

RESOLUTION NO. MA 02-21

Resolution Of The Board Of Directors Of The Management Of Emeryville Services Authority (MESA) Approving An Agreement Of Employment Between MESA And Andrea Visveshwara As I n t e r i m City Attorney/General Counsel For The Period Of April 24, 2021 Through October 31, 2021, And Authorizing The Chair Of The Board Of Directors To Execute Said Agreement On Behalf Of The 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 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 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, City Attorney/General Counsel Michael Guina has accepted a position with another agency requiring the placement of an Interim City Attorney while a recruitment for the position of City Attorney/General Counsel is conducted;

WHEREAS, the MESA Board of Directors and Assistant City Attorney Andrea Visveshwara have negotiated the terms of an Agreement of Employment for her interim placement in the position of City Attorney/General Counsel for the period April 24, 2021 through October 31, 2021, as set forth in Exhibit A attached hereto; now, therefore, be it

RESOLVED, that 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 Andrea Visveshwara as Interim City Attorney/General Counsel for the period of April 24, 2021 through October 31, 2021, 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.

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ADOPTED, by the Board of Directors of the Management of Emeryville Services Authority at a regular meeting held on Tuesday, April 20, 2021, by the following vote:

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

DocuSigned by:

Dianne Martinez

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CHAIR

ATTEST:

DocuSigned by:

Sheri Hartz

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CITY CLERK

APPROVED AS TO FORM:

Michael Quinn

LEGAL COUNSEL

AGREEMENT OF EMPLOYMENT BETWEEN THE MANAGEMENT OF EMERYVILLE SERVICES AUTHORITY AND ANDREA VISVESHWARA

THIS AGREEMENT OF INTERIM APPOINTMENT ("Agreement") is entered into effective the 24th day of April, 2021 (the "Effective Date") by and between the MANAGEMENT OF EMERYVILLE SERVICES AUTHORITY, hereinafter referred to as the "City" and Andrea Visveshwara, hereinafter referred to as "Employee", and collectively the "Parties".

RECITALS

Whereas, Employee currently serves as Assistant City Attorney; and

Whereas, City is commencing a recruitment for a permanent City Attorney and anticipates the position will be filled with a permanent appointment no later than December 1, 2021; and

Whereas, Employee has the necessary education, experience, skills and expertise to serve as City Attorney during the recruitment period for a permanent City Attorney; and

Whereas, the Parties desire to enter into a written agreement setting forth the terms and conditions for Employee's appointment as Interim City Attorney.

Now, Therefore, in consideration of the mutual covenants set forth herein, the Parties agree as follows:

AGREEMENT

1. **Duties:** Employee is appointed to serve as Interim City Attorney of the City of Emeryville, Interim City Attorney of the City of Emeryville Successor Agency, Interim General Counsel of the Emeryville Community Development Commission and Interim General Counsel of the Emeryville Services Authority ("Authority") to perform the functions and duties as specified by the ordinances of the City 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. Employee agrees that, to the best of her ability and experience, she will, at all times, loyally and conscientiously perform all of the duties and obligations required of her, either expressly or implicitly by the terms of the Agreement.

2. **Term:** Employee's appointment is effective April 24, 2021 and shall automatically terminate on October 31, 2021, unless terminated prior to this date by Employee, with thirty (30) days advance notice, or the City. The City anticipates that it will terminate this agreement upon the City finding a permanent replacement for the position of City Attorney. The Parties may, by mutual agreement, extend the Term of this Agreement on a month- to- month basis to accommodate the recruitment process for a permanent City Attorney.
3. **Return Rights Upon Termination of Agreement:** Except in the case of removal for cause as defined below, upon termination of this Agreement, Employee will be entitled to return to the position of Assistant City Attorney with all salary, benefits and terms and conditions of employment attendant to that position.
4. **Removal for Cause – At Will Employment:** The Parties expressly agree that Employee will serve under this Agreement as an "at-will" employee, at the will and pleasure of the City Council. Accordingly, the City Council may terminate this Agreement at any time with or without cause or advance notice. In the event this Agreement is terminated for cause, as defined below, Employee will not be entitled to return rights under paragraph 3 above and will receive only the compensation earned and accrued and such other termination benefits and payments as may be required by law.

"Cause" shall include the following reasons: (i) an act in bad faith that causes damage to the City; (ii) refusal to act in accordance with any specific lawful direction or order of the City Council; (iii) unfitness or unavailability for service that exceeds thirty (30) consecutive calendar days and is not the

result of any excused illness or medical condition; (iv) commission of an act involving moral turpitude or other similar acts, which cause damage to the City; (v) intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence; (vi) a conviction of a felony or other crime involving moral turpitude punishable by jail or imprisonment in the jurisdiction involved (or entry of a plea of guilty or nolo contendere with respect to any such crime); (vii) working while under the influence of alcoholic beverages or other non-prescribed controlled substances or abuse/misuse of lawfully prescribed controlled substances during working hours; (viii) engaging in an actual conflict of interest; (ix) commission of acts of theft, embezzlement, or fraud; (x) acceptance of bribes or extortion; (xi) material breach of this Agreement by Employee.

Prior to terminating Employee for cause, the City Council agrees to provide written notice to Employee as prescribed in Government Code section 54957(b)(2).

5. **Salary:** During the Term of this Agreement, the City agrees to pay Employee for her services as Interim City Attorney a base salary of **Sixteen Thousand, Nine Hundred and Thirty-Seven dollars and Fifty cents (\$16,937.50) per month**, payable in installments at the same time as other employees of the City are paid.
6. **Benefits:** Except as expressly provided for by the terms of this Agreement, Employee remains subject to and eligible for all applicable provisions of the rules, regulations and ordinances of the City relating to vacation, sick leave, retirement, pension system contributions, holidays and other fringe benefits and working conditions as they now apply to the position of Assistant 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 will control.
7. **Indemnification:** The City will defend, hold harmless and indemnify Employee 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 duties of the Interim City Attorney's duties.

8. **Bonding:** The City shall bear the full cost of any fidelity or other bonds required of the City Attorney under any law or ordinance.
9. **Other Terms and Conditions of Employment:** The City Council, in consultation with the Interim City Attorney, will 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 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.
10. **No Reduction of Benefits:** The City will not, at any time during the Term of this Agreement, unilaterally reduce the salary or benefits of the Interim City Attorney.
11. **Notices:** Notices pursuant to this Agreement will 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.
12. **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.

Exhibit A

DocuSigned by:

Dianne Martinez

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Management of Emeryville Services Authority: _____

Date: 4/21/2021

Interim City Attorney: _____

Date: _____