

CITY OF RICHMOND

PART-TIME, LIMITED DURATION EXTRA HELP/SPECIAL PROJECT

EMPLOYMENT AGREEMENT

This PART-TIME, LIMITED DURATION EXTRA HELP/SPECIAL PROJECT EMPLOYMENT AGREEMENT (“Agreement”) is made by and between the CITY OF RICHMOND (“City”) and DELMY CUELLAR (“Employee”). The City and Employee may be referred to individually as a “Party” or collectively as “the Parties.”

RECITALS

WHEREAS, Government Code Sections 21224(a) and 7522.56(c) permit retired annuitants under the California Public Employees’ Retirement System (“CalPERS”) to be employed without reinstatement from retirement upon appointment by a public agency because the retired person has specialized skill needed in performing work of limited duration; and

WHEREAS, as a CalPERS retired annuitant under Government Code Sections 21224(a) and 7522.56(c), Employee possesses extensive professional experience in municipal finance and budgeting and therefore has specialized skills to perform services critically-needed by the City under this Agreement; and

WHEREAS, Employee recently retired from the position of Finance Director for the City, with a retirement date of less than 180-days prior to the commencement of employment pursuant to this Agreement; and

WHEREAS, pursuant to Cal. Government Code § 7522.56(f), a retired person shall not be employed as a retired annuitant for a period of 180 days following the date of retirement, unless he or she meets one of several exceptions, including that “[t]he employer certifies the nature of the employment and that the appointment is necessary to fill a critically needed position before 180 days have passed and the appointment has been approved by the governing body of the employer in a public meeting[.]” and

WHEREAS, concurrent with the approval of this Agreement, the City Council adopted Resolution No. **XX-XX**, certifying the nature of Employee’s employment and that the appointment is necessary to provide critically needed services in the Finance Department before 180 days have passed since Employee’s retirement; and

WHEREAS, CalPERS requires in order “[t]o secure a 180-day wait period exception, the employer must submit the resolution-certification package and a copy of the retiree’s employment agreement or personnel appointment document to CalPERS before the first day of employment[.]” and

WHEREAS, Employee acknowledges that employment pursuant to this Agreement is at-will and of a limited duration for a definite period of time, as described below; and

WHEREAS, the City desires to hire Employee as an at-will, part-time employee in order to provide critically needed special project or a limited duration of time; 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:

AGREEMENT

Section 1: TERM

The term of this Agreement shall commence on May 22, 2023, and shall automatically terminate on May 21, 2024, unless terminated prior to this date by either Party ("Term"). Accordingly, the Term will in no event exceed the 960-hour per fiscal year limit under Government Code Section 21224(a). **Employee acknowledges she is an at-will, limited duration extra-help/special project employee who may be terminated, with or without cause, and with or without notice, at any time by the City Manager.** May 22, 2023, shall be Employee's "Hire Date" for purposes of this Agreement.

Section 2: DUTIES, RESPONSIBILITIES, AND WORK HOURS

A. Employee shall be appointed to perform extra-help/special project work critically needed by the City's Finance Department to maintain basic operations for a limited duration of time. The special project work will consist of the following tasks:

- Responding to a state audit.
- Implementing new City-wide software that is used for a critical function in the Finance Department (Measure U).
- Providing City financial information and analysis to be used in negotiations with two bargaining groups.
- Beginning implementation of a class and comp study.
- Initiating budget preparation for the upcoming fiscal year.

B. Employee acknowledges that City Hall is open Monday through Friday from 8:30 a.m. to 5:00 p.m., including a standard one hour lunch period. Employee shall work under the direction of the City Manager and Deputy City Manager- Internal Services. 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 Deputy City Manager – Internal Services, anticipated to be 15-20 hours per week, 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 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 at the hourly rate of Ninety-Five dollars and ninety cents (\$95.90), which is within hourly compensation range for the Project Manager III, the position which includes duties most comparable to those specific tasks that will be performed by Employee under this Agreement. The current hourly compensation range for the position of Project Manager III is \$60.24 per hour to \$95.90 per hour.

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 hourly rate.

Section 4: RESIGNATION/TERMINATION

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

B. Employee is an at-will employee and 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.

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

Shasa Curl, City Manager
City of Richmond _____
City Manager's Office
450 Civic Center Plaza, Ste 300

Richmond, CA 94804

Employee

Delmy Cuellar
Address on file with the City

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.

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 Contra Costa County, California. Employee expressly waives any right to remove any such action from Contra Costa County.

G. Effective Date. This Agreement shall not become effective until it has been signed by Employee and approved by the City Manager.

H. Effect of Agreement on Employee's CalPERS Retirement Benefits. The City makes no representation on the impact, if any, this Agreement shall or may have upon her CalPERS 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 CalPERS-related impact of her employment. Therefore, Employee releases the City from any and all CalPERS-related claims or liabilities that may arise in connection with her employment pursuant to this Agreement.

I. Employee Certifications. Employee expressly certifies and warrants to the City that she has not received any unemployment insurance payments for retired annuitant work for any public employer within the 12 months prior to her appointment date. Employee certifies that she has reached "Normal Retirement Age" as defined by CalPERS. Employee certifies that she did not receive a golden handshake or other employer incentive to retire.

J. Compliance With 960 Hours Per Fiscal Year Limit. Employee further certifies and warrants to the City that her anticipated work schedule of 15-20 hours per week will not cause her to exceed the 960 hours per fiscal year limit pursuant to Government Code Section 21224(a), including work for any other CalPERS employer during the current fiscal year.

K. 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.

L. Independent Legal Advice. The City and Employee represent and warrant to each other that each had the opportunity to receive 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.

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

CITY OF RICHMOND,

Dated: _____

Shasa Curl, City Manager

EMPLOYEE,

In signing this Agreement, Employee understands and agrees that she is an **at-will, part-time 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

Richmond 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: _____
Delmy Cuellar, Employee