

**EMPLOYMENT AGREEMENT
CITY OF NEWPORT BEACH FIRE CHIEF**

This EMPLOYMENT AGREEMENT ("Agreement") is made effective as of July 23, 2019 ("Effective Date") and is entered into by and between the CITY OF NEWPORT BEACH, a California municipal corporation and Charter City ("Employer" or "City") and JEFF BOYLES ("Employee"), an individual (sometimes collectively referred to herein as "the Parties").

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business under the statutes of the State of California and the City Charter.
- B. Pursuant to Section 504(a) of the City Charter, and in accordance with Newport Beach Municipal Code ("NBMC") Section 2.24.100, the City Manager has directed a qualifications appraisal process and screened all qualified applicants and other qualified persons known by the City Manager to be available for the position of Fire Chief.
- C. Following the qualifications appraisal process, the City Manager believes Employee to be the best qualified on the basis of executive and administrative qualifications, with special reference to the experience and knowledge of accepted practice with respect to the duties of Fire Chief as contemplated by, and in conformity with, NBMC Section 2.24.100.
- D. The City desires to employ Employee as Fire Chief and to enter into an Agreement with Employee upon the terms and conditions in this Agreement.
- E. Employee is willing to accept such employment on the terms and conditions set forth in this Agreement.
- F. The Parties also mutually agree that this form of Agreement reflects the terms and conditions under which the Parties intend and desire to continue Employee's employment, and that there are no other agreements between them - oral, written or implied.

NOW, THEREFORE, it is mutually agreed by and between the undersigned Parties as follows:

SECTION 1: Term and Notice of Non-Renewal

This Agreement shall become effective July 23, 2019 ("Effective Date"). Subject to City's right to terminate Employee's employment at any time, as provided for in this Agreement,

the initial term of this Agreement is two (2) years from the Effective Date ("Initial Term"). This Agreement shall automatically be extended for an additional twelve (12) month period unless City notifies Employee of its intent not to extend the Agreement six (6) months prior to expiration of the Initial Term or any subsequent automatic extension of the Initial Term. City's election not to extend this Agreement shall not entitle Employee to Severance pursuant to Section 8 of this Agreement.

SECTION 2: No Break in Service

Employee has been continuously employed by the City since February 28, 2000. Employee's employment as Fire Chief shall not constitute a break in service.

SECTION 3: Duties and Authority

Employer agrees to employ Employee as Fire Chief, to exercise the powers and authority and to perform the functions and duties specified in the Newport Beach City Charter, the Municipal Code and all relevant resolutions, rules, regulations, procedures, applicable job description(s) and state codes, as they currently or may in the future exist, specifically, but not limited to, those set forth in the "Fire Chief" description attached hereto as Exhibit A and incorporated herein by this reference. Employee shall exercise such power and authority and perform such other functions and duties, not inconsistent with this Agreement, as Employer, by the City Manager, may legally assign.

SECTION 4: Compensation and Performance Evaluation

- A. Base Salary. Employer agrees to pay Employee an annual base salary of \$235,527 (two hundred, thirty-five thousand, five hundred and twenty-seven dollars) ("Base Salary"), subject to deductions and withholding of any and all sums required for federal or state income tax, pension contributions, and all other taxes, deductions or withholdings required by then current state, federal or local law, prorated and paid on Employer's normal paydays for the City Manager, City Attorney, City Clerk, and any Department Directors not covered by collective bargaining agreements (collectively, the "Executive Management Employees"). Employer shall also deduct sums Employee is obligated to pay because of participation in benefit plans or programs described in Section 5 of this Agreement. The annual Base Salary of Employee is within the approved salary range adopted by resolution of the City Council of the City of Newport Beach ("City Council").
- B. Adjustments to Compensation. At the time of any cost of living increase in compensation to the base salary that the Newport Beach Fire Management Association ("NBFMA") receives pursuant to an approved Memorandum of Understanding ("MOU") between the NBFMA and the City, Employee shall receive a Base Salary increase in compensation equal to the lesser of: (1) the cost of living

adjustment(s) (percentage increase(s)) provided to unit members as set forth in the MOU between the NBFMA and the City; or (2) a cost of living adjustment based on an increase in the "Cost of Living" as defined in Government Code Section 3511.1, as it currently exists or may be modified in the future.

The cost of living adjustment will be calculated by comparing the last published index number that is closest in time to the date the adjustment in compensation is to be made, and the corresponding index number for one year earlier. $[(A-B)/B*100=i]$, where A=Most recent index B=Corresponding index for one year earlier i=Cost of living adjustment, in percent]

City and Employee expressly agree that any adjustment in compensation as provided for in this Section shall not exceed the approved salary range adopted by resolution of the City Council.

- C. Uniform Allowance. As permissible by law and subject to the provisions and limitations under the Public Employees' Retirement Law (California Government Code § 20000 et seq.), as amended or superseded from time to time, the City shall report, biweekly, the value of provided uniforms at \$1,519 (one thousand, five hundred and nineteen dollars) per year, in accordance with California Public Employees' Retirement System ("CalPERS") requirements. The Parties agree the reported value of uniforms is intended to reflect clothing such as pants, shirts, jackets, and related attire and excludes health and safety related equipment. If CalPERS does not agree that the uniform allowance qualifies as special compensation, the City shall have no liability in this regard or duty to represent Employee in proceedings related to said determination. This Agreement shall be deemed amended whenever the City approves a new uniform allowance via an MOU or Side Letter Agreement with the NBFMA.
- D. Evaluations. Employer, via the City Manager, shall conduct annual performance examinations on or about the anniversary date of the Effective Date of this Agreement, or, consistent with that of other Executive Management Employees.
- E. Employee's compensation as discussed under this Section is not tied to the compensation of any other City employee or group of City employees, except as expressly provided in this Agreement.

SECTION 5: Employee Benefits

- A. Leave Benefit Balances Carried Over. All of Employee's accrued Flex Leave and other benefit balances shall carry over as set forth herein. Employee's Flex Leave

shall continue to accrue under the terms of applicable City policies and the provisions in Section 5(B) immediately below.

- B. Flex Leave. Employee shall accumulate Flex Leave as provided in the City's Key and Management Compensation Plan ("Compensation Plan"), Executive Management category, Years of Continuous Service, 15 and over, at the rate of 9.69 hours per pay period. The amount of Employee's accrued Flex Leave may not exceed (i.e. no longer accrue) a total of 755.82 (seven hundred fifty-five and eighty-two hundredths) hours.

The right to sell back accumulated Flex Leave shall be consistent with the "Leave Sellback" provision of the Compensation Plan.

This Agreement shall be deemed amended whenever the City Council adopts a resolution changing the Compensation Plan in regards to: (i) the amount of Flex Leave accrued per pay period; (ii) the maximum allowable balance of Flex Hours that can be accrued; (iii) provisions related to the use of Flex Leave to provide dependent care; or (iv) Flex Leave Sellback.

- C. Administrative Leave. Employee may be granted administrative leave hours, if any, in the sole discretion of the City Manager, up to a maximum of eighty (80) hours per calendar year. Administrative Leave hours will be credited to Employee the first pay period in January of each calendar year. Consistent with the City's Key and Management Compensation Plan, Administrative Leave does not accrue and therefore has no cash value. As such it cannot be carried over from year to year.
- D. Holidays. Employee will take time off for holidays in the same manner as Executive Management Employees ("Regular Holidays"). The City will not report Regular Holidays as special compensation.
- E. Other Leaves. Employee shall be entitled to the same Bereavement Leave, Jury Duty Leave, Workers' Compensation Leave and Medical Treatment for Industrial Injuries Leave, as received by Executive Management Employees as set forth in the Compensation Plan and/or EPM. This Agreement shall be deemed amended whenever the City Council adopts a resolution changing the Compensation Plan or EPM in regard to these leaves.
- F. Additional Benefits. Unless otherwise provided in this Agreement, Employee shall receive the same benefits as are available to Executive Management Employees under the Compensation Plan and/or EPM, including cafeteria benefits, LIUNA Supplemental Pension, IRS Section 125 Flexible Spending Accounts, short term and long-term disability plans, life insurance plans, and deferred compensation plans. This

Agreement shall be deemed amended whenever the City Council adopts a resolution or takes action changing these benefits under the Compensation Plan and/or EPM.

- G. Annual Physical Exam. Employee may undergo an annual physical examination and City shall reimburse Employee for the actual cost of the examination up to a maximum of one thousand dollars (\$1,000).
- H. City Provided Vehicle. Employee's duties require him to be available to respond to the demands of City business at all times and outside of regular business hours, including weekends. Therefore, City shall provide Employee with a vehicle that may be used for City-related purposes. The make and model of the vehicle shall remain within the City's sole discretion. City shall pay for reasonable maintenance of the vehicle and gasoline. It is contemplated by the parties that Employee will use the vehicle principally for City-related business, however, to the extent that Employee uses the vehicle for any incidental personal business, Employee shall pay for gasoline for all such personal use.
- I. Phone Allowance. Employee shall be entitled to the same phone allowance as provided to any of the Executive Management Employees.
- J. Key and Management Group, Executive Management Category. Except as expressly provided herein, Employee shall be treated as a member of the City's Key and Management Group, Executive Management category. As such, the benefits, terms and conditions of the Compensation Plan shall apply to Employee as provided more specifically above, provided however, in the event of a conflict between the provisions of this Agreement and the Compensation Plan, this Agreement shall prevail.
- K. Retirement - CalPERS. Employee shall be eligible for the "3% at 50" retirement formula (i.e. the same retirement formula set forth in Section 4 (D) (1) of the "Retirement Benefits" and Tier 1 ("Legacy") portion of the current NBFMA MOU. Employee contributes 12.5% of compensation earnable towards Employee's retirement benefits, which is designated as follows: 9% of Employee/Member's total compensation earnable salary as the Employee/Member Contribution; and 3.5% as cost sharing of the Employer Contribution Rate in accordance with Government Code section 20516(f).

Employee's retirement percentage contribution is the same as that applied to unit members of the NBFMA. As such, Employee's retirement percentage contribution will increase to 13% effective the pay period that includes July 1, 2020 and to 13.5% effective the pay period that includes July 1, 2021. If the City Council enters into an MOU between the City and NBFMA which provides for retirement contributions for members of the NBFMA in excess of 13.5%, this Agreement shall be deemed

amended and Employee shall be subject to the same percentage contribution as it is applied to the members of the NBFMA and for the same duration.

- L. Supplemental Pension. Employee is a member of the LIUNA Supplemental Pension Fund ("Plan"). Effective in the pay period which includes January 1, 2019, the Plan will be funded exclusively by contributions from the members. The City will not make any contributions to the Plan. In addition, as there are increases (which typically occur annually) to the costs (whether identified as employer or employee contributions) to fund the Plan, they will be made by Employee (i.e., the participants in the Plan). The City is not responsible for, nor does it make any representation regarding, the payment of benefits to Employee.

Employee cannot receive the contributed amounts directly instead of having them paid to the Plan. Participation in the Plan will continue to be mandatory for Employee.

Employees who leave City employment prior to vesting in the LIUNA pension plan will have no right to the return of amounts contributed, or other recourse against the City concerning LIUNA.

SECTION 6: General Business Expenses

- A. Employer recognizes that Employee may incur expenses of a non-personal, job related nature that are reasonably necessary to Employee's service to Employer. Employer agrees either to pay such expenses in advance or to reimburse the expenses, so long as the expenses are incurred and submitted according to Employer's normal expense reimbursement procedures or such other procedure as may be designated by the City Council. To be eligible for reimbursement, all expenses must be supported by documentation meeting Employer's normal requirements and must be submitted within time limits established by Employer.
- B. Consistent with Employer's normal expense reimbursement procedures or such other procedure as may be designated by the City Manager, Employer agrees to budget and to reimburse or pay for reasonable costs for attendance and participation in meetings, at institutes, training programs, conferences, conventions and similar gatherings that support leadership development and the advancement of Employer and Employee's mutually agreed upon goals, and which are related to Employee's duties or Employer's operations and held in the continental United States. For purposes of this paragraph, reasonable expenses are limited to the reasonable and actual cost of registration, airfare (where applicable), ground transportation and meals.

Reasonable expenses will also include the reasonable and actual cost of lodging for meetings outside of Orange County.

- C. The expenses to be budgeted and paid in this Section 6(C) and Sections 6(A) and (B) immediately above are exclusive of reasonable expenses related to events, participation in organizations, or attendance at events or meetings on behalf of the City as required by the City Manager. Employer will separately budget and pay for membership and participation in community, civic or other organizations or events in which Employer requires Employee to participate.

SECTION 7: At-Will Employment Relationship

- A. Consistent with Section 504 of the City Charter and NBMC Section 2.12.020, Employee is appointed by, and serves at the pleasure of, the City Manager. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employer to terminate this Agreement and the employment of Employee at any time, with or without cause. Employer shall pay Employee for all services through the effective date of termination and Employee shall have no right to any additional compensation or payment, except as provided in Section 8 “Severance and Benefit Payoff at Termination, and General Release Agreement” below. Nothing herein shall be construed to limit the rights and obligations of City and Employee as set forth in the Firefighters Procedural Bill of Rights Act, codified at Government Code section 3250, et seq. (“FPBRA”).
- B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign from his employment with Employer, subject only to Employee providing a minimum of sixty (60) calendar days’ prior written notice to Employer of the effective date of his resignation. Upon the effective date of resignation, Employee forfeits all compensation and benefits owing for the remainder of the term of this Agreement, as well as any potential “Severance” pay per Section 8 below.

SECTION 8: Severance and Benefit Payoff at Termination, and General Release Agreement

- A. Termination Without Cause: By providing Employee at least fourteen (14) calendar days’ prior written notice thereof, the City may terminate Employee without cause but rather based upon management reasons such as implementing the City’s goals or policies, including but not limited to: (i) change of administration, or (ii) incompatibility of management styles. In the event Employee is terminated without cause, Employee expressly agrees that he shall not be entitled to any Severance pay as the result of the termination of this Agreement except as provided in this Section 8(A). If Employer terminates Employee without cause, and if Employee signs, delivers to the City, and does not revoke, the Agreement of Separation, Severance and General Release in

the form attached hereto as Exhibit B, then Employer shall pay Employee a lump sum benefit equal to six (6) months of his then applicable Base Salary, and six (6) months of medical coverage as provided under the Compensation Plan and/or EPM as long as Employee is already enrolled and receiving medical coverage through the City medical benefits plan at the time of termination.

In accordance with Government Code Section 53260 (a), in no event shall Employee receive a cash settlement that is greater than the monthly Base Salary of Employee multiplied by the number of months left on the unexpired term of the Agreement.

The lump sum payment described in this Section 8(A) shall be referred to herein as "Severance".

In order to comply with the requirements of California Government Code section 3254 (c), termination by the City Manager for a reason other than cause shall be conducted in accordance with the following procedures:

1. The City reserves the right to place Employee on paid administrative leave for all or a portion of the fourteen (14) day written notice period provided under this Section 8(A).
2. Employee may request to appear before the City Council prior to the effective date of the termination to challenge the reasons for the termination or to raise mitigating circumstances regarding the termination but in such event would waive any right to Severance pay under this Section 8(A).

B. Termination With Cause: If Employer terminates this Agreement (thereby terminating Employee's Employment) with cause, as determined by the City Manager, Employee shall not be entitled to any Severance. As used in this Agreement, cause shall mean any of the following:

1. Conviction of a felony;
2. Conviction of a misdemeanor arising out of Employee's duties under this Agreement and involving a willful or intentional violation of law;
3. Conviction of any crime involving an "abuse of office or position," as that term is defined in Government Code Section 53243.4;
4. Willful abandonment of duties;
5. A pattern of repeated, willful and intentional failure to carry out materially significant and legally constituted direction of the City Manager or the policy decisions of the City Council made by the City Council as a body; and/or

6. Any other intentional or grossly negligent action or inaction by Employee that materially and substantially: (a) impedes or disrupts the operations of Employer or its organizational units; (b) is detrimental to Employee or public safety; (c) violates properly established rules or procedures of Employer causing a material and substantial adverse impact on Employer; or (d) has a material and substantial adverse effect on Employer's interests as clearly defined and delineated by properly established City Council action taken by the Council as a body, policy, regulations, ordinances, or Charter provisions of Employer.

Within five (5) days of receipt of written notice of termination for cause under this Section 8(B), Employee may submit a request in writing to the City Manager for an administrative appeal. Such appeal shall not prohibit or otherwise delay the termination of Employee prior to the administrative appeal. Failure to timely file such a request shall be deemed a waiver of the right to do so.

Upon Employee's written appeal request, the City Manager shall appoint an independent hearing officer to conduct an administrative hearing and issue an advisory decision, which shall then be reviewed and considered and either adopted, modified or rejected by City Council. Both the Employee and the City and their respective representatives, if any, shall make reasonable efforts to set an administrative appeal hearing date within thirty (30) days from the City Manager's receipt of the written appeal request.

At the administrative appeal hearing, the independent hearing officer shall be presented with both the information and documents on which the City based its decision to terminate as well as any information and documents on which the City based its decision to terminate for cause as well as any information and documentation that the Employee chooses to submit to challenge the City's information and documents to raise mitigating circumstances for consideration by the independent hearing officer.

Within thirty (30) days of completing the hearing, the independent hearing officer shall issue an advisory decision in writing to the City Council determining whether Employee was properly terminated and whether there was sufficient "cause" to justify not paying Severance under the terms of this Agreement, unless Severance was already tendered. Following City Council's review and consideration of the advisory decision, Employee shall be notified in writing as to whether the advisory decision will be upheld, modified or rescinded.

- C. Resignation/Non-Renewal: If Employee resigns or otherwise terminates this Agreement (thereby terminating Employee's Employment) or if this Agreement is not renewed as provided in Section 1, Employee shall not be entitled to any Severance.

- D. Upon termination (regardless of reason), Employee shall be compensated for all accrued but unused Flex Leave. No compensation shall be paid for any unused Administrative Leave.

SECTION 9: Employee's Obligations and Hours of Work

- A. Employee shall devote his full energies, interests, abilities and productive time to the performance of this Agreement and utilize his best efforts to promote Employer's interests. Employee's duties may involve expenditures of time in excess of the regularly established workday or in excess of a forty (40) hour workweek and may include time outside normal office hours (including attendance at City Council meetings). Employee's Base Salary includes compensation for all hours worked and Employee shall be classified as an exempt employee for purposes of overtime and shall not be entitled to any form of compensation for overtime. In recognition of the significant time Employee will need to devote outside of normal office hours to business activities of Employer and the exempt, salaried nature of the employment, Employee is permitted to exercise a flexible work schedule. However, consistent with this flexibility and Employee's participation in activities out of the office, Employee will generally be expected to keep office hours at the Newport Beach Fire Department during normal business hours, subject to Section 9(B) immediately below.
- B. Employee is authorized to work the 9/80 schedule as defined in the City's EPM and referred to in the City's Key and Management Compensation Plan as either may be amended from time to time or superseded. However, as Fire Chief, Employee shall not take a 9/80 day when the press of business or the public safety needs of the community require Employee's attendance.

SECTION 10: Confidentiality and Non-Disparagement

- A. Employee acknowledges that in the course of his employment contemplated herein, Employee will be given or will have access to confidential and proprietary documents and information, relating to the City, its residents, businesses, employees, and customers ("Confidential Information"). Such Confidential Information may include, but is not limited to, all information given to or otherwise accessible to Employee that is not public information or would be exempt from public disclosure as confidential, protected, exempt or privileged information. Employee shall hold the Confidential Information in trust for City's benefit, and shall not disclose the Confidential Information to others without the express written consent of City. All Confidential Information shall be promptly returned to the City immediately upon the effective date of any severance of employment.
- B. Except as otherwise required by law, in the event the City terminates Employee with or without cause, the City and Employee agree that no member of the City Council,

the City management staff, nor the Employee shall make any written, oral, or electronic statement to any member of the public, the press, or any City employee concerning the Employee's termination except in the form of a joint press release or statement, which is mutually agreeable to City and Employee. The joint press release or statement shall not contain any text or information that is disparaging to either Party. Either Party may verbally repeat the substance of the joint press release or statement in response to any inquiry.

- C. The obligations of Employer and Employee under this Section 10 shall survive the termination of this Agreement.

SECTION 11: Outside Activities

Consistent with California Government Code section 1126 et seq., Employee shall not engage in any employment, activity, consulting service or enterprise, for compensation or otherwise, which is actually or potentially in conflict with, inconsistent, incompatible with or inimical to, or which materially interferes with his duties, functions and responsibilities to Employer.

SECTION 12: Indemnification

- A. Consistent with the California Government Code, Employer shall defend and indemnify Employee, using legal counsel of Employer's choosing, against expense or legal liability for acts or omissions by Employee occurring within the course and scope of Employee's employment under this Agreement. In the event Employer determines that there is a conflict of interest between Employer and Employee and independent counsel is required for Employee, Employer may select the independent counsel after having considered the input of Employee and shall pay the reasonable fees of such independent counsel consistent with City litigation guidelines and standard rates received by City from its chosen special counsel. (Cal. Govt. Code sections 825, 995, et. seq.)
- B. Notwithstanding the foregoing, and consistent with Sections 53243 through 53243.3 of the Government Code, Employee shall be required, if convicted of a crime involving an abuse of his office or position, to fully reimburse the City for: (1) any paid leave salary offered by the City to the Employee; (2) any funds provided for the legal criminal defense of the Employee; (3) any cash settlement related to the termination that Employee may receive; and (4) any other payments received by Employee from City that in any way relate to the foregoing.

SECTION 13: Other Terms and Conditions of Employment

Employer may fix other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and

conditions are not inconsistent with or in conflict with the provisions of this Agreement or applicable law.

SECTION 14: Notices

A. Notice pursuant to this Agreement shall be given by depositing written notification in the custody of the United States Postal Service, postage prepaid, addressed as follows:

(1) EMPLOYER:

City of Newport Beach
c/o City Clerk
100 Civic Center Drive
Newport Beach, California 92660

With a courtesy copy to:

City Attorney
City of Newport Beach
100 Civic Center Drive
Newport Beach, California 92660

(2) EMPLOYEE: Jeff Boyles

At the home address then shown in Employer's file(s)

B. Alternatively, notice required pursuant to this Agreement may be personally served in the same manner as is applicable in civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service as provided by law.

SECTION 15: General Provisions

A. Integration. This Agreement sets forth the final, complete and exclusive agreement between Employer and Employee relating to the employment of Employee by Employer. Any prior discussions or representations by or between the parties are merged into this Agreement or are otherwise rendered null and void. The Parties by mutual written agreement may amend any provision of this Agreement. Such amendments shall be incorporated and made a part of this Agreement. The foregoing notwithstanding, Employee acknowledges that, except as expressly provided in this Agreement, his employment is subject to Employer's generally applicable rules and

policies pertaining to employment matters, such as those addressing equal employment opportunity, sexual harassment and violence in the workplace, as they currently or may in the future exist, and his employment is, and will continue to be, at the will of the City Manager.

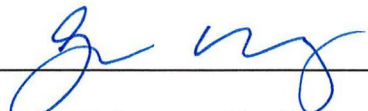
- B. Binding Effect. This Agreement shall be binding on the Employer and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.
- C. Choice of Law. This Agreement shall be interpreted and construed pursuant to and in accordance with the laws of the State of California and all applicable City Charter provisions, Codes, Ordinances, Policies and Resolutions.
- D. Severability. If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect. If any provision is held invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.
- E. Conflict with City Charter or Municipal Code. In the event of a conflict between the provisions of this Agreement and the City Charter, or this Agreement and the NBMC, the City Charter or the NBMC shall prevail over this Agreement. All other City personnel ordinances, resolutions, rules, and policies shall apply to Employee in the same manner as applied to other Executive Management Employees.
- F. Employee's Independent Review. Employee acknowledges that he has had the opportunity and has conducted an independent review of the financial and legal effects of this Agreement. Employee acknowledges that he has made an independent judgment upon the financial and legal effects of this Agreement and has not relied upon any representation of Employer, its officers, agents or employees other than those expressly set forth in this Agreement. Employee acknowledges that he has been advised to obtain, and has availed himself of, legal advice with respect to the terms and provisions of this Agreement.


(Signatures on Following Page)

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates reflected below each signature.

EMPLOYER
CITY OF NEWPORT BEACH,
A California Municipal Corporation

EMPLOYEE
An Individual

By: 
Grace K. Leung, City Manager


By: 
Jeff Boyles

Date: 7/24/19

Date: 7/16/19


APPROVED AS TO FORM:

Office of the City Attorney

By: 
Aaron C. Harp,
City Attorney

Date: 7/15/19

ATTEST:

By: 
Leilani Brown, City Clerk

Date: 7-25-19



[End of Signatures]

Attachments: Exhibit A – Fire Chief Job Description

Exhibit B - Agreement of Separation, Severance and General Release



CITY OF NEWPORT BEACH
Established Date: Jul 30, 2014
Revision Date: May 1, 2019

FIRE CHIEF

Class Code:
70001C

Bargaining Unit: Key & Management - Department Director
Safety

SALARY RANGE

\$76.62 - \$114.92 Hourly
\$6,129.83 - \$9,193.50 Biweekly
\$13,281.30 - \$19,919.24 Monthly
\$159,375.63 - \$239,030.90 Annually

DEFINITION:

To serve as the executive director of the Fire Department; to plan, organize, direct and coordinate the fire suppression and prevention, emergency medical services, ocean safety, hazardous waste mitigation, and disaster preparedness programs and activities of the department; to serve as a member of the City Manager's executive management team; and to provide highly responsible and professional staff assistance to the City Manager and City Council.

SUPERVISION RECEIVED AND EXERCISED: Receives general administrative direction from the City Manager. Exercises direct supervision over management, supervisory, professional, technical and clerical personnel.

ESSENTIAL DUTIES:

The following essential functions are typical for this classification. Incumbents may not perform all of the listed functions and/or may be required to perform additional or different functions from those below, to address business needs and changing business practices:

- Plan, direct, and review the operation, services and activities of the Fire Department, including fire suppression, hazardous material mitigation, fire and life safety code compliance, emergency medical services, ocean lifeguards, citywide disaster preparedness and response; administer the overall operation of the department, including hiring, personnel administration, budgeting, and community relations; assess community service expectations and requirements and develop appropriate methods to meet service requirements; ensure the maximum utilization of manpower, equipment, and supplies;
- Develop, plan and implement departmental goals and objectives; develop, recommend and administer approved policies and procedures; coordinate departmental activities with those of other City departments and outside agencies and organizations; provide professional and technical advice and assistance to the City Manager and City Council on matters related to departmental functions; Prepare and present staff reports and answer questions;
- Plan, organize, select and supervise the work of departmental staff; coach, motivate, monitor, correct and evaluate staff performance; serve as the second level supervisor of staff supervised by division managers and review performance evaluations prepared by subordinate managers; develop and implement staff training programs and plans; recommend employee recognition, discipline and termination; ensure that City personnel policy and employee agreements are implemented and applied consistently within the department;
- Supervise and participate in the development of the departmental budget; participate in the forecast of revenue, expenses and additional funds needed for staffing, equipment, materials, and supplies; administer the approved departmental budget and guide subordinate managers in developing and administering division and unit budgets;
- Represent the City and participate in professional and public meetings and organizations, as appropriate; attend staff meetings; participate in mandated training and staff development; respond to and meet with property owners, homeowner groups, business districts, and the public; meet with, provide information and negotiate with various regulatory agencies to satisfy their requirements; represent the City as a witness in legal actions;
- Oversee and direct departmental office operations; maintain appropriate records and files; coordinate workflow; prepare reports, agenda items memoranda, letters and other forms of correspondence;
- Regularly and predictably attend work; and
- Perform related duties as assigned.

QUALIFICATIONS:

To perform this job successfully, an individual must be able to perform each essential function. The requirements listed below are representative of the knowledge, skill, and/or ability required.

Knowledge of:

Advanced principles and practices of fire suppression and prevention, emergency medical services, disaster preparedness, training, and ocean lifeguard programs and services;

Principles and practices of organization, administration and personnel management and leadership, particularly as applied to the analysis and evaluation of programs, policies and operational needs;

Principles and techniques of budget development and administration;

Applicable Federal, State and local laws, ordinances, codes and regulations;

Principles of supervision, training and performance evaluation;

Current technological and communication equipment and software applicable to the delivery of departmental services to internal and external customers;

Modern office practices, procedures, methods and equipment; and

The use of a PC and applicable software.

Ability to:

Direct, plan and organize the activities of a comprehensive citywide Fire Department, including fire suppression and prevention, emergency medical services, disaster preparedness, personnel training, and ocean lifeguard programs and services;

Analyze problems; identify alternative solutions, project consequences of proposed actions and implement recommendations in support of goals;

Interpret and apply City policies, procedures, rules and regulations;

Develop and administer sound departmental policies and procedures;

Stay abreast of new trends, innovations, standards and guidelines in the fields of fire suppression and prevention, emergency medical services, disaster preparedness, hazardous material mitigation and ocean lifeguard services and safety;

Provide leadership to a diverse work force; meeting City objectives while maintaining positive employee morale;

Gain cooperation through discussion and persuasion;

Select, supervise, train and evaluate personnel;

Prepare and administer a departmental budget;

Maintain confidentiality of medical and other privileged information;

Communicate clearly and concisely, both orally and in writing;

Regularly and predictably attend work;

Follow directions from a supervisor;

Understand and follow posted work rules and procedures;

Accept constructive criticism; and

Establish and maintain cooperative working relationship with those contacted in the course of work.

EXPERIENCE & EDUCATION AND LICENSE/CERTIFICATE:

A combination of experience and education that would likely provide the required knowledge and abilities may be qualifying. A typical way to obtain the knowledge and abilities would be:

Experience: Seven years of increasingly responsible fire suppression and prevention experience, including at least three years of responsible management and supervisory experience at the rank of Fire Battalion Chief or above.

Education: Equivalent to a Bachelor's degree in fire administration or a closely related field. A Master's degree in public administration, fire administration or a related field is desirable.

License/Certificate: Due to the performance of some field duties which require the operation of a personal or City vehicle, a valid and appropriate California driver's license and an acceptable driving record are required.

Please Note: Candidates deemed most qualified, as reflected in their application materials, will be invited to continue in the recruitment process. The prospective candidate must successfully complete a thorough background review, including being fingerprinted by the Newport Beach Police Department. The resulting report of your conviction history, (if any), will be evaluated along with the other information received in connection with your application. Except as otherwise required by law, a criminal conviction will not necessarily disqualify you from the position. The nature, date, surrounding circumstances, and the relevance of the offense to the position applied for may, however, be considered.

Disaster Service Worker: In accordance with Government Code Section 3100, City of Newport Beach Employees, in the event of a disaster, are considered disaster service workers and may be asked to respond accordingly.

FLSA Classification: Exempt. This position may be required to work extended hours and on holidays as needed. Must have the ability to respond 24/7 to a variety of emergency conditions as they arise.

AGREEMENT OF SEPARATION, SEVERANCE, AND GENERAL RELEASE

1. PARTIES

This Agreement of Separation, Severance, and General Release (hereinafter referred to as the "AGREEMENT") is entered into by and between the City of Newport Beach, a charter city and municipal corporation (hereinafter referred to as "THE CITY"), and JEFF BOYLES, an individual (hereinafter referred to as "EMPLOYEE").

2. RECITALS

- 2.1. EMPLOYEE was hired by THE CITY as an at-will fire chief effective July 23, 2019 serving at the pleasure of the City Manager of THE CITY pursuant to a written contract, a copy of which is attached hereto as Exhibit "A" ("THE CONTRACT").

EMPLOYEE is currently ___ years old.

- 2.2. THE CITY and EMPLOYEE desire that EMPLOYEE resign and enter into a severance agreement whereby EMPLOYEE receives severance compensation in exchange for executing a general release and waiver of any and all claims that EMPLOYEE may have against THE CITY, including but not limited to its elected and non-elected officials, employees, attorneys, and agents. Accordingly, the parties hereto intend by this AGREEMENT to mutually conclude any and all employment relationships between THE CITY and EMPLOYEE by means of EMPLOYEE's voluntary separation as of _____, ____.
- 2.3. This AGREEMENT sets forth the full and complete terms and conditions concluding EMPLOYEE's employment relationship with the CITY and any obligations related thereto, including any provided under THE CONTRACT.
- 2.4. In accordance with this AGREEMENT and with applicable state and federal laws, EMPLOYEE acknowledges that EMPLOYEE has been advised of EMPLOYEE's post-employment rights, including but not limited to, EMPLOYEE's rights under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), the Employee Retirement Income Security Act of 1974 ("ERISA"), and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

3. CONSIDERATION

- 3.1. EMPLOYEE shall receive payment to him at the time of his voluntary separation all earned salary, accrued fringe benefits as detailed in THE CONTRACT, and/or all other wage compensation/benefits owed to EMPLOYEE upon separation of employment, as required by law or THE CONTRACT or any other agreement with THE CITY.

- 3.2. In exchange for the waivers and releases set forth herein, THE CITY shall also cause to be paid to EMPLOYEE an additional compensatory payment by means of severance, settlement and release in the form of a lump sum amount of _____ and ___ cents (\$_____.00), as set forth in THE CONTRACT in the form of a check made payable to EMPLOYEE to be mailed to EMPLOYEE at EMPLOYEE's home address via certified mail return receipt requested within thirty (30) business days after the EFFECTIVE DATE (as defined below) of this AGREEMENT.
- 3.3. In exchange for the severance payment provided for herein, EMPLOYEE, and on behalf of EMPLOYEE's spouse, heirs, representatives, successors, and assigns, hereby releases, acquits, and forever discharges THE CITY, and each of its predecessors, successors, assigns, officials, employees, representatives, agents, insurers, attorneys, and all persons and entities acting by, through, under, or in concert with any of them, and each of them (hereinafter referred to as "THE CITY PARTIES"), from any and all claims, charges, complaints, contracts, understandings, liabilities, obligations, promises, benefits, agreements, controversies, costs, losses, debts, expenses, damages, actions, causes of action, suits, rights, and demands of any nature whatsoever, known or unknown, suspected or unsuspected, which EMPLOYEE now has or may acquire in the future, or which EMPLOYEE ever had, relating to or arising out of any act, omission, occurrence, condition, event, transaction, or thing which was done, omitted to be done, occurred or was in effect at any time from the beginning of time up to and including _____, _____ (hereinafter referred to collectively as "CLAIMS"), without regard to whether such CLAIMS arise under the federal, state, or local constitutions, statutes, rules or regulations, or the common law. EMPLOYEE expressly acknowledges that the CLAIMS forever barred by this AGREEMENT specifically include, but are not limited to, claims based upon any alleged breach of THE CONTRACT or any other agreement of employment, any demand for wages, overtime or benefits, any claims of violation of the provisions of ERISA, COBRA or HIPAA, any alleged breach of any duty arising out of contract or tort, any alleged wrongful termination in violation of public policy, any alleged breach of any express or implied contract for continued employment, any alleged employment discrimination or unlawful discriminatory act, or any claim or cause of action including, but not limited to, any and all claims whether arising under any federal, state or local law prohibiting breach of employment contract, wrongful termination, or employment discrimination based upon age, race, color, sex, religion, handicap or disability, national origin or any other protected category or characteristic, and any and all rights or claims arising under the California Labor Code or Industrial Welfare Commission Wage Orders, the Federal Fair Labor Standards Act, the California Fair Employment and Housing Act, California Government Code §§12, 900 et seq., the Americans With Disabilities Act, Title VII of the Civil Rights Act of 1964, the Public Safety Officers Procedural Bill of Right Act, and any other federal, state, or local human rights, civil rights, or employment discrimination or employee rights statute, rule, or regulation.

4. SPECIFIC ACKNOWLEDGMENT OF WAIVER OF CLAIMS UNDER ADEA AND OWBPA

The Age Discrimination in Employment Act of 1967 (hereinafter referred to as the "ADEA") makes it illegal for an employer to discharge any individual or otherwise discriminate with respect to the nature and privileges of an individual's employment on the basis that the individual is age forty (40) or older. The Older Workers Benefit Protection Act (hereinafter referred to as the "OWBPA," 29 U.S.C. § 626, et. seq., Pub L 101-433, 104 Stat. 978 (1990)) further augments the ADEA and prohibits the waiver of any right or claim under the ADEA, **unless the waiver is knowing and voluntary**. By entering into this AGREEMENT, EMPLOYEE acknowledges that he knowingly and voluntarily, for just compensation in addition to anything of value to which EMPLOYEE was already entitled, waives and releases any rights he may have under the ADEA and/or OWBPA. EMPLOYEE further acknowledges that he has been advised and understands, pursuant to the provisions of the ADEA and OWBPA, that:

- a) This waiver/release is written in a manner understood by EMPLOYEE;
- b) EMPLOYEE is aware of, and/or has been advised of, his rights under the ADEA and OWBPA, and of the legal significance of his waiver of any possible claims he currently may have under the ADEA, OWBPA and/or similar age discrimination laws;
- c) EMPLOYEE is entitled to a reasonable time of at least twenty-one (21) days within which to review and consider this AGREEMENT and the waiver and release of any rights he may have under the ADEA, the OWBPA and similar age discrimination laws; but may, in the exercise of his own discretion, sign or reject this AGREEMENT at any time before the expiration of the twenty-one (21) days;
- d) The waivers and releases set forth in this AGREEMENT shall not apply to any rights or claims that may arise under the ADEA and/or OWBPA **after** the EFFECTIVE DATE of this AGREEMENT;
- e) EMPLOYEE has been advised by this writing that he should consult with an attorney prior to executing this AGREEMENT;
- f) EMPLOYEE has discussed this waiver and release with, and been advised with respect thereto by, his counsel of choice, and that he does not need any additional time within which to review and consider this AGREEMENT;
- g) EMPLOYEE has **seven (7) days following his execution** of this AGREEMENT to revoke the AGREEMENT;
- h) Notice of revocation within the seven (7) day revocation period must be provided, in writing, to THE CITY pursuant to Paragraph 8.9 herein, and must state, "I hereby revoke my acceptance of our Agreement of Severance and General Release;" and

- i) This AGREEMENT shall not be effective until all parties have signed the AGREEMENT and ten (10) days have passed since EMPLOYEE's execution ("EFFECTIVE DATE").

5. UNKNOWN CLAIMS

In relation to the release provisions of Paragraphs 3 and 4 above, EMPLOYEE understands that California Civil Code section 1542 reads as follows:

"General Release--Claims Extinguished"

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

EMPLOYEE hereby waives the protection of California Civil Code section 1542.

6. WAIVER OF ADDITIONAL CLAIMS

EMPLOYEE hereby waives any provisions of state or federal law that might require a more detailed specification of the claims being released pursuant to the provisions of Paragraphs 3, 4, and 5 above.

7. REPRESENTATIONS AND WARRANTIES

Each of the parties to this AGREEMENT represents and warrants to, and agrees with, each other party as follows:

- 7.1. Advice of Counsel: The parties hereto have received independent legal advice from their respective attorneys concerning the advisability of entering into and executing this AGREEMENT or have been given the opportunity to obtain such advice. The parties acknowledge that they have been represented by counsel of their own choice in the negotiation of this AGREEMENT, that they have read this AGREEMENT; that they have had this AGREEMENT fully explained to them by such counsel, or have had such opportunity to do so and that they are fully aware of the contents of this AGREEMENT and of its legal effect.
- 7.2. No Fraud in Inducement: No party (nor any officer, agent, employee, representative, or attorney of or for any party) has made any statement or representation or failed to make any statement or representation to any other party regarding any fact relied upon in entering into this AGREEMENT, and neither party relies upon any statement, representation, omission or promise of any other party in executing this AGREEMENT, or in making the settlement provided for herein, except as expressly stated in this AGREEMENT.

- 7.3. Independent Investigation: Each party to this AGREEMENT has made such investigation of the facts pertaining to this settlement and this AGREEMENT and all the matters pertaining thereto, as it deems necessary.
- 7.4. Mistake Waived: In entering into this AGREEMENT, each party assumes the risk of any misrepresentation, concealment or mistake. If any party should subsequently discover that any fact relied upon by it in entering into this AGREEMENT was untrue, or that any fact was concealed from it, or that its understanding of the facts or of the law was incorrect, such party shall not be entitled to any relief in connection therewith, including without limitation on the generality of the foregoing any alleged right or claim to set aside or rescind this AGREEMENT. This AGREEMENT is intended to be, and is, final and binding between the parties, regardless of any claims of misrepresentation, promise made without the intent to perform, concealment of fact, mistake of fact or law, or any other circumstance whatsoever.
- 7.5. Later Discovery: The parties are aware that they may hereafter discover claims or facts in addition to or different from those they now know or believe to be true with respect to the matters related herein. Nevertheless, it is the intention of the parties that EMPLOYEE fully, finally and forever settle and release all such matters, and all claims relative thereto, which do now exist, may exist or have previously existed against THE CITY or THE CITY PARTIES. In furtherance of such intention, the releases given here shall be, and remain, in effect as full and complete releases of all such matters, notwithstanding the discovery or existence of any additional or different claims or facts relative thereto.
- 7.6. Indemnification: EMPLOYEE agrees to indemnify and hold harmless THE CITY or THE CITY PARTIES from, and against, any and all claims, damages, or liabilities sustained by them as a direct result of the violation or breach of the covenants, warranties, and representations undertaken pursuant to the provisions of this AGREEMENT. EMPLOYEE understands and agrees that he shall be exclusively liable for the payment of all taxes for which he is responsible, if any, as a result of his receipt of the consideration referred to in Paragraph 3 of this AGREEMENT. In addition, EMPLOYEE agrees fully to indemnify and hold the CITY PARTIES harmless for payment of tax obligations as may be required by any federal, state or local taxing authority, at any time, as a result of the payment of the consideration set forth in Paragraph 3 of this AGREEMENT.
- 7.7. Future Cooperation & Consultation fees: EMPLOYEE shall execute all such further and additional documents as shall be reasonable, convenient, necessary or desirable to carry out the provisions of this AGREEMENT. EMPLOYEE shall provide THE CITY with consultation services (including deposition or trial testimony) in any litigation involving THE CITY which is reasonably related to acts or occurrences transpiring during his employment. Said services shall be provided as needed by THE CITY at a rate of \$100.00 per hour.
- 7.8. Return of Confidential Information and Property: Prior to the separation date, EMPLOYEE shall submit a written inventory of, and return to the City Clerk, all

City keys, equipment, computer identification cards or codes, and other equipment or materials or confidential documents provided to or obtained by EMPLOYEE during the course of his employment with THE CITY.

- 7.9. No Pending Claims and/or Actions: EMPLOYEE represents that he has not filed any complaints or charges against THE CITY or THE CITY PARTIES with any local, state or federal agency or court; that he will not do so at any time hereafter for any claim arising up to and including the EFFECTIVE DATE of this AGREEMENT; and that if any such agency or court assumes jurisdiction of any such complaint or charge against THE CITY or THE CITY PARTIES on behalf of EMPLOYEE, whenever or where ever filed, he will request such agency or court to withdraw from the matter forthwith.
- 7.10. Ownership of Claims: EMPLOYEE represents and warrants as a material term of this AGREEMENT that EMPLOYEE has not heretofore assigned, transferred, released or granted, or purported to assign, transfer, release or grant, any of the CLAIMS disposed of by this AGREEMENT. In executing this AGREEMENT, EMPLOYEE further warrants and represents that none of the CLAIMS released by EMPLOYEE thereunder will in the future be assigned, conveyed, or transferred in any fashion to any other person and/or entity.
- 7.11. Authority: Each party represents to the other that it has the right to enter into this AGREEMENT, and that it is not violating the terms or conditions of any other AGREEMENT to which they are a party or by which they are bound by entering into this AGREEMENT. The parties represent that they will obtain all necessary approvals to execute this AGREEMENT. It is further represented and agreed that the individuals signing this AGREEMENT on behalf of the respective parties have actual authority to execute this AGREEMENT and, by doing so, bind the party on whose behalf this AGREEMENT has been signed.

8. MISCELLANEOUS

- 8.1. No Admission: Nothing contained herein shall be construed as an admission by THE CITY of any liability of any kind. THE CITY denies any liability in connection with any claim and intends hereby solely to avoid potential claims and/or litigation and buy its peace.
- 8.2. Governing Law: This AGREEMENT has been executed and delivered within the State of California, and the rights and obligations of the parties shall be construed and enforced in accordance with, and governed by, the laws of the State of California.
- 8.3. Full Integration: This AGREEMENT is the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. This AGREEMENT may be amended only by a further agreement in writing, signed by the parties hereto.

- 8.4. Continuing Benefit: This AGREEMENT is binding upon and shall inure to the benefit of the parties hereto, their respective agents, spouses, employees, representatives, officials, attorneys, assigns, heirs, and successors in interest.
- 8.5. Joint Drafting: Each party agrees that it has cooperated in the drafting and preparation of this AGREEMENT. Hence, in any construction to be made of this AGREEMENT, the parties agree that it shall not be construed against any party.
- 8.6. Severability: In the event that any term, covenant, condition, provision or agreement contained in this AGREEMENT is held to be invalid or void by any court of competent jurisdiction, the invalidity of any such term, covenant, condition, provision or agreement shall in no way affect any other term, covenant, condition, provision or agreement and the remainder of this AGREEMENT shall still be in full force and effect.
- 8.7. Titles: The titles included in this AGREEMENT are for reference only and are not part of its terms, nor do they in any way modify the terms of this AGREEMENT.
- 8.8. Counterparts: This AGREEMENT may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one AGREEMENT, which shall be binding upon and effective as to all parties.
- 8.9. Notice: Any and all notices given to any party under this AGREEMENT shall be given as provided in this paragraph. All notices given to either party shall be made by certified or registered United States mail, or personal delivery, at the noticing party's discretion, and addressed to the parties as set forth below. Notices shall be deemed, for all purposes, to have been given on the date of personal service or three (3) consecutive calendar days following deposit of the same in the United States mail.

As to EMPLOYEE:

At EMPLOYEE's home address on file with THE CITY.

As to THE CITY:

City Manager
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660