

RESOLUTION NO. 22-013

**A RESOLUTION AUTHORIZING AND APPROVING A NEW CHIEF OF POLICE AGREEMENT FOR A THREE YEAR TERM BEGINNING DECEMBER 31, 2022 AND ENDING ON DECEMBER 31, 2025; AND PROVIDING FOR OPEN MEETINGS AND EFFECTIVE DATE CLAUSES.**

**WHEREAS**, the current City Chief of Police Agreement in effect between the City of Marlin and James Hommel, who serves as the Chief of Police for the City of Marlin, will terminate and be of no further force and effect on December 31, 2022;

**WHEREAS**, the City Council intends and desires, by the adoption of this Resolution, to approve and authorize a new employment agreement with James Hommel to serve as Chief of Police for the City of Marlin with a new and additional three (3) year term beginning on December 31, 2022 to continue through December 31, 2025.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARLIN, TEXAS, that:**

**Section 1. Findings.** The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

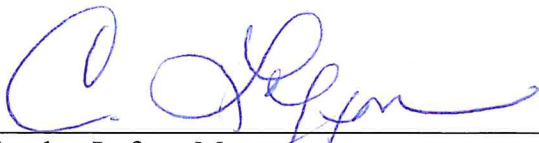
**Section 2. City Council Approval Chief of Police Agreement.** The City Council authorizes and approves of the Chief of Police Agreement attached to this Resolution for a three (3) year term of December 31, 2022 through December 31, 2025. The City Council authorizes the Mayor to execute the Chief of Police Agreement attached to this Resolution on behalf of the City of Marlin, Texas.

**Section 3. Effective Date.** This Resolution shall become effective from and after the date of its passage in accordance with the Texas Local Gov.'t. Code and the City Charter.

**Section 4. Open Meetings.** That the City Council has found and determined that the meeting at which this Resolution is considered is open to the public and that notice thereof was given in accordance with the provisions of the Texas Open Meetings Act, Texas Government Code, Chapter 551, as amended, and that a quorum of the City Council was present.

**RESOLUTION PASSED AND APPROVED** on this the 14th day of June, 2022.



  
Carolyn Lofton, Mayor

  
Maryann Waddle, City Secretary



CITY OF MARLIN  
101 Fortune St.  
Marlin, TX 76661  
(254) 883-1450

## **CHIEF OF POLICE EMPLOYMENT AGREEMENT**

**THIS CHIEF OF POLICE EMPLOYMENT AGREEMENT** ("Agreement") is made and entered into this 14<sup>th</sup> day of June, 2022, by and between the CITY OF MARLIN, TEXAS, a Texas municipal corporation (the "City") and JAMES HOMMEL (the "Chief of Police") to commence on the 31st day of December, 2022.

**WHEREAS**, the City Council of the City (the "Council") and the (Chief of Police) believe that an employment agreement negotiated between the Council, on behalf of the City, and the Chief of Police can be mutually beneficial to the City, the Chief of Police, and the community they serve;

**WHEREAS**, when appropriately structured, the Council and the Chief of Police believe an employment agreement can strengthen the City Council and Chief of Police relationship by enhancing the excellence and continuity of the public safety management of the City for the benefit of its citizens;

**WHEREAS**, the Council, on behalf of the City, desires to continue to employ the services of JAMES HOMMEL as the (Police Chief) of the City, pursuant to the terms, conditions and provisions of this Agreement;

**WHEREAS**, the Chief of Police has agreed to accept employment subject to the terms, conditions and provisions of this Agreement,

**NOW, THEREFORE**, the City and the Chief of Police for and in consideration of the terms, conditions and provisions hereinafter established have agreed, and do hereby agree as follows:

### **I. TERM**

1.1 **TERM.** The term of this Agreement shall be for a term of three (3) years beginning on December 31, 2022 (the "Commencement Date") and ending on December 31, 2025. However, the term of this Agreement shall be subject to earlier termination by a Unilateral Severance (as defined and set forth in Section 6.4 below) or For Cause Termination (as defined in Section 6.2 below) at the pleasure of the Council acting by majority vote. The (Chief of Police) serves at the pleasure of the Council as set forth in the City Charter.

1.2 **EXTENSION.** The City may, by action of the Council, and with the consent and approval



of the (Police Chief), extend the term of this Agreement. **There are no automatic extensions of this Agreement.** The Council may extend the term at any time after the first year.

1.3 **TERMINATION OF PRIOR AGREEMENTS.** Upon the beginning of the term of this Agreement on December 31, 2022, any and all prior employment agreements and amendments thereto shall be terminated and shall be replaced and superseded in their entirety by this Agreement

## **II. EMPLOYMENT**

2.1 **CHIEF EXECUTIVE POLICE OFFICER.** The Police Chief is the chief executive officer of the city police department and shall faithfully perform the duties of the Chief of Police as prescribed in the job description, as set forth in state law, the City Charter and City ordinances and, as may be lawfully assigned by the Council (collectively the "Chief of Police Duties"). Further, the Chief of Police shall comply with (collectively "Applicable Laws and Authorities"): state and federal law; the City's Charter and all City policies, rules, regulations and ordinances as they exist or may hereinafter be amended; and, all lawful Council directives. All duties assigned to the Chief of Police by the Council shall be appropriate to and consistent with the professional role and responsibility of the Chief of Police position. Within (2) months after the execution of this Agreement, the Chief of Police shall establish a residence close enough to the City of Marlin to enable the Chief of Police to respond to incidents or emergencies in the City within forty-five (45) minutes.

2.2 **DUTIES.** The Council does hereby employ the Chief of Police to perform public safety-law enforcement duties in accordance with and pursuant to all Applicable Laws and Authorities and the City's Charter, Code of Ordinances, or other Applicable Laws and Authorities; along with such duties lawfully assigned by the City Council. The Chief of Police shall perform the his or her duties with reasonable care, diligence, skill and expertise. The Chief of Police owes all duties of ethical conduct required by the State of Texas Code of Ethics, to the City Charter, City Council Personnel Policy Handbook, and the Department Code of Conduct. Assisting the Council in complying with the Texas Open Meetings Act and ethics laws is a function of the Chief of Police, whether it be by stopping a potential violation, counseling and providing guidance, or providing training.

The Chief of Police shall keep the City Manager and City Council informed regarding City related business at all times.

At no time shall the Chief of Police actively work to undermine the confidence in the City Council, City Manager or other employees, the public, or other agencies.

At no time shall the Chief of Police encourage an employee to file a false charge or false grievance.

At no time shall the Chief of Police control the Council's or City Manager knowledge of or participation in City business by purposefully withholding matters from the agenda.

At no time shall the Chief of Police secretly record any member of the City Council or any City official without advising them of the ongoing recording. Conversely, at no time shall a member of the City Council or City Official secretly record the Chief of Police without advising him or her of the ongoing recording.

Both the Police Chief and City Council members must have confidence in the judgment and discretion of one another to provide candid information.

**2.3 REASSIGNMENT.** The Chief of Police cannot be reassigned from the position of Chief of Police to another position without the Chief of Police prior express written consent.

**2.4 COUNCIL MEETINGS.** Except to the extent prohibited by or in material conflict with Applicable Laws and Authorities, the Chief of Police or his or her designee shall attend, and shall be permitted to attend all open meetings of the City Council.

**2.5 CRITICISMS, COMPLAINTS, AND SUGGESTIONS.** The Council, individually and collectively, shall refer in a timely manner all substantive criticisms, complaints, and suggestions called to the Council's attention to the Chief of Police for study and/or appropriate action, and the Chief of Police shall refer the matter(s) to the appropriate City employee or shall investigate such matter(s) and inform the Council of the results of such efforts. Individual personnel decisions should not be interfered with by the Council or any member thereof if such complies with Applicable Law and Authorities.

**2.6 INDEMNIFICATION.** To the extent it may be permitted to do by applicable law, including, but not limited to Texas Civil Practice & Remedies Code Chapter 102, the City does hereby agree to defend, hold harmless, and indemnify the Chief of Police from any and all demands, claims, suits, actions, judgments, expenses and attorneys' fees incurred in any legal proceedings brought against the Chief of Police in the Chief of Police individual or official capacity as an employee of the City of Marlin and as Chief of Police, provided the incident(s), which is (are) the basis of any such demand, claim, suits, actions, judgments, expenses and attorneys' fees, arose or does arise in the future from an act or omission of the Chief, as an employee of the City, acting within the course and scope of the Chief's employment with the City. The indemnification provided herein excludes and such indemnification is limited and does not extend to any such demand, claim, suits, actions, judgments, expenses and attorneys' fees for those claims or any causes of action where it is determined that the Chief of Police committed official misconduct, or committed a willful or wrongful act or omission, or an act or omission constituting gross negligence. A legal defense for claims may be provided through insurance coverage, in which case the Chief of Police has a right to consent to legal counsel provided for him which will depend on the terms of the applicable insurance contract. To the extent this Paragraph 2.6 exceeds the authority provided and limitations imposed by Texas Civil Practice & Remedies Code, Chapter 102, it shall be construed and modified accordingly. The provisions of this Paragraph 2.6 shall survive the termination, expiration or other end of this Agreement and/or the Chief of Police employment with the City. The Chief of Police will be covered by the City's TML Risk Pool/or liability policy coverage where such coverage is applicable.

**2.7 HOURS OF WORK.** The Chief acknowledges the proper performance of the Chief of Police Duties require the Chief to generally observe normal business hours and will also often require the performance of necessary services outside of normal business hours. The Chief agrees to devote such additional time as is necessary for the full and proper performance of the Chief of Police Duties and that the compensation herein provided includes compensation for the performance of all such services. However, the City intends that reasonable time off be permitted to the Chief, such as is customary for exempt employees so long as the time off does not interfere with the normal conduct of the office of Chief of Police. The Chief will devote full time and effort to the performance of the Chief of Police Duties and shall remain in the exclusive employ of the City



during the term of this Agreement.

### III. COMPENSATION

3.1 **SALARY.** The City shall provide the Chief of Police with an annual base salary in the sum of **\$64,253.46 annually**. This annual salary rate shall be paid to the Chief of Police in equal installments on the same schedule as other City employees and shall be paid net of any applicable withholding or deductions required by the Applicable Laws and Authorities. An additional incentive pay (Police Department Certification Incentive Pay) for professional certification, i.e. Master Peace Officer Certificate is applicable in the sum of \$150.00 monthly. All annual raises must be approved by the City Council.

3.2 **SALARY ADJUSTMENTS.** At any time during the term of this Agreement, the Council may, in its discretion, review and adjust the salary of the Chief, but in no event shall the Chief be paid less than the salary set forth in Paragraph 3.1 of this Agreement, except by mutual agreement of the parties to this Agreement. Any adjustments to the Chief of Police's salary set forth in Paragraph 3.1 of this Agreement shall require the approval of the City Council and shall be set forth in a written amendment to this Agreement reflecting the newly adjusted salary.

3.3 **PAID LEAVES – VACATION, SICK/PERSONAL AND HOLIDAY.** The Chief of Police may take, at the Chief's choice, the same number of hours of vacation authorized for other executive and administrative employees of the City; the leave may be in a single period or taken at different times. The vacation leave taken by the Chief will be taken at such time or times as will least interfere with the performance of the Duties of the Chief of Police. The Chief is hereby granted the same sick/personal leave benefits as authorized by Council policies for executive administrative employees. The Chief shall observe the same legal holidays as provided by the City for its administrative employees. Leave carry-forward/accumulation is subject to the same rules applicable to City employees generally. **There is no payment for accrued sick leave on separation from employment.** Accrued vacation leave pay will be paid as per City policy at separation.

Notwithstanding the foregoing, the City shall, effective on the December 31, 2022 and continuing through December 31, 2025, grant to the Chief of Police a benefit of 80 hours of sick leave, 3 weeks of paid vacation leave, 40 hours of bereavement leave, and up to 40 hours compensation-time annually for the participation of additional duties related to City business.

3.4 **BENEFITS - GENERAL.** Unless expressly provided otherwise in this Agreement, in addition to those benefits specifically set forth herein, the Police Chief shall be entitled to the same benefits that are enjoyed by any other administrative employees of the City pursuant to all Applicable Laws and Authorities.

3.5 **INSURANCE – HEALTH.** The Police Chief shall be entitled to coverage under the City's Group Health Insurance on the same terms and conditions as any other employee, with the City providing such contribution to premium for the employee (Chief of Police) only.

3.6 **AUTOMOBILE.** Chief of Police duties require exclusive and unrestricted use of a vehicle. The City agrees to provide to the Chief of Police, during the term of this Agreement or any extension thereto, a city vehicle. The Chief of Police shall acquire and maintain the vehicle during the term of this Agreement, which shall be available for the Chief exclusive and unrestricted use in the performance of his duties hereunder. The Chief Police shall be responsible for ensuring regular

operational, maintenance, and repair are maintained. In addition, for travel outside of the state require approval from City Council.

3.7 **RETIREMENT BENEFIT.** The City agrees to enroll the Chief of Police into the applicable state or local retirement system and to make on his or her behalf of at least 9.1 percent level of contribution of the employee (Chief of Police) annual salary, as the City does for its other administrative employees consistent with all Applicable Laws and Authorities.

3.8 **EXPENSES.** The City shall pay or reimburse the Chief for reasonable expenses incurred by the Chief in the continuing performance of the Chief of Police duties under this Agreement. The City agrees to pay the actual and incidental costs incurred by the Chief in conducting City business which include travel, hotels and accommodations, meals, rental car, and other expenses incurred in the performance of the business of the City. The Chief shall comply with all procedures and documentation requirements in accordance with Applicable Laws and Authorities.

3.9 **BONDS.** The City shall bear the full cost of any fidelity or other bonds required of the Chief of Police under any law or ordinance.

3.10 **CELL-PHONE.** The City will provide the Chief of Police with a cell-phone and appropriate data plan for City business use in accordance with the City's use policies.

#### **IV. PROFESSIONAL GROWTH**

4.1 **PROFESSIONAL DUES AND SUBSCRIPTIONS.** The City agrees to a limited budget for and to pay for professional dues and subscriptions of the Chief necessary for continuation and full participation in national, state, regional, and local associations and organizations as necessary and/or desirable for the good of the City through the Chief of Police continued professional participation, growth and advancement.

4.2 **PROFESSIONAL DEVELOPMENT TRAVEL.** The City agrees to budget for and to pay for travel and subsistence expenses of the Chief for at least 2 professional and official travel meetings or trainings to adequately continue the professional development of the Chief of Police and to pursue necessary official functions for the City. Attendance at such events must not interfere with the Chief of Police ability to perform his duties for the City; if such attendance becomes a hindrance to the Chief of Police performance-permission to attend these events and conferences will be revoked by the Council. Further, attendance of such events is conditioned on City budget limitations.

4.3 **EXTENT.** This reimbursement is intended for attendance at seminars and training and is not intended to provide tuition for college credits. The limit will be set in the budget approved by the City Council.

#### **V. PERFORMANCE EVALUATION**

5.1 **SIX MONTH EVALUATION.** After the Chief of Police has completed six (6) months of service to the City under this Agreement, an evaluation will be conducted by the City Council with the Chief of Police to determine whether the Council's expectations are being met. If the lawful expectations of the Council are not being met, the Council shall issue directives in writing to the Chief identifying specific items that must be improved or corrected and providing a reasonable

time for those directives to be accomplished. As with the failure to follow any lawful written directives of the Council, failure to accomplish these directives shall be good cause for termination. (This section does not apply once the Chief of Police has completed one (1) year of service).

**5.2 ANNUAL EVALUATION PROCESS.** The Council shall review the Chief of Police job performance at least once annually with the first review being on the anniversary date of this Agreement, and subsequent annual reviews to occur during the same month of each year thereafter unless the parties agree otherwise. The annual performance reviews and evaluations shall be in writing and in accordance with criteria and format developed jointly by the Council and the Chief. The Council shall provide the Chief a reasonable and adequate opportunity to discuss with the Council and/or respond to the Chief of Police evaluation.

The length of the term of this Agreement and compensation may be part of the evaluation process.

**5.3 MODIFICATION OF EVALUATION PROCESS.** In the event the Council determines that the evaluation instrument, format and/or procedure are to be modified by the Council, and such modifications would require new or different performance expectations, then the Chief shall be provided a reasonable period of time to demonstrate such expected performance before being evaluated.

## **VI. TERMINATION**

**6.1 TERMINATION EVENTS.** This Agreement shall terminate upon any of the following:

- a. Mutual agreement of the Council and the Chief of Police in writing and signed by them;
- b. Retirement or death of the Chief of Police;
- c. Termination of Chief Employment for "good cause" (as defined in Paragraph 6.2 below);
- d. A Unilateral Severance (as defined and set forth in Section 6.3 below); or,
- e. Expiration of the term of this Agreement.

**6.2 "GOOD CAUSE".** For purposes of this Agreement the term "good cause" is defined as follows:

- (a) Any willful, knowing, grossly negligent, or negligent breach, disregard or habitual neglect of any provision of this Agreement, or any willful, knowing, grossly negligent, or negligent breach, disregard or habitual neglect of any duty or obligation required to be performed by Chief of Police under this Agreement or under the Charter and ordinances of the City and/or the laws of the United States or the State of Texas.
- (b) Any misconduct of the Chief of Police involving an act of moral turpitude, criminal illegality (excepting minor traffic violations), or habitual violations of the traffic laws, whether or not related to Chief of Police official duties hereunder.



- (c) Any willful, knowing, grossly negligent, or negligent misapplication or misuse, direct or indirect, by of public or other funds or other property, real, personal, or mixed, owned by or entrusted to the City, any agency or corporation thereof, or the Chief of Police in his or her official capacity.
- (d) Any failure to follow lawful written directives of the Council.
- (e) Violation of the City's Drug and Alcohol Policy;
- (f) Violation of the City's policies prohibiting sexual harassment and discrimination.
- (g) Arrest, indictment, or conviction on a felony charge or a non-felony charge constituting a crime involving moral turpitude.
- (h) Insubordination towards the Council.
- (i) Violation of Codes of Ethics identified in Section 6.7.

Before terminating the Chief of Police for good cause, the City shall provide the Chief of Police with written notice of the reasons for the proposed termination and shall allow the Chief an opportunity to be heard by the Council on the proposed good cause termination at a meeting to be held by the Council at least ten (10) business days after the date of the notice. The Chief agrees that this is all the process he will be due under this Agreement.

**6.3 UNILATERAL SEVERANCE.** As one of the termination events specified above in Paragraph 6.1, the Council may end the employment relationship and terminate this Agreement, at the pleasure of the Council in accordance with the City Charter, without cause or reason, upon written notice to the Chief as specified below and payment to the Chief of Police of the Severance Amount (as defined below). If the Council determines that it desires a Unilateral Severance it shall provide written notice to the Chief at least fifteen (15) days in advance of the effective date of such termination, which specifies: (a) the Council has voted to pursue a Unilateral Severance pursuant to this Paragraph 6.3 of the Agreement, (b) the effective date of the Unilateral Severance ("Severance Effective Date"), and (c) the City's commitment to pay the Severance Amount. There shall be no limitations on the City making all deductions and withholdings required by law.

In recognition of the fact that the Chief will have incurred costs to re-locate and will have forgone other opportunities, the City agrees to pay the Chief the Severance Amount within fifteen (15) days of the Severance Effective Date. The Chief of Police agrees to accept the Severance Amount in full settlement and satisfaction of all claims, causes of action, damages and rights that the Chief has or may have against the City, whether sounding in contract, tort, or statutory violation. Payment of the Severance Amount by the City to the Chief of Police shall be the Chief sole remedy and right for Unilateral Severance. The Severance Amount is a sum equal to a set number of months of base-pay. No benefits are included except matching contributions or withholding as required by law. The Chief of Police understands that required deductions for taxes and retirement will have to be withheld from the Severance Amount.

**Severance Amount:** The Severance Amount for a Unilateral Severance shall be equal to six (6) months of base pay, with no benefits.

**6.4. RESIGNATION OR TERMINATION BY EXPIRATION.** A Unilateral Severance by the



resignation of the Chief of Police does not entitle the Chief to payment of any Severance Amount. The Chief shall give the City Council no less than 30 day's written notice of resignation unless the Council waives the requirement. Failure to give such notice will contractually bar the Chief from recovery of any accrued benefits.

(This provision does not address a resignation made as part of a mutually agreed separation, which may involve compensatory elements).

If the City gives the Chief of Police 90 days written notice of the City's intent not to renew the Agreement at its expiration, no severance compensation shall be due. If the City fails to timely give such notice, on expiration of the Agreement, the City must pay three (3) months of Base Salary without benefits to the Chief as severance compensation.

6.5 **SUSPENSION.** The Chief may be suspended *with pay* during the pendency of any investigation into the Chief conduct. No procedural requirements apply other than a majority vote of the Council. The Chief of Police agrees that Chief shall be entitled to no special process prior to a suspension as long as it is with pay and benefits.

6.6 **CONFLICT OF INTEREST.** State conflict of interest laws apply to the Chief of Police. More importantly, the conflict-of-interest provisions of the Marlin City Charter and Code of Ordinances apply to the Chief. Other than permits related to his residence, the Chief shall not become involved in any ventures which would require actions or approvals of the City.

6.7 **ETHICS.** The Chief of Police shall comply with any or all applicable city rules and policies, as well as the State of Texas Law Enforcement Code of Ethics.

6.8 **NO RELATIONSHIP WITH SUBORDINATES.** The Chief may not enter any romantic or sexual relationship with any City employee subordinates.

6.9 **NEPOTISM.** The Chief shall comply with State and City nepotism restrictions.

6.10 **APPROPRIATIONS.** The Council has appropriated, and does hereby appropriate, available and unappropriated funds of the City in an amount sufficient to fund and pay all financial obligations of the City pursuant to this Agreement, including, but not limited to, the severance pay, salary and benefits set forth and described herein.

## **VII. GENERAL PROVISIONS**

7.1 **COMPLETE AGREEMENT.** This Agreement sets forth and establishes the entire understanding between the City and the Manager relating to the employment of the Manager by the City. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The parties by mutual written signed agreement may amend any provision of this Agreement during the term of this Agreement; such amendments shall be incorporated and made a part of this Agreement. Amendments must be approved by the City Council.

7.2 **BINDING EFFECT.** This Agreement shall be binding on the City and the Chief as well as their heirs, assigns, executors, personal representatives and successors in interest.

7.3 **SAVINGS CLAUSE.** If any term or provision of this Agreement, as applied to any party or

to any circumstance, is declared by a court of competent jurisdiction hereof to be illegal, unenforceable or void in any situation and in any jurisdiction, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending provision in any other situation or in any other jurisdiction. The parties agree that the court or arbitrator making such determination shall have the power to reduce the scope, duration, area or applicability of the term or provision, to delete specific words or phrases or to replace any illegal, unenforceable or void term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision.

**7.4 CONFLICTS.** In the event of any conflict between the terms, conditions and provisions of this Agreement and the Applicable Laws and Authorities, then, unless otherwise prohibited by law, the terms of this Agreement shall take precedence over the contrary provisions of the Applicable Laws and Authorities during the term of this Agreement.

**7.5 CONTROLLING LAW.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Texas and shall be solely performable in Falls County, Texas, unless otherwise provided by law.

**7.6 MULTIPLE COUNTERPARTS.** The signature pages to this Agreement may be executed by the Parties hereto, as the case may be, in separate counterparts. Facsimile signatures and signature pages provided in the form of a ".pdf" or similar imaged document transmitted by electronic mail shall be deemed original signatures for all purposes hereunder.


**AGREED TO AND ACCEPTED:**

**CITY OF MARLIN, TEXAS**

  
\_\_\_\_\_  
Carolyn Lofton  
Mayor


Date: June 14, 2022

**CHIEF OF POLICE**

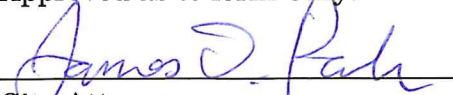
  
\_\_\_\_\_  
James Hommel

Date: June 14, 2022

Attest:

  
\_\_\_\_\_  
Maryann Waddle  
City Secretary

Approved as to form Only:

  
\_\_\_\_\_  
City Attorney