

POLICE CHIEF EMPLOYMENT AGREEMENT RESTATED
Between the City of Fort Bragg,
a Municipal Corporation,
and Neil Cervenka

I. PARTIES AND DATE

The Police Chief Employment Agreement is herein amended and Restated and dated August 1, 2024, and is effective as of final approval by the City of Fort Bragg City Manager, by and between the City of Fort Bragg, California, a municipal corporation (the "City"), and Neil Cervenka, an individual (Cervenka) (collectively the "Parties").

- A. The City requires the services of a Police Chief;
- B. Cervenka has the necessary education, experience, skills and expertise to serve as the City's Police Chief;
- C. The City Manager of the City (the "City Manager") desires to continue to employ Neil Cervenka as the Fort Bragg Police Chief;
- D. The Parties desire to execute this Agreement Amendment pursuant to the authority of and subject to the provisions of Government Code Section 53260 et seq.; and
- E. In consideration of these Recitals and the performance by the Parties of the promises, covenants, and conditions herein contained, the Parties agree as provided in this Agreement.

II. EMPLOYMENT

The City has continually employed Neil Cervenka as its Police Chief since July 25, 2022. City wishes to continue Police Chief's employment.

III. COMMITMENTS AND UNDERSTANDINGS

A. Police Chief's Commitments

- 1. Duties & Authority:
 - Cervenka shall be the Police Chief of the City upon execution of this Agreement and be responsible to the City Manager for the proper administration of assigned duties and responsibilities of the City.
 - Plans, organizes, directs and coordinates the activities of Police Department in the preservation of order, protection of life and property; enforcement of all federal, state and local laws, codes and ordinances, investigation and prevention of crime; and maintenance of effective communication and records systems and other support activities.
 - Develops, implements and revises departmental rules, procedures and policies; reviews actions and conduct of subordinates, recommends corrective action and maintains effective discipline throughout the department.
 - Directs and participates in the development, implementation and monitoring of annual departmental budget; prepares reports and recommendations concerning proposed city

activities and their budgetary and/or staffing impact on the city and the police department and recommends purchase of equipment and supplies.

- Identifies and develops solutions to difficult community and organizational problems and assures effective implementation through the Police Department.
- Recommends appointment and evaluates Police Department personnel, assigns work projects; coordinates work or subordinates and has general accountability for the effectiveness of all operations; observes and takes corrective action on significant employee relations problems; and implements Affirmative Action Program within the Police Department.
- Develops and ensures enforcement of Police Department operating policies and procedures.
- Coordinates Police Department activities and maintains liaison with other federal, state, county and local law enforcements related agencies on judicial, prosecution and defense issues.
- Represents the Police Department before the City Council and other governmental bodies; prepares and presents special studies and reports concerning Police Department programs and activities.
- Represents the Police Department before various community groups, develops and implements the department's community relation efforts with special emphasis toward community oriented policing principles and practices and maintaining positive and effective relationships among the various communities in Fort Bragg.
- Reviews reports on crimes committed, arrests made, investigations conducted and unusual incidents requiring documentation and assure their transmittal to other agencies and the City manager as appropriate.
- Investigates or directs investigation of citizen complaints.
- Facilitates, leads and/or participates in meetings and committees; represents the City at meetings and conferences, serves as liaison between departments, external organizations, the general public and other agencies.
- Implements and oversees special projects that meet the goals of the City Council and the City Manager.
- Responds to and resolves sensitive and complex community inquiries and complaints.
- If the City Manager is expected to be unavailable in their duties for a period longer than two weeks, and the Police Chief is asked to serve as Acting City Manager, the Police Chief shall receive 5% out-of-class pay according to personnel rules and regulations. Police Chief agrees to waive 5% out-of-class pay for Acting City Manager duties for any time period two consecutive work weeks or less.

2. Hours of Work

Police Chief is an exempt employee without set hours of work, but is expected to be available at all times and to engage in those hours of work that are necessary to fulfill the obligations of the Police Chief's position.

3. Disability or Inability to Perform

In the event the Police Chief becomes mentally or physically incapable of performing the Police Chief's functions and duties with reasonable accommodation and it reasonably appears such incapacity will last for more than six months; the City Manager may terminate the Police Chief. If the City Manager does elect to terminate the Police Chief due to incapacity, the Police Chief shall receive all severance benefits provided in Section V.C. under Severance Pay.

B. City Commitments

1. The City shall provide the Police Chief with the compensation, incentives and benefits specified in this Agreement.
2. The City shall provide the Police Chief with office space, staff, equipment, supplies, automobile, and all other facilities and services adequate for the performance of the Police Chief's duties.
3. The City shall pay for or provide the Police Chief reimbursement for all actual business expenses. The City shall provide the Police Chief a credit card to charge appropriate and lawful business expenses.
4. The City agrees to pay the professional dues and subscriptions on behalf of the Police Chief for participation in national, regional, state, or local associations and organizations, as necessary and desirable for the good of the City, and for the Police Chief's continued professional participation and advancement.
5. The City agrees to pay the travel and subsistence expenses of the Police Chief for purposes such as official functions, meetings, occasions, short courses, institutes and seminars that are necessary for the good of the City or for the professional development of the Police Chief.
6. The City agrees to appropriate \$1,800 per year, to be used as needed, for continuing education expenses associated with maintaining professional licenses and furthering professional development of the Police Chief.

C. Mutual Commitments

1. Performance Evaluation

The City Manager recognizes that for the Police Chief to respond to its needs and to grow in the performance of the job, the Police Chief needs to know how the City Manager evaluates the Police Chief's performance. To assure that the Police Chief gets this feedback, the City Manager shall conduct an evaluation of the Police Chief's performance at least once each year, and/or when it deems necessary to discuss any concerns or direction in performance.

The City Manager and Police Chief shall jointly define goals and performance objectives which they deem necessary for the proper operation of the City in the attainment of the City Manager's policy objectives, and shall establish the relative priority among the various goals and objectives.

IV. COMPENSATION

The City agrees to provide the following compensation to the Police Chief during the term of the

agreement:

A. Salary

1. Cervenka shall be paid an annual base salary of \$188,822.40 (Step 5) for performing the duties of Police Chief and a 5% increase for obtaining, or being eligible for, a California Peace Officers Standards and Training Executive Certificate effective August 1, 2024. This salary shall be increased by any COLAs applied to the City's Executive Management Employee Group, or the increase determined by the annual Salary Survey in accordance with Ordinance 672, whichever is greater, or by amendment to this Agreement.
2. The Police Chief shall be paid at the same intervals and in the same manner as regular City employees; in the event that there are more than twenty-six pay periods in a calendar year the periodic payments shall be adjusted accordingly so that the salary shall not exceed any amount approved by the City Manager.
3. The City shall not at any time during the term of this Agreement, reduce the base salary, compensation or other financial benefits of the Police Chief, unless as part of a general City management salary reduction, and then in no greater percentage than the average reduction of all City department heads

B. Benefits:

1. Retirement. Police Chief Employee shall be eligible for the "2% at 50" retirement formula enrolled in the Tier 1 ("Classic") retirement formula. Police Chief shall pay employee's contribution to CalPERS. City shall pay the required Employer contribution.
 - If the City Council enters into an agreement with any Public Safety bargaining unit changing the Classic CalPERS formula to "3% at 50" or 3% at 55", this Agreement shall be deemed amended and Employee shall be subject to the same percentage contribution as it is applied to other Public Safety Members and for the same duration.
2. Life Insurance. City shall obtain and pay for a life insurance policy for Police Chief in the amount of \$200,000.
3. Health Insurance. City shall pay 80% of the premiums for medical, dental and vision plans for Police Chief and dependents.
4. Sick Leave and Vacation.
 - (a) Sick Leave:
 - i. Accrual: Police Chief shall accrue sick leave at a rate of eight (8) hours per month. Sick leave may be accrued with no maximum limit.
 - ii. Personal Use: Sick leave may be used as it is accrued. It is to be used for illness or injury and may not be used to supplement days off.
 - iii. Family Care Use: Accrued sick leave may be used for care of children, siblings and parents (be they natural, adoptive, step or foster of the employee or their current spouse or domestic partner), or spouse or domestic partner, to a maximum of one hundred twenty (120) hours in the calendar

year of January 1 through December 31.

- iv. Conversion: Sick leave accrued in excess of eight hundred (800) hours may be converted to vacation on the basis of three (3) hours of vacation time for each ten (10) hours of sick leave accrued and converted.
- v. Up to 25% of sick leave accrued in excess of one thousand (1,000) hours may be converted to vacation on the basis of one (1) hour of vacation time for each one (1) hour of sick leave accrued and converted.
- vi. Conversions may be made once in each calendar year.
- vii. Transfer: Police Chief may voluntarily transfer accrued sick leave to another employee in cases of emergency.
- viii. Compensation on Separation: Upon separation after two or more years of service, Police Chief shall be paid for 30% of unused accrued sick leave. Such compensation is not applicable if Police Chief is discharged for cause.
- ix. Family and Medical Leave: Police Chief shall be entitled to leave as provided for in the Family and Medical Leave Act (FMLA) of 1993 and the California Family Rights Act (CFRA).

(b) Vacation Leave:

- i. Police Chief shall accrue vacation as follows:
 - 120 hours annually for 1 to 10 years of service (i.e. 0-120 months of service);
 - 160 hours annually for 10 to 15 years of service (i.e. 121-180 months of service);
 - 200 hours annually for more than 15 years of service (i.e. more than 180 months of service).
 - Accumulation: Police Chief may accumulate up to 360 hours of vacation leave. The City Manager may authorize accrual of additional vacation hours in situations where vacation time cannot be authorized due to work demands.
 - Use: Vacation leave may be taken as it accrues. Accrued vacation time may be used, at a minimum, in blocks of one (1) hour or more. The date of vacation may be selected by the employee, but shall be approved by the City Manager, who shall consider the wishes of the employee and the needs of the Department.
 - Vacation Buy-Back: Once during each fiscal year, and subject to the approval of the City Manager, a maximum of 160 hours of vacation leave may be cashed in. At the time the cash-in option is exercised, the employee must retain a minimum of 80 hours of vacation leave. Cash-in requests must be made in writing to the City Manager.
6. Cell Phone Allowance. Police Chief shall be paid a technology allowance in the amount of \$40 per month for a Police Chief owned cell phone and, if applicable, \$20 per month for a Police Chief owned tablet, all payable on the City's regular payroll under the procedures currently used by the City for making such payments.
7. City-Provided Vehicle. Police Chief's duties require him to be available to respond to the demands of City business at all times and outside of regular business hours, including weekends. Therefore, City shall provide Employee with a vehicle that may be used for City-related business purposes. City anticipates that the vehicle provided

to Employee may be a Ford Explorer, but the make and model of the vehicle shall remain in the City's sole discretion. City shall pay for reasonable maintenance of the vehicle and gasoline. It is contemplated by the parties that the Employee will use the vehicle principally for City-related business, however, to the extent the Employee uses the vehicle for any incidental personal business, Employee shall pay for gasoline for all such personal use.

8. Uniform Allowance. As permissible by law and subject to the provisions and limitations under the California Public Employees' Retirement Law (California Government Code §20000 et seq.), as amended or superseded from time to time, the City shall report, biweekly, the value of provided uniforms at \$1,300 (one thousand, three hundred dollars) per year, in accordance with California Public Employees' Retirement System ("CalPERS") requirements. The Parties agree the reported value of uniforms is intended to reflect clothing such as pants, shirts, jackets, and related attire and excludes health and safety related equipment. Employee agrees and understands that an increase in the uniform allowance will require an amendment to the Agreement for CalPERS to consider a uniform allowance as a special compensation. If CalPERS does not agree that the original uniform allowance or any increased allowance qualifies as special compensation, then the City shall have no liability in this regard, no duty to appeal this determination on Employee's behalf, and no duty to represent Employee in proceedings related to said determination.

9. Other Benefits: The Police Chief shall be entitled to the following benefits:

- a. Executive Leave. Police Chief shall receive 80 hours of Executive Leave annually accrued as of January 1. Executive Leave must be taken as time off and is not compensable upon termination. This will be prorated if hired after January 1st of the year.

If the Leave is not used by December 31 of each year, the unused balance will not carry forward unless approval by the City Manager is requested and received before December 31. The City Manager may authorize a carry-over of the unused balance for up to 90 days past December 31. Any unused leave not taken within the 90-day extension period will be lost. Executive Leave must be taken as time off and is not compensable upon termination.

- b. Holidays: Police Chief shall receive 12 designated paid holidays per year and one floating holiday per year to be observed during each fiscal year (July 1-June 30). Specified holidays are as follows:

- January 1 (New Year's Day)
- 3rd Monday in January (Martin Luther King Jr. Day)
- 3rd Monday in February (Presidents Day)
- Last Monday in May (Memorial Day)
- July 4 (Independence Day)
- 1st Monday in September (Labor Day)
- 2nd Monday in October (Indigenous Peoples' Day)
- November 11 (Veterans Day)

- 4th Thursday in November (Thanksgiving)
- Friday after Thanksgiving
- December 24 (Christmas Eve)
- December 25 (Christmas Day)

In addition, any day proclaimed by the Governor and recognized by the City Manager as a public holiday, day of mourning, or day of thanksgiving shall be provided as a holiday.

One "floating holiday" may be taken as time off only, scheduled with due regard to the wishes of the employee and the convenience of the City. Floating holidays, defined as eight hours, may not be carried forward from one fiscal year to the next and must be used no later than the last regularly scheduled pay date prior to June 30th of each fiscal year. Unused floating holidays are deemed to be lost, if not used, at the end of each fiscal year or upon termination of employment. Floating holiday time may not be exchanged for actual compensation under any circumstances.

- c. Bereavement Leave. When a death occurs in the Police Chief's immediate family, the Police Chief shall be granted necessary time off of up to five consecutive work days, with compensation, for the purpose of attending the funeral and/or to personal affairs.
- d. Jury Duty. If the Police Chief is summoned to serve on jury duty during an on-duty day, they shall be entitled to leave of absence with full pay for such period of time as may be required to attend the court in response to such summons. The Police Chief may retain such payment as may be allowed for travel, lodging and meal expenses. The Police Chief shall not be required to submit to the City compensation received from the court for jury duty in order to receive full pay and expenses referenced above.

V. SEPARATION

- A. Resignation/Retirement: The Police Chief may resign at any time and agrees to give the City at least 45 days' advance written notice of the effective date of the Police Chief's resignation, unless the Parties otherwise agree in writing. If the Police Chief retires from full time public service with the City, the Police Chief may provide six months' advance notice. The Police Chief's actual retirement date will be mutually established.
- B. Termination & Removal: Police Chief is an exempt at-will employee serving at the pleasure of the City Manager as provided in Government Code Section 36506.
 - 1. The City Manager may remove the Police Chief at any time, either with or without cause. Notice of termination shall be provided to the Police Chief in writing. The City Manager may also elect not to renew this Agreement. Notice of nonrenewal shall also be provided to the Police Chief in writing. The City Manager understands that termination or nonrenewal of employment without cause could result in an adverse financial impact not completely mitigated by any severance compensation as provided in this Agreement. Therefore, the City Manager agrees that if termination or nonrenewal is made without cause, it shall provide not less than 180 days' notice of termination to the Police Chief. If the Police Chief resigns after receiving notice of termination, or notice of nonrenewal, the resignation shall be considered "involuntary" as described in Section 5.D. of this Agreement. Termination as used in this section

shall also include a request that the Police Chief resign, a reduction in salary or other financial benefits of the Police Chief (excluding a general City Management salary reduction), a material reduction in the powers and authority of the Police Chief, or the elimination of the Police Chief's position. Any such notice of termination or act constituting termination shall be given at or effectuated at a duly noticed and conducted meeting of the City Manager.

C. Severance Pay

1. In the event the Police Chief is terminated by the City Manager during such time that the Police Chief is willing and able to perform the Police Chief's duties under this Agreement, the City shall pay the Police Chief a lump sum cash payment equal to the lesser of (a) the actual number of months' salary remaining on the current term of employment and the cash equivalent of health (medical, dental and vision) benefits for that same period, or (b) six (6) months' base salary and cash equivalent of health (medical, dental and vision) benefits then in effect as provided in Section 4 above. It is the intention of the parties that this paragraph complies with the requirements of Government Code Section 53260 et seq. When provided by California Intergovernmental Risk Authority or CIRA Insurance an additional six (6) month's salary may be provided by the insurance company. In the event of any conflict between this provision and those code sections, the terms of those code sections shall govern the contractual relationship between the employer and employee.
2. In addition, the City shall extend to the Police Chief the right to continue health insurance as may be required by and pursuant to the terms and conditions of the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA).
3. In the event the City refuses, following written notice of non-compliance, to comply with any provision in this Employment Agreement benefitting the Police Chief, or the Police Chief resigns following a suggestion, whether formal or informal, by the City Manager that the Police Chief resign, then, in that event, the Police Chief may be deemed to be "terminated" as of the date of such refusal to comply or suggestion to resign and this severance pay provision shall be actuated.
4. All payments required under this Section V are subject to and shall be interpreted to comply with the limitations set forth in Government Code Section 53260.

D. Involuntary Resignation: In the event that the City Manager formally or informally asks the Police Chief to resign, then the Police Chief shall be entitled to resign and still receive the severance benefits provided in Section V.C. above.

E. Separation for Cause

1. Notwithstanding the provisions of Section V.C., the Police Chief may be terminated for cause. As used in this section, "cause" shall mean only one or more of the following:
 - (a) Conviction of, or no contest plea to, a felony;
 - (b) Conviction of, or no contest plea to, any illegal act involving moral turpitude or personal gain;

- (c) Continued abuse of non-prescription drugs or alcohol that materially affects the performance of the Manager's duties;
 - (d) Any act constituting a knowing and intentional violation of the City's conflict of interest code; or
 - (e) Repeated and protracted unexcused absences from the Police Chief's office and 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 termination, payments required by Section V.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 V.C.
 - 3. If the Police Chief is terminated for cause, and "cause" meets the definition of "abuse of office or position," as defined in Government Code section 53243.4, the provisions of Government Code sections 53243 through 53243.4 shall apply and prevail over any contrary terms and conditions of this Agreement.

F. Payment for Unused Leave Balance

- 1. On separation from City employment, the Police Chief shall be paid for all unused accrued leave allowances provided in Section 4.B. above in accordance with the current salary and benefits plan for Exempt At-Will Executive Classification employees. Accumulated leave balances shall be paid at the Police Chief's monthly base salary rate at the effective date of separation.
- 2. In the event the Police Chief dies while employed by the City under this Agreement, the Police Chief's beneficiaries or those entitled to the Police Chief's estate, shall be entitled to the Police Chief's earned salary, and any in-lieu payments for accrued benefits, including compensation for the value of all accrued leave balances.

- G. Joint Statements of Separation: In the event of resignation or retirement of the Police Chief, termination by the City (with or without cause), or other separation of employment as described the Section V, the City and the Police Chief agree that neither any member of the City Manager, or the City's management staff, nor the Police Chief, shall make any written, oral or electronic statement to any member of the public, the press, or any City employee concerning the Police Chief's termination or separation, except in the form of a joint press release or statement, the content of which is mutually agreeable to both the City and the Police Chief. The joint press release or statement shall not contain any text or information that is disparaging to either Party. Either Party may verbally repeat the substance of this Section V.G., and the joint press release or statement, in response to any inquiry.

VI. MISCELLANEOUS PROVISIONS

A. Term

The initial term of this Agreement shall be for a period of twenty-four (24) months beginning 12:00 a.m. August 1, 2024 and continuing until 12:00 a.m. July 31, 2026 (the "initial Termination

Date").

B. Subsequent Terms

Unless the City gives the Police Chief written notice of non-renewal at least 180 days prior to the initial Termination Date or the termination date of any Renewal Term (as hereinafter defined) this Agreement may be renewed by the parties for one or more additional terms of up to three (3) years each, each renewal term to be reflected by a written amendment signed by the parties. If the parties cannot mutually agree to the term of any renewal, this Agreement shall continue in effect for automatic renewals of one (1) year each (whether renewed by amendment or renewed by operation of this Section each, a "Renewal Term").

C. Provisions that Survive Termination

Many sections of this Agreement are intended by their terms to survive the Police Chief's termination of employment with the City, including but not limited to Sections V and VI.F. These sections, and the others so intended, shall survive termination of employment and termination of this Agreement.

D. Amendments

This Agreement may be amended at any time by mutual agreement of the City and the Police Chief. Any amendments are to be negotiated, put in writing, and adopted by the City Manager.

E. 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 official duties or would tend to impair independence of judgment or action in the performance of 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 City employment.
3. The Police Chief is responsible for submitting to the City Clerk the appropriate Statement of Economic Interests at the time of appointment, annually thereafter, and at the time of separation from the position. Form 700 from the Fair Political Practice Commission (FPPC) shall be completed in a timely matter as required by law.

F. Indemnification

1. To the full extent of the law, the City shall defend and indemnify the Police Chief, in his capacity as Police Chief against and for all losses sustained by the Police Chief in direct consequences of the discharge of the Police Chief's duties on the City's behalf for the period of the Police Chief's employment, save and except those losses sustained as a result of the willful act or omission of the Police Chief including any "abuse of office or position," as described in Section V(E)(3) of this Agreement.
2. The City shall defend, save harmless and indemnify the Police Chief against any tort, professional liability claims or demand or other legal action, whether groundless or

otherwise, arising out of an alleged act or omission occurring in the performance of the Police Chief's duties as Police Chief. The City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon.

3. Whenever the Police Chief shall be sued for damages arising out of the performance of the Police Chief's duties, the City shall provide defense counsel for the Police Chief in such suit and indemnify the Police Chief from any judgment rendered against the Police Chief; provided that such indemnity shall not extend to any judgment for damages arising out of any willful wrongdoing. 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, 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.

4. The City and all parties claiming under or through it, hereby waive all rights of subrogation and contribution against the Police Chief, while 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 or on behalf of the City or any party affiliated with or otherwise claiming under it or through it, regardless of any prior, concurrent, or subsequent active or passive negligence by the Police Chief.

G. Severability

If any clause, sentence, part, section, or portion of this Agreement is found 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.

H. Laws Affecting Title

In addition to those laws affecting a Police Chief, the Police Chief shall have the same powers, rights and responsibilities as a Chief Executive Officer, City Administrative Officer, Administrator, and City Administrator as those terms are used in local, state or federal laws when acting in the City Manager's role.

I. 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 Mendocino County, California, unless the Parties mutually agree to removal to a different county.

J. Entire Agreement

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

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above

written.

CITY OF FORT BRAGG

POLICE CHIEF

By: _____
Bernie Norvell, Mayor

By: _____
Neil Cervenka

Attest:

Approved as to Form:

By: _____
Diana Sanchez, City Clerk

By: _____
Baron J Bettenhausen, City Attorney

DRAFT