

**RESOLUTION NO. 2014-120**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK  
AUTHORIZING AND APPROVING AN EMPLOYMENT AGREEMENT BETWEEN THE  
CITY OF ROHNERT PARK AND MARILYN PONTON FOR DEVELOPMENT SERVICES  
DIRECTOR SERVICES**

**WHEREAS**, the City requires the services of a Director of Development Services;

**WHEREAS**, Employee desires to serve as Director of Development Services of the City of Rohnert Park in consideration of and subject to the terms, conditions, and benefits set forth in this Agreement;

**WHEREAS**, Employee has the necessary education, experience, skills and expertise to serve as the City's Director of Development Services; and

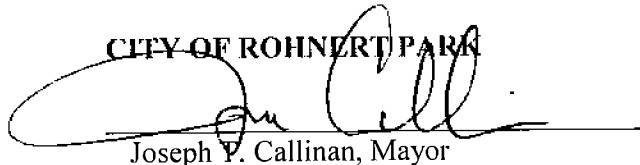
**WHEREAS**, the City Manager, as appointing power, and Employee desire to agree in writing to the terms and conditions of Employee's employment;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Rohnert Park that the City Council authorizes and approves the 2014 Employment Agreement between the City of Rohnert Park and Marilyn Ponton for Director of Development Safety services in substantially the same form attached hereto as Exhibit "A" and incorporated by this reference.

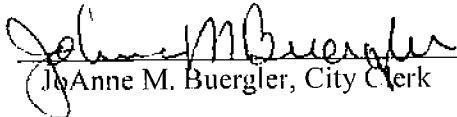
**BE IT FURTHER RESOLVED** that the City Manager is authorized and directed to execute the same for and on behalf of the City of Rohnert Park.

**DULY AND REGULARLY ADOPTED** by the City Council of the City of Rohnert Park this 14th day of October, 2014.



**CITY OF ROHNERT PARK**  
  
Joseph Y. Callinan, Mayor

**ATTEST:**

  
JoAnne M. Buergler, City Clerk

BELFORTE: ABSENT MACKENZIE: AYE STAFFORD: AYE AHANOTU: AYE CALLINAN: AYE

AYES: ( 4 ) NOES: ( 0 ) ABSENT: ( 1 ) ABSTAIN: ( 0 )

## **EMPLOYMENT AGREEMENT**

### **Between CITY OF ROHNERT PARK AND MARILYN PONTON**

THIS AGREEMENT between the CITY OF ROHNERT PARK ("City") and Marilyn Ponton ("Employee") is dated for reference purposes as of October 14, 2014, and is deemed effective as of that date.

#### **RECITALS**

WHEREAS, the City requires the services of a Director of Development Services;

WHEREAS, Employee desires to serve as Director of Development Services of the City of Rohnert Park in consideration of and subject to the terms, conditions, and benefits set forth in this Agreement;

WHEREAS, Employee has the necessary education, experience, skills and expertise to serve as the City's Director of Development Services; and

WHEREAS, the City Manager, as appointing power, and Employee desire to agree in writing to the terms and conditions of Employee's employment;

#### **AGREEMENT**

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

##### **1. DUTIES.**

(a) City agrees to employ Employee as Director of Development Services of the City of Rohnert Park to perform the functions and duties specified in the City of Rohnert Park Job Description for the Director of Development Services position, attached hereto as Exhibit A, and to perform other legally permissible and proper duties and functions as City Manager may from time to time assign.

(b) Employee shall perform her duties to the best of her ability in accordance with the highest professional and ethical standards of the profession and shall comply with all general rules and regulations established by City.

(c) Employee shall not engage in any activity, which is or may become a conflict of interest, prohibited contract, or which may create an incompatibility of office as defined under California law. Prior to performing any services under this Agreement and annually thereafter, Employee must complete disclosure forms required by law.

##### **2. HOURS OF WORK.**

The Director of Development Services is an exempt employee but is expected to engage in those hours of work that are necessary to fulfill the obligations of the Director position. The Director of Development Services is expected to work customary business hours.

**3. TERM.**

The term of this Agreement shall be five (5) years from the date of adoption specified or until terminated by either party in accordance with the provisions set forth in this agreement or by the event of the death or permanent disability of Employee.

**4. RESIGNATION AND TERMINATION.**

(a) Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign at any time from her position as City's Director of Development Services. Employee may terminate this Agreement by submitting written notice of her resignation to City. Employee shall give the City thirty (30) days written notice of her intention to resign.

(b) Employee is an "at will" employee who serves at the pleasure of the City Manager and nothing herein shall be taken to prevent, limit or otherwise interfere with the right of the City Manager to terminate the services of Employee as Director of Development Services with or without cause at any time. There is no express or implied promise made to Employee for any form of continued employment. Further, nothing in this Agreement is intended to, or does, confer upon Employee any due process right to a hearing or other administrative process pertaining to termination, before or after a decision by the City to terminate her employment, unless Employee is entitled to a name clearing hearing under California or federal law. No terms of this Agreement may be altered without an express written document signed by the Employee and City Manager and approved by the City Council.

(c) Employee may be terminated for cause at any time by providing Employee written notice of her termination for cause. Termination for cause means termination based upon a breach of any of the terms of this Agreement, malfeasance of any nature occurring during the course and scope of the Employee's duties as Director of Development Services; or a conviction, plea bargain, or personal adverse State or federal determination against Employee individually involving any felony, intentional tort, crime of moral turpitude, violation of statute or law constituting forfeiture of office, misconduct in office for personal gain, misuse of public funds for personal benefit, conflict of interest resulting in conviction, or any other incompatible activity or conflict of interest listed in Section 7 of City Personnel Rules and Regulations.

**(d) Severance Benefits**

(1) In the event Employee is terminated from employment without cause while still willing and able to perform her duties under this Agreement, then City agrees to pay Employee a lump sum cash payment equal to three (3) months of base salary.

(2) In addition, City shall extend to Employee the right to continue health insurance as may be required by and pursuant to the terms and conditions of the Consolidated Omnibus Budget Act of 1986 (COBRA).

(3) In the event Employee is terminated for cause, Employee shall be entitled to only the compensation earned and accrued and such other termination benefits and payments as may be required by law. Employee shall not be entitled to any severance benefits.

## **5. COMPENSATION AND BENEFITS.**

(a) City agrees to pay Employee for her services rendered pursuant hereto as Director of Development Services Director a gross monthly salary of \$11,364 payable in bi-weekly installments at the same time as other employees of the City are paid and subject to all applicable payroll taxes and withholdings. The position of Director of Development Services is exempt under the Fair Labor Standards Act and, therefore, no overtime pay will be paid to Employee based on hours worked.

(b) In accordance with City policy, City Manager will review and evaluate performance of Employee as Director of Development Services once each year. During this annual review, City agrees to consider all possible merit based increases.

(c) Employee shall be entitled to the following salary adjustments provided to the non-public safety Management Unit in accordance with the Outline of Certain Conditions of Employment, Fringe Benefits, and Salary for the Management Unit ("Management Unit Outline") (Effective July 1, 2014 – June 30, 2017): three percent (3%) non-pensionable on July 1, 2015 and three percent (3%) pensionable on July 1, 2016.

(d) Employee shall be entitled to all benefits, rights, and privileges accorded to the non-public safety Management Unit in the Management Unit Outline except as otherwise provided in this Agreement. If there is any conflict between this Agreement and any resolution fixing compensation and benefits for non-public safety City Department Directors or other unclassified employees, this Agreement shall control.

(e) Employee shall be included in the City's Miscellaneous Plan with the California Public Employees' Retirement System ("CalPERS") at the two point seven percent (2.7 %) at fifty-five (55), single highest year program.

(f) If available and budgeted, City will provide up to three thousand dollars (\$3,000.00) per fiscal year for Employee's professional development expenses. Use of these dollars shall be subject to the prior approval of the City Manager.

(g) Employee is subject to City Personnel Rules and Regulations as an Executive Management Employee and is exempt from specific rules and regulations as set forth in Section 1, subsection (C) of the Personnel Rules, as amended or supplemented from time to time. Employee is exempt from the City's Grievance Policy and Procedure as set forth in Resolution No. 79-22 and incorporated by reference into the Management Unit Outline and City Personnel Rules and Regulations.

(h) In the event Employee is called upon after cessation of employment with City for witness depositions, file preparation, interviews for lawsuits or any actions requiring call back, Employee shall be paid one hundred dollars (\$100) per hour plus travel and accommodation costs for time spent on such actions.

(i) In the event Employee is terminated or separates from employment with City, the City agrees to limit the employment information provided to a prospective employer to dates of employment, list of positions held with the City and salary. The City Manager or Director of Human Resources shall respond to any formal requests for employment information made by prospective employer. However, Employee is responsible for referring prospective employer to address any employment inquiries or referrals to the City Manager or Director of Human Resources directly.

**6. INDEMNIFICATION.**

In accordance with the terms, conditions, and limitations of the Government claims Act (Gov't Code §§ 810 et seq.), City shall defend, save 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 in the performance of Employee's duties as Director of Development Services, Interim Director of Development Services, Development Services Manager, and Planning and Building Manager during her employment with the City of Rohnert Park. Based on its sole discretion, the City will determine whether to compromise and settle any such claim or suit and the amount of any settlement or judgment rendered thereon. Said indemnification shall extend beyond termination of employment, and the otherwise expiration of this Agreement for any acts undertaken in her capacity as Director of Development Services, Development Services Manager, Interim Director of Development Services and Planning and Building Manager, regardless of whether the notice of filing of a lawsuit for such tort, claim, demand, or other legal action occurs during or following Employee's employment with City.

**7. CONFLICT OF INTEREST PROHIBITION.**

Employee represents and warrants to City that, to the best of her knowledge, she presently has no interest, and represents that she will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or interfere in any way with the performance of her duties under this Agreement.

**8. CONFIDENTIAL INFORMATION.**

"Confidential Information" is all non-public information pertaining to the business of City (or any City affiliate), its employees, clients, consultants, or business associates, which was produced by any employee of City in the course of his/her employment or otherwise produced or acquired by or on behalf of City. Confidential Information shall include, without limitation, proprietary information such as trade secrets, confidential financial data and formulae, attorney client-privileged information, confidential licensing information, software and other computer programs, copyrightable material, and other information exempt from production under the California Public Records Act and/or the Freedom of Information Act. During her employment by City, Employee shall disclose Confidential Information only for the benefit of City and as may be necessary to perform her job responsibilities under this Agreement. Following termination, Employee shall not disclose any Confidential Information, except with the express written consent of City. Employee's obligations under this Section shall survive the termination of her employment and the expiration of this Agreement.

**9. GENERAL EXPENSES.**

City recognizes and agrees to pay and/or reimburse Employee for reasonable and necessary travel, subsistence and other business expenses incurred by Employee in the performance of her duties with prior approval by the City Manager.

**10. NOTICES.**

Any notices required by this Agreement shall be in writing and either given in person or by first class mail with postage prepaid and addressed as follows:

TO CITY:                   City Manager  
                                City of Rohnert Park  
                                130 Avram Avenue  
                                Rohnert Park, CA 94928

TO EMPLOYEE:       Marilyn Ponton  
                                Home Address on File with Human Resources

**11.     ATTORNEY'S FEES.**

In the event of any mediation, arbitration or litigation to enforce any of the provisions of this Agreement, each party shall bear its own attorney's fees and costs.

**12.     ENTIRE AGREEMENT.**

This Agreement is the final expression of the complete agreement of the parties with respect to the matters specified herein and supersedes all prior oral or written understandings, and it may not be contradicted by evidence of any prior or contemporaneous statements or agreements. Except as prescribed herein, this Agreement cannot be modified except by written mutual agreement signed by both parties and approved by the City Council. To the extent that the practices, policies, or procedures of City, now or in the future, apply to Employee, and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control.

**13.     ASSIGNMENT.**

This Agreement is not assignable by either City or Employee.

**14.     SEVERABILITY.**

In the event that 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 the Agreement shall remain in full force and effect unless the parts found to be void are wholly inseparable from the remaining portion of the Agreement.

**15.     PROVISIONS THAT SURVIVE TERMINATION.**

Many sections of this Agreement are intended by their terms to survive the termination of employment with the City, including but not limited to Sections 6 and 8. These sections, and the others so intended, shall survive termination of employment and termination of this Agreement.

**16.     JURISDICTION AND VENUE.**

This Agreement shall be construed in accordance with the laws of the State of California, and the Parties agree that venue shall be in Sonoma County, California.

**17. NO WAIVER OF DEFAULT.**

The failure of any party to enforce against another party any provision of this Agreement shall not constitute a waiver of that party's right to enforce such a provision at a later time, and shall not serve to vary the terms of this Agreement.

**18. EFFECTIVE DATE.**

This Agreement shall be deemed effective on October 14, 2014.

**19. ACKNOWLEDGMENT.**

Employee acknowledges that she has had the opportunity to consult legal counsel in regard to this Agreement, that she read and understands this Agreement, that she is fully aware of its legal effect, and that she has entered into it freely and voluntarily and based on her judgment and not on any representations or promises other than those contained in this Agreement.

IN WITNESS WHEREOF, the City has caused the Agreement to be signed and executed on its behalf by its City Manager. It has also been executed by Employee on the date first above written.

CITY OF ROHNERT PARK

By: \_\_\_\_\_  
Darrin Jenkins,  
City Manager

EMPLOYEE

By: \_\_\_\_\_  
Marilyn Ponton

Per Resolution Number 2014-\_\_\_\_\_  
adopted by City Council on October 14, 2014.

Approved as to form:

By: \_\_\_\_\_  
Michelle Marchetta Kenyon  
City Attorney

Attest

\_\_\_\_\_  
City Clerk