

RESOLUTION \_\_\_\_\_

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS BANOS  
APPOINTING GREGORY B. WELLMAN AS INTERIM CITY MANAGER  
AND APPROVING INTERIM CITY MANAGER EMPLOYMENT  
AGREEMENT

WHEREAS, Government Code Section 21221(h) permits the City Council of the City of Los Banos to appoint a retired annuitant to a vacant position requiring specialized skills during recruitment for a permanent appointment, and provides that such appointment will not subject the retired person to reinstatement from retirement or loss of benefits so long as it is a single appointment that does not exceed 960 hours in a fiscal year; and

WHEREAS, the position of City Manager is currently vacant; and

WHEREAS, in order to retain efficient and uninterrupted operation and management, the City Council desires to appoint Gregory B. Wellman as an interim appointment retired annuitant to the vacant position of City Manager for the City of Los Banos under Government Code Section 21221(h), effective July 11, 2022; and

WHEREAS, Gregory B. Wellman has substantial government management experience, including serving as CEO for the County of Merced; City Manager for the City Atwater; and Interim City Manager for the City of Oakdale; and

WHEREAS, an appointment under Government Code Section 21221(h) requires the retiree is appointed into the interim appointment during recruitment for a permanent appointment; and

WHEREAS, the City has begun the process for selection of a recruiting firm to assist in the recruitment for a permanent appointment; and

WHEREAS, it is understood by the City and Gregory B. Wellman that the combined total hours to be served by an annuitant in any fiscal year, for all CalPERS employers combined, shall not exceed the 960-hour limitation set forth in California Government Code Section 21221(h) and Section 7522.56(d); and

WHEREAS, the compensation paid to retirees cannot be less than the minimum nor exceed the maximum base salary paid to other employees performing comparable duties; and

WHEREAS, the hourly rate to be paid to the Interim City Manager will be \$104.94; and

WHEREAS, the Interim City Manager has not and will not receive any other benefit, incentive compensation in lieu of benefit or any other form of compensation in addition to this hourly pay rate.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LOS BANOS DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. All of the above recitals are true and correct and incorporated herein by reference.

Section 2. Gregory B. Wellman has the specialized skills needed to perform the work required of the City Manager position on an interim basis until a permanent City Manager is appointed by the City Council and thereafter begins service.

Section 3. The City Council hereby certifies the nature of the employment of Gregory B. Wellman as described herein and detailed in the attached Interim City Manager Employment Agreement and that this appointment is necessary to fill the critically needed position of Interim City Manager for the City of Los Banos effective July 11, 2022.

Section 4. The City Council approves and authorizes the Mayor or his designee to execute the Interim City Manager Employment Agreement attached hereto as Exhibit "A".

The foregoing Resolution was introduced at a regular meeting of the City Council of the City of Los Banos held on this 11th day of July 2022, by Council Member \_\_\_\_\_, who moved its adoption, which motion was duly seconded by Council Member \_\_\_\_\_, and the Resolution was adopted by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

\_\_\_\_\_  
Manuel Thomas Faria III, Mayor

ATTEST:

\_\_\_\_\_  
Lucille L. Mallonee  
City Clerk

## **CITY OF LOS BANOS**

### **INTERIM CITY MANAGER EMPLOYMENT AGREEMENT**

THIS AGREEMENT is between the City of Los Banos, a California municipal corporation ("City"), and Gregory B. Wellman, an individual ("Employee") (collectively, the "Parties").

#### **RECITALS**

WHEREAS, the City has a vacancy at the position of City Manager, a regular position for which the City is conducting a recruitment for a permanent appointment;

WHEREAS, the City has an immediate need for an employee to temporarily perform the position of City Manager, a position involving specialized skills and training and which is critically necessary to the on-going duties and functions of the City;

WHEREAS, Government Code Sections 21221(h) and 7522.56 permit retired annuitants under the California Public Employees' Retirement System ("CalPERS") to be employed without reinstatement from retirement upon appointment by a governing body to fill a vacant position on an interim basis during the recruitment to permanently fill the vacant position;

WHEREAS, as a CalPERS retired annuitant under Government Code Section 21221(h), Employee possesses extensive experience as a City Manager and possesses the specialized skill set to perform the required duties of Interim City Manager and desires to perform the duties of, and assume responsibility for, the position of Interim City Manager and acknowledges that such employment is at-will and of a limited duration for a definite period of time;

WHEREAS, Employee is competent and qualified to perform the services required by this Agreement, and City wishes to have Employee perform the City Manager duties on an interim basis; and

NOW, THEREFORE, the parties do mutually agree as follows:

#### **AGREEMENT**

1. Employment. The City hereby appoints Employee as the Interim City Manager, and Employee hereby accepts that employment effective July 11, 2022. The employment under this agreement incorporates all of the requirements under Government Code sections 21221(h) and 7522.56. Employee acknowledges that he will be an at-will, exempt, temporary employee of City, and that he shall serve at the pleasure of City Council.

2. Term. The Employee's term of employment shall be for a maximum period of 6 months (not to exceed 960 hours), commencing July 11, 2022 unless employment is terminated earlier in accordance with Section 7. The term shall expire as of the first of the following to occur: (i) 5:00 p.m. on January 11, 2023; (ii) upon the employment commencement date of a

permanent City Manager employed by City; (iii) upon Employee working his 960th hour for City during the 2022-2023 fiscal year, including hours worked for other CalPERS agencies during such fiscal year; or (iii) upon termination of the Agreement by either Employee or City as provided in Section 7.

3. Duties. Employee shall serve as the Interim City Manager and shall be for the term of this Agreement vested with the powers, duties and responsibilities of the City Manager as specified in Los Banos Municipal Code, and ordinances and resolutions of City Council, and to perform other legally permissible and proper duties and functions as City Council may from time to time assign. It is the intent of City Council for the Interim City Manager to function as the chief executive officer of City. Without additional compensation, Employee shall provide such other services as are customary and appropriate to the position of Interim City Manager. Employee shall devote his best efforts and full-time attention to the performance of these duties. During the period of his employment, Employee shall not accept any other employment or engage, directly or indirectly, in any other business, commercial, or professional activity, whether or not to pecuniary advantage, that is or may be competitive with City, that might cause a conflict of interest with City, or that otherwise might interfere with the business or operation of City or the satisfactory performance of Employee's duties as Interim City Manager. During the period of his employment, Employee shall not accept any other employment for or serve as a consultant for any other public or private organization without the prior written consent of City Council. Employee has disclosed and the parties acknowledge that Employee provides limited voluntary consulting under the name Wellman Advisors LLC which is consented to by the City.

#### 4. Compensation and Work Schedule.

A. Rate of Pay. Employee shall be paid at the rate of \$104.94 per hour. The City has confirmed that this rate is not less than the minimum or in excess of the maximum, City Manager salary range (divided by 173.333 to equal an hourly rate) as listed on the City's publicly-available pay schedule. Payments will be made on regularly scheduled City payroll dates, and shall be subject to all applicable payroll taxes and withholdings. Such compensation shall be the sole compensation for Employee's services under this Agreement. The City will reimburse Employee for City related business expenses approved by the City Council and mileage accrued between his primary residence and Los Banos City Hall (at the IRS mileage reimbursement rate of 62.5 cents per mile) that is reasonable and necessary for him to perform his duties as Interim City Manager and in accordance with the applicable mileage rate. In the alternative, at the option of the Employee the City will provide Employee with a City owned vehicle (Prius) for his commute and other city related activities.

B. Work Schedule. Employee is expected to devote necessary time, within and outside normal business hours, to the business of the City. Employee shall devote the time necessary to adequately perform his duties as Interim City Manager. The Parties anticipate that Employee will work approximately forty (40) hours per week allocated between regular business hours and hours outside of regular business hours including, but not limited, to attendance at regular and special City Council meetings, and attendance at such community events and City functions as the City Council may direct. Toward that end, Employee shall be allowed reasonable flexibility in setting his own office hours, provided the schedule of such hours includes presence at City

Hall, reasonable availability to City Council, City staff, and members of the community during regular City business hours and for the performance of his duties and of City business. City acknowledges that Employee has pre-planned out of town personal commitments on July 31 through August 4 and August 23 through August 31.

C. 960-Hour Limitation. Pursuant to Government Code sections 21221(h) and section 7522.56, however, Employee's performance of services as a retired annuitant, whether compensated or on a volunteer basis, shall not exceed 960 hours per fiscal year in all positions for all public employers that contract with CalPERS for retirement benefits. The City retains the right to designate, reduce, change, or amend the number of hours assigned to Employee consistent with the City's workload and other needs.

i. Employee will be responsible for keeping track of the number of hours worked on a time sheet form provided by the City and submitting them at least every two weeks.

ii. The position to which Employee is appointed is a temporary, hourly assignment which shall not exceed 40 hours per week. Due to the nature of the position, it is understood that the work day and work week hours may vary, however Employee shall not work overtime (i.e. hours in excess of 40 per week).

iii. The City and Employee anticipate that Employee will primarily work a five day (Monday-Friday) schedule. The City and Employee acknowledge that this work will include hours outside of regular business hours including, without limitation, attendance at regular and special City Council meetings and attendance at such community events and City functions at the Council may direct.

## 5. Employment Status and Benefits.

A. Benefits. Other than the compensation described above in Section 3, Employee will receive no other benefits, incentives, compensation in lieu of benefits, or any other form of compensation. Employee understands and agrees that he is not, and will not be, eligible to receive any benefits from the City, including any City group plan for hospital, surgical, or medical insurance, any City retirement program, or any paid holidays, vacation, sick leave, or other leave, with or without pay, or any other job benefits available to an employee in the regular service of the City, except for Worker's Compensation Insurance coverage or benefits required by state or federal law.

B. No Property Right in Employment. Employee understands and agrees that the terms of his employment are governed only by this Agreement and that no right of regular employment for any specific term is created by this Agreement. Employee further understands that he acquires no property interest in his employment by virtue of this Agreement, that the employment is "at will" as defined by the laws of the State of California (meaning that he can be terminated at any time for any reason or for no reason), and that he is not entitled to any pre- or post-deprivation administrative hearing or other due process upon termination or any disciplinary action except as otherwise provided by law.

6. Representation of Employee.

A. Employee represents that he is properly trained and certified to perform the duties required of the interim City Manager position and this Agreement.

B. Employee further represents that he has not worked any hours as a retired annuitant for a CalPERS employer in the 2023 fiscal year (July 1, 2022 - June 30, 2023) and will immediately notify the City if he works any hours for another CalPERS employer. Consistent with current Government Code provisions, the City shall not provide any benefits; leave time or compensation in lieu of benefits.

C. Employee represents that he has not received any unemployment insurance payments for prior retired annuitant work for any CalPERS employer within twelve months of the effective date of this Agreement.

D. Employee represents that more than 180 days have passed since his date of his bona fide CalPERS retirement.

7. Termination.

A. By City. This Agreement may be terminated by City for any reason 30 days after providing written notice to Employee of such termination. City's only obligation in the event of such termination will be payment to Employee of all compensation then due and owing as set forth in Section 3A up to and including the effective date of termination.

B. By Employee. This Agreement may be terminated by Employee for any reason 30 days after providing written notice to City of such termination. City shall have the option, in its complete discretion, to make Employee's termination effective at any time prior to the end of such period, provided City pays Employee all compensation as set forth in Section 3A. then due and owing him through the last day actually worked.

C. No Notice for Expiration. Nothing in this Section 7 shall be construed to require either party to give advance written notice in order for the Agreement to expire as set forth in Section 2.

D. Termination Obligations. Employee agrees that all property, including, without limitation, all equipment, tangible Proprietary Information (as defined below), documents, records, notes, contracts, and computer-generated materials furnished to or prepared by him incident to his employment belongs to City and shall be returned promptly to City upon termination of Employee's employment. Employee's obligations under this subsection shall survive the termination of his employment and the expiration of this Agreement.

8. Non-Assignment of Agreement. This Agreement is intended to secure the individual services of the Employee and is not assignable or transferable by Employee to any third party.

9. Governing Law/Venue. This Agreement shall be interpreted according to the laws of the State of California. Venue for any action or proceeding regarding this contract shall be in Merced County.

10. Enforceability. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

11. Conflict of Interest. Employee agrees that during the term of this Agreement, he will not maintain any financial interest or engage in any other contract employment, occupation, work, endeavor or association, whether compensated or not, that would in any way conflict with, or impair Employee's ability to perform the duties described in this Agreement. Any work performed for the City outside the terms of this Agreement must be approved in advance in writing by the City Council.

12. Entire Agreement and Modification. This Agreement constitutes the entire understanding of the parties hereto. This Agreement supersedes any previous contracts, agreements, negotiations or understandings, whether written or oral, between the parties. Employee shall be entitled to no other compensation or benefits than those specified herein, and Employee acknowledges that no representation, inducements or promises not contained in this Agreement have been made to Employee to induce Employee to enter into this Agreement. No changes, amendments, or alterations hereto shall be effective unless in writing and signed by both parties. Employee understands that no oral modification of this Agreement made by any officer, agent, or employee of the City is effective. Employee specifically acknowledges that in entering into and executing this Agreement, he relies solely upon the provisions contained herein and no others.

13. Reimbursement for Expenses. City recognizes that certain expenses of a non-personal but job related nature are incurred by Employee, and agrees to reimburse or to pay said general expenses, including without limitation reimbursement for Employee's use of his personal automobile for City related business which reimbursements shall be made in accordance with City policy, IRS regulations, and other applicable state or federal laws. Other than as specifically provided herein, Employee shall receive no other compensation or reimbursements for expenses incurred by him in the performance of this Agreement.

14. Notices. All notices permitted or required under this Agreement shall be given to the respective parties by hand-delivery or by mail at the following address, or at such other address as the respective parties may provide in writing for this purpose, by deposit in the U.S. Mail, postage pre-paid, addressed as follows:

CITY: City of Los Banos  
520 J Street  
Los Banos, CA 93635  
ATTN: City Clerk

EMPLOYEE: Gregory B. Wellman  
520 J Street  
Los Banos, CA 93635

15. Indemnification. In accordance with and subject to the limitations of the California Government Claims Act and California Labor Code, the City shall defend, save 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 in the performance of Employee's services as interim City Manager, except that this provision shall not apply with respect to any intentional tort or crime committed by Employee, or any actions outside the course and scope of his employment as interim City Manager. The duty of defense shall include reimbursement of any out-of-pocket expenses incurred by Employee in connection with his service as a witness, party or other participant in litigation, whether such service occurs during or after the termination of Employment. Said duties of defense and indemnity shall survive the termination of employment under this Agreement.

16. Drafting of Agreement. The Parties hereto acknowledge and agree that although this Agreement has been drafted by City's legal counsel, Employee has reviewed, or had an opportunity to review the terms of this Agreement with Employee's 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.

17. Independent Review of Agreement. Employee acknowledges that Employee has had the opportunity and has conducted an independent review of the financial and legal effects of this Agreement. Employee acknowledges that Employee 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.

18. 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.

19. Partial Invalidity. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

20. Attorney's Fees. In the event of any legal action between the parties hereto to enforce the provisions of this Agreement, the prevailing party shall be entitled to attorney's fees and costs.

21. Counterparts. This Agreement may be executed on separate copies, any one of which need not contain signatures of more than one party but all of which taken together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first herein written above.

“EMPLOYEE”

Dated: July \_\_, 2022

\_\_\_\_\_  
Gregory B. Wellman

"CITY"

Dated: July \_\_, 2022

\_\_\_\_\_  
Manuel Thomas Faria III  
Mayor

ATTEST:

\_\_\_\_\_  
Lucille L. Mallonee  
City Clerk

APPROVED AS TO FORM

\_\_\_\_\_  
William A. Vaughn  
City Attorney