

CITY OF OAKLAND

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2017 JAN 27 PM 1:28

AGENDA REPORT

TO: Oakland City Council

FROM: Sabrina B. Landreth
City Administrator

SUBJECT: Contract Agreement for Anne
Kirkpatrick as Oakland Police Chief

DATE: January 17, 2017

City Administrator Approval

Date:

1/27/17

RECOMMENDATION

Staff Recommends That The City Council Consider Adopting:

1. **A Resolution Authorizing The City Administrator To Execute An Employment Agreement Between The City Of Oakland And The Chief Of Police, Anne Kirkpatrick, For A Total Annual Compensation Of \$299,675.00 Which Includes An Annual Salary Of \$270,000.00 And Premium Pay Required By The Memorandum Of Understanding Between The City Of Oakland And The Oakland Police Management Association In The Amount Of \$29,675.00.**
2. **An Ordinance Amending The Salary Schedule Of Ordinance No. 12187 C.M.S. ("Salary Ordinance") To Increase The Salary For Chief Of Police And The City Administrator.**

EXECUTIVE SUMMARY

Approval of the contract agreement resolution authorizes the City Administrator and Mayor to execute an employment agreement with Anne Kirkpatrick for the role of Chief of Police of the Oakland Police Department for a period of two and a half (2.5) years from February 27, 2017 through August 26, 2019 with the option for the Mayor to extend the contract for another two and a half (2.5) years without returning to City Council. The total annual compensation of \$299,675 for Chief Kirkpatrick includes an annual salary of \$270,000 and premium pay required by the Memorandum of Understanding between the City of Oakland and the Oakland Police Management Association in the amount of \$29,675.00. The employment agreement also includes a severance payment equivalent to 12 months of base salary. Adoption of the proposed Salary Schedule amendment would increase the salary range for the Police Chief and ensure that the Police Chief's salary within the Salary Schedule corresponds to the amount within the Chief's employment agreement. The proposed Salary Schedule amendment also adjusts the City Administrator's salary range to ensure compaction issues do not occur.

Item: _____
City Council
February 7, 2017

BACKGROUND / LEGISLATIVE HISTORY

The Mayor and the City Administrator conducted a 6-month, nationwide search process that began in July 2016 with the hiring of Ralph Andersen and Associates, an executive recruiting firm based in Rocklin, California. The process included a robust community engagement effort that began in August 2016 with a variety of opportunities for Oaklanders to provide feedback on qualities they want to see in the City's new Police Chief, the top community safety priorities for Oakland, and the criteria for the selection of community members to participate in the hiring selection process. Residents had the opportunity to engage via an online survey available in multiple languages, an online platform, a designated phone line and nearly a dozen community meetings, including two focused on youth participation and two held in Spanish and Cantonese, respectively.

The process resulted in more than 30 candidates applying for the job and a smaller pool was selected for panel interviews. After applying the core values of the community input, Ms. Kirkpatrick showed through as the strongest candidate.

Chief Kirkpatrick is a seasoned professional who began her career in law enforcement with the Memphis, Tennessee Police Department in 1982. She went on to earn the rank of Sergeant with the Redmond (Washington) Police Department where she served as Assistant Commander for the State Law Enforcement Academy and was a criminal procedure instructor and tactical officer. She later progressed to become Police Chief in Spokane (Washington), Federal Way (Washington), and Ellensburg (Washington).

Her extensive experience includes a specialized focus on police reform, training, and management. She is a Master Instructor for the Federal Bureau of Investigations (FBI) Law Enforcement Executive Development Association and has conducted extensive trainings nationally on Procedural Justice, Implicit Bias, and Executive Leadership.

ANALYSIS AND POLICY ALTERNATIVES

Contract Agreement with Chief Kirkpatrick

The City Administrator and Mayor wish to execute an employment agreement with Chief Kirkpatrick in the capacity of Chief of Police with the monthly salary rate of \$22,500. The Chief will be provided a City vehicle and premiums consistent with the Memorandum of Understanding (MOU) between the City of Oakland and the Oakland Police Management Association (OPMA) as described in Table 1 below.

Table 1: Breakdown of Annual Compensation

Item	Amount
Base Salary	\$270,000
Education Premium – Bachelor's	\$13,500
Education Premium – Master's	\$13,500
Longevity Premium	\$1,875
Uniform Allowance	\$800
Total Annual Compensation	\$299,675

In addition to the total annual compensation, Chief Kirkpatrick will also receive a one-time \$5,000 relocation incentive and an annual Professional Development reimbursement of \$800.

In the Chief role, Chief Kirkpatrick will focus on the executive management of the Police Department, achieving compliance with the Negotiated Settlement Agreement (NSA), reducing and preventing violent crime, and ensuring that OPD practices fair and just policing. The community really wants to see the new chief lead cultural change within OPD.

Salary Schedule Amendment

As stated above, the proposed Salary Schedule amendments are recommended to update the Salary Schedule of the Salary Ordinance to increase the salary range for the Police Chief and ensure that the Police Chief's salary within the Salary Schedule corresponds with the amount within the Chief's employment agreement. The proposed Salary Schedule amendment also adjusts the City Administrator's salary range in order to address any compaction issues emerging from the increased Police Chief salary. The Chief's salary will increase according to the OPMA salary increase schedule for the current MOU with the exception of the May 1, 2017 increase of 4 percent (which is already included in the Chief's base salary).

FISCAL IMPACT

As shown in Table 1 in the Analysis Section, Chief Kirkpatrick will be paid an annual salary of two hundred seventy thousand dollars (\$270,000.00) and annual premiums provided under the Memorandum of Understanding between the City and the Oakland Police Management Association ("MOU") which currently total \$29,675 based on Longevity Premium of \$1,875.00, Uniform Allowance of \$800 and a 5% premium in the amount of \$13,500.00 for each of the following: a Bachelor's Degree and a Master's Degree (collectively "Annual Total Compensation").

Source of Funding: The source of funding is available from the vacant, budgeted Chief of Police position.

The total amount of the employment agreement, including all eligible incentives, on an annual basis is \$299,675.

The City Administrator's salary range is being increased as well. The top of the new range will be \$324,135.25 to avoid any future compaction issues.

PUBLIC OUTREACH/INTEREST

The City engaged with the community in the recruitment process and factored that information into the decision for the new Police Chief. The community looks forward to the opportunity to work with the new Police Chief to continue efforts to make Oakland safer and to rebuild community trust.

COORDINATION

Staff consulted with the Human Resources and Management Department, Controller's Bureau, and the Office of the City Attorney for this report.

SUSTAINABLE OPPORTUNITIES

Economic: No direct economic opportunities have been identified.

Environmental: No environmental opportunities have been identified.

Social Equity: The appointment of a Police Chief committed to reform, procedural justice, and cultivating and rebuilding trust with Oaklanders benefits all Oaklanders.

ACTION REQUIRED BY THE COUNCIL

Staff Recommends That The City Council Consider Adopting:

1. A Resolution Authorizing The City Administrator To Execute An Employment Agreement Between The City Of Oakland And The Chief Of Police, Anne Kirkpatrick, For A Total Annual Compensation Of \$299,675.00 Which Includes An Annual Salary Of \$270,000.00 And Premium Pay Required By The Memorandum Of Understanding Between The City Of Oakland And The Oakland Police Management Association In The Amount Of \$29,675.00.
2. An Ordinance Amending The Salary Schedule Of Ordinance No. 12187 C.M.S. ("Salary Ordinance") To Increase The Salary For Chief Of Police And The City Administrator.

For questions regarding this report, please contact Chantal Cotton Gaines, at (510) 238-3301.

Respectfully submitted,



SABRINA B. LANDRETH
City Administrator

2017 JAN 27 PM 1:27

Approved as to Form and Legality

Oakland City Attorney's Office

OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

A RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE AN EMPLOYMENT AGREEMENT BETWEEN THE CITY OF OAKLAND AND THE CHIEF OF POLICE, ANNE KIRKPATRICK, FOR A TOTAL ANNUAL COMPENSATION OF \$299,675.00 WHICH INCLUDES AN ANNUAL SALARY OF \$270,000.00 AND PREMIUM PAY REQUIRED BY THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF OAKLAND AND THE OAKLAND POLICE MANAGEMENT ASSOCIATION IN THE AMOUNT OF \$29,675.00.

WHEREAS, the Mayor and City Administrator conducted a 6-month, nationwide search process that began in July 2016 with the hiring of an executive recruiting firm; and

WHEREAS, the process included a robust community engagement effort that began in August 2016 with a variety of opportunities for Oaklanders to provide feedback on qualities desired in a new chief as well as the top community safety priorities for Oakland; and

WHEREAS, Oakland has seen significant gains in terms of achieving compliance with the Negotiated Settlement Agreement and in achieving crime reduction; and

WHEREAS, Chief Kirkpatrick successfully competed for the post and rose to the top as Oakland's next chief due to her vast experience in management, training, and police reform; and

WHEREAS, in December 2016, City Administrator Sabrina B. Landreth appointed Anne Kirkpatrick as the permanent Police Chief for the Oakland Police Department; and

WHEREAS, City Administrator Landreth has negotiated an employment agreement with Chief Kirkpatrick that requires the City Council's approval of the two-and-a-half-year contract term, with an option given to the Mayor to renew the employment agreement, in his or her sole discretion and without City Council approval, for one (1) additional two-and-a-half year term as described in the Employment Agreement attached hereto as Exhibit A, and authorization to pay Chief Kirkpatrick the salary above the top of the range stated in the current Salary Schedule; and

WHEREAS, the City Administrator has authority under the City's Salary Ordinance to grant Chief Kirkpatrick the terms provided under the Memorandum of Understanding

between the City and the Oakland Police Management Association ("MOU") which includes annual premium pay totaling \$29,675.00 based on Longevity premium of \$1,875.00, Uniform Allowance of \$800.00 and 5% premium currently in the amount of \$13,500.00 for each of the following: a Bachelor's Degree and a Master's Degree; and

WHEREAS, the Salary Ordinance No. 12187 empowers the City Administrator to grant the Chief of Police up to six months' severance to be paid if the City terminates her employment without good cause before the expiration of the employment agreement, and Ordinance No. 12903 requires that the Council authorize a salary above the midpoint of the salary range for department heads; now, therefore be it

RESOLVED: That the City Council hereby authorizes the City Administrator to execute an employment agreement with Police Chief Anne Kirkpatrick with an annual salary of \$270,000.00 which is currently above the top of the salary range for the Chief of Police classification, and for a two-and-a-half-year term beginning on February 27, 2017 and ending at midnight on August 26, 2019, with an option given to the Mayor to renew the employment agreement, in his or her sole discretion and without City Council approval, for one (1) additional two-and-a-half year term on the same terms and conditions stated herein with the following exceptions: (1) Kirkpatrick shall continue to receive the same Total Annual Compensation she receives on August 26, 2019 subject to the same salary and compensation adjustments described in the Employment Agreement; (2) Kirkpatrick shall not receive a one-time award of ten (10), or any other amount, days of Executive Leave; (3) Kirkpatrick shall not receive a one-time relocation incentive of \$5,000; and (4) at the beginning of, and during, the second two-and-a-half year term, severance pay will be twelve (12) months of Annual Total Compensation, subject to the same limitations during the last eleven (11) months of this second term as described below. On or before February 26, 2019, the Mayor shall notify Kirkpatrick, in writing, of his or her intent to invoke the option to continue this Agreement for a Renewal Term; and be it

FURTHER RESOLVED: That the employment agreement will provide (1) twelve months of Total Annual Compensation at Chief Kirkpatrick's then current rate of pay as severance pay if the City terminates Chief Kirkpatrick's employment as Police Chief without cause before the end of the term except that, consistent with California Government Code section 53260 and during the last eleven (11) months, the number of months of Annual Total Compensation paid as severance shall not exceed the number of months left to be performed on this Agreement, (2) in accordance with the MOU and City policies, cost of living and other salary increases provided under current or successor MOUs (with the exception of the four percent (4%) salary adjustment scheduled for all police ranks on May 1, 2017), (3) premiums provided under the MOU or successor MOUs for longevity, Bachelor's and Master's degrees, and uniform allowance in a total amount of \$29,675, (4) use of a City vehicle, (5) a one-time award of ten (10) days of Executive Leave to be used within the first two (2) years of employment, (6) a one-time payment of \$5,000 for relocation expenses, (7) other benefits provided for executive employees, and (8) on the terms and conditions included in the Employment Agreement attached hereto as Exhibit A; and be it

FURTHER RESOLVED: That the current Total Annual Compensation, including salary and premium pay, for Chief Kirkpatrick is \$299,675.00; and be it

FURTHER RESOLVED: That the employment agreement must be approved as to form and legality by the City Attorney before the City Administrator executes it and a copy of the executed agreement shall be lodged with the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, CAMPBELL WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLEN, KALB, KAPLAN, AND PRESIDENT REID
NOES-

ABSENT-

ABSTENTION-

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California

Employment Agreement

This Employment Agreement ("Agreement") is entered into by the City of Oakland ("City") and Anne Kirkpatrick ("Kirkpatrick"). The City and Kirkpatrick are sometimes referred to in the Agreement individually as the "party" and collectively as the "parties."

Section 1. Position

Subject to the terms and conditions stated herein, the City hereby employs Kirkpatrick as Chief of Police, effective February 27, 2017. Pursuant to City Charter sections 601 and 902(b) and Chapter 2.29 of the Oakland Municipal Code, the Chief of Police position is not a civil service classification and is not subject to the Oakland Civil Service Rules. It is expressly understood and agreed that during the term of this Agreement, as defined below, Kirkpatrick shall not be employed by, retained by, consult with, provide services to, or represent any other person or public or private entity, unless the City Administrator authorizes Kirkpatrick to do so in writing.

Section 2. Compensation

A. Kirkpatrick shall be paid an annual salary of two hundred seventy thousand dollars (\$270,000.00) and the following annual premiums provided under the Memorandum of Understanding between the City and the Oakland Police Management Association ("MOU"): a five percent (5%) premium in the amount of \$13,500.00 for a Bachelor's Degree and a five percent (5%) premium in the amount of \$13,500.00 for a Master's Degree. The annual salary and the five percent (5%) premiums, in the total amount of \$297,000.00, shall be paid on a bi-weekly basis in accordance with the City's payroll policies, less all required withholdings and deductions ("Annual Salary").

In addition to the Annual Salary, Kirkpatrick shall receive the following payments once a year, in accordance with the City's payroll policies and subject to all required withholdings and deductions: Longevity Premium of \$1,875.00, Uniform Allowance of \$800, and Professional Development Reimbursement of \$800. The "Annual Total Compensation" (which includes the Annual Salary and all payments made once a year except for the Professional Development Reimbursement and the Relocation Incentive) shall total \$299,675.

As an at-will employee with a negotiated agreement, the Chief of Police may receive compensation adjustments based on an annual performance evaluation and shall receive salary adjustments, if any, consistent with those in the existing or successor MOU, except that Kirkpatrick will not receive the 4% salary adjustment scheduled for all police ranks on May 1, 2017.

B. Kirkpatrick will receive a one-time award of ten (10) days of Executive Leave, which must be used within the first two (2) years of appointment. All employee benefits not defined herein ("Benefits") shall be consistent with executive employee level benefits provided by the City.

C. Kirkpatrick will accrue vacation leave at a rate commensurate with his/her public service experience, which is a rate of thirty (30) days per year. Kirkpatrick may cash out up to 120 hours (15 days) of accrued leave annually. Kirkpatrick will accrue all other leaves in accordance with City policies and the MOU or successor MOUs, consistent with her years of service in the City. In the event of a conflict between City policy and the aforesaid MOU, the MOU shall govern. Consistent with City policy, Management Leave shall be accrued and may be awarded retroactively for the preceding year on July 1 of each year and if Kirkpatrick's employment is terminated prior to July 1 or during a fiscal year for any reason, she will not accrue or be eligible to be awarded any Management Leave for that fiscal year. Leave and Management Leave shall sometimes be referred to herein collectively as "Leave."

Section 3. Pension Contribution

Kirkpatrick shall be entitled to retirement benefits in accordance with the MOU and shall make retirement contributions in accordance with the MOU.

Section 4. Deferred Compensation

The City shall not provide any matching of deferred compensation.

Section 5. Term, Termination of Employment, and Severance

A. This Agreement shall be for a two and a half year term ("Term"), commencing on February 27, 2017 and ending at midnight on August 26, 2019. The Mayor shall have the authority and the option, in his or her sole discretion and without City Council approval, to renew this employment agreement for one (1) additional two-and-a-half year term ("Renewal Term") on the same terms and conditions stated herein with the following exceptions: (1) Kirkpatrick shall continue to receive the same Total Annual Compensation she receives on August 26, 2019 subject to the same salary and compensation adjustments described herein; (2) Kirkpatrick shall not receive a one-time award of ten (10), or any other amount, days of Executive Leave; (3) Kirkpatrick shall not receive a one-time relocation incentive of \$5,000; and (4) at the beginning of, and during, the Renewal Term, Severance, as defined below, will be twelve (12) months of Annual Total Compensation, shall be subject to the same limitations during the last eleven (11) months of the Renewal Term as described below. On or before February

26, 2019, the Mayor shall notify Kirkpatrick, in writing, of his or her intent to invoke the option to continue this Agreement for a Renewal Term.

B. Pursuant to the Police Commission ballot measure the City's voters approved on November 8, 2016 ("Police Commission Measure"), the Chief of Police serves at the Mayor's pleasure. In addition, once the Police Commission is established, the Commission may terminate the Police Chief's employment for cause in accordance with the Police Commission Measure. Accordingly, the Mayor may terminate Kirkpatrick's employment at any time with or without good cause and without prior notice. Kirkpatrick also may terminate her employment during the Term of this Agreement as set forth below.

1. *Termination by Mayor Without Good Cause.* The Mayor may terminate Kirkpatrick's employment at any time without cause and without notice. If the Mayor terminates Kirkpatrick without "Good Cause," as defined below, the City shall provide twelve (12) months of Annual Total Compensation at Kirkpatrick's then current rate of pay, less all required withholdings and deductions, as severance pay except that, during the last eleven (11) months of the Term and consistent with California Government Code section 53260, the number of months of Annual Total Compensation paid as severance shall not exceed the number of months left to be performed in the Term ("Severance"). The City shall pay the Severance only if Kirkpatrick executes and returns to the City, within 21 days after the effective date of her termination of employment, a *General Release and Waiver of Claims*, in a form provided by the City that is substantially similar in all material respects to **Exhibit 1** attached hereto. ("General Release"); the General Release is made a part of this Agreement and must become effective and enforceable in accordance with its terms. Kirkpatrick understands and agrees that the Severance is adequate consideration in exchange for the General Release. Kirkpatrick understands and agrees that in the event that she does not sign and return the General Release within the required time period, or revokes it pursuant to the revocation provision, she will not be entitled to Severance.

The City also shall pay to Kirkpatrick the accrued and unpaid pro-rata portion of her Total Annual Compensation, Benefits, and Leave through the effective date of termination, subject to all required withholdings and deductions. Accrued Leave will be paid in accordance with City policies and the MOU, e.g., upon termination of employment sick leave is cashed out at the rate of one day of salary (less applicable withholdings and deductions) for every two days of sick leave.

2. *Termination by Mayor for Good Cause.* The City may terminate Kirkpatrick's employment for "Good Cause." The term "Good Cause" is defined for purposes of this Agreement as any one or more of the following occurrences:

(a) Kirkpatrick's conviction by, or entry of a plea of guilty or nolo contendere, in a court of competent and final jurisdiction for any crime involving moral turpitude, any felony offense, or which is likely to have a material adverse impact on the business operations or financial or other condition of the City, or which has resulted in imprisonment;

(b) Kirkpatrick's material breach of confidentiality;

(c) Kirkpatrick's fraud, embezzlement or willful misconduct injurious to the City;

(d) Kirkpatrick's continuing repeated, intentional or willful failure or refusal to perform the duties and responsibilities of the Chief of Police as required by this Agreement, the City Charter and governing laws and regulations, including but without limitation, Kirkpatrick's inability to perform her duties hereunder as a result of chronic alcoholism or drug addiction and/or as a result of her intentional or willful failure to comply with any laws, rules, or regulations of any governmental entity applicable to Kirkpatrick's employment by the City or to City operations;

(e) Kirkpatrick's gross negligence, material violation of any duty of loyalty to the City, or Kirkpatrick's intentional or willful breach of any material provision of this Agreement;

(f) Kirkpatrick's intentional commission of any act which is detrimental to the City's business or goodwill or willful act or omission which is materially injurious to the City's financial condition or business reputation;

(g) Loss of any professional license required to perform the duties of the position; or

(h) Kirkpatrick's violation of a material City written policy and/or procedure, including, but not limited to, policies and procedures pertaining to harassment and discrimination.

If Kirkpatrick's employment is terminated by the Mayor for Good Cause, the City shall provide a written notice of termination stating the reasons for the termination.

If Kirkpatrick's employment is terminated by the Mayor for Good Cause, Kirkpatrick will not be entitled to any Severance and shall receive only the accrued unpaid pro-rata portion of her Total Annual Compensation, Benefits, and Leave (if applicable and in accord with the City's policies and the MOU) through the effective date of termination, subject to all required withholdings and deductions.

3. *Termination by the Police Commission for Cause.* The Police Commission Measure, in section 604(b)(10) provides that the Police Commission may remove the Chief of Police only after adopting a finding or findings of cause. With respect to the Police Commission Measure and the Police Commission's power to terminate the Chief of Police, "cause" is not yet defined and shall be defined by City ordinance. The Commission must make its finding of just cause by a minimum of five affirmative votes.

If Kirkpatrick's employment is terminated by the Police Commission for cause, Kirkpatrick will not be entitled to any Severance and shall receive only the accrued unpaid pro-rata portion of her Total Annual Compensation, Benefits, and Leave (if applicable and in accord with the City's policies and the MOU) through the effective date of termination, subject to all required withholdings and deductions.

4. *Termination by Kirkpatrick.* If Kirkpatrick decides to voluntarily terminate her employment, she shall provide the Mayor with sixty (60) days advance written notice unless the Mayor, in her sole judgment and discretion, waives this notice requirement. Failure to provide said notice will interrupt police operations and place an administrative burden on the City. In recognition of the City's inability to determine with certainty the actual damages it would incur, the City will assess, and Kirkpatrick will be liable for, liquidated damages of \$800 per day for each day of notice Kirkpatrick fails to provide, up to a maximum of 60 days.

If Kirkpatrick voluntarily terminates her employment, Kirkpatrick will not be entitled to any Severance and shall receive only the accrued unpaid pro-rata portion of her Total Annual Compensation, Benefits, and Leave (if applicable and in accord with City policies and the MOU) through the effective date of termination, subject to all required withholdings and deductions.

5. *Termination Due To Disability.* If Kirkpatrick becomes disabled during the Term of this Agreement, her employment shall terminate. For purposes of this Agreement, Kirkpatrick shall be determined to be disabled if, by reason of any medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a continuous period of not less than 3 months, Kirkpatrick is unable to engage in any substantial gainful activity, or is receiving income replacement benefits for a period of not less than three months under an accident and health plan covering City employees, or the Social Security Administration determines that Kirkpatrick is totally disabled ("Disability").

A termination of Kirkpatrick's employment for Disability shall be communicated to her by written notice and shall be effective immediately (the "Disability Effective Date"). Nothing in this section shall be deemed to extend the Term of this Agreement or of Kirkpatrick's employment hereunder, beyond the Term defined herein.

Upon the Disability Effective Date, Kirkpatrick shall receive the accrued unpaid pro-rata portion of her Total Annual Compensation, Benefits, and Leave (if applicable and in accordance with City policies and the MOU) through the effective date of termination, less all required withholdings and deductions.

6. *Termination Due to Death.* In the event Kirkpatrick dies during the Term of this Agreement, Kirkpatrick's beneficiaries or those entitled to her estate, shall be entitled to Kirkpatrick accrued unpaid pro-rata portion of her Total Annual Compensation, Benefits and Leave (if applicable and in accord with City policies and the MOU) through the effective date of her death, less all required withholdings and deductions.

Section 6. Relocation Incentive

Kirkpatrick will receive a one-time relocation incentive of \$5,000.

Section 7. Automobile and Parking

During the Term of this Agreement, City will provide Kirkpatrick at City expense a City vehicle and parking at a location assigned by the City. City will reimburse Kirkpatrick only for any payments she makes for fuel provided at City facilities. The City will not reimburse Kirkpatrick for gasoline she purchases or for parking expenses she incurs except for any parking expenses she incurs at the location assigned by the City.

Section 8. Telecommunication

During the Term of this Agreement, the City shall provide to Kirkpatrick and fully pay for a smart phone with email and cell service, internet service, and a laptop computer with the capacity for remote access.

Section 9. Professional Membership/City Business and Travel Expense

A. The City agrees to pay for professional dues and subscriptions necessary for continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for Kirkpatrick's continued professional participation, growth, and advancement, and for the good of the City.

B. The City agrees to reimburse Kirkpatrick for reasonable travel and subsistence expenses for legitimate City business purposes provided supporting documentation is provided by Kirkpatrick to support such expenses.

C. Consistent with California Labor Code section 2802, the City shall indemnify Kirkpatrick for all necessary expenditures or losses incurred by her in direct consequence of the discharge of her duties, or of her obedience to the City's directions,

even though unlawful, unless at the time of obeying the City's directions, she believed the directions to be unlawful.

Section 10. Performance Evaluations

The City may periodically review Kirkpatrick's performance subject to a process, form, criteria, and format for the evaluation which shall be mutually agreed upon by the City Administrator and Kirkpatrick. The process at a minimum shall include the opportunity for both parties to: (1) prepare a written evaluation, (2) meet and discuss the evaluation, and (3) present a written summary of the evaluation results. The final written evaluation should be completed and delivered to Kirkpatrick within 30 days of the evaluation meeting.

Section 11. Non-Disclosure of Confidential Information.

The parties acknowledge that as Chief of Police, Kirkpatrick is responsible for, among other things, overseeing the operations of the Police Department and establishing policies and procedures to ensure constitutional policing. Kirkpatrick acknowledges that, solely by reason of entering into this Agreement and her employment with the City, City Confidential Information, as defined below, may be discovered by or disclosed to her. Kirkpatrick agrees that she shall not at any time or in any manner, either directly or indirectly, whether or not for compensation, use, divulge, disclose or communicate to any person, firm, corporation or any other entity in any manner whatsoever any confidential information concerning any matters affecting or relating to the business of City except for the benefit of the City and only with the express written permission of City after the termination of her employment with the City.

Section 12. Conflict of Interest.

Kirkpatrick agrees that after the termination of her employment with the City she will not, directly or indirectly, participate in or in any way represent, provide advice or input or any other information or assistance/advice to any party who is negotiating with the City any agreement, seeking award of any contract or seeking any grant, permit or any other benefits or who is in an adversarial posture with the City if Kirkpatrick was privy to and/or was involved in any manner in such matter or if her department was responsible for evaluating, drafting, negotiating, making recommendations regarding such matter on behalf of the City during her employment with the City.

Section 13. Non-Disparagement.

Kirkpatrick agrees that during and after the Term of this Agreement, she will not make disparaging remarks, comments or statements, nor take any action that is intended, or would reasonably be expected, to harm the City or its reputation or that would

reasonably be expected to lead to unwanted or unfavorable publicity to the City, its officers, employees and officials. "Disparaging remarks, comments or statements" are those that impugn the character, honesty, integrity, morality or business acumen or abilities in connection with any aspect of the operation of the City.

Section 14. Representation in Litigation

In accordance with applicable law, the City will represent and provide a defense for Kirkpatrick in claims or litigation naming her as a defendant and alleging acts/omissions in her official capacity, unless the City has a conflict; if the City has a conflict, City will retain conflict counsel to represent Kirkpatrick.

Section 15. Interpretation of Agreement - Arbitration

This Agreement shall be governed by, construed, and enforced pursuant to the laws of the State of California. Any dispute regarding the interpretation or application of this Agreement and any action to enforce or interpret this Agreement shall be resolved by binding arbitration. In the event of a dispute between Kirkpatrick and the City with respect to the interpretation of this Agreement or any alleged breach of this Agreement which cannot be settled amicably by agreement of the parties, the dispute shall be submitted to arbitration by a single arbitrator mutually agreed to by Kirkpatrick and the City. The award shall be final, binding and conclusive and may be entered in the highest court having jurisdiction. Each party shall pay its share of the arbitration fees and costs. Any arbitration shall take place in the City of Oakland, County of Alameda. The Parties expressly consent to the jurisdiction and venue identified in this section and waive any defenses to lack of jurisdiction or venue.

Section 16. Entire Agreement

This Agreement supersedes any and all agreements, either oral or written, between the parties with respect to the rendering of services to the City by Kirkpatrick. It contains all of the representations, covenants and agreements between the parties with respect to Kirkpatrick's services. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party that are not contained in this Agreement. No agreement, statement or promise not contained in this Agreement shall be valid or binding.

Section 17. Modification

Any modification of this Agreement shall be effective only if it is in writing and signed by all parties to this Agreement.

EXHIBIT 1

GENERAL RELEASE AND WAIVER OF CLAIMS

Pursuant to Section 4.B.1. of the Employment Agreement between the City of Oakland ("City"), and myself dated May 14, 2014 ("Employment Agreement) and in consideration of the Severance defined therein in connection with the termination of my employment on this date, I hereby agree to this General Release and Waiver of Claims ("Agreement").

I hereby release and forever discharge the City, and all of its past, present and future Councils, agencies, divisions, and departments, including but not limited to the their respective former, current and future directors, department heads, supervisors, managers, employees, attorneys, elected officials, Councilmembers, City Administrators, and any and all of them (all of the above collectively, the "City Released Parties"), to the extent permitted by law, from any and all liability, actions, causes, causes of action, suits, debts, dues, sums of money, accounts, reckonings, obligations, costs, expenses, bonds, bills, specialties, covenants, controversies, agreements, promises, damages, judgments, executions, liens, claims and demands of whatever nature or description, in law or in equity, whether now known or unknown, suspected or unsuspected, and occurring prior to the execution of this Agreement and arising from or during my employment or resulting from the termination of my employment, which I now have, own or hold, or at any time heretofore owned, or held, or could or shall or may hereafter own or hold against the City Released Parties, upon or by reason of any matter, cause or thing, all such things constituting the "Released Matters," which are hereby merged into this Agreement and are hereby released in favor of the City Released Parties to the fullest extent permitted by law. This means that I cannot and will not file any claim, charge or lawsuit for the purpose of obtaining any monetary award above and beyond the amounts provided for in this Agreement, reinstatement of my employment or for any equitable relief. If I have previously filed any such claim, I agree to take all reasonable steps to cause it to be withdrawn without further delay.

I acknowledge that the Released Matters include, but are not limited to, all claims arising under federal, state or local laws prohibiting employment discrimination and all claims growing out of any legal restrictions on the City's right to terminate its employees including any breach of contract claims. The Released Matters also specifically encompass all claims of employment discrimination based on race, color, religion, sex and national origin, as provided under Title VII of the Civil Rights Act of 1964, as amended, all claims of discrimination based on age, as provided under the Age Discrimination in Employment Act of 1967, as amended, and the Older Workers Benefit Protection Act, all claims under the Employee Retirement Income Security Act, all claims of employment discrimination under the Americans with Disabilities Act, all

claims under state law as provided under the California Government Code, California Labor Code, and any other applicable state or local laws and regulations, contract claims, tort claims, and wage or benefit claims, including but not limited to, claims for salary, bonuses, vacation pay, fringe benefits, severance pay or any other form of compensation (other than the payments, rights and benefits to which I am, pursuant to the express provisions of the Employment Agreement, entitled in connection with my termination of employment; my vested rights, if any, under any City's retirement plan any worker's compensation benefits under any City workers' compensation insurance policy or fund; unemployment, state disability and/or paid family leave insurance benefits pursuant to the terms of applicable state law, and to the extent prohibited by law). I agree that this release does not waive or release any rights or claims that I may have under the Age Discrimination in Employment Act of 1967 which arise after the date I execute this Agreement or any rights or claims that I may have for any breach of this Agreement.

I understand that there is a risk that subsequent to the execution of this Agreement, I may incur or suffer loss, damage or injuries which are in some way caused by or related to the Released Matters, but which are unknown or unanticipated at the time of the execution of this Agreement. Further, there is a risk that the loss or damage presently known may be or become greater than I now expect or anticipate. I assume this risk and the terms of this Agreement shall apply to all unknown or unanticipated results, as well as those known and anticipated, and I waive all rights related to the Released Matters against the Released Parties pursuant to California Civil Code, Section 1542, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

I fully understand that, if any fact with respect to any Released Matters covered by this Agreement is found hereafter to be other than or different from the facts now believed by me to be true, I expressly accept and assume that this Agreement shall be and remain effective, notwithstanding such difference in the facts.

I acknowledge that I have not heretofore assigned or transferred to or purported to assign or transfer to any person not a party hereto any Released Matters or any part or portion thereof, and agree to indemnify and hold harmless the City Released Parties from and against any claim, demand, controversy, damage, debt, liability, account,

reckoning, obligation, cost, expense, lien, action, or cause of action (including the payment of attorneys' fees and costs actually incurred whether or not litigation commenced) based on, in connection with, or arising out of any assignment or transfer or claimed assignment or transfer thereof.

I also understand and agree that prior to execution of this Agreement; I have apprised myself of sufficient relevant information in order that I might intelligently exercise my own judgment. I understand and agree that by executing this Agreement, I am waiving any claims under the Federal Age Discrimination in Employment Act of 1967, and the Older Workers Benefit Protection Act. I acknowledge that I expressly acknowledges and agree that by entering into this Agreement: (a) I am waiving all claims under the Federal Age Discrimination in Employment Act of 1967, as amended by the Older Workers Benefit Protection Act ("ADEA"); (b) I fully understand the terms, conditions, and provisions of this Agreement; (c) I have freely and voluntarily entered into this Agreement without any threat, coercion, or intimidation by any person; (d) I have been advised to consult with an attorney of his choice prior to signing this Agreement and in fact have consulted with an attorney; (e) the consideration provided for in this Agreement is in addition to that which I am already entitled; (f) I am not waiving my right, if any, to file a complaint or charge with the EEOC or participate in any investigation or proceeding conducted by the EEOC with respect to an age discrimination claim that arose prior to the Effective Date of this Agreement, but am waiving any right to recover damages or to seek reinstatement pursuant to such complaint or charge; (g) this provision does not purport to waive ADEA rights or claims that may arise from acts or events occurring after the Effective Date of this Agreement; (h) I am entitled to consider this Agreement for a period of twenty-one (21) days and can waive the twenty-one (21) day period by signing and returning this Agreement and Attachment 1 to this Agreement that the twenty-one (21) day period is waived; and (i) I am entitled to revoke this Agreement for a period of seven (7) days after signing this Agreement ("Revocation Period"), by delivering a written notice of revocation to the City Administrator or City's Personnel Director in the Office of Personnel Resource Management, 150 Frank H. Ogawa Plaza, 3rd Floor, Oakland, CA 94612-2019, which notice must be received at that address no later than the close of business on the seventh (7th) day following execution of this Agreement.

I intend this Agreement to be binding upon myself, my estate, heirs and assignees. I understand and agree that if I breach this Agreement or if I file any claim or lawsuit against the City Released Parties seeking any relief which has been released herein, the release contained herein shall operate as a complete defense to such claims and all payments and benefits provided herein shall cease, and I or my estate shall be required to reimburse the City Released Parties for all payments and benefits I received

under this Agreement prior to such time plus any damages and attorneys' fees and costs incurred by the City Released Parties.

I understand that the Released Matters do not pertain to any claims which may subsequently arise in connection with the City's default in the Severance payment obligation under the Employment Agreement or any other obligations thereunder which expressly survive the termination of the Employment Agreement.

I understand that this Agreement does not prevent or prohibit me from filing a claim with a government agency that is responsible for enforcing a law. However, I understand and acknowledge that, because I am waiving all claims for monetary damages and any other form of personal relief in this Waiver and Release, I may only seek and receive non-personal forms of relief through any claim with a government agency.

Consistent with my Employment Agreement and the City Charter, I agree that I shall not at any time or in any manner, either directly or indirectly, whether or not for compensation, use, divulge, disclose or communicate to any person, firm, corporation or any other entity in any manner whatsoever any confidential information concerning any matters affecting or relating to the business of City except with the express written permission of City. Such information includes but is not limited to, the identification of any of City's licensees, sub-licensees, or any of the information concerning the business of the City, its manner of operation, its plans, or other proprietary data where such information is not publicly known and is not otherwise subject to public inspection or disclosure. I further understand and agree that any violation of this paragraph shall constitute and be treated as a material breach of this Agreement.

I further agree not to speak or write critically or negatively about any of the City Released Parties, whether by expressing my or any other person's opinion, or by speaking in any other manner whatsoever that would reasonably be expected to result in the City Released Parties being viewed by another person in a false or negative light. I also agree not to make any comments of a denigrating or disparaging nature about any of the City's operations and/or services. I understand and agree that any violation of this paragraph shall constitute and be treated as a material breach of this Agreement.

I further acknowledge and confirm that I have returned to the City any City assets, information, and documents in my possession, custody or control.

I further agree to provide the City with any business information relating to my City employment duties upon its request and to make myself reasonably available to, and cooperate with, the City and its respective representatives on an as needed basis with respect to any matter for which I had responsibility, about which I have knowledge,

and/or in which I was engaged on behalf of the City during my employment with the City. I further agree to reasonably cooperate with the City in any internal investigation or administrative, regulatory, or judicial proceeding. I understand and agree that my cooperation may include, but not be limited to, making myself available to the City upon reasonable notice for interviews, and factual investigations, appearing at the City's request to provide testimony without the necessity of receiving a subpoena, volunteering to the City pertinent information, and turning over to the City all relevant documents which may come into my possession. I understand and agree that I will not receive any additional compensation/consideration for complying with this provision other than what is already set forth above herein.

Except for the sections of my Employment Agreement which my termination of employment from the City, this Agreement constitutes the entire agreement between myself and the City with respect to any matters referred to in this Agreement and this Agreement supersedes any and all of the other agreements between myself and the City. No other consideration, agreements, representations, oral statements, understandings or course of conduct that are not expressly set forth in this Agreement should be implied or are binding. I am not relying upon any other agreement, representation, statement, omission, understanding or course of conduct that is not expressly set forth in this Agreement. I understand and agree that this Agreement shall not be deemed or construed at any time or for any purposes as an admission of any liability or wrongdoing by either myself or the City. I also agree that if any provision of this Agreement is deemed invalid, the remaining provisions will still be given full force and effect.

I have read this Agreement and understand all of its terms. I further acknowledge and agree that this Agreement is executed voluntarily, without coercion, and with full knowledge of its significance. I also understand and agree that if any suit is brought to enforce the provisions of this Agreement, the prevailing party shall be entitled to its costs, expenses and attorneys' fees as well as any and all other remedies.

Dated: _____

Anne Kirkpatrick

ATTACHMENT 1

WAIVER OF TWENTY-ONE (21) DAY PERIOD


The undersigned, hereby acknowledges that she was advised that she could have twenty-one (21) days to consider the General Release and Waiver Agreement ("Agreement") and voluntarily choose to sign the Agreement prior to the expiration of the twenty-one (21) day period. The undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this ____ day of _____, 2017, at Oakland, California.

Anne Kirkpatrick

FILED
OFFICE OF THE CITY CLERK
INTRODUCED BY COUNCIL MEMBER _____

APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY

2017 JAN 26 PM 6:38

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

**AN ORDINANCE AMENDING THE SALARY SCHEDULE OF
ORDINANCE NO. 12187 C.M.S. ("SALARY ORDINANCE") TO
INCREASE THE SALARY FOR CHIEF OF POLICE AND THE
CITY ADMINISTRATOR**

WHEREAS, Oakland City Charter section 207 charges the City Council with fixing the compensation of all City employees, officers and officials unless otherwise provided by the Charter; and

WHEREAS, Ordinance No. 12187 C.M.S., the "Salary Ordinance," sets forth a salary schedule reflecting all classifications of employment within the City including those of city employees and city officers; and the City Administrator, or other appointing authority, authorizes individual positions in classifications in accordance with budgetary appropriations made by the City Council; and persons holding respective positions and offices in the classifications set forth in the salary schedule shall receive as salary in full for their respective services that amount set forth in the salary schedule specified for such office; and

WHEREAS, the maximum of the pay range currently stated in the salary schedule for the position of Chief of Police is lower than the salary agreed upon by incoming Chief of Police Anne Kirkpatrick and the City Administrator; and

WHEREAS, the pay range currently stated in the salary schedule for the position of Chief of Police should be adjusted to ensure that the salary stated in the employment agreement for incoming Chief of Police Anne Kirkpatrick does not exceed the maximum pay permitted by the salary schedule; and

WHEREAS, to avoid compaction issues, the pay range stated in the salary schedule for the position of City Administrator should also be adjusted; and

WHEREAS, Section 2.00.02 of the Salary Ordinance requires that the salary of the Chief of Police, "shall be adjusted by a percentage amount equivalent to the average percentage amount of salary adjustment granted to rank and file uniformed employees" of the Police Department; and

WHEREAS, an increase of four percent (4%) is scheduled to take effect on May 1, 2017 for the rank and file of the Police Department and the City Administrator wishes to incorporate that scheduled increase into the salary rate of the Chief of Police, effective immediately; now therefore,

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. Section 2.00.2 of the Salary Ordinance shall be suspended on May 1, 2017 and on that day only so that the salary for the Chief of Police will remain unchanged when an increase of four percent (4%) takes effect on May 1, 2017 for the uniformed rank and file of the Police Department.

Section 2. The Salary Schedule of the Salary Ordinance is hereby amended as set forth below. Additions are indicated by underscoring and deletions are indicated by ~~strike-through type~~; portions of ordinances not cited or not shown in underscoring or strike-through type are not changed.

Section 3. Effective upon passage, the Salary Schedule for the following classification title is amended in Ordinance No. 12187 C.M.S. in the Unit UN1.80.002 Pay Grade Table of the Salary Schedule to read as follows:

Classification Title	Class No.	Pay Range	
Chief of Police	EM122	Min 17211.64	<u>18,000.00</u>
		Max 21137.22	<u>22,500.00</u>

Section 4. Effective upon passage, the Salary Schedule for the following classification title is amended in Ordinance No. 12187 C.M.S. in the Unit UK1.75.061 Pay Grade Table of the Salary Schedule to read as follows:

Classification Title	Class No.	Pay Range	
City Administrator	ET108	Min 16249.69	<u>21609.02</u>
		Max 24374.53	<u>27011.27</u>

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2017

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, CAMPBELL-WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLEN, KALB, KAPLAN, and PRESIDENT REID

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION _____

AN ORDINANCE SUSPENDING SECTION 2.00.02 OF ORDINANCE NO. 12187 C.M.S. ("SALARY ORDINANCE") AND AMENDING THE SALARY SCHEDULE OF THE SALARY ORDINANCE TO INCREASE THE SALARY FOR CHIEF OF POLICE AND THE CITY ADMINISTRATOR

Digest

An Ordinance Suspending Section 2.00.02 Of Ordinance No. 12187 C.M.S. ("Salary Ordinance") and Amending The Salary Schedule of the Salary Ordinance to Increase the Salary for Chief of Police And the City Administrator
