

**AGREEMENT EMPLOYING PAUL BEARD AS CHIEF OF POLICE
FOR THE CITY OF OAKLEY, CA**

WHEREAS, the City of Oakley desires to employ Paul Beard as its Police Chief, and

WHEREAS, Paul Beard desires to accept such appointment on the terms and conditions contained herein;

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

- 1. Employment:** This Police Chief Employment Agreement (“Agreement”) is entered into by and between the CITY OF OAKLEY (“City”), a California “General Law” City, and Paul Beard (“Chief” or “Police Chief”). Under this Agreement, the City offers, and Chief accepts, employment as Police Chief of the City. Chief agrees that employment with City is “at will,” at the will of the City Manager pursuant to City of Oakley Municipal Code (OMC) Section 2.2.114 c., OMC Section 2.2.304 and California Government Code Section 34856. The City Manager may terminate said employment in their sole discretion, with or without cause. There has been no express or implied promise made to Chief concerning continued employment and any such promise cannot arise absent an ordinance amendment to the OMC as the at-will nature of this employment is set within the Municipal Code itself.
- 2. Effective Date:** The effective date of this contract shall begin on January 11, 2022 and it shall continue unless and until the City Manager and/or Chief of Police or the Parties terminate the agreement pursuant to the termination, severance and resignation provisions of this contract. Both the City and the Chief understand that the Chief’s employment is an “at-will” employment. Thus, Chief serves at the pleasure of the City Manager subject to any termination and severance and notice provisions contained in this Agreement or as provided for by law. In like manner, nothing in this contract shall be deemed to interfere with the right of Chief to resign at any time subject to the resignation and notice provisions of this contract.
- 3. Duties:** Chief shall perform those duties and have those responsibilities that are commonly assigned to a Police Chief of a city in California as described in Government Code Section 38630, 41601 through 41611 and any successor legislation, and as provided for in OMC Chapter 2, Article 3. Should any provision of this Agreement conflict with these provisions of the Municipal Code, the Municipal Code shall prevail. Chief shall, additionally, perform such other legally permissible and proper duties and functions consistent with the office of Police Chief, as the City Manager shall from time to time assign.
- 4. Devotion to City Business:** During the term of this Agreement, Police Chief shall not accept any other employment and shall be exclusively employed by City, unless prior written authorization is received from the City Manager, which the City Manager may withhold in their sole and exclusive discretion.

The Police Chief shall not engage in any activity which is or may become a conflict of interest, or which may create an incompatibility of office as defined under California law, or

which interferes with the Chief's ability to effectively perform his duties under this Agreement. The Police Chief must annually complete financial disclosure forms as required by law.

5. Termination of Employment and this Agreement; General Release; Severance:

A. At-Will Employee. Police Chief serves at the pleasure of the City Manager and nothing herein shall be taken to prevent, limit or otherwise interfere with the right of the City Manager to terminate the services of Police Chief with or without cause. There is no express or implied promise made to Police Chief for any form of continued employment. This Agreement is the sole and exclusive basis for an employment relationship between Police Chief and the City.

B. Termination Not-For-Cause. If City Manager terminates this Agreement (thereby terminating Chief's employment) without Cause, and if Chief signs, delivers to the City, and does not revoke, a General Release Agreement ("Release Agreement"), City shall pay Chief a lump sum payment equal to four (4) months of Chief's then Base Salary, less any applicable tax withholdings (the payment, collectively "Severance").

C. Termination for Cause. If City Manager terminates this Agreement (thereby terminating Chief's employment) with Cause, the Chief shall not be entitled to any additional compensation or payment, including Severance, but shall be entitled only to accrued Base Salary and vacation pay, and any other accrued and unused benefit allowances according to their terms ("Accrued Salary and Benefits"). Termination of the Chief under this Section shall be conducted in compliance with California Government Code Section 3304(c), which reads as follows:

3304 (c) "No chief of police may be removed by a public agency, or appointing authority, without providing the chief of police with written notice and the reason or reasons therefor and an opportunity for administrative appeal.

For purposes of this subdivision, the removal of a chief of police by a public agency or appointing authority, for the purpose of implementing the goals or policies, or both, of the public agency or appointing authority, for reasons including, but not limited to, incompatibility of management styles or as a result of a change in administration, shall be sufficient to constitute "reason or reasons."

Nothing in this subdivision shall be construed to create a property interest, where one does not exist by rule or law, in the job of Chief of Police."

As used in this Agreement, Cause shall mean any of the following:

1. Conviction of, or plea of guilty or nolo contendere to, any crime or offense (other than minor traffic violations or similar offenses) which is likely to have a material adverse impact on the City or on the Chief's reputation;

2. Conviction of any crime involving an "abuse of office or position," as that term is defined in Government Code Section 53243.4 (see Section 5. D., (below));

3. Willful insubordination or failure to carry out a lawful directive or directives of the City Manager; and

4. Any grossly negligent action or inaction by Chief that materially and adversely: (a) impedes or disrupts the operations of City or its organizational units; (b) is detrimental to employees or public safety; or (c) violates City's properly-established rules or procedures.

D. Abuse of Office. Notwithstanding any of the provisions in Sections 5. A. and 5. B. (above), in any circumstance in which the Chief is convicted of a crime involving abuse of his or her office or position with the City as defined in California Government Code Section 53243.4, any paid administrative leave provided by the City pending an outcome of the investigation into such crime, any City funds expended for the legal criminal defense to such criminal allegation, and any cash settlement or severance provided to the Chief upon termination shall be fully reimbursed by the Chief to the City.

E. Termination of Agreement in the Event of Chief's Death. This Agreement shall terminate upon the death of the Chief. In the event of such termination, the Chief's estate shall receive Accrued Salary and Benefits, but shall not be entitled to any additional compensation or payment, including Severance.

F. Automatic Termination in Event Chief fails to meet Certification Requirements. A failure to meet all certification requirements for a Chief of Police as required by the Commission on Peace Officer Standards and Training (POST) and other California laws and/or regulations shall result in an automatic termination of this Agreement. In the event of such termination, the Chief shall not be entitled to additional compensation or payment, including Severance.

G. Disability Termination. If Chief shall, for whatever reason, become incapable of performing any of the essential functions of Chief's position, even with reasonable accommodation by Employer, either (1) permanently, or (2) for a period exceeding the period of leave available to the Chief under the Family Medical Leave Act or the California Family Rights Act, accrued sick leave or 180 days, whichever is longer, then Chief shall be deemed to have suffered a disability. As the Chief's position requires Chief to devote a great deal of time both during and outside of normal office hours to the business of Employer, Chief recognizes that granting a leave longer than the time period stated in this section may constitute an undue hardship on Employer. In accordance with applicable law, any request for leave that does constitute an undue hardship may be grounds for not-for-cause termination of this Contract under, and in accordance with, Paragraph 5.B of this Agreement.

Nothing in this Paragraph 5.G shall impact the right of the Employee in connection with receipt of 4850 pay in the event of a qualifying occupational injury.

H. Resignation/Retirement of Chief. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Chief to resign at any time from their position with the City. The Chief may terminate the Agreement by submitting written notice of their resignation to the City Manager and shall provide not less than thirty (30) days written

notice of their intention to resign or retire. If Chief resigns or retires from employment with the City, they shall not be entitled to any severance pay. Chief shall be paid for all accrued vacation to the effective date of the termination.

6. Compensation and Annual Evaluation:

A. Base Salary. Chief's initial annual Base Annual Salary shall be **Two-Hundred Sixteen Thousand Dollars (\$216,000.00)** payable in equal installments at the same time and in the same manner as other employees of the City are paid. The salary shall be subject to withholding.

B. Incentive Pay. Chief shall be eligible for the following incentive pay:

1. *Intermediate POST Certificate.* Two and one-half percent (2.5%) of base pay for acquiring the specified training and education points and/or college degree and the prescribed years of law enforcement experience and, holding the Intermediate POST Certificate.

2. *Advanced or Supervisory POST Certificate.* An additional two and one-half percent (2.5%) of base pay for acquiring the specified training and education points and/or college degree and the prescribed years of law enforcement experience and, holding the Advanced or Supervisory POST Certificate.

3. *Management or Executive POST Certificate.* An additional two and one-half percent (2.5%) of base pay for acquiring the specified training and education points and/or college degree and the prescribed years of law enforcement experience and, holding the Management or Executive POST Certificate.

4. *Bilingual Pay.* Chief shall also be eligible for a one and one-half percent (1.5%) incentive pay for certified fluency in a non-English language that meets any established City criteria for eligible languages and language proficiency.

B. Annual Performance Reviews. At least annually the City Manager and Chief may set mutually-agreed-upon objectives for each year. These objectives shall coincide with the City Manager's completion of a public employee performance evaluation of the Chief on or before the anniversary date of this Agreement ("Annual Evaluation"). Nothing in this section precludes the City Manager from completing an interim public employee performance evaluation of the Chief at any time different from the required annual performance review.

C. Annual Salary Adjustments. Subject to Chief's overall satisfactory performance at the annual performance evaluation referred to in Section 6. B. (above), Chief's base salary shall be adjusted by an annual merit increase as specified in the City's Compensation Policy.

7. Non-Cash Compensation and Benefits:

A. CalPERS Retirement. The City does not participate in Social Security. City agrees to continue to enroll Chief as a member of the California Public Employees Retirement

System (CalPERS) in the CalPERS "Public Safety" plan of 2.7@57 for qualifying "Classic" members, consistent with the provisions of the California Public Employees Pension Reform Act of 2013 (PEPRA). Pursuant to California Government Code Section 53244, a local public officer who is convicted by a state or federal trial court of any felony under state or federal law for conduct arising out of or in the performance of, his or her official duties shall forfeit any contract right or other common law, constitutional or statutory claim against a public agency employer to retirement or pension rights or benefits.

B. Deferred Compensation Retirement Plan (IRS 457(b) or 401a). The City will match up to a *cumulative* one percent (1%) of payroll contributions, if any, made by the Chief to any City-approved Deferred Compensation Plan.

C. Retirement Medical Trust. To the extent permitted by the Trust, City will continue to provide up to a maximum of \$450 per month contribution to the Retirement Medical Trust that Chief participated in as an associate member of the City of Oakley Peace Officers' Association (POA).

D. In-lieu Medical Premium. Chief currently opts out of City-provided medical, dental and vision coverage. City shall provide Chief with an opt-out amount of \$1235.00 per month in lieu of providing medical coverage and a City contribution to medical premiums. If Chief should enroll in any City-provided medical plan, this benefit shall cease upon enrollment.

E. Uniform and Equipment Reimbursement, Business Attire. Chief is expected to regularly wear a police uniform. Uniform components and equipment shall be provided to the Chief in the same manner as uniform components are provided to other sworn personnel of the Police Department. The Chief may from time-to-time be required to wear a business suit or other appropriate attire customarily worn by a Chief of Police. Chief shall be reimbursed up to a total of One Thousand Dollars (\$1,000.00) per year for the purchase, care and cleaning of non-uniform business attire, inclusive of dry cleaning. Uniforms and boots/shoes shall be provided to Chief

F. Other Non-Cash Benefits. Unless otherwise specifically provided for in this Agreement, City will provide the Chief with the same type and level of benefits as provided to other full time senior management level employees within the City's employ, including, but not limited to holidays, sick leave, vacation, and term life insurance.

All actions taken by the City Council relating to those benefits for other management employees of City shall be considered actions relating to these benefits of Police Chief and shall be deemed to be agreeable amendments to this Agreement without any need for a written, modification signed by all parties.

Chief shall be responsible for any income tax liability arising out of receipt of benefits provided under this Agreement that exceed the allowable tax exempt amounts including, but not limited to excess life insurance, and agrees to hold City harmless and indemnify it for any liabilities, costs and expenses caused by any tax authority relating to these benefits.

G. Hours of Work and Administrative Leave. In recognition of the fact that the Chief is an Exempt employee pursuant to the provisions of the Fair Labor Standards Act (FLSA), and that Chief is expected to work any and all hours/days necessary to competently and fully perform the functions as Police Chief, the Chief will be provided with ninety-six (96) hours of paid administrative leave in each full calendar year of employment. This administrative leave shall not accrue or carry over from one year to the next and shall not be eligible to be converted to a cash benefit nor paid out upon separation of employment.

8. Use of City-Owned Vehicle: The City agrees to provide a City vehicle for job-related and incidental use, including travel to and from home and work.

9. Electronic Equipment / Technology: City shall provide Chief with a reimbursement of \$76.00 per month to compensate Chief for work-related use of his personal cell phone.

10. Business and Professional Expenses:

A. Dues and Subscriptions. City agrees to budget and pay for the professional membership dues and subscriptions for the Chief's continued full participation in national, regional, State and local associations and organizations as are necessary and desirable for the Chief's continued professional growth and advancement, and for the good of the City. Further, City shall pay for the membership dues for the Chief to become a member of a service club in Oakley.

B. Conferences. The City hereby agrees to annually budget and pay for the Chief's necessary travel, lodging and meal costs when representing the City at conferences or meetings of national or state committees or commissions upon which the Chief of Police serves as a member, subject to the approval of the City Manager; and for such other official meetings or travel as are reasonable necessary for the professional development and advancement of the Chief as approved by the City Manager.

C. Professional Development and Training. City also agrees to budget and pay for the travel, lodging and meals expenses of the Chief incurred during his or her attendance at short educational courses, institutes and/or seminars that are necessary for his professional development or training and for the good of the City as approved by the City Manager.

11. Enforcement of this Agreement: The prevailing party in any actions brought to enforce this Agreement or to resolve any dispute or controversy arising under its terms and conditions, shall be entitled to payment of his/her/its reasonable attorneys' fees and costs.

12. Indemnification: Subject to any contrary provisions of the California Government Code or Section 5 (D) of this Agreement (above), City shall defend, hold harmless, and indemnify Chief using legal counsel of City's choosing, against expense or legal liability for acts or omissions by Chief occurring within the course and scope of Chief's employment under this Agreement, provided that such indemnity shall not extend to any judgment or damages arising out of any willful wrongdoing. Legal representation, provided by City for Chief, shall extend

until a final determination of the issues including any and all losses, damages, judgments, interest, settlements, fines, court costs, and the reasonable costs and expenses of legal proceedings, including appeals, and including attorneys' fees, and expert witness fees and all other trial and appellate costs, and other liabilities incurred, imposed upon, or suffered by Chief in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened. In the event there is a conflict of interest between City and Chief such that independent counsel is required for Chief, the Chief may engage their own legal counsel, in which event City shall indemnify Chief, including direct payment of all such reasonable costs related thereto.

The parties agree that this section shall survive termination of this Agreement and Chief's employment with the City. This section shall apply at the time any such claim, demand, action, loss or charge is made or occurs as the case may be provided that the act or omission giving rise to the claim occurred during the time that the Chief was employed by the City.

13. Notices: Any notices to be given hereunder by either party to the other in writing may be effected either by personal delivery, mail, or email. Mailed notices shall be addressed to the parties as set forth below, but each party may change his/her/its address by written notice given in accordance with this Section. Notices delivered personally or by email will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated and received as of three (3) calendar days following the date of mailing.

CITY:
City of Oakley
Attention: City Manager
3231 Main Street
Oakley, CA 94561

CHIEF OF POLICE:
Paul Beard
3231 Main Street
Oakley, CA 94561

COPY TO:
Derek Cole, Esq., City Attorney
Cole Huber LLP
2281 Lava Ridge Court, Ste 300
Roseville, CA 95661

14. Conflict with City Municipal Code: The City personnel ordinances, resolutions, rules and policies shall apply to Chief in the same manner as applied to other management employees, provided, however, in the event of a conflict between the provisions of this Agreement and the City Municipal Code, the City Municipal Code shall prevail over this Agreement.

15. Entire Agreement: This Agreement represents the entire agreement between the parties and supersedes any and all other agreements, either oral or in writing, between the parties with respect to the employment of Chief by City, and contains all of the covenants and agreements between the parties with respect to that employment. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by either party, or by anyone acting on behalf of either party, which are not

embodied herein, and that no other employment agreement, statement, or promise not contained in this Agreement shall be valid or binding upon either party.

16. Modifications: Any modifications to this Agreement shall be effective only if in writing and signed by both of the parties hereto.

17. Effect of Waiver: The failure of either party to insist upon 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.

18. Partial Invalidity: If any provision of 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.


19. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of California.

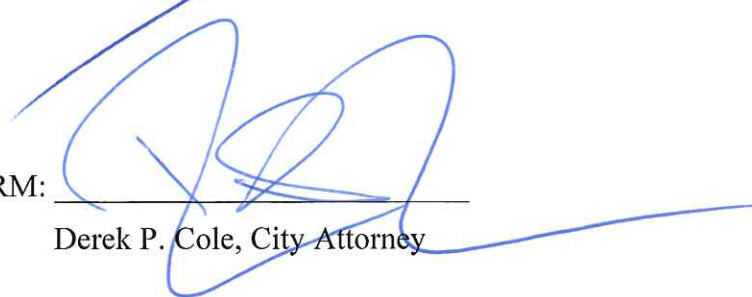
This Agreement is entered into this 11th day of January, 2022.

CITY OF OAKLEY

POLICE CHIEF

By: 
Josh McMurray, City Manager

By: 
Paul Beard, Police Chief

APPROVED AS TO FORM: 
Derek P. Cole, City Attorney