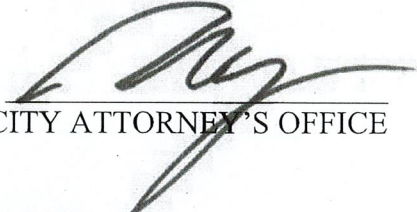


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FILED
OFFICE OF THE CITY CLERK
OAKLAND


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

RESOLUTION NO. 90798 C.M.S.

INTRODUCED BY COUNCILMEMBER [IF APPLICABLE]

“RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE AN EMPLOYMENT AGREEMENT BETWEEN THE CITY OF OAKLAND AND THE CHIEF OF POLICE, FLOYD MITCHELL, FOR A TOTAL ANNUAL COMPENSATION OF \$365,100 WHICH INCLUDES AN ANNUAL SALARY OF \$325,000.00 AND PREMIUM PAY REQUIRED BY THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF OAKLAND AND THE OAKLAND POLICE MANAGEMENT ASSOCIATION IN THE AMOUNT OF \$40,100.00, AS WELL AS AN AUTO ALLOWANCE OF \$750.00 PER MONTH.”

WHEREAS, Oakland has enacted Measure LL and Measure SI creating a civilian oversight structure to center police accountability, community policing principles, and community input; and

WHEREAS, the Oakland Police Commission, part of the City’s civilian oversight structure, began its Police Chief recruitment process in February 2023, steered through three phases, undertook a vigorous national search with the assistance of an executive recruiting firm, and received guidance from the Police Commission’s Police Chief Search Ad Hoc Committee, and conducted several rounds of interviews; and

WHEREAS, the Oakland Police Commission hosted a Community Forum to facilitate community engagement wherein members of the public had the opportunity to hear from the Police Commission’s top candidates and provide feedback on their candidacy [<https://www.oaklandca.gov/meeting/police-chief-search-open-forum>]; and

WHEREAS, Oakland is focused on increasing and sustaining the significant gains in terms of achieving compliance with the Negotiated Settlement Agreement and in empowering a robust civilian oversight structure to support police accountability, crime prevention and reduction; and

WHEREAS, Chief Mitchell is a proponent of community policing and outreach, crime prevention and reduction efforts, and preventative proactive policing, and has experience leading and managing all aspects of a law enforcement agency with a focus on communication, collaboration, and officer-community engagement at every level of police organizations; and

WHEREAS, Chief Floyd Mitchell has more than 30 years of professional law enforcement experience, beginning as a patrol officer with the Kansas City, Missouri Police Department, and being appointed Chief of Police of the City of Temple, Texas, and later being appointed Chief of Police in the City of Lubbock, Texas, where he served until September 2023; and

WHEREAS, on May 11, 2024, City Administrator Jestin Johnson shall appoint Floyd Mitchell as the permanent Police Chief for the Oakland Police Department; and

WHEREAS, City Administrator Johnson has negotiated an Employment Agreement with Chief Mitchell which requires the City to pay Chief Mitchell a one-time relocation assistance payment of ten thousand dollars (\$10,000.00) and a temporary housing allowance of three thousand five hundred dollars (\$3,500.00) per month for up to six (6) months, while Chief Mitchell seeks a permanent housing arrangement, that requires the City Council's approval of the three year contract term, with an option given to the Mayor to renew the Employment Agreement in their sole discretion without City Council approval, for one (1) additional two-year term as described in the Employment Agreement attached hereto as Exhibit A, and authorization to pay Chief Mitchell the salary and compensation adjustments described in the Employment Agreement; and

WHEREAS, the City Administrator has authority under the City's Salary Ordinance to grant Chief Mitchell the terms provided under the Memorandum of Understanding between the City and the Oakland Police Management Association ("MOU") which includes, annual premium pay totaling \$40,100.00 based on Longevity premium of \$6,400.00, Uniform Allowance of \$1,200.00 and 5% premium currently in the amount of \$16,500.00 for each of the following: a Bachelor's Degree and a Master's Degree; and

WHEREAS, the Employment Agreement between the City and Chief Mitchell provides for payment of severance if the Mayor terminated Chief Mitchell without cause, in the amount of twelve (12) months of annual total compensation at the then current rate of pay, except during the last eleven (11) months of the Employment Agreement term, the number of months of Annual Total Compensation paid as severance shall not exceed the number of months left to be performed in the employment contract term. Severance payments if Mitchell's employment is terminated not for cause pursuant not the Employment Agreement and for no other reason may not exceed the statutory limits in Government Code section 53260 et. seq.; now, therefore be it

RESOLVED: That the City Council hereby authorizes the City Administrator to execute an Employment Agreement with Police Chief Floyd Mitchell with an annual salary of \$325,000.00, and for a three-year term beginning on May 11, 2024 and ending at midnight on May 10, 2027, with an option given to the Mayor to renew the Employment Agreement, in her, his, or their sole discretion and without City Council approval, for one (1) additional two-year term. Any such renewal shall be on the same terms and conditions stated in the Employment Agreement with the following exceptions: (i) Mitchell shall not receive a one-time award of ten (10), or any other amount, days of Executive Leave; (ii) Mitchell shall not receive a one-time relocation assistance or housing allowance; and (iii) at the beginning of, and during, the Renewal 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 renewal term as described in the Employment Agreement. On or before January 15, 2027, the Mayor shall notify Chief Mitchell in writing, of her, his, or their intent to invoke the option to continue this Employment Agreement for a Renewal Term; and be it

FURTHER RESOLVED: That the Employment Agreement will provide: (1) twelve months of Annual Total Compensation at Chief Mitchell's then current rate of pay as severance pay if the Mayor terminates Chief Mitchell'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) under the City's Salary Ordinance and the Memorandum of Understanding between the City and the Oakland Police Management Association ("MOU") which includes, annual premium pay totaling \$40,100.00 based on Longevity premium of \$6,400.00, Uniform Allowance of \$1,200.00 and 5% premium currently in the amount of \$16,500.00 for each of the following: a Bachelor's Degree and a Master's Degree; (3) use of a City vehicle, (4) a monthly auto allowance in the amount of \$750 per month, (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 ten thousand dollars (\$10,000.00) for relocation assistance and a housing allowance of three thousand five hundred dollars (\$3,500.00) per month for up to six months, while seeking a permanent housing arrangement; (7) other benefits provided for executive employees; and (8) on substantially the same 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, premium pay, for Chief Mitchell is \$365,100.00, as well as an auto allowance of \$750 per month; 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 Employment Agreement shall be lodged with the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE: APR 30 2024

AYES - ~~WILLIAMS~~, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND
PRESIDENT FORTUNATO BAS - 7

NOES - 0

ABSENT - 0

ABSTENTION - 0

Excused - Five

ATTEST:



ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California

EXHIBIT A

Employment Agreement

This Employment Agreement (“Agreement”) is entered into by the City of Oakland (“City”) and Floyd Mitchell (“Mitchell”). The City and Mitchell are sometimes referred to in the Agreement individually as the “party” and collectively as the “parties.”

Section 1. Employment as Chief of Police

Subject to the terms and conditions stated herein, the City hereby employs Mitchell as Chief of Police, effective May 11, 2024.

Pursuant to City Charter sections 601 and 902(b) and Chapter 2.29 of the Oakland Municipal Code, the Chief of Police position is “at-will.” The Chief of Police may be terminated at any time with or without cause as detailed in Section 8 of this Agreement. Mitchell understands and agrees that the terms of Mitchell’s employment are governed by this Agreement and that the Chief of Police position is not a civil service classification and is not subject to the Oakland Civil Service Rules.

Section 2. Compensation

Mitchell shall be paid an annual salary of three hundred twenty-five thousand dollars (\$325,000.00) and the following annual premiums provided under the Memorandum of Understanding between the City and the Oakland Police Management Association (“MOU”): a five percent (5.0%) premium in the amount of \$16,250.00 for a Bachelor’s Degree and a five percent (5.0%) premium in the amount of \$16,250.00 for a Master’s Degree. The annual salary and the five percent (5%) premiums, in the total amount of three hundred fifty-seven thousand and five hundred dollars (\$357,500.00), 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, Mitchell 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 \$6,400.00 and Uniform Allowance of \$1,200. The “Annual Total Compensation” (which includes the Annual Salary and all payments made once a year) shall total three hundred sixty-five thousand and one hundred dollars (\$365,100.00).

As an at-will employee, 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 MOU that is in effect at the time.

Section 3. Benefits and Other Non-Cash Compensation

All employee benefits not defined herein shall be consistent with executive employee level benefits provided by the City.

EXHIBIT A

A. Executive Leave. Mitchell 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.

B. Vacation. Mitchell will accrue vacation leave at a rate commensurate with Mitchell's public service experience, which is thirty (30) days per year. Mitchell will receive and accrue vacation leave in accordance with the MOU. Mitchell will be credited a prorated amount of vacation for the remainder of the 2024 calendar year in accordance with the MOU.

C. Management and Other Leave. Mitchell will accrue all other leaves in accordance with City policies and the MOU or successor MOUs, consistent with Mitchell's 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 Mitchell's employment is terminated prior to July 1 or during a fiscal year for any reason, Mitchell 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."

D. Pension Contribution. Mitchell shall be entitled to retirement benefits and make pension contributions in accordance with the appropriate pension tier for which he is eligible in accordance with the rules established by the California Public Employees' Retirement System ("CalPERS").

E. Deferred Compensation. The City shall not provide any matching of deferred compensation contributions.

F. Relocation Assistance and Temporary Housing Allowance. Mitchell will receive a one-time relocation assistance of \$10,000. Mitchell shall also receive a housing allowance of three thousand five hundred dollars (\$3,500) per month for up to six (6) months, while Mitchell seeks a permanent housing arrangement.

Section 4. Use of City-Owned Vehicle, Auto Allowance, and Parking

During the Term of this Agreement, City will provide Mitchell, at City expense, a monthly Auto Allowance of \$750, a City vehicle, and parking at a location assigned by the City.

The parties agree Mitchell may use the vehicle for "personal use" that is not exempt under IRS rules and regulations and/or Oakland Police Department policy, such as use for vacations or recreation trips, provided that Mitchell agrees to document such personal use in a method that complies with IRS requirements in order to allow the City to make appropriate deductions from Mitchell's Auto Allowance.

City shall be responsible for paying: (i) all premiums for required automobile insurance; (ii) all vehicle maintenance and repair. In accordance with City reimbursement policies,

EXHIBIT A

Mitchell may claim reimbursement for any payments Mitchell makes for fuel provided at City facilities. The City will not reimburse Mitchell for gasoline or parking expenses Mitchell incurs for personal vehicle use.

Section 5. Electronic Equipment

During the Term of this Agreement, the City shall provide to Mitchell 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 6. Business and Professional Development Expenses

A. Dues and Subscriptions. 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 Mitchell's continued professional participation, growth, and advancement.

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

Section 7. Term

This Agreement shall be for a three-year term ("Term"), commencing on May 11, 2024 and ending at midnight on May 10, 2027.

The Mayor shall have the authority and the option, in their sole discretion and without City Council approval, to renew this employment agreement for one (1) additional two-year term ("Renewal Term"). Any such renewal shall be on the same terms and conditions stated herein, including the same Total Annual Compensation subject to the same salary and compensation adjustments described herein, with the following exceptions: (i) Mitchell shall not receive a one-time award of ten (10), or any other amount, days of Executive Leave; (ii) Mitchell shall not receive any additional relocation assistance or housing allowance; and (iii) 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 January 15, 2027, the Mayor shall notify Mitchell, in writing, of their intent to invoke the option to continue this Agreement for a Renewal Term.

Section 8. Termination of Employment and Severance

As set forth in Section 1 of this Agreement, Mitchell's employment is an "at-will" employee. This Agreement may be terminated, and Mitchell removed from his position as Chief of Police, at any time with or without cause. Notice of removal, whether with or without cause,

EXHIBIT A

will be made in accordance with Government Code section 3304(c). Notwithstanding any provision in this Agreement, the Mayor may place the Chief of Police on paid administrative leave at any time during the Term of this Agreement.

A. Termination Not-For-Cause

The Mayor may terminate Mitchell's employment at any time without cause and without notice. The City shall pay Mitchell any accrued and unpaid portion of Mitchell's Total Annual Compensation, Benefits, and Leave (if applicable and in accordance with City policies and the MOU) through the effective date of separation, subject to all required withholdings and deductions.

B. Severance

If the Mayor terminates Mitchell without cause ("cause" is defined in Section C below), the City shall provide twelve (12) months of Annual Total Compensation at Mitchell'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, 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 Mitchell severance only if Mitchell executes and returns to the City, 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"), within twenty-one (21) days after the effective date of Mitchell's termination of employment. The executed General Release shall become part of this Agreement and shall become and remain effective and enforceable in accordance with its terms and shall not be revoked. Mitchell understands and agrees that the Severance is adequate consideration in exchange for the General Release. Mitchell understands and agrees that in the event that Mitchell does not sign and return the General Release within the above required time period or revokes it, Mitchell is not entitled to Severance.

Severance shall be paid to Mitchell only if employment is terminated not for cause pursuant to section 6(A) above and for no other reason. Severance payments may not exceed the statutory limits in Government Code section 53260 et seq.

C. Termination for Cause

1. *Termination for Cause by the Mayor*

The Mayor may terminate Mitchell's employment for cause. For the purposes of this provision "cause" is defined as any one or more of the following occurrences:

EXHIBIT A

(a) Continuing, intentional, or willful failure or refusal to perform the duties and responsibilities of the Chief of Police as required by any employment agreement with the City, the City Charter, the City's governing laws and regulations, or any laws, rules or regulations of any governmental entity applicable to the Chief's employment by the City or to City operations, including without limitation, the inability to perform the duties and responsibilities of the Chief of Police as aforementioned as a result of alcoholism or drug addiction;

(b) A final Sustained finding of Misconduct against the Chief arising from an administrative investigation where termination is within the recommended range of discipline in the Police Department's Discipline Matrix;

(c) Gross neglect of duties, material violation of any duty of loyalty to the City, or material violation of City or Department policy, including without limitation any policies or procedures pertaining to harassment and discrimination, after the Chief has received written warning of the neglect or violation and the Chief has failed to cure the neglect or violation within twenty (20) days;

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

(e) Failure or refusal to cooperate with any investigation involving employees of the Department;

(f) Obstruction of any investigation of Department employee misconduct or criminal activity;

(g) Refusal, which shall include ongoing failure, to administer or enforce any Department policy or procedure

(h) A material act of dishonesty, fraud, embezzlement, self-dealing, or other act of moral turpitude;

(i) A material breach of confidentiality; or

(j) Loss of any professional license or other certification required by state or local law to perform the duties of the position of Chief of Police.

2. Termination for Cause by the Police Commission

The Police Commission may terminate the Chief of Police, and without the approval of the Mayor, after a finding of cause by a minimum of five affirmative votes. "Cause" for the

EXHIBIT A

purposes of this provision is specifically defined and enumerated in Oakland Municipal Code section 2.45.070(E). The Municipal Code, and its provisions, including the enumeration of cause discussed herein may be revised from time to time in accordance with applicable law.

If Mitchell's employment is terminated for cause by either the Mayor or the Police Commission, Mitchell shall receive only the accrued unpaid portion of Mitchell's Total Annual Compensation, Benefits, and Leave (if applicable and in accord with the City's policies and the MOU) through the effective date of separation, subject to all required withholdings and deductions.

D. Termination Due to Disability

If Mitchell becomes disabled during the Term of this Agreement, Mitchell's employment shall terminate. For purposes of this Agreement, Mitchell 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 three (3) months, Mitchell 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 CalPERS determines that Mitchell is totally disabled ("Disability").

A termination of Mitchell's employment for Disability shall be communicated to Mitchell 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 Mitchell's employment hereunder, beyond the Term defined herein.

Upon the Disability Effective Date, Mitchell shall receive the accrued unpaid portion of Mitchell's 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 as dictated by CalPERS.

E. Termination Due to Death

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

F. Termination by Mitchell

Nothing in this agreement shall prevent or otherwise interfere with the right of the Chief of Police to resign or retire at any time from their position with the City. In order to terminate employment, Mitchell shall provide the Mayor with not less than sixty (60) days advance

EXHIBIT A

written notice. The Mayor, in the Mayor's sole discretion, may waive this notice requirement upon request. Any such waiver by the Mayor shall be provided to Mitchell in writing. 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 Mitchell will be liable for, liquidated damages of \$800 per day for each day of notice Mitchell fails to provide, up to a maximum of 60 days.

If Mitchell voluntarily terminates Mitchell's employment, Mitchell shall receive only the accrued unpaid portion of Mitchell's Total Salary, Benefits, and Leave (if applicable and in accord with City policies and the MOU) through the effective date of separation, subject to all required withholdings and deduction as required by each benefit.

Section 9. Performance Evaluations

A. Annual Evaluation by the Police Commission

The Police Commission will conduct an annual review of Mitchell's performance as the Chief of police pursuant to section 2.45.070(G) of the Municipal Code.

B. Periodic Evaluation by the City Administrator

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

Section 10. Non-Disclosure of Confidential Information

The parties acknowledge that as Chief of Police, Mitchell is responsible for, among other things, overseeing the operations of the Police Department and establishing policies and procedures to ensure constitutional policing. Mitchell acknowledges that, solely by reason of entering into this Agreement and Mitchell's employment with the City, City Confidential Information, as defined below, may be discovered by or disclosed to Mitchell.

Mitchell agrees that Mitchell 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 the City except for the benefit of the City and only with the express written permission of City after the termination of Mitchell's employment with the City. Mitchell understands and agrees that the prohibitions of this provision shall survive the expiration or other termination of this Agreement.

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Section 11. Devotion to City Business and Conflict of Interest

During the Agreement Term, Mitchell shall be a full-time Police Chief. Mitchell shall not be employed by, retained by, consult with, provide services to, or represent any other person or public or private entity, unless Mitchell receives prior written authorization to do so from the City Administrator, which the City Administrator may withhold in their sole and exclusive discretion. The Chief of Police will not engage in any activity which is or may become a conflict of interest, or that may create an incompatibility of office as defined under California law, or which interferes with the Chief's ability to effectively perform their duties.

Mitchell agrees that after the termination of Mitchell's employment with the City, Mitchell 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 Mitchell was privy to and/or was involved in any manner in such matter or if Mitchell's department was responsible for evaluating, drafting, negotiating, making recommendations regarding such matter on behalf of the City during Mitchell's employment with the City.

Section 12. Indemnification and Representation in Litigation

Consistent with California Labor Code section 2802, the City shall indemnify Mitchell for all necessary expenditures or losses incurred by Mitchell's in direct consequence of the discharge of Mitchell's duties, or of Mitchell's obedience to the City's directions, even though unlawful, unless at the time of obeying the City's directions, Mitchell believed the directions to be unlawful. The City may compromise and settle any claim or suit for which it is indemnifying Mitchell and pay the amount of any resulting settlement. The City may decline to defend or indemnify Mitchell only as permitted by the government code. Notwithstanding any of the provisions in this agreement, in any circumstance in which the Chief of Police is convicted of a crime and being involving abuse their office or position with the City, as defined in Government Code section 53243.4, any paid administrative leave provided by the City pending an outcome of the investigation into such crime, any City funds expended their legal criminal defense to such criminal allegation, and any cash settlement or severance provided to them upon termination shall be fully reimbursed by them to the City.

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

Section 13. General Provisions

A. Governing Law

EXHIBIT A

This Agreement shall be governed by, construed, and enforced pursuant to the laws of the State of California.

B. Interpretation or Enforcement of Agreement - Arbitration

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. Any dispute between Parties with respect to the interpretation, enforcement or breach of this Agreement which cannot be settled amicably by agreement of the parties, shall be submitted to arbitration by a single arbitrator mutually agreed to by Mitchell and the City. The award shall be final, binding and conclusive and may be entered in the highest court having jurisdiction.

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.

Each party shall pay half of the arbitration fees and shall bare their own costs. No party shall be deemed a "prevailing party" for any purpose, including any statutory or contractual claim based upon "prevailing party" status with respect to the Agreement.

C. 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 Mitchell. It contains all of the representations, covenants and agreements between the parties with respect to Mitchell'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.

D. Modification

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

E. Severability

If any part of this Agreement is determined to be invalid, unlawful or unenforceable, that part shall not be deemed to be part of this Agreement.

F. Counterparts

This Agreement may be executed in one or more counterparts, each of which shall constitute an original document, and all of which, when taken together, shall constitute a single document. Fax signatures and electronically transmitted signatures (for example: portable

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document format ("PDF") files) shall constitute original signatures for the purpose of this Agreement.

G. Voluntary Execution

Mitchell acknowledges that Mitchell has read and understands this Agreement, is fully aware of its legal effect, has had an opportunity to consult legal counsel and has entered into it freely and based on Mitchell's own judgment.

Floyd Mitchell Date

CITY OF OAKLAND

Jestin Johnson Date
City Administrator

Sheng Thao Date
Mayor

Approved as to Form and Legality:

Barbara J. Parker Date
City Attorney

Resolution No. _____ C.M.S. – passed [date] __ ayes, ____ noes, ____ abstentions, ____ absent

EXHIBIT A

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

EXHIBIT A

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,

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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

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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

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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: _____

Floyd Mitchell