

ATTACHMENT 2

INTERIM DEPUTY CITY MANAGER

EMPLOYMENT AGREEMENT-LIMITED TERM RETIRED ANNUITANT

This INTERIM DEPUTY CITY MANAGER EMPLOYMENT AGREEMENT-LIMITED TERM RETIRED ANNUITANT (“Agreement”) is made by and between the CITY OF LAKE FOREST (“City”), a municipal corporation in the State of California and DONALD J. WHITE (“Employee”), an individual. The City and Employee may be referred to individually as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, City of Lake Forest (“City”) desires to hire Employee as a temporary, at-will employee for a definite period of time to serve in the position of Interim Deputy City Manager for the City of Lake Forest, California, which is a position that requires specialized skills, and Employee desires to perform and assume responsibility as the Interim Deputy City Manager on a temporary basis subject to the terms and conditions set forth in this Agreement; and

WHEREAS, the parties wish to have Employee perform the services of Interim Deputy City Manager, while the City conducts its recruitment for a permanent Deputy City Manager, and will terminate such services upon the City’s selection and hiring of a permanent Deputy City Manager; and

WHEREAS, the City is actively conducting a recruitment for a permanent Deputy City Manager;
and

WHEREAS, Government Code sections 7522.56 and 21221(h) permit retired annuitants under the California Public Employees’ Retirement System (“CalPERS”) to be employed without reinstatement from retirement upon appointment by a public agency to fill a vacant position on an interim basis during the recruitment to permanently fill the vacant position, if approved by the City Council; and

WHEREAS, Employee has served as a City Manager and in various other management positions with over forty years of Municipal experience, and those specialized skills are necessary to support the continuing operations of the City during the recruitment; and

WHEREAS, the City wishes to establish the terms and conditions of Employee’s services to the City through this Agreement, in compliance with Government Code sections 7522.56 and 21221(h).

NOW, THEREFORE, in consideration of the mutual covenants contained herein, City and Employee hereby agree as follows:

AGREEMENT

1.0 EMPLOYMENT & DUTIES

1.1 Duties. City hereby employs Employee as Interim Deputy City Manager for the City to perform the functions and duties of the Deputy City Manager and shall temporarily perform the functions of this position, which is a position involving highly-specialized and critically-needed skills as set forth in state law. Such employment is “at-will,” subject to the terms of this Agreement, and Employee shall perform said duties at the pleasure of the City Manager.

1.2 Work Schedule. Employee’s work hours under this Agreement will be on a part-time basis and generally limited to normal business hours of the City (Monday through Thursday, from 8:00 a.m. to 6:00 p.m., and Fridays from 8:00 a.m. to 5:00 p.m.). Employee and the City Manager will mutually agree to a schedule to meet the needs of the City. Employee will be required to keep accurate time records of his hours worked and be enrolled in the myCalPERS system as a retired annuitant to ensure that he does not exceed 960 hours worked within the fiscal years that occur during the term of this Agreement. In the position of Interim Deputy City Manager, work before or after normal business hours may be required. Employee shall attempt to flex his hours (starting late or ending early or scheduling time off during the week), so that he does not work over 40 hours in a workweek. If Employee determines that work over 40 hours in a workweek is required, Employee is required to notify the City Manager in advance, so that the matter may be reviewed as deemed necessary. Employee’s workweek begins/ends halfway through the workday on Fridays.

1.3 Employment Status. Employee shall serve at the will and pleasure of the City Manager and understands he is an "at-will" employee subject to summary dismissal without any right of notice or hearing, including any “*Skelly*” hearing. City may terminate the employment of Employee at any time, as set forth in Section 2.2 below. Employee will not acquire a property interest in the position of Interim Deputy City Manager. Employee is a temporary employee employed to perform specialized services in accordance with Government Code sections 7522.56 and 21221(h).

2.0 TERM

2.1 Term. This Agreement shall become effective upon the date executed both by Employee and the Mayor, following approval by the City Council. Employee shall commence the performance of his duties under this Agreement on June 7, 2023 (“Commencement Date”). This Agreement shall expire as of the first of the following to occur: (i) upon the employment commencement date of a permanent Deputy City Manager; (ii) upon Employee working 960 hours combined for any CalPERS Agencies during fiscal year 2023-2024 or 960 hours in any subsequent fiscal year; or (iii) upon termination of the Agreement by either Employee or the City as provided below.

2.2 Termination by City or Employee. The City may terminate this Agreement at any time with or without cause and with or without notice. At the time of termination, Employee shall not be entitled to any pay or benefits, except that which is owed for those hours already worked. Additionally, Employee may terminate this Agreement at any time

with or without cause, provided, however he shall reasonably provide the City with at least two (2) weeks' advance written notice prior to the effective date of termination, if practicable, unless a shorter period is acceptable to the City.

2.3 Transfer of Responsibilities. After Notice of Resignation or Termination, Employee shall cooperate with the City, as requested by the City, to effect a transition of Employee's responsibilities and duties and to ensure that the City is aware of all matters being handled by Employee.

2.4 No Reappointment or Extension of Term. In accordance with state law and the requirements of the PERL, Employee may only be appointed to this position one time (single appointment).

3.0 COMPENSATION AND REIMBURSEMENT

3.1 Compensation and Compensation Cap. For the services rendered pursuant to this Agreement, City agrees to pay Employee as employee's sole compensation, the amount of \$99.1501 per hour, which amount is in conformance with the requirements of Government Code Section 7522.56(d). The hourly rate is not more than the maximum nor less than the minimum monthly base salary paid to other employees performing comparable duties as listed on the City's publicly approved pay schedule, reflected as an hourly rate by dividing the monthly base pay of \$17,186 by 173.333. Because Employee is paid on an hourly basis, and in accordance with the FLSA, if Employee works over 40 hours per workweek, Employee will be paid for additional hours at the legally required overtime rate.

3.2 No Other Benefits. Employee shall not receive any benefits, incentives, compensation in lieu of benefits, or any other forms of compensation.

3.3 Reimbursable Expenses. Employee shall be entitled to reimbursement of mileage for driving required in the course of his work (not commuting), in accordance with City policies for all employees. Employee shall not be entitled to reimbursement for any other costs or expenses incurred in the performance of Employee's duties under this Agreement, unless said costs and expenses have received prior approval by the City Council, and are supported by written documentation in accordance with the established policies and customary practices of the City.

4.0 CONDITIONS OF EMPLOYEE'S SERVICES AND ACKNOWLEDGMENT OF NO BENEFITS

4.1 Conflicts Prohibited. During the term of this Agreement, Employee shall not engage in any business or transaction or maintain a financial interest which conflicts, or reasonably might be expected to conflict, with the proper discharge of Employee's duties under this Agreement. Employee shall comply with all requirements of law, including but not limited to, Sections 87100 *et seq.*, Section 1090 and Section 1125 of the Government Code, and all other similar statutory and administrative rules.

4.2 Provision of Benefits Prohibited. Employee is a CalPERS retiree and will thus not be enrolled in CalPERS, other than as a retired annuitant solely for administrative recording keeping purposes (Employee will remain in retired status) and will report both the hours worked by Employee and pay pursuant to this Agreement. Employee understands and acknowledges that Government Code Section 21221(h) provides that a retired annuitant appointed to a vacant position pursuant to this subdivision shall not receive any benefits, incentives, compensation in lieu of benefits, or any other forms of compensation in addition to the hourly rate of compensation. Therefore, Employee will receive only the hourly wages described above, unless otherwise required by applicable law.

5.0 ANNUITANT'S REPRESENTATIONS AND WARRANTIES

5.1 Employee warrants that he has been retired for service, as defined in the Public Employees' Retirement Law, for at least 180 days and that he therefore is eligible to be employed as a retired annuitant by the City.

5.2 Employee represents that he is currently not employed by any other CalPERS employer and has not worked for any other CalPERS employers this fiscal year. The City has no way of monitoring the hours that Employee works for another CalPERS employer. As such, it is Employee's responsibility to ensure that the total hours worked for the City and any other CalPERS employer do not exceed 960 hours during any fiscal year. Employee agrees to notify the City if he comes within 40 hours of the cap.

5.3 Employee warrants that he has not received any unemployment insurance compensation arising out of prior public employment during the prior 12-month period prior to appointment.

6.0 BONDS AND INDEMNIFICATION

6.1 Indemnification. For the purposes of indemnification and defense of legal actions, Employee shall be considered an employee of the City and entitled to the same rights and subject to the same obligations as are provided for all other employees of the City, as required by the Government Code. Accordingly, to the extent mandated by the Government Code, the City shall defend, hold harmless, and indemnify Employee against any tort, professional liability, claim or demand, or other legal action arising out of an alleged act or omission occurring within the course and scope of Employee's services under this Agreement, subject to the exceptions and exclusions provided by law.

6.2 Bonds. City shall bear the full cost of any fidelity or other bonds, which may be required in the performance of Employee's services under this Agreement.

7.0 NOTICES

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

To City:

City Council
City of Lake Forest
100 Civic Center Drive
Lake Forest, CA 92630

To Employee:

Donald J. White
ADDRESS ON FILE

Notices shall be deemed given as of the date of personal service or upon the date of deposit in the course of transmission with the United States Postal Service.

8.0 GENERAL PROVISIONS

8.1 Entire Agreement. This Agreement represents the entire agreement between the parties and supersedes any and all other agreements, either oral or in writing, between the parties with respect to Employee's employment by City and contains all of the covenants and agreements between the parties with respect to such employment. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by either party, or anyone acting on behalf of either party, which are not embodied herein, and that no other agreement, statement or promises not contained in this Agreement shall be valid or binding upon either party.

8.2 Assignment. This Agreement is not assignable by either the City or Employee.

8.3 Severability. In the event 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 this Agreement shall remain in full force and effect unless the parts found to be illegal or void are wholly inseparable from the remaining portions of this Agreement.

8.4 Effect of Waiver. The failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

8.5 Governing Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of California, which are in full force and effect as of the date of execution. Any action to interpret or enforce the terms of this Agreement

shall be held exclusively in a state court in Orange County, California. Employee expressly waives any right to remove any such action from Orange County.

8.6 Effective Date. This Agreement shall become effective June 7, 2023, provided that by such date it has been approved by the City Council and signed by Employee and the Mayor.

8.7 Effect of Agreement on Employee's CalPERS Retirement Benefits. City and Employee make this Agreement in compliance with applicable law for the hiring of a retired annuitant without reinstatement from retirement. However, the ultimate determination of this matters rests with CalPERS, and as such the City makes no representation on the impact, if any, this Agreement shall or may have upon his CalPERS retirement benefits, status, duties, and/or obligations. Employee acknowledges that in entering into this Agreement, he has not relied upon any such representations (none of which being in existence) in assessing the CalPERS-related impact of his employment. Therefore, Employee releases the City from any and all related claims or liabilities that may arise in connection with his employment pursuant to this Agreement.

8.8 Interpretation. This Agreement shall not be construed against the party or its representatives who drafted it or who drafted any portion thereof.

8.9 Authority. The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

8.10 Independent Legal Advice. City and Employee represent and warrant to each other that each has received legal advice from independent and separate legal counsel with respect to the legal effect of this Agreement, or have voluntarily chosen not to consult legal counsel, and, City and Employee further represent and warrant that each has carefully reviewed this entire Agreement and that each and every term thereof is understood and that the terms of this Agreement are contractual and not a mere recital.

[Signatures on following page]

IN WITNESS WHEREOF, the City of Lake Forest has caused this Agreement to be signed and executed on its behalf by its Mayor, and duly attested by its officers thereunto duly authorized, and Employee has signed and executed this Agreement, all in triplicate.

CITY OF LAKE FOREST

Dated: _____

Doug Cirbo
Mayor

ATTEST:

Lisa Berglund
City Clerk

APPROVED AS TO FORM:

Matthew E. Richardson
City Attorney

EMPLOYEE

In signing this Agreement, Employee understands and agrees that he is an **at-will, temporary employee**, that his rights to employment with the City are governed by the terms and conditions of this Agreement rather than the ordinances, resolutions, and policies of the City which might otherwise apply to classified or other employees of the City and that he fully understands and agrees to all of the terms set forth in this Agreement. Further, Employee hereby certifies to the City of Lake Forest that he has not received unemployment insurance payments within the past 12 months arising from work performed as a retiree for any public employer. Employee further acknowledges that he was given the opportunity to consult with an attorney prior to signing this Agreement.

Dated: _____

Signed: _____
Donald J. White
Employee