

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement") is made and entered into this 1st day of March, 2019, by and between the City of Dixon, a California municipal corporation ("City") and Robert E. Thompson, an individual ("Employee"). City and Employee may individually be referred to herein as "Party" or collectively as "Parties". There are no other parties to this Agreement.

RECITALS

A. The City Manager is authorized to appoint City staff, pursuant to the Dixon Municipal Code ("D.M.C.") Section 2.09.040, subject to review and ratification by the Dixon City Council ("City Council") in the case of department heads;

B. Employee began employment with the City as the Police Chief on March 1, 2017;

C. City Manager has evaluated Employee's knowledge, experience, administrative skills and abilities to serve as the City's Police Chief and recommends that Employee continue to serve as Police Chief pursuant to the terms of this Agreement;

D. The Parties agree that this Agreement shall be the sole agreement between the Parties regarding the employment of Employee as Police Chief;

E. The Parties desire to execute this Agreement pursuant to the authority of and subject to the provisions of California Government Code ("Government Code") Section 53260 *et seq.*

NOW, THEREFORE, in consideration of the mutual covenants entered into between the Parties and in consideration of the benefits that accrue to each, it is agreed as follows:

AGREEMENT

Section 1. Recitals. The recitals set forth above ("Recitals") are incorporated herein by this reference and made a part of this Agreement. In the event of any inconsistencies between the Recitals and Sections 1 through 10 of this Agreement, Sections 1 through 10 will prevail.

Section 2. Effective Date. This Agreement shall become effective once executed by both the City and Employee ("Effective Date").

Section 3. Appointment of Police Chief, Duties and Term.

3.1. Appointment of Police Chief and Duties. The City Manager hereby appoints Employee to the position of Police Chief, in and for the City, to perform the

function and duties of the Police Chief under the direction of the City Manager, as the City Manager is authorized to oversee City employees under Section 2.09.040 of the D.M.C. Employee accepts such appointment and employment pursuant to the terms of this Agreement. Employee shall further perform the functions and duties specified under the laws of the State of California, the D.M.C., the ordinances and resolutions of the City, and such other duties and functions as the City Manager may from time to time assign.

3.2. No Secondary Employment. Employee agrees to devote all of his productive time, ability, and attention to the City's business to the extent necessary to perform his duties and responsibilities in a manner satisfactory to City. During the Term, as defined in Section 3.5 of this Agreement, Employee shall not hold secondary employment or engage in activities which conflict with, or present the appearance or possibility of conflicting with, the City's legitimate business interests. As such, Employee agrees that he will notify the City Manager or the City Council in writing if Employee accepts secondary employment. The City may determine whether there is the appearance of or an actual conflict, or potential conflict, with the satisfactory performance of Employee's duties and/or what is in the best interest of the City. Employee has the right to volunteer for such nonprofit organizations as he may see fit, provided that such volunteer services shall not interfere with his duties as Police Chief.

3.3. Exempt Employee. The general business hours for City employees are Monday through Friday, 9:00 a.m. to 5:00 p.m. However, it is recognized by the Parties that Employee is an exempt employee for purposes of the Fair Labor Standards Act of 1938 (29 U.S.C. § 201 et seq.). Employee shall not receive overtime or extra compensation for hours worked outside of the City's general business hours, which are necessary to fulfill the duties of the Police Chief position, unless otherwise provided in this Agreement.

3.4. Schedule. The Police Chief's daily and weekly work schedule shall vary in accordance with the work required to be performed. The Police Chief position may include frequent attendance at evening meetings and frequent irregular hours as necessary to meet deadlines and achieve objectives. The City Council and the City Manager recognize that the Police Chief must devote a great deal of his time outside normal office hours to business of the City and to that end, will be allowed to take administrative leave as he shall deem appropriate during said normal office hours.

3.5. Term. The term of this Agreement shall be for three (3) years from the Effective Date ("Term"). The City Manager in his sole discretion may extend the Term from time to time in increments of at least two (2) years. No later than three (3) months prior to the expiration of the Term, the City Manager shall provide written notice to Employee as to whether the City Manager intends to extend the Term.

Section 4. At-Will Employment.

4.1. At Will. Employee is an at-will employee serving at the pleasure of the City Council and City Manager as provided in Government Code section 36506 and the

D.M.C. Section 2.09.040. Accordingly, the City Manager may terminate Employee's employment at any time, with or without cause, and with or without notice. Only if Employee is terminated by City without good cause, as defined in Section 6.3 of this Agreement, shall Employee be entitled to a severance.

4.2. No Property Right in Employment. Employee understands and agrees that the terms of his employment are governed solely by this Agreement. Employee further understands and agrees that this Agreement does not confer a right of employment for any specified term and that he is not entitled to due process for any disciplinary action under the City's personnel policies and rules, including termination.

Section 5. Compensation and Evaluations.

5.1. Base Salary. City agrees to pay Employee an annual salary of One Hundred Eighty-Four Thousand Dollars (\$184,000) ("Base Salary"), payable in installments at the same time that the other City employees are paid. Effective the first full pay period following March 1, 2020, Employee's Base Salary shall increase by five percent (5%) to One Hundred Ninety-Three Thousand Two Hundred Dollars (\$193,200). Effective the first full pay period following March 1, 2021, Employee's Base Salary shall increase by another five percent (5%) to Two Hundred Two Thousand Eight Hundred Sixty Dollars (\$202,860).

5.2. Pro-rata Decrease. Employee acknowledges that the Base Salary may be subject to pro rata decrease based on the City Council's adoption of an unpaid Mandatory Furlough Program adopted as a budgetary measure.

5.3. Review and Evaluation. The City Manager agrees to review and evaluate Employee's performance of his duties as Police Chief pursuant to the terms of this Agreement ("Review and Evaluation") on not less than an annual basis and to provide Employee with a written performance review. The annual Review and Evaluation shall be conducted in April of each year, or at the City Manager's discretion.

5.4. Benefits. During the Term of this Agreement, Employee shall be entitled to receive the same benefits provided in the City's "Compensation Plan for Confidential Senior Management Classifications" (the "Compensation Plan") attached hereto as **Exhibit A**, or as may be amended from time to time. Any benefits listed in this Agreement, Sections 5.5 through 5.9, shall be in lieu of those benefits provided in the Compensation Plan. Any benefits not specifically listed in Sections 5.5 through 5.9 of this Agreement are enumerated in the attached Compensation Plan.

5.5. Deferred Compensation. Employee shall receive a City contribution for deposit into a deferred compensation retirement account. The City agrees to contribute a five percent (5%) match of Employee's Base Salary each month.

5.6. Retirement. The City participates in the Public Employees Retirement System ("PERS"). Employee is currently considered as a "New Member" under

Government Code section 7522.04 and is eligible for the Tier 2.7% @ 57 retirement formula. Employee shall contribute fifty percent (50%) of normal costs, as determined annually by PERS, towards the employee share of the PERS contributions.

5.7. Vacation. Employee shall accrue one hundred sixty hours (160) of vacation leave per year. Effective March 1, 2021, Employee shall accrue one hundred eighty hours (180) of vacation per year. Upon separation, Employee is entitled to receive payment at his current base pay for all vacation time earned, but not taken as of the effective date of separation.

5.8. Uniform Allowance. Employee shall receive the same uniform allowance amount that is provided to the members of the Dixon Police Officers' Association. Employee may elect to receive his uniform allowance on a bi-weekly basis (subject to tax deductions), or have his uniform allowance paid directly to the City's uniform vendor in order to purchase uniforms on a pre-tax basis. Employee shall make this election prior to June 30 of each year, to take effect July 1. If Employee elects to direct his uniform allowance directly to the City's uniform vendor, any allowances not spent directly with the vendor during the City's fiscal year will be forfeited. If Employee separates employment from the City and is no longer required to wear a Dixon Police Department uniform, he shall automatically forfeit any remaining allowances.

5.9. Education Incentive. If Employee receives the Executive Development Certificate through the Peace Officer Standards and Training Commission ("POST"), the City will provide Employee five percent (5%) of his Base Salary, as an education incentive, the first pay period following the day Employee provides the Executive Development Certificate to the City.

Section 6. Termination of Employment and Severance.

6.1 Voluntary Resignation. Employee may resign at any time and agrees to give the City at least sixty (60) days advance written notice of the effective date of the Employee's resignation, unless the Parties otherwise agree in writing. If the Employee retires from full-time public service with the City, the Employee shall provide three (3) months advance written notice. The Employee's actual retirement date will be mutually established between the Parties. During the notice period, all rights and obligations of the Parties under this Agreement shall remain in full force and effect. Promptly after the effective date of resignation, the City shall pay to Employee all salary and benefit amounts both accrued and owing under this Agreement. In the event of voluntary resignation, Employee shall not be entitled to a severance as set forth in this Agreement.

6.2 Termination by City Manager. The City Manager may terminate this Agreement and remove Employee from his position as Police Chief at any time with or without cause and with or without notice. If Employee's termination is based on charges of misconduct that publicly stigmatizes Employee's reputation or impairs his ability to earn a living, or might damage his standing in a community, Employee may, within five (5) business days of the City Manager's notice to Employee of his or her intent to

terminate Employee's employment, make a written request for a "name-clearing" hearing (as described in *Lubey v. City and County of San Francisco* (1979) 98 Cal.App.3d 340 at its progeny) before the City Council in closed session. The "name-clearing" hearing is solely to provide Employee the opportunity to clear his name. The City Council may determine whether the allegations contained in the notice of termination are supported. If the City Council determines that the allegations are not supported, a decision shall be issued to reflect that Employee's termination was without fault. This decision will not, however, require that Employee be reinstated to his position. In the event Employee does not request a "name-clearing" hearing before the City Council, the City Manager's decision to terminate will be effective by the close of business on the fifth (5th) day after the City Manager provided notice to Employee of his or her intent to terminate Employee's employment.

6.3. Termination Without Good Cause. In the event City terminates this Agreement without cause, as defined below, the City shall pay Employee a sum equal to nine (9) months Base Salary ("Severance"). This Severance is subject to the restrictions of Government Code section 53260. Any cash settlement related to the termination of this Agreement received by Employee from City shall be fully reimbursed to the City if Employee is convicted of a crime involving an abuse of his office or position while employed with City, pursuant to Government Code section 53243.2. This Severance shall be paid in the same manner as other employees, unless otherwise agreed to by the City and Employee. The City agrees to make a contribution to the Employee's deferred compensation account on the value of this compensation calculated using the rate ordinarily contributed on regular compensation. In the event City terminates this Agreement, Employee shall be entitled to continued medical and dental benefits at his cost, pursuant to the provisions of the federal Consolidated Omnibus Budget Reconciliation Act ("COBRA").

6.4. Termination For Good Cause. The City may at any time immediately terminate this Agreement for good cause as defined in this Section 6.4. If Employee is terminated for good cause, the City shall not be required to pay any Severance under this Agreement, and City shall have no obligation to Employee beyond those benefits accrued as of Employee's last day of employment and those City is obligated to provide under federal or state law.

"Good Cause" for purposes of this Agreement, means a fair and honest cause or reason for termination. These reasons include, but are not limited to:

1. Conviction of a felony;
2. Disclosing confidential information of City;
3. Gross carelessness or misconduct;
4. Unjustifiable and willful neglect of the duties described in this Agreement;

5. Mismanagement;
6. Non-performance of duties;
7. Any conduct which violates the City's Personnel Rules and for which a City employee may be terminated;
8. Repeated and protracted unexcused absences from the Police Chief's office and duties;
9. Willful destruction or misuse of City property;
10. Conduct that in any way has a direct, substantial, and adverse effect on the City's reputation;
11. Willful violation of federal, state, or City discrimination laws;
12. Continued substance abuse which adversely affects performance of Employee's duties as Police Chief;
13. Refusal to take or subscribe any oath or affirmation which is required by law;
14. Permanent disability of Employee, or Employee becoming otherwise unable to perform the duties of Police Chief, by reason of sickness, accident, illness, injury, mental incapacity or health for a period of six (6) weeks following the exhaustion of all available leave balances and any applicable Family Medical Leave Act or California Medical Leave Act leaves, or where the same occurs for forty (40) working days over a sixty (60) working day period following exhaustion of such leaves;
15. Dishonesty; or
16. Engaging in other employment or activities which conflict with, or present the appearance or possibility of conflicting with, City's legitimate business interests.

Notwithstanding any provision in this Agreement to the contrary, the City Manager may place Employee on investigatory leave with full pay and benefits at any time during the Term of this Agreement.

Section 7. Indemnification. City shall defend, hold harmless and indemnify Employee against any tort, personnel, civil rights or 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 Police Chief in accordance with California's Tort Claims Act (Government Code section 825 et seq.),

and Churchwell White, LLP
ATTN: Douglas L. White
1414 K Street, 3rd Floor
Sacramento, CA 95814

If to Employee: City of Dixon
ATTN: Robert E. Thompson
600 East A Street
Dixon, CA 95620
w/ cc: home address on file

Section 10. General Provisions.

10.1. Modification of Agreement. This Agreement may be supplemented, amended, or modified only by a writing signed by the City and Employee.

10.2. Entire Agreement. This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the Parties and supersedes all other prior or contemporaneous oral or written understandings and agreements of the Parties. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty, except those expressly set forth in this Agreement.

10.3. Severability of Agreement. If a court or an arbitrator of competent jurisdiction holds any section of this Agreement to be illegal, unenforceable, or invalid for any reason, the validity and enforceability of the remaining sections of this Agreement shall not be affected.

10.4. Authority. All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement and the names, titles and capacities herein stated on behalf of any entities, persons, states or firms represented or purported to be represented by such entities, persons, states or firms and that all former requirements necessary or required by the state or federal law in order to enter into this Agreement had been fully complied with. Further, by entering into this Agreement, neither Party hereto shall have breached the terms or conditions of any other contract or agreement to which such Party is obligated, which such breach would have a material effect hereon.

10.5. Headings. The headings in this Agreement are included for convenience only and neither affect the construction or interpretation of any Section in this Agreement nor affect any of the rights or obligations of the Parties to this Agreement.

10.6. Necessary Acts and Further Assurances. The Parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement.

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

10.8. Waiver. No covenant, term, or condition or the breach thereof shall be deemed waived, except by written consent of the Party against whom the waiver is claimed, and any waiver of the breach of any covenant, term, or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term, or condition.

10.9. Counterparts. This Agreement may be executed in counterparts and all so executed shall constitute an agreement which shall be binding upon the Parties hereto, notwithstanding that the signatures of all Parties and Parties' designated representatives do not appear on the same page.

10.10. Venue. Venue for all legal proceedings shall be in the Superior Court of the State of California, in and for the County of Solano.

10.11. Attorney's Fees and Costs. If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret sections of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, this Agreement has been entered into by and between EMPLOYEE and CITY as of the date of the Agreement set forth above.

CITY:

City of Dixon, a California municipal corporation

By: 

Jim Lindley, City Manager

Date Signed: 3-11-19

EMPLOYEE:

By: 

Robert Thompson, an individual

Date Signed: 2/26/2019

By: 

Joan M. Aguilar, Acting City Clerk

Date Signed: 2/28/19

Approved as to Form and Content:

By: 

Douglas L. White, City Attorney