



CITY OF MENDOTA

"Cantaloupe Center Of The World"

VICTOR MARTINEZ
Mayor

LIBERTAD "LIBERTY" LOPEZ
Mayor Pro Tempore

JOSE ALONSO

JOSEPH R. RIOFRIO

OSCAR ROSALES

AGENDA MENDOTA CITY COUNCIL

Special City Council Meeting
CITY COUNCIL CHAMBERS
643 QUINCE STREET
May 19, 2023
3:00 PM

CRISTIAN GONZALEZ
City Manager

JOHN KINSEY
City Attorney

The Mendota City Council welcomes you to its meetings; Regular meetings are scheduled for the 2nd and 4th Tuesday of every month. Your interest and participation are encouraged and appreciated. Notice is hereby given that Council may discuss and/or take action on any or all of the items listed on this agenda. Please turn your cell phones on vibrate/off while in the council chambers.

Any public writings distributed by the City of Mendota to at least a majority of the City Council regarding any item on this regular meeting agenda will be made available at the front counter at City Hall located at 643 Quince Street Mendota, CA 93640, during normal business hours 8 AM – 5 PM.

In compliance with the Americans with Disabilities Act, individuals requiring special assistance to participate at this meeting please contact the City Clerk at (559) 655-3291. Notification of at least forty-eight hours prior to the meeting will enable staff to make reasonable arrangements to ensure accessibility to the meeting.

CALL TO ORDER

ROLL CALL

FLAG SALUTE

FINALIZE THE AGENDA

1. Adjustments to Agenda.
2. Adoption of final Agenda.

CLOSED SESSION

1. CONFERENCE WITH LABOR NEGOTIATORS
Pursuant to Government Code § 54957.6, subdivision (a)
Title: Chief of Police
City's Designated Representative and Negotiator: Cristian Gonzalez, City Manager

CONSENT CALENDAR

Matters listed under the Consent Calendar are considered to be routine and will be enacted by one motion and one vote. There will be no separate discussion of these items. If discussion is desired, that item will be removed from the Consent Calendar and will be considered separately.

1. MAY 8, 2023 THROUGH MAY 11, 2023
WARRANT LIST CHECK NOS. 53236 THROUGH 53277
TOTAL FOR COUNCIL APPROVAL = \$317,821.49
2. Proposed adoption of **Resolution No. 23-30**, approving an employment agreement for the position of Chief of Police of the Mendota Police Department.

CITIZENS ORAL AND WRITTEN PRESENTATIONS

At this time members of the public may address the City Council only on matters listed on the agenda. Please complete a "request to speak" form and limit your comments to THREE (3) MINUTES. Please give the completed form to City Clerk prior to the start of the meeting. All speakers shall observe proper decorum. The Mendota Municipal Code prohibits the use of boisterous, slanderous, or profane language. All speakers must step to the podium, state their names and addresses for the record. Please watch the time.

ADJOURNMENT

CERTIFICATION OF POSTING

I, Celeste Cabrera-Garcia, City Clerk of the City of Mendota, do hereby declare that the foregoing agenda for the Mendota City Council special meeting of May 19, 2023, was posted on the outside bulletin board located at City Hall, 643 Quince Street on Thursday, May 18, 2023, at 3:00 p.m.



Celeste Cabrera-Garcia, City Clerk

CITY OF MENDOTA
CASH DISBURSEMENTS
05/08/23 - 05/11/23
CK# 053236 - 053277

Check Date	Check Number	Check Amount	Vendor Name	Department	Description
May 8, 2023	53236	\$ 4,460.11	ACME ROTARY BROOM SERVICE	REFUSE	(2) E5TH SCHWARZE AVALANCE GUTTER BROOMS
May 8, 2023	53237	\$ 527.38	ARAMARK	GENERAL, WATER, SEWER	PUBLIC WORKS UNIFORM SERVICE FOR 04/06/23, 04/13/23, 04/20/23, 04/27/23
May 8, 2023	53238	\$ 32.38	AUTOZONE, INC.	GENERAL	(1) 2PC DEEP MATS (PD)
May 8, 2023	53239	\$ 622.10	CALIFORNIA BUSINESS MACHINES	GENERAL, WATER, SEWER	COPIER CONTRACT SERVICE BASE - MAY 2023, USAGE APRIL 2023
May 8, 2023	53240	\$ 79.20	CALIFORNIA BUILDING	GENERAL	QUARTER 1: 1/1/23 - 3/31/23- BUILDING ADMIN
May 8, 2023	53241	\$ 16.00	DIVISION OF THE STATE ARCHITECT	GENERAL	DISABILITY ACCESS & ED QTRLY FEE 10/1/23 -12/31/23
May 8, 2023	53242	\$ 395.69	DATAMATIC, INC.	WATER	MONTHLY SOFTWARE LICENSE & SERVICE MAINTENANCE FEE JUNE 2023
May 8, 2023	53243	\$ 504.00	FRESNO MOBILE RADIO INC.	GENERAL	(36) POLICE DEPARTMENT RADIOS SERVICE APRIL 2023
May 8, 2023	53244	\$ 474.67	MENDOTA 1 SMOG	GENERAL	2019 DODGE CHARGER PURSUIT: CHECK CAR NO START, 2018 FORD UNIT # 87: OIL AND FILTER CHANGE (PD)
May 8, 2023	53245	\$ 72.94	R.G. EQUIPMENT COMPANY	GENERAL	(2) IDLER PULLY FLAT
May 8, 2023	53246	\$ 29.95	SEBASTIAN	GENERAL	SECURITY SERVICES 04/21/23 - 05/20/23 (PD)
May 8, 2023	53247	\$ 556.93	SIGNMAX	STREETS	(4) CUSTOM STREET SIGNS (2) TRAFFIC STOP SIGN
May 8, 2023	53248	\$ 1,143.88	KEVIN SMITH	GENERAL	PER DIEM EXPENSE TWO PORTOLA PLAZA 03/12/23 - 03/16/23
May 8, 2023	53249	\$ 8,065.42	BANKCARD CENTER	GENERAL, WATER, SEWER	COSTCO, PHOTOJOE, PIZZA FACTORY, MENDOTA FOOD CENTER, FLAGS USA LLC, ADOBE, MSFT MSBILL, CHEWY.COM
May 8, 2023	53250	\$ 535.00	MARK ANTHONY DUARTE	GENERAL, WATER, SEWER	PEST CONTROL SERVICES: ROJAS PIERCE PARK, CITY HALL, DMV, PUBLIC WORKS, WATER DIVISION BUILDINGS - 04/25/23
May 8, 2023	53251	\$ 783.33	THARP'S FARM SUPPLY	SEWER	(3) EAR PLUGS, (2) ALUM CAM LOCK 6', (2) ALUM CAMLOC 6', (2) EXTENSION SPRING
May 8, 2023	53252	\$ 145.62	UNIFIRST CORPORATION	GENERAL, WATER, SEWER	(3)4X6 COM RUGS, (3) BOWL CLIPS, WET MOP, TERRY CLOTHS
May 8, 2023	53253	\$ 2,004.48	VALWORX INC	WATER	(3)VALWORX 562705C ELECT ACTUATED BUTTERFLY VALVE
May 11, 2023	53255	\$ 5,245.76	AMERITAS GROUP	GENERAL	VISION AND DENTAL INSURANCE FOR JUNE 2023
May 11, 2023	53256	\$ 120,670.90	AMERICAN PAVING CO.	STREETS	MENDOTA JR HIGH SRTS PAYMENT#1 JOB #333620011
May 11, 2023	53257	\$ 88,806.00	BB LIMITED	WATER	LEASE AGREEMENT 2ND INSTALLMENT FY 22/23
May 11, 2023	53258	\$ 61.30	COLONIAL LIFE	GENERAL	LIFE INSURANCE PREMIUM FOR APRIL 2023
May 11, 2023	53259	\$ 1,995.22	COMCAST	GENERAL, WATER, SEWER	CITYWIDE XFINITY PHONE & INTERNET 05/06/23 - 06/05/23
May 11, 2023	53260	\$ 737.58	CORELOGIC INFORMATION	GENERAL, WATER, SEWER	REALQUEST SERVICES FOR APRIL 2023
May 11, 2023	53261	\$ 175.00	DEPARTMENT OF JUSTICE	GENERAL	(5) BLOOD ALCOHOL ANALYSIS FOR MARCH 2023
May 11, 2023	53262	\$ 1,219.77	ECS HOUSE INDUSTRIES, INC.	SEWER	(3) ELEMENT RAPTOR E20 & SHIPPING
May 11, 2023	53263	\$ 32,582.41	EMPLOYER DRIVEN INSURANCE SERVICE	GENERAL	BILLING SUMMARY FOR JUNE 2023
May 11, 2023	53264	\$ 90.00	EMPLOYEE RELATIONS	WATER, SEWER	(1) EMPLOYEE BACKGROUND CHECK (PD)
May 11, 2023	53265	\$ 505.00	GONZALEZ, CRISTIAN	GENERAL	WASHINGTON D.C. FEDERAL ADVOCACY TRIP 05/15-18/23, ICSC LAS VEGAS CONFERENCE PER DIEM 05/21-23/23
May 11, 2023	53266	\$ 825.00	INSYARATH, KHAMPHOU	GENERAL	POLICE STATISTICS FOR JANUARY, MARCH AND APRIL 2023

CITY OF MENDOTA
 CASH DISBURSEMENTS
 05/08/23 - 05/11/23
 CK# 053236 - 053277

May 11, 2023	53267	\$ 1,736.50	JMP OFFICE TECHNOLOGIES	GENERAL, WATER, SEWER	CONTRACT BASE RATE CHARGE 04/22/23 - 04/21/24 - FOLDING MACHINE
May 11, 2023	53268	\$ 505.00	VICTOR MARTINEZ	GENERAL	ICSC LAS VEGAS CONFERENCE PER DIEM 05/21-23/23, WASHINGTON D.C. FEDERAL ADVOCACY PER DIEM 05/15-18/23
May 11, 2023	53269	\$ 17,498.06	PG&E	GENERAL, WATER, SEWER, STREETS	CITYWIDE UTILITIES 03/09/23 - 04/06/23
May 11, 2023	53270	\$ 501.82	PITNEY BOWES INC.	GENERAL, WATER, SEWER	(3)DMC300C/400C RED INK, (1) TAPE STRIPS
May 11, 2023	53271	\$ 4,033.75	PROVOST & PRITCHARD	GENERAL, STREETS	PASS THRU PROF SERV JULY, AUGUST 2022 - ODYSSEY, SAFE ROUTES TO SCHOOL MASTER PLAN MARCH 2023
May 11, 2023	53272	\$ 290.00	OSCAR ROSALES	GENERAL	WASHINGTON FEDERAL ADVOCACY TRIP PER DIEM 05/15-18/23
May 11, 2023	53273	\$ 143.00	SAN JOAQUIN VALLEY AIR	WATER, SEWER	FY 23/24 PERMIT- CUMMINS DIESEL- FIRED EMERGENCY GENERATOR
May 11, 2023	53274	\$ 215.00	KEVIN SMITH	GENERAL	ICSC LAS VEGAS CONFERENCE PER DIEM 05/21-23/23
May 11, 2023	53275	\$ 3,148.34	SORENSEN MACHINE WORKS	GENERAL, WATER, SEWER	CITYWIDE DEPARTMENT SUPPLIES FOR MARCH 2023
May 11, 2023	53276	\$ 150.00	VORTAL	GENERAL, WATER, SEWER	CITY WEBSITE HOSTING AND MAINTENENCE APRIL 2023
May 11, 2023	53277	\$ 16,237.00	WANGER JONES HELSLEY PC ATTORNEY	GENERAL	PASS THRU LEGAL SERVICE RE: ODYSSEY 6/15/2022, 7/15/22, 8/15/22, 9/15/22, 10/15/22, 11/15/22, 12/15/22, 01/15/23, 02/15/23, 03/15/23

\$ 317,821.49

**BEFORE THE CITY COUNCIL
OF THE
CITY OF MENDOTA, COUNTY OF FRESNO**

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MENDOTA APPROVING
AN EMPLOYMENT AGREEMENT FOR
THE POSITION OF CHIEF OF POLICE
OF THE MENDOTA POLICE DEPARTMENT**

RESOLUTION NO. 23-30

WHEREAS, Kevin Smith is the appointed Chief of Police of the City of Mendota's ("City") Police Department and currently serves in that position without a written employment agreement; and

WHEREAS, the City and Mr. Smith wish to execute an employment agreement outlining written terms related to Mr. Smith's continued employment as the City's Chief of Police for a period of three years; and

WHEREAS, the City has prepared an employment agreement (the "Agreement"), which is attached hereto as Exhibit "A" and incorporated herein by this reference, reflecting the parties' agreement regarding the terms of Mr. Smith's continued employment with the City.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Mendota as follows:

SECTION 1. Resolution No. 23-30 is hereby adopted to approve and incorporate the Agreement containing the terms and conditions of Mr. Smith's continued employment, as reflected in Exhibit "A" attached hereto.

SECTION 2. The City Manager, or his designee, is hereby authorized and directed to execute the Agreement, in substantially the form attached hereto as Exhibit "A," and any other documents reasonably required to effect the Agreement on the City's behalf.

SECTION 3. The Agreement shall be effective on May 22, 2023, unless otherwise specifically indicated within Exhibit "A."

Victor Martinez, Mayor

ATTEST:

I, Celeste Cabrera-Garcia, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a special meeting of said Council, held at the Mendota City Hall on the 19th day of May, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Celeste Cabrera-Garcia, City Clerk

EXHIBIT A

CHIEF OF POLICE EMPLOYMENT AGREEMENT

This CHIEF OF POLICE EMPLOYMENT AGREEMENT (“**Agreement**”) is entered into and made effective **May 22, 2023** (the “**Effective Date**”), by and between the CITY OF MENDOTA, a general law city and municipal corporation (the “**City**”), and KEVIN W. SMITH, an individual (“**Employee**”; collectively with the City, the “**Parties**”).

RECITALS

WHEREAS, the City is a general law city duly organized and existing under the Government Code of the State of California.

WHEREAS, Employee currently serves as the Chief of Police of the Mendota Police Department (the “**Police Chief**” position).

WHEREAS, Section 2.28.030 of the Mendota Municipal Code (“**MMC**”) provides the following regarding the Police Chief position:

The police department shall be headed by a police chief appointed by the city manager with the approval of the city council. S/he shall be responsible for the direction and control of all functions assigned to that department. The police department shall be organized, maintained and operated by the police chief under the general administrative direction of, and subject to the approval of, the city council.

WHEREAS, Section 34856 of the Government Code provides the City Manager may appoint and dismiss the Police Chief and other subordinate appointive officers and employees of the City, excepting the City Attorney.

WHEREAS, the City Manager and City wish to extend a three-year employment contract to Employee for the City’s Police Chief position.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

AGREEMENT

1. NATURE OF EMPLOYMENT; DUTIES.

- 1.1. Employee shall be employed as the City’s Police Chief pursuant to the terms and conditions set forth herein.
- 1.2. The City Council retains ultimate authority over all decisions regarding the City, but has delegated authority to the City Manager as the operational chief of the City, and all employees, both regular and contract, report directly to him, excluding the City Attorney. Therefore, the Police Chief shall serve at the discretion and subject to the direction of the City Manager upon the City’s approval of this Agreement.

- 1.3. Subject to the supervision and direction of the City Council and City Manager, the Police Chief shall manage and direct the City's Police Department, and shall perform other duties as specified in the MMC, the statutes of the State of California, and as are customarily performed by one holding this position in similar cities. The Police Chief shall also additionally render other, related services and duties as may be lawfully assigned to Employee from time to time by the City Manager, including the appointment, training, evaluation, suspension, or removal of subordinate employees.
- 1.4. Employee shall professionally perform the functions and duties of the Police Chief at all times.
- 1.5. Employee agrees to abide by all City rules, policies, practices, and procedures in the performance of their duties as Police Chief. Employee shall be subject to all applicable provisions of the MMC, ordinances, resolutions, regulations, and rules of the City, except for any provisions contradicting Employee's employment status, creating due process or property rights, or as may be changed by the terms herein. In the event of any conflict between this Agreement and the MMC, ordinances, resolutions, regulations, or rules, this Agreement shall control and govern the terms of Employee's employment, to the extent permitted by law.

2. TERM.

- 2.1. The "**Term**" of this Agreement shall be three years from the Effective Date, or until terminated by City or Employee as provided in Section 3 herein.
- 2.2. This Agreement may be extended for additional one-year periods by mutual written agreement of the Parties until it expires or is terminated by either Party as otherwise set forth herein.
- 2.3. In the event Employee continues their employment as the City's Police Chief following the expiration of this Agreement without a written extension pursuant to Section 2.2 above, Employee's status shall be at-will as defined by California law regardless of the length of employment or any other representation of continued employment by any agent or employee of City. Employee expressly acknowledges that, in such an event, Section 3.2's termination provisions shall no longer apply to Employee's employment as the City's Police Chief.

3. TERMINATION.

- 3.1. Chapter 9.7, Section 3300, et seq., of the Government Code is otherwise referred to as the Public Safety Officers Procedural Bill of Rights Act ("**POBRA**"). POBRA section 3304, subdivision (c), provides:

No chief of police may be removed by a public agency, or appointing authority, without providing the chief of police with written notice and the reason or reasons therefor and an opportunity for administrative appeal.

For purposes of this subdivision, the removal of a chief of police by a public agency or appointing authority, for the purpose of implementing the goals or policies, or both, of the public agency or appointing authority, for reasons including, but not limited to, incompatibility of management styles or as a result of a change in administration, shall be sufficient to constitute “reason or reasons.”

Nothing in this subdivision shall be construed to create a property interest, where one does not exist by rule or law, in the job of Chief of Police.

3.2. Termination by City.

3.2.1. Notwithstanding the provisions of POBRA section 3304, subdivision (c), reproduced above, Employee and City agree “**Cause**” shall have the following meanings:

- 3.2.1.1. The City Manager’s determination Employee materially breached any provision in this Agreement;
- 3.2.1.2. The City Manager’s determination Employee negligently performed Employee’s official duties as Police Chief;
- 3.2.1.3. The City Manager’s determination Employee is guilty of any conduct that might customarily be used by the City as a basis for employment actions, including, but not limited to, violations of federal, state, or local laws applicable to the Police Chief position;
- 3.2.1.4. Employee’s misconduct or malfeasance, which the City Manager determines is related to the effective performance of Employee’s official duties as Police Chief, including, but not limited to, an illegal act or criminal conviction in office;
- 3.2.1.5. Upon the City Manager’s determination that Employee is unable to perform the essential functions of the Police Chief position with or without a reasonable accommodation, due to a mental, physical, or other illness or disability lasting longer than six months; and/or
- 3.2.1.6. Employee’s receipt of two consecutive negative performance evaluations pursuant to Section 6 below, which are subsequently confirmed by the City Council.

3.2.2. The City may only terminate this Agreement and Employee's employment as Police Chief with Cause, subject to the procedural due process requirements outlined in *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194 and its progeny.

3.3. Termination by Employee.

3.3.1. Employee may voluntarily terminate this Agreement by providing not less than ninety days' written notice of Employee's planned resignation or retirement from employment with the City.

3.4. Automatic Termination. This Agreement shall automatically terminate and no additional sums or benefits shall be payable to Employee, except such amounts that are legally due upon Employee's separation from City service through the date of termination, upon the occurrence of any one of the following events:

3.4.1. Upon the death of Employee;

3.4.2. Upon Employee's termination for Cause pursuant to Section 3.2 above;

3.4.3. Upon the effective date listed in Employee's written resignation or retirement from employment with the City pursuant to Section 3.3 above;
or

3.4.4. Upon Employee's acceptance of other employment at any time during the Term of this Agreement. Employee agrees to notify City in writing immediately upon acceptance of other employment, including full- or part-time work, regardless of whether serving as an independent contractor or employee. City reserves the right to terminate this Agreement prior to the date of separation listed in said notice of alternative employment provided by Employee under this Section.

3.5. Section 53243 of the Government Code.

3.5.1. Pursuant to Government Code section 53243, et seq., if Employee is convicted of a crime involving abuse of office or their official position, Employee shall fully reimburse City for the following: (a) paid leave salary during any investigation of matters related to the conviction; (b) legal criminal defense costs associated with the conviction; and (c) any severance or cash settlement related to termination of this Agreement.

3.5.2. Employee agrees and acknowledges that if this Agreement is terminated, any cash settlement Employee might receive from City related to Employee's termination shall be fully reimbursed to the City if Employee is convicted of a crime involving an abuse of Employee's office or position, as defined in Section 53243.4 of the Government Code, which defines "abuse of office or position" as either: (1) "An abuse of public authority, including, but not limited to, waste, fraud, and violation of the law under color of authority"; or (2) "A crime against public justice, including, but not limited to, a crime described in Title 5 (commencing with Section 67), Title 6 (commencing with Section 85), or Title 7 (commencing with Section 92) of Part 1 of the Penal Code."

4. SALARY AND BENEFITS.

4.1. Salary. In consideration for Employee's performance of the duties of Police Chief under this Agreement, the City agrees to pay Employee an annual base salary of \$128,272.56 subject to deductions and withholding of any and all sums required for federal and state income tax, pension contributions, and all other taxes, deductions, or withholdings required by then-current state, federal, or local laws, prorated and paid bi-weekly on the City's payroll cycle.

4.1.1. Employee's compensation shall be reviewed annually in connection with the performance evaluations by the City Manager pursuant to Section 6 below. Employee has the potential of a merit step increase, if available, as part of said performance evaluations. For purposes of avoidance of doubt, Employee's current status is step five on the City's six-step salary schedule for the Police Chief position as of the Effective Date. Salary adjustments made under this clause are considered separate from any cost of living adjustment ("COLA") that may be made as set forth below. By negotiating specific COLA and performance increases as part of this Agreement, Employee will not be entitled to revised salaries and benefits the City offers to other management employees via the City's Management Resolution, as it may be amended from time to time.

4.1.2. COLA. Employee's base salary shall be increased by 3% during the first year of the original three-year Term of this Agreement, representing a negotiated COLA. The \$128,272.56 salary figure provided in Section 4.1 above already includes this 3% COLA increase for Fiscal Year 2023-2024. Employee's base salary shall be increased by 6% during the second year of the original three-year Term of this Agreement, representing a negotiated COLA to take effect on May 22, 2024.

- 4.1.3. Performance Increases. Maintaining a minimum performance rating of “satisfactory” throughout the performance evaluations conducted pursuant to Section 6 shall entitle Employee to a 5% merit-based salary increase effective August 3, 2023, when Employee is eligible to advance to step six on the City’s salary schedule for the Police Chief position. For purposes of avoidance of doubt, Employee’s work anniversary for purposes of calculating merit-based salary increases shall remain August 3rd, regardless of the Effective Date of this Agreement.
- 4.1.4. Overtime. Employee is “Management Personnel” and is not eligible for overtime pay as a full-time salaried employee of the City.
- 4.1.5. Hours of Work. Employee shall work a flexible work schedule assigned by the City Manager as required to meet the operational needs of the City. Attendance at City Council Meetings, events, and other meetings may be required by the City Manager.
- 4.2. Vehicle Use. Employee's duties require that he have use of City-owned automobile at all times during his employment by the City.
- 4.3. Cell Phone. The City shall provide Employee with a City-paid cell phone and service for use in carrying out his duties as Police Chief during his employment by the City.
- 4.4. Administrative Leave. Employee shall receive ten Administrative Leave days on July 1st of each fiscal year. Unused leave can either be paid out once during the fiscal year or up to twenty hours of unused administrative leave may be carried over to the following fiscal year.
- 4.5. Vacation. Vacation shall accrue at the rate of 6.666 hours per month. City employees with at least five years plus one day of service shall accrue vacation at the rate of 10 hours per month to be carried over annually. Management Employees may receive payment at their regular salary rate for up to 80 hours of accrued vacation time per fiscal year.
- 4.6. Sick Leave. Employee shall accrue eight hours per month of accumulated sick leave. City employees who become ill while on vacation may charge their sick leave accounts for the time sick. Sick leave may be carried over annually.
 - 4.6.1. Upon death, retirement, resignation, layoff, or termination, unused accumulated sick leave shall be paid at Employee’s last salary rate as follows: (1) More than five years of City service: 25%; (2) more than ten years of City service: 35%; and (3) more than twenty years City service: 50%.
- 4.7. Bereavement Leave. Employee shall be entitled to use up to twenty-four hours of bereavement leave for each occurrence, not to exceed a total of forty-eight hours per year, upon approval of the City Manager.

- 4.8. Holidays. Employee shall have thirteen eight-hour and three four-hour paid holidays annually, plus any day or part of day declared by the President of the United States or Governor of California to be a national day of mourning or celebration. Holidays shall be the same as for Represented General Employees, and if additional holidays are added, Management Employees shall have their holidays match. In the interest of maintaining a minimum level of service to the community, Management Employees may be required to work on a declared day of mourning. Employee will be compensated at their regular rate of pay but shall be entitled to eight hours of compensatory time off to be taken at Employee's discretion with approval of the City Manager.
- 4.9. Floating Holiday. Employee shall receive one eight-hour day of floating holiday leave on July 1st of each year. Unused floating holiday leave will be paid out once per fiscal year.
- 4.10. Disability, Health, and Life Insurance. Employee shall receive fully paid City health benefits for themselves and their dependents which shall include Medical, Dental, and Vision. Plans should be equal to or better than the plans represented General Employees receive. If Employee is covered by Health Insurance from a different source other than City, Employee may elect to receive payment in lieu of coverage in the amount of \$500.00. Employee shall also receive a \$50,000.00 Term Life Insurance Policy, paid by the City, during their employment for City.
- 4.11. Retirement.
- 4.11.1. The benefit contract in effect between the City of Mendota and the Public Employees Retirement System (“**PERS**”) on behalf of eligible permanent full-time employees of the safety category is 2.7% at age 57. Employee will make the full employee contribution to the plan. City will make the full employer contribution to the plan.
- 4.11.2. All new employees hired on or after January 1, 2013, are new Safety members of PERS. Pursuant to the Public Employee's Pension Reform Act (“**PEPRA**”) of 2013, the City shall provide the PERS Safety 2.7% @ 57 Supplemental Formula Retirement Plan. All PERS contributions paid by the Employee shall be paid on a pre-tax basis per IRS code.
- 4.11.3. The City shall maintain the existing Section 401(k) Pension Plan. Employees are eligible to make contributions after six months of regular full-time employment.
- 4.11.4. City shall pay the full amount of Employee's S.D.I. during employment for the City.

4.12. Reimbursements.

- 4.12.1. Professional Dues and Subscriptions. City agrees to budget and to pay for the professional dues and subscriptions of Employee necessary for his continuation of and full participation in national, regional, state, and local associations and organizations necessary and desirable for his continued professional participation, growth, and advancement which shall be considered a benefit to the City, as approved by City Manager.
- 4.12.2. Professional Development. Employee is authorized, subject to budget limitations and pre-approval from the City Manager, to attend appropriate meetings and conferences related to their employment activities and to be given a flat-rate per diem, lodging, and mileage reimbursement at a rate set by the City Council.
- 4.12.3. Educational Reimbursement Program. Employee shall be reimbursed for tuition and book expenses actually incurred (\$334 per academic term, not to exceed \$1,000 per fiscal year) for attending classes on their own time, which would be a direct benefit to Employee and the City, as approved in advance by the City Manager. In the event any Employee receiving such reimbursement resigns his/her position, all reimbursement for tuition and/or book expenses paid to said Employee within the previous twelve months shall be returned to the City by resigning Employee.
- 4.12.4. General Expenses. City recognizes that certain expenses, which are not of a personal nature and which are generally of a job-related nature are incurred by Employee. City hereby agrees to reimburse or to pay said reasonable, general expenses upon receipt of duly executed expense or petty cash vouchers, receipts, statements, or personal affidavits. The City also agrees to reimburse Employee for any and all necessary, customary, and usual expenses incurred by Employee while traveling for and on behalf of City pursuant to City's directions.

5. REDUCTION OF BENEFITS.

- 5.1. City shall not, at any time during the Term of this Agreement, reduce the salary, compensation, or other financial benefits of Employee, except in the following circumstances:
 - 5.1.1. In the case of temporary discipline for Cause imposed by the City Manager;
 - 5.1.2. Placement of Employee on Unpaid Administrative Leave;
 - 5.1.3. To the degree of such reduction made by City across-the-board with respect to all Employees of City; or

5.1.4. Pursuant to an across-the-board City policy or legal requirement applicable to all Employees of City, including, but not limited to, the reduction of benefits following the exhaustion of protected leave which would result in Consolidated Omnibus Budget Reconciliation Act (“**COBRA**”) continuation of health coverage offers being extended to Employee.

6. PERFORMANCE EVALUATION.

- 6.1. The City Manager shall review and evaluate the performance of Employee at least twice annually in advance of the adoption of the City’s annual operating budget.
- 6.2. The City Manager and Employee shall define goals and performance objectives which they determine to be necessary for the proper operation of the City and attainment of the City Council’s policy objectives, and shall further establish a relative priority on those various goals and objectives to be reduced to writing. Such goals shall generally be attainable within the time limitations as specified in the City’s annual operating capital budgets and appropriations provided.
- 6.3. Said review and evaluation shall be in accordance with specific criteria developed jointly by City and Employee pursuant to this Section. Said evaluation criteria may be added to or deleted from time to time as the City Manager may determine following consultation with Employee.
- 6.4. The City Manager shall provide the Employee with a written statement summarizing the findings of each evaluation and provide an adequate opportunity for the Employee to discuss his evaluation with the City Manager.

7. INDEMNIFICATION.

- 7.1. To the extent permitted by law, City shall defend, save harmless, and indemnify Employee against any tort, professional liability claim, demand, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee’s duties as Police Chief, except to the extent that Employee’s actions are determined to constitute actual fraud, corruption, actual malice, or otherwise justify an award of punitive or exemplary damages against Employee.

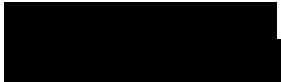
8. GENERAL PROVISIONS.

- 8.1. POBRA. Nothing in this Agreement shall be construed to abrogate or limit the rights afforded the position of Police Chief under POBRA.
- 8.2. Non-Assignment. Employee’s duties and obligations under this Agreement are personal and not assignable.

- 8.3. Entire Agreement. This Agreement contains the entire agreement and understanding between the Parties and contains all of the terms and conditions of the Parties' agreement related to Employee's employment as Police Chief. This Agreement is the complete and final expression of the Parties' agreement and supersedes all prior or contemporaneous oral or written negotiations, discussions, representations, or agreements, if any exist. Employee acknowledges that he has not relied on any promises, statements, representations, or warranties except as set forth expressly in this Agreement.
- 8.4. Amendment. This Agreement, and any and all terms and conditions contained herein, may only be changed, revoked, amended, or superseded by a written document signed by both Employee and the City Manager, and approved by the City Council.
- 8.5. Capacity of Parties. By execution hereof, the Parties acknowledge that this Agreement has been carefully read, its contents are known, its contents are fully understood, and it is freely signed. Each Party further acknowledges that such Party has received independent legal advice and explanation of the terms and effects of this Agreement from independent counsel selected by that Party, or has had the sufficient opportunity to obtain said advice and elected not to, all prior to the execution of this Agreement.
- 8.6. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California. Jurisdiction for a dispute regarding this Agreement shall be in the County of Fresno.
- 8.7. No Waiver. No Party's failure to enforce any provision or provisions of this Agreement will be construed in any way as a waiver of any such provision or provisions, or otherwise prevent that Party from enforcing each and every provision of this Agreement thereafter.
- 8.8. Partial Invalidity; Severability. If any paragraph or any portion thereof contained in this Agreement is held to be unconstitutional, invalid, or unenforceable, it shall be deemed severable from this Agreement and shall not invalidate the remainder of the paragraph in which it is located or the remainder of this Agreement.
- 8.9. Construction. Headings used at the beginning of each section and subsection of this Agreement are solely for the convenience of the Parties and shall not be used to interpret this Agreement. The singular form shall include plural and vice versa. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both parties have prepared it. Unless otherwise indicated, all references to sections are to this Agreement.

- 8.10. Attorneys' Fees. In the event of any action or proceeding, sounding in contract or tort, related this Agreement, the prevailing party in such action, or the non-dismissing party when the dismissal occurs other than by a settlement, shall be entitled to recover its reasonable costs and expenses through appeal, including, without limitation, reasonable attorneys' fees and costs and expert fees and costs paid or incurred in good faith. This attorneys' fees clause applies in alternative dispute proceedings and bankruptcy proceedings, including efforts to obtain relief from stay. Prevailing party within the meaning of this Section shall include, without limitation, a party who successfully brings an action against the other party for sums allegedly due or performance of covenants allegedly breached, the party who obtains substantial relief sought in the action, and as otherwise defined by law.
- 8.11. Notices. Notices required or permitted under the terms of this Agreement intended for either Party hereto shall be delivered either by the United States Postal Service, postage prepaid, or by personal service as follows:

If to City: City of Mendota
 Attn: City Manager
 643 Quince Street
 Mendota, CA 93640

If to Employee: Kevin W. Smith
 

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

CITY OF MENDOTA

EMPLOYEE

BY: _____
Cristian Gonzalez, City Manager

BY: _____
Kevin Smith

Date: _____

Date: _____

APPROVED AS TO FORM:

John P. Kinsey, City Attorney

ATTEST:

Celeste Cabrera-Garcia, City Clerk