

CITY OF SAN LEANDRO

AGREEMENT FOR EMPLOYMENT OF ASSISTANT CITY MANAGER

This Employment Agreement (“Agreement”) is made and entered into this ____ day of _____, 2012, by and between the City of San Leandro (the “CITY”), a charter city, and Lianne Marshall (“ASSISTANT”). CITY and ASSISTANT are together the “Parties.”

RECITALS

WHEREAS, the CITY desires to employ, as an “at-will” employee, the services of ASSISTANT as Assistant City Manager for the CITY in accordance with applicable provisions of the San Leandro City Charter, Municipal Code and the terms of this Agreement; and

WHEREAS, ASSISTANT desires to be employed as the at-will Assistant City Manager for the CITY in accordance with applicable provisions of the City Charter, Municipal Code and the terms of this Agreement; and

WHEREAS, the classification of Assistant City Manager was previously included in the bargaining unit represented by the San Leandro Management Organization (“SLMO”), but the unit was recently modified to remove the Assistant City Manager classification; and consequently the Assistant City Manager classification is no longer represented by SLMO; and

WHEREAS, it is the desire of the CITY to provide certain compensation and benefits; and establish certain conditions of employment for the position of Assistant City Manager through this Agreement.

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

TERMS

1. Appointment

The City Manager hereby appoints ASSISTANT to the position of Assistant City Manager in and for the City of San Leandro California. ASSISTANT hereby accepts such appointment under the terms and conditions of this Agreement.

2. Term of Agreement

This Agreement will become effective on January 1, 2013. The Agreement will expire on December 31, 2017, unless extended or terminated as provided herein. The Parties may terminate this Agreement pursuant to the provisions of Section 6.

3. At-Will Employment

The ASSISTANT is an “at-will” employee who shall serve at the pleasure of the City Manager. Accordingly the City Manager may terminate ASSISTANT’s employment under this Agreement at any time with or without cause.

4. Duties and Responsibilities

a. ASSISTANT shall serve the CITY and perform the functions and duties of the position of Assistant City Manager as specified under the laws of the State of California (including but not limited to the Government Code and the Penal Code); the CITY’s Charter, Administrative Code and Municipal Code; the Ordinances and Resolutions of the CITY; and any other legally permissible and proper duties and functions as the City Manager may from time to time assign.

b. ASSISTANT shall be responsible to the City Manager for the proper performance of all duties and functions assigned to ASSISTANT.

5. Termination of Employment and Severance

a. This agreement may be terminated with or without cause by the City Manager. In the event ASSISTANT is terminated for cause, or voluntarily resigns, she shall not be entitled to severance. For purposes of this Agreement, the phrases “for cause,” “with cause” and “without cause” relate only to ASSISTANT’s potential entitlement to severance, and does not alter her at-will status.

b. Without Cause. In the event ASSISTANT is terminated without cause, she is eligible for severance. If the CITY terminates this Agreement without “cause” before December 31, 2017, ASSISTANT will be compensated for all sick and vacation leave and will be paid in a lump sum in an amount equal to ASSISTANT’s full salary, health benefits and cash benefits for a period of five (5) months from receipt of written termination notice.

c. For Cause. If ASSISTANT is terminated “for cause,” the CITY shall not owe any severance under this Agreement. A termination “for cause” may include, but shall not be limited to, the following:

- (i) Violation of administrative policies and procedures;
- (ii) Failure to properly perform assigned duties;
- (iii) Theft of CITY property;
- (iv) Conviction of a felony;
- (v) Conviction of a crime involving an abuse of office or position, as defined in Government Code Section 53243.4;
- (vi) Improper use of CITY funds or property;
- (vii) Willful misconduct;
- (viii) Any act of dishonesty.

d. Vacation Leave at Termination. ASSISTANT shall receive payment for all accrued unused vacation at the time of her separation from employment.

e. Sick Leave at Termination. Upon separation, sick leave above one year accrual may be converted to cash out or contributed to deferred compensation at a conversion rate of 75% up to a maximum of two years accrual, AND ASSISTANT may convert all or part of the sick leave balance to PERS service credit as provided for under the City's CalPERS contract.

f. Resignation. ASSISTANT shall provide forty-five (45) days notice in the event of a voluntary resignation unless the CITY agrees otherwise.

6. Compensation and Benefits

a. Salary. ASSISTANT shall be paid an annual base salary of one hundred eighty-seven thousand dollars (\$187,000.00; \$15,583 per month), payable on the City-established payroll cycle. Cost of Living Adjustments (COLA) during the term of this agreement shall be made to ASSISTANT's base salary as follows:

January 2013:	0.0%
January 2014:	2.0%
January 2015:	2.5%
January 2016:	3.5%
January 2017:	3.5%

b. Benefits. In addition to the compensation provided above, the CITY agrees to provide the following to ASSISTANT in consideration for the services provided pursuant to this Agreement:

- (i) *Annual Vacation.* ASSISTANT shall accrue vacation leave at the rate of twenty-five days each year (16.66 hours per month). Accumulated vacation leave may be sold back to the CITY in January and July.
- (ii) *Other Benefits.* ASSISTANT shall be provided sick leave, disability benefits, health benefits, holidays, management allowances and incentive pay, retirement benefits, payments provided to management employees and all other benefits currently provided to management employees as they may be amended from time to time, under the same conditions provided to other Department Heads except as otherwise specified in this Agreement.
- (iii) *Retirement Benefits.* ASSISTANT shall be eligible for CalPERS retirement benefits plan of 2.5% @ 55. Pursuant to this Agreement, ASSISTANT agrees to contribute on a pre-tax basis towards the "Employee Contribution" based on the following schedule:

January 2013 – December 2013:	1.0%
January 2014 – December 2014:	1.0%
January 2015 – December 2015:	2.0%
January 2016 – December 2016:	2.0%
January 2017 – December 2017:	<u>2.0%</u>
Full Employee Contribution:	8.0%

- (iv) *Health Benefits.* The CITY agrees to contribute \$1400 per month toward medical, dental and vision benefits for the calendar years of 2013 and 2014; \$1450 per month in 2015; and \$1500 per month for the remainder of the term of the contract. Any remainder of the benefit after paying for medical, dental and vision benefits shall be taken by ASSISTANT as cash in lieu. The parties understand and agree that any portion of the benefit taken by ASSISTANT as cash is not considered to be “PERS-able” compensation.

- c. Compaction. Throughout the life of this Agreement, ASSISTANT’s “PERS-able” compensation shall remain a minimum of 15% above that of a top step CITY Police Captain.

7. Indemnification & Professional Liability

The City agrees that it shall defend, hold harmless, and indemnify the ASSISTANT from all demands, claims, suits, actions, errors, or other omissions in legal proceedings, whether groundless or otherwise, brought against the ASSISTANT in her individual capacity or in her official capacity, provided the incident arose while the ASSISTANT was acting within the scope of her employment, in accordance with the provisions of California Government Code Section 825 and the City will provide a defense in accordance with Government Code Sections 995 – 999.6. The City may decline to defend and/or indemnify Employee only as permitted by the California Government Code.

8. Performance Evaluations

The City Manager shall review and evaluate the performance of ASSISTANT at least once every year. At the time of each evaluation, performance goals shall be discussed that will be used to assist in the evaluation of ASSISTANT’s performance in the future.

9. Miscellaneous

- a. The text herein shall constitute the entire agreement between the Parties. This Agreement may not be modified, except by written agreement executed by both Parties.

- b. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

- c. This Agreement shall be governed by the laws of the State of California.

- d. The Parties agree that any ambiguity in this Agreement shall not be construed or interpreted against, or in favor of, either party.

- e. This Agreement may be executed in counterparts containing original signatures.

- f. This Agreement shall be effective only when and if approved by the City Council.

10. Notices

Notices pursuant to this Agreement shall be in writing and served by mailing via the United States Postal Service, first class postage prepaid, addressed as follows:

- a. The CITY:
City Manager
City of San Leandro
Civic Center
835 East 14th Street
San Leandro, California 94577
- b. ASSISTANT:
Lianne Marshall
Hand-delivered

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

IN WITNESS WHEREOF, the CITY has caused this Agreement to be signed and executed in its behalf by its City Manager and duly attested by its City Clerk, and ASSISTANT has signed and executed this Agreement, on the day and year written below.

ASSISTANT CITY MANAGER

DATED: _____

LIANNE MARSHALL

CITY

DATED: _____

CHRIS ZAPATA
CITY MANAGER

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

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