



DATE: December 14, 2023

TO: City Council

CC: City Manager, Assistant City Manager, City Attorney

FROM: Sheila Harrington, City Clerk

SUBJECT: F.2 Adopt a resolution to approve an exception to the 180-Day waiting period for post-retirement employment and approve an employment agreement with Gina Anderson to serve as Interim Police Chief pursuant to Government Code sections 7522.56 and 21221(h)

In advance of the City Council meeting, staff submitted the proposed resolution and employment agreement for Item F.2 to CalPERS to ensure conformity with CalPERS regulations and requirements. After distributing the City Council packet for the December 14, 2023 City Council meeting, CalPERS staff contacted the City and requested two modifications to ensure compliance with CalPERS regulations and standards. Specifically CalPERS indicated that the start date should be subsequent to effective retirement date and that the interim appointment required an end date. As a result, staff has amended the resolution and employment agreement to reflect the following:

- 1) A start date for Gina Anderson to serve as Interim Police Chief of December 30, 2023.
- 2) An end date for the Interim appointment of July 19, 2024.

The revised resolution and employment agreement are attached. CalPERS indicated that its review was ongoing. As a result, staff also requests that as part of the motion, the City Council authorize modifications to the resolution and employment agreement necessary to comply with any CalPERS requirements.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF NEWARK APPROVING AN EXCEPTION TO THE
180-DAY WAITING PERIOD FOR POST-RETIREMENT
EMPLOYMENT FOR GINA ANDERSON TO SERVE AS
INTERIM POLICE CHIEF PURSUANT TO
GOVERNMENT CODE SECTIONS 7522.56 AND
21221(H)

WHEREAS, in compliance with Government Code section 7522.56 of the Public Employees' Retirement Law, the City Council of the City of Newark ("City Council") must provide CalPERS this certification resolution when hiring a retiree before 180 days has passed since their retirement date; and

WHEREAS, Gina Anderson, CalPERS ID [insert], will retire from the City of Newark in the position of Police Chief, effective December 29, 2023; and

WHEREAS, Government Code section 7522.56 requires that post-retirement employment commence no earlier than 180 days after the retirement date, which is December 29, 2023 plus 180 days, without this certification resolution; and

WHEREAS, Government Code section 7522.56 provides that this exception to the 180 day wait period shall not apply if the retiree accepts any retirement incentive; and

WHEREAS, the City Council of the City of Newark, the City of Newark, and Gina Anderson certify that Gina Anderson has not and will not receive a Golden Handshake or any other retirement-related incentive; and

WHEREAS, the City Council of the City of Newark authorizes the appointment of Gina Anderson as an interim appointment retired annuitant to the vacant position of Police Chief for the City of Newark under Government Code section 21221(h), effective December 30, 2023; 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, this Government Code section 21221(h) appointment shall only be made once and therefore will end on July 19, 2024; and

WHEREAS, the entire employment agreement, contract or appointment document between Gina Anderson and the City of Newark has been reviewed by this body and is attached herein; and

WHEREAS, no matters, issues, terms or conditions related to this employment and appointment have been or will be placed on a consent calendar; and

WHEREAS, the employment shall be limited to 960 hours per fiscal year for all CalPERS employers; and

WHEREAS, the compensation paid to retirees cannot be less than the minimum nor exceed the maximum monthly base salary paid to other employees performing comparable duties, divided by 173.333 to equal the hourly rate; and

WHEREAS, the maximum monthly base salary for this position is \$23,475.22 and the hourly equivalent is \$135.43, and the minimum base salary for this position is \$19,562.69 and the hourly equivalent is \$112.86; and

WHEREAS, the hourly rate paid to Gina Anderson will be \$135.43; and

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

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of Newark hereby certifies the nature of the employment of Gina Anderson as described herein and detailed in the attached employment agreement and that this appointment is necessary to continue the critically needed and specialized-skilled position of Interim Police Chief by December 30, 2023 because the position is needed to provide broad policy direction for the activities of the Police Department; advise the City Manager on matters pertaining to departmental programs and law enforcement; and participate as a member of the City's Executive Team in the consideration of general City policies, programs, and concerns.

**EMPLOYMENT AGREEMENT BETWEEN
THE CITY OF NEWARK AND GINA ANDERSON
TO SERVE AS RETIRED ANNUITANT INTERIM POLICE CHIEF**

This Employment Agreement ("**Agreement**") is entered into this 30th day of December 2023, by and between the City of Newark ("**City**") and Gina Anderson ("**Gina Anderson**" or "**Annuitant**") collectively referred to as "**Parties**".

RECITALS

WHEREAS, the City requires an individual with the knowledge, skills and abilities to serve as Interim Police Chief while the City engages in recruitment to serve as Police Chief; and

WHEREAS, Annuitant, by virtue of having previously served as the City's Police Chief, is uniquely qualified and has the requisite specialized skills, training and experience to serve as Interim Police Chief; and

WHEREAS, the City desires to employ the specialized services of Annuitant as Interim Police Chief for the City in consideration of and subject to the terms and conditions of this Agreement; and

WHEREAS, Annuitant desires to accept temporary employment as Interim Police Chief in consideration of and subject to the terms and conditions of this Agreement; and

WHEREAS, under Government Code section 21221(h), California Public Employees Retirement System (CalPERS) retirees with specialized skills may perform work of a limited duration without reinstating into CalPERS; and

WHEREAS retired annuitants hired pursuant to Government Code section 21221(h) may work no more than 960 hours per fiscal year where the retiree has specialized skills needed to perform work of a limited duration; and

WHEREAS, the City desires by this Agreement to set forth the terms and conditions of Annuitant's duties and services as Interim Police Chief.

AGREEMENT

The Parties hereby agree as follows:

1. **SCOPE OF SERVICE.** Annuitant shall perform her duties to the best of her ability in accordance with the highest professional and ethical standards. Annuitant shall comply with the City's rules and regulations, and they shall obey the laws of the State of California and the United States of America as they apply to the performance of her duties.
2. **TERM.** The term of this Agreement shall be from December 30, 2023 until July 19, 2024.
3. **EFFECTIVE DATE.** This Agreement shall become effective after:
 - i. This Agreement is approved and executed by Annuitant; and
 - ii. This Agreement is approved and executed by the City Manager.

4. **RETIRED ANNUITANT STATUS.** It is intended that at all times Annuitant's post-retirement employment shall be in compliance with all laws governing employment of CalPERS retired annuitants, including without limitation Government Code sections 7522.56 and 21221(h). Annuitant understands that she is solely responsible for monitoring her hours worked and ensuring that she does not work more than 960 hours in a fiscal year (including work performed prior to execution of this agreement and work performed for other employers participating in CalPERS).
5. **SERVICES TO BE PERFORMED BY ANNUITANT - INTERIM POLICE CHIEF.** Annuitant shall perform the duties of Police Chief as provided in Exhibit A, attached herein and incorporated by reference.
6. **COMPENSATION.** City shall pay Annuitant for her services hereunder as Interim Police Chief and Annuitant shall accept, as full and complete compensation for said services, the sum of one hundred thirty-five dollars and forty-three cents (\$135.43) per hour. Annuitant shall receive no other payment, benefit, or remuneration other than her hourly wage for her services. There shall be no deductions from Annuitant's wages for health insurance (including medical, dental, vision care, life, disability), no overtime, no vacation, or any other similar benefits of whatever kind or nature.
7. **INDEMNIFICATION.** City agrees, in the event Annuitant is named as a defendant in a civil action arising from or as a result of her performance of duties as Interim Police Chief, to provide Annuitant such indemnification benefits as are required to be provided to an employee of the City under the laws of the State of California, including the provisions of Government Code Section 825 et seq. and 995 et seq. This provision shall not apply with respect to any intentional tort or crime committed by Annuitant, or any actions outside the course and scope of the performance of her job duties pursuant to this Agreement.
8. **RESERVED.**
9. **RESERVED.**
10. **UNEMPLOYMENT INSURANCE.** Annuitant certifies that she has not received any unemployment insurance payments in the past 12 months.
11. **ENTIRE AGREEMENT.** This Agreement supersedes any and all other agreements, either oral or in writing, between the Parties hereto with respect to the subject matter hereof, and no other agreement, statement or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding unless in writing and signed by both Parties.
12. **GOVERNING LAW.** The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the Parties hereunder, shall be governed by the laws of the State of California and any action concerning the terms of this Agreement shall be heard in the Superior Court of the County of Alameda.
13. **SEVERABILITY.** Should any part, term or provision of this Agreement be declared invalid, void or unenforceable, all remaining parts, terms and provisions hereof shall remain in full force and shall in no way be invalidated, impaired, or affected thereby.
14. **ASSIGNMENT.** The Parties agree that the expertise and experience of Annuitant are material considerations for this Agreement. Annuitant shall not assign, transfer, or subcontract any interest in this Agreement, nor the performance of any of Annuitant's obligations hereunder.

15. **TERMINATION.** Annuitant understands that she is an at-will employee, and that the employment may be terminated by Annuitant or City at any time, for any reason, or for no reason at all. The City's right of termination shall be in addition to all other remedies available under law to the City.
16. **WAIVER.** Waiver by City of any breach or violation of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by City of the performance of any work or services by Annuitant shall not be deemed a waiver of any term or condition of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on the dates hereinafter respectively set forth.

City of Newark
A California Municipal Corporation

DATED: _____

By: _____
David J. Benoun
City Manager

Approved as to Form: _____
Kristopher J. Kokotaylo
City Attorney

Annuitant

DATED: _____

By: _____
Gina Anderson

EXHIBIT "A" - SCOPE OF SERVICES ATTACHED

(Police Chief Job Specification)