

RESOLUTION NO. MA04-18

Resolution Of The Board Of Directors Of The Management Of Emeryville Services Authority (MESA) Approving An Agreement Of Employment Between MESA And James Nil Holgersson As Interim City Manager And Authorizing The Chair Of The Board Of Directors To Execute Said Agreement On Behalf Of MESA

WHEREAS, on January 20, 1998 the City of Emeryville and Emeryville Redevelopment Agency adopted a Joint Powers Agreement to create the Management of Emeryville Services Authority ("MESA"); and

WHEREAS, on June 2, 1998 the City of Emeryville and MESA entered into an Operating Agreement whereby certain non-public safety classifications of employees of the City of Emeryville, including that of City Manager, were transferred to MESA and thereafter have been employees of MESA; and

WHEREAS, the MESA employees within the classifications delineated in Section 2 of the Operating Agreement, including that of City Manager, provide certain management, administrative, special or general personnel services to the City; and

WHEREAS, the position of City Manager of the City of Emeryville also fulfills duties as City Manager for the City of Emeryville Successor Agency, Executive Director of the Emeryville Public Financing Authority, Executive Director of the Emeryville Community Development Commission, and Executive Director of the Management of Emeryville Services Authority (MESA); and

WHEREAS, section 4.F of the Operating Agreement between MESA and the City of Emeryville provides that the City shall "provide all hiring, disciplinary and general personnel administration for MESA and its employees"; and

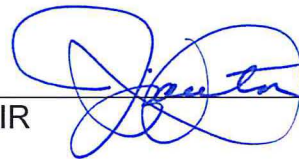
WHEREAS, the City of Emeryville City Council and the MESA Board of Directors, through their designated representatives, and James Nil Holgersson have negotiated the terms of an Agreement of Employment for a three (3) month term commencing July 1, 2018, and terminating September 30, 2018, as set forth in Exhibit A attached hereto; now, therefore, be it

RESOLVED, by the Board of Directors of the Management of Emeryville Services Authority hereby approves an Agreement of Employment between the Management of Emeryville Services Authority and James Nil Holgersson as Interim City Manager for a three (3) month period commencing July 1, 2018, and terminating September 30, 2018, in the form attached hereto as Exhibit A, and authorizes the Chair of the Board of Directors to execute said Agreement of Employment on behalf of the Management of Emeryville Services Authority.

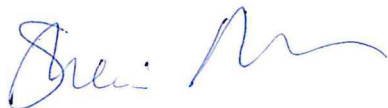
ADOPTED, by the Board of Directors of the Management of Emeryville Services Authority at a regular meeting held Tuesday, June 19, 2018, by the following vote:

AYES:	<u>3</u>	<u>Chair Bauters and Board Members Donahue and Martinez</u>
NOES:	<u>0</u>	<u></u>
ABSTAIN:	<u>0</u>	<u></u>
ABSENT:	<u>2</u>	<u>Vice Chair Medina and Board Member Patz</u>

CHAIR



ATTEST:



SECRETARY

APPROVED AS TO FORM:



LEGAL COUNSEL

**AGREEMENT OF EMPLOYMENT BETWEEN THE MANAGEMENT OF
EMERYVILLE SERVICES AUTHORITY AND JAMES N. HOLGERSSON**

THIS AGREEMENT OF EMPLOYMENT ("Agreement") is entered into effective the 1st day of July 2018 (the "**Effective Date**"), by and between the **MANAGEMENT OF EMERYVILLE SERVICES AUTHORITY**, hereinafter referred to as the "**Authority**", and **JAMES HOLGERSSON**, sometimes hereinafter referred to as the "**Interim City Manager**," and collectively the "**Parties**."

Recitals

Whereas, the Authority desires to retain an interim City Manager for the period July 1, 2018 – September 30, 2018, as it conducts a recruitment for a permanent City Manager; and

Whereas, the Authority finds that specialized knowledge, skills, and training are necessary to render the services necessary to do the work contemplated under this Agreement; and

Whereas, the Authority has determined that James Holgersson is qualified by training and experience to render such services; and

WHEREAS, James Holgersson desires to provide such services; and,

WHEREAS, the public interest will be served by this Agreement; and

NOW, THEREFORE, the Parties hereto do mutually agree as follows

Now therefore, the Parties agree as follows:

Section 1. Duties

The Authority agrees to employ James Holgersson to serve as the Interim City Manager of the City of Emeryville, Interim City Manager of the City of Emeryville Successor Agency, Interim Executive Director of the Emeryville Public Financing Authority, Interim Executive Director of the Emeryville Community Development Commission, and Interim Executive Director of the Authority to perform the functions and duties as specified by the ordinances of the City of Emeryville as such ordinances may be amended from time to time, and to perform other legally permissible and proper duties and functions as the City Council, Successor Agency, Financing Authority, Development Commission and Authority shall from time to time assign. The Interim City Manager agrees that, to the best of his ability and experience, he will, at all times, loyally and conscientiously perform all of the duties and obligations required of him, either expressly or implicitly by the terms of the Agreement.

Section 2. Term

Interim City Manager shall be retained by the Authority to perform the duties described in Section 1 above for a period commencing July 1, 2018, and terminating on September 30, 2018, and agrees to remain in the employ of the Authority during the term of this Agreement.

Section 3. At-Will

Interim City Manager understands and acknowledges that he is an at-will employee of the Authority and therefore may be terminated by the Authority without cause.

Section 4. Termination and Severance Pay

A. Termination By Authority. Termination of this Agreement shall require three affirmative votes of the Authority Board of Directors and upon giving 14 days' prior notice to the Interim City Manager.

B. Termination By Interim City Manager or Expiration of Term. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Interim City Manager to resign at any time from his position upon giving 14 days' prior written notice to the Authority.

Section 5. Salary

The Authority agrees to pay the Interim City Manager for his services rendered an hourly rate of **One Hundred and Twenty-One Dollars and Sixty-Seven Cents (\$121.67)** for up to 40 hours per week worked, payable in installments at the same time as other employees of the Authority are paid.

Section 6. Sick Leave, Holidays and Vacation; Public Employees Retirement System

The Interim City Manager acknowledges and agrees that during the term of this Agreement, he will not accrue nor be entitled to vacation, sick, or administrative leave. Nor shall he accrue retirement, pension system contributions or health care benefits, including coverage under the California Public Employee Retirement System, or other fringe benefits, except as otherwise explicitly provided in this Agreement. Any leave taken during the term of this Agreement, other than adopted City of Emeryville holidays, shall be unpaid leave.

Section 7. Business Expenses

The Authority agrees to budget and allocate sufficient funds to pay for City related business expenses of the Interim City Manager. This shall include, but not necessarily be limited to, Interim City Manager's necessary membership dues, and travel expenses while representing the Authority at local and regional conferences and meetings of committees or commissions upon which the Office of the City Manager serves as a member, said membership of said committees or commissions being subject to the approval of the Authority, and for such other official meetings and/or travel as are reasonably necessary for the Interim City Manager to carry out his professional responsibilities.

Section 8. Indemnification

The Authority shall defend, hold harmless and indemnify the Interim City Manager against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring during the course and scope of the performance of the Interim City Manager's duties.

Section 9. Bonding

The Authority shall bear the full cost of any fidelity or other bonds required of the Interim City Manager under any law or ordinance.

Section 10. Abuse of Office.

If the Authority provides (i) paid leave salary to the Interim City Manager pending an investigation, or (ii) funds for the legal criminal defense of the Interim City Manager, then in the event the Interim City Manager is convicted of a crime involving an abuse of his office or position as defined in California Government Code Section 53243.4, all such sums paid by the Authority to the Interim City Manager or for the City Manager's benefit shall be fully reimbursed to the Authority by the Interim City Manager.

Section 11. Other Terms and Conditions of Employment

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

Section 12. No Reduction of Benefits

The Authority shall not, at any time during the term of this Agreement, unilaterally reduce the salary or benefits of the City Manager.

Section 13. Notices

Notices pursuant to Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid. Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

Section 14. Mediation

The Parties agree that, if a dispute arises between them that in any way relates to this Agreement, the terms of this Agreement, or the performance by either party under this Agreement, such dispute shall, after the claims procedures that may be applicable under the California Government Tort Claims Act are exhausted, be submitted to mediation. If such dispute proceeds to litigation, each party shall be responsible for their own attorney fees, costs and expenses. The exclusive venue for any legal action taken pursuant to this Agreement shall be the State of California Superior Court for the County of Alameda or the United States District Court for the Northern District of California.

Section 15. Entire Agreement; Modifications

This Agreement constitutes the complete agreement between the Parties and supersedes any and all other agreements, either oral or in writing, between the Parties with respect to the subject matter of this Agreement. No other agreement, statement or promise relating to the subject matter of this Agreement not contained in this Agreement shall be valid or binding. This Agreement may be modified or amended only by a written document signed by representatives of both Parties with appropriate authorization.

This Agreement is executed by the Parties as of the date noted below and effective as of the Effective Date set forth above.

Management of Emeryville Services Authority

Date: July ____, 2018

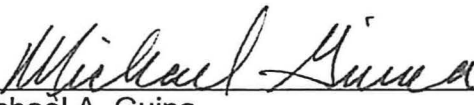
John Bauters, Chair of Board of Directors

Interim City Manager

Date: July ____, 2018

James Holgersson

Approved As To Form:



Michael A. Guina
General Counsel