

City of South Gate
CITY COUNCIL

AGENDA BILL

For the Regular Meeting of: August 10, 2021
Originating Department: City Manager's Office

Interim City Manager: Chris Jeffers Interim City Manager: Chris Jeffers

SUBJECT: AMENDMENT NO. 2 TO CONTRACT NO. 2787 EMPLOYMENT AGREEMENT WITH RANDALL DAVIS

PURPOSE: To further amend previously approved Employment Agreement with Randall Davis effective January 1, 2012, to provide for a structured deferred payment of accrued and vested leave after employee's separation from the City of South Gate.

RECOMMENDED ACTIONS: The City Council will consider:

- a. Approving Amendment No. 2 to the Employment Agreement between the City and Randall Davis, Police Chief, consistent with direction previously given by the City Council to city negotiators for a structured deferred payment of accrued and vested leave after employee's separation from the City of South Gate.
- b. Authorize the Mayor to execute the Agreement in a form acceptable to the City Attorney.

FISCAL IMPACT: Employee is entitled to full cash out value of vested and unused leaves accrued during his 30+ years of employment with the City of South Gate. The value of those leaves is \$429,708.15. The contractually required payout would be restructured from a lump sum payout through the next full payroll period after separation to a deferred payout in three payments, with no interest accruing, of \$108,007.05 on August 19, 2021; \$160,850.55 on January 23, 2022 and \$160,850.55 on January 23, 2023. There is no additional cost incurred by the City of South Gate in amending the employment agreement to permit this deferred payment structure.

ANALYSIS: The current Employment Agreement provides payment of all accrued and unused leave upon separation. By law, the payment must be paid within the next full pay period after separation. The employee, however, has requested that the lump sum payment be deferred and restructured to three payments annually over a three-year period. Under state law all employees are entitled to full compensation of accrued and unused holiday, vacation, and administrative leave that the employees have at the time of separation. Under the current Employment Agreement, the City has agreed that accrued unused sick leave shall be paid to employee upon termination, resignation or retirement at 100 percent.

It should be noted that with all new Directors hired after July 1, 2021, there is no sick leave cash out upon separation. Instead, any accrued sick time is potentially counted as service credit at the time of retirement under the City's CalPERS contract. Also, all new employment agreements will provide clarity on the issuance of any final check issuance.

- ATTACHMENT:**
- A. Proposed Amendment No. 2 to Contract No. 2787
 - B. Contract No. 2787
 - C. Amendment No. 1 to Contract No. 2787

**AMENDMENT NO. 2 TO CONTRACT NO. 2787
THE EMPLOYMENT AGREEMENT BETWEEN
THE CITY OF SOUTH GATE AND RANDALL J. DAVIS**

This Amendment No. 2 ("Amendment No. 2") to Contract No. 2787, the Employment Agreement ("Agreement") between the City of South Gate, a municipal corporation (the "City"), and Randall J. Davis ("Employee"), effective January 1, 2012, shall be effective as of July 26, 2021. The City and Employee are jointly referred to as the "Parties". The Parties to this Amendment do hereby enter into the amended terms and conditions as follows:

RECITALS

WHEREAS, the Parties hereto have previously entered into Contract No. 2787, an Agreement to set forth the terms and conditions upon which Employee will provide professional services to the City in his capacity as Chief of Police;

WHEREAS, the Parties previously executed Amendment No. 1 to Contract No. 2787, effective January 1, 2016, relating to adjustment of base salary and term of the agreement;

WHEREAS, Employee knowingly and voluntarily enters into this Amendment No. 2 to Contract No. 2787 and freely, without any duress from the City, and accepts the amended terms and conditions of said Agreement;

WHEREAS, Employee is retiring from his employment and has requested to have his accrued and unpaid sick leave, administrative leave and vacation paid out in three annual installments on the indicated agreed upon dates, rather than in a lump sum payment upon retirement;

WHEREAS, the City is under no obligation to fulfill Employee's request and undertakes this action as an accommodation to Employee and in consideration of the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing, the Parties hereto agree to the following amended terms:

AGREEMENT

Employee's unused, accrued and unpaid vacation, administrative and sick leave hours upon retirement scheduled for July 28, 2021, shall be paid to Employee over a three (3) calendar year period, commencing on or before August 19, 2021, and ending on or about January 19, 2023, in three (3) installments with no interest accruing on any such unpaid monetary sums, subject to withholdings for state and federal payroll, and other customary taxes and deductions.

City and Employee further agree that Employee accrued aggregate leave balances totaled 3,899.21, and that he is entitled to the following payouts of such accrued leave time earned while employed by the City of South Gate at the hourly rate of \$110.2039:

On or about August 19, 2021:	\$108,007.05
On or about January 20, 2022:	\$160,850.55
On or about January 19, 2023:	<u>\$160,850.55</u>
Total	\$429,708.15

Employee acknowledges that these payments in total reflect the full and complete aggregate due to Employee for all unpaid leave balances. Employee expressly agrees to waive any state or federal law requiring that the timing of payment of any or all such sums be made earlier, as the deferral of payment is at Employee's request. City will deduct the applicable federal and state employment taxes and FICA deductions from the wages paid under this Section. Employee shall be solely responsible for making any necessary remaining state and federal withholdings or for the payment of any of his taxes made necessary by virtue of the above payments, and Employee shall be exclusively liable for the payment of all applicable state and federal taxes for which Employee is responsible, if any, as a result of Employee's receipt of the unpaid leave payments.

Accordingly, Employee shall hold the City harmless for payment of Employee's tax obligations as may be required by any federal, state, or local taxing authority, at any time, as a result of the payment of the consideration set forth herein, as well as any investigative and/or enforcement proceedings that may be initiated by the Internal Revenue Service or the Franchise Tax Board, or any other taxing authority, regarding claims of taxes owed by Employee in connection with this payment, including, but not limited to, any and all of his tax liabilities, penalties, and related reasonable attorneys' fees which may become due as a result of this payment.

The Employee understands there is no interest owed or earned on the outstanding funds.

IN WITNESS WHEREOF, the City of South Gate has caused this Agreement to be signed and executed on its behalf by the City Manager and duly attested by the City Clerk, and Employee has signed and executed three (3) copies of this Agreement.

CITY OF SOUTH GATE:

Dated August 10, 2021

By: _____
Al Rios, Mayor

EMPLOYEE:

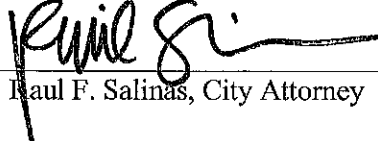
Dated: August 10, 2021

By: _____
Randall J. Davis

ATTEST:

By: _____
Carmen Avalos, City Clerk
(SEAL)

APPROVE AS TO FORM:

By:  _____
Raul F. Salinas, City Attorney

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement"), is effective the 1st day of January, 2012, and is made by and between the CITY OF SOUTH GATE, a municipal corporation (the "City"), and RANDALL J. DAVIS ("Employee"). The parties to this Agreement do hereby enter into the terms, conditions, covenants, duties and responsibilities as follows:

RECITALS

WHEREAS, the City is a municipal corporation providing a wide range of public services to the community;

WHEREAS, for the City to insure that its responsibilities to the health and safety of the public are met at all times, the City must attract and retain in its employment a Chief of Police ("Police Chief") who exhibits the knowledge, experience, technical ability, professionalism and qualities of leadership necessary to meet the City's objectives;

WHEREAS, commencing on July 28, 1991, Employee worked for the City as a peace officer for twenty years of service and as a Captain since March 2, 2009; and

WHEREAS, the City desires to retain the service of Employee to serve as Police Chief for a period of four years, pursuant to the terms and conditions set forth herein.

WHEREAS, it is the desire of the City Council to provide certain benefits, establish certain conditions of employment and set working conditions for the position of Police Chief; and

WHEREAS, it is the desire of the City Council to: (1) retain the services of Employee and to provide inducement for him to remain in such employment; (2) establish a clear and mutually understood system of compensating Employee; (3) provide a just means for terminating the services of Employee at such time as he may be unable to discharge fully his duties due to disability or retirement or when the City Council may desire to otherwise terminate his employment, and

WHEREAS, in contemplation of and subject to the approval of the City Council, Employee agrees that he will serve as Police Chief effective as of January 1, 2012.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and as authorized by the South Gate Municipal Code, the applicable Personnel Rules and Regulations, all Resolutions previously adopted by the City, and the provisions of the California Government Code, the parties hereto agree as follows:

Section 1. Duties.

A. The City hereby hires Employee as Police Chief to perform the duties and functions as specified in State law and in the South Gate Municipal Code, and to perform such other legally permissible duties as defined in the City's Job Classification specifications and as the City Manager shall from time to time assign.

B. Employee shall perform other related and necessary duties as required by law and designated by the City. Employee shall be subject to the powers, terms and conditions of the South Gate Municipal Code relating to the position of Police Chief. In addition to the duties and responsibilities defined herein, during the term of this Agreement, and any extensions thereto, Employee shall also serve as a board member of any City-based non-profit organization requiring in its bylaws the participation of the Police Chief.

C. The Employee and City Manager shall mutually establish performance goals and objectives to be met by the Employee for each year of this Agreement. Said objective shall be established as part of an annual evaluation process.

Section 2. Compensation and Review.

A. The term of this Agreement shall be for four (4) years commencing from the effective date, ending December 31, 2015. Employee's base salary during the term of this Agreement shall be One Hundred Eighty Four Thousand Dollars (\$184,000). Employee shall be given an annual uniform allowance of Five Hundred Dollars (\$500.00).

B. Effective July 1, 2014, Employee may be eligible to receive an increase in his salary in an amount up to the percentage increase, if any, afforded other City-employed peace officers on or after July 1, 2014, subject to the recommendation of the City Manager and approval by the City Council.

C. The City Manager shall conduct an annual performance evaluation of Employee using such criteria as the City Manager may establish with the input from the Employee.

D. This Agreement may be terminated with or without cause. Employee may be terminated for cause based on a felony conviction, a misdemeanor conviction involving moral turpitude, or conduct unbecoming an officer. In such, no severance payment shall be paid by City to Employee. If the Agreement is terminated by the City without cause, Employee shall be entitled to receive nine (9) months of his then present base salary. Employee's severance payment, together with all accrued and unpaid benefits, shall constitute the entirety of all sums due to Employee under this Agreement.

E. Notwithstanding any other benefit offered by the City to other peace officers, or to any other City employee, Employee's sole and exclusive compensation and benefits shall be governed exclusively by this Agreement.

Section 3. Schedule.

The Employee's schedule of work each day and week shall vary in accordance with the work required to be performed and as approved by the City Manager. It is recognized that the Police Chief must devote a great deal of his time outside of normal office hours to business of the City and, to that end, will be allowed to take compensatory time off as shall be deemed appropriate during said normal office hours.

Section 4. Automobile.

During the term of this Agreement, Employee shall be provided an automobile by Employer for Employee's exclusive and unrestricted use. Employer shall be responsible for paying for liability, property damage and comprehensive liability insurance and for the purchase, operation, maintenance, repair and regular replacement of said automobile.

Section 5. Other Benefits.

A. Employee shall be entitled to observe holidays on the same basis as other city management employees. Employee shall earn vacation leave at a rate of 200 hours annually, and shall be allowed to accrue unused vacation leave to a maximum of 400 hours. The full value of any such unused vacation leave shall be paid to employee upon termination, resignation or retirement. Employee shall earn sick leave at a rate of 156 hours annually, and shall be allowed to accrue unused sick leave and shall be paid to employee upon termination, resignation or retirement at 100 percent. The full value of any such unused sick leave shall be paid to employee upon termination, resignation or retirement.

B. The City shall procure and maintain in force a policy of life insurance for the benefit of Employee's survivors in the amount of \$150,000.

C. The City shall pay the Employer contribution and Employee will pay the Employee contribution on behalf of Employee for his membership in the Public Employees Retirement System. The City shall pay the premium for health and dental insurance coverage for employee and his spouse in the same amount and manner this benefit is provided to other management employees. Employee's retired medical benefit shall remain at the current Kaiser rate plus 5% for the duration of this contract and at the time of termination, resignation, or retirement, it shall be fixed at the rate at that time with no additional percentage increases. Employee agrees that he will not be entitled to receive employee paid membership contribution benefits ("EPMC"), or the value thereof, upon the termination of his employment with the City.

Section 6. Indemnification.

A. The City shall defend, save harmless and indemnify Employee 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 Employee's duties as defined in this Agreement. The City will compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon for Employee's activities performed within the course and scope of his employment.

Section 7. Bonding.

A. The City shall bear the full costs of any fidelity or other bonds required of the Employee under any law or ordinance.

Section 8. Modifications.

A. Any modification to this Agreement must be in writing and signed by both parties executing this Agreement to be effective.

Section 9. Effect of Waiver.

A. The failure of either party to insist on 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 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.

Section 10. Entire Agreement.

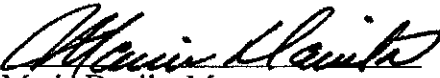
A. Each of the Recitals stated above are incorporated by reference is fully set forth herein.

B. Each party agrees that this Agreement is valid and shall be binding upon said party. In the event of Employee's death prior to the expiration of this Agreement or any extension thereof, the heirs at law and executors of Employee shall be entitled to accrued benefits as prescribed in Section 5 and earned and unpaid salary to which Employee would have been entitled. Each party to this Agreement acknowledges that no representation, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein, and that no other agreement, statement or promise not contained or referenced in this Agreement shall be valid or binding on either party. Employee has ten (10) days, following approval by the City, to review and execute this Agreement.

IN WITNESS WHEREOF, the City of South Gate has caused this Agreement to be signed and executed on its behalf by the Mayor and duly attested by the City Clerk, and Employee has signed and executed three (3) copies of this Agreement.

Dated: December 19, 2011

“CITY”

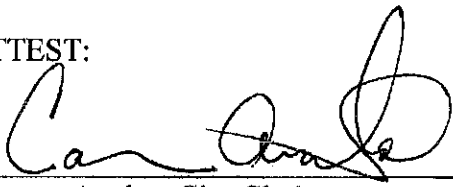
By: 
Maria Davila, Mayor

Dated: December 19, 2011

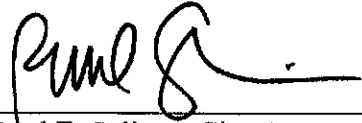
“EMPLOYEE”

By: 
Randall J. Davis

ATTEST:


Carmen Avalos, City Clerk

APPROVED AS TO FORM:


Raul F. Salinas, City Attorney

**AMENDMENT NO. 1 TO CONTRACT NO. 2787 -
THE EMPLOYMENT AGREEMENT BETWEEN
THE CITY OF SOUTH GATE AND RANDALL J. DAVIS**

This Amendment No. 1 (Amendment) to Contract No. 2787, the Employment Agreement ("Agreement") between the City of South Gate, a municipal corporation (the "City"), and Randall J. Davis ("Employee"), effective January 1, 2012, shall be effective June 26, 2016. The City and Employee are jointly referred to as the "Parties". The Parties to this Amendment do hereby enter into the amended terms and conditions as follows:

RECITALS

WHEREAS, the Parties hereto have previously entered into Contract No. 2787, an Agreement to set forth the terms and conditions upon which Employee will provide professional services to the City in his capacity as Chief of Police;

WHEREAS, the City desires to continue to retain the services of Employee and to provide inducement for him to remain in such employment;

WHEREAS, Employee knowingly and voluntarily enters into this Amendment No. 1 to Contract No. 2787 and freely, without any duress from the City, accepts the amended terms and conditions of said Agreement;

WHEREAS, the Parties desire in this Amendment No. 1 to amend certain terms and conditions established in the Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained and as authorized by the South Gate Municipal Code, the applicable Personnel Rules and Regulations, all Resolutions currently in effect and adopted by the City, and any and all applicable provisions of federal and/or state law, including but not limited to the California Government Code, the Parties hereto agree to the following amended terms:

AGREEMENT

This Section 2A replaces and supersedes Section 2A of Contract No. 2787:

SECTION 2. Compensation and Review.

A. Salary. Effective January 1, 2016, the term of this Agreement shall be on a month-to-month basis pending approval of a new contract. Effective June 26, 2016, Employee's base salary during the term of this month-to-month Agreement shall be set at Step "A" of Range 702, in the monthly amount of \$16,553.00. Employee shall be given an annual uniform allowance of \$500.00.

IN WITNESS WHEREOF, the City of South Gate has caused this Amendment No. 1 to be signed and executed on its behalf by the Mayor and duly attested by the City Clerk, and the Employee has signed and executed three (3) copies of this Amendment.

CITY OF SOUTH GATE

Dated: June 14, 2016

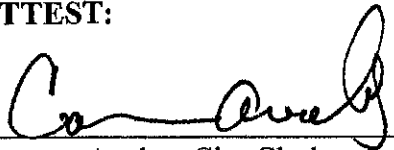
By: 
W. H. (Bill) De Witt, Mayor

EMPLOYEE

Dated: June 14, 2016

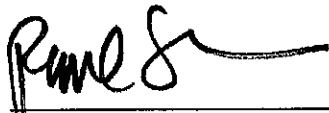
By: 
Randall J. Davis

ATTEST:


Carmen Avalos, City Clerk

(SEAL)

APPROVED AS TO FORM:


Raul F. Salinas, City Attorney