

AGREEMENT OF EMPLOYMENT BETWEEN THE MANAGEMENT OF EMERYVILLE SERVICES AUTHORITY AND ADAM POLITZER

THIS AGREEMENT OF EMPLOYMENT ("Agreement") is entered into effective the 1st day of August 2022 (the "**Effective Date**"), by and between the **MANAGEMENT OF EMERYVILLE SERVICES AUTHORITY**, hereinafter referred to as the "**Authority**", and Adam Politzer, sometimes hereinafter referred to as the "**Interim City Manager**," and collectively the "**Parties**."

Recitals

WHEREAS, the Authority desires to retain an Interim City Manager to serve on a limited term basis, as it conducts a recruitment for a permanent City Manager; and

WHEREAS, pursuant to Government Code sections 7522.56(c) and 21221(h), the Authority finds that specialized knowledge, skills, and training are necessary to render the services necessary to do the work contemplated under this Agreement; and

WHEREAS, the Authority has determined that Adam Politzer, a California Public Employees' Retirement System (CalPERS) retiree, is qualified by training and experience to render such services; and

WHEREAS, Adam Politzer desires to provide such services; and

WHEREAS, the public interest will be served by this Agreement; and

NOW, THEREFORE, the Parties hereto do mutually agree as follows:

Section 1. Duties

The Authority agrees to employ Adam Politzer to serve as the Interim City Manager of the City of Emeryville, Interim City Manager of the City of Emeryville Successor Agency, Interim Executive Director of the Emeryville Public Financing Authority, Interim Executive Director of the Emeryville Community Development Commission, and Interim Executive Director of the Authority to perform the functions and duties as specified by the ordinances of the City of Emeryville as such ordinances may be amended from time to time, and to perform other legally permissible and proper duties and functions as the City Council, Successor Agency, Financing Authority, Development Commission and Authority shall from time to time assign. The Interim City Manager agrees that, to the best of his ability and experience, he will, at all times, loyally and conscientiously perform all of the duties and obligations required of him, either expressly or implicitly by the terms of the Agreement.

Section 2. Term

Subject to earlier termination as provided for in this Agreement, the Interim City Manager shall be retained by the Authority to perform the duties described in Section 1 above for a period commencing August 1, 2022 and ending when a permanent City Manager assumes office; and agrees to remain in the employ of the Authority during the term of this Agreement.

Section 3. At-Will

During the term of this Agreement, Interim City Manager understands and acknowledges that he is an at-will employee of the Authority and therefore may be terminated by the Authority without cause in accordance with the termination provision set forth in Section 4 below.

Section 4. Termination and Severance Pay

A. Termination By Authority. Termination of this Agreement shall require three affirmative votes of the Authority Board of Directors and upon giving 14 days' prior notice to the Interim City Manager.

B. Termination By Interim City Manager or Expiration of Term. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Interim City Manager to resign at any time from his position, provided however, he shall endeavor to give at least 14 days' prior written notice to the Authority.

Section 5. Salary

The Authority agrees to pay the Interim City Manager for his services rendered at a monthly salary of \$19,377 which equates to an hourly rate of **One Hundred and Eleven Dollars and Seventy-nine Cents (\$111.79)** for an average of 40 hours per week worked, payable in installments at the same time as other employees of the Authority are paid. Consistent with the requirement of Government Code sections 21221(h) and 7522.56(d), this hourly rate is not more than the maximum, nor less than the minimum, monthly base salary paid to other previous employees performing comparable duties as listed on a publicly available pay schedule for the City Manager position, divided by 173.333.

Section 6. Sick Leave, Holidays and Vacation; Public Employees Retirement System

The Interim City Manager acknowledges and agrees that during the term of this Agreement, he will not accrue nor be entitled to vacation, sick, or administrative leave. Nor shall he accrue retirement, pension system contributions or health care benefits, including coverage under the California Public Employee Retirement System, or other fringe benefits provided to City employees. The Interim City Manager recognizes that Government Code section 21221(h) provides that a retired person appointed to a vacant position pursuant to that subdivision may not receive any benefits, incentives, compensation in lieu of benefits, or any other forms of compensation in addition to the hourly rate.

Section 7. Business Expenses

The Authority agrees to budget and allocate sufficient funds to pay for City related business expenses of the Interim City Manager. This shall include, but not necessarily be limited to, Interim City Manager's necessary membership dues, and travel expenses while representing the Authority at local and regional conferences and meetings of committees or commissions upon which the Office of the City Manager serves as a member, said membership of said committees or commissions being subject to the approval of the Authority, and for such other official meetings and/or travel as are reasonably necessary for the Interim City Manager to carry out his professional responsibilities.

Section 8. Indemnification

Except as set forth in Paragraphs 13 and 14 below, the Authority shall defend, hold harmless and indemnify the 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 during the course and scope of the performance of the Interim City Manager's duties.

Section 9. Bonding

The Authority shall bear the full cost of any fidelity or other bonds required of the Interim City Manager under any law or ordinance.

Section 10. Abuse of Office

If the Authority provides (i) paid leave salary to the Interim City Manager pending an investigation, or (ii) funds for the legal criminal defense of the Interim City Manager, then in the event the Interim City Manager is convicted of a crime involving an abuse of his office or position as defined in California Government Code Section 53243.4, all such sums paid by the Authority to the Interim City Manager or for the City Manager's benefit shall be fully reimbursed to the Authority by the Interim City Manager.

Section 11. Certification Regarding Prior Unemployment Benefits

In accordance with Government Code section 7522.56(e)(1), Politzer certifies and warrants to Authority that he has not received any unemployment insurance payments for retired annuitant work for any public employer within the twelve months prior to his appointment date under this Agreement.

Section 12. Adequate Retirement Period

In accordance with Government Code section 7552.56(f), Politzer warrants to City that a period of 180 days or more has passed since the date of his most recent retirement with CalPERS.

Section 13. Effect of Agreement on CalPERS Retirement Benefits

The Authority makes no representation on the impact, if any, this Agreement shall or may have upon Politzer's CalPERS retirement benefits, status, duties and/or obligations. Politzer acknowledges that in entering into this Agreement, he has not relied upon any such representations in assessing the CalPERS-related impact of his employment. Therefore, Politzer releases the Authority from any and all CalPERS-related claims or liabilities that may arise in connection with his employment pursuant to this Agreement.

Section 14. Work Restrictions

Due to his status as a CalPERS retiree, Politzer may not work more than 960 hours for all public agencies contracting with CalPERS within the fiscal year(s) occurring during the term of this Agreement without impacting his retirement benefits and having to be reinstated in CalPERS as an active employee. Accordingly, under no circumstances may Politzer work more than 960 hours during any fiscal year, defined as the period beginning July 1st and ending June 30th of each year, including any service to other CalPERS employers. Politzer shall keep accurate time records of his hours worked to ensure that he does not exceed 960 hours within any fiscal year that occurs during the term of this Agreement and for payroll purposes. Politzer further represents that he will not perform work for any other public agency member of CalPERS during the term of this Agreement. If a controversy arises between Politzer and CalPERS regarding the impact of this Agreement and the services provided for herein on the nature of CalPERS retirement terms or benefits, the City shall have no obligation to intervene in or to defend or prosecute such dispute.

Section 15. Other Terms and Conditions of Employment

The Board of Directors, in consultation with the Interim City Manager, shall fix any such other terms and conditions of employment as it may determine from time to time, relating to the performance of the Interim City Manager, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, City ordinances, or any other law.

Section 16. No Reduction of Salary

The Authority shall not, at any time during the term of this Agreement, unilaterally reduce the salary of the Interim City Manager.

Section 17. Notices

Notices pursuant to Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid. Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

Section 18. Mediation

The Parties agree that, if a dispute arises between them that in any way relates to this Agreement, the terms of this Agreement, or the performance by either party under this Agreement, such dispute shall, after the claims procedures that may be applicable under the California Government Tort Claims Act are exhausted, be submitted to mediation. If such dispute proceeds to litigation, each party shall be responsible for their own attorney fees, costs and expenses. The exclusive venue for any legal action taken pursuant to this Agreement shall be the State of California Superior Court for the County of Alameda or the United States District Court for the Northern District of California.

Section 19. Entire Agreement; Modifications

This Agreement constitutes the complete agreement between the Parties and supersedes any and all other agreements, either oral or in writing, between the Parties with respect to the subject matter of this Agreement. No other agreement, statement or promise relating to the subject matter of this Agreement not contained in this Agreement shall be valid or binding. This Agreement may be modified or amended only by a written document signed by representatives of both Parties with appropriate authorization.

This Agreement is executed by the Parties as of the date noted below and effective as of the Effective Date set forth above.

Management of Emeryville Services Authority

Date: 07/22/2022

DocuSigned by:
John Bauters
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John J. Bauters, Chair of Board of Directors

Interim City Manager

Date: 07/21/2022

DocuSigned by:
Adam W. Politzer
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Adam Politzer

Approved As To Form:

DocuSigned by:
John Kennedy
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John Kennedy
General Counsel