

**RETIRED ANNUITANT EMPLOYMENT AGREEMENT  
For the Position Of  
INTERIM POLICE CHIEF**

This Employment Agreement ("Agreement") is made and entered into this 30th day of July, 2020, by and between the CITY OF MENLO PARK ("CITY"), a general law city and municipal corporation, and David Spiller ("Spiller"), an individual, on the following terms and conditions:

**RECITALS**

A. CITY desires to employ the services of Spiller as its Interim Police Chief, temporarily, to carry out the duties and responsibilities of Police Chief, in consideration of and subject to the terms, conditions, and benefits set forth in this Agreement.

B. Spiller desires to accept employment as Interim Police Chief in consideration of and subject to the terms, conditions, and benefits set forth in this Agreement.

C. On March 4, 2020, Governor Newsom issued a Proclamation of State of Emergency related to COVID-19 and on March 11 the City of Menlo Park City Council declared a local emergency due to the COVID-19 pandemic;

D. Effective on or about July 31, 2020, the City's current Police Chief is scheduled to retire and an Interim Police Chief is needed to ensure adequate staffing during the state of emergency until a permanent chief can be hired;

E. Spiller represents that he is a retired annuitant of CalPERS within the meaning of Government Code § 21221(h) and acknowledges that his compensation is statutorily limited as provided in Government Code § 21221(h). Spiller acknowledges that he has worked a total of zero hours for another CalPERS agency in fiscal year 2020-2021 and normally is restricted to working no more than 960 hours for CITY, a state agency or other CalPERS contracting agencies (collectively "CalPERS Agencies") during CITY's 2020-2021 fiscal year. However, given the current state of emergency, and with the Governor's Executive Order N-25-20 and CalPERS Circular Letter: 200-016-20 which suspends the 960-hour limitation during the state of emergency to ensure adequate staffing during the state of emergency, any hours worked by Spiller to ensure adequate staffing during the state of emergency will not be counted toward the 960-hour limit for the fiscal year.

F. Spiller also represents that he has not received unemployment compensation from any CalPERS agencies during the 12-month period preceding the effective date of this Agreement.

G. CITY has determined that it is necessary to hire Spiller, a retired annuitant, because the position of Interim Police Chief is required for adequate staffing

in emergency response and recovery, and Spiller, by virtue of his significant experience as a retired Police Chief, has those special skills.

### **OPERATIVE PROVISIONS**

In consideration of the promises and covenants contained herein, the parties agree as follows:

#### **1 Position and Duties.**

1.1 Position. Spiller accepts employment with CITY as its Interim Police Chief and shall oversee the police department and perform all functions, duties and services set forth in Section 1.4 [Duties] of this Agreement. Spiller shall provide service at the direction and under the supervision of the City Manager. It is the intent of the parties that Spiller, as the Interim Police Chief, shall keep the City Manager fully apprised of all significant ongoing operations of the City's police department.

1.2 Term. This Agreement shall become effective when executed both by Spiller and CITY's City Manager, which date shall be the date first referenced above. Spiller shall commence the performance of his duties as the Interim Police Chief on July 30, 2020 or at such later date as the parties hereto shall agree in writing ("Commencement Date"). This Agreement shall expire as of the first of the following to occur: (i) 5:00 p.m. on January 31, 2021;(ii) upon the employment commencement date of a permanent Police Chief employed by CITY; or (iii) upon termination of the Agreement by either Spiller or CITY as provided in Section 4 [Termination] of this Agreement.

1.3 At-Will. Spiller acknowledges that he is an at-will, temporary employee of CITY who shall always serve at the pleasure of the City Manager during the period of his service hereunder. Nothing in this Agreement is intended to, or does, confer upon Spiller any right to any property interest in continued employment, or any due process right to a hearing before or after a decision by the City Manager to terminate his employment, except as is expressly provided in Section 1.2 [Term] or Section 4 [Termination] of this Agreement. Nothing contained in this Agreement shall in any way prevent, limit or otherwise interfere with the right of CITY to terminate the services of Spiller, as provided in Section 1.2 [Term] or Section 4 [Termination]. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Spiller to resign at any time from this position with CITY, subject only to the provisions set forth in Section 1.2 [Term] or Section 4 [Termination] of this Agreement. This at-will employment Agreement shall be expressly subject to the rights and obligations of CITY and Spiller, as set forth in Section 1.2 [Term] or Section 4 [Termination] below.

1.4 Duties. Spiller shall serve as the Interim Police Chief and shall for the Term of the Agreement perform the duties set forth in Government Code sections 41601-41612. In addition, at the City Manager's direction, Spiller shall cooperate with any organizational audit of the police department as authorized by the City Council and, participate in community discussions, including police reform and make recommendations to the City Manager regarding re-allocation of police resources to address residents' concerns about under and over policing in certain areas of the city. Spiller shall provide service at the direction and under the supervision of the City Manager. Spiller shall also do an

organizational assessment to provide recommendations regarding stabilizing and rebuilding police services to best serve the overall community. It is the intent of the parties that the Interim Police Chief shall keep the City Manager fully apprised of all significant ongoing operations of CITY's Police Department. Spiller shall devote his best efforts and full-time attention to the performance of his duties.

1.5 Hours of Work. Spiller shall devote the time necessary to adequately perform his duties as Interim Police Chief. The parties anticipate that Spiller will work a sufficient number of hours per week allocated between regular business hours and hours outside of regular business hours including, without limitation, attendance at regular and special City Council meetings and such community meetings as the City Manager may direct. Toward that end, Spiller shall be allowed reasonable flexibility in setting his own office hours, provided the schedule of such hours provides a significant presence at the Police Department, reasonable availability to the City Council, City Manager, CITY staff, and members of the community during regular CITY business hours and for the performance of his duties and of CITY business.

## **2 Compensation.**

2.1 Rate of Pay. For all services performed by Spiller as the Interim Police Chief under this Agreement, CITY shall pay Spiller compensation at the rate of \$120.00 per hour according to the payroll schedule in place for CITY employees paid bi-weekly subject to the limitations provided below.

2.1.1 Compliance with CalPERS requirements. It is the intent of the parties to compensate Spiller only to the extent permitted under Government Code § 21221(h) and corresponding CalPERS regulations and policy statements. The Rate of Pay is within the established salary range for Police Chief. Spiller acknowledges that he will be compensated the rate of \$120.00 per hour and will not receive any benefits, incentives, compensation in-lieu of benefits, or any other form of compensation.

2.1.2 Recordation and Reporting of Hours Worked. Spiller and the CITY will comply with all applicable CalPERS regulations governing employment after retirement, including the recordation and reporting of all hours worked for CITY to CalPERS as required. Additionally, Spiller shall keep CITY continually apprised of any hours worked by Spiller for other CalPERS Agencies during the term of this Agreement.

Spiller will be responsible for keeping track of his hours worked, including during the period in which the Governor's Executive Order N-25-20 and CalPERS Circular Letter: 200-016-20 suspending the 960-hour limitation during the state of emergency are in effect. Spiller will submit his timesheets to the CITY in accordance with City payroll procedures. The CITY shall maintain these approved timesheets in a legal file and they shall not be disclosed except and unless as required by law or Spiller and/or the CITY need to defend themselves against any legal claims, including but not limited to by CalPERS.

2.1.3 Indemnity for CalPERS Claimed Overpayments. The CITY agrees to defend and indemnify Spiller for any fees, fines, penalties, contributions or other monetary damages claimed, asserted, or alleged against Spiller by CalPERS as a result of his

employment with the CITY upon a finding that the CITY failed to keep or report Spiller's accurate hours worked.

## 2.2 Benefits.

2.2.1 No Benefits. Pursuant to Government Code §21221(h) and related CalPERS regulations and policy statements, Spiller shall not receive from CITY any benefits CITY commonly provides to its employees, including without limitation health, dental, or vision insurance coverage, life insurance, employee assistance programs, and similar benefits.

## 3. **Vacation and Leave.**

3.1 No Leave. Spiller, in accordance with Government Code Section 21221(h) and related CalPERS regulations and policy statements, shall not be provided or accrue any personal time off, vacation, sick leave, administrative leave, paid holidays or similar leave benefits.

## 4. **Termination.**

4.1 By CITY. This Agreement may be terminated by CITY for any reason thirty (30) days after providing written notice to Spiller of such termination. CITY's only obligation in the event of such termination will be payment to Spiller of all compensation then due and owing as set forth in Section 2.1 [Rate of Pay] up to and including the effective date of termination. However, this Agreement may be terminated immediately if necessitated by changes to CalPERS statutory or regulatory requirements.

4.2 By Spiller. This Agreement may be terminated by Spiller for any reason thirty (30) days after providing written notice to CITY of such termination. CITY shall have the option, in its complete discretion, to make Spiller's termination effective at any time prior to the end of such period, provided CITY pays Spiller all compensation as set forth in Section 2.1 [Rate of Pay] then due and owing him through the last day actually worked.

4.3 No Notice for Expiration. Nothing in this Section 4 [Termination] shall be construed to require either party to give advance written notice for the Agreement to expire as set forth in Section 1.2 [Term].

4.4 Termination Obligations. Spiller agrees that all property, including, without limitation, all equipment, tangible Proprietary Information (as defined below), documents, records, notes, contracts, and computer-generated materials furnished to or prepared by him incident to his employment belongs to CITY and shall be returned promptly to CITY upon termination of Spiller's employment. Spiller's obligations under this subsection shall survive the termination of his employment and the expiration of this Agreement.

## 5. **Conflict of Interest**

In accordance with Government Code Section 1126, during the period of his employment, Spiller shall not accept, without the express prior written consent of the City

Manager, any other employment or engage, directly or indirectly, in any other business, commercial, or professional activity, whether or not to pecuniary advantage, that is or may be competitive with CITY, that might cause a conflict of interest with CITY, or that otherwise might interfere with the business or operation of CITY or the satisfactory performance of Spiller's duties as Interim Police Chief.

**6. Expenses.**

CITY agrees to pay job related expenses incurred by Spiller for any out of area business and travel expenses incurred in the course of his duties as approved by the City Manager.

**7. General Provisions.**

7.1 Recitals. The recitals, inclusive of all facts and representations, are incorporated into this Agreement as if set forth in the Operative Provisions.

7.2 Vehicle Operation. Spiller shall comply with CITY's administrative policies regarding operation of a vehicle on official business. Spiller shall not receive an automobile allowance but shall be eligible for reimbursement for mileage when using his personal vehicle for CITY business in accordance with CITY policy.

7.3 Notices. All notices required under this Agreement shall be in writing and either given in person or delivered by first class mail with postage prepaid and addressed as follows:

**City's Notice Address:**

City of Menlo Park  
Attn: Theresa DellaSanta, Human Resources Manager  
701 Laurel Street  
Menlo Park, CA 94025

**Interim Police Chief Address:**

*Address on file with Human Resources Department*

7.4 Indemnification. Subject to, in accordance with, and to the extent provided by the California Government Claims Act [Government Code Section 810 *et seq.*], CITY will indemnify, defend, and hold Spiller harmless from and against any action, demand, suit, monetary judgment or other legal or administrative proceeding, and any liability, injury, loss or other damages, arising out of any act or omission occurring during Spiller's tenure as Interim Police Chief.

7.5 Bonding. CITY shall bear the full cost of any fidelity or other bonds required of the Interim Police Chief under any law or ordinance.

7.6 Integration. This Agreement is intended to be the final, complete, and exclusive statement of the terms of Spiller's appointment as Interim Police Chief 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 Spiller as Interim Police Chief, 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 Spiller and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control.

7.7 Amendments. This Agreement may not be amended except in a written document signed by Spiller, approved by the City Council and signed by CITY's City Manager.

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

7.9 Assignment. Spiller shall not assign any rights or obligations under this Agreement. CITY may, upon prior written notice to Spiller, assign its rights and obligations hereunder.

7.10 Severability. If a court or arbitrator holds any provision of this Agreement to be invalid, unenforceable, or void, the remainder of this Agreement shall remain in full force and effect.

7.11 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.

7.12 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, with venue proper only in San Mateo County, State of California.

7.13 Interpretation. This Agreement shall be construed, 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 nor against the party responsible for any 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 their 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.

7.14 Acknowledgment. Spiller acknowledges that he has had the opportunity to consult legal counsel regarding 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 him own judgment and not on any representations or promises other than those contained in this Agreement.

IN WITNESS WHEREOF, CITY has caused this Agreement to be signed and executed on its behalf by its Mayor and Spiller has signed and executed this Agreement, as of the date first indicated above.

CITY OF MENLO PARK

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*Starla Jerome-Robinson*

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Starla, Jerome-Robinson, City Manager

APPROVED AS TO FORM:

DocuSigned by:

*Cara Silver*

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Cara Silver, Interim City Attorney

INTERIM POLICE CHIEF

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David Spiller