

## **EMPLOYMENT AGREEMENT INTERIM POLICE CHIEF**

This Employment Agreement ("Agreement") is entered into as of June 27, 2018 by and between the City of Nevada City, California, a municipal corporation (the "City"), and James Leal, an individual (the "Interim Police Chief"). The City and the Interim Police Chief are sometimes individually referred to as a "Party" and collectively as "Parties."

### **RECITALS**

**WHEREAS**, the City desires to employ the services of James Leal as Interim Police Chief on a temporary basis for the period of six (6) months, with the possibility of a three (3) month extension, until such time as the City is able to identify a viable candidate for the position of Police Chief; and

**WHEREAS**, the Interim Police Chief is qualified by virtue of experience, specialized skills, training, education and expertise to accomplish such services; and

**WHEREAS**, City desires to employ the services of Interim Police Chief as allowed under the provisions of Government Code section 21221(h); and

**WHEREAS**, James Leal desires to serve as the City's Interim Police Chief.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises set forth herein and for other valuable consideration, receipt of which is hereby acknowledged, the City and the Interim Police Chief mutually agree as follows:

### **Section 1. Employment**

City agrees to employ the Interim Police Chief to perform the following services:

- a. Interim Police Chief shall serve as Interim Police Chief, have the same powers, rights and responsibilities of a full time Police Chief, and shall be responsible for managing and directing the Nevada City Police Department under the direction of the City Manager.
- b. Interim Police Chief shall perform the duties of the Police Chief, as described in the job description (classification specifications) for the Police Chief and in accordance with all applicable requirements of federal, state and local laws to the best of the Interim Police Chief's ability in accordance with the highest professional and ethical standards of the profession and shall comply with all general rules and regulations established by the City.
- c. Interim Police Chief shall have the same employment rights as provided for the position of Police of Chief in the California "Public Safety Officers Procedural Bill of Rights," California Government Code section 3300 et seq.
- d. Interim Police Chief agrees to remain in the exclusive employ of the City during this Agreement and shall not engage in any other employment except as may be specifically approved in writing in advance by the City Manager.

## **Section 2. Hours of Work**

The City contracts with the California Public Employees' Retirement System ("CalPERS") for retirement benefit. Interim Police Chief is a retired annuitant pursuant to Government Code section 21221(h). As a retired annuitant, Interim Police Chief is limited to working no more than 960 hours for any and all CalPERS employers during a fiscal year. Interim Police Chief will report, on a bi-weekly basis, all hours worked for the City on City time sheets or other suitable record, and any hours worked for any other CalPERS agency.

Due to the type of work performed by the Interim Police Chief, the parties acknowledge that the scheduling of work hours must necessarily be flexible and may be modified as necessary to accommodate the needs of the City and the Interim Police Chief. Interim Police Chief will inform the City Manager in writing (or via e-mail) when he will be out of the office, and shall designate an acting police chief during those times.

## **Section 3. Compensation and Benefits**

City agrees to pay Interim Police Chief an hourly rate of fifty dollars (\$51.00), per hour, payable bi-weekly, at the same time as other employees are paid and subject to customary withholding.

Except as set forth herein, Interim Police Chief waives his right to any leave and benefits contained in the City's Memorandum of Understanding with the Management Employees and shall receive no employment benefits (including, but not limited to, retirement (CalPERS), annual leave, sick leave, administrative leave, holiday/floating holiday pay, health, dental, or any other benefits given to regular, full time employees), except that the City shall provide workers' compensation benefits as required by State law and shall pay the employer's share of the Medicare tax. Interim Police Chief shall be permitted to participate in the City's existing deferred compensation plan to the same extent and in the same manner as other City employees.

The Parties agree, except as otherwise provided in this Agreement, that Interim Police Chief is not entitled to any post-employment benefit to be paid by the City of Nevada City. The Parties have entered into this Agreement pursuant to the provisions of Government Code section 21221(h) for purposes of determining Interim Police Chief's employment status under the Public Employees' Retirement Law. In the event that this Agreement is determined to be contrary to any provision of the Public Employees' Retirement Law, each party shall be solely responsible for paying to CalPERS any amounts respectively owed as the employer and employee contributions, including interest, in connection with Interim Police Chief's employment with the City. The parties also agree that each party is solely responsible for any administrative fees that may be assessed to each of them under Government Code Section 21220 or by CalPERS.

or hereafter amended, City shall defend, hold harmless, and indemnify the Interim Police Chief 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 the Interim Police Chief's duties in accordance with the provisions of Sections 825 and 825.6, as now existing or hereafter amended. City may conduct such defense reserving the rights of City not to pay the judgment, compromise or settlement until it is established that the injury arose out of an act or omission occurring within the scope of the Interim Police Chief's employment as an employee of City. City is required to pay the judgment, compromise, or settlement only if it is established that the injury arose out of an act or omission occurring in the scope of the Interim Police Chief's employment as an employee of City. Nothing in this Agreement authorizes or obligates City to pay that part of any claim or judgment that is for punitive or exemplary damages. City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered therefrom only to the extent authorized in Sections 825 through 825.6, as now existing or hereafter amended.

If the Interim Police Chief is convicted of a crime involving an abuse of his office or position, as defined in Government Code section 53243.4, then the Interim Police Chief shall fully reimburse the City for any paid leave salary paid by the City to the Interim Police Chief pending any investigation, funds provided to the Interim Police Chief for his or her legal criminal defense, and/or any cash settlement paid to the City Manager related to his termination by the City. Said reimbursements are required if such payments are made, even if the payments were made by the City in the absence for any contractual requirement to do so.

#### **Section 8. Notice**

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

**To City:**

Catrina Olson  
City Manager  
City of Nevada City  
317 Broad Street  
Nevada City, CA 95959

**To Interim Police Chief:**

James Leal  
Interim Police Chief  
Nevada City Police Department  
317 Broad Street  
Nevada City, CA 95959

Notices shall be deemed received upon receipt or upon depositing in the U.S. Mail postage prepaid first class mail.

#### **Section 9. Miscellaneous Provisions**

- A. Assignment. This Agreement is not assignable by either City or Interim Police Chief.
- B. Entire agreement. This Agreement represents the entire agreement of the Parties, and no representations have been made or relied upon except as set forth herein. This

Agreement may be amended or modified only by a written, fully executed agreement of the Parties.

- C. 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.
- D. Jurisdiction and Venue. This Agreement shall be construed in accordance with the laws of the State of California, and the Parties agree that venue shall be in Nevada County, California.
- E. Waiver. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent or any other right hereunder.
- F. Ambiguity. The parties acknowledge that this is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.
- G. Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.
- H. Counterparts. The Parties may execute this Agreement in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument.
- I. Facsimile Signature; Electronic Signature. This Agreement shall be binding upon the receipt of facsimile signatures or e-mailed by PDF or otherwise. Any person transmitting his or her signature by facsimile or electronically shall promptly send an original signature to the other party pursuant to the notice provision of this Agreement. The failure to send an original shall not affect the binding nature of this Agreement.

(SIGNATURES ARE ON THE FOLLOWING PAGE)

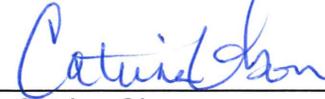
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above.

**JAMES LEAL,**  
an individual

By:   
James Leal

(City Seal)

**CITY OF NEVADA CITY,**  
a municipal corporation

By:   
Catrina Olson  
City Manager

Attest:   
Niel Locke  
City Clerk

Approved as to Form:

  
Hal DeGraw  
City Attorney