DIRECTOR OF ADMINISTRATIVE SERVICES EMPLOYMENT AGREEMENT

This Employment Agreement ("Agreement") is made and entered into this 18th day of February 2010 by and between the City of Fullerton, a municipal corporation (hereafter "City"), and Julia A. James (hereinafter referred to as "James").

RECITALS

The City desires to retain the services of James as the Director of Administrative Services to serve at the direction of the City Manager, (hereinafter referred to as "City Manager").

It is the desire of the City to provide certain benefits, establish certain conditions of employment, and set certain working conditions of the Director of Administrative Services.

The City desires to secure and retain the services of James and to provide inducement for James to remain in such employment, and to make possible full work productivity by assuring James's morale and peace of mind with respect to future security.

AGREEMENT

Now therefore, in consideration of the mutual promises, covenants, and conditions herein, the parties agree as follows:

1. Duties

City hereby agrees to employ James as Director of Administrative Services beginning March 8, 2010 (hereinafter "appointment date") to perform the functions and duties of the Director of Administrative Services and to perform other permissible and proper duties and functions consistent with the position of the Director of Administrative Services, as the City Manager shall from time to time assign.

2. Term and Conditions

A. This Agreement supplements all policies, rules, regulations, procedures and benefits which apply to Executive employees, which shall also apply to James. Where the City's policies et al conflict with the provisions of this Agreement, the provisions of this Agreement shall prevail. A copy of

the current resolution, Resolution No. 09-66, Compensation for Executive Employees (hereinafter "Executive Compensation Resolution") is attached.

- B. The above paragraph notwithstanding, Municipal Code Sections 2.33.010 and 2.33.020 (attached) shall not apply to James with respect to the City's disciplinary and appeals procedures. James serves at the pleasure of the City Manager and may be discharged without cause provided that James is given six months written notice. As an alternative to such notice, James shall receive a lump sum cash payment equal to six months of her then-current base salary and the City shall pay for the first six months of COBRA coverage under any City sponsored medical, dental or vision plan in which James and her dependents are covered at the time of her separation. This requirement shall not apply if James is discharged as a result of an act of moral turpitude or conviction of a felony or as a result of James being unable to obtain or maintain a bond to fulfill the requirements of Municipal Code Sections 2.05.010 and 2.05.040 (attached).
- C. If James voluntarily retires or resigns, she shall give the City ninety (90) calendar days written notice in advance, unless the parties otherwise agree.

3. Salary

City agrees to compensate James for services rendered an annual salary of \$165,000. For the period from March 8, 2010 to June 25, 2010, James shall not be subject to the terms of Section 5. G. of the Executive Compensation Resolution, establishing a 7.647% gross pay back deduction for employees in the Executive classifications. Rather, the gross pay back deduction for James shall be 5% for the March 8, 2010 to June 30, 2011 period. Effective July 1, 2011, James will no longer be exempt from the Section 5. G. provision, or any comparable provision in a successor resolution. Future changes to the compensation for James shall be made in accordance with the then current Executive Compensation Resolution.

4. Vacation

Upon appointment date, James shall begin accruing vacation leave at a rate of 160 hours per year, equivalent to the rate for a 14 year employee, and subject to increases thereafter per the terms of the Executive Compensation Resolution.

5. Retiree Medical Insurance Contributions

At the completion of five years of service with the City of Fullerton in the classification of Director of Administrative Services, James shall be credited with an additional five years credit for the purpose of determining eligibility for a City contribution toward medical insurance after retirement (see Section 9. B. of the Executive Compensation Resolution). Such credit shall not apply to any other benefit provided to employees covered by the Executive Compensation Resolution or to service credit under the California Public Employees Retirement System.

6. Sick Leave

Upon appointment date, James shall begin accruing sick leave at the rate set in the Executive Compensation Resolution and shall be provided a sick leave balance of 96 hours.

7. Executive Leave

Upon appointment date, James shall be provided an Executive Leave balance for 36 hours for fiscal year 2009/10. Thereafter, Executive Leave shall be provided per the terms of the Executive Compensation Resolution, except that James shall be provided a balance of 108 hours per year. (If James' work schedule converts to a traditional 40 hour work week, her Executive Leave balance shall be reduced to 96 hours per year.)

8. Change in benefits

James acknowledges and agrees that City may during the term of this agreement reduce the base salary, compensation, or other financial benefits of James either (a) on the same basis as may be applicable to all executive management employees of the City (this may be done notwithstanding the provisions of Section 3 above), or (b) at the direction of the City Manager in response to performance deficiencies, discipline, or a reduction of James' scope of authority or responsibility.

9. Indemnification

City shall defend, hold harmless and indemnify James against any tort, professional liability claim or demand or other legal action, arising out of any alleged act or omission occurring within the scope of her employment as Director of Administrative Services in accordance with the provisions of California Government Code Section 825. At its sole discretion, City may

compromise, settle, assign legal counsel, determine litigation strategy, or pay judgment rendered in any such claim or suit.

James shall cooperate fully in the investigation and defense of any such liability claim, demand, or legal action.

James acknowledges and agrees that City's agreement to defend, hold harmless and indemnify her does not constitute an agreement to pay any punitive damages awarded against James in any such liability claim, demand or legal action. In that regard, James acknowledges and agrees that per subdivision (b) of Government Code Section 825, City may not make a determination whether or not to indemnify an employee for an award of punitive damages until such time as the award is made.

This covenant shall survive the termination of the Agreement.

10. Other Terms and Conditions of Employment

The City Manager, in consultation with James, shall establish any other terms and conditions of employment as he may determine from time to time, relating to the performance of James provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Fullerton Municipal Code, any ordinance or resolution of the City, or other applicable laws, rules or regulations.

11. Notices

Any notice required or permitted by this agreement shall be in writing and shall be personally served or be sufficiently given when served upon the other party as sent by the United States Postal Service, postage prepaid and addressed as follows:

To City:

To James:

City Manager City of Fullerton 303 West Commonwealth Ave. Fullerton, California 92832-1775

12. General Provisions

- A. The text herein shall constitute the entire agreement between the parties.
- B. This Agreement shall become effective March 8, 2010 or upon successful completion of a Post-Offer of Employment Physical, whichever occurs latest.
- C. If any provision or portion thereof contained in this Agreement is held unconstitutional, the remainder of this Agreement, or portion thereof, shall be deemed severable and shall not be affected and shall remain in full force and effect.
- D. In the event of any legal action between the parties hereto to enforce the provisions of this Agreement, the prevailing party shall be entitled to reasonable legal fees and costs as fixed by the Court.

In witness whereof, City has caused this Agreement to be signed and duly executed on its behalf by its City Manager, and James has signed and executed this Agreement, the date and year first written above.

Ву:	Christ de	Date:
	Chris Meyer, City Manager	
Ву:	Julia A. James	Date: <u>2 - 78 - 76</u>