

RETIRED ANNUITANT EMPLOYMENT AGREEMENT

THIS INTERIM CITY ATTORNEY EMPLOYMENT AGREEMENT-LIMITED TERM retired annuitant (“Agreement”), dated for purposes of identification only this \_\_\_\_\_ of February 2025 is made and entered into by and between THE CITY OF ORANGE, a municipal corporation, hereinafter referred to as “ORANGE,” AND WAYNE W. WINTHERS, an individual hereinafter referred to as “WINTHERS”

**WITNESSETH:**

WHEREAS, Government Code Section 21221(h) of the Public Employees’ Retirement Law permits the governing body to appoint a California Public Employees’ Retirement System (CalPERS) retiree to vacant position without reinstatement from retirement if such appointment is necessary to fill a vacant executive position requiring specialized skills during a recruitment for a permanent appointment; and

WHEREAS, WINTHERS will be serving as Interim City Attorney, a specialized vacant position that must be performed by a licensed California attorney; and

WHEREAS, WINTHERS retired and through the City Council, ORANGE desires to employ the services of WINTHERS as Interim City Attorney, temporarily, to carry out the duties and responsibilities of the position, while ORANGE conducts its recruitment; and

WHEREAS, ORANGE has initiated an active recruitment for a permanent City Attorney; and

WHEREAS, WINTHERS has served as a City Attorney for approximately 7 years, with 25 years in the City Attorney’s office, and ORANGE has determined the experience and specialized skills are critically needed to maintain the continued operation of the City Attorney’s office and the legal protection of the City is protected, without interruption; and

WHEREAS, WINTHERS represents that he has not received unemployment compensation from any CalPERS agencies during the 12-month period preceding the effective date of this Agreement or at any other time; and

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE PROMISES, COVENANTS, AND CONDITIONS HEREIN CONTAINED, IT IS AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. **DUTIES.**

ORANGE hereby employs WINTHERS as Interim City Attorney to oversee the City Attorney Department and perform all functions, duties, and services set forth in the current classification, ORANGE Municipal Code, rules and regulations, and to perform such other legally permissible duties and functions as the ORANGE City Council may from time-to-time assign. WINTHERS shall provide service at the direction and under the supervision of the City Council.

2. **ACCEPTANCE OF APPOINTMENT.**

WINTHERS hereby accepts the appointment to Interim City Attorney, subject to all terms and conditions set forth in this Agreement. WINTHERS, as the Interim City Attorney, shall keep the City Council fully apprised of all significant ongoing operations of the City Attorney's Office. WINTHERS shall devote his full attention and effort to the position and perform the duties and functions of the position in a professional manner.

3. **STATUS AND TERM.**

A. **Status:** WINTHERS shall be an at-will employee of ORANGE and shall serve at the pleasure of the City Council. Nothing contained in this Agreement shall prevent, limit or otherwise interfere with the right of the City Council to terminate the employment of WINTHERS at any time. WINTHERS will not acquire a property interest in the position of Interim City Attorney. Employee is a temporary employee employed to perform a specialized service in accordance with Government Code Section 21221(h).

B. **Term:** The term of this Agreement shall be temporary and commence February 25, 2025. This agreement shall expire as of the first following to occur: i) upon the employment commencement date of a permanent City Attorney, ii) upon WINTHERS working 960 hours combined for any CalPERS agencies in a fiscal year, or iii) upon termination of the Agreement by either party as provided herein.

C. **Termination by ORANGE or WINTHERS:** ORANGE may terminate this Agreement at any time with or without cause and with or without notice. At the time of termination, WINTHERS shall not be entitled to any pay or benefits, except that which is owed for those hours already worked. Additionally, WINTHERS may terminate this Agreement at any time, with or without cause, provided, however he shall reasonably provide ORANGE with at least two (2) weeks' advance written notice prior to the effective date of termination, if practicable, unless a shorter period is agreed to by ORANGE.

D. No Severance Pay: Upon termination, WINTHERS shall not be entitled to severance pay, payment of any benefits, or any other form of compensation, and WINTHERS expressly waives any and all rights with respect to severance pay.

4. **COMPENSATION AND BENEFITS.**

A. Rate of Pay: ORANGE agrees to pay WINTHERS and WINTHERS agrees to accept from ORANGE, as compensation for services rendered by WINTHERS pursuant to this Agreement, an hourly rate of \$150.00 per hour, according to the payroll schedule in place for ORANGE'S publicly approved pay schedule.

B. Recordation and Reporting of Hours Worked: ORANGE and WINTHERS will comply with all applicable CalPERS regulations governing employment after retirement, including the recordation and reporting of all hours worked for ORANGE to CalPERS as required. Additionally, WINTHERS shall keep ORANGE continually apprised of any hours worked by WINTHERS for other CalPERS Agencies during the term of this Agreement.

C. Expenses/Reimbursements: ORANGE agrees to pay and/or reimburse for job related expenses incurred in the performance of WINTHERS' duties under this Agreement and as approved by the City Manager, in accordance with City policies for all employees.

D. Health and Welfare Benefits: Pursuant to Government Code Section 21221(h) and related CalPERS regulations and policy statements, WINTHERS shall not receive from ORANGE any benefits, incentives, compensation in lieu of benefits, or any other forms of compensation.

E. Vacation and Leave: WINTHERS shall not be provided or accrue any personal time off, vacation, sick leave, administrative leave, paid holidays or similar leave benefits.

5. **INDEMNIFICATION.**

A. ORANGE shall defend, hold harmless and indemnify WINTHERS against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of any alleged act or omission occurring in the performance of WINTHERS duties or resulting from the exercise of judgment or discretion in connection with the performance of duties or responsibilities, unless 1) the act or omission of WINTHERS involved willful misconduct and/or illegal activity, or 2) the legal action is brought by WINTHERS against ORANGE or by ORANGE against WINTHERS. WINTHERS may request and ORANGE shall not unreasonably refuse to provide WINTHERS independent legal representation at ORANGE's

expense. Legal representation provided by ORANGE for WINTHERS shall continue until there is a final resolution of the legal action, including any appeals. ORANGE shall indemnify WINTHERS against any and all losses, damages, judgments, interest, settlements, fines, court costs, attorneys' fees, and other reasonable costs and expenses of legal proceedings, and any other liabilities incurred by, imposed upon, or suffered by WINTHERS in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of WINTHERS' duties, unless 1) such claims or actions arose out of the willful misconduct and/or illegal acts of WINTHERS, or 2) such claims or losses resulted from legal action brought by WINTHERS against ORANGE or by ORANGE against WINTHERS. Settlement of any claim must be made with prior approval of ORANGE in order for indemnification, as provided for in this Section, to be available.

B. ORANGE agrees to pay all reasonable litigation expenses of WINTHERS throughout the pendency of any litigation to which WINTHERS is a party, witness or advisor to ORANGE. Such expense payments shall continue beyond WINTHERS' employment with ORANGE as long as litigation is pending.

6. **NOTICES.**

A. Any notice required or permitted by this Agreement shall be in writing and may be emailed to an address provided by WINTHERS. It shall further be personally served, or shall be sufficiently given and deemed served upon the other party if sent by United States Postal Service, postage prepaid, and addressed to the appropriate party as follows:

If to ORANGE: City Manager  
c/o City Clerk  
City of Orange  
300 E. Chapman Ave.  
Orange, CA 92866

If to WINTHERS: Address on file with:  
City of Orange  
Human Resources Department  
300 E. Chapman Ave.  
Orange, CA 92866

Notices shall be deemed given as of the date of personal service or upon the date of deposit in the course of transmission with the United States Postal Service. Either party may change the location at which they receive notices by providing written notice of the new address at which notices are to be received.

7. **GENERAL PROVISIONS.**

A. This writing constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior oral or written representations or written agreements which may have been entered into between the parties. No modification or revision of this Agreement shall be of any force or effect, unless the same is in writing and executed by the parties hereto. The City Manager is authorized to enter into and execute any amendments or modifications to this Agreement approved as to form by the City Attorney and agreeable to WINTHERS.

B. Vehicle Operation: WINTHERS shall comply with ORANGE's policies regarding operation of a vehicle on official business.

C. This Agreement shall become effective February 25, 2025.

D. If any provision, or any portion thereof, in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable and shall remain in full force and effect.

IN WITNESS WHEREOF, ORANGE and WINTHERS have each caused this Agreement to be duly executed by the persons whose signatures are subscribed below, each of whom is duly authorized to execute this Agreement.

*(Remainder of page intentionally left blank; signatures on next page)*

CITY OF ORANGE, a municipal corporation

ATTEST:

By: \_\_\_\_\_  
Daniel R. Slater, Mayor

\_\_\_\_\_  
Pamela Coleman, City Clerk

By: \_\_\_\_\_  
Thomas C. Kisela, City Manager

By: \_\_\_\_\_  
Nathalie Adourian, Senior Assistant City Attorney

By: \_\_\_\_\_  
Wayne W. Winthers, Interim City Attorney

By: \_\_\_\_\_  
Monica Espinoza, Human Resources Director

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