

RESOLUTION NO. 2021-02-09-1

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, APPOINTING KENNETH H. ROSENFELD, P.E., AS INTERIM CITY MANAGER OF THE CITY OF LAGUNA HILLS, AND APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN INTERIM CITY MANAGER EMPLOYMENT AGREEMENT

WHEREAS, after 29 years of service to the City of Laguna Hills, City Manager Don White recently announced his separation from the City. The City Council and Mr. White reached an agreement to mutually separate. Mr. White's separation from employment took effect at the end of the day on Friday, January 22, 2021; and,

WHEREAS, during a Special Meeting held on Tuesday, January 19, 2021, the City Council unanimously voted to appoint Assistant City Manager/Public Services Director/City Engineer Kenneth H. Rosenfield, P.E. as the Acting City Manager, effective at 5:01 p.m., January 22, 2021, pending the negotiation and preparation of a proposed interim city manager employment contract; and,

WHEREAS, on January 26, 2021, the City Council appointed the City Attorney as its designated labor representative for purposes of preparing a proposed interim city manager employment contract with Mr. Rosenfield, which was directed to be presented for review and approval at a regular meeting of the City Council; and,

WHEREAS, pursuant to Laguna Hills Municipal Code Chapter 2-08, the City Council now desires to appoint Kenneth H. Rosenfield, P.E., as the Interim City Manager of the City of Laguna Hills and to retain Mr. Rosenfield and establish the terms and conditions for such continued employment by approving the attached Interim City Manager Employment Agreement; and,

WHEREAS, pursuant to Government Code Section 36506, the City Council is required to establish the compensation of the Interim City Manager by Resolution, which appointed official shall hold office at the direction and pleasure of the City Council.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:


SECTION 1. The foregoing recitals are true and correct and are incorporated herein by reference.

SECTION 2. Kenneth H. Rosenfield, P.E., is hereby appointed Interim City Manager of the City of Laguna Hills to serve at the direction and pleasure of the City Council, effective February 10, 2021, pursuant to Laguna Hills Municipal Code Chapter 2-08.

SECTION 3. The City Council hereby approves and authorizes the Mayor to execute the Interim City Manager Employment Agreement, dated February 9, 2021, which employment agreement is attached hereto as Exhibit "1" and is incorporated herein by reference, with a term of office commencement date of February 10, 2021.

SECTION 4. The City Clerk is hereby directed to administer the Oath of Office.

PASSED, APPROVED, AND ADOPTED this 9th day of February 2021.



ERICA PEZOLD, MAYOR

ATTEST:



MELISSA AU-YEUNG,
DEPUTY CITY MANAGER/CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LAGUNA HILLS)

I, Melissa Au-Yeung, Deputy City Manager/City Clerk of the City of Laguna Hills, California, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. 2021-02-09-1 adopted by the City Council of the City of Laguna Hills, California, at a Regular Meeting thereof held on the 9th day of February 2021, by the following vote:

AYES: Council Members Heft, Hunt, Wheeler, Mayor Pro Tempore Sedgwick, and Mayor Pezold

NOES: None

ABSENT: None

ABSTAIN: None

(SEAL)



MELISSA AU-YEUNG, CITY CLERK

EXHIBIT "1"

INTERIM CITY MANAGER EMPLOYMENT AGREEMENT

DATED: FEBRUARY 9, 2021

EMPLOYMENT AGREEMENT INTERIM CITY MANAGER

THIS EMPLOYMENT AGREEMENT (the "Agreement") is made and entered into, to be effective February 10, 2021 ("Effective Date"), by and between the CITY OF LAGUNA HILLS, a California municipal corporation organized and existing under the laws of the State of California (hereinafter referred to as "City"), and KENNETH H. ROSENFELD, an individual (hereinafter referred to as "Rosenfield" or "Interim City Manager"). City and Rosenfield are sometimes hereinafter individually referred to as "party" and are hereinafter collectively referred to as the "parties."

RECITALS

A. The City desires to retain Kenneth H. Rosenfield as the Interim City Manager in addition to continuing to serve as Assistant City Manager/ Director of Public Services/ City Engineer.

B. Kenneth H. Rosenfield desires to serve as the Interim City Manager, pending the City Council's selection of a permanent City Manager, as well as Assistant City Manager/ Director of Public Services/ City Engineer.

THEREFORE, IT IS AGREED AS FOLLOWS:

1.0: Retention

1.1.: City hereby appoints and retains Rosenfield to serve as Interim City Manager of the City of Laguna Hills and Rosenfield hereby accepts such employment with City beginning on February 10, 2021, and continuing until Interim City Manager or City Council terminates this Agreement. The Interim City Manager is employed by City in an "at-will" capacity serving at the pleasure of the City Council. Either the City Council or Interim City Manager may terminate this Agreement at any time with or without cause and in its or his sole discretion, as set forth in this Agreement.

1.2.: This Agreement shall automatically renew each month from the Effective Date unless Rosenfield or City Council terminate his employment or this Agreement prior to such renewal. At any time during the term of this Agreement, City and Interim City Manager may mutually agree to either: (1) appoint Rosenfield to the position of City Manager and enter into a new Employment Agreement at that time; or (2) return Rosenfield to the position of Assistant City Manager / Director of Public Services/ City Engineer, where he will continue to serve under the terms and conditions of the applicable personnel policies and procedures, salary and benefits resolutions, and administrative regulations, and receive the same salary and benefits that he received prior to his appointment as Interim City Manager. City also reserves the right to terminate this Agreement and Rosenfield's employment with cause as defined in Section 5.2 of this Agreement.

2.0: General Duties

Rosenfield shall serve as the Interim City Manager of the City of Laguna Hills. In that capacity, Rosenfield shall perform all of the city manager duties specified by the Laguna Hills Municipal Code, the Government Code, and any other applicable laws of the State of California and shall perform the functions and duties as the administrative head of the government of the City of Laguna Hills.

3.0: Salary

3.1.: As compensation for the professional services to be performed hereunder including services as Interim City Manager and continued service as Assistant City Manager/ Director of Public Services/City Engineer, effective February 10, 2021, City agrees to pay Interim City Manager an annual base salary of \$269,000, subject to deductions and withholdings of any and all sums required for federal or state income tax, other deductions or withholdings required by then current state, federal or local law, and paid bi-weekly in accordance with the City's established accounting and payroll practices at the same time and in the same manner as other employees of the City are paid. The City shall also deduct from his annual base salary any applicable sums that Interim City Manager is obligated to pay because of participation in plans or programs described in Section 4.0 of this Agreement and Interim City Manager hereby authorizes such deductions.

3.2. Interim City Manager's annual base salary shall not be subject to or affected by any Cost of Living or Consumer Price Index adjustments approved by the City Council to the salaries of other Executive Management employees.

4.0: Benefits and Leaves of Absence

4.1.: Employee Benefits

Except as expressly provided for in this Agreement, Interim City Manager shall continue to receive all benefits set forth in Resolution No. 2018-06-26-2, as may be amended from time to time by the City Council, and applicable to the Assistant City Manager/ Director of Public Services, specifically, and Executive Management employees, in general. These benefits include, but are not limited to: health insurance (medical, dental, vision), holidays, supplemental retirement contribution, retiree health savings plan, group life and disability insurance, sick leave, and bereavement leave. In addition, Interim City Manager will continue to receive the benefit of a City provided mobile phone while serving under this Agreement.

4.2.: Carryover of Vacation and Sick Leave

Interim City Manager shall retain any vacation and sick leave that he has accrued as Assistant City Manager/ Director of Public Services/ City Engineer as of February 10, 2021.

While serving as Interim City Manager, he shall continue to accrue vacation at the same rate as he did prior to his appointment as Interim City Manager. Any accrual caps which may exist at the time of his appointment as Interim City Manager shall also remain in place while Rosenfield serves as Interim City Manager.

4.3.: General Business Expenses

The City recognizes that Interim City Manager may incur expenses of a non-personal, job-related nature (such as payment of dues for participation in professional organizations or fees for attending events organized by professional organizations) that are reasonably necessary to Interim City Manager's service to the City. The City agrees to either pay such expenses (supported by documentation) in advance or to reimburse the expenses, so long as the expenses are incurred and submitted according to the City's established expense reimbursement policies and procedures.

4.4.: Administrative Leave Pending an Investigation

Because Interim City Manager is an "at-will" employee, the City is not obligated to pay Interim City Manager pending an investigation into any alleged misconduct by the Interim City Manager. Notwithstanding the foregoing, in the event that the City Council determines, in its sole discretion, that it is in the best interest of the City for Interim City Manager to be placed on paid administrative leave pending such an investigation, Interim City Manager shall fully reimburse any salary provided for that purpose if the misconduct for which Interim City Manager was under investigation results in Interim City Manager being convicted of a crime involving an abuse of his office or position as defined in Section 5.2 of this Agreement. Interim City Manager shall fully reimburse such salary no later than six months after such conviction.

5.0: Termination of Agreement

5.1.: Termination by City Without Cause or For Reasons Other Than "Cause"

If City terminates this Agreement without cause or for reasons other than "cause" as defined in 5.2 below upon the vote of a majority of the total membership of the City Council in attendance at a lawfully called meeting, Rosenfield shall immediately be returned to his former position as Assistant City Manager / Director of Public Services/ City Engineer.

5.2.: Termination by City For Cause

If the City terminates this Agreement (thereby terminating Interim City Manager's employment) with cause, Interim City Manager shall not be entitled to return to his former position as Assistant City Manager / Director of Public Services/City Engineer. As used in this Agreement, "cause" shall mean any of the following:

Conviction of a felony; conviction of a misdemeanor arising out of Interim City

Manager's duties or performance under this Agreement; misappropriation of public funds; willful abandonment of duties consisting of the failure to report to work for five consecutive working days (for reasons not medically related) and not notifying staff and the City Council of his leave status; a willful and intentional failure to carry out materially significant and legally constituted policy decisions of the City Council made by the City Council; any other intentional or negligent action or inaction by Interim City Manager that: (a) materially and substantially impedes or disrupts the operations of the City or its organizational units; (b) is detrimental to employees or public safety; (c) violates properly established rules or procedures of the City causing a material and substantial adverse impact on the City; or (d) has a material and substantial adverse effect on the City's interests as clearly defined and delineated by properly established City Council actions, policies, regulations, or City ordinances.

5.3.: Termination by Interim City Manager

Rosenfield may resign from his employment as Interim City Manager and return to his former position of Assistant City Manager / Director of Public Services/City Engineer or terminate this Agreement (and employment with the City) at any time. Interim City Manager agrees, if practicable, to give the City Council at least thirty days advance written notice of his decision to return to his previous position or resign from employment with the City. City Council may choose to waive this thirty-day notice period and/or place Interim City Manager on paid administrative leave through the effective date of the resignation of employment with the City. The City Council's waiver of this period shall not change the Interim City Manager's resignation to a termination.

6.0: Confidentiality

Interim City Manager acknowledges that in the course of his employment contemplated herein, he will be given or will have access to confidential and proprietary documents and information relating to the City, its residents, businesses, employees, and customers ("Confidential Information"). Such Confidential Information may include, but is not limited to, all information given to or otherwise accessible to Interim City Manager that is not public information or would be exempt from public disclosure as confidential, protected, exempt, or privileged information. Interim City Manager shall hold the Confidential Information in trust for the City's benefit and shall not disclose the Confidential Information to others without the express written consent of the City. All Confidential Information shall be promptly returned to the City immediately upon the effective date of any termination or resignation.

7.0: Indemnification

7.1.: Except for an act of misappropriation of public funds, or an indictment, the filing of an information, a plea of guilty or a plea of nolo contendere for a crime involving moral turpitude, City shall defend, hold harmless and indemnify 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 within the scope of his employment as Interim City Manager, using

legal counsel of the City's choosing in its sole discretion, in accordance with the provisions of California Government Code Section 825, applicable provisions of the Government Claims Act, and other applicable law. In the event there is a conflict of interest between the City and Interim City Manager in such a case such that qualified independent counsel is required for Interim City Manager, the City shall pay the reasonable fees of such qualified independent counsel, who shall be mutually chosen by the parties. City may compromise and settle any claim or suit against the Interim City Manager and pay the amount of any settlement or judgment rendered therefrom.

7.2.: In the event that the City provides funds for the legal criminal defense of the Interim City Manager, Interim City Manager shall fully reimburse said funds to the City if Interim City Manager is convicted of a crime involving an abuse of his office or position as defined in Section 5.2 of this Agreement. Interim City Manager shall fully reimburse to City such criminal legal defense fees no later than six months after such conviction.

8.0: Entire Agreement

This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the employment of by City and contains all of the covenants and agreements between the parties with respect to that employment in any manner whatsoever. Each party to this Agreement acknowledges that no representation, inducement, promise, or agreement, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein. Any modification of this Agreement shall be effective only if it is in writing and signed by the parties.

9.0 Miscellaneous Provisions

10.1.: Partial Invalidity. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in anyway.

10.2.: Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California and all applicable City regulations, resolutions, and ordinances.

10.3.: Bonding. City shall bear the full cost of any fidelity or other bonds required of the Interim City Manager under any law or ordinance, or any insurance policies in lieu thereof.

10.4.: City's Policies and Procedures. The terms and conditions of Interim City Manager's employment, including additional employment benefits of Interim City Manager not specifically provided for in this Agreement, shall be governed by City's personnel policies and procedures, salary and benefits resolutions, and administrative regulations, to the extent not inconsistent with the provisions of this Agreement. In the event of any such inconsistency or conflict, the provisions of this Agreement shall govern.

10.5.: Enforcement. The prevailing party in any action brought to enforce this Agreement or to resolve any dispute or controversy arising under the terms and conditions hereof shall be entitled to payment of reasonable attorneys' fees and costs.


10.0: Interim City Manager's Independent Review

Rosenfield acknowledges that he has had the opportunity and has conducted an independent review of the financial and legal effects of this Agreement and has not relied upon representation of the City, its elected or appointed officers and officials, agents or employees, other than those expressly set forth in this Agreement.

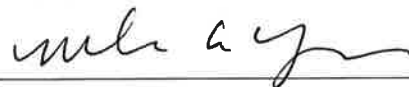
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date reflected above.

"CITY"
CITY OF LAGUNA HILLS, a California
municipal corporation


By:


ERICA PEZOLD,
Mayor

ATTEST:


MELISSA AU-YEUNG,
Assistant City Manager/City Clerk

APPROVED AS TO FORM:


GREGORY E. SIMONIAN,
City Attorney

"INTERIM CITY MANAGER"
KENNETH H. ROSENFELD, an individual

By:


KENNETH H. ROSENFELD, P.E.