

INTERIM CITY MANAGER EMPLOYMENT AGREEMENT BETWEEN THE CITY OF SAN BRUNO AND ALEX MCINTYRE

This Employment Agreement ("Agreement") is made as of and entered into as of March 28, 2023 (the "Effective Date") by and between the City of San Bruno, a California municipal corporation ("City"), and Alex McIntyre, an individual.

RECITALS

A. A vacancy exists in the Office of City Manager. City desires to secure the specialized services of a qualified person to serve as Interim City Manager on a temporary, limited-term basis while City seeks to fill the position of City Manager through a recruitment and selection process.

B. Mr. Alex McIntyre represents that he has the requisite education, experience, specialized skills and training and is otherwise qualified to serve as the Interim City Manager.

C. The City desires to employ Mr. Alex McIntyre ("Manager") to serve as the Interim City Manager of the City.

NOW, THEREFORE, in consideration of these recitals and the performance by the parties of the promises, covenants, and conditions herein contained, the City and Manager agree as provided in this Agreement.

1. **Appointment of Interim City Manager.** City does hereby appoint and employ Manager in the capacity of Interim City Manager as of April 15, 2023.

2. **Term.** Unless sooner terminated, the term of this Agreement shall commence on the Effective Date and terminate on August 9, 2023 ("Term"). Thereafter, if the City determines that it is necessary or it desires to extend this Agreement, the City and Manager shall discuss such extension prior to the expiration of the Term.

3. **Duties and Authority.** Manager shall, on an interim basis, exercise the full powers and perform the duties of the position of City Manager of the City of San Bruno, as set forth in the San Bruno Municipal Code, any relevant ordinances, resolutions or regulations, the City Manager job description and under state law, as each of them currently or may in the future exist. Manager shall exercise such other powers and perform such other duties as City Council may from time to time assign. As determined by the City Council, Manager shall serve as representative to any agency or organization to which the City Council may make appointments. Except as otherwise determined by the City Council, Manager shall serve as Interim Executive Director to any agency, authority or similar entity staffed by City.

4. **Obligations.** Manager shall devote his full energies, interest, abilities and productive time to the performance of this Agreement, and utilize his best efforts to promote City's interests. Manager shall not engage in any activity, consulting service or enterprise,

for compensation or otherwise, which is actually or potentially in conflict with or inimical to, or which materially interferes with his duties and responsibilities to City. As set forth in Section 4 of this Agreement, Manager, as the Interim City Manager, shall be exempt from the overtime pay provisions of California law (if any) and federal law and as such is expected to engage in those hours of work that are necessary to fulfill the obligations of the Interim City Manager position. Notwithstanding anything to the contrary in this paragraph, the parties hereby agree that Manager may, at times, be required to attend to obligations related to his role as former City Manager of the City of Ventura, and Manager may attend to such obligations provided that such obligations arose prior to the Effective Date and further provided that such obligations do not have a material negative effect on Manager's obligations to the City, in the sole and absolute discretion of the City Council.

5. Salary and Benefits.

A. Base Salary. Commencing on April 10, 2023 (the "Employment Date"), City shall pay Manager a monthly base salary of \$25,000. No additional housing allowance is provided to Manager. The monthly salary will be prorated and paid on City's normal paydays, subject to legally permissible or required withholding. Manager's salary is compensation for all hours worked and for all services under this Agreement, including those as an Interim Executive Director or involving any other position, office or appointment associated with the City. As stated above, Manager shall be exempt from the overtime pay provisions of California law (if any) and federal law.

B. Benefits.

(1) Limited Fringe Benefit Package. As an interim appointment made pursuant to the terms of this Agreement, Manager will receive only those fringe benefits expressly provided in this Agreement and any others required by law. Without limiting the foregoing, while employed under this Agreement Manager will not be eligible to participate in the following City programs: deferred compensation savings plan (i.e. 457 plan) and the employee home loan assistance program. In addition, Manager will not be provided nor will Manager be reimbursed for: any professional development, including but not limited to professional reference materials, attendance at professional organization meetings and trainings and the like; any additional paid leave of any type (i.e. bereavement, personal, etc.) except as otherwise specifically provided for herein.

(2) Medical, Dental and Vision Plans. The City will provide and Manager may participate in the City's medical program (medical, dental and vision insurance) in an amount equal and on the same basis to that which is provided to other City employees. This includes the ability for Manager to participate in the "opt-out benefit" which is currently \$422.10 per month. In such case, Manager shall be required to provide evidence of health insurance as required by law. Manager may also participate in the City's Flexible Spending Plan. Eligibility and benefits will be as determined by the applicable laws, regulations and plan documents. In the event of a conflict between this Agreement and the applicable laws, regulations and plan documents, the latter shall prevail. The City reserves the right to change or discontinue its benefits programs at any time, to the maximum extent permitted by law.

(3) Long Term Disability and Life Insurance. City shall provide Manager with a long term disability insurance policy and life insurance in an amount equal and on the same basis to that which is provided to other City employees.

(4) Retirement. Manager shall be enrolled under City's retirement plan with PERS pursuant to terms of that plan and applicable state law and regulations. It is the understanding of the parties that Manager will qualify as a "Classic Employee" under the Public Employees' Pension Reform Act of 2013 and will be covered by City's second tier formula of 2.7% @ 55. Manager shall make all member contributions and there will be no employer paid member contributions. In the event of any conflict between this Agreement and the City's PERS contract or the applicable laws and regulations, the latter shall prevail.

(5) Holidays. Manager will be eligible for the same paid holidays as other City employees. To the extent that Manager may work on a holiday, Manager's base salary includes compensation for such work.

(6) Vacation. Manager shall accrue vacation at the rate of 3.078 hours per pay period during the Term of this Agreement. Vacation shall be scheduled with the City Council in advance.

(7) Sick Leave. Manager shall receive an initial allotment of three days of paid sick leave on starting employment. Beginning on the fourth month of employment and thereafter (if applicable), Manager shall accrue one paid sick day per month. Paid sick leave does not accrue and unused paid sick leave is not carried over. Paid sick leave may be used in accordance with the minimum requirements of California law (Labor Code §§ 245 – 249) and as otherwise permitted by Employer. Paid sick leave under this section has no cash value and therefore is not payable upon termination or separation from employment, regardless of the reason for termination or separation.

(8) Business Expenses. City recognizes that Manager may incur certain reasonable job-related expenses of a non-personal nature. City agrees to reimburse or to pay such business expenses incurred by the Manager in the course of his duties. Manager shall submit such expenses according to City's normal expense reimbursement procedures. All expenses must be supported by documentation meeting City's normal requirements and must be submitted within time limits established by City. Job-related expenses shall not include expenses that are characterized as professional development expenses.

(9) Office Equipment. The City shall provide Manager with a City-issued cellular device and laptop device, including business-related software, to maintain communication with the City Council and City staff. Such equipment and software shall remain the sole property of the City and the City reserves the right to monitor the use of its equipment. Manager agrees that Manager has no privacy rights in the use of such equipment and the equipment shall be returned upon termination or separation from employment.

(10) Personal Vehicle Use. Any rules, policies or practices to the contrary notwithstanding, Manager shall be provided a monthly auto allowance of Three Hundred Dollars (\$300.00) in exchange for making a vehicle available for the Interim City Manager's use for City-related business and/or functions during, before and after normal work hours. Manager shall comply with all City policies related to the use of his own vehicle, which includes providing the City with proof of current automobile insurance with liability limits in the amount set by the City.

(11) Management Leave. Manager shall be granted 10 hours of Management Leave each month Manager is employed under this Agreement and the initial month shall be prorated based on the Employment Date. Manager shall have the option of cashing out up to 10 hours of Management Leave within 7 days of the end of previous month. Upon termination or separation, however, any unused Management Leave or Management Leave that was not previously cashed out, will have no cash value and therefore is not payable upon termination or separation from employment, regardless of the reason for termination or separation. Except as otherwise provided for herein, Management Leave will be forfeited if not used.

(12) Deferred Compensation Savings Plan. The City Manager may voluntarily participate in the City's deferred compensation savings plan (also known as a "457" plan) that is offered to other City employees in accordance with the deferred compensation plan participation agreement. Notwithstanding, Manager understands and agrees that the City shall not make any monetary contributions into the plan on behalf of Manager.

(13) Reimbursement of Attendance at City Meeting. In recognition of the value of meeting with the City's executive team and the City's employees prior to the Employment Date, the City shall reimburse the Manager for reasonable expenses in travelling to the City in connection with one single visit to the City, not to exceed a two-night stay, in the same manner and amount as the City reimburses other city employees who travel outside of the City for City business. Manager shall submit such expenses according to City's normal expense reimbursement procedures. All expenses must be supported by documentation meeting the City's requirements and must be submitted within time limits established by City.

(14) Remote Work. City agrees that the Manager may work remotely one day during the work week as long as working remotely does not interfere with the Manager's primary duty as the Interim City Manager and/or City business. Notwithstanding, it is the expectations of the Parties that the Manager intends to use the ability to work remotely sparingly and not on a weekly basis. When working remotely, Manager shall be accessible by phone, email, etc. during business hours.

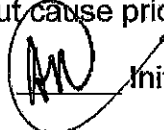
(15) Bonding. City shall bear the full costs of any fidelity or other bonds required of Manager (if any) under any law or ordinance by virtue of his employment as Interim City Manager.

6. **Evaluations.** Manager shall report to and shall be evaluated by the City Council.

7. **Indemnification.** Except as otherwise permitted, provided, limited or required by law, including without limitation California Government Code Sections 825, 995, and 995.2 through 995.8, the City will defend and indemnify Manager, using legal counsel of City's choosing, against legal liability for acts or omissions by Manager occurring in the course and scope of employment under this Agreement. In the event City provides funds for legal criminal defense pursuant to this section and the terms of the Government Code, Manager shall reimburse the City for such legal criminal defense funds if Manager is convicted of a crime involving an abuse of office or position, as provided by Government Code Sections 53243 – 53243.4. Further, in the event Manager is convicted of a crime involving an abuse of office or position, Manager shall reimburse City for any paid leave or cash settlement, as provided by Government Code Sections 53243 – 53243.4.

8. **At-Will Employment Relationship-Termination.**

A. Under the terms of this appointment and California Government Code Section 36507, Manager is appointed by and serves at the pleasure of the City Council and is an "at-will" employee. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City to terminate this Agreement and the employment of Manager at any time, with or without cause, as provided in this paragraph. Accordingly, Manager may be terminated: (i) with cause, at any time, upon written notice, and (ii) without cause, by giving thirty (30) calendar days advance written notice to the Manager, unless the parties mutually agree to waive or alter the time required for such notice. Upon termination, the employment relationship shall end. City shall pay Manager for all services through the effective date of termination and Manager agrees that he shall have no right to any additional compensation or payment. In addition, Manager and City agree that Manager shall not be entitled to any severance payment if this agreement is terminated either with or without cause prior to the end of the Term.



Initialed by Manager

B. Manager may terminate this Agreement by giving thirty (30) calendar days advance written notice to the City Council, unless the parties mutually agree to waive or alter the time required for such notice.

9. **Integration of Agreement.** This Agreement contains the entire agreement between the parties and supersedes all prior oral and written agreements, understandings, commitments, and practices between the parties concerning Manager's employment with the City. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, oral or written, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding on either party.

10. Confidential Information. Manager acknowledges and agrees that in the performance of his duties, the City discloses and entrusts him with certain confidential proprietary information. Manager agrees not to directly or indirectly disclose or use at any time any such information, whether it be in the form of records, lists, data, personnel information, reports or otherwise, of a business or technical nature, which was acquired or viewed by Manager during Manager's relationship with the City unless such disclosure is authorized by the City in writing, required by law, or required in the performance of the duties of the Interim City Manager. This provision shall survive the termination or expiration of this Agreement.

11. Method of Amendment. No amendments to this Agreement may be made except by a writing signed and dated by City and Manager.

12. Notices. Any notice to City under this Agreement shall be given in writing to City, by personal service, by overnight delivery service providing confirmation of delivery, or by registered or certified mail, postage prepaid, addressed to the Chief People Officer at the City's then principal place of business. Any such notice to Manager shall be given in a like manner and, if deposited with an overnight delivery service or mailed, shall be addressed to Manager at his home address then shown in City's files. For the purpose of determining compliance with any time limit in this Agreement, a notice shall be deemed to have been duly given (a) on the date of delivery, if served personally on the party to whom notice is to be given, (b) on the next delivery day following deposit with an overnight delivery service or (c) on the third calendar day after mailing, if mailed to the party to whom the notice is to be given in the manner provided in this Section.

13. General Provisions.

A. Severability. If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect. If any provision is held invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.

B. Entire Agreement. This Agreement sets forth the final, complete and exclusive agreement between City and Manager relating to the employment of Manager as Interim City Manager by City. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The foregoing notwithstanding, Manager acknowledges that, except as expressly provided in this Agreement, his employment is subject to City's generally applicable rules and policies pertaining to employment matters, such as those addressing equal employment opportunity, sexual harassment and violence in the workplace.

C. Choice of Law and Venue. This Agreement shall be interpreted and construed pursuant to and in accordance with the local laws of the State of California and all applicable City Codes, Ordinances and Resolutions. The parties agree that venue shall be in San Mateo County, California.

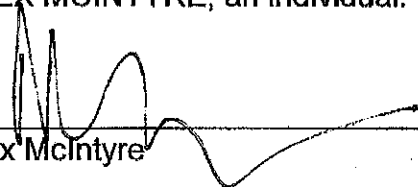
D. Independent Review of Agreement. Manager acknowledges that he has had the opportunity and has conducted an independent review of the financial and legal effects of this Agreement. Manager acknowledges that he has made an independent judgment upon the financial and legal effects of this Agreement and has not relied upon any representation of City, its officers, agents or employees other than those expressly set forth in this Agreement.

E. Drafting of Agreement. The Parties hereto acknowledge and agree that although this Agreement has been drafted by City's legal counsel, Manager has reviewed, or had an opportunity to review the terms of this Agreement with his legal counsel. Consequently, the doctrine that ambiguities in an agreement should be resolved against the drafting party shall not be employed in connection with this Agreement and this Agreement shall be interpreted in accordance with its fair meaning.

F. Voluntary Agreement. Manager represents and warrants that he has read carefully and fully understands all the provisions of this Agreement, that he is free to enter into this Agreement and to render the services described in it, that he entering into and performance of this Agreement will not breach or violate or conflict with any other agreement (written or oral) to which he is a party, and that he has had an opportunity to consult with his legal counsel prior to entering into this Agreement and has either done so or voluntarily chosen not to do so. Manager is voluntarily entering into this Agreement. The City represents and warrants that it has the right and power to enter into this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed and executed personally as the date and year first written above.

ALEX MCINTYRE, an individual:



Alex McIntyre

CITY OF SAN BRUNO:

Rico E. Medina, Mayor

ATTEST:

Lupita Huerta, City Clerk

APPROVED AS TO FORM:

Trisha Ortiz, City Attorney