



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: City Manager

**Prepared by: Cristine Alliovich,
Assistant City Manager**

City Manager Approval: _____

A handwritten signature in blue ink, appearing to be the initials 'AS', written over a horizontal line.

TOPIC: CHIEF OF POLICE EMPLOYMENT AGREEMENT

SUBJECT: RESOLUTION AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AN EMPLOYMENT AGREEMENT WITH DAVID SPILLER TO SERVE AS THE CITY OF SAN RAFAEL CHIEF OF POLICE

RECOMMENDATION:

Adopt Resolution to Execute an Employment Agreement with David Spiller to serve as the City's Chief of Police.

BACKGROUND:

On December 31, 2020, Police Chief Diana Bishop retired after nine years of service with the City of San Rafael. At that time, Captain David Starnes assumed the role of Interim Police Chief, and the City continued its formal recruitment in partnership with executive search firm Bob Murray & Associates which started in September 2020. Twenty-five applications were received from well qualified candidates across the United States.

ANALYSIS:

Following this nationwide search, the City of San Rafael is pleased to announce the selection of David Spiller to serve as San Rafael's next Chief of Police. The final decision-making body was the San Rafael City Council along with the City Manager. The process included multiple rounds and involved members of the San Rafael Police Department, other City Departments, community organizations, and other stakeholders.

Chief Spiller comes to San Rafael having served as the Police Chief of the City of Pleasanton for over eight years, overseeing a community with a population of 82,000 and 65,000 annual calls for service. A 30 plus year veteran of the police service, Chief Spiller's most recent role was with the City of Menlo Park as the Interim Police Chief.

Chief Spiller began his career in the late 1980's with the San Diego Police Department, where he worked as a patrol officer for a short time before joining the Mountain View Police Department. With

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

well over a decade of service in various department operations with the Mountain View Police Department, Chief Spiller earned a strong reputation as an effective problem solver and collaborator.

Chief Spiller holds an associate degree in Administration of Justice from De Anza College in Cupertino, a bachelor's degree in Organizational Behavior from the University of San Francisco, as well as a master's degree from Saint Mary's College in Public Sector Leadership. Chief Spiller is also a graduate of the Senior Management Institute for Police through the Police Executive Research Forum and he is a graduate of the California POST Command College.

The City of San Rafael has a history of employment agreements for its Fire Chiefs and Police Chiefs. Attached to this report is an employment agreement between David Spiller and the City of San Rafael. If approved, Chief Spiller's appointment would take effect March 16, 2021. Interim Chief Starnes will continue to lead and support the department in the interim. The City would like to thank Captain Starnes for his exemplary service in the Interim Chief role and welcome Chief Spiller.

FISCAL IMPACT:

The proposed employment agreement establishes an annual salary set at Police Chief "Step E" of the Executive Management Salary Resolution, which is currently of \$16,152 per month. Chief Spiller will also receive the benefits provided to all department directors per the Executive Management Salary Resolution, which includes health and dental insurance, leave accruals, plus life and long-term disability insurance. The compensation package does not require any new appropriations from the General Fund for the current fiscal year.

OPTIONS:

- Approve the Resolution to execute the employment agreement as presented.
- Modify the agreement and make that a part of approving the Resolution.
- Don't approve the Resolution.

RECOMMENDATION:

Adopt Resolution as presented.

ATTACHMENTS:

1. Resolution
2. Employment Agreement between City of San Rafael and David Spiller

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AN EMPLOYMENT AGREEMENT WITH DAVID SPILLER TO SERVE AS THE CITY OF SAN RAFAEL CHIEF OF POLICE

WHEREAS, following the announcement by Police Chief Diana Bishop of her intention to retire on December 31, 2020, the City of San Rafael entered an executive search partnership with Bob Murray and Associates to initiate a nationwide recruitment search for the City's next Police Chief; and

WHEREAS, the Human Resources department, in collaboration with the City Manager's office created an end-to-end recruitment approach and process; and

WHEREAS, an official recruitment brochure was shared with over 900 potential candidates in the recruitment database made available to the City of San Rafael. The City received 25 qualified applications for consideration; and

WHEREAS, on December 15, 2020, the City of San Rafael held two group panel interviews consisting of internal and external leaders to assess the knowledge, skills, abilities and culture fit of the six (6) final candidates; and

WHEREAS, a final offer of employment was extended and accepted by David Spiller, to be the next Chief of Police of San Rafael;

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of San Rafael that the Mayor and City Manager are authorized to execute, on behalf of the City of San Rafael, an agreement with David Spiller to serve as the Chief of Police for the City of San Rafael, a copy of which is included with the staff report supporting this resolution.

I, LINDSAY LARA, Clerk of the City of San Rafael, California, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the Council of the City of San Rafael held on the 16th day of February 2021, by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

LINDSAY LARA, City Clerk

POLICE CHIEF EMPLOYMENT AGREEMENT
Between the City of San Rafael and
David Spiller

Dated _____

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**POLICE CHIEF EMPLOYMENT AGREEMENT
BETWEEN THE CITY OF SAN RAFAEL AND DAVID SPILLER**

THIS AGREEMENT is made and entered into this ____ day of _____, 2021, by and between the City of San Rafael, a municipal corporation ("City"), and David Spiller ("Spiller" or "Police Chief"). In this Agreement, the City and Spiller may each be referred to individually as a "Party", and collectively as the "Parties."

RECITALS

- A) The City desires to employ Spiller as its Police Chief and has conferred with him and performed all necessary pre-employment background and reference checks required for appointment to this highly sensitive and important City position.
- B) Spiller possesses the necessary education, experience, skills and judgment to serve as the City's Police Chief.
- C) The Parties desire to enter into and execute this Agreement pursuant to the authority of and subject to the provisions contained Article VI, Section 11 of the City's Charter, the City's Municipal Code, California Government Code Section 53260 et seq., and all other applicable law.

NOW THEREFORE, the Parties agree as follows:

AGREEMENT

- 1) EMPLOYMENT - The City hereby offers to employ Spiller as its Police Chief, and Spiller accepts such employment on the terms and conditions set forth hereafter.

- 2) TERM - The Agreement shall become effective on March 16, 2021 and continue until such time as thereafter terminated pursuant to the terms and provisions set forth hereafter. Although Article VI, Section 11 of the City's Charter provides that the appointment of the Police Chief shall be for a four-year term, for convenience and certainty in City's operations the City Council hereby approves automatic renewal of the four-year term until such time as the Police Chief separates from City employment, as otherwise provided in this Agreement.

- 3) COMMITMENTS AND UNDERSTANDINGS
 - A) Police Chief's Commitments
 - (1) Duties & Authority
 - (a) The Police Chief shall serve under the sole direction and

supervision of the City Manager during the full term of the Police Chief's employment with the City.

(b) Throughout the duration of the Police Chief's employment with City and the term of this Agreement, the Police Chief shall perform all the duties and functions specified and set forth in Article VIII, Section 6 of the City's Charter and Section 2.08.170 of the San Rafael Municipal Code, pertinent provisions of the California Government Code, and all applicable City policies and procedures, adopted and/or approved by the City Council and/or City Manager. The Police Chief shall administer and enforce Police Department policies established by the City Council and/or City Manager and promulgate rules and regulations as necessary to implement such policies.

(2) Hours of Work

(a) The Police Chief is an exempt employee in City government; however, it is expressly agreed to and understood by Spiller that he is expected to engage in all hours of work necessary to fulfill the obligations of the position. The position does not have set hours of work and the Police Chief is expected to be available at all times throughout his term of employment, weekdays and weekends included.

(b) It is recognized that the Police Chief must devote a substantial amount of time to the business of the City outside of the City's customary business hours. Therefore, the Police Chief's schedule of work each day and week shall vary in accordance with the work required to be performed by him. The Police Chief shall spend sufficient hours on site to perform all of his assigned duties, all of the time.

(c) The Police Chief shall not spend more than 12 hours per month teaching, consulting, speaking, or involved in any other non-City connected business or venture without the express prior written consent of the City Manager.

(3) Disability or Inability to Perform

(a) In the event the Police Chief becomes mentally and/or physically incapable of performing his functions and duties, taking into account reasonable accommodation, and the City Manager reasonably determines that such incapacity will continue for more than six (6) months after the date of his determination, the City Council may, upon recommendation of the City Manager, terminate the Police Chief. Any such determination by the City Manager shall be provided to the Police Chief in writing prior to or concurrently with the City Manager's recommendation to the City Council. If the City

Council does elect to terminate the Police Chief due to such determined incapacity, the Police Chief shall be entitled to receive all severance benefits provided in Section 6.C below.

B) City Commitments

(1) The City shall provide the Police Chief with the compensation, incentives and benefits specified in this Agreement, as may be from time to time amended.

(2) The City shall directly pay or provide the Police Chief reimbursement for, all actual documented business expenses incurred in connection with all official City business conducted by the Police Chief.

(3) The City agrees to directly pay, on behalf of the Police Chief, or reimburse the Police Chief for the professional dues, subscriptions, travel and subsistence expenses which may be necessary for the Police Chief's full participation in national, regional, state, and/or local associations, and/or organizations necessary and/or desirable for the Police Chief's continued professional growth and advancement, including, but not limited to, governmental groups and committees upon which the Police Chief serves or may serve as a member. The City will also provide direct City payment or expense reimbursement for instructional courses, institutes and/or seminars that are necessary for career professional development of the Police Chief. All such fees/expenses shall be required to be documented to the reasonable satisfaction of City prior to payment or reimbursement hereunder.

C) Mutual Commitments

(1) Performance Evaluation

(a) Annual performance evaluations constitute an important method for the City Manager and Police Chief to ensure effective communication between them relating to City Manager job expectations and Police Chief performance. The City Council and City Manager recognize that for the Police Chief to respond to their needs and expectations, and for the Police Chief to grow in performance on the job, he needs to be advised concerning evaluation of his performance at regular intervals. To assure that he receives this information, the City Manager shall conduct an evaluation of the Police Chief's performance *at least* once each year.

4) COMPENSATION - The City agrees to provide the following initial compensation to the Police Chief during the term of the Agreement:

A) Compensation & Required Employer Costs

(1) Base Salary

(a) The annual salary for the position of Police Chief shall be established by Resolution of the City Council. The annual salary, on appointment, is hereby set at \$193,824. This salary may be adjusted via adoption of a separate Salary Resolution, commencing on or before each fiscal year, and shall be reflected in the salary range identified in said Salary Resolution, from time to time amended and adopted throughout the term of this Agreement.

(2) Required Employer Costs - the following costs shall be paid by City on behalf of the Police Chief:

(a) Federal Insurance Contributions Act (FICA) (if applicable).

(b) Medicare.

(c) Unemployment Compensation.

(d) The cost of any fidelity or other bonds required by law for the Police Chief.

(e) The cost to defend and indemnify the Police Chief as provided in Section 7.C below.

(f) Workers Compensation.

B) Benefits

(1) Holidays - The Police Chief shall be entitled to paid holidays in accordance with the Council approved provisions of the Salary and Benefit Plan for the Unrepresented Executive Management Group of City.

(2) Leave Allowance

(a) The Police Chief shall receive the same vacation accrual and benefits as provided to the Unrepresented Executive Management class of City employees. The Police Chief will accrue 15 (fifteen) days of vacation per year, which accrual shall increase in accordance with the City of San Rafael's policy for the Unrepresented Executive Management class of City employees. The Police Chief shall be credited with 30 days of vacation leave as of the effective date of this Agreement. The Police Chief shall be paid for any unused accrued vacation upon either voluntary or involuntary termination of his employment.

(b) The Police Chief shall receive the same sick leave accrual and benefits as provided to the Unrepresented Executive Management class of City employees. Spiller shall be credited with 270 hours of "Credited Sick Leave" as of the effective date of this Agreement. Any unused Credited Sick Leave shall be

applied toward service credit at the time of Spiller's retirement, subject to pertinent and related retirement provisions, specified by the Marin County Employee Retirement Association (MCERA). Spiller shall not have the right to receive cash compensation for unused Credited Sick Leave. Before using Credited Sick Leave during his employment with the City, Spiller shall be required to exhaust any and all accrued City Sick Leave benefits he may then have.

(c) The Police Chief shall be entitled to administrative leave each year consistent with the then in effect leave provided to the Unrepresented Executive Management class of City employees.

(3) Automobile - The Police Chief shall be provided an automobile for his use in connection with City-related business and/or City-related or approved functions during, before, and/or after normal work hours. The automobile shall be of a type and model consistent with policies established by the City's Fleet Advisory Board and shall also be subject to advance approval of the City Manager. The City shall maintain such automobile for the Chief in such manner and to such standards that it is always in a safe and reliable condition for the Police Chief's use and shall pay all fuel and associated maintenance costs of that vehicle.

(4) Uniform Allowance - The Police Chief will receive a uniform allowance for each six (6) months of service ending June 30 and December 31. The uniform allowance shall be the sum of \$885 (\$1,770 per year). A pro-rated portion of the allowance may be given for the first and last six (6) months of service based upon the approval of the City Manager or designee. The Uniform Allowance amounts shall be adjusted during the term of this Agreement to coincide with the Uniform Allowance amounts defined in the San Rafael Police Mid-Management Association Memorandum of Understanding.

(5) Benefits that Accrue to Other Employees - The Police Chief shall be entitled to all benefits, rights, and privileges accorded to safety City Department Directors, including, but not limited to, group health and dental insurance, except as otherwise provided in this Agreement. To the extent the benefits contained herein exceed the benefits provided to the Unrepresented Executive Management Group employees of the City, this Agreement shall control.

5) OTHER EMPLOYMENT BENEFITS

A) Pension - Marin County Employee Retirement Association (MCERA)

(1) The Police Chief shall be considered a safety employee as the position relates to the Marin County Employee Retirement Association (MCERA). The Police Chief will be responsible for paying the full cost of the employee contribution rate as established by MCERA. In addition, as provided in the Salary Resolution for the Unrepresented Executive

Management class of City employees, the Police Chief will pay an additional contribution of one percent (1%) of pensionable compensation toward the normal cost of pension provided by MCERA. The City shall pay the remainder of the City's share for participation in the Marin County Employee Retirement Association.

(2) Internal Revenue Code Compliance - All provisions of Section 5.A shall be subject to all applicable provisions and limitations of the Internal Revenue Code and its related adopted regulations, as the same may be amended from time to time. No requirement of any provision of Sections 5.A and 5.B shall be effective if it would violate any provision of the Internal Revenue Code or its related regulations, and the inability of the City to effectuate such requirements for such reasons shall not constitute a breach of this Agreement.

B) Insurance

(1) Disability Insurance. Long-Term Disability insurance shall be provided in such amount as is consistent with that provided to other City Department Directors as identified in the Unrepresented Executive Management Group controlling documents

(2) Life Insurance. Term life insurance shall be provided at the Department Director level as identified in the Unrepresented Executive Management Group controlling documents

(3) Retiree Health Insurance. The City shall provide retiree health insurance for the Police Chief, so long as the Police Chief retires from the Marin County Employees Retirement Association (MCERA) within 120 days following termination of his employment with City and further that the Police Chief complies with all then applicable MCERA retirement laws and regulations. The Police Chief shall receive the same retiree health insurances as provided to the Unrepresented Management class of City employees as defined in the Unrepresented Executive Management Salary Resolution.

6) SEPARATION

A) Resignation/Retirement - The Police Chief agrees to provide the City at least 60 days advance written notice of his determination to resign, including the effective date of such resignation, unless the Parties hereto otherwise agree in writing to a different notice provision. If the Police Chief retires from full time public service with the City of San Rafael, then he may provide six (6) months' advance notice if he chooses. The Police Chief's actual retirement date shall be mutually agreed to and established.

B) Termination & Removal

(1) It is expressly understood, the entry into this Agreement notwithstanding, that the Police Chief is an at-will employee of the City, serving at all times throughout his tenure with City at the pleasure of the

City Council, as provided in Article VI, Section 11 of the City's Charter and Government Code Section 36506.

(2) The City Council may remove the Police Chief at any time, with or without cause, by a majority vote of its members. Notice of such termination shall be provided to the Police Chief in writing.

(3) Given the at-will nature of the position of Police Chief, an important element of this Agreement pertains to the subject of termination. It is in the interest of both the City and the Police Chief that any separation of the Police Chief from City be accomplished in a dignified and businesslike manner.

C) Severance Pay

(1) In the event the Police Chief is terminated not for cause by the City Council during a time when the Police Chief continues to be willing and able to perform his duties under this Agreement, then, and in that event, the City agrees to pay the Police Chief a lump sum cash payment in an amount equal to six (6) months' base salary.

(2) All payments required under Sections 6.C (1), are subject to and shall be interpreted to comply with the limitations set forth in Government Code Section 53260.

D) Involuntary Resignation

(1) In the event that the City Council requests that the Police Chief resign, then he shall resign, and he shall be entitled to receive the severance benefits provided in Section 6.C above.

E) Separation for Cause

(1) Notwithstanding the provisions of Section 6.C, the Police Chief may be terminated for cause. As used in this Section, "cause" shall mean one or more the following:

- (a) Conviction of a felony;
- (b) Conviction of a misdemeanor;
- (c) A plea of nolo contendere to any felony or misdemeanor;
- (d) Any act constituting a knowing and intentional violation of Section 7.B below, or conflict of interest codes adopted by or followed by City;
- (e) Abuse of drugs or alcohol that materially affects the performance of the Police Chiefs duties; or
- (f) Repeated and protracted unexcused absences from the Police Chief's duties

(2) In the event the City terminates the Police Chief for cause, then the City may terminate this Agreement immediately, and the Police Chief

shall be entitled to only the compensation accrued up to the date of such termination, payments required by Section 6.F below, and such other termination benefits and payments as may be required by law. The Police Chief shall not be entitled to any severance benefits provided by Section 6.C in these circumstances.

F) Payment for Unused Leave Balance

(1) On separation from City employment, the Police Chief shall be paid for all unused accrued vacation and administrative leave allowances provided in Section 4.B (2) above. Accumulated leave balances shall be paid at the Police Chief's monthly salary rate on the effective date of separation.

7) MISCELLANEOUS PROVISIONS

A) Amendments - This Agreement may be amended at any time but only by mutual written agreement of the City and the Police Chief.

B) Conflict of Interest

(1) The Police Chief shall not engage in any business or transaction or have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper discharge of his official duties or which would tend to impair independence in the performance of his official duties.

(2) The Police Chief shall also be subject to the conflict of interest provisions of the California Government Code and any conflict of interest code applicable to the Police Chief's employment with the City.

(3) The Police Chief is responsible for submitting to the City Clerk the appropriate Conflict of Interest Statements at the time of appointment, annually thereafter, and at the time of separation from the position.

C) Indemnification

(1) The City shall defend, hold harmless and indemnify the Police Chief from any claim, demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring within the course and scope of the Police Chief's performance of his duties as Police Chief, pursuant to and in accordance with Government Code sections 995 through 996.6 and Government Code section 825.

Should the Police Chief be sued for damages in an action in which it is alleged that the complained of act(s) arise out of the performance of his duties, the City shall provide a legal defense for the Police Chief in such suit and indemnify the Police Chief from any judgment rendered against him; provided however that such indemnity shall not extend to any judgment for damages arising out of any proved willful wrongdoing on his part. This indemnification shall extend beyond termination of employment and the otherwise expiration of this Agreement, to provide

protection for any such acts undertaken or committed in the Police Chief's capacity as Police Chief while in the employment of City, regardless of whether the notice of filing of a lawsuit occurs during or following employment with the City. This indemnity provision shall survive the termination of the Agreement and is in addition to any other rights or remedies that the Police Chief may have under the law.

(2) The City and all parties claiming under or through it, hereby waives all rights of subrogation and contribution against the Police Chief, for all matters while he is acting within the scope of the Police Chief's duties, from all claims, losses and liabilities arising out of or incident to activities or operations performed by him, or by him on behalf of the City, or any party affiliated with or otherwise claiming under or through him, regardless of any prior, concurrent, or subsequent active or passive negligence by the Police Chief.

D) Severability - If any clause, sentence, part, section, or portion of this Agreement is determined by a court of competent jurisdiction to be illegal or unenforceable, such clause, sentence, part, section, or portion so found shall be regarded as though it were not part of this Agreement and the remaining parts of this Agreement shall be fully binding and enforceable by the Parties hereto.

E) Jurisdiction and Venue - This Contract 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.

F) Entire Agreement - This Contract represents the entire agreement of the Parties, and no representations have been made or relied upon except as expressly set forth herein. This Contract may be amended or modified only by a written, fully executed agreement executed by the Parties.

G) Notice - Any notice, amendments, or additions to this Agreement, including change of address of either party during the term of this Agreement, which the Police Chief or the City shall be required, or may desire, to make shall be in writing and shall be sent by prepaid first-class mail or hand delivered to the respective Parties as follows:

If to the City:

City Manager
City of San Rafael
1400 Fifth Avenue
San Rafael, CA 94901

With a copy to the City Attorney

If to the Police Chief:

Police Chief

City of San Rafael
1375 Fifth Avenue
San Rafael, CA 94901

EXECUTION:

IN WITNESS WHEREOF, the City of San Rafael has caused this Agreement to be duly executed by its Mayor, its City Manager, and the Police Chief, and duly attested by its City Clerk, the day and year first written above.

EMPLOYER - CITY OF SAN RAFAEL

POLICE CHIEF

By: _____
Kate Colin, Mayor

_____ David Spiller, Police Chief

By: _____
Jim Schutz, City Manager

ATTEST:

Lindsay Lara, City Clerk

APPROVED AS TO FORM:

Robert F. Epstein, City Attorney