



2022

CHIEF OF POLICE EMPLOYMENT AGREEMENT
(EMPLOYEE: JAKE FISHER)

THIS 2022 CHIEF OF POLICE EMPLOYMENT AGREEMENT (“Agreement”) is dated as of this 22 day of November 2022 by and between the CITY OF EL MONTE, a municipal corporation and general law city (“CITY”) and JAKE FISHER, an individual (“EMPLOYEE”). The foregoing notwithstanding, this Agreement shall be deemed to take effect on the date it is signed by all of the Parties hereto (hereinafter, the “Effective Date”). For purposes of this Agreement, the capitalized term “Parties” shall be a collective reference to both CITY and EMPLOYEE. The capitalized term “Party” may refer to either CITY or EMPLOYEE interchangeably as reasonably appropriate.

RECITALS

THIS AGREEMENT is made and entered into in consideration of the following:

WHEREAS, the CITY is organized under a City Manager-City Council form of government as codified under Chapter 2.12 (City Manager) of the El Monte Municipal Code; and

WHEREAS, per Government Code Section 34856, applicable to municipalities that have adopted a City Manager – City Council form of government, “the City Manager may appoint and dismiss the Chief of Police” and certain other subordinate officers and employees of the CITY; and

WHEREAS, per Section 2.12.030 (Duties and Powers of the City Manager) of the El Monte Municipal Code (“Section 2.12.030”), the City Manager’s powers include the power to “[a]ppoint and maintain, competent qualified department heads, including the Chief of Police and all other employees of the City...”; and

WHEREAS, the City Manager of the City of El Monte, pursuant to her authority stated above, has appointed EMPLOYEE to the office of Chief of Police; and

WHEREAS, per Section 2.12.120 (Contract authority) of the El Monte Municipal Code, the City Manager is authorized to sign contracts approved by the City Council which approval authorizes the City Manager to sign the contract on behalf of the CITY; and

WHEREAS, this Agreement was approved by the City Council at its regular meeting of November 15, 2022 in open session as part of the Regular Meeting Agenda under Agenda Item No. 14.11 in compliance with Government Code Sections 53262, 54953(c)(3) and 54956.

NOW, THEREFORE, for and in consideration of the mutual agreements contained herein, CITY and EMPLOYEE agree as follows:

SECTION 1. POSITION, TERM, DUTIES:

1.1 EMPLOYMENT AS CHIEF OF POLICE. This Agreement establishes the terms and conditions of employment of EMPLOYEE as the Chief of Police of the City of El Monte (hereinafter, "Chief of Police").

1.2 TERM. The term of this Agreement ("Term") shall commence upon the date it is fully executed by all of the Parties (the "Effective Date") and shall continue until December 31, 2027.

1.3 DUTIES AND RESPONSIBILITIES.

A. EMPLOYEE shall discharge and perform all of the duties, functions and responsibilities of the office of Chief of Police for the City of El Monte as set forth in the El Monte Municipal Code and as governed by Government Code Sections 41601 through 41612. EMPLOYEE shall also perform and discharge all such other law enforcement duties and functions performed by persons occupying the office of Chief of Police as may be set forth under the laws of the State of California, the laws of the federal government of the United States and the job descriptions, policies, rules, and regulations adopted or otherwise established by the City Council or the City Manager. For purposes of this Agreement references in the El Monte Municipal Code to the term "Chief of Police" or "Police Chief" shall refer to the job title held by EMPLOYEE pursuant to this Agreement. Additionally, EMPLOYEE shall perform such other legally permissible and proper functions and duties as the City Manager shall, from time-to-time, direct or assign as appropriate to the office of Chief of Police. EMPLOYEE shall perform these functions and duties in an efficient, competent, and ethical manner and shall devote EMPLOYEE's best efforts and full-time attention thereto.

B. EMPLOYEE's performance of EMPLOYEE's duties shall be subject to the direction and oversight of the City Manager. EMPLOYEE's duties and responsibilities shall include, but are not limited to, the following:

1. EMPLOYEE shall administer and enforce policies and procedures established by the City Council and the City Manager and assist the City Manager in the promulgation of such rules and regulations as may be necessary to implement such policies;
2. EMPLOYEE shall (i) attend all meetings of the City Council, unless excused by the City Manager, and take part in the discussion of all matters before the City Council as directed by the City Manager; and (ii) assist the City Manager as directed in providing direction and oversight of the El Monte Police Department (the "Department") and all employees and independent contractors under the Department's supervision, except those employees or independent contractors, if any, that are directly appointed by or who report directly to the City Council.

1.4 WORK HOURS.

A. The position of Chief of Police shall be deemed an exempt position under state and federal wage and hours laws. EMPLOYEE's compensation (whether salary or benefits or other allowances) is not based on hours worked and EMPLOYEE shall not be entitled to any compensation for overtime.

B. EMPLOYEE shall be allowed reasonable flexibility in setting EMPLOYEE's own office hours, provided: (i) EMPLOYEE maintains a reasonably substantial onsite presence at City Hall during normal CITY business hours; and (ii) EMPLOYEE is reasonably available to the City Manager, members of the City Council, Department personnel and members of the community during normal CITY business hours.

C. Consistent with paragraph A, above, EMPLOYEE's work hours may generally conform to the four 10-hour days per week work schedule afforded department heads and directors. The foregoing notwithstanding, EMPLOYEE understands that the duties, demands and responsibilities of Chief of Police may from time to time require work days and work hours that do not strictly conform to that schedule generally afforded to other executive level staff and with this in mind, EMPLOYEE shall be available to discharge the duties and responsibilities of Chief of Police at all times reasonably necessary.

1.5 OUTSIDE EMPLOYMENT. EMPLOYEE shall not take on or otherwise commence any other compensated or uncompensated full-time or part-time outside employment with any third party without the prior written consent of the City Manager. Under no circumstances may EMPLOYEE take on or otherwise commence any other compensated or uncompensated full time or part time outside employment (i) where such outside employment would create a financial conflict of interest or violate the laws of the State of California, the laws of the federal government of the United States, the El Monte Municipal Code or CITY policies; or (ii) where such employment would be performed at hours that are concurrent with EMPLOYEE's employment with the CITY. The City Manager further reserves the right to place conditions upon the granting of any permission to engage in full-time or part-time outside employment.

1.6 CONFLICTS OF INTEREST. At no time shall EMPLOYEE, individually, as a partner, joint venture, officer, or shareholder, invest or participate in any business venture conducting business within the territorial boundaries of the City of El Monte, except for stock ownership in any company whose capital stock is publicly held and regularly traded, without prior approval of the City Council. EMPLOYEE shall further refrain from developing a financial stake in any commercial venture or partnership with any entity doing business with the CITY where such financial stake would create a violation of Government Code Section 1090. For and during the Initial Term of this Agreement and any extension term, EMPLOYEE further agrees that, except for a personal residence or residential property acquired or held for future use as EMPLOYEE's personal residence, EMPLOYEE will not invest in any other real estate or property improvements within the corporate limits of the City of El Monte without the prior consent of the City Council and subject to the restrictions of all applicable financial conflict of interest laws.

1.7 PERFORMANCE EVALUATION. The City Manager reserves the right to perform such annual performance evaluations as may be authorized under the CITY's most up-to-date, City Council approved iteration of the CITY's Executive Benefits Profile. The failure of the City Manager to undertake a performance evaluation shall not limit City Manager's ability to terminate this Agreement pursuant to Section 3, below. Further, nothing in this Section shall be construed to restrict or otherwise limit the ability of the City Manager to undertake any other review or investigation of EMPLOYEE during the course of a fiscal year which the City Manager may deem necessary to address any allegation of inappropriate conduct or other wrongdoing.

SECTION 2. SALARY AND BENEFITS.

2.1 BASE SALARY.

A. EMPLOYEE's annual base salary shall be in an amount equivalent to the highest Step 5 annual salary sum payable to Police Captains as set forth under the most recent City Council-adopted Classification and Compensation Plan ("Class and Comp Plan") for Full Time Classifications and/or the PMMA MOU, as this term is defined under Section 2.3, below, plus an add-on of 15% of the same (hereinafter the "Base Salary"). In the event the highest Step 5 annual salary sum payable to Police Captains, as stated in the Class and Comp Plan, is different from what is stated in the PMMA MOU, the highest of the two sums shall control. The Base Salary shall be subject to deductions for taxes, deferred compensation and other out-of-pocket benefits paid for by EMPLOYEE, if any. CITY shall pay EMPLOYEE in bi-monthly installments at the same time as other employees of CITY are paid. In the event of the highest Step 5 annual salary sum payable to Police Captains is increased, either in the Class and Comp Plan or the PMMA MOU, a corresponding adjustment, inclusive of the 15% add-on referenced above, shall be made to EMPLOYEE's salary, which adjustment shall take effect upon the same as the Step 5 increase takes effect.

B. Within 18 months of the Effective Date, but in no event commencing later than the first pay period of July 2024, EMPLOYEE's Base Salary shall be increased by 5% to bring EMPLOYEE's Base Pay to 20% above an amount equivalent to the highest Step 5 annual salary sum payable to Police Captains as set forth under the most recent Class and Comp Plan for Full Time Classifications and/or the PMMA MOU, as this term is defined under Section 2.3.

2.2 POST CERTIFICATE PAY. In addition to his Base Pay Employee shall receive \$350.00 per month for his POST management certificate.

2.3 BENEFITS. Except as otherwise provided herein, EMPLOYEE shall, during the term of this Agreement, receive all such benefits as set forth in the most recent City Council-approved Memorandum of Understanding for members of the El Monte Police Mid-Managers' Association collective bargaining unit, inclusive of the terms of the most recent and unexpired side letter agreements or other similar agreements to the same (hereinafter the "PMMA MOU"). In the event of any conflict or inconsistency between the provisions of this Agreement and the provisions of the PMMA MOU, the provisions of this Agreement shall govern and control, but only to the extent of the conflict or inconsistency and no further.

2.3A CONCESSIONS. Any concession in pay or benefits agreed to by the El Monte Police Mid-Manager's Association will be implemented on this contract upon ratification of such concessions by the City Council.

2.4 JURY DUTY. EMPLOYEE will receive full pay and benefits while responding to a jury summons or serving on a jury, up to a maximum of fourteen (14) business days. Any compensation for such jury duty (except travel pay) shall be remitted to CITY.

2.5 REIMBURSEMENT. CITY shall reimburse EMPLOYEE for reasonable and necessary travel, subsistence and other business expenses incurred by EMPLOYEE in the performance of EMPLOYEE's duties. All reimbursements shall be subject to and in accordance with any limitations or restrictions set forth under the laws of the State of California or any CITY-adopted reimbursement policies.

SECTION 3. TERMINATION

3.1 TERMINATION OF STATUS AS CHIEF OF POLICE. EMPLOYEE shall serve as Chief of Police at the will and pleasure of the City Manager. The City Manager may terminate EMPLOYEE's employment status as Chief of Police for convenience and without cause at any time, provided that in such event EMPLOYEE may elect to continue his employment with the CITY by being immediately, without any break in service, reinstated and reclassified as a top step Police Captain whose salary, benefits, compensation, job duties and other employment terms and conditions shall be governed solely and exclusively by the PMMA MOU, and such other employment policies or regulations as may be applicable to members of the Police Mid-Manager's Association and persons holding the rank of Police Captain. The City Manager's right to terminate EMPLOYEE's employment status as Chief of Police without cause shall not be subject to or in any way limited by: (i) the CITY's personnel procedures and rules set forth under Chapter 2.72 (Personnel System) of the El Monte Municipal Code or any procedures and rules applicable classified employees who are represented by CITY-recognized collective bargaining units; (ii) any right of notice or hearing, including any due process pre-disciplinary "Skelly" hearing; and (iii) past CITY practices related to the employment, discipline or termination of its employees. EMPLOYEE expressly waives any rights that might otherwise be provided for the Chief of Police under the El Monte Municipal Code, or under other state or federal law to any other form of pre- or post-termination administrative hearing, appeal, or other administrative process pertaining to the termination of his employment status as Chief of Police. Nothing in this Agreement shall be construed to create a property interest, where one does not exist by rule of law, in the job or position of Chief of Police. The termination of EMPLOYEE's employment as Police Chief and re-classification to Police Captain pursuant to this paragraph shall not constitute "removal" or "discipline" within the meaning of the Public Safety Officers Procedural Bill of Rights Act (Government Code Sections 3300-3313) ("POBR").

3.2 TERMINATION FOR CAUSE.

A. During the term of this Agreement, the City Manager may terminate EMPLOYEE's employment with the CITY for cause at any time by providing EMPLOYEE with five (5) business days' written notice of the termination for cause and the facts and grounds constituting such cause. The term "cause" shall be defined to

include any misconduct materially related to performance of official duties, including but not limited to any of the following:

- (i) Any breach of this Agreement;
- (ii) Conviction (including a plea of no contest) of a felony or any misdemeanor under the Political Reform Act (Government Code Section 81000 et seq.) or Government Code Section 1090;
- (iii) Conviction (including a plea of no contest) of any offense constituting an "abuse of office or position" within the meaning of Government Code Section 53243.4 (including, but not limited to, waste, fraud, and violation of the law under color of authority and crimes against public justice, including crimes involving bribery and corruption);
- (iv) Conviction (including a plea of no contest) of a misdemeanor involving moral turpitude (including, but not limited to, offenses contrary to justice, honesty, or morality or in violation of Penal Code Section 424), conviction (including a plea of no contest) of a misdemeanor DUI, or conviction (including a plea of no contest) of a felony under California law;
- (v) Any illegal or unethical act involving personal gain;
- (vi) Use or possession of illegal drugs or other illegal controlled substances;
- (vii) Continued abuse of alcohol or other legal or illegal controlled substances that materially affects the performance of EMPLOYEE's duties;
- (viii) Repeated and protracted unexcused absences from EMPLOYEE's office and duties;
- (ix) Résumé fraud or other acts of material dishonesty;
- (x) Any violation of the CITY's anti-harassment policies and/or a finding that legally prohibited personal acts of harassment against a CITY official or employee or legally prohibited personal acts of discrimination against a CITY official or employee has occurred;
- (xi) Gross misfeasance or gross malfeasance;
- (xii) A pattern of repeated, willful and intentional failure to carry out materially significant and legally constituted policy decisions of the City Manager or the City Council, or persistent willful violation of properly established rules and procedures;
- (xiii) Any other action or inaction of EMPLOYEE that materially and

substantially impedes or disrupts the performance of CITY or its organizational units or is detrimental to employee safety or public safety; and

- (xiv) Engaging in conduct tending to bring embarrassment or disrepute to the CITY.

B. In order to comply with the requirements of Government Code Section 3304(c), termination by the City Manager for cause shall be conducted in accordance with the following procedures:

1. Within five (5) days of receipt of written notice under paragraph A of this subsection 3.2, EMPLOYEE may submit a request in writing to the City Manager for an administrative appeal. The City Manager shall then appoint an independent hearing officer to conduct an administrative hearing. Both the CITY and EMPLOYEE and their respective representatives, if any, shall make reasonable efforts to set a hearing date within thirty (30) days from the City Manager's receipt of EMPLOYEE's request.
2. At the hearing, the independent hearing officer shall be presented with both the information and documents on which CITY based its decision to terminate for cause as well as any information and documentation that EMPLOYEE chooses to submit to challenge the CITY's information and documents to raise mitigating circumstances for consideration by the independent hearing officer.
3. Within fifteen (15) days, the independent hearing officer shall make an advisory recommendation in writing to the City Council. Following City Council's review in closed session, EMPLOYEE shall be notified in writing as to whether EMPLOYEE's termination will be modified, rescinded or remain in effect.
4. Regardless of whether the termination of EMPLOYEE's employment with the CITY remains in effect following administrative appeal, or whether EMPLOYEE fails to exercise the right to an administrative appeal, EMPLOYEE shall still receive payment for accrued and unused leave in the manner provided under the PMMA MOU.
5. Nothing in this agreement, shall be interpreted to eliminate any of the rights he otherwise enjoys under the Public Safety Officers Procedural Bill of Rights Act (Government Code Sections 3300 – 3313).

3.3 RESIGNATION/RETIREMENT. During the term of this Agreement, EMPLOYEE may voluntarily resign or retire from EMPLOYEE's employment with the CITY at any time for any reason, provided EMPLOYEE provides the City Manager with written notice of EMPLOYEE's intent to so terminate EMPLOYEE's employment at least thirty (30) calendar days prior to the effective date of separation. The City Manager, in the City Manager's sole and absolute discretion, may waive or shorten the two-week prior written notice requirement provided such waiver is made in writing. EMPLOYEE

shall not be entitled to be reinstated as a Police Captain if EMPLOYEE voluntarily retires from the CITY.

3.4 RETURN OF CITY EQUIPMENT. EMPLOYEE agrees that all property including, without limitation, all equipment (including, but not limited to all, computers and communication devices provided by CITY), tangible Proprietary Information (as defined below), documents, records, notes, contracts, and computer-generated materials, furnished to or prepared by him incident to EMPLOYEE's employment, are the property of CITY and shall be returned promptly to CITY upon termination of EMPLOYEE's employment. EMPLOYEE's obligations under this subsection shall survive the termination of EMPLOYEE's employment and the expiration or early termination of this Agreement.

3.5 PAYMENT OF UNUSED LEAVE BALANCE. Upon separation from CITY employment, EMPLOYEE shall be paid for any accrued but unused leave allowances in accordance with the terms and conditions set forth in the PMMA MOU and other applicable CITY policies.

SECTION 4. GENERAL PROVISIONS.

4.1 PROPRIETY INFORMATION. "Proprietary Information" means all information and any ideas pertaining in any manner to the business of the CITY, the City Manager, the City Council or the CITY's various, departments, divisions, committees and commissions, which was produced by EMPLOYEE in the course of EMPLOYEE's employment or otherwise produced to or acquired by EMPLOYEE in the course of EMPLOYEE's employment with the CITY. Proprietary Information shall include, without limitation, trade secrets, product ideas, inventions, processes, formulae, data, know-how, software and other computer programs, copyrightable material, marketing plans, strategies, sales, financial reports, forecasts and customer lists. All Proprietary Information not generally known outside of CITY's organization, and all Proprietary Information so known only through improper means, shall be deemed "Confidential Information." During EMPLOYEE's employment by CITY, EMPLOYEE shall use Proprietary Information, and shall disclose Confidential Information, only for the benefit of CITY and as is, or may be, necessary to perform EMPLOYEE's job responsibilities under this Agreement. Following termination, EMPLOYEE shall not use any Proprietary Information and shall not disclose any Confidential Information, except with the express written consent of CITY. EMPLOYEE's obligations under this Section shall survive the termination of EMPLOYEE's employment and the expiration of this Agreement.

4.2 NOTICES. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be effective upon delivery by hand, or three (3) business days after deposit in the United States mail, postage prepaid, certified or registered, and addressed to CITY at the address below, and at the last known address maintained in EMPLOYEE's personnel file. EMPLOYEE agrees to notify CITY in writing of any change in EMPLOYEE's address during EMPLOYEE's employment with CITY. Notice of change of address shall be effective only when accomplished in accordance with this Section.

City's Notice Address:

City of El Monte
11333 Valley Boulevard
El Monte, California 91731
Attn: City Manager

EMPLOYEE's Address: [Deliver to last updated address in personnel file]

4.3 INDEMNIFICATION.

A. CITY shall defend, hold harmless and indemnify EMPLOYEE against any claim, demand, judgment or action of any type or kind arising within the course and scope of EMPLOYEE's employment to the extent required by Government Code Sections 825 and 995.

B. Paragraph A of this subsection notwithstanding, CITY reserves all rights (including all rights to monetary reimbursement) afforded under Government Code Sections 53243, 53243.1, 53243.2, 53243.3 and 53243.4 and nothing in this Agreement shall operate or otherwise be construed to place any restriction upon CITY in exercising and/or enforcing such rights under the foregoing Government Code Sections. In the event EMPLOYEE is convicted of an offense constituting an abuse of office or position, EMPLOYEE shall reimburse CITY for any sums expended investigating and/or defending such wrongdoing as provided under Government Code Section 53243, 53243.1 and 53243.3. For purposes of this Agreement, the phrase "abuse of office or position" shall have the same meaning as set forth under Government Code Section 53243.4

4.4 ENTIRE AGREEMENT. This Agreement is intended to be the final, complete, and exclusive statement of the terms of EMPLOYEE's employment by CITY. This Agreement supersedes all other prior and contemporaneous agreements and statements, whether written or oral, express or implied, pertaining in any manner to the employment of EMPLOYEE, and it may not be contradicted by evidence of any prior or contemporaneous statements or agreements. To the extent that the practices, policies, or procedures of CITY, now or in the future, apply to EMPLOYEE and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control.

4.5 AMENDMENTS. This Agreement may not be amended except in a written document signed by EMPLOYEE, approved by the City Council and signed by Mayor.

4.6 WAIVER. Failure to exercise any right under this Agreement shall not constitute a waiver of such right.

4.7 ASSIGNMENT. EMPLOYEE shall not assign any rights or obligations under this Agreement. CITY may, upon prior written notice to EMPLOYEE, assign its rights and obligations hereunder.

4.8 SEVERABILITY. If any court of competent jurisdiction holds any provision of this Agreement to be invalid, unenforceable, or void, the remainder of this Agreement

shall remain in full force and effect.

4.9 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.

4.10 GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of California, with venue properly only in Los Angeles County, State of California.

4.11 INTERPRETATION. This Agreement shall be construed as a whole, according to its fair meaning, and not in favor of or against any party. By way of example and not in limitation, this Agreement shall not be construed in favor of the party receiving a benefit or against the party responsible for any particular language in this Agreement. Captions are used for reference purposes only and should be ignored in the interpretation of the Agreement. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the Parties to this Agreement and by no other means. Each Party waives its future right to claim, contest, or assert that this Agreement was modified, cancelled superseded or changed by any oral agreement, course of conduct, waiver or estoppel.

4.12 ACKNOWLEDGMENT. EMPLOYEE acknowledges that he has had the opportunity to consult legal counsel with regard to this Agreement, 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 EMPLOYEE's own judgment and not on any representations or promises other than those contained in this Agreement.

4.13 COUNTERPARTS. This Agreement shall be executed in three (3) original counterparts, each of which shall be of equal force and effect. No handwritten or typewritten amendment, modification or supplement to any one counterpart shall be valid or binding unless made to all three counterparts. One fully executed counterpart shall be delivered to EMPLOYEE, the second fully executed counterpart shall be archived by the City Clerk and the third fully executed counterpart shall be retained by the Human Resources Department.

[SIGNATURE PAGE TO FOLLOW]


IN WITNESS WHEREOF, CITY, acting through the City Council, has authorized and caused this Agreement to be signed and executed on its behalf by the City Manager, and EMPLOYEE has signed and executed this Agreement, as of the date first indicated under EMPLOYEE's signature below.


CITY OF EL MONTE

EMPLOYEE – JAKE FISHER

By: 
Alma K. Martinez, City Manager

By: 
Jake Fisher

Date: 

Date: 

APPROVED AS TO FORM:

By: 

Name: Richard Padilla

Title: Assistant City Attorney