

RESOLUTION NO. 2014-119

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK
AUTHORIZING AND APPROVING AN EMPLOYMENT AGREEMENT BETWEEN THE
CITY OF ROHNERT PARK AND BRIAN MASTERSON FOR DIRECTOR OF PUBLIC
SAFETY SERVICES**

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

WHEREAS, City entered into a First Amended Employment Agreement ("the First Amended Agreement") with Employee on March 31, 2013 to extend the 2010 Employment Agreement and the First Amended Agreement expired on April 1, 2014;

WHEREAS, City and Employee have continued under the terms of the First Amended Agreement on a month to month basis and now desire to enter into a new employment agreement with Employee to continue to serve as the Director of Public Safety;

WHEREAS, City and Employee have negotiated a new employment agreement ("2014 Employment 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 therein.

WHEREAS, this 2014 Employment Agreement is intended to and shall supersede the First Amended Agreement.

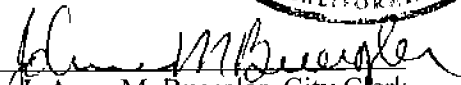
NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Rohnert Park that the City Council authorizes and approves the 2014 Employment Agreement between the City of Rohnert Park and Brain Masterson for Director of Public Safety services in substantially the same form attached hereto as Exhibit "A" and incorporated herein by this reference.

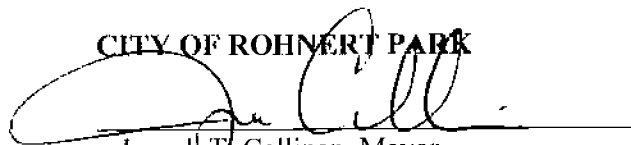
BE IT FURTHER RESOLVED that the City Manager is authorized and directed to execute same for and on behalf of the City of Rohnert Park.

DULY AND REGULARLY ADOPTED by the City Council of the City of Rohnert Park this 14th day of October, 2014.



ATTEST:


JoAnne M. Buerger, City Clerk


CITY OF ROHNERT PARK
Joseph T. Callinan, Mayor

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

AYES: (4) NOES: (0) ABSENT: (1) ABSTAIN: (0)

Exhibit A

**2014 EMPLOYMENT AGREEMENT
BY AND BETWEEN THE CITY OF ROHNERT PARK AND BRIAN MASTERSON
FOR DIRECTOR OF PUBLIC SAFETY SERVICES**

THIS 2014 EMPLOYMENT AGREEMENT between the CITY OF ROHNERT PARK ("City") and BRIAN MASTERSON ("Employee") (collectively, the "Parties") is dated for reference purposes this 14th day of October, 2014 and is deemed effective April 1, 2014 (Effective Date").

RECITALS

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

WHEREAS, on March 31, 2013, City entered into a First Amended Employment Agreement (the "First Amended Agreement") with Employee to extend the 2010 Employment Agreement and the First Amended Agreement expired on April 1, 2014;

WHEREAS, City and Employee desire to enter into a new employment agreement with Employee to continue to serve as the Director of Public Safety;

WHEREAS, the Parties have negotiated this "2014 Employment 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, this 2014 Employment Agreement is intended to and shall supersede the First Amended Agreement.

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 March 31, 2017, 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.

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) In accordance with City policy, the City Manager will review and evaluate the performance of Employee as Director of Public Safety once each year. At the City Manager's discretion, Employee may earn up to an additional three percent (3%) increase to base salary depending on the results of the Employee's performance evaluation each year.

(c) Employee shall be entitled to the following salary adjustments provided to the non-public safety Management Unit in accordance with the Outline of Certain Conditions of Employment, Fringe Benefits, and Salary for the Management Unit ("Management Unit Outline"), effective July 1, 2014 to June 30, 2017: three percent (3%) one-time non-pensionable payment on October 17, 2014, three percent (3%) one-time non-pensionable payment on July 1, 2015, and three percent (3%) pensionable increase to base salary on July 1, 2016.

(d) Employee shall be entitled to accrue the same Annual Leave hours and Administrative Leave hours provided to the Public Safety Managers' Association in accordance with the Memorandum of Agreement, effective July 1, 2014 to June 30, 2017 ("RPPSMA MOA").

(e) 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 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.

(f) City shall provide Employee with any "in-district" pay provided to members of the Rohnert Park Public Safety Managers' Association in Section 9 "Residency" of the RPPSMA MOA, so long as Employee meets the criteria to be eligible for this stipend.

(g) Employee shall be entitled to all benefits, rights and privileges afforded to the non-public safety Management Unit in the Management Unit Outline except as otherwise provided in this Agreement. If there is any conflict between this Agreement and any resolution fixing compensation and benefits for non-public safety City Department Directors or other unclassified employees, this Agreement shall control.

(h) Employee shall be included in the City's Safety Plan with the California Public Employees' Retirement System ("CalPERS"). Employee shall contribute the total "employee contribution" required by law currently set at 9%.

(i) 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.

(j) 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 conducting 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
 130 Avram Avenue
 Rohnert Park, CA 94928

TO EMPLOYEE: Brian Masterson
 Address on file with Human Resources

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.

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: _____
Darrin Jenkins,
City Manager

EMPLOYEE:

By: _____
Brian Masterson

Per Resolution Number 2014-_____
adopted by City Council on October 14, 2014.

Approved as to form:

By: _____
Michelle Marchetta Kenyon
City Attorney

Attest

City Clerk