

**CITY OF MONTEREY PARK
EMPLOYMENT AGREEMENT**

THIS AGREEMENT is made and entered into on the 4th day of February, 2015 , by and between the CITY OF MONTEREY PARK, a municipal corporation and general law city (“CITY”) and James D. Smith, an individual (“EMPLOYEE”). CITY and EMPLOYEE agree as follows:

1. **RECITALS.** This Agreement is entered into with the following understandings and objectives:

- A. CITY desires to continue EMPLOYEE’S employment as POLICE CHIEF of CITY as provided by State law and CITY’S past practice.
- B. It is CITY’S desire to provide certain benefits, establish certain conditions of employment and set working conditions of EMPLOYEE.
- C. It is CITY’S desire to secure and retain EMPLOYEE and to provide inducement to remain in such employment; deter against malfeasance or dishonesty for personal gain on EMPLOYEE’S part; and permit a reasonable means of terminating EMPLOYEE’S services.
- D. EMPLOYEE desires to accept employment as Police Chief, pursuant to the terms and conditions herein set forth.
- E. CITY has employed EMPLOYEE since June 11, 1992 as a member of the Monterey Park Police Department.
- F. The EMPLOYEE has served as the Police Chief of CITY since October 5, 2011.

2. **DUTIES:** EMPLOYEE will continue EMPLOYEE’S employment as CITY’S Police Chief. CITY agrees to employ EMPLOYEE to perform all the functions and duties specified by statute and relevant CITY ordinances and resolutions for a Police Chief, and to perform such other legally permissible and proper duties and functions as CITY may from time to time assign.

3. **TERM:**

- A. This Agreement will become effective retroactive to October 1, 2014 and terminated two (2) years afterward (“Initial Term”). Unless terminated at least thirty (30) days before the anniversary date of this Agreement, the term will automatically renew on the anniversary date for successive one (1) year terms.
- B. Nothing in this Agreement prevents, limits, or otherwise interferes with the right of the City Manager to terminate the services of EMPLOYEE at any time subject to the provisions of this Section and Sections 4 and 5 of this Agreement.
- C. Nothing in this Agreement prevents, limits, or otherwise interferes with the right of EMPLOYEE to resign at any time from his position with CITY, subject only to the provisions set forth in Section 5 of this Agreement.
- D. Except as otherwise provided EMPLOYEE agrees to remain in the exclusive employ of CITY and not become employed by any other employer until this Agreement lapses or is terminated. However, EMPLOYEE may, with the City Manager’s written approval, engage in teaching activities while employed by CITY.

4. **SEVERANCE.** Should EMPLOYEE’S service as Police Chief be terminated without cause, CITY will pay EMPLOYEE a severance in a lump sum amount equal to six (6) calendar months’ severance pay based on the Employee’s salary at the time of termination. In addition, City will provide all medical, dental, and vision benefits as specified herein for a period of six (6) calendar months following the date of termination.

5. **TERMINATION:**

- A. EMPLOYEE serves at the City Manager’s pleasure and may be terminated at any time, with or without cause.

- B. EMPLOYEE retains all rights under applicable law as a public safety employee including such workers compensation claims that may be legally asserted against CITY for EMPLOYEE's previous service.
- C. EMPLOYEE may be terminated for cause including, without limitation, the willful breach of the duties that EMPLOYEE is required to perform under the terms of this Agreement; conviction of any felony; conviction of any crime involving moral turpitude; or removal from office by the Grand Jury. Under such circumstances, EMPLOYEE will be separated from service and acquire only such benefits which otherwise are vested in EMPLOYEE and will NOT receive a severance as otherwise contemplated by this Agreement.
- D. Should EMPLOYEE voluntarily resign his position with CITY before expiration of the aforesaid term of employment, the EMPLOYEE must give CITY a minimum of thirty (30) calendar day's prior written notice. In that event, EMPLOYEE will NOT receive a severance as otherwise contemplated by this Agreement.

6. **HOURS OF WORK**: EMPLOYEE is expected to work as many hours as necessary to satisfactorily fulfill the obligations of the position, including devoting necessary time outside normal office hours to the business of CITY.

7. **VACATION**: EMPLOYEE will accrue vacation leave at the same rate and the same manner as a member of CITY's Executive Management Team.

8. **SICK LEAVE**: EMPLOYEE will accrue sick leave at the same rate and in the same manner as members of the CITY's Executive Management Team. Notwithstanding anything to the contrary in, without limitation, CITY's municipal code or personnel rules, EMPLOYEE may continue to accumulate sick leave without restriction. EMPLOYEE continues to be vested with 100% of his sick leave Bank 1.

9. **HEALTH AND LIFE INSURANCE**: EMPLOYEE will receive the same health and life insurance benefits as other members of CITY's Executive Management Team or

per the Monterey Park Police Mid-Management Group, whichever is the higher of the two.

10. **SALARY:**

- A. CITY agrees to pay EMPLOYEE for his services rendered pursuant to this Agreement an annual salary of \$185,000 which is payable in equal installments at the same time as other employees of CITY are paid.
- B. Annually, as determined by the effective date of this Agreement, the City Manager may, but is not required, to adjust EMPLOYEE's salary based upon EMPLOYEE's performance. The City Manager cannot, under any circumstances, increase EMPLOYEE's salary beyond the existing salary range reflected in attached Exhibit "A," which is incorporated by reference (the "Salary Range"). Any increase to the Salary Range requires City Council approval and an amendment to this Agreement.
- C. Effective the next payroll date after the City Council approves this contract, Employee will receive compensation consistent with what is described in the Monterey Park Police Officers Mid-Management Association's Memorandum of Understanding, Article 28, "Wages and Salaries" (see Attachment – "B" of this document, which is incorporated by reference).

11. **RETIREMENT:** EMPLOYEE will be covered by CITY's PERS as a "public safety employee" (as defined by PERS) and any modification to CITY's plans. CITY must pay the employer's share and EMPLOYEE must pay 100% of the employee's contribution to PERS, which is currently 9% of "compensation earnable."

12. **UNIFORM ALLOWANCE:** The CITY must provide the EMPLOYEE with an annual uniform allowance of \$650.

13. **TRANSPORTATION:** The EMPLOYEE must be assigned a City vehicle to be used in the performance of his duties and for emergency response in compliance with City of Monterey Park Administrative Policy 50-04.

14. **OTHER BENEFITS:** Except as otherwise provided in this Agreement, EMPLOYEE is entitled to all of the employee benefits of City's Executive Management Team or per the Monterey Park Police Mid-Management Group, whichever is the higher of the two.

15. **CHANGES:** This Agreement may be changed or amended by the mutual written consent of CITY and EMPLOYEE.

16. **BONDING:** CITY will pay for the cost of fiduciary bonds required of EMPLOYEE as a consequence of the exercise of his duties under this Agreement.

17. **INDEMNIFICATION:**

- A. CITY must indemnify and defend EMPLOYEE from any and all claims, demands, actions, losses, or charges arising out of, related to, or as a consequence of EMPLOYEE performing his duties as Police Chief. Further, CITY must pay all expenses, costs and attorney's fees arising out of or related to the same.
- B. The Parties agree that this Section will survive the termination of this Agreement and EMPLOYEE's employment and his right to return to the position of Police Captain. CITY's obligations under this Section apply whether EMPLOYEE is or is not employed by the CITY at the time any such claim, demand, action, loss or charge is made or occurs, as the case may be so long as the action giving rise to the claim occurred during the time EMPLOYEE was employed by CITY.

18. **PERFORMANCE EVALUATION:** The City Manager may evaluate EMPLOYEE at any time, and must provide a written evaluation of EMPLOYEE's performance on an annual basis. Such evaluations will become a part of EMPLOYEE's personnel file.

19. **WAIVER OF BREACH**: No waiver of the breach of any of the covenants, agreements, provisions, or conditions of this Agreement by either party will be construed to be a waiver of any succeeding breach of the same or other covenants, agreements, provisions or conditions of this Agreement. No delay or omission of CITY or EMPLOYEE in exercising any right, power, or remedy herein provided in the event of default will be construed as a waiver thereof, or acquiescence therein.

20. **ENTIRE CONTRACT**: This Agreement contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this instrument will be of no force or effect excepting a subsequent modification in writing signed by CITY and EMPLOYEE.

21. **PARTIAL INVALIDITY**: Partial invalidity of this Agreement will not affect the remainder of this Agreement.

22. **VENUE**: This Agreement will be interpreted in accordance with California law and venue is in Los Angeles County.

23. **BINDING EFFECT**: This Agreement is binding upon and inures to the benefit of the parties and their successors, heirs, agents and personal representatives.

24. **SEVERABILITY**: Each portion of this Agreement is separate and if any portion is found to be invalid by a court of competent jurisdiction, the remaining portions must each remain in full force and effect.

[SIGNATURES ON NEXT PAGE]

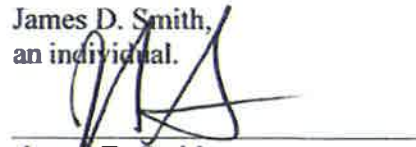
IN WITNESS WHEREOF, the parties have caused this Agreement **to be** signed and executed this 4th day of Feb., 2015.

City of Monterey Park,
a municipal corporation.



Paul Talbot, City Manager

James D. Smith,
an individual.



James D. Smith

ATTEST:


Vincent Chang, City Clerk

APPROVED AS TO FORM
MARK D. HENSLEY, City Attorney

By: 

Karl H. Berger, Assistant City Attorney

Exhibit A

Executive Management Team Salary and Benefits

RESOLUTION NO. 11598

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF MONTEREY PARK, CALIFORNIA,
FIXING THE SALARY RATES AND BENEFITS
FOR EXECUTIVE MANAGEMENT EMPLOYEES**

BE IT RESOLVED by the City Council of the City of Monterey Park as follows:

WHEREAS, The City's Executive Management are not represented by an employee association and are classified as the unrepresented employees set forth below:

City Librarian
Director of Community and Economic Development
Director of Human Resources & Risk Management
Director of Management Services
Director of Public Works/Assistant City Manager
Director of Recreation & Parks
Fire Chief
Police Chief
Controller

SECTION 1: Salary: Effective August 7, 2013, Executive Management salaries will be in the range set forth in attached Exhibit "A," which is incorporated by reference.

SECTION 2: Fair Labor Standards Act : Except as otherwise provided by federal law, all Executive Management employees are designated as exempt from the provisions of the FLSA and are ineligible for overtime compensation.

SECTION 3: Health Insurance: All executive management employees shall receive City paid monthly medical premiums in the same manner as provided other management employees of the City, as they may from time to time exist. Further, the City shall provide \$250 cash per month in lieu of medical contribution, if the employee can provide proof of medical coverage that they are enrolled in a non-city provided medical insurance plan. Enrollment into, and withdrawal from, City-paid medical is subject to the medical providers policies. The City shall maintain the same practice for retiree medical as provided to other managers in the City.

All executive management employees shall receive \$50.00 per month City paid contribution toward dental insurance.

All executive management employees shall receive City paid vision coverage as provided other management employees of the City.

All executive management employees shall be provided a \$100,000 term life insurance policy.

SECTION 4: Public Employees' Retirement System: The City is a contract member with the California Public Employees' Retirement System (PERS). Under this contract, all Executive Management with the exception of the Police Chief and Fire Chief are classified as miscellaneous members (as are all other non-sworn employees). The Police Chief is classified as local police and receives the same benefits as the sworn regular police, and the Fire Chief is classified as local fire and receives the same benefits as the sworn regular fire. The City contract for Executive Management employees who are PERS members includes the following options:

- 2% @ 62-Full formula as of 1/1/13 New members to PERS or an individual with a 6-month break in service
- 2.7% @ 55-Full formula for Classic PERS members and with prior PERS service credit with no service break greater than 6 months
- 3% @ 55-Full formula (Government Code § 21363.1) for local police members *only* (Police Chief)
- 3% @ 55-Full formula (Government Code § 21363.1) for local fire members (Fire Chief)
- 1959 Survivor Benefit at funding Level 14 (Government Code § 21574)
- One Year Final Compensation (Government Code § 20042).
- Military Service Credit as Public Service (Section 21024).
- Credit for Unused Sick Leave (Sec. 20965)

SECTION 5: Contribution to PERS: The Executive Management employees will pay 100% of the employee's portion of PERS retirement contribution.

SECTION 6: Car Allowance: The Police Chief and the Fire Chief shall continue to receive a City vehicle for business use.

SECTION 7: Education Incentive: Public Safety executive management shall receive educational incentive pay in the amount commensurate with the respective safety employee associations under their department.

SECTION 8: Long Term Disability: All executive management employees shall continue to receive City paid Long Term Disability Insurance.

SECTION 9: Vacation Leave: Vacation accrual shall be as provided other Management employees.

SECTION 10: Sick Leave: Sick leave with pay shall be granted to every full time employee who has been continuously employed for a period of time in excess of 30 days. Such leave shall be granted by the appointing authority at any time after 30 days of employment, at the rate of eight-hours for each full calendar month of continuous employment with the City.

- A. Sick leave shall be accumulated at the rate of 88 hours per year.
- B. Catastrophic Leave Bank. Executive management employees will be enrolled in the Catastrophic Leave Bank as described in Administrative Policy 30-10. The City will annually contribute eight-hours sick leave on behalf of each eligible employee.

SECTION 11: Bereavement Leave: Bereavement leave shall be as provided other management employees.

SECTION 12: Family and Emergency Sick Leave: Family and Emergency sick leave shall be as provided other management employees of the City.

SECTION 13: Military Leave: Military Leave of Absence shall be granted in accordance with provisions of the City of Monterey Park's Personnel System Rules and Regulations, Administrative Policy 30-14 and as defined in Section 395 et. Seq of the Military and Veteran's Code of the State of California.

SECTION 14: Jury Duty: Shall be governed by Personnel Rule, Attendance and Leaves, Section 3a, Jury Leave.

SECTION 15: Leave of Absence: Shall be governed by Personnel Rule, Attendance and Leaves, Section 4, Leave of Absence.

SECTION 16: Holiday Leave: Holidays shall be as provided to other management employees.

SECTION 17: Leave Cashout: Annually executive management employees may cash out vacation, holiday and sick leave in the same amounts as other management employees. Upon separation, retirement or death of an employee, the City shall cash-out the unused balance of accrued sick leave to the employee or designated beneficiary.

SECTION 18: Administrative Leave: 60 hours every Fiscal Year. No accumulation or rollover of hours to subsequent years or cash out value.

SECTION 19: This Resolution will become effective immediately upon adoption and will remain effective unless repealed or superseded.

SECTION 20: The City Clerk will certify to the passage and adoption of this Resolution; will enter the same in the book of original Resolutions of said City; and will make a minute of the passage and adoption thereof in the record of proceedings of the City Council of said City, in the minutes of the meeting at which the same is passed and adopted.

PASSED AND ADOPTED this 7th day of August 2013.



Teresa Real Sebastian, Mayor
Monterey Park, California

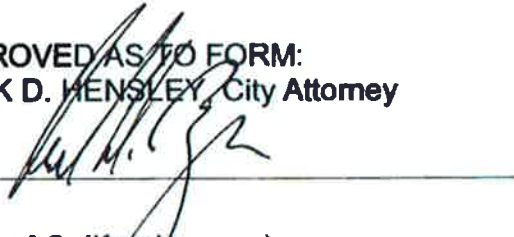
ATTEST:



Vincent D. Chang, City Clerk
Monterey Park, California

APPROVED AS TO FORM:
MARK D. HENSLEY, City Attorney

By:



State of California)
County of Los Angeles) ss.
City of Monterey Park)

I, Vincent D. Chang, City Clerk of the City of Monterey Park, California, do hereby certify that the foregoing Resolution No. 11598 was duly and regularly adopted by the City Council of the City of Monterey Park at a meeting held on the 7 day of August 2013, by the following vote:

Ayes:	Council Members: Ing, Chan, Liang, Wong
Naes:	Council Members: None
Absent:	Council Members: Real Sebastian
Abstain:	Council Members: None

Dated this 7th day of August 2013.



Vincent D. Chang, City Clerk
Monterey Park, California

CITY OF MONTEREY PARK
EXECUTIVE MANAGEMENT SALARY TABLE

Effective August 7, 2013

Job Title	<u>Range Minimum</u>	<u>Range Maximum</u>
*Police Chief	\$146,000	\$186,000
Fire Chief	\$140,000	\$178,000
*Director of Public Works/ACM	\$137,000	\$175,000
Director of Management Services	\$116,000	\$148,000
Director of Human Resources & RM	\$116,000	\$148,000
Director of Community/Economic Development	\$116,000	\$148,000
Controller	\$113,219	\$144,500
Director of Recreation	\$ 99,000	\$126,000
City Librarian	\$ 90,000	\$115,000

*Pursuant to Contract

(ACM) Assistant City Manager

(RM) Risk Management

ATTACHMENT – “B”

Peace Officers Mid-Management Association MOU
ARTICLE 28 - SALARIES AND WAGES

Effective Date: Next payroll cycle after the City Council approves the 2014-2016 MOU:
3% cash lump sum payment based on 12 months employment and compensation with the city and calculated according to the classifications base salary schedule.
Pay Period: July 2014-June 2015

This one time lump sum payment is intended for association members who work the entire 2014-2015 fiscal year. If a member of the association leaves Monterey Park employment to go to another agency or is terminated for disciplinary reasons, that association member shall pay back to the city a pro-rated share of this lump sum payment and this amount shall be deducted from the employees' last paycheck with the city. (i.e., if an association member leaves city employment for another agency 9 months into the fiscal year, that employee will owe back to the city 3 months or 25% of this lump sum payment to be deducted from their last paycheck)

Effective Date: Dec 12, 2015
Pay Period: July 2015-Jun 2016

As of January 1, 2016 and effective the first pay period following January 1, 2016, represented members shall be entitled to a retroactive 1.5% cash payment representing the first six months of the 2014-2015 fiscal, back to July 1, 2015 (calculated according to the member's annual base salary as set forth in the City's Salary Schedule). Also, as of January 1, 2016 and effective the first pay period following January 1, 2016, represented members shall be entitled to a 3% pay increase (calculated according to the member's base salary as set forth in the City's Salary Schedule). Payment of this retroactive payment and salary increase is expressly conditioned upon the following terms and conditions and shall not be implemented if either of the terms and conditions set forth below are not satisfied.

The Permit and Impact Fee Condition. The City must receive \$700,000.00 or more in building permit and impact fees from any combination of five major projects that are identified in Addendum C and which are described as the AG Hotel, the Marriott Hotel, the Double Tree Hotel, the Market Place – Home Depot and the Towne Center. The City must receive \$700,000.00 or more in building permit and impact fees from any combination of these five major projects on or before December 15, 2015. The projected building and impact permit fees that the City is expected to receive for each of the five projects is set forth in Addendum C and shall be referred to as the “Base Building Permit and Impact Fee” for each respective project. In the event the City Council approves a reduction of the “Base Building Permit and Impact Fee” for any of the five major projects, the City will calculate the percentage by which the “Base Building Permit and

Impact Fee” was reduced. The single greatest percentage reduction, if any, for any of the five major projects shall then be applied to the \$700,000.00 “trigger”. For example, if the Council approves a reduction of the “Base Building Permit and Impact Fee” for four of the projects by 5% and approves a reduction of the “Base Building Permit and Impact Fee” of the fifth project by 10%, a 10% reduction shall be applied to the \$700,000.00 permit fee trigger, thus reducing the permit fee trigger to \$630,000.00.

The Safety Net Condition. The combined negative variance (revenues are less than budget projections and/or expenditures exceed budget authorization) to the General Fund shall not exceed \$450,000.00 during the fiscal year 2014-2015. Revenue measurement shall exclude one-time receivables such as state repayments, residual distributions and revenues from permit fees. Expenditures shall exclude capital improvements, transfers out and expenses related to the above base building permit and impact fees. All other expenditures, such as, a reduction in revenue and/or an increase in expenditures due to state or federal action, natural disaster, liabilities, or other expenditures, shall be included in this calculation.

The retroactive 3% wage increase referenced above is expressly conditioned upon both the Permit Fee Condition and the Safety Net condition being met. If either or both conditions are not met, the City shall have no obligation to provide the 3% wage increase. However, in the event one or both conditions are not met, and absent any contrary action by the Council, a 3% lump sum payment (calculated according to the member’s annual base salary as set forth in the City’s Salary Schedule) shall be provided to all members for the 2015/16 fiscal year. This 3% lump sum payment shall be paid on the first payroll in February 2016.