

CITY MANAGER EMPLOYMENT AGREEMENT

THIS AGREEMENT is between the City of El Paso de Robles, a municipal corporation (the “City”) and Ty Lewis (“Employee”). It is effective as of August 22, 2021 (the “Effective Date”). City and Employee are sometimes referred to in this Agreement as “Party” and collectively as “Parties.”

This Agreement is entered into on the basis of the following facts, among others:

- A. Employee has been employed by the City’s Police Department as Police Chief.
- B. The City Council of the City desires to appoint Employee as the City Manager of the City, and Employee desires to accept this appointment.
- C. The City and Employee desire to establish specific terms and conditions relating to compensation and benefits, performance evaluations, and related matters.

BASED UPON THE FOREGOING, THE CITY AND EMPLOYEE AGREE AS FOLLOWS:

1. Employee Appointed. The City appoints and employs Employee as City Manager, and Employee accepts the appointment and employment, effective August 22, 2021.

2. Duties of Employee. Employee shall perform the duties established for the City Manager by State law, the Paso Robles Municipal Code, the City Manager job description, the directions of the City Council, or as otherwise provided by law, ordinance, or regulation. A copy of the City Manager job description is attached hereto as Exhibit A and may be amended by the Council from time to time. By direction of the City Council and until further notice, the City Manager’s duties also include serving as the Executive Director of the Successor Agency to the City of Paso Robles Redevelopment Agency and any similar City of Paso Robles agencies, if any. In accordance with City procedures, Employee shall account for his time expended on behalf of said agencies in order for the City to be reimbursed for Employee’s services.

(a) Full Energy and Skill. Employee shall faithfully, diligently, and to the best of Employee’s abilities, perform all duties that may be required under this Agreement. Employee agrees that Employee has a duty of loyalty and a general fiduciary duty to the City. Employee shall devote the whole of Employee’s working time, skill, experience, knowledge, ability, labor, energy, attention and best effort exclusively to the City’s business and affairs.

(b) No Conflict. Employee shall not engage in any employment, activity, consulting service, teaching, or other enterprise, for compensation or otherwise, which is actually or potentially in conflict with, inimical to, or which interferes with the performance of Employee’s duties. Further, Employee shall not, during the term of this Agreement, individually, as a partner, joint venture, officer, or shareholder, invest or participate in any business venture conducting business in the corporate limits of the City of Paso Robles.

Exhibit A

(c) Outside Activities. The City Manager shall not spend more than eight (8) hours per month in teaching, consulting, expert witness testimony, speaking, or other non-City connected business for which compensation is paid without express prior consent of the City Council. City Manager will take personal leave (i.e., vacation time) for all outside activities of this nature.

(d) Hours of Work. The City Manager is an exempt employee and is expected to engage in those hours of work that are necessary to fulfill the obligations of the City Manager's position. Employee does not have set hours of work, as the City Manager is expected to be available at all times, other than when on vacation. It is recognized that Employee must devote a great deal of time to the business of the City outside of the City's customary office hours, and to that end Employee's schedule of work each day and week shall vary in accordance with the work required to be performed and in accordance with any specific direction provided by the City Council.

(e) Proximity to City. In order to facilitate Employee's ability to carry out the responsibilities set forth in this Agreement, City desires, and Employee agrees, that during the term of this Agreement, he shall resident within a thirty (30) minute drive of the Emergency Operations Center at 900 Park Street.

3. Term. City agrees to employ and Employee accepts employment with the City under the terms of this Agreement or until Employee's employment is terminated by either party in accordance with the provisions set forth in Paragraph 8 or by the event of the death or permanent disability of Employee.

4. Initial and Annual Evaluations. On or about the end of the first six months of Employee's employment, Council shall conduct an evaluation of Employee's performance and provide guidance and direction regarding the City Council's goals and objectives which Employee shall be tasked with implementing. In addition, each year on or about the anniversary of the Effective Date, or at a time mutually agreed upon by the City Council and Employee, the City Council shall conduct an evaluation of Employee's performance and provide guidance and direction regarding the City Council's goals and objectives which Employee shall be tasked with implementing. Employee shall be provided a written report of the Council's evaluation and shall be given the opportunity to confidentially discuss the evaluation with the Council in accordance with the Ralph M. Brown Act. Nothing in this paragraph prohibits the City Council from conducting additional formal performance evaluations when deemed appropriate or from providing informal feedback to Employee regarding his performance.

5. Compensation.

(a) Salary. Employee shall receive the base annual salary of Two Hundred Twenty-One Thousand Dollars (\$221,000), payable in this Agreement on a pro-rata basis in the same manner as all full-time City employees, and subject to all applicable payroll taxes and withholdings.

(b) Annual Salary Adjustments. Subject to and conditioned upon a fully satisfactory performance evaluation, Employee shall receive a 3.5% salary adjustment effective the first full payroll period in September 2022. In addition, commencing September 2023, at the

Exhibit A

City Council's sole discretion, salary adjustments may be given to Employee at or around the time of the annual review and evaluation by the City Council.

(c) Reduction in Salary or Benefits. In the event the City implements cost-saving measures, such as work furloughs, salary reductions, changes to health or welfare benefits and allowances (as defined in Section 6), or any other changes to the monetary terms of the Unrepresented, Confidential, Professional and Management Group ("Executive Management Group") as provided in the applicable benefit summary, Employee will receive the same downward adjustment or adhere to the change in terms as are applicable to the Executive Management Group. In the event that such cost-saving measures are subsequently eliminated (i.e. former salary or benefit levels are restored) for the Executive Management Group, Employee will receive the same restoration of salary or benefits as the Executive Management Group.

6. Regular Benefits and Allowances. As a general rule, Employee will be eligible for, and shall receive, all regular health and welfare benefits (e.g., insurance, CalPERS retirement and contributions paid by the City, Social Security, education reimbursement, etc.) as are provided to employees of the City's Executive Management Group, subject to the contribution amounts applicable to the Executive Management Group.

Nothing shall prevent the City Council from providing Employee benefits in addition to those provided to the Executive Management Group. To the extent there is any inconsistency between the benefits available to the current Executive Management Group and this Agreement, the terms of this Agreement shall control.

7. Additional Benefits and Allowances. In addition to the benefits specified in Section 6, Employee shall receive the following additional benefits and allowances.

(a) Vacation; Administrative Leave; Sick Leave; Holidays.

(i) Vacation. Based on his years of service for the City, Employee shall accrue vacation hours in accordance with the accrual rate as set forth in the benefit summary for the Executive Management Group. The maximum accrual of vacation leave shall be two times the Employee's annual maximum. Accrual will cease once the maximum accrual has been reached.

(ii) Administrative Leave. At the beginning of each calendar year, Employee shall have Fifty-Six (56) hours of administrative leave to be used at Employee's discretion, subject to the fulfillment of Employee's duties. Any unused administrative leave remaining at the end of the calendar year will be paid to Employee at the end of the calendar year at his then-current rate of pay; provided however, that if the treatment of accrued administrative leave for the Executive Management Group is changed, such change shall automatically also apply to Employee. Because of Employee's existing position, he has already been provided with administrative leave for the 2021 calendar year.

(iii) Sick Leave. In accordance with California law, Employee shall be allowed to accrue and use paid sick leave and be absent from work because of personal

Exhibit A

illness/injury or the illness/injury of covered family members (as identified in California Labor Code). Sick leave includes attendance at doctor's appointments, related medical activities, or other reasons allowed by applicable law. Employee shall accrue and use sick leave in the same manner and in the same amount as that provided to employees in the Executive Management Group.

(iv) Holidays. After the Effective Date of this Agreement, Employee shall be eligible for holidays with pay as a non-safety management employee as set forth in the benefit summary for non-safety employees in the Executive Management Group. Because, as Police Chief, Employee was provided a safety holiday bank at the beginning of the calendar year, he will be paid for the six (6) holidays that have occurred thus far this calendar year at eight (8) hours per holiday. Payment will occur on September 10, 2021 at the rate in effect at the time the holidays were earned. After the Effective Date of this Agreement, holidays will be provided as outlined for management non-safety employees of the Executive Management Group.

(b) Automobile. Employee's duties require that he have the use of a personal automobile at all times during his employment with the City. In recognition of that fact, Employee shall receive a car allowance of \$230.77 each completed pay period. The parties intend for this taxable allowance to be in lieu of reimbursement on an itemized basis for mileage, gas, insurance, maintenance of a vehicle, etc. Employee is not eligible for and shall not be separately reimbursed for mileage driven in his personal vehicle. Employee shall be responsible for maintaining liability, property and comprehensive insurance on his personal vehicle.

(c) Longevity Pay. Regardless of Employee's CalPERS status (whether considered Tier 1 or Tier 2), Employee is not eligible for and will not receive any longevity pay from the City.

(d) Deferred Compensation. Subject to any limitations imposed by law and by the City's 457 plan, the City will contribute, on the employee's behalf, \$369.23 each completed pay period to Employee's deferred compensation account. Employee is responsible to ensure that Employee's contribution and the City's contribution meet Internal Revenue Code Section 457 deferred compensation program requirements.

8. Termination of Employment.

(a) No Property Interest. Employee understands and agrees that Employee has no constitutionally-protected property or other interest in Employee's employment as City Manager. Employee understands and agrees that Employee works at the will and pleasure of the City Council, and that Employee may be terminated, or asked to resign, at any time, with or without cause, by a majority vote of its members. Any such notice of termination or act constituting termination shall be given at or effectuated at a duly noticed regular or special meeting of the City Council.

(b) Termination Immediately Before or Following City Council Election. No action by the City Council to terminate Employee, other than for gross mismanagement or an act of moral turpitude (as described in Section 8(e)), will be made within ninety (90) days either before or immediately following election or appointment of one or more

Exhibit A

City Council members. Nothing in this paragraph alters the “at will” status of Employee’s employment with City.

(c) Notice Required of Employee. Employee may voluntarily terminate employment at any time by giving not less than sixty (60) days’ notice.

(d) Severance. If Employee is asked to resign or is terminated as City Manager, then Employee shall be paid for any accrued, but unused, vacation and/or administrative leave, but not accrued sick leave. Employee shall also be eligible to receive two severance benefits: first, a cash payment equivalent to the sum of Employee’s then-current monthly base salary multiplied by six (6) months; and second, continuation of Employee’s monthly COBRA-eligible health benefits, at then-current levels, multiplied by six (6) months, and subject to Employee’s required contribution(s), if any. Eligibility for severance benefits is expressly conditioned upon Employee’s execution of (i) a waiver and release of any and all of Employee’s claims against City, its Councilmembers, officers, and employees, and (ii) a covenant not to sue any of those parties.

The cash payment will be made on a prorated, monthly basis over the number of months involved. All normal payroll taxes and withholdings as required by law shall be made with respect to any amounts paid under this section. Employee expressly agrees to provide notice to the City within two (2) business days of accepting employment elsewhere, and the City’s obligation to pay for any further health benefits shall terminate upon Employee’s acceptance of such alternative employment.

(e) Ineligibility for Severance Under Certain Conditions. If the termination of Employee is the result of malfeasance, gross mismanagement, and/or an act or acts of moral turpitude, Employee shall not be paid any severance pay except as provided in the remainder of this subsection. In such an instance, Employee’s sole remedy shall be a judicial action in declaratory relief to determine whether there was substantial evidence of gross mismanagement and/or an act or acts of moral turpitude. If the court determines there was not substantial evidence, Employee shall receive the severance pay provided in this subsection, but no other damages or litigation expenses.

9. Statutory Requirements. This Agreement shall be deemed to incorporate by reference the provisions of Sections 53243 *et seq.* of the Government Code, as those provisions may be amended or renumbered.

10. Payment of Expenses of Employment. The City shall pay the following usual and customary employment expenses.

(a) The cost of any fidelity or other bonds required by law for the City Manager position.

(b) The cost to defend and indemnify Employee to the full extent of the law as provided by the California Government Claims Act (Government Code §810 *et seq.*), or otherwise. Notwithstanding the foregoing, the City’s obligation to defend and indemnify

Exhibit A

Employee shall extend only to the entry of a final judgment by the trial court, and shall not extend to providing defense or indemnity in connection with an appeal of the judgment, unless otherwise specifically provided by law. City will determine, in its sole discretion, whether to compromise and settle any such claim or suit against Employee and the amount of any settlement or judgment rendered thereon.

(c) Subject to Budget Approval, reasonable dues for Employee's membership in professional organizations associated with the office of City Manager as well as the cost of attending conferences or other events (i.e. retirement dinners, out-of-town meetings, professional seminars, etc.) necessary for the proper discharge of Employee's duties. The City will allow Employee reasonable time away from the City to participate in the annual conferences of these organizations. The City will not reimburse Employee for any expenses related to membership in service clubs.

11. Miscellaneous.

(a) Notices. Notices given under this Agreement shall be in writing and shall be:

- (i) served personally; or
- (ii) sent by facsimile (provided a hard copy is mailed within one (1) business day); or
- (iii) delivered by first-class United States mail, certified, with postage prepaid and a return receipt requested; or
- (iv) Sent by Federal Express, or some equivalent private overnight delivery service.

Notices shall be deemed received at the earlier of actual receipt or three (3) days following deposit in the United States mail, postage prepaid. Notices shall be directed to the addresses shown below, provided that a party may change such party's address for notice by giving written notice to the other party in accordance with this subsection.

CITY:

City of Paso Robles
Attn: Mayor
1000 Spring Street
Paso Robles, CA 93446
Phone: (805) 237-3888
Fax: (805) 237-4032

EMPLOYEE:

Ty Lewis
Address Last on File with City

Exhibit A

(b) Compliance with Government Code §§53243, 53243.1, & 53243.2. If Employee is convicted of a crime involving an abuse of Employee's office or position, all of the following shall apply:

(i) If Employee is provided with administrative leave pay pending an investigation, Employee shall be required to fully reimburse City for such amounts paid;

(ii) If City pays for the criminal legal defense of Employee (which would be in its sole discretion, as it is not generally required to pay for a criminal defense), Employee shall be required to fully reimburse City such amounts paid; and

(iii) If this Agreement is terminated based on actions underlying such conviction, any cash settlement related to the termination that Employee may receive from City shall be fully reimbursed to the City by Employee or void if not yet paid to Employee.

(iv) For this subsection, "abuse of office or position" means either (a) an abuse of public authority, including waste, fraud, and violation of the law under color of authority, or (b) a crime against public justice, including but not limited to a crime described in Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

(c) Entire Agreement/Amendment. This Agreement constitutes the entire understanding and agreement between the parties as to those matters contained in it, and supersedes any and all prior or contemporaneous agreements, representations and understandings of the parties. This Agreement may be amended at any time by mutual agreement of the parties, but any such amendment must be in writing, dated, and signed by the parties and attached hereto.

(d) Attorney's Fees. Except as provided elsewhere in this Agreement, if any legal action or proceeding is brought to enforce or interpret this Agreement, the prevailing party, as determined by the court, shall be entitled to recover from the other party all reasonable costs and attorney's fees, including such fees and costs as may be incurred in enforcing any judgment or order entered in any such action.

Nothing in this subsection shall be read to prevent the parties from agreeing to some alternative method of dispute resolution. If such a method is agreed to, any final determination shall include an award of attorney's fees and costs by the presiding officer.

(e) Severability. In the event any portion of this Agreement is declared void, such portion shall be severed from this Agreement and the remaining provisions shall remain in effect, unless the result of such severance would be to substantially alter this Agreement or the obligations of the parties, in which case this Agreement shall be immediately terminated.

(f) Waiver. Any failure of a party to insist upon strict compliance with any term, undertaking, or condition of this Agreement shall not be deemed to be a waiver of such term, undertaking, or condition. To be effective, a waiver must be in writing, signed and dated by the parties.

Exhibit A

(g) Representation by Counsel; No Presumption of Drafter. The parties acknowledge and agree that they were, or had the opportunity to be, represented individually by legal counsel with respect to the matters that are the subject of this Agreement and that they are fully advised with respect to their respective rights and obligations resulting from signing this Agreement. The Parties further agree that this Agreement shall not be interpreted or construed against or in favor of either Party by reason of who caused this Agreement to be drafted and that this Agreement is the product of the representation of each Party by independent legal counsel.

(h) Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Employee and City agree that venue for any dispute shall be in San Luis Obispo County, California.

(i) Section Headings. The headings on each of the sections and subsections of this Agreement are for the convenience of the parties only and do not limit or expand the contents of any such section or subsection.

(j) No Assignment. Employee may not assign this Agreement in whole or in part.

[Signatures on following page]

Exhibit A

Dated: Aug 25, 2021

CITY OF EL PASO DE ROBLES

By Steven W. Martin
Steven W. Martin (Aug 25, 2021 18:05 PDT)
Steven Martin, Mayor

Dated: _____

EMPLOYEE

Ty Lewis 8/13/2021
Ty Lewis

Attest:

Melissa Boyer
Melissa Boyer,
City Clerk

Approved as to Form:

Elizabeth Wagner Hull
Elizabeth Wagner Hull (Aug 23, 2021 13:24 PDT)
Elizabeth Hull
City Attorney












Ty Lewis Employment Agreement

Final Audit Report

2021-08-26

Created:	2021-08-23
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