

INTERIM CHIEF OF POLICE EMPLOYMENT AGREEMENT

This Interim Chief of Police Employment Agreement (hereinafter "Agreement") is made and entered into on this, 20th day of November, 2018, by and between and CITY OF FULLERTON (hereinafter "City") and ROBERT DUNN II, (hereinafter "Employee").

WHEREAS, the City desires to employ the services of Employee as Interim Chief of Police of the City of Fullerton; and

WHEREAS, the City desires to provide certain benefits, establish certain conditions of employment, and to set working conditions of said Employee; and

WHEREAS, the City desires to (1) secure and retain the services of Employee and to provide inducement for him to remain in such employment, and (2) to make possible full work productivity by assuring Employee's morale and peace of mind with respect to future security; and

WHEREAS, Employee was appointed Police Captain on January 8, 2018 and has served as Acting Chief of Police since September 8, 2018;

WHEREAS, Employee accepts the offer of employment as Interim Chief of Police authorized by the City Council on November 20, 2018.

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

SECTION 1 – TERM OF EMPLOYMENT

The City hereby agrees to employ Employee as Interim Chief of Police for a term that shall begin on November 17, 2018 (hereinafter "Interim Contract Commencement Date") and shall end on or before November 18, 2019 unless and until extended by written amendment to this Agreement authorized by City Council (hereinafter "Interim Contract End Date"). Either party may terminate this Agreement in accordance with the provisions and requirements of Sections 8 and 9 herein.

SECTION 2 – DUTIES AND AUTHORITY

City agrees to employ Employee as Interim Chief of Police to exercise the powers and authority and to perform the functions and duties of Chief of Police specified in the Fullerton Municipal Code and all relevant resolutions, rules, regulations, procedures, applicable job description(s) and state codes, as they currently or may in the future exist. Employee shall exercise such power and authority and perform such other functions and duties, not inconsistent with this Agreement, as City, by its City Council, may legally assign.

SECTION 3 – SALARY AND BENEFITS

- A. Effective the Interim Contract Commencement Date, Employee shall be paid an annualized base salary rate of \$192,454.52 (\$92.526 per hour), payable in equal installments through the normal payroll process established by the City. Effective January 12, 2019, the Employee's annualized base salary rate shall be increased to \$201,401.03 (\$96.827 per hour).
- B. The City's contract with CalPERS shall apply to Employee.
1. The City shall pay on behalf of Employee the first 7% of the CalPERS normal member contribution (as defined in Section 20678(a) of the California Government Code pursuant to Section 20691 of the California Government Code). This payment of the first 7% will be included within Employee's compensation earnable that is reported to CalPERS, pursuant to Section 20636(c)(4) of the California Government Code. Employee shall pay the remaining balance of the CalPERS normal member contribution.
 2. In addition, Employee shall pay an additional 6.357% of salary to CalPERS by way of cost sharing of the City's employer rate. The greatest portion possible of the cost sharing contribution shall be made pursuant to Government Code Section 20516(a), with the balance being made pursuant to Government Code Section 20516(f).
 3. The City shall pay the 1959 Survivor Benefits premium for Employee.
 4. Employee shall be subject to the provisions of California Government Code Section 20037, whereby his final compensation shall be the highest annual average compensation during any consecutive 36-month period of employment.
- C. Medicare. Employee shall pay the designated employee contribution for Medicare in accordance with applicable law.
- D. Health Insurance. Employee's enrollment in City sponsored health coverage shall be subject to the following terms:
- a. Employee shall be eligible to enroll in City sponsored medical, dental and vision plans during the term of this Agreement.
 - b. The City's contributions to plans selected by Employee shall be subject to the following maximum monthly City contributions:
 - i. Medical insurance - \$510 per month for single coverage; \$1,010 per month for two party coverage; or \$1,420 per month for family coverage
 - ii. Dental insurance - \$50 per month
 - iii. Vision insurance - \$25 per month

- c. Employee shall not be eligible to receive payment for the cash value difference between the maximum monthly City contribution and the premium of the plan and tier of coverage he enrolls in.
- d. Employee's salary shall be reduced by the amount of any necessary payroll deduction for health insurance premiums in excess of the agreed City contribution on a before-tax basis.
- E. Life Insurance. Employee shall be eligible for group life insurance equal to his annual base salary up to the annual base salary maximum set in the group policy, which at the Effective Date of this Agreement is \$200,000. Employee is eligible to purchase voluntary City group term life insurance through payroll deduction.
- F. Long-Term Disability Insurance. The City shall pay 100% of the premium for Employee to be eligible for the City's long term disability insurance coverage.
- G. Consolidated Omnibus Budget Reconciliation Act of 1985. In the event Employee is eligible to remain on a City health or dental insurance plan following separation from employment other than retirement, the City may pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) charge Employee for selected coverage the maximum rate permissible by law (presently 102% of the premium for an active employee).
- H. Voluntary 457 Deferred Compensation Plan. Employee shall be eligible to participate in the City's voluntary 457 Deferred Compensation Plan. The City shall not make any contributions to the plan on Employee's behalf.

SECTION 4 – NO REDUCTION OF BENEFITS

The City shall not reduce the salary, compensation or other financial benefits of Employee, except to the degree of such an across-the-board reduction for all Executive employees.

SECTION 5 – VEHICLE USE, UNIFORM ALLOWANCE AND SERVICE WEAPON

- A. Vehicle Use. City agrees to provide Employee a City vehicle and necessary service, fuel, equipment and maintenance. Employee is authorized by the City to use the City vehicle for personal use to and from home and on-call purposes only in his official capacity as Police Chief. In exchange therefore, Employee agrees:
 - 1. To operate the City vehicle at all times in accordance with the laws of the State of California or other applicable jurisdictions within the United States.
 - 2. To not drive or allow the City vehicle to be driven outside the jurisdiction of the United States of America.
 - 3. To fuel the vehicle with appropriate fuel dispensed from City fueling stations or purchased in accordance with City purchasing rules and policies.

4. To not operate the City vehicle while under the influence of alcohol or any controlled substances.
 5. To not allow any person other than a current employee of the City of Fullerton to operate the City vehicle.
 6. To reasonably maintain the exterior and interior condition of the City vehicle and to immediately report all service and mechanical repair needs to the Public Works Fleet Division.
 7. To not use or allow the use of tobacco products, e-cigarettes or vapor devices inside the City vehicles.
 8. To notify the local police agency and request a report of any accident involving or damage incurred by the City vehicle, except that, in the case of an accident within the City of Fullerton, an outside police agency shall be contacted to investigate the accident.
 9. To complete a City of Fullerton Incident Report form and provide it to the City Manager within 24 hours of any incident involving the City vehicle.
 10. City and Employee believe the authorized personal use to and from home is not subject to taxation. In the event of changes in the law or application of the law, any resultant tax liabilities shall be the sole responsibility of Employee.
- B. Uniform Allowance. The City shall pay Employee the amount of \$31.60 per pay period for the purchase and maintenance of uniforms.
- C. Duty Weapon. Employee shall be issued a duty weapon per the policy of the Fullerton Police Department.

SECTION 6 – PAID LEAVE

- A. Holidays. Employee shall be eligible for paid leave on the following City recognized holidays:
1. January 1, New Year's Day
 2. The third Monday in February, Presidents' Day
 3. The last Monday in May, Memorial Day
 4. July 4, Independence Day
 5. The first Monday in September, Labor Day
 6. November 11, Veterans Day
 7. Thanksgiving Day
 8. The Friday following Thanksgiving Day
 9. December 24, Christmas Eve
 10. December 25, Christmas Day
 11. December 31, New Year's Eve

In the event that Employee's work duties require him to work on a City recognized holiday, he shall not be entitled to additional compensation.

- B. Vacation. Employee shall carryover his existing bank of vacation leave upon the Interim Contract Commencement Date of this Agreement. Thereafter during the term of the Agreement, Employee shall accrue vacation leave at the rate of 160 hours per year. Employee may accumulate credit up to 320 hours. Employee is encouraged to use at least 80 hours of vacation leave per year. If Employee is at his maximum accrual and unable to take vacation leave, 40 hours shall be converted to cash. In addition, Employee shall be permitted to convert up to 80 hours to cash each payroll year in accordance with the City's annual leave conversion program.
- C. Sick Leave. Employee shall carry over his existing bank of sick leave upon the Interim Contract Commencement Date of this Agreement. Thereafter, Employee shall earn and accumulate 3.69 hours of sick leave for each pay period he has worked at least one full regular workday or been on paid vacation. He may use such sick leave in accordance with rules applying to Executive employees.
- D. Bereavement Leave. Employee shall be eligible for bereavement leave of up to 27 hours in accordance with the rules applying to Executive employees.
- E. Executive Leave. Employee shall be entitled to 81 hours of paid Executive Leave per fiscal year. Such leave shall not accrue from year to year. Unused Executive Leave shall be lost at the end of each fiscal year, and shall not be converted to any other form of compensation.

SECTION 7 – GENERAL BUSINESS EXPENSES

- A. City recognizes that Employee may incur expenses of a non-personal, job related nature that are reasonably necessary to Employee's service as Chief of Police. City agrees to either pay such expenses in advance or to reimburse the expenses, so long as the expenses are incurred and submitted according City's regular reimbursement requirements or such other procedure as may be designated by the City Council. To be eligible for reimbursement, all expenses must be supported by documentation meeting City's normal requirements and must be submitted within time limits established by City.
- B. City agrees to budget and pay for professional dues, membership and subscriptions necessary for Employee's participation in such organizations as the City Manager and Employee may agree to as necessary and appropriate.
- C. City agrees to budget and to reimburse or pay for reasonable costs for attendance and participation in meetings, institutes, training programs, conferences, conventions and similar gatherings that support leadership development and the advancement of Parties' mutually agreed upon goals, and which are related to Employee's duties or City's operations and held in the continental United States. For purposes of this paragraph, reasonable expenses are limited to the reasonable and actual cost of registration, coach-class airfare (where applicable), ground transportation and meals. Reasonable expenses will also include the reasonable and actual cost of lodging for meetings greater than 60 miles outside the City of Fullerton boundaries.

- E. The expenses to be budgeted and paid in Section 7, Paragraphs A, B, and C above, are exclusive of reasonable expenses related to events, participation in organizations, or attendance at events or meetings on behalf of the City as required by the City Manager. City will separately budget and pay for membership and participation in community, civic or other organizations or events in which City requires Employee to participate.

SECTION 8 – SUPERVISION

Employee is appointed by, and serves at the pleasure of, the City Council. The City and Employee agree that City Council has, through this Agreement, delegated authority for supervision and management of Employee, including discipline and dismissal to the City Manager. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of City to terminate this Agreement and the employment of Employee at any time, with or without Cause (as defined in Section 9 below).

SECTION 9 – TERMINATION OF AGREEMENT

- A. In the event the City terminates this Agreement without cause, Employee shall be given at least thirty (30) days written notice prior to the effective date of the termination. The parties agree that this notice requirement is met herein for termination of the Agreement upon the Interim Contract End Date. Upon the effective date of the termination, the Employee shall return to his previous classification of Police Captain. Upon his return, he shall be assigned to top step of the salary range and provided Education Incentive Pay then in effect for the classification and shall be entitled to all terms and conditions of employment available to employees in the classification of the Police Captain as set forth in the memorandum of agreement between the City of Fullerton and the Fullerton Police Management Association then in effect. Employee shall retain all accrued leave balances upon his return to the position of Police Captain. Time served as Interim Chief of Police shall be included in service time calculations and probation period calculations for Police Captain.
- B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign from his employment with City, subject only to Employee providing forty-five (45) calendar days' prior written notice to City of the effective date of his resignation, unless the parties agree otherwise. Upon the effective date of resignation, Employee forfeits all compensation and benefits owing for the remainder of the term of this Agreement. The City acknowledges that Employee shall be eligible for payout of the cash value of accrued vacation leave at the time of separation at the base hourly rate then in effect for Employee.
- C. Government Code Section 3304(c) Rights. The City and Employee agree that Municipal Code Sections 2.33.010 and 2.33.020 shall not apply to Employee with respect to the City's disciplinary and appeals procedures. In accordance with the rights Employee has under Government Code Section 3304(c), prior to action to terminate this Agreement, whether with or without cause, Employee shall be provided written notice of the proposed action and the reason or reasons for removal

from this appointment and in addition, shall be provided the right to an administrative appeal before an independent hearing officer appointed by the City Manager. Such hearing officer, after being presented the information and documentation deemed important by Employee, shall make an advisory recommendation on the matter to the City Manager or City Council.

SECTION 10 – GOVERNMENT CODE SECTION 53243 ET SEQ. REQUIREMENTS

- A. In the event City determines to place Employee on paid leave pending an investigation, Employee shall fully reimburse such pay if he is subsequently convicted of a crime involving an abuse of his office or position.
- B. In the event the City determines to fund all or part of a legal criminal defense for Employee, he shall fully reimburse such funds if he is subsequently convicted of a crime involving an abuse of his office or position.
- C. In the event Employee receives a cash settlement under the provisions of Section 9(B), he shall fully reimburse such funds if he is subsequently convicted of a crime involving an abuse of his office or position.
- D. For purposes of this Section, “abuse of office or position” shall be determined by the definition in Government Code Section 53243.4.

SECTION 11 – EMPLOYEE'S OBLIGATIONS AND HOURS OF WORK

Employee shall devote his full professional energies, interest, abilities and productive time to the performance of this Agreement and utilize his best efforts to promote City's interests. Employee's duties may involve expenditures of time in excess of the regularly established workday or in excess of a forty (40) hour workweek and may also include time outside normal office hours (including attendance at City Council meetings and various community meetings, forums or workshops). Employee's base salary includes compensation for all hours worked. Employee shall be classified as an exempt employee for purposes the Fair Labor Standards Act and shall not be entitled to any form of compensation for overtime. In recognition of the significant time Employee will need to devote outside normal office hours to business activities of City and the exempt, salaried nature of the employment, Employee is permitted to exercise a flexible work schedule. However, consistent with this flexibility and Employee's participation in activities out of the office, Employee will generally be expected to keep office hours at the Fullerton Police Department Administration offices, during normal business hours.

SECTION 12 – CONFIDENTIALITY AND NON-DISPARAGEMENT

- A. Employee acknowledges that in the course of his employment contemplated herein, Employee will be given or will have access to confidential and proprietary documents and information, relating to the City, its residents, businesses, employees, and customers ("Confidential Information"). Such Confidential Information may include, but is not limited to, all information given to or otherwise accessible to Employee that is not public information or would be exempt from public disclosure as confidential,

protected, exempt or privileged information. Employee shall hold the Confidential Information in trust for City's benefit, and shall not disclose the Confidential Information to others without the express written consent of City.

- B. Except as otherwise required by law, in the event the City terminates Employee with or without cause, City and Employee agree that no member of the City Council, the city management staff, nor Employee shall make any written, oral, or electronic statement to any member of the public, the press, or any City employee concerning Employee's termination except in the form of a joint press release or statement, which is mutually agreeable to City and Employee. The joint press release or statement shall not contain any text or information that is disparaging to either City or Employee. Either City or Employee may verbally repeat the substance of the joint press release or statement in response to any inquiry.
- C. The obligations of City and Employee under this Section 12 shall survive the termination of this Agreement.

SECTION 13 – OUTSIDE ACTIVITIES

Employee shall not engage in any activity, consulting service or enterprise, for compensation or otherwise, which is actually or potentially in conflict with, incompatible with or inimical to, or which materially interferes with his duties and responsibilities to City. (Cal. Govt. Code §§ 1125 *et seq.*)

SECTION 14 – DEFENSE AND INDEMNIFICATION

In accordance with the provisions of California Government Code Sections 995 *et seq.* as they currently exist or may hereafter be amended, City shall defend and indemnify Employee, using legal counsel of City's choosing, against any civil action or proceeding brought against Employee, in his official or individual capacity or both, on account of an act or omission in the scope of his employment as Chief of Police, unless such act or omission was due to actual fraud, corruption, or actual malice. In the event the City determines there is a conflict of interest between City and Employee, and independent counsel is required for Employee's defense, City shall select and pay the reasonable fees of such independent counsel for Employee's defense. Employee shall cooperate fully in the investigation and defense of any civil action or proceeding. Employee acknowledges and agrees that City reserves its rights pursuant to Government Code Section 825(a) not to pay any judgment, compromise, or settlement until it is established that the injury arose out of an act or omission occurring within the scope of his employment, and that City's agreement to defend and indemnify him does not constitute an agreement to pay any punitive damages awarded against him. In that regard, Employee acknowledges and agrees that pursuant to Government Code Section 825(b), City may not make a determination whether or not to indemnify an employee for an award of punitive damages until such time as the award is made. This provision shall survive the termination of this Agreement.

SECTION 15 – OTHER TERMS AND CONDITIONS OF EMPLOYMENT

City may fix other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement or applicable law.

SECTION 16 – GENERAL PROVISIONS

- A. This Agreement shall constitute the entire agreement between the parties.
- B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee.
- C. If any provision or portion thereof contained in this Agreement is held unconstitutional, the remainder of this Agreement, or portion thereof, shall be deemed severable and shall not be affected and shall remain in full force and effect.
- D. Any notice required or permitted by this Agreement shall be in writing and shall be personally served or be sufficiently given when served upon the other party as sent by the United States Postal Service, postage prepaid and addressed as follows:

To City:

City Manager
City of Fullerton
303 W. Commonwealth Avenue
Fullerton, CA 92832-1775

To Employee:

Robert Dunn II
(Primary residence address
on file with Human Resources)

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

CITY OF FULLERTON:

EMPLOYEE:

By: _____
Mayor

By: _____
Robert Dunn II

ATTEST:

City Clerk

APPROVED AS TO FORM:

Richard D. Jones
City Attorney