



EMPLOYMENT AGREEMENT

This AGREEMENT (hereinafter referred to as “Agreement”) is made and entered into between (hereinafter referred to as “Employee”) and the CITY OF FONTANA (hereinafter referred to as the “City” or “Employer”) as of **April 28, 2018**.

NOW, THEREFORE, the parties hereto agree as follows:

1. Employment and Term. The City hereby agrees to employ Employee on an “at will” basis as its **Chief of Police**, and Employee agrees and accepts at will employment upon the terms and conditions set forth herein. The term of this Agreement shall be for **two (2) years and two (2) months**, unless sooner terminated or extended by the parties as set forth in the agreement. In the event that the City Manager determines that the Employee is not to be reemployed upon expiration of this Agreement, he shall be given written notice thereof by the City at least six (6) months in advance of the expiration of the term of this Agreement. Should the City fail to give notice at least six (6) months notice prior to the end date of this Agreement, the Agreement shall be extended on the same terms for an additional period of one (1) year.

2. Duties and Obligations of Employee. Employee currently works at will for the City as its Chief of Police (hereinafter referred to as “Position”). Employee hereby agrees to perform the duties of the Position as set forth in the City’s Municipal Code, Rules, Regulations, and Policies, and to perform such other duties as assigned by the City Manager. It is expressly understood that the terms of this Agreement, including but not limited to those governing termination of employment, supersede any rights conferred by City Ordinance, Rule, Regulation or Policy.

3. Salary and Benefits.

A. *Salary.* Employee shall be compensated at the rate of **\$16,971.07 mo./\$203,652.80 annual**, which shall be payable in installments at the same time as other employees of the City are paid, pursuant to the procedures regularly established, and as they may be amended by the City. **Employee shall receive a 3% base salary increase effective the pay period covering July 1, 2018, and a 2% base salary increase effective the pay period covering July 1, 2019.**

The City may annually assess Employee’s performance and salary. The Employee shall be eligible, if warranted in the City’s sole discretion, to receive a salary increase at the conclusion of such annual assessment. Any agreed salary increase must be expressly memorialized in a subsequent written and executed Amendment.

B. *Longevity Pay.* Employee shall be eligible to receive Longevity Pay in accordance with the schedule established for Police Management Employees hired post July 1, 1990 with continuous service of 15 years \$2750, 20 years \$3250 based upon the Employees anniversary date (date of initial hire into a regular full-time position) of July 26, 1999. Such Longevity will be paid annually in December. Longevity will cease upon termination of employment and no payments will be made for partial years of service.

C. *Automobile Allowance.* Employee shall be provided an automobile for his use while conducting official City business. Employee understands that the vehicle may be used for official city business and incidental personal purposes only or at any time he could potentially have to respond to a work related incident. Further, said vehicle shall not be operated by

persons other than Employee. The City shall be responsible for providing liability insurance (bodily injury and property damage) for the Employee's use of said vehicle. In addition to those restrictions listed above, Employee agrees to abide by any additional restrictions on the use of said vehicle imposed by the insurer. The City shall provide Employee written notice of any additional terms and/or restrictions imposed by the insurer. The City shall also provide for maintenance, repair and replacement costs of said automobile, in accordance with City policy.

D. *Cell Phone Allowance.* The City shall provide the Employee with an eighty-five dollar (\$85.00) monthly cell phone allowance to cover the costs of using a mobile phone, based on the number of minutes projected to be needed for city-related work.

E. *Annual Leave Accrual & Cash Out.* Employee shall accrue personal leave in accordance with the leave accrual rate established for Police Management employees. Employee shall agree to limit the number of personal leave hours which can be carried over from year to year to a maximum of one thousand (1,000) hours. Employee will cease to accrue personal leave time until they have reduced their personal leave below that ceiling. Employee may cash out up to 160 hours maximum, subject to the limits on accrued leave cash out time available. All accrued personal leave is payable upon separation from service.

F. *Administrative Leave.* Upon execution of this Agreement and each year thereafter, Employee will be allotted eighty (80) hours of administrative leave away from the office to be scheduled and used throughout the year. These days off do not accrue, are not subject to carry over, are not subject to any cash-out option, and will not be paid out upon separation of service.

G. *Bereavement Leave.* Employee shall be entitled to a maximum of up to three (3) in state and four (4) out of state bereavement days per occurrence to be utilized in the event of a death of Employee's spouse, child, brother, sister, parent, grandparent or other relative, subject to the approval of the City. The terms of the bereavement leave are governed by the City's internal policies as may be amended by the City from time to time.

H. *Holidays.* Employee shall receive compensation for working holidays at the rate of five (5.38) hours per pay period, for a total of one hundred thirty (140) hours holiday pay per annum.

I. *Retiree Medical Trust.* Employee shall continue to be eligible for the \$250 monthly payment into the Retiree Medical Trust Fund. The Police Management Association maintains the trust. There will be no increase in the monthly amount for the term of this employee contract.

J. *Cafeteria Allotment.* Employee shall have a monthly Cafeteria Plan Allotment equal to 31.4% greater than the Cafeteria allotment provided to the Mgmt/Confidential Unit employees of the City. This allotment is adjusted annually based on premium increases/decreases.

K. *PERS.* The City shall pay the Employee's required retirement contributions pursuant to the retirement plan maintained by the City through the Public Employees Retirement System (PERS; provided, however, said payment shall not exceed nine percent (9%) of the Employee's compensation in the case of safety members. The City will report as compensation for retirement purposes the Employer Paid Member Contribution (EPMC) of 9%. These payments are not salary increases but are retirement contributions made in accordance with Section 414(h)2 of the Internal Revenue Code.

The City will pay the Employee's cost of the 1959 Survivor's Benefit.

Cost Sharing (per section 20516 of the CA Public Employees Retirement Law). Effective as soon as practical and upon CalPERS approval of the amendment to the City's contract, all Classic, Safety Members in the classification

of Chief of Police will contribute three percent (3%) toward the City' Employer's costs. Such contribution shall be tax-deferred and shall be credited to the members account.

L. *Fringe Benefits.* In addition, Employee shall be provided all the fringe benefits which are proportionate to those provided to the Police Management Association and/or Department Heads. These benefits may be adjusted by the City for the Police Management employees/Department Heads from time to time and the amounts shall be adjusted proportionately, including POST certificate pay of \$5500 for a Management Certificate.

4. At-Will Employment Status, Termination of Agreement and Severance Pay.

A. *Nature of Employment.* Employee expressly agrees that the employment relationship created by this Agreement is "at will" and that Employee serves at the will and pleasure of the City Manager. Nothing in this Agreement, any Resolution, Statute, Ordinance, Rule, or Policy shall prevent, limit or otherwise interfere with the right of the City Manager to terminate the services of Employee at any time without cause or right of notice, subject to Fontana Municipal Code Sections 20-31 and 20-32.

B. *By the Employee.* The Employee may terminate this Agreement upon written notice to the City Manager and shall endeavor to give two (2) weeks' prior notice. The City shall have the complete discretion to terminate the Employee any time prior to the end of such notice period, provided the City pays the Employee all compensation due and owing through the last day actually worked, plus an amount equal to the base salary the Employee would have earned through the remainder of the notice period.

C. *By the City, Without Cause.* At any time, the City may terminate the Employee's employment for any reason without cause. In the event the City exercises its right under this provision to terminate employment without cause, the Employee will be entitled to one, or a combination of, the following three options, at the City's discretion: (1) nine (9) months' notice of termination of employment; or, (2) compensation due and owing through the last day actually worked, plus nine (9) months of the Employee's salary at the time of the termination or an amount equivalent to the remainder of the term of this Agreement pursuant to the requirements of Government Code § 53260, whichever is less; or, (3) a combination of notice of termination of employment and salary in lieu of notice of termination of employment, not to exceed a total of nine (9) months or an amount equivalent to the remainder of the term of this Agreement pursuant to the requirements of Government Code § 53260, whichever is less. At the sole discretion of the City Manager an option of demotion to the previously held classification of Police Captain may also be considered along with the above options.

Further, per Government Code sections 53243 to 53243.4, if Employee is convicted of a crime involving an abuse of his office or position, whether before or after release from employment, Employee shall fully reimburse the City for any severance pay, paid leave salary disbursed pending an investigation related to the crime, or legal criminal defense funds relevant to the crime.

D. *By the City, For Cause.* At any time, and without prior notice, the City may terminate Employee for Cause (as defined below). The City shall pay Employee all compensation then due and owing; thereafter, all of the City's obligations under this Agreement shall cease. Termination shall be for "cause" if Employee: (1) acts in bad faith and to the detriment of the City; (2) refuses or fails to act in accordance with any specific direction or lawful order of the City; (3) exhibits in regard to his employment unfitness or unavailability for service, misconduct, dishonesty, habitual neglect, or incompetence; (4) is convicted of a crime involving dishonesty, breach of trust, or physical or emotional harm to any person; or (5) breaches any material term of this Agreement. Any dispute between the City Manager and Employee regarding whether the Employee's conduct constitutes cause for termination shall be resolved conclusively by the City Council, in its discretion, without right of appeal.

5. Amendments. This Agreement may not be amended or modified except by a writing signed by both parties. The failure of either party to insist on strict compliance with the terms or conditions of this Agreement by the other party shall not be deemed a waiver of that term or condition nor shall any waiver of any right or power at any one time be deemed a waiver of that right or power for all times.

6. Severability. If a court or arbitrator holds any provision of this Agreement to be invalid, unenforceable, or void, the remainder of this Agreement shall remain in full force and effect.

7. Attorneys' Fees. In any legal action, arbitration, or other proceeding brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

8. Governing Law. This Agreement shall be governed by and construed in accordance with the law of the State of California. Venue shall be appropriate in San Bernardino County Superior Court.

9. Interpretation. This Agreement shall be construed as a whole, according to its fair meaning, and not in favor of or against any party. The Agreement is integrated and whole and not reliant on any parole evidence for its terms. No presumption for or against validity or as to any interpretation based upon the identity of the drafter shall be applicable.

10. Conflict of Interest. The Employee agrees to abide with all applicable local State and Federal rules on conflicts of interest and receipt of gifts, including without limitation those rules found in the California Fair Political Practices Act and related regulations and those found in Government Code Sections 1090, et seq.

11. Acknowledgment. Employee acknowledges that he has read and understands this Agreement, that he is fully aware of its legal effect, and that he has entered into it freely and voluntarily and based on his own judgment and not on any representations or promises other than those contained in this Agreement.

IN WITNESS WHEREOF, the CITY OF FONTANA has caused this Agreement to be signed and duly executed by its City Manager, and the Employee has signed and executed this Agreement as of the day and year first written above.

CITY OF FONTANA

EMPLOYEE