

# EMPLOYMENT AGREEMENT

for

## INTERIM POLICE CHIEF

### 1. PARTIES AND DATE.

This Employment Agreement (“Agreement”) is made by and between the TOWN OF COLMA, a municipal corporation (“Town”) and Robert Lotti (“Employee”), effective June 29, 2020, to provide in writing the terms and conditions of employment as interim Police Chief. The Town and Employee are sometimes individually referred to herein as “Party” and collectively as “Parties.”

### 2. RECITALS.

2.1 **Interim Police Chief.** Due to his experience and specialized skills, the Town desires to employ the services of Employee as interim Police Chief of the Town of Colma, and Employee desires to accept employment as interim Police Chief. It is the desire of the Parties through this Agreement to establish conditions of employment and to set working conditions for Employee.

2.2 **Temporary Appointment.** Employee’s employment is authorized by Government Code Sections 7522.56 and 21221(h), which permit the City Council to appoint a California Public Employees’ Retirement System (“CalPERS”) retiree to a vacant position requiring specialized skills during recruitment for a permanent appointment, and provide that such appointment will not subject the retired person to reinstatement from retirement or loss of benefits so long as it is a single appointment that does not exceed 960 hours in a fiscal year, inclusive of all hours worked for other CalPERS employers.

2.3 **Employee Representations.** Employee represents that he is a retired annuitant of CalPERS within the meaning of Government Code Sections 7522.56 and 21221(h) (“Statutes”) and acknowledges that his compensation is statutorily limited as provided in Government Code Section 21221(h). Employee represents that, as of the effective date of this Agreement, he has not worked for another CalPERS state or contracting agency as a retired annuitant during the Town’s 2019-2020 fiscal year, and that he therefore acknowledges that he can work up to 960 hours for the Town, a state agency or other CalPERS contracting agencies (collectively “CalPERS Agencies”) during the Town’s 2019-2020 fiscal year. He further acknowledges that he will have 960 hours starting the new fiscal year 2020-2021 to provide services to the Town, minus all hours worked for other CalPERS employers during this same period. Employee represents that he has not received unemployment compensation from any CalPERS Agencies during the 12-month period preceding the effective date of this Agreement. Employee further represents that his CalPERS retirement date became effective prior to the 180-day period preceding the effective date of this Agreement

### 3. TERMS.

3.1 **Duties.** In accordance with Resolution No. \_\_\_, the City Council has appointed Employee as interim Police Chief. Thus, the Town shall employ Employee as interim Police Chief of the Town to perform the duties and functions pertaining to the Police Chief position, and to perform other legally permissible duties and such functions as the City Manager shall from time

to time assign. The City Manager shall have the authority to determine the specific duties and functions which Employee shall perform under this Agreement and the means and manner by which Employee shall perform those duties and functions. Employee agrees to devote all of his business time, subject to the hourly limitation set forth under Section 21221(h), skill, attention, and best efforts to the discharge of the duties and functions assigned to him by the City Manager.

3.2 **Town Documents.** All data, studies, reports and other documents prepared by Employee while performing his duties during the term of this Agreement shall be furnished to and become the property of the Town, without restriction or limitation on their use. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information and other materials either created by or provided to Employee in connection with the performance of this Agreement shall be held confidential by Employee. Such materials shall not, without the prior written consent of the City Council, be used by Employee for any purposes other than the performance of his duties. Nor shall such materials be disclosed to any person or entity not connected with the performance of services under this Agreement, except as required by law.

### 3.3 **Conditions of Employment.**

3.3.1 *Part Time Authorized.* Employee is expected to devote necessary time, within and outside normal business hours, to the business of the Town. However, in accordance with Government Code Section 21221(h), Employee shall not work under this Agreement for more than a total of 960 hours in any fiscal year. It is understood by both parties that employment with other CalPERS employers shall count against the 960 hours per fiscal year limitation. In the event Employee is providing services to any other CalPERS Agencies during the term of this Agreement, Employee must notify the Town of such employment and disclose on a periodic basis (at a frequency determined by the Town) the number of hours Employee is performing services for that other public agency. Notwithstanding the preceding, Employee shall be responsible for ensuring that he does not work in excess of 960 hours in a fiscal year, taking into account hours worked for any CalPERS Agency during the same fiscal year. Employee shall be allowed to establish a schedule that is less than full time in order to maximize the use of the 960 hours throughout an entire fiscal year; provided, however, that Employee's schedule shall be acceptable to the City Manager and shall be established in advance.

3.3.2 *No Conflicts.* During the term of this Agreement, Employee shall not engage in any business or transaction or maintain a financial interest which conflicts, or reasonably might be expected to conflict, with the proper discharge of Employee's duties under this Agreement.

### 3.4 **Compensation; No Fringe Benefits.**

3.4.1 *Compensation.* For services rendered pursuant to this Agreement, Employee shall be compensated at the hourly rate of \$96.33. The Town has confirmed that this rate is not less than the minimum, nor in excess of the maximum, paid by the Town to other employees performing comparable duties (divided by 173.333 to equal an hourly rate) as listed on the Town's publicly-available pay schedule. This hourly rate is established pursuant to the requirements of Government Code Section 21221(h) and may only be modified if permitted thereby. The compensation shall be paid at the same time and in the same manner as salaries are usually paid to Miscellaneous Employees of the Town and shall be subject to all applicable taxes, and other required deductions. Such compensation shall be Employee's sole compensation for his

service under this Agreement. Notwithstanding the foregoing, the Town shall pay for workers' compensation insurance for Employee. Employee shall not be entitled to any additional benefits provided by the Town to its employees, including, but not limited to, paid vacation, paid holiday leave, paid sick leave, medical insurance, dental insurance, life insurance, deferred compensation, disability insurance, unemployment insurance, and vehicle allowance.

3.4.2 *Reimbursable Expenses.* The Town shall reimburse Employee for his direct, reasonable and necessary expenses incurred in the performance of his duties and in compliance with Colma Administrative Code, subchapter 3.07.

**3.5 Term; Termination.**

3.5.1 *Term.* The term of this Agreement shall be effective as of June 29, 2020 and shall be a single appointment ending on the date immediately preceding the date on which the permanent appointee to the vacant position of Police Chief for the Town commences his or her employment or, if earlier, the date that this appointment is terminated by the Town or Employee in accordance with Section 3.5.2.

3.5.2 *Termination.* This Agreement may be terminated with or without cause at any time upon thirty (30) days advance written notice given by Employee to Town or immediately upon notice by Town to Employee. No compensation or severance payment of any kind shall be payable upon termination of this Agreement, other than any compensation due and owing under this Agreement through the last effective date of employment. The Parties understand and agree that the temporary employment relationship created by this Agreement is "at-will" and that the Employee shall serve at the will and pleasure of the City Manager, and may be terminated at any time, without notice and with or without cause. Nothing in this Agreement, any statute, ordinance or rule shall prevent, limit or otherwise interfere with the right of the City Manager to terminate, without cause or right of appeal or grievance, the services of the Employee at any time and without notice. Notice of termination may be delivered personally or by mail.

3.6 **Notices.** All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose, by deposit in the custody of the United States Postal Service, postage pre-paid, addressed as follows:

TOWN: Town of Colma  
Attn: City Manager  
1198 El Camino Real  
Colma, California 94014

EMPLOYEE: Robert Lotti  
1178 Villa Ave.  
Belmont, CA 94002  
650-333-2016  
[Boblotti587@gmail.com](mailto:Boblotti587@gmail.com)

Alternatively, notices required pursuant to this Agreement may be personally served in the manner as is applicable to 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 United States Postal Service.

3.7 **Indemnification.** The Town shall defend, hold harmless and indemnify Employee against any tort, professional liability, claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's services as interim Police Chief, except that this provision shall not apply with respect to any intentional tort or crime committed by Employee, or any actions outside the course and scope of his employment as interim Police Chief.

3.8 **General Provisions.**

3.8.1 *Entire Agreement.* This Agreement constitutes the entire agreement between the parties. This Agreement may be amended in writing and signed by both Parties.

3.8.2 *Severability.* If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

3.8.3 *Bonding.* If applicable, the Town shall bear the full cost of any fidelity or other bonds required of Employee in the performance of his duties as interim Police Chief.

3.8.4 *Modification.* Any modification to this Agreement will be effective only if it is in writing and signed by both Parties.

3.8.5 *Effect of Waiver.* The failure of either Party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other Party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

3.8.6 *Assignment.* Neither this Agreement, nor any right, privilege or obligation of Employee hereunder shall be assigned or transferred by him without the prior written consent of the City Manager. Any attempt at assignment or transfer in violation of this provision shall, at the option of the City Manager, be null and void and may be considered a material breach of this Agreement.

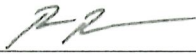
3.8.7 *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue shall be in San Mateo County, California.

3.8.8 *No Presumption of Drafter.* The Parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the Parties, and this Agreement reflects their mutual agreement regarding the subject matter of this Agreement. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any Party to be the drafter of this Agreement and, therefore, no presumption for or against validity or as to any interpretation hereof, based upon the identity of the drafter shall be applicable in interpreting or enforcing this Agreement.

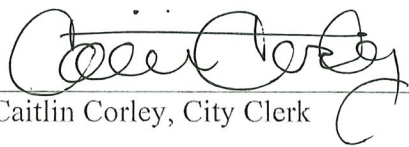
3.8.9 *Assistance of Counsel.* Each Party to this Agreement warrants to the other Party that it has either had the assistance of counsel in negotiation for, and preparation of, this Agreement or could have had such assistance and voluntarily declined to obtain such assistance.

**IN WITNESS WHEREOF**, the Town of Colma has caused this Agreement to be signed and executed on its behalf by its City Manager, and duly attested by its City Clerk, and Employee has signed and executed this Agreement, both in duplicate, effective on the day and year first above written.

**TOWN OF COLMA**

By:   
Brian Dossey, City Manager

Dated: 6/30/20

Attest:   
Caitlin Corley, City Clerk

**EMPLOYEE**  
  
Robert Lotti, Employee

Dated: 6/30/20

