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OFFICE OF THE CITY CLERK
OAKLAND

2014 MAY 22 PM 5: 23

AGENDA REPORT

TO: FRED BLACKWELL
CITY ADMINISTRATOR

FROM: Arturo M. Sanchez, Interim
Assistant City Administrator

SUBJECT: Appointment of Sean Whent as
Chief of Police and Authorization
Of An Employment Agreement
For the Chief of Police

DATE: May 23, 2014

City Administrator
Approval

Date

5/27/14

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Staff recommends that the City Council Adopt a Resolution Authorizing The City Administrator To Execute An Employment Agreement Between The City and Chief Of Police Sean Whent For The Four-Year Term Of May 14, 2014 Through May 13, 2018 And Total Annual Compensation Of \$262,879.21 Which Includes An Annual Salary Of \$226,438.44, The Top of The Salary Range For The Chief Of Police Classification, And Premium Pay Required By The Memorandum Of Understanding Between The City And The Oakland Police Management Association In The Amount of \$36,440.76

OUTCOME

Approval of the resolution authorizes the City Administrator to execute an employment agreement with Police Chief Sean Whent for a period of four (4) years from May 14, 2014 through May 13, 2018 and a salary at the top of the range for the position of Chief of Police in the amount of \$18,869.87 per month, plus cost of living increases provided under the MOU.

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June 3 2014

BACKGROUND

As the Interim Police Chief, Chief Sean Whent has led the City of Oakland Police Department for the last year. During his tenure, the City has seen significant gains in the right direction in both compliance with the Negotiated Settlement Agreement (NSA) and crime. During this same period, Chief Whent successfully competed amongst a nationwide pool of applicants to be the permanent Chief of the Oakland Police Department. The City Administrator Fred G. Blackwell upon recommendation of a hiring panel began negotiations with Chief Whent on May 12, 2013. Negotiations resulted in a contract on that retained Chief Whent for a period of four (4) years with the monthly salary rate of \$18,869.87 and be provided a City vehicle and premiums as described in the table below:

Chief Whent's Pay	
Descriptions	Amount
Salary	\$ 226,438.44
Premium for POST Certification (5%)	\$ 11,321.92
Education Incentive Premium-BA (5%)	\$ 11,321.92
Education Incentive Premium-Master (5%)	\$ 11,321.92
Longevity Premium for 15 through 19 years of service	\$ 1,675.00
Uniform Allowance	\$ 800.00
Total:	\$ 262,879.21

In addition, the Chief shall receive benefits consistent with executive employee level benefits provided by the City. Chief Whent will accrue all leaves in accordance with City policies and the MOU, which may be modified by a successor MOU, consistent with his years of service in the City. Consistent with City policy, Management Leave shall be accrued and awarded retroactively for the preceding year on July 1st of each year and if Whent's employment is terminated prior to July 1 or during a fiscal year for any reason, he will not accrue or be awarded any Management Leave for that fiscal year.

ANALYSIS

The City Administrator wishes to execute an employment agreement with Chief Whent in his capacity as Chief of Police with the monthly salary rate of \$18,869.87 and be provided a City vehicle and premiums provided under the Memorandum of Understanding ("MOU") between the City and the Oakland Police Management Association ("OPMA") and as described below:

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Chief Whent's Pay	
Descriptions	Amount
Salary	\$ 226,438.44
Premium for POST Certification (5%)	\$ 11,321.92
Education Incentive Premium-BA (5%)	\$ 11,321.92
Education Incentive Premium-Master (5%)	\$ 11,321.92
Longevity Premium for 15 through 19 years of service	\$ 1,675.00
Uniform Allowance	\$ 800.00
Total:	\$ 262,879.21

As the Chief, Chief Whent will focus on the executive management of the Police Department, achieving compliance with the NSA, continuing the implementation of District Based Policing and Investigations, reducing Overtime, and assuring that all Officers adhere to constitutional policing.

COST SUMMARY/IMPLICATIONS

1. COST ELEMENTS OF AGREEMENT/CONTRACT:

Approval of this resolution will authorize an employment agreement with Chief Sean Whent for the period of May 14, 2013 through May 13, 2018 at a total annual cost of \$226,438 (monthly salary of \$18,869.83 plus be provided a City vehicle and premiums provided under the Memorandum of Understanding ("MOU") between the City and the Oakland Police Management Association ("OPMA") which currently are as follows: Peace Officers Standards and Training ("POST") Certification Premium of 5% per year, Education Incentive Premium of 5% per year for a Bachelor's Degree and 5% per year for a Masters' Degree, Uniform Allowance: \$800 per year and Longevity Premium of \$1,675/year (15-19 years of service) or \$1,875/yr (20+ years of service).

2. SOURCE OF FUNDING:

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

3. FISCAL IMPACT:

The total amount of the employment agreement, including all eligible incentives, on an annual basis is \$262,879.21, on an ongoing basis.

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Fred Blackwell, City Administrator

Subject: Contract Appointing Sean Whent the Chief of the Oakland Police Department

Date: May 21, 2014

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SUSTAINABLE OPPORTUNITIES

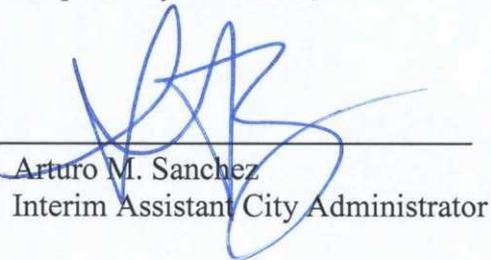
Economic: Maintains the leadership of the Oakland Police Department, which has seen gains on public safety an important factor in attracting and retaining Economic Development Projects.

Environmental: There are no environmental opportunities.

Social Equity: Retaining Chief Whent as the Chief of the Oakland Police Department will assure that a Chief that adheres to constitutional Policing and will achieve compliance with the NSA reforms mandated by the Court leads.

For questions regarding this report, please contact Arturo M. Sanchez, Interim Assistant City Administrator at (510) 238-7542.

Respectfully submitted,



Arturo M. Sanchez
Interim Assistant City Administrator

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City Council
June 3, 2014

Employment Agreement

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

Section 1. Position

On May 14, 2014, Interim City Administrator Fred Glover Blackwell appointed Whent to the position of Chief of Police and Whent took the oath of office. The City enters into Agreement with Whent as Chief of Police effective May 14, 2014. 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, Whent shall not be employed by, retained by, consult with, provide services to, or represent any other person or public or private entity, unless authorized in writing by the City Administrator.

Section 2. Compensation

A. Whent shall be paid an annual salary of two hundred twenty-six thousand four hundred thirty-eight dollars and forty-four cents (\$226,438.44) and annual premiums provided under the Memorandum of Understanding between the City and the Oakland Police Management Association ("MOU") which currently total \$36,440.76 based on Longevity premium of \$1675.00, Uniform Allowance of \$800 and 5% premium in the amount of \$11,321.92 for each of the following: Peace Officers Standards and Training ("POST") Certification, a Bachelor's Degree and a Master's Degree (collectively "Annual Total Compensation").

The Annual Total Compensation in the amount of \$262,879.21 shall be payable bi-weekly in accordance with the City's payroll policies less all required withholdings and deductions. 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 cost of living adjustments, if any, consistent with those in the existing or successor MOU.

B. All employee benefits ("Benefits") shall be consistent with executive employee level benefits provided by the City.

C. Whent will accrue all leaves in accordance with City policies and the MOU or successor MOUs, consistent with his 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 Whent's employment is terminated prior to July 1 or during a fiscal year for any reason, he 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. Deferred Compensation

The City shall not provide any matching of deferred compensation.

Section 4. Term, Termination of Employment, and Severance

A. This Agreement shall be for a four-year term ("Term"), commencing on May 14, 2014, and ending at midnight on May 13, 2018.

B. Pursuant to Oakland City Charter sections 503, 600 and 902(b) and Chapter 2.29 of the Oakland Municipal Code, the Chief of Police serves at the City Administrator's pleasure; however, the Chief of Police may be hired by contract for a term authorized by the City Council, provided that no such contract shall prevent the City Administrator from removing the Chief of Police at any time. Accordingly, City Administrator may terminate Whent's employment at any time with or without good cause and without prior notice. Whent also may terminate his employment during the Term of this Agreement as set forth below.

1. *Termination Without Good Cause.* The City Administrator may terminate Whent's employment at any time without cause and without notice. If the City Administrator terminates Whent without "Good Cause", as defined below, City shall provide four months of base salary at Whent's then current rate of pay, less all required withholdings and deductions as severance pay ("Severance"). The City shall pay the Severance only if Whent executes and returns to the City, within 21 days after the effective date of his termination of employment, a *General Release and Waiver of Claims*, in a form provided by the City that is substantially similar in all material respect 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. Whent understands and agrees that the Severance is adequate consideration in exchange for the General Release. Whent understands and agrees that in the event that he does not sign and return the General Release within the required time period or revokes it pursuant to the revocation provision, he will not be entitled to Severance.

The City also shall pay to Whent the accrued and unpaid pro-rata portion of his Total Annual Compensation, Benefits, and Leave through the effective date of termination, subject to all required withholdings and deductions and withholdings. 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 for Good Cause.* The City may terminate Whent'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) Whent'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) Whent's material breach of confidentiality;

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

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

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

(f) Whent'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) Whent'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 Whent's employment is terminated for Good Cause, the City shall provide a written notice of termination stating the reasons for the termination.

If Whent's employment is terminated for Good Cause, Whent will not be entitled to any Severance and shall receive only the accrued unpaid pro-rata portion of his 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 and withholdings.

3. *Termination by Whent.* If Whent decides to voluntarily terminate his employment, he shall provide the City Administrator with ninety (90) days advance written notice unless the City Administrator in her/his sole judgment and discretion waives this notice requirement.

If Whent voluntarily terminates his employment, Whent will not be entitled to any Severance and shall receive only the accrued unpaid pro-rata portion of his 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 and withholdings.

4. *Termination Due To Disability.* If Whent becomes disabled during the Term of this Agreement, his employment shall terminate. For purposes of this Agreement, Whent 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, Whent 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 Whent is totally disabled ("Disability").

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

Upon the Disability Effective Date, Whent shall receive the accrued unpaid pro-rata portion of his 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.

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

Section 6. Automobile and Parking

During the Term of this Agreement, City will provide Whent at City expense a City vehicle and parking at a location assigned by the City. City will reimburse Whent only for any payments he makes for fuel provided at City facilities. The City will not

reimburse Whent for gasoline he purchases or for parking expenses he incurs except for any parking expenses he incurs at the location assigned by the City.

Section 7. Telecommunication

During the Term of this Agreement, the City shall provide to Whent 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 8. 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 Whent's continued professional participation, growth, and advancement, and for the good of the City.

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

Section 9. Performance Evaluations

The City may periodically review Whent's performance subject to a process, form, criteria, and format for the evaluation which shall be mutually agreed upon by the City Administrator and Whent. 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 Whent within 30 days of the evaluation meeting.

Section 10. Non-Disclosure of Confidential Information.

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

Section 11. Conflict of Interest.

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

Section 12. Non-Disparagement.

Whent agrees that during and after the Term of this Agreement, he will not make disparaging remarks, 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 13. Legal Defense *[Language for this section is under discussion]*

The City shall defend Whent in any litigation filed based on his official capacity in which he is named as a defendant.

Section 14. 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 Whent 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 Whent 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/his share of the arbitration fees and costs. The prevailing party in any arbitration pursuant to this paragraph shall be entitled to recover its reasonable attorney's 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 waives any defenses to lack of jurisdiction or venue.

Section 15. 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 Whent. It contains all of the representations, covenants and agreements between the parties with respect to Whent'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 16. Modification

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

Section 17. 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.

Section 18. Survival of Certain Provisions. The provisions of Sections 10 (Non-disclosure of Confidential Information), 11 (Conflict of Interest), and 12 (Non - Disparagement) shall survive the expiration or other termination of this Agreement.

Section 19. 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: pdf files) shall constitute original signatures for the purpose of this Agreement.

Section 20. Voluntary Execution

Whent acknowledges that he 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 his own judgment.

CITY OF OAKLAND

Fred Glover Blackwell Date
City Administrator

Sean Whent Date

Approved as to Form and Legality:

Barbara J. Parker
City Attorney

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

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: _____

Sean Whent

ATTACHMENT 1

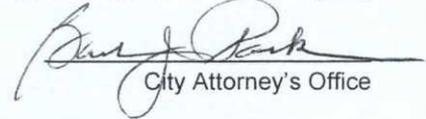
WAIVER OF TWENTY-ONE (21) DAY PERIOD

The undersigned, hereby acknowledges that he was advised that he 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 _____, 201_, at Oakland, California.

Sean Whent

FILED
OFFICE OF THE CITY CLERK
OAKLAND


City Attorney's Office

2014 MAY 22 PM 5:23 OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY CITY ADMINISTRATOR FRED GLOVER BLACKWELL

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE AN EMPLOYMENT AGREEMENT BETWEEN THE CITY AND CHIEF OF POLICE SEAN WHENT FOR THE FOUR-YEAR TERM OF MAY 14, 2014 THROUGH MAY 13, 2018 AND TOTAL ANNUAL COMPENSATION OF \$262,879.21 WHICH INCLUDES AN ANNUAL SALARY OF \$226,438.44, THE TOP OF THE SALARY RANGE FOR THE CHIEF OF POLICE CLASSIFICATION, AND PREMIUM PAY REQUIRED BY THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY AND THE OAKLAND POLICE MANAGEMENT ASSOCIATION IN THE AMOUNT OF \$36,440.76

WHEREAS, the City Administrator appointed Sean Whent as Interim Chief of Police for the City of Oakland and he has served in that capacity for the last year; and

WHEREAS, during his tenure the City has seen significant gains in terms of achieving compliance with the Negotiated Settlement Agreement pertaining to the *Delphine Allen v. City of Oakland* litigation, commonly referred to as the Riders case, and crime reduction; and

WHEREAS, the City Administration conducted a nationwide recruitment for a permanent Police Chief and Chief Whent successfully competed for the post; and

WHEREAS, on May 14, 2014, Interim City Administrator Fred Glover Blackwell appointed Interim Police Chief Whent as permanent Police Chief for the Oakland Police Department; and

WHEREAS, City Administrator Blackwell has negotiated an employment agreement with Chief Whent that requires the City Council's approval of the four-year contract term and authorization to pay Chief Whent the salary at the top of the range for the Chief of Police classification; and

WHEREAS, the City Administrator has authority under the City's Salary Ordinance to grant Chief Whent terms provided under the Memorandum of Understanding between the City and the Oakland Police Management Association ("MOU") which includes annual premium pay totaling \$36,440.76 based on Longevity premium of \$1675.00, Uniform Allowance of \$800 and 5% premium currently in the amount of \$11,321.92 for each of the following: Peace Officers Training and Standards Certification, 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 his employment without good cause before the expiration of the employment agreement, provided he has completed at least 10 years of service 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 Sean Whent for a four-year term beginning on May 14, 2014 and ending at midnight on May 13, 2018 with an annual salary of \$226,438.44 which is the top of the salary range for the Chief of Police classification; and be it

FURTHER RESOLVED: That in accordance with the MOU and City policies, the employment agreement will provide (1) four months of salary as severance pay if the City terminates Chief Whent's employment as Police Chief without cause before the end of the term, (2) cost of living and other salary increases provided under current or successor MOUs, (3) premiums provided under the MOU or successor MOUs for longevity, Bachelor's and Master's degrees, uniform allowance and Peace Officers Standards and Training Certifications, (4) use of a City vehicle, and (5) other benefits provided for executive employees; and be it

FURTHER RESOLVED: That the current total annual compensation including salary and premium pay is \$262,879.21; 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, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF AND
PRESIDENT KERNIGHAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council of the
City of Oakland, California