



FAIRFAX TOWN COUNCIL MEETING STAFF REPORT

MEETING DATE September 4, 2023
PREPARED FOR Mayor and Town Council
PREPARED BY Heather Abrams, Town Manager
SUBJECT Receive notice of amendments to the employment agreement with Rico Tabaranza, Police Chief, for the period of July 1, 2024 through June 30, 2028

RECOMMENDATIONS

Receive notice of amendments to the employment agreement with Rico Tabaranza, Police Chief, for the period of July 1, 2024 through June 30, 2028.

BACKGROUND

In 2015, the Town Council, in response to the Grand Jury report on labor negotiations, stated that the Town would place final tentative employee agreements on two successive Town Council agendas - the first for notice of amendments to the agreement, the second for Council vote. While employment agreements with the Police Chief and Town Manager aren't agreements with bargaining groups (i.e., MOU's), in the spirit of labor agreement transparency, we are following the process to place the agreements on the agenda for two consecutive Council meetings. This item represents the first notice of amendments to the Police Chief's agreement.

DISCUSSION

The Police Chief has had an employment agreement with the Town since July 1, 2021. The job performance of the Police Chief is typically evaluated every July by the Town Manager.

Based on negotiations with the Chief, the Town Manager recommends the following amendments:

- Cost of Living Adjustment (COLA) which matches the FPOA MOU for four years (FPOA has agreed to COLAs of: 6% effective July 1, 2024, 5% effective July 1, 2025, and 4% effective July 1, 2026, and the Chief agrees to accept whatever COLA is negotiated for FPOA for Fiscal Year 2027-28).
- Ability to cash out 200 hours of vacation leave/year (reduces Town liability vs. banking leave).

FISCAL IMPACT

All police safety salaries are paid from Budget item 01-411-402, including the Chief. FPOA COLAs were budgeted, smaller adjustments for one employee are not specifically budgeted in advance of negotiation, however, negotiations were expected. The budget does not need to be adjusted at this time.

ATTACHMENT

Restated and Amended Employment Agreement

AMENDED AND RESTATED EMPLOYMENT AGREEMENT

This **AMENDED AND RESTATED EMPLOYMENT AGREEMENT** ("Agreement") is effective as of July 1, 2024, by and between the Town of Fairfax (the "Town") and Rico Tabaranza, ("Employee")

RECITALS

- A. The Town desires to employ Employee as its Police Chief, in the operation of the Police Department, in order to retain his experience, skills, abilities, background and knowledge, and is willing to engage Employee on the terms set forth below.
- B. Employee desires to work in the Employ of the Town as its Police Chief and is willing to do so on the terms set forth below.
- C. Employee was appointed Police Chief on July 1, 2021 with such appointment ratified by the Town Council on July 7, 2021.

NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE RECITALS AND OF THE MUTUAL PROMISES AND CONDITIONS OF THIS AGREEMENT, IT IS AGREED AS FOLLOWS:

Employment: On the terms and conditions contained in this Agreement, the Town offers to employ Employee as its Police Chief, and Employee accepts that employment. Employee shall be subject to the supervision and oversight of the Town Manager. Employee is expected to devote his full professional energies to the position of Police Chief, and shall not engage in secondary employment, teaching, or consulting without the express and advance written authorization of the Town Manager. Further, Employee shall not engage in any activity which is or may become a conflict of interest, prohibited contract, or which may create an incompatibility of office as defined under California law. Prior to performing any services under this Agreement and annually thereafter, Employee must complete disclosure forms required by law.

At Will Employment. Employee will serve at the pleasure of the Town Manager and may be terminated with or without cause by the Town Manager, subject to the reversion rights specified below. Employee has no constitutionally recognized property rights in employment under this Agreement. Subject to, and in accordance with, both the Peace Officers Procedural Bill of Rights, and the Town's personnel ordinances and regulations per Town Municipal Code Section 2.12.070 (B)(3)

Term: This agreement shall remain in full force and effect from July 1, 2024, at 12:01 A.M, until terminated by the Employer or Employee.

Duties: The duties of Employee are as set forth in this paragraph, in addition to those specified by state law and those the Town Manager may from time-to-time assign. In particular, the operational control of the police department for the Town shall be the responsibility of Employee. Employee shall be responsible for the planning, organizing, and coordination of police operations. Employee's duties shall include, but not be limited to, the following:

- Supervision of the daily operations of the police department.
- Supervision of all department personnel.
- Preparation and submission of the police department budget.
- Submission of reports to the Town either orally or in writing when requested or required in order to ensure the proper communication between the Town and the police department.
- Being responsible for all departmental expenditures, as well as the receipt of funds and property in the custody of the police department.
- Supervision and control of all equipment and motor vehicles belonging to or used by the police department.
- Establishing weapons, ammunition, uniforms, equipment and vehicle specifications for the police department.
- Being in charge of all special, auxiliary and/or reserve police officers.
- Supervision and control of all training programs for department personnel and the assignment of personnel to such programs.

Standard Police Employee Benefits: Unless otherwise specified herein, Employee shall be entitled to all of the employee health and welfare benefits provided in the current/existing Memorandum of Understanding and approved side letters between the Town of Fairfax and the Fairfax Police Officers Association (FPOA). The most recent agreement is attached hereto and incorporated as Exhibit A.

Base Salary: Effective July 1, 2024, Employee's base salary will be \$17,366.59 per month. This represents a 6% increase to prior base salary. Effective July 1, 2025, Employee's base salary will be \$18,234.92 per month. This represents a 5% increase to base salary. Effective July 1, 2026, Employee's base salary will be \$18,964.32 per month. This represents a 4% increase to base salary. These increases to base salary are consistent with the previously agreed upon salary increases provided to FPOA employees. Effective July 1, 2027, Employee's base salary shall increase consistent with COLA increases provided to FPOA employees.

Employee's position is exempt employee and Employee is therefore not eligible for overtime pay.

Longevity Pay: Employee shall receive Longevity Pay that aligns with the FPOA Longevity Pay incentive. Longevity Pay is based on years of full-time service with the Town, and having served 10 years with the Town of Fairfax. Accordingly, Employee shall receive Longevity Pay in the amount of 5% of base pay. This amount will increase to 7.5% at 15 years of service and 10% at 20 years of service with the Town of Fairfax.

Professional Achievement/Certificate Pay: Employee shall be eligible to receive the same Peace Officer Standards and Training Certificate incentive pay outlined in the FPOA MOU. For possession of a Supervisory Certificate, Employee shall receive an incentive equal to 11% of base pay, and shall receive 13.5% for possession of a POST Management Certificate. In order to begin receiving the 11% or 13.5% increase to base pay for POST certificates, Employee shall be required to meet all requirements identified by the POST Commission, which include attending all mandatory training and classes, unless excused by the applicable department head, to continue to meet departmental performance standards, and to receive an affirmative recommendation from the applicable department head. Employee's salary shall only be reduced by the amount of the

educational incentive if they fail to meet these provisions and are no longer eligible for the relevant POST certificate due to falling short of POST Commission requirements. Employee shall not be eligible to re-qualify for the incentive pay step for six months or until he once again meets all requirements of the relevant POST certificate.

Performance Reviews: The Employee's performance reviews shall occur on or about July 1 of each year, at which time the Employee's salary and benefits also will be reviewed.

The review of the performance of Employee shall be subject to a process, form, criteria, and format for the evaluation, which shall be mutually agreed upon by the Employer and Employee.

Reversion Rights / Conditional Severance Pay:

If the Town Manager, with ratification from the Town Council if required by Town Code, elects to terminate Employee from the position without cause, Employee may choose to revert to the position from which Employee was last promoted, even if there is no vacancy in that position or the position no longer exists. In lieu of reverting to the prior position, Employee may choose to elect severance pay upon termination without cause. In that event, the Town agrees to pay Employee a lump sum cash payment as severance pay, in an amount equal to six (6) months' salary at Employee's then-current monthly salary. Eligibility for such severance payment is expressly conditioned upon Employee's execution (and non-revocation) of (i) a waiver and release of any and all of Employee's claims against the Town of Fairfax and its officers, elected officials and employees to the full extent permitted by law, and (ii) a covenant not to sue, in a severance agreement with terms agreeable to the Town. In the event, however, that Employee is terminated for cause (as defined in Government Code §19572), Employee shall be entitled to only the compensation earned and accrued to the date of termination, and to such other termination benefits and payments as may be required by law. Employee shall not be entitled to any severance benefits if terminated for cause.

Hours of Work: Employee agrees to devote that amount of time and energy which is reasonably necessary to faithfully perform the duties of Police Chief under this employment agreement.

It is recognized that the Police Chief must devote a great deal of time and effort outside normal office hours to the business of the Town. Accordingly, Employee will be allowed to take reasonable amounts of time off and be allowed to have flexibility in scheduling time as Employee shall deem appropriate during normal office hours, and at such times as Employee determines will least adversely impact the Police Department.

It is also recognized that flexible scheduling is essential in order to properly supervise and meet with supervisors and employees of the department who do not work normal business hours. Employee is expected to schedule some of hours to coincide and work with these employees. In addition, when a shift supervisor is absent due to vacancy, long term absence or occasional vacation coverage, Employee may fill in as the shift watch commander when needed for coverage. For any such shift that Employee works as the Watch Commander, he will be compensated at the rate of \$100 for each Watch Commander shift worked. Notwithstanding the preceding, Watch Commander Pay paid to the Employee is not reported to CalPERS for use in pension calculations.

Administrative Leave: In recognition of the long hours required to accomplish the requirements of the job, including attendance at numerous meetings outside normal working hours, Employee shall receive fifteen (15) administrative leave days per fiscal year. At any point in time, Employee may have a balance of no more than 30 days of administrative leave each fiscal year. Any administrative leave in excess of 30 days must be converted to cash. Employee, at Employee's option, may convert to cash, fifteen days of unused administrative leave days once, each fiscal year.

Vacation Leave: Employee, at Employee's option, may convert to cash, 200 hours of accrued vacation time each fiscal year. The maximum amount of unused vacation hours is capped at 400 hours without prior approval of the Town Manager, in writing, to temporarily exceed that amount.

Holidays: Employee shall receive twelve (12) paid holidays at 10 hours per holiday for a total of 120 hours per year.

- January 1, New Year's Day
- June 19, Juneteenth
- 3rd Monday in January, Martin Luther King Jr. Holiday
- 3rd Monday in February, President's Day
- Last Monday in May, Memorial Day
- July 4, Independence Day
- 1st Monday in September, Labor Day
- September 9th, Admission Day
- November 11, Veteran's Day
- Thanksgiving Day
- Friday after Thanksgiving
- December 25, Christmas Day

Employee will be paid by separate check for all authorized holidays, along with uniform pay, on the last paychecks of May and November of each year as other personnel. Payment will be made at Employee's regular rate of pay at the time payment is made. Holiday pay is paid in arrears.

Holiday Pay paid to Employee is not reported to CalPERS for use in pension calculations.

Uniform Allowance: Employee shall be entitled to a uniform allowance of \$1200 per year to maintain the non-safety items of uniform equipment as provided by departmental regulations. This uniform pay is consistent with the previously agreed upon uniform increase provided to FPOA employees. The uniform allowance shall be payable in the last pay periods of May and November of each year. Uniform allowance is taxable in Box 1 of each employee's W2 form. The payment shall be prorated if the Chief retires or otherwise leaves employment with the Town, as appropriate.

Prior Unused Leave "Compensation Balance": All accrued and unused compensatory leave shall remain available for use by Employee.

Compensation for Temporary Assignment:

In the event Employee, upon request of the Town Manager, serves as "Acting Town Manager", Employee shall receive an additional 5% of base pay for the time worked in the higher classification beginning on the 6th day.

Education Leave: In order to promote continued development of skills, knowledge, and abilities among the management of the Town, the Town Manager may grant time off to Employee for education leave. Such leave may be received in order to attend professional, technical or managerial workshops, courses, conferences, conventions, seminars, or related activities. The costs for attendance at these activities including travel, per diem, registration, tuition, material or other reasonable costs are deemed legitimate Town expenses.

The Town recognizes that certain expenses, dues, subscriptions, travel and subsistence expenses are reasonably incurred by Employee as necessary for the position of Police Chief, without the need for the prior approval of the Town Manager but subject to all applicable Town reimbursement requirements, in the performance of the duties of his position. Examples of such duties and activities include attendance at civic/community functions, meetings and professional development and professional conferences, such as the California Peace Officers Association, Federal Bureau of Investigation National Academy Associates, International Association of Chiefs of Police, Executive Leadership Classes and Peace Officers Standards and Training Executive Courses.

The Town agrees to budget for and to pay for the reasonable costs for the necessary and desirable continued professional growth and advancement of Employee's skills, knowledge and abilities. Expenses may also be reimbursed or directly paid on behalf of Employee for courses, institutes and seminars that are necessary, in the discretion of the Town Manager, for the professional development of Employee.

Automobile: The Town shall provide a police vehicle for use by Employee and shall pay all attendant operating, toll, parking and maintenance expenses and insurance. The vehicle is to be used by Employee in connection with the performance of his duties as Police Chief and for his professional growth and development. Since Employee is required to be "on call" twenty-four (24) hours a day and is required to report to an incident or event, the police vehicle may be used for personal reasons during periods of active work, but may not be utilized for personal travel during periods of approved leaves (such as vacations or extended periods of sick leave). Employee shall receive \$200 per month automotive allowance to cover home charging electricity costs or related expenses associated with the Town's fully electric vehicles.

Mobile Phone/PDA Device: Employee is required to maintain and utilize a mobile device supplied by or reimbursed by the Town.

Health and Life Insurance Benefits: The Town shall contribute to the Health/Dental benefits for the Police Chief an amount of dollars equal to the current CAL PERS Family premium for the Kaiser Health plan and Delta Dental Health plan for the Police Chief and his eligible dependents.

The Town will pay the premium for life insurance coverage of \$150,000 for Employee.

Employee is eligible to be reimbursed for eye exams, prescription glasses/contacts, vision plan premiums paid out of pocket and co-pays for vision plans as required for the employee and

dependents. The annual fiscal year amount is \$200. Unused amounts may be carried forward to the next fiscal year. The maximum amount that can be carried over from one year to the next is \$200 for a maximum reimbursement of \$400 in any one fiscal year. Employee must submit copies of receipts indicating the amount and a description of the service or goods paid for by the employee or dependent in that fiscal year to be eligible for reimbursement.

Employee shall receive \$30/month as part of the Town's wellness program for managers. The payment is to compensate managers for those costs they incur to maintain their mental and/or physical well-being such as gym/club memberships, health therapies, and recreational/educational classes.

Retirement: Employee is enrolled in the California Public Employee's Retirement System (3% @ 55 safety formula,) and pays the full 9% employee portion of Employee's retirement. Consistent with the cost-sharing established in the FPOA MOU and pursuant to Government Code Section 20516, Employee shall pay 3% of the Town's portion of retirement for a total of 12% employee payment towards retirement. This 12% paid portion will be tax deferred to the extent permitted by law, the Town's contract with CalPERS and any other applicable CalPERS requirements.

Deferred Compensation: In addition to Base Salary, the Town shall contribute, an amount equal to 3.5% of Employee's base salary and any additional pay required to be reported to CalPERS, annually, to a deferred compensation account.

Retiree Health Benefits: The Town will reimburse Employee, upon retirement from the Town of Fairfax an amount up to the CalPERS Kaiser Employee only Basic Monthly Rate to cover medical insurance premiums (HMO and/or Medicare) based upon the following formula:

10 years of service	50%
15 years of service	75%
20 years of service	100%

Upon Retirement, Employee shall annually submit written evidence of medical coverage (e.g., premium bill from health care insurance provider and related proof of Medicare premiums when eligible/applicable) to the Town as requested to be eligible for reimbursement. Should proof not be provided after a good faith effort by the Town to obtain documentation, the Town may withhold reimbursement. It is understood that to continue in the CalPERS health plan during retirement, that the employee is required to sign up for Medicare when eligible as outlined in the CalPERS Medicare Enrollment Guide.

Retirees enrolled in a CalPERS health plan understand that premium reimbursements from the Town include the Town's cost to CalPERS for the Minimum Employee Contribution (MEC minimum contribution required pursuant to Government Code section 22892(b) ("MEC") established by PEMCHA the Public Employees' Medical and Hospital Care Act ("PEMHCA"), if applicable. Employee's monthly premium from their chosen health plan is then reduced by the amount of the Town's MEC contribution. If Employee is not part of the CalPERS health plan and the Town still has a cost established by PEMHCA, Employee's reimbursement from the Town will not be reduced.

This retiree health benefit will continue as stated above after this Agreement expires.

Professional Membership Fees: Employee's costs for membership in professional organizations necessary and relevant to the job of Police Chief, as approved in the discretion of the Town Manager, shall be paid for by the Town.

Indemnification: To the extent required by, and in accordance with the terms, conditions, and limitations of the Government Claims Act (Gov't Code §§ 810 et seq.), Town shall defend, save 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 duties as Police Chief (and, as provided herein, as acting Town Manager). Town will determine whether to compromise and settle any such claim or suit and the amount of any settlement or judgment rendered thereon.

Limitations/Reimbursements: Notwithstanding any other provision in this Agreement, and in accordance with California Government Code Sections 3511.1, 3511.2, 53243, 53243.1 and 53243.2, the following limitations apply to Town's obligations to Employee:

(a) In the event Employee is placed on paid leave pending an investigation, Employee shall reimburse such pay to Town if he is subsequently convicted of a crime that constitutes "abuse of office or position" as defined in Government Code Section 53243.4.

(b) In the event Town pays for Employee's legal criminal defense, he shall fully reimburse such funds to the Town if he is subsequently convicted of a crime that constitutes "abuse of office or position" as defined in Government Code Section 53243.4.

(c) If this contract is terminated, any cash settlement related to the termination that Employee may receive from Town must be fully reimbursed to Town if he is subsequently convicted of a crime that constitutes "abuse of office or position" as defined in Government Code Section 53243.4.

Severability of Provisions: If any clause or provision of this contract shall be determined to be illegal by a court of competent jurisdiction, the remainder of this contract shall not be affected thereby.

Jurisdiction and Venue: This agreement shall be construed in accordance with the laws of the State of California, and the parties agree that venue shall be in Marin County, California.

Entire Agreement: This is the entire agreement between the parties. It replaces and supersedes any and all oral agreements between the parties, as well as any prior writings. Modifications and amendments to this agreement, including any exhibit or appendix, shall be enforceable only if they are in writing and are signed by authorized representatives of both parties.

Modification: No change or modification of this contract shall be valid unless it shall be in writing and signed by both of the parties.

Counterparts. This Agreement may be executed in counterparts, and all so executed shall constitute an agreement which shall be binding upon the Parties hereto, notwithstanding that

the signatures of all Parties and Parties' designated representatives do not appear on the same page.

Execution: IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first written above.

On Behalf of the Town of Fairfax:

Accepted By:

Heather Abrams, Town Manager

Rico Tabaranza, Police Chief

Date: _____

Date: _____