INTERIM CHIEF OF POLICE
EMPLOYMENT AGREEMENT

1. Parties and Date

This Agreement is entered into as of the 5th day of April, 2016 by and between the City of Placentia, a California charter city ("City"), and Ronald Lowenberg, an individual ("Employee"). City and Employee are sometimes individually referred to as a "Party" and collectively as "Parties."

A. The City requires the services of an Interim Chief of Police while it recruits for the next Chief of Police; and

B. Employee is a CalPERS Retiree and has the necessary education, experience, skills and expertise to serve as the City's Interim Chief of Police; and

C. The City Administrator desires to employ the Employee to serve as the Interim Chief of Police.

D. The Parties desire to execute this Agreement pursuant to the authority of and subject to the provisions of Government Code Section 53260 et seq.

E. In consideration of these Recitals and the performance by the Parties of the promises, covenants, and conditions herein contained, the Parties agree as provided in this Agreement.

2. Employment

The City hereby employs the Employee as its Interim Chief of Police, and the Employee hereby accepts such employment.

3. Commitments and Understandings

A. <u>The Employee's Commitments</u>

(1) <u>Duties & Authority</u>

(a) During the term of this Agreement Employee shall serve as the Interim Chief of Police, and be responsible to the City Administrator for the proper administration of all affairs of that department.

(b) Employee shall perform all of the duties of a Chief of Police as that role is defined under state law, in the

City's Charter and Municipal Code, and in accordance any City policies and procedures.

(c) Employee shall administer and enforce any City code provisions and policies applicable to the police department, and will promulgate any rules and regulations determined to be necessary to carry out the functions of Employee's office.

(d) During the term of this Agreement Employee shall assist the City Administrator in conducting a general evaluation of the police department. Employee shall seek to implement changes Employee believes will result in greater efficiency, economy, or improved public service in the administration of the police department. Employee's actions shall at all times be subject to the authority of the City Administrator.

(e) Employee shall be required to:

(i) Attend all meetings of the City Council, unless excused by the City Administrator, and shall be prepared to take part in the discussion of any matters which concern the police department.

(ii) Review agenda documents related to the police department before any regular or special meetings of the City Council.

(iii) Employee may undertake any study or investigation Employee believes is necessary or desirable related to the police department, and shall conduct such reviews or studies which the City Council or City Administrator may direct.

(iv) Recommend to the City Council and City Administrator from time to time, adoption of such measures as Employee may deem necessary or expedient for the health, safety, or welfare of the community or for the improvement of the police department.

(v) Consolidate or combine offices, positions, departments or units under Employee's jurisdiction, as determined to be necessary or appropriate.

(vi) Conduct research in administrative practices in order to bring about greater efficiency and economy in the police department, and develop and recommend to the City Council and the City Administrator long-range plans to improve department operations, and to generally prepare for future City growth and development.

(vii) Provide management training and develop leadership qualities among police department management staff as determined to be necessary, so as to help build a management team that can plan for and meet future challenges.

(viii) Exercise control of the police department and its staff in emergencies as authorized by the Municipal Code and California law.

(2) Hours of Work

(a) Employee is an exempt employee as that term is used in the Fair Labor Standards Act (FLSA), but is expected to engage in those hours of work that are necessary to fulfill the obligations of the Interim Chief of Police position. The Employee does not have set hours of work as the Employee is expected to be available at all times.

(b) It is recognized that Employee must devote a great deal of time to the business of the City outside of the City's customary office hours, and to that end Employee's schedule of work each day and week shall vary in accordance with the work required to be performed. Employee shall spend sufficient hours on site to perform Employee's duties; however, Employee has discretion over the Employee's work schedule and work location.

(c) City acknowledges that Employee currently serves as the Dean the Golden West Community College Criminal Justice Training Center. City agrees that Employee is authorized to continue in that role with reduced hours during the term of this Agreement.

(d) In accord with the Public Employee's Pension Reform Act (PEPRA) of 2013 and Government Code Section

7522.56, Employee, as a CalPERS Retiree, shall not work more than nine hundred and sixty (960) hours from March 23, 2016 through June 30, 2016 and shall not work more than nine hundred and sixty (960) hours from July 1, 2016 through December 31, 2016.

B. City Commitments

(1) The City shall provide Employee with the compensation specified Section 4.A.(1)(a) in this Agreement.

(2) The City shall provide Employee with a private office, staff, office equipment, supplies, and all other facilities and services adequate for the performance of the Interim Chief of Police's duties.

(3) The City shall pay for or provide Employee reimbursement for all actual business expenses.

(4) The City shall provide use of a vehicle with fuel during the term of the agreement. Pursuant to CalPERS requirements for retired annuitants, a car allowance in exchange for use of a City vehicle is not allowed.

(5) The City agrees to pay the travel and subsistence expenses of Employee to pursue any official or required functions for the City.

(6) Given the importance of technological tools to the effective and efficient business of City government, the City shall provide computer, I-pad, high-speed internet access, fax, copy machine and similar devices to Employee at the City's expense, at Employee's office.

C. City Council Commitments

(1) The City Council sets policy for the governance and administration of the City, and it implements its policies through the City Administrator. The City Administrator implements those policies through Employee and the other department heads.

(2) The City Administrator recognizes that in order to meet current challenges facing the City he must exercise decisive policy leadership. As one step in carrying out this leadership responsibility, the City Administrator will endeavor to spend time each month working with Employee on setting goals and

priorities for the police department, and to work on issues that may be inhibiting the maximum achievement of City goals.

4. COMPENSATION

The City agrees to provide the following compensation to the Employee during the term of the agreement:

A. Compensation & Required Employer Costs

(1) Base Salary

(a) Employee's compensation is based on a calculation assumption of eighty six dollars and forty four cents ($86.44), which does not exceed the salary of the current Chief of Police.

During the term of this Agreement, the Employee's total compensation shall not exceed $82,982.40 ([960 hours per fiscal year X 1 year term of Agreement] X $86.44 = $82,982.40).

(b) In no event will Employee's total amount of hours exceed 960 hours per Fiscal Year.

(c) The Employee shall be paid at the same intervals and manner as other City employees.

(d) Employee shall keep an accurate and ongoing accounting of his actual hours worked, and make monthly reports thereon to the City Administrator. Employee shall ensure that the statutory limit of 960 hours per fiscal year is anticipated sufficiently in advance, so that steps can be taken to ensure no overage of hours during a fiscal year.

(2) **Required Employer Costs**

(a) Federal Insurance Contributions Act (FICA) (if applicable).

(i) Old Age Survivor and Disability Income (OASDI).

(ii) Medicare.

(iii) PARS Employer Contribution

(b) Unemployment Compensation.

(c) The cost of any fidelity or other bonds required by law for the Employee.

(d) The cost to defend and indemnify the Employee as provided in Section 6.E below.

(e) Workers Compensation.

5. SEPARATION

A. Resignation/Retirement

The Employee may resign at any time and agrees to give the City at least thirty (30) days advance written notice of the effective date of the Employee's resignation, unless the Parties otherwise agree in writing.

B. Termination & Removal

(1) Employee is an at-will employee serving at the pleasure of the City Administrator as provided in Government Code Section 36506. The parties understand and agree that this position is being filled by Employee for a limited period of time, so that Employee can help City with the recruitment and selection process for a permanent Chief of Police. Employee understands that Employee will be required to vacate the position once a permanent Chief has been chosen and is ready to serve the City.

(2) The City Administrator may remove the Employee at any time, with or without cause. Notice of termination shall be provided to the Employee in writing.

(3) Given the at-will nature of the position of Employee, an important element of the employment agreement pertains to termination. It is in both the City's interest and that of the Employee that any separation of the Employee is done in a businesslike manner.

6. MISCELLANEOUS PROVISIONS

A. Term

The Term of this Agreement shall begin on March 23rd, 2016, and shall terminate no later than December 31st, 2016 (the Termination Date), unless it is sooner terminated as provided herein.

B. Provisions that Survive Termination

Many sections of this Agreement are intended by their terms to survive the Employee's termination of employment with the City, including but limited to Sections 6.E. These sections, and the others so intended, shall survive termination of employment and termination of this Agreement.

C. Amendments

This Agreement may be amended at any time by mutual agreement of the City and the Employee. Any amendments are to be negotiated, put in writing, and executed by the City Administrator and Employee.

D. Conflict of Interest

(1) Except as may be specifically authorized herein, Employee shall not engage in any business or transaction or shall have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties. Personal as distinguished from financial interest includes an interest arising from blood or marriage relationships or close business, personal, or political associations. This section shall not serve to prohibit independent acts or other forms of enterprise during those hours not covered by active City employment, providing such acts do not constitute a conflict of interest as defined herein.

(2) Employee shall also be subject to the conflict of interest provisions of the California Government Code and any conflict of interest code applicable to Employee's City employment.

(3) Employee is responsible for submitting to the City Clerk the appropriate Conflict of Interest Statements at the time of appointment, annually thereafter, and at the time of separation from the position.

E. Indemnification

(1) To the full extent of the law as provided by the California Torts Claims Act (Government Code Section 810 et seq.) and the indemnity provisions of this Agreement, whichever shall provide the greatest protection to Employee, the City shall defend and indemnify Employee against and for all losses sustained by Employee in direct consequences of the

discharge of Employee's duties on the City's behalf for the period of Employee's employment.

(2) The City shall defend, save harmless and indemnify Employee 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 in the performance of Employee's duties as Interim Chief of Police. Such indemnity shall not extend to any willful wrongdoing by Employee. The City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon.

(3) Whenever Employee shall be sued for damages arising out of the performance of Employee's duties, the City shall provide defense counsel for Employee in such suit and indemnify Employee from any judgment rendered against Employee; provided that such indemnity shall not extend to any judgment for damages arising out of any willful wrongdoing. This indemnification shall extend beyond termination of employment and the otherwise expiration of this Agreement to provide protection for any such acts undertaken or committed in Employee's capacity as Interim Chief of Police, regardless of whether the notice of filing of a lawsuit occurs during or following employment with the City. This indemnity provision shall survive the termination of the Agreement and is in addition to any other rights or remedies that Employee may have under the law.

(4) The City and all parties claiming under or through it, hereby waives all rights of subrogation and contribution against Employee, when Employee is acting within the scope of Employee's duties, from all claims, losses and liabilities arising out of or incident to activities or operations performed by or on behalf of the City or any party affiliated with or otherwise claiming under or through it.

F. Severability

If any clause, sentence, part, section, or portion of this Agreement is found by a court of competent jurisdiction to be illegal or unenforceable, such clause, sentence, part, section, or portion so found shall be regarded as though it were not part of this Agreement and the remaining parts of this Agreement shall be fully binding and enforceable by the Parties hereto.

G. Laws Affecting Title

In addition to those laws affecting Employee, Employee shall have the same powers, rights and responsibilities as a Chief of Police as that term is used in local, state or federal laws, and in the City's Charter.

H. Jurisdiction and Venue

This Contract shall be construed in accordance with the laws of the State of California, and the Parties agree that venue shall be in Orange County, California.

I. Entire Agreement

This Contract represents the entire agreement of the Parties, and no representations have been made or relied upon except as set forth herein. This Contract may be amended or modified only by a written, fully executed agreement of the Parties.

J. Notice

Any notice, amendments, or additions to 8this Agreement, including change of address of either party during the term of this Agreement, which the Employee or the City shall be required, or may desire, to make shall be in writing and shall be sent by prepaid first class mail or hand-delivered to the respective Parties as follows:

(1) If to the City:

City of Placentia
Attn: City Administrator
401 East Chapman Avenue
Placentia, CA 92708

(2) If to the Employee:

Ronald Lowenberg
Attn: City of Placentia Police Department
401 East Chapman Avenue
Placentia, CA 92708

7. Execution

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

"City"

CITY OF PLACENTIA
A Municipal Corporation

By:_____
Damien Arrula, City Administrator

"Employee"

RONALD LOWENBERG

Ronald Lowenberg

ATTEST:

By:_____
Patrick J. Melia, City Clerk

APPROVED AS TO FORM:

By:_____
Christian Bettenhausen,
City Attorney