



CITY OF DEL REY OAKS

650 CANYON DEL REY BLVD., DEL REY OAKS, CALIFORNIA 93940

PHONE (831) 394-8511 FAX (831) 394-6421

DATE: January 24, 2023
TO: Honorable Mayor and City Council
FROM: John Guertin, City Manager
SUBJECT: Ratify Employment Contract for Acting Chief of Police

CEQA: Not a Project under CEQA per Article 20, Section 15378 and General Rule Article 5 Section 15061.

Recommendation

That the City Council ratify employment contract for Acting Chief of Police with Chris Bourquin.

Discussion

After 5 years of service to the City, Chief Jeff Hoyne left the City for an executive position with the Monterey County Sheriff's Office. Commander Chris Bourquin has been filling the Acting Chief of Police role since January 3, 2023. Chris will continue in this "acting" role until a permanent placement is made.

Chris brings 28 years of service and experience with the Del Rey Oaks PD to the role of Acting Chief. He was instrumental in assisting Chief Hoyne with many of the improvements and upgrades of the department in recent years and will ensure our continued progress. Chris is well respected among the staff and the community and will hit the ground running.

This will be a short-term assignment as City/Department needs and organization are evaluated, and a permanent placement is made.

Fiscal Impacts

There is an anticipated salary savings of approximately \$22,000 due to the difference in annual salary for the positions (\$172,000 Chief/\$150,000 Acting).

Respectfully submitted,

John Guertin
City Manager

**EMPLOYMENT AGREEMENT
BETWEEN THE CITY OF DEL REY
OAKS AND CHRIS BOURQUIN**

This Agreement ("Agreement") is made and entered into on the 24th day of January 2023, by and between the City of Del Rey Oaks ("City"), and Chris Bourquin ("Bourquin") both of whom understand as follows:

RECITALS

WHEREAS, Chief of Police Jeff Hoyne left City of Del Rey Oaks employment effective January 2, 2023;

WHEREAS, City desires to have Commander Chris Bourquin fill in as Acting Chief of Police effective January 3, 2023, until a permanent placement is made; and

WHEREAS, City desires to provide certain benefits, to establish certain conditions of employment, and to set working conditions for Bourquin.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

Section 1. Duties:

City hereby agrees to employ Bourquin as Acting Police Chief of City to perform the functions and duties as established by the City Manager, and such other legally permissible and proper duties and functions as the City Manager shall from time-to-time assign to him.

Bourquin shall serve at the pleasure of the City Manager, and report to and receive direction solely from the City Manager. In the event that it becomes necessary, Bourquin may be disciplined and/or placed on administrative leave by the City Manager. Bourquin shall not report to, receive direction from, or be evaluated by the City Council.

Section 2. Termination:

A. Bourquin agrees to remain in the exclusive employ of the City until December 31, 2023 ("Expiration Date") and to neither accept other employment nor to become employed by any other employer until the expiration date of this Agreement, subject to the provisions of Subsection 2. B.

B. If Bourquin resigns his position as Acting Police Acting Chief before the expiration date of the initial or any extended term of this Agreement, then Bourquin shall give City no less than 60 days written notice in advance.

C. As an "at will" employee serving at the pleasure of the City Manager, Bourquin's appointment may be terminated by the City Manager without cause at any time. In the event that Bourquin is terminated without cause, other than as specified in Section 2.D herein, the City agrees that Bourquin shall return to his previous position as Police Commander.

D. For cause termination. Bourquin may be terminated by the City Manager at any time upon five (5) business days' written notice of the termination for cause and the facts and

grounds constituting cause. "Cause" shall be defined to include any misconduct materially related to performance of official duties, including but not be limited to any of the following: 1) Breach of this Agreement; 2) Willful or persistent material breach of duties; 3) Resume fraud or other acts of material dishonesty; 4) Unauthorized leave; 5) Conviction of a misdemeanor involving moral turpitude (*i.e.*, offenses contrary to justice, honesty, or morality), conviction of a misdemeanor DUI, or conviction of a felony under California law (the City may, in its discretion, place Bourquin on paid or unpaid administrative leave with pay until resolution of charges brought against Bourquin); 6) Violation of the City's anti-harassment policies and/or a finding that legally prohibited personal acts of harassment against a City official or employee or legally prohibited personal acts of discrimination against a City official or employee has occurred; 7) Violation of the City's Municipal Code, ordinances, rules, and regulations, including but not limited to the City's Personnel Manual or Ordinances; 8) Use or possession of illegal drugs; 9) Engaging in conduct tending to bring embarrassment or disrepute to the City; 10) Any illegal or unethical act involving personal economic gain; 11) A pattern of repeated, willful and intentional failure to carry out materially significant and legally constituted direction of the City Manager or the policy decisions of the City Council; and 12) Gross misfeasance or gross malfeasance.

E. Death, Disability or Inability to Perform.

1. This Agreement shall terminate immediately upon Bourquin's death or mental or physical incapacity to perform the duties of Acting Chief of Police, subject to the City's accommodation obligations.

2. Unpaid Leave of Absence. The City reserves the right to place Bourquin on a disability leave of absence during the Term of this Agreement if Bourquin suffers any physical or mental disability that would prevent him from safely performing his duties under this Agreement. The City will engage in an interactive process with Bourquin to identify and evaluate possible accommodations that would allow Bourquin to perform his duties under this Agreement. The City will provide reasonable accommodation in accordance with applicable law in the event Bourquin's disability renders him unable to perform the essential functions of his job. If an accommodation is identified that is reasonable and will not impose an undue hardship, the City will make the accommodation. If City is unable to make a reasonable accommodation, Bourquin's employment with the City will terminate, and this Agreement will terminate.

Section 3. Non-Industrial Injury or illness:

If Bourquin is permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or health for a period of four successive weeks beyond any accrued leave, City shall have the option to terminate the Agreement.

Section 4. Salary and Compensation:

Bourquin shall receive a base salary of \$150,000 per year while performing the role of Acting Chief.

Section 5. Performance Evaluation:

A. The City Manager shall review and evaluate the performance of Bourquin on a regular basis after the commencement of and for the duration of this Agreement.

B. The City Manager and Bourquin shall define the criteria that they determine are necessary for the proper fulfillment of Bourquin's duties, as outlined above, and establish goals and objectives for Bourquin to fulfill, including the establishment of a relative priority among the goals and objectives. All such goals and objectives shall be reduced to writing. The goals and objectives shall be reasonably attainable within the time and budgetary resources allocated to

Bourquin to achieve them.

Section 6. Hours of Work:

Bourquin shall be employed on a full-time basis and for optimal customer service and should generally perform such work during City's normal business hours. However, it is recognized that Bourquin shall be required to devote a great deal of time outside of normal office hours on business of City, and to that end he shall be allowed to establish an appropriate work schedule, with the approval of the City Manager, to meet the requirements of the position.

Section: 7. Automobile Use:

City shall provide Bourquin with an unmarked automobile suitable for his use while performing his duties as Acting Chief of Police in compliance with Internal Revenue Regulation Section 1.274-5 T(k)(6). If the City requires Bourquin to travel outside a 50-mile radius of the Monterey Airport, Bourquin shall obtain authorization from the City Manager to rent a vehicle at the expense of the City. All vehicle use by Bourquin pursuant to this Agreement must comply with the City's fleet management policy and procedures, which may be updated from time to time.

Section 8. Vacation and Sick Leave:

Bourquin shall continue to accumulate sick leave and vacation time in accordance with City policies and at his current (Commander position) rates of accrual. Bourquin shall be permitted to accumulate a maximum of 240 hours of Vacation Leave. Upon termination of employment Bourquin will be paid for unused Vacation Leave that has been earned through the last day of work up to a maximum of 240 hours.

Section 9. Bereavement Leave:

When compelled to be absent from work by reason of death of an immediate family member or where death appears imminent Bourquin shall be entitled to receive up to three (3) days Bereavement Leave, which shall not be charged against any other leave acquired by Bourquin. If Bourquin desires such leave, he shall notify, in writing, the City Manager of the time of absence needed and the expected date of return to work. Bereavement Leave shall not accrue or roll over from year to year and shall have no cash value and may not be cashed out.

The immediate family is defined as spouse; natural, step or legal child; parent; brother; sister; grandparent; grandchild; mother-in-law or father-in-law.

Section 10. Medical. Dental. Vision. Insurance and Other Benefits:

Employee and dependent coverage is available from CalPERS at the employer's cost. Health Benefits are available on the date of hire. Dental coverage for employee and dependents is available at the employer's cost. Dental Benefits shall be available as of the execution date of this Agreement. Vision coverage for employee and dependents is available at employer cost. Vision benefits shall be available as of the execution date of this Agreement.

Section 11. Holidays:

Bourquin is authorized to celebrate the following holidays: New Year's Day, Martin Luther King Day, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, Day after Thanksgiving Day, Day before Christmas Day; Christmas Day; Caesar Chavez Day; Floating Holiday; and any other holidays approved by the Council.

Section 12. Retirement:

The City shall pay the employer's required PERS contribution, and Bourquin shall pay

the employee contribution as set forth in California statute. Bourquin shall receive retirement benefits at 2% at 55 years of age. The City shall provide for optimal conversion of accrued Sick Leave for Service Credit upon retirement, if available, subject to PERS regulations.

Section 13. Deferred Compensation Plan:

The City shall provide a Deferred Compensation Plan. The City shall not be required to make a contribution to any of Bourquin's Deferred Compensation Plan.

During the term of the Agreement and any extensions thereof, Bourquin shall not accept any outside employment of any kind or character without having first obtained the prior approval of the City Manager.

Section 14. Dues and Subscriptions:

City agrees to budget for and to pay for professional dues and subscriptions of Bourquin necessary for his continuation and full participation in national, regional, state and local associations and organizations as are desirable for his continued professional participation, growth, and advancement, and for the good of the City; provided, however, the amount of such dues and subscriptions shall not exceed the amount appropriated therefore in the annual budget.

Section 15. Professional Development:

A. City agrees to pay for travel and subsistence expenses of Bourquin, with the advanced written approval of the City Manager, for professional and official travel, meetings, and occasions adequate to continue the professional development of Bourquin and to adequately pursue necessary official functions for City, and such other national, regional, state and local governmental groups and committees thereof which Bourquin serves as a member; provided, however, the amount of such travel and subsistence shall not exceed the amount appropriated therefore in the annual budget. Bourquin shall not accept a leadership, executive, or other officer position in a related industry or trade group without the advance consent of the City.

B. City also agrees to pay for travel and subsistence expenses of Bourquin for short courses, institutes and seminars that are necessary for his professional development and for the good of the City; provided, however, the amount of such travel and subsistence shall not exceed the amount appropriated therefore in the annual budget.

Section 16. Indemnification:

In addition to the requirements of state and local law, City shall defend, save harmless, and indemnify Bourquin against any tort, professional liability claim or demand, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Bourquin's duties as Acting Police Chief. However, the provisions of Section 2.D and Section 20 shall prevail over this Section 16. The City shall have no obligations under this Section 16 for actions outside the course and scope of the services provided by Bourquin pursuant to this Agreement, or should Bourquin be terminated, pursuant to Section 2.D.

Section 17. Bonding:

City shall bear the full cost of any fidelity or other bonds required of Bourquin under any law or ordinance.

Section 18. Other Terms and Conditions of Employment:

A. The City may fix other terms and conditions of employment, as it may determine

from time to time relating to the performance of Bourquin, following consultations with him, provided such terms and conditions are not inconsistent with or in conflict with the provisions of the Agreement, the Ordinances of the City, the City's enabling act or any other law.

B. It is understood and agreed by City and Bourquin that Bourquin is an "at will" employee of the City. As such, Bourquin serves at the pleasure of the City Manager; Bourquin is subject to the provisions of the City's Personnel Rules and Regulations, provided they do not conflict with the tenets of this Agreement, in which case, this Agreement shall control.

Section 19. Notices:

Notices pursuant to the Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

TO CITY:

City Manager,
650 Canyon Del Rey Blvd,
Del Rey Oaks, CA 93940

TO BOURQUIN:

Chris Bourquin
(Address on file)

Alternatively, notices required pursuant to the Agreement may be personally served to the same persons as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the United States Postal Service.

Section 20. Government Code §§ 53243-53243.4.

Assembly Bill 1344, which was subsequently enacted as Government Code §§ 53243 53243.4, was enacted to provide greater transparency in local government and institute certain limitations on compensation paid to local government executives. These statutes also require that contracts between local agencies and its employees include provisions requiring an employee who is convicted of a crime involving an abuse of his office or position to provide reimbursement to the local agency. These statutes are set forth in full in Exhibit "B" attached hereto and incorporated herein.

Accordingly, the parties agree that it is their mutual intent to fully comply with these Government Code sections and all other applicable law as it exists as of the date of execution of this Agreement and as such laws may be amended from time to time thereafter. Specifically, for the purposes of this Agreement, "abuse of office or position" shall be defined as in California Government Code Section 53243.4. Notwithstanding any other provision in this Agreement and in accordance with California Government Code Sections 3511.1, 3511.2, 53243, 53243.1 and 53243.2, the following limitations apply to City's obligations to Bourquin:

- In the event Bourquin is placed on paid leave pending an investigation, Bourquin shall reimburse such pay to City if he is subsequently convicted of a crime that constitutes an abuse of office or position.
- In the event City pays for Bourquin's legal criminal defense, he shall fully reimburse such funds to the City if he is subsequently convicted of a crime that constitutes an abuse of office or position.
- If this contract is terminated, any cash settlement related to the termination that Bourquin may receive from City must be full reimbursed to City if he is subsequently convicted of a crime that constitutes an abuse of office or position.

Bourquin represents he has reviewed, is familiar with, and agrees to comply fully with each of these provisions if any of these provisions are applicable to Bourquin, including that Bourquin agrees that any cash settlement or severance related to the terms of this Agreement involving compensation for termination that Bourquin may receive from the City shall be fully reimbursed to the City.

Section 21. General Provisions:

A. Attorney's Fees. In the event either party to this Agreement brings a judicial proceeding to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and related expenses and costs, including but not limited to court costs, expert witness fees and expenses, and accountant fees and expenses. Recovery of these fees and costs shall be as additional costs awarded to the prevailing party and shall not require initiation of a separate legal proceeding.

B. Dispute Resolution. In the event of a dispute arising out of the performance of this Agreement, both parties agree to make good faith efforts to informally resolve the dispute. If an informal settlement cannot be reached, the parties agree to mediate any disagreements in good faith. The parties shall split equally the costs of mediation. Should either party determine a dispute cannot be resolved in mediation, it is agreed that the dispute may be resolved in a court of law competent to hear the matter.

C. Entire Agreement. This Agreement represents the entire Agreement between the parties and supersedes any and all other Agreements, either oral or in writing, between the parties with respect to the employment of Bourquin by City and contains all of the covenants and Agreements between the parties with respect to that employment. Each party to this Agreement acknowledges that no representations, inducements, promises, or Agreements, oral or otherwise, have been made by either party, or by anyone acting on behalf of either party, which are not embodied herein, and that no other employment Agreement, statement, or promise not contained in this Agreement shall be valid or binding upon either party.

D. Modifications. Any modifications to this Agreement shall be effective only if in writing and signed by both of the parties hereto.

E. Effect of Waiver. The failure of either party to insist upon strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed a waiver of that, or any other, term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

F. Partial Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

G. Section Headings. All section headings in this Agreement are for the convenience of reference and are not intended to define or limit the scope of any provision of this Agreement.

H. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

[Signatures follow on the next page.]

CITY OF DEL REY OAKS:

John Guertin, City Manager

CHRIS BOURQUIN:

Chris Bourquin

APPROVED AS TO FORM:

Alex Lorca, City Attorney

EXHIBIT A

GENERAL RELEASE AGREEMENT

This General Release Agreement ("Release Agreement") is entered into by and between Chris Bourquin ("Bourquin") and CITY ("City"), in light of the following facts:

1. Bourquin's employment with City concluded on: _____
2. Certain disputes have arisen between City and Bourquin.
3. City and Bourquin each deny any liability whatsoever to the other.
4. City and Bourquin wish to resolve fully and finally any and all disputes they may have with each other.
5. Consideration of Agreement. Bourquin is hereby informed that he has twenty-one (21) days from receipt of this Agreement to consider it. City hereby advises Bourquin to consult with his legal counsel before signing this Agreement.
6. Revocation Period. Bourquin acknowledges that for a period of seven (7) days following the signing of this Agreement ("Revocation Period"), he may revoke the Agreement. This Agreement shall not become effective or enforceable until the day the Revocation Period has expired.
7. Receipt of Sale • Payment. Bourquin acknowledges receipt of a check or checks for all compensation owing to him, including salary, accrued benefit balances and reimbursed expenses ("Salary Payment") from City. The payment does not constitute consideration for this Agreement.
8. Severance. Within five (5) days following Bourquin's signing, delivering to the City, and not revoking this Agreement, City shall pay Bourquin the gross amount provided for in Section 2.C. of the attached Employment Agreement, less applicable deductions. Bourquin acknowledges that the Severance is in excess of all amounts due and owing him as a result of his employment by City.
9. General Release. In consideration of the Severance to be paid and provided to Bourquin, and other good and valuable consideration, Bourquin hereby releases and discharges City and its past and present City Council Members, employees, representatives and agents, from all rights, claims, causes of action, and damages, both known and unknown, in law or in equity, concerning and/or arising out of his employment by City which he now has, or ever had, including but not limited to any rights, claims, causes of action or damages arising under Title VII of the Civil Rights Act of 1964, the Vocational Rehabilitation Act of 1973, the Employee Retirement Income Security Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Older Workers Benefits Protection Act, the Family and Medical Leave Act of 1993, the Domestic Partners Act of 2003, the California Labor Code, the Private Attorneys General Act of 2004, the California Moore-Brown-Roberti Family Rights Act, the California Unruh Civil Rights Act, the California Fair Employment and Housing Act, any other federal, state, or local

employment practice legislation, or any federal or state common law, including wrongful discharge, breach of express or implied contract, or breach of public policy.

Bourquin hereby waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of California. City Manager understands and acknowledges the significance and consequences of this specific waiver of Section 1542. Section 1542 of the Civil Code of California states as follows:

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of City and its past and present City Council Members, employees, representatives and agents, Bourquin expressly acknowledges that this General Release Agreement is intended to include in its effect, without limitation, all claims which he does not know or suspect to exist in his favor.

Bourquin further acknowledges that he has read this General Release and that he understands that this is a general release, and that he intends to be legally bound by the same.

10. Fees and Costs. Bourquin and City agree that in the event of litigation relating to this Release Agreement, the prevailing party shall be entitled to recover his/its reasonable attorneys' fees and costs.

Dated: _____

City of Del Rey Oaks

Dated: _____

Chris Bourquin

Exhibit B

GOVERNMENT CODE SECTIONS 53243-53243.4 and 53260(a)

53243. On or after January 1, 2012, any contract executed or renewed between a local agency and an officer or employee of a local agency that provides paid leave salary offered by the local agency to the officer or employee pending an investigation shall require that any salary provided for that purpose be fully reimbursed if the officer or employee is convicted of a crime involving an abuse of his or her office or position.

53243.1. On or after January 1, 2012, any contract executed or renewed between a local agency and an officer or employee of a local agency that provides funds for the legal criminal defense of an officer or employee shall require that any funds provided for that purpose be fully reimbursed to the local agency if the officer or employee is convicted of a crime involving an abuse of his or her office or position.

53243.2. On or after January 1, 2012, any contract of employment between an employee and a local agency employer shall include a provision which provides that, regardless of the term of the contract, if the contract is terminated, any cash settlement related to the termination that an employee may receive from the local agency shall be fully reimbursed to the local agency if the employee is convicted of a crime involving an abuse of his or her office or position.

53243.3. On or after January 1, 2012, if a local agency provides, in the absence of a contractual obligation, for any of the payments described in this article, then the employee or officer receiving any payments provided for those purposes shall fully reimburse the local agency that provided those payments in the event that the employee or officer is convicted of a crime involving the abuse of his or her office or position.

53243.4. For purposes of this article, "abuse of office or position" means either of the following:

(a) An abuse of public authority, including, but not limited to, waste, fraud, and violation of the law under color of authority.

(b) A crime against public justice, including, but not limited to, a crime described in Title 5 (commencing with Section 67), Title 6 (commencing with Section 85), or Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

53260. (a) All contracts of employment between an employee and a local agency employer shall include a provision which provides that regardless of the term of the contract, if the contract is terminated, the maximum cash settlement that an employee may receive shall be an amount equal to the monthly salary of the employee multiplied by the number of months left on the unexpired term of the contract. However, if the unexpired term of the contract is greater than 18 months, the maximum cash settlement shall be an amount equal to the monthly salary of the employee multiplied by 18.

GOVERNMENT CODE SECTIONS 3511.1-3511.2

3511.1. As used in this chapter, the following definitions apply:

- (a) "Compensation" means annual salary, stipend, or bonus, paid by a local agency employer to a local agency executive.
- (b) "Cost-of-living" means the California Consumer Price Index for Urban Wage Earners and Clerical Workers as calculated by the Department of Industrial Relations.
- (c) "Local agency" means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission, or agency thereof, or other local public agency.
- (d) "Local agency executive" means any person employed by a local agency who is not subject to the Meyers-Milius-Brown Act (Chapter 10 (commencing with Section 3500)), Chapter 5 (commencing with Section 45100) of Part 25 of Division 3 of Title 2 of the Education Code, or Chapter 4 (commencing with Section 88000) of Part 51 of Division 7 of Title 3 of the Education Code, and who meets either of the following requirements:
 - (1) The person is the Acting Chief executive officer, a deputy Acting Chief executive officer, or an assistant Acting Chief executive officer of the local agency.
 - (2) The person is the head of a department of a local agency.
 - (3) The person's position within the local agency is held by an employment contract between the local agency and that person.

3511.2. On or after January 1, 2012, any contract executed or renewed between a local agency and a local agency executive shall not provide for the following:

- (a) An automatic renewal of a contract provides for an automatic increase in the level of compensation that exceeds a cost-of-living adjustment.
- (b) A maximum cash settlement that exceeds the amounts determined pursuant to Article 3.5 (commencing with Section 53260) of Chapter 2 of Part 1 of Division 2 of Title 5.