

EMPLOYMENT AGREEMENT FOR INTERIM ASSISTANT CITY MANAGER (U)

This employment agreement ("Agreement") is made and entered into this 8th day of August, 2024 by and between the City of San Bernardino (a charter city and municipal corporation organized and operating under the laws of the State of California with its principal place of business at 290 North D Street, San Bernardino, California 92401)("CITY") and Frederick M. Lewis (a retiree with a home residence on file)("RETIREE"). CITY and RETIREE are sometimes individually referred to as "Party" and collectively as "Parties".

RECITALS

A. **WHEREAS**, CITY seeks to engage RETIREE on a temporary basis in the unclassified ("U") position of Interim Assistant City Manager in accordance with the terms set forth in this Agreement; and

B. **WHEREAS**, RETIREE desires to accept employment as Interim Assistant City Manager (U) on a temporary basis in consideration of and subject to the terms, conditions, and benefits set forth in this Agreement; and

C. **WHEREAS**, RETIREE represents that he is a retired annuitant of the California Public Employees' Retirement System ("CalPERS") within the meaning of Government Code sections 7522.56 and 21221(h) ("Statutes"), and acknowledges that his compensation is statutorily limited as provided in Government Code section 21221(h). RETIREE represents that, as of the effective date of this Agreement, he has not worked for another CalPERS state or contracting agency as a retired annuitant during the 2024-2025 fiscal year; and he therefore acknowledges he can work up to 960 hours for the CITY, a state agency, or other CalPERS contracting agencies ("CalPERS Agencies") during the 2024-2025 fiscal year. With the execution of this Agreement, RETIREE affirms he has not received unemployment compensation arising from work pursuant to Government Code section 7522.56 during the 12-month period preceding the effective date of this Agreement. RETIREE further affirms his CalPERS retirement date became effective prior to the 180-day period preceding the commencement date, as that term is defined in Section 4 of this Agreement; and

D. **WHEREAS**, CITY has determined it is necessary to hire RETIREE, a retired annuitant, because his extensive knowledge and skills are necessary for the successful operation of the City Manager's Office.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties agree as follows:

AGREEMENT

1. **INCORPORATION OF RECITALS**. The recitals listed above are true and correct, and they are hereby incorporated herein by this reference.

2. **APPOINTMENT**. RETIREE is appointed Interim Assistant City Manager (U) of the CITY on a temporary basis under the terms of this Agreement.

3. **POSITION AND DUTIES.** RETIREE has been appointed by the Acting City Manager as Interim Assistant City Manager (U) of the CITY on a temporary basis to perform the duties and functions pertaining to the Interim Assistant City Manager (U) position, and to perform other legally permissible duties and such functions as the City Manager shall from time-to-time assign. The City Manager shall have the authority to determine the specific duties and functions which RETIREE shall perform under this Agreement, and the means and manner by which RETIREE shall perform those duties and functions. RETIREE agrees to devote all of his business time, skill, attention, and best efforts to the discharge of the duties and functions of the Interim Assistant City Manager (U) position and any other duties assigned by the City Manager.

4. **TERM, TERMINATION AND AT-WILL STATUS.** This Agreement shall become effective upon the date executed both by RETIREE and the City Manager, which date shall be the date first referenced above. RETIREE shall commence the performance of his duties under this Agreement on August 12, 2024, or at such later date as the parties hereto shall agree in writing ("Commencement Date"). This Agreement shall expire as of the first of the following to occur: (i) upon the employment commencement date of a permanent Assistant City Manager (U); (ii) upon RETIREE working 960 hours combined for any CalPERS Agencies during fiscal year 2024-2025 or 960 hours in any subsequent fiscal year; or (iii) upon termination of the Agreement by either RETIREE or CITY as provided below.

a. RETIREE acknowledges that he is an at-will, temporary employee of the CITY who shall serve at the pleasure of the City Manager at all times during the period of his service hereunder; and shall be subject to termination by the City Manager at any time without advance notice and without cause.

b. The terms of CITY's personnel rules, policies, regulations, procedures, ordinances, and resolutions regarding City administrative personnel ("Personnel Policies"), as they may be amended or supplemented from time to time, shall not apply to RETIREE; and nothing in this Agreement is intended to, or does, confer upon RETIREE any right to any property interest in continued employment, or any due process right to a hearing before or after a decision by the City Manager to terminate his employment. Nothing contained in this Agreement shall in any way prevent, limit, or otherwise interfere with the right of CITY to terminate the services of RETIREE; and nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of RETIREE to resign at any time from his position with CITY.

5. **COMPENSATION.** The CITY agrees to provide the following compensation to RETIREE for the services of Interim Assistant City Manager (U):

a. Beginning as of the Commencement Date, CITY agrees to pay to RETIREE for services rendered under this Agreement \$116.54 per hour consistent with the pay rate established for the Assistant City Manager (U) position as listed in the CITY's publicly available pay schedule.

b. The RETIREE shall not be entitled to any additional compensation. The City shall not pay for vacation or holidays, nor shall RETIREE be entitled to any fringe benefits.

6. **SUPPORT SERVICES AND EQUIPMENT.** RETIREE shall be provided office space and the equipment needed to perform his duties and sufficient to fulfill obligations under this Agreement, as determined by the City Manager, at no cost to RETIREE. In accordance with Government Code section 21221(h), personal use of such equipment is not permitted.

7. **EXPENSES.** CITY shall reimburse RETIREE for authorized, reasonable, and necessary travel expenses incurred by RETIREE in the performance of his duties pursuant to this Agreement. RETIREE shall document and claim said reimbursement for such travel in the manner and forms required by the CITY. All reimbursements shall be for actual expenses and shall be subject to, and in accordance with, California and Federal law and CITY's adopted reimbursement policies. Other than as specifically provided herein, RETIREE shall receive no other compensation or reimbursements for expenses incurred by him in performance of this Agreement. Such reimbursements are not considered wages and, as such, shall not be reported to CalPERS.

8. **PROPRIETARY INFORMATION.** "Proprietary Information" is all information and any idea pertaining in any manner 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 or her employment, or otherwise produced or acquired by or on behalf of City. Proprietary Information shall include without limitation trade secrets, product ideas, inventions, processes, formulae, data, know-how, software and other computer programs, copyrightable material, marketing plans, strategies, sales, financial reports, forecasts, and customer lists. All Proprietary Information not generally known outside of CITY'S organization, and all Proprietary Information so known only through improper means, shall be deemed "Confidential Information". During his employment by CITY, RETIREE shall use Proprietary Information and shall disclose Confidential Information only for the benefit of CITY and as is, or may be, necessary to perform his job responsibilities under this Agreement. Following termination, RETIREE shall not use any Proprietary Information and shall not disclose any Confidential Information, except with the express written consent of CITY. RETIREE'S obligations under this Section shall survive the termination of his employment and the expiration of this Agreement.

9. **NON-ASSIGNMENT OF AGREEMENT.** This Agreement is intended to secure the individual services of the RETIREE and is not assignable or transferable by RETIREE to any third party.

10. **GOVERNING LAW/VENUE.** This Agreement shall be interpreted according to the laws of the State of California. Venue for any action or proceeding regarding this contract shall be in San Bernardino County.

11. **ENFORCEABILITY.** If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

12. **CONFLICT OF INTEREST.** RETIREE agrees that during the term of this Agreement, he will not maintain any financial interest or engage in any other contract employment, occupation, work, endeavor or association (whether compensated or not) that would in any way conflict with or impair RETIREE'S ability to perform the duties

described in this Agreement. Any work performed for the CITY outside the terms of this Agreement must be approved in advance in writing by the City Manager. RETIREE agrees to disclose whether he is performing work for any other CalPERS public agency employer during the term of this Agreement.

13. **NOTICE.** Notices required pursuant to this Agreement shall be given by personal service upon the party to be notified or by delivery of same to the custody of the United States Postal Service, or its lawful successor, postage prepared and addressed as follows:

CITY

City of San Bernardino
290 North D Street
San Bernardino, CA 92401
Attention: City Manager

RETIREE

Frederick M. Lewis
ADDRESS ON FILE

14. **HOURS OF WORK.** RETIREE shall devote the time necessary to adequately perform his duties as Interim Assistant City Manager (U) on a temporary basis. The parties anticipate that RETIREE will work a sufficient number of hours per week allocated between regular business hours and hours outside of regular business hours as the City Manager may direct. However, in no event shall RETIREE be required to work in excess of 960 hours in fiscal year 2024-2025 and 960 hours per each subsequent fiscal year for CITY, including hours worked for other CalPERS Agencies during such fiscal years.

a. It is the intent of the parties to compensate RETIREE only to the extent permitted under the Statutes, and corresponding CalPERS regulations and policy statements. The Rate of Pay set forth above is based on the salary limitations established by CalPERS in accordance with Section 21221(h) which provides that the Rate of Pay shall be no less than the minimum or greater than the maximum hourly rate for the Assistant City Manager (U) position as listed on the CITY's publicly available pay schedule.

b. RETIREE will comply with all applicable CalPERS regulations governing employment after retirement, including the recordation and reporting of all hours worked for CITY to CalPERS as may be required. CITY shall assist in any such reporting obligations to CalPERS. Additionally, RETIREE shall keep CITY continually apprised of any hours worked by RETIREE for other CalPERS Agencies during the term of this Agreement.

15. **WAIVER.** No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding, unless executed in writing by the party making the waiver.

16. **INDEMNIFICATION.** In accordance with and subject to the limitations of the California Government Claims Act and California Labor Code, the CITY shall defend, save harmless, and indemnify RETIREE against any tort, professional liability, claim or demand or other legal action arising out of an alleged act or omission occurring in the performance of RETIREE's services as Interim Assistant City Manager (U) on a temporary basis; except that this provision shall not apply with respect to any intentional tort or crime committed by RETIREE, or any actions outside the course and scope of his employment as Interim Assistant City Manager (U) on an interim basis.

17. **NO PRESUMPTION OF DRAFTER.** The Parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the Parties, and this Agreement reflects their mutual agreement regarding the subject matter of this Agreement. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any Party to be the drafter of this Agreement; and, therefore, no presumption for or against validity or as to any interpretation hereof based upon the identity of the drafter shall be applicable in interpreting or enforcing this Agreement.

18. **ASSISTANCE OF COUNSEL.** Each party to this Agreement warrants to the other party that the party has either had the assistance of counsel in negotiation for, and preparation of, this Agreement or could have had such assistance and voluntarily declined to obtain such assistance.

19. **ENTIRE AGREEMENT.** This Agreement constitutes the entire Agreement of the parties considering the subject matter hereof and all prior agreements or understanding, oral or written, are hereby merged herein. This Agreement shall not be amended in any way except by a writing expressly purporting to be such an amendment, signed, and acknowledged by both of the parties thereto. If any portion or provision hereof is held to be unconstitutional, invalid, or unenforceable, the remainder of this Agreement or portion thereof shall be deemed severable and shall be effective and shall remain in full force and effect.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE FOR
EMPLOYMENT AGREEMENT FOR
INTERIM ASSISTANT CITY MANAGER (U)**

CITY OF SAN BERNARDINO

By: _____ Date: _____
Rochelle Clayton, Acting City Manager

RETIREE

By: _____ Date: _____
Frederick M. Lewis

Approved as to Form:

By: _____ Date: _____
Sonia R. Carvalho
City Attorney
City of San Bernardino