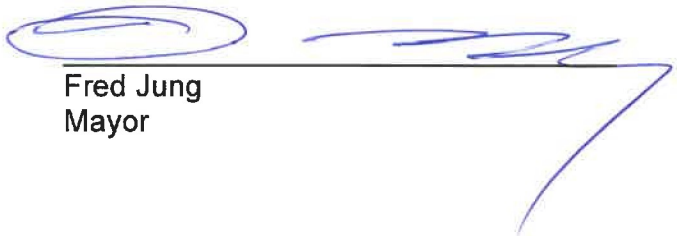
Section 27: Workers' Compensation

The rules governing Workers' Compensation for employees in the non-sworn management bargaining unit shall apply to non-safety Executive employees. The Chief of Police and the Fire Chief shall be governed by the rules that apply to the police safety management unit and fire safety management unit respectively.

Section 28: Cancellation

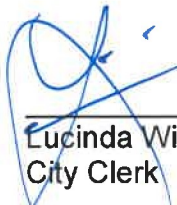
This Resolution supersedes Resolution No. 2021-69 and amendments thereto. Provisions of the Resolution are effective January 18, 2022 unless otherwise stated.

ADOPTED BY THE FULLERTON CITY COUNCIL on January 18, 2022.



Fred Jung
Mayor

ATTEST:



Lucinda Williams, MMC
City Clerk

January 21, 2022
Date

City of Fullerton
RESOLUTION CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS
CITY OF FULLERTON)

RESOLUTION NO. 2022-003

I, Lucinda Williams, City Clerk and ex-officio Clerk of the City Council of the City of Fullerton, California, hereby certify that the whole number of the members of the City Council of the City of Fullerton is five, and that the City Council adopted the above and foregoing Resolution No. 2022-003 at a regular meeting of the City Council held on the January 18, 2022 by the following vote:

COUNCIL MEMBERS IN FAVOR: Jung, Whitaker, Silva, Zahra

COUNCIL MEMBERS OPPOSED: None

COUNCIL MEMBERS ABSTAINED: None

COUNCIL MEMBERS ABSENT: Dunlap



Lucinda Williams, MMC
City Clerk

Fullerton, CA Municipal Code

2.33.010 Personnel system established.

A personnel system is established for the selection, employment, advancement, discipline and compensation of all appointive officers and employees. This system shall be implemented under conditions of competitive merit, political neutrality and equal opportunity, pursuant to rules adopted by resolution of the City Council and regulations adopted by the City Manager. (Ord. 2836 (part), 1993: Ord. 1509 § 1 (part), 1967).

2.33.020 Applicability.

The personnel system shall apply to all employees, as defined by resolution, in all departments, and shall be consistent with Chapter 2.09. (Ord. 2836 (part), 1993: Ord. 1509 § 1 (part), 1967).