

## SEPARATION AGREEMENT AND GENERAL RELEASE

THIS SEPARATION AGREEMENT AND GENERAL RELEASE (hereafter, "Agreement") of all claims against the City of Petaluma, which includes without limitation, the City Council, City Council members, the City Manager, other City officials, City directors, departments, commissions, predecessors, successors, subsidiaries, related entities, past and present employees, independent contractors, managers, attorneys, agents and assigns (collectively, "the City"), is made by David Sears ("Sears") and the City ("the Parties").

### RECITALS

WHEREAS, Sears was employed by the City as a law enforcement officer and member of the Petaluma Police Department beginning September 7, 1999; and

WHEREAS, Sears has desired to resign from his employment from the City, and Sears and the City have had a mutual interest in ending their employment relationship; and

WHEREAS, as set forth herein, Sears desires to resolve, fully and forever, any and all actual and potential grievances, disputes, controversies, claims, actions and lawsuits he might have against the City in order to avoid the uncertainties of litigation and the expense and costs incident thereto; and

WHEREAS, City desires to avoid the time, effort, public expense, disruption and uncertainty involved in litigating any and all actual and potential grievances, disputes, controversies, claims, actions and lawsuits Sears may have against the City;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

**TERMS**

1. Sears has voluntarily and irrevocably resigned and separated from his employment with the City effective August 22, 2013. This term is self-executing and requires no further act by either Party for full force or effect. The City has accepted Sears' resignation effective August 22, 2013 and his termination is accordingly withdrawn. Sears agrees that he does not possess any rights or claims to employment with the City after August 22, 2013.
2. Sears promises and agrees not to accept or apply for employment or otherwise seek to be hired, rehired, or reinstated by the City. If Sears applies for employment, re-employment or reinstatement with the City in contravention of this paragraph, the City may reject his application based solely on the promises contained in this paragraph, and Sears will not have any legal basis to challenge that decision.
3. In consideration of Sears' dismissal of all actions and disputes in accordance with paragraph four (4) of this Agreement and the other releases contained in this Agreement, and if Sears does not revoke his release under the ADEA pursuant to paragraph twenty-two (22) of this Agreement, the City will pay Sears a lump sum of \$75,000. Such payment by the City will be due within 15 calendar days of the January 1, 2015. The City will issue Sears a 1099 reflecting this amount. Sears shall be responsible for any and all payment of taxes, penalties or other payments to state and federal taxing authorities, and shall defend, indemnify and hold the City harmless from any determination that the City failed to make appropriate payroll deductions from said sum, and from any penalties. Sears understands and agrees that he has previously

been paid all compensation owed pursuant to his separation from employment and that Sears is not entitled to, will not seek and fully and irrevocably waives, discharges and releases any other compensation of any kind whatsoever from the City related to Sears' employment with and/or separation from the City and/or this Agreement other than the payment pursuant to this paragraph.

4. By execution of this Agreement, Sears dismisses and fully and forever resolves any and all actual and potential grievances, disputes, controversies, claims, actions and lawsuits he has against the City, including without limitation, the appeal he filed August 26, 2013, and the claim he filed on February 24, 2014, as well as his arbitration pending before retired Judge Patrick J. Mahoney pursuant to the stipulation executed January 28, 2014. However, the Parties reserve the right to enforce this agreement at law and equity in the Superior Court of Sonoma County and the prevailing party shall be entitled to an award of reasonable attorneys fees.

5. In consideration of the foregoing, Sears, for himself, his heirs, executors, assigns and successors, fully and forever releases, discharges and covenants not to sue or otherwise institute in any way, actively participate in or voluntarily assist in the participation of any legal or administrative proceedings against the City, including, without limitation, the City Council, the City Manager, other City officials, City directors, departments, commissions, predecessors, subsidiaries, related entities, past and present employees, managers, attorneys, agents and assigns with respect to any matter arising out of, connected with or related in any way to Sears' employment with City, Sears' separation from City employment, and/or any act or omission by the City that took place prior to the Parties' execution of this Agreement.



6. Sears shall, within three calendar days of the Parties' execution of this Agreement, submit a letter of resignation indicating only the following: "Effective August 22, 2013, I have decided to resign from my employment with the City of Petaluma to pursue my study of law and develop a second career as an attorney." Sears' personnel file will reflect that he has resigned from his employment with the City.

7. In any communications referring to Sears' former employment with and/or separation from the City, including, but not limited to, any communications with members of the press or other members of the public, Sears may disclose only his name, employing department, compensation, hiring and separation dates, his final position at the time of separation, that he resigned to study the law and pursue a potential second career as an attorney, and that he believes he made positive contributions to the Petaluma Police Department and the Petaluma Community during his City employment.

8. Any communications of the City referring to Sears' former employment with and/or separation from the City, including, but not limited to, any communications with members of the press or other members of the public, will be coordinated by the City Attorney. If the City is contacted by any potential future employers about a potential non-peace officer position for Sears, the City will only disclose non-confidential information such as Sears' name, employing department, compensation, hiring and separation dates, and his final position at the time of separation. If the City is contacted by any potential future employers about a potential peace officer position for Sears, the City will disclose any requested information, subject to applicable law. If a member of the public requests that the City provide information regarding Sears' former

employment, the City will only disclose non-confidential information such as his name, employing department, compensation, hiring and separation dates, and his final position at the time of separation. The City will disclose that this Agreement has been concluded in accordance with the requirements of California Government Code section 54957.1.

9. The City understands and agrees that various provisions of law, including, but not limited to, California Penal Code sections 832.7 and 832.8, afford to Sears certain rights of privacy in City personnel records regarding Sears' employment with the City. City will protect such rights of privacy in accordance with applicable law. Notwithstanding such rights of privacy, the Parties understand and agree that this Agreement shall be subject to disclosure on request in accordance with California Government Code section 6250 *et seq.*

10. Both Parties understand and agree that various provisions of law and City rules and policies govern retention and destruction of peace officer personnel and related records, including records of citizen complaints, internal investigations and other records. The City will comply with such laws, rules and policies regarding records related to Sears' employment with the City, and retain such records as required by law and destroy such records in accordance with applicable records retention laws, rules, policies and schedules.

11. Sears understands and expressly agrees that this Agreement extends to all claims of every nature and kind, known or unknown, suspected or unsuspected, past, present or future, arising from or attributable to Sears' employment with City, his separation from City employment, and/or any act or omission by the City that occurred

prior to the execution of this Agreement. Sears acknowledges that any and all rights granted to him under Section 1542 of the California Civil Code or any analogous state or federal law or regulation are hereby expressly waived. Sears recognizes and acknowledges that factors which have induced him to enter into this Agreement might turn out to be incorrect or different from what he had previously anticipated, and Sears expressly assumes all of the risks of this waiver of California Civil Code Section 1542. Said Section 1542 of the California Civil Code, reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his settlement with the debtor.

12. Sears agrees that he will not, except as may be mandated by statutory or regulatory requirements or as may be required by legal process, disclose to others the facts underlying any claims or grievances he had, believed he had or contemplated bringing against the City, and/or any facts that lead to his execution of this Agreement. This paragraph is a material term, and Sears agrees that the City may take action in any court of competent jurisdiction to enforce this term.

13. In further consideration of the foregoing, Sears agrees, acknowledges and recognizes that nothing contained in this Agreement shall constitute or be treated as an admission of liability or wrongdoing by City (including its City Council, the City Manager, other City officials, City directors, departments, commissions, predecessors, successors, subsidiaries, related entities, past and present employees, managers, attorneys agents and assigns), which liability or wrongdoing is expressly denied.



14. Both Parties shall bear their own attorney's fees in conjunction with this Agreement. The Parties further agree that Sears may, within three calendar days of the Parties' execution of this Agreement, submit a confidential written rebuttal to the Notice of Final Discipline that was issued to Sears on August 22, 2013. If Sears submits such a written rebuttal, it will be stored in his personnel file and subject to applicable protections described in paragraph nine (9) of this Agreement.

15. The Parties agree to cooperate fully to achieve a binding settlement in this matter, including, without limitation, signing any documentation required by any Court or administrative agency.

16. In the event that any term, condition or provision of this Agreement shall be held by a court of competent jurisdiction to be invalid or against public policy, that term, condition or provision shall be deemed to be deleted, and the remaining terms, conditions and provisions shall continue in force and effect.

17. The validity, interpretation and performance of this Agreement shall be construed and interpreted according to the laws of the State of California.

18. Sears represents and warrants that he has full power to make the releases and agreements contained herein. Sears expressly represents and warrants that he has not assigned, encumbered or in any manner transferred all or any portion of the claims covered by the releases and agreements contained herein. Sears acknowledges and agrees that this warranty and representation is an essential and material term of the Agreement.

19. The Parties acknowledge that this Agreement constitutes the sole and entire agreement of the Parties in this matter and that any modifications to this

Agreement may only be effected by a writing signed by authorized representatives of both Parties, and that this Agreement supersedes any prior written or oral agreement concerning the subject matter of its provisions. The Parties agree that there are no representations, agreements, arrangements or understandings, either written or oral, between or among the Parties relating to the subject matter of this Agreement which are not fully expressed herein.

20. Each Party has had the opportunity to participate in drafting the Agreement. Any terms, conditions or provisions of the Agreement shall not be construed against one Party and in favor of another by virtue of who actually drafted or circulated the Agreement.

21. The Parties agree to execute all documents and perform all acts necessary to effectuate the terms and purposes of this Agreement.

22. The Parties may execute this Agreement in counterparts, and by facsimile, with the same force and effect as if executed in a single, complete document.

23. The Agreement constitutes a comprehensive, general release of any and all claims of any kind whatsoever Sears may have (including without limitation Age Discrimination in Employment Act ("ADEA") claims) against the City including its City Council, the City Manager, other City officials, City directors, departments, commissions, predecessors, successors, subsidiaries, related entities, past and present employees, managers, attorneys, agents and assigns. Sears understands and acknowledges that he has been given at least 21 days to consider his release of claims under the ADEA, and in any event that he expressly waives this 21 day notice provision. Sears acknowledges that he has seven calendar days from the date he executes this




Agreement to revoke his release under the ADEA, provided, however, that should Sears revoke his release, the City may in its sole discretion rescind this entire Agreement and in that case the City will not be obligated to fulfill any obligations it would otherwise have under this Agreement, including, but not limited to, the obligation to pay Sears \$75,000 under paragraph three (3).

24. Sears acknowledges that he has been represented by counsel in connection with this matter. Sears also acknowledges that he has read and understands the foregoing Agreement and that he affixes his signature hereto voluntarily and without coercion. Sears further acknowledges that the waivers he has made are knowing, conscious and with full appreciation that he is forever foreclosed from pursuing any of the rights so waived.

DATED: 11/13/2014

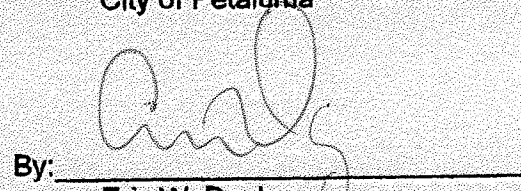
  
David Sears

DATED: 11/17/14


  
John C. Brown, City Manager  
City of Petaluma

APPROVED AS TO FORM:

DATED: 11/13/2014

  
By: Eric W. Danly  
Petaluma City Attorney

DATED: 11/13/2014

  
By: Manuel Nieto  
Attorney for Sears