

## **RESOLUTION NO. 20-69**

### **RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EMERYVILLE APPROVING AND CONSENTING TO AN AGREEMENT OF EMPLOYMENT BETWEEN THE MANAGEMENT OF EMERYVILLE SERVICES AUTHORITY AND MICHAEL GUINA AS CITY ATTORNEY/GENERAL COUNSEL FOR THE PERIOD OF AUGUST 1, 2020, THROUGH JULY 31, 2022**

**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 Attorney, 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 Attorney, provide certain management, administrative, special or general personnel services to the City; and

**WHEREAS**, the position of City Attorney of the City of Emeryville also fulfills duties as City Attorney for the City of Emeryville Successor Agency, General Counsel of the Emeryville Public Financing Authority, the Emeryville Community Development Commission, and the MESA; and

**WHEREAS**, section 4.F of the Operating Agreement between the 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 MESA Board of Directors and Michael Guina have negotiated the terms of an Agreement of Employment for a two (2) year term commencing August 1, 2020, and terminating July 31, 2022 as set forth in Exhibit A attached hereto; now, therefore, be it

**RESOLVED**, that the City Council of the City of Emeryville hereby approves and consents to an Agreement of Employment between the Management of Emeryville Services Authority and Michael Guina as City Attorney / General Counsel, for a two (2) year period commencing August 1, 2020, and terminating July 31, 2022 in the form attached hereto as Exhibit A.

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City Attorney Agreement  
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**ADOPTED**, by the City Council of the City of Emeryville at a regular meeting held on Tuesday, July 7, 2020, by the following vote:

AYES:	<u>5</u>	Mayor Patz, Vice Mayor Martinez, and Council Members Bauters, Donahue, and Medina
NOES:	<u>0</u>	
ABSTAIN:	<u>0</u>	
ABSENT:	<u>0</u>	

DocuSigned by:



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MAYOR

ATTEST:

DocuSigned by:



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CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY

## **AGREEMENT OF EMPLOYMENT BETWEEN THE MANAGEMENT OF EMERYVILLE SERVICES AUTHORITY AND MICHAEL A. GUINA**

**THIS AGREEMENT OF EMPLOYMENT (“Agreement”)** is entered into effective the 1st day of August 2020 (the **“Effective Date”**), by and between the **MANAGEMENT OF EMERYVILLE SERVICES AUTHORITY**, hereinafter referred to as the **“Authority”**, and **MICHAEL GUINA**, hereinafter referred to as the **“City Attorney,”** and collectively the **“Parties.”**

### **Recitals**

**Whereas**, the Authority and the City of Emeryville retained the services of City Attorney pursuant to that certain Agreement of Employment effective July 1, 2018, for a two-year term ending July 30, 2020 (MESA Resolution No. MA03-18; City Council Resolution No. 18-079); and

**Whereas**, that agreement allows for the Parties to meet periodically in closed session for the purpose of evaluating the performance of the City Attorney and to negotiate and consider a new contract; and

**Whereas**, pursuant to those provisions, the Parties have met and negotiated terms for a new agreement of employment; and

**Whereas**, as a result of the evaluations and negotiations, the Parties wish to enter into this Agreement;

**Now therefore**, the Parties agree as follows:

### **Section 1. Duties**

The Authority agrees to employ Michael Guina to serve as the City Attorney of the City of Emeryville, City Attorney of the City of Emeryville Successor Agency, General Counsel of the Emeryville Public Financing Authority, General Counsel of the Emeryville Community Development Commission, and General Counsel 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 City Attorney agrees that, to the best of his ability and experience, he will, at all time, 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**

City Attorney shall be retained by the Authority to perform the duties described in Section 1 above for a two (2) year period, commencing August 1, 2020, and expiring on July 31, 2022, and agrees to remain in the employ of the Authority during the term of this Agreement. The Parties agree to renegotiate the terms of this Agreement, in good faith, at least three (3) months prior to the expiration of the Agreement.

## **Section 3. At-Will**

City Attorney 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 (3) affirmative votes of the Board of Directors. Notwithstanding the foregoing, it is also understood and agreed that the City Attorney shall be retained for a minimum of four (4) months following any municipal election, where at least one new Director is elected, thereby allowing the new Board of Directors adequate time to assess the City Attorney's performance. In the event the City Attorney is terminated by the Board of Directors before expiration of the term of employment and during such time that the City Attorney is willing and able to perform his duties under this Agreement, then in that event the Authority agrees to pay the City Attorney a cash payment equal to: (i) one (1) months' aggregate salary in the amount set forth in section 6 below, multiplied by the number of whole months and pro-rated portions of months left on the unexpired term of employment under this Agreement, but in no event shall such cash payment exceed six (6) months' aggregate salary; plus (ii) the cash value of all (i.e. 100%) accrued, but unused, vacation and administrative leave credited to the City Attorney's leave balance; and (iii) the cash value of sixty percent (60%) accrued, but unused, sick leave credited to the City Attorney's leave balance. Said cash payments shall be paid, at the option of the City Attorney, in: (a) lump sum upon date of termination; (b) lump sum on January 1 of the year following termination; (c) twelve (12) equal monthly payments; or (d) any combination of the foregoing.

B. Termination By City Attorney or Expiration of Term. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City Attorney to resign at any time from his position upon giving sixty (60) days prior written notice to the Authority. In the event the City Attorney resigns from his position with the Authority or the term of this Agreement expires and no successor agreement is entered into between the Authority and City Attorney, then in that event the Authority agrees to pay the City Attorney a cash payment equal to: (i) the cash value of all (i.e. 100%) accrued, but unused, vacation and administrative leave credited to the City Attorney's leave balance; plus (ii) the cash value of sixty

percent (60%) of accrued, but unused, sick leave credited to the City Attorney's leave balance. Said cash payments shall be paid, at the option of the City Attorney, in: (a) lump sum upon date of termination; (b) lump sum on January 1 of the year following termination; (c) twelve (12) equal monthly payments; or (d) any combination of the foregoing.

## **Section 5. Evaluations; Discipline/Dismissal and Complaints**

The Board of Directors and City Attorney shall use good faith efforts to meet on or about the annual anniversary date of this Agreement in a closed session for the purpose of evaluating the performance of the City Attorney. Furthermore, the Authority shall make good faith efforts to have all issues, matters or concerns of an individual Board of Director which could give rise to discipline or dismissal of the City Attorney or which amount to complaints or charges against the City Attorney to be brought to the attention of the Authority and City Attorney first in a closed session as provided by California Government Code Section 54957.

## **Section 6. Salary**

During the Term of this Agreement, the Authority agrees to pay the City Attorney for his services rendered a base salary of **Seventeen Thousand, Six Hundred Eighty Thousand Dollars (\$17,680.00)** per month, payable in installments at the same time as other employees of the Authority are paid.

In recognition of accomplishment of objectives, the Authority may grant the City Attorney an increase to said base salary. In addition to any other benefits that the Authority and City Attorney may subsequently agree to, the Authority agrees to provide increases to said base salary of the City Attorney in the same amount as negotiated in good faith between the Authority, acting through its City Manager, and the Confidential Administrative, Managerial and Professional (CAMP) employees of the Authority.

## **Section 7. Sick Leave, Holidays and Vacation**

All provisions of the rules, regulations and ordinances of the Authority relating to vacation, sick leave, administrative leave, retirement, pension system contributions, holidays and other fringe benefits and working conditions as they now exist, or hereafter may be amended, to the extent not inconsistent with the terms of this Agreement, shall apply to the City Attorney. To the extent any rules or regulations of the Authority are inconsistent with the terms of this Agreement, the terms of this Agreement shall control. The City Attorney is hereby specifically granted a total of four (4) weeks of vacation per year, three (3) weeks of sick leave per year, and 80 hours of administrative leave per year. The City Attorney may cash out up to 80 hours of administrative leave per year.

## **Section 8. Public Employees Retirement System**

The Authority will provide for participation of the City Attorney in the California Public Employees' Retirement System ("PERS") under the PERS Miscellaneous Employee 2% @ 55 (single highest year of compensation earnable) retirement formula plan. The PERS Level III Survivor Benefit shall apply.

The City Attorney shall contribute to the Public Employees' Retirement System each pay period all seven percent (7%) of the employee contribution rate required by PERS. Contributions made pursuant to this paragraph shall be reported to PERS as "employee contributions being made by the contracting agency."

The Authority shall implement the provisions of section 414(h)(2) of the Internal Revenue Code by making "employee contributions" pursuant to California Government Code Section 20691 to the California Public Employees' Retirement System on behalf of the City Attorney. As used in this paragraph "employee contributions" shall mean the seven percent (7%) contribution to the California Public Employees' Retirement System which is deducted from the salary of the City Attorney and credited to the City Attorney's account pursuant to California Government Code Section 20691.

## **Section 9. Business Expenses**

The Authority agrees to annually budget and allocate sufficient funds to pay for the City related business expenses of the City Attorney. This shall include, but not necessarily be limited to, City Attorney's necessary travel and living expenses while representing the Authority at the Annual League of California Cities Conference, conferences of the City Attorney's Department of the League of California Cities and conferences and meetings of committees or commissions upon which the City Attorney 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 City Attorney to carry out his professional responsibilities. In addition, the Authority agrees to pay City Attorney dues as required to maintain membership status in the State Bar of California, which membership is required in order to perform the work in accordance with this Agreement, as well as tuition of Mandatory Continuing Legal Education courses.

## **Section 10. Group Insurance Coverage**

The Authority agrees to put into force and make required premium payments for the City Attorney, his spouse and dependents for medical, dental and other health care benefits generally given to or provided for other Authority employees.

### **Section 11. Indemnification**

The Authority shall defend, hold harmless and indemnify the City Attorney 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 City Attorney's duties.

### **Section 12. Bonding**

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

### **Section 13. Other Terms and Conditions of Employment**

The Board of Directors, in consultation with the City Attorney, shall fix any such other terms and conditions of employment as it may determine from time to time, relating to the performance of the City Attorney, 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 14. 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 Attorney.

### **Section 15. Notices**

Notices pursuant to this 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 16. 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, the prevailing party shall be entitled to reasonable attorney fees and costs. The exclusive venue for any litigation instituted 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 17. General Provisions**

- A. The text herein shall constitute the entire Agreement between the Parties.
- B. This Agreement shall become effective upon execution by the Parties hereto.

**Authority** **Management of Emeryville Services**

Date: \_\_\_\_\_, 2020

\_\_\_\_\_  
CHRISTIAN R. PATZ, Chair of Board of Directors

**City Attorney**

Date: June 22, 2020

  
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MICHAEL A. GUINA