

RESOLUTION NO. 2013-077

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK AUTHORIZING AND APPROVING A FIRST AMENDED EMPLOYMENT AGREEMENT FOR THE DIRECTOR OF PUBLIC SAFETY

WHEREAS, on March 16, 2010, City entered into that certain Employment Agreement (“the Employment Agreement”) with Brian Masterson (“Employee”) to retain his services as the Director of Public Safety, and said Employment Agreement expired on April 1, 2013;

WHEREAS, the City Manager, as the appointing authority, has determined that Employee possesses the skills and expertise necessary to continue to perform the services of Director of Public Safety;

WHEREAS, Employee desires to continue to serve as Director of Public Safety;

WHEREAS, the City Council wishes to extend the Employment Agreement with Employee for one year so that he may continue to serve as the Director of Public Safety of the City of Rohnert Park;

WHEREAS, the Parties have negotiated a First Amended Employment Agreement (“the First Amended Agreement”), attached hereto as Exhibit A, in which Employee will continue to serve as the Director of Public Safety subject to the terms and conditions described therein;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Rohnert Park that the City Council authorizes and approves the attached First Amended Employment Agreement Between the City of Rohnert Park and Brian Masterson.

BE IT FURTHER RESOLVED that the City Manager is authorized and directed to execute same for and on behalf of the City of Rohnert Park.

DULY AND REGULARLY ADOPTED by the City Council of the City of Rohnert Park
this 14th day of May, 2013.



CITY OF ROHNERT PARK

Pam Stafford
Pam Stafford, Mayor

ATTEST:

JoAnne Buergler
JoAnne Buergler, City Clerk

Attachments: Exhibit A, Agreement

AHANOTU: AYE BELFORTE: ABSENT MACKENZIE: AYE CALLINAN: ABSENT STAFFORD: AYE

AYES: (3) NOES: (0) ABSENT: (2) ABSTAIN: (0)

FIRST AMENDED EMPLOYMENT AGREEMENT
between
CITY OF ROHNERT PARK AND BRIAN MASTERSON

THIS FIRST AMENDED EMPLOYMENT AGREEMENT ("First Amended Agreement") between the CITY OF ROHNERT PARK ("City") and BRIAN MASTERSON ("Employee") (collectively, the "Parties") is dated for reference purposes this 14th day of May, 2013 and is deemed effective March 31, 2013 ("Effective Date").

RECITALS

WHEREAS, on March 16, 2010, City entered into that certain Employment Agreement ("the 2010 Employment Agreement") with Employee to retain his services as the Director of Public Safety, and said 2010 Employment Agreement expired on April 1, 2013;

WHEREAS, City desires to extend the term of the 2010 Employment Agreement for one year;

WHEREAS, Employee desires to continue to serve as Director of Public Safety of the City of Rohnert Park in consideration of and subject to the terms, conditions, and benefits set forth herein;

WHEREAS, the Parties have negotiated this First Amended Agreement, in which Employee will continue to serve as the Director of Public Safety in consideration of and subject to the terms, conditions, and benefits described herein;

WHEREAS, the City Manager, as appointing power, and Employee desire to agree in writing to the following terms and conditions of Employee's employment;

AGREEMENT

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. DUTIES.

(a) City agrees to employ Employee as Director of Public Safety of the City of Rohnert Park to perform the functions and duties specified in state and federal law, the Municipal Code, and the ordinances and resolutions of City, and to perform other legally permissible and proper duties and functions as City Manager may from time to time assign.

(b) Employee shall perform his duties to the best of his ability in accordance with the highest professional and ethical standards of the profession and shall comply with all general rules and regulations established by City.

(c) Employee shall not engage in any activity which is or may become a conflict of interest, prohibited contract, or which may create an incompatibility of office as defined under California law. Prior to performing any services under this Agreement and annually thereafter, Employee must complete disclosure forms required by law.

2. TERM.

(a) The term of this Agreement shall be from the Effective Date and ending April 1, 2014, unless terminated earlier by either party in accordance with the provisions set forth in Paragraph 3 or by the event of the death or permanent disability of Employee. By mutual agreement, Parties may extend this Agreement up to one additional year following expiration of this Agreement.

3. RESIGNATION AND TERMINATION.

(a) Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign at any time from his position as City's Director of Public Safety. Employee may terminate this Agreement by submitting written notice of his resignation to City. Employee shall give the City thirty (30) days written notice of his intention to resign.

(b) Employee is an "at will" employee who 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 Employee as Director of Public Safety with or without cause. There is no express or implied promise made to Employee for any form of continued employment as the Director of Public Safety.

(c) Employee may be terminated for cause at any time, with or without cause. Termination for cause means termination based upon a breach of any of the terms of this Agreement, malfeasance of any nature occurring during the course and scope of the Employee's duties as Director of Public safety, or a conviction, plea bargain, or personal adverse State or Federal determination against Employee individually involving any felony, intentional tort, crime of moral turpitude, or violation of statute or law constituting forfeiture of office, misconduct in office for personal gain, misuse of public funds for personal benefit, or conflict of interest resulting in conviction.

(d) Severance Benefits.

- (1) In the event the Employee is terminated from employment without cause while still willing and able to perform Employee's duties under this Agreement, then the City agrees to pay Employee a lump sum cash payment equal to six (6) months of base salary. In addition, the City shall extend to Employee the right to continue health insurance as may be required by and pursuant to the terms and conditions of the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA).
- (2) In the event Employee is terminated for cause, Employee shall be entitled to only the compensation earned and accrued and such other termination benefits and payments as may be required by law. Employee shall not be entitled to any severance benefits provide.

4. COMPENSATION AND BENEFITS.

(a) City agrees to pay Employee for his services rendered pursuant hereto as Director of Public Safety a gross monthly salary of thirteen thousand four hundred sixty dollars (\$13,460) payable in installments at the same time as other employees of the City are paid and subject to all applicable payroll taxes and withholdings. City agrees that the gross monthly salary of the Director of Public Safety shall be no less than ten percent (10%) greater than the gross monthly salary of any member of the Rohnert Park Public Safety Managers Association.

(b) City acknowledges that Employee has submitted a valid Peace Officers Standards and Training (P.O.S.T.) Management Certificate and agrees to pay Employee a P.O.S.T. Certification Stipend in the amount of eight and a half percent (8.5%) of base salary per month. City agrees that upon submission by Employee of a valid P.O.S.T. Executive Certificate, Employee shall receive a P.O.S.T. Certification Stipend in the amount of ten percent (10%) of base salary per month. The Stipend payments provided above are not cumulative; Employee may only receive one P.O.S.T. Certification Stipend. Any change to the P.O.S.T. Certification Stipend shall be effective on the first day of the calendar month subsequent to the submission of a valid certificate.

(c) City shall provide Employee with any In-District stipends and residency stipends provided to members of the Rohnert Park Public Safety Managers Association and defined in Section 10, "Residency," of the *Outline of Certain Conditions of Employment Fringe Benefits, and Salary Adjustments for the Management Unit*, dated May 27, 2008, so long as Employee meets the criteria to be eligible for these stipends.

(d) City will provide Employee with the same holidays, sick leave and long term disability benefits, insurance and retirement benefits, vacation and administrative leave as are provided to the Rohnert Park Management Unit. Employee shall be included in the City's Safety Plan with the California Public Employees' Retirement System ("CalPERS"). Employee has voluntarily elected to contribute nine percent (9%) of the City's "employer" contribution into CalPERS for the benefit of Employee effective through December 31, 2011.

(e) City shall provide Employee with a cell phone, City vehicle for his use at City expense, and any other equipment deemed appropriate by the City Manager.

(f) City shall provide three thousand dollars (\$3,000) per fiscal year for Employee's professional development expenses. Use of these dollars shall be subject to the approval of the City Manager.

6. INDEMNIFICATION.

In accordance with the terms, conditions, and limitations of the Government Claims Act (Gov't Code §§ 810 et seq.), City shall defend, save harmless, and indemnify Employee 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 Employee's duties as Director of Public Safety. City will determine whether to compromise and settle any such claim or suit and the amount of any settlement or judgment rendered thereon. Said indemnification shall extend beyond termination of employment, and the otherwise expiration of this Agreement for any acts undertaken or committed in his capacity as Director of Public Safety, regardless of whether the notice of filing of a lawsuit for such tort, claim, demand, or other legal action occurs during or following Employee's employment with City as Director of Public Safety.

7. CONFLICT OF INTEREST PROHIBITION.

It is further understood and agreed that because of the duties of the Director of Public Safety within and on behalf of the City of Rohnert Park, and its citizenry, the Employee shall not, during the term of this Agreement, individually, as a partner, joint venturer, officer or shareholder, invest or participate in any business venture or conduct business in the corporate limits of the City of Rohnert

Park except for stock ownership in any company whose capital stock is publicly held and regularly traded, without prior approval of the City. For and during the term of this Agreement, Employee further agrees, except for a personal residence or residential property acquired or held for future use as his personal residence, not to invest in any other real estate property improvements within the corporate limits of the City of Rohnert Park, without the prior consent of the City Council.

8. OTHER TERMS AND CONDITION OF EMPLOYMENT.

The City Manager may fix any other terms and conditions of employment, as he or she may determine from time to time relating to the performance of Employee, provided such terms and conditions are not inconsistent with provisions of this Agreement or law.

9. GENERAL EXPENSES.

City recognizes and agrees to pay the job-related expenses incurred by Employee in the course of his duties as approved by the City Manager.

10. NOTICES.

Any notices required by this Agreement shall be in writing and either given in person or by first class mail with postage prepaid and addressed as follows:

TO CITY: City Manager
 City of Rohnert Park
 6750 Commerce Blvd.
 Rohnert Park, CA 94928

TO EMPLOYEE: Brian Masterson
 1250 Heartwood Drive
 Rohnert Park, CA 94928

11. ATTORNEY'S FEES.

In the event of any mediation, arbitration or litigation to enforce any of the provisions of this Agreement, each party shall bear its own attorney's fees and costs.

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12. ENTIRE AGREEMENT.

This Agreement is the final expression of the complete agreement of the parties with respect to the matters specified herein and supersedes all prior oral or written understandings. Except as prescribed herein, this Agreement cannot be modified except by written mutual agreement signed by the parties.

13. ASSIGNMENT.

This Agreement is not assignable by either City or Employee.

14. SEVERABILITY.

In the event that any provision of this Agreement is finally held or determined to be illegal or void by a court having jurisdiction over the parties, the remainder of the Agreement shall remain in full force and effect unless the parts found to be void are wholly inseparable from the remaining portion of the Agreement.

15. EFFECTIVE DATE.

This Agreement shall be deemed effective on the Effective Date.

IN WITNESS WHEREOF, the City has caused the Agreement to be signed and executed on its behalf by its City Manager. It has also been executed by the Employee on the date first above written.

CITY OF ROHNERT PARK

By: _____
Gabriel Gonzalez
City Manager

ATTEST:

By: _____
JoAnne Buergler
City Clerk

EMPLOYEE:

By: _____
Brian Masterson

APPROVED AS TO FORM:

By: _____
Michelle Marchetta Kenyon
City Attorney