

## **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 Deann Bailey ("Bailey") and the City ("the Parties").

### **RECITALS**

WHEREAS, Bailey has been employed by the City as a law enforcement officer and member of the Petaluma Police Department beginning in November, 1998; and

WHEREAS, Bailey desires to retire from her employment from the City, and Bailey and the City have a mutual interest in ending their employment relationship; and

WHEREAS, as set forth herein, Bailey desires to resolve, fully and forever, any and all actual and potential grievances, disputes, controversies, claims, actions and lawsuits she 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 Bailey may have against the City, including, without limitation, any and all workers compensation, and federal and state law claims and causes of action against the City;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

**TERMS**

1. Within 30 days of the Parties' execution of this Agreement, Bailey will apply for industrial disability retirement from the City with the California Public Employees Retirement System (CalPERS) in accordance with all applicable requirements of CalPERS and the Public Employees Retirement Law (PERL).

2. The Parties intend to enter a separate agreement for compromise and release of any and all of Bailey's claims against the City under California workers compensation laws and regulations (Compromise and Release Agreement). The Parties' execution of the Compromise and Release Agreement, and approval of the Compromise and Release Agreement by a Workers Compensation Judge in accordance with applicable California workers compensation laws and regulations, is a condition precedent to this Agreement and the Parties rights and obligations under this Agreement taking effect. Upon its execution by the Parties and approval by a Workers Compensation Judge, the Compromise and Release Agreement shall be deemed made a part of this Agreement by reference without further action of the Parties.

3. The Parties intend to enter a separate agreement for settlement of U.S. Equal Employment Opportunity Commission (EEOC) Charge Number 550-2014-00568 (Charge) which Bailey filed May 12, 2014. The Parties' execution of an agreement fully and finally settling the EEOC Charge (EEOC Settlement), as prescribed by the EEOC, and approval of the EEOC Settlement by an authorized official of the EEOC, are material terms of this Agreement. Upon its execution by the Parties and approval of the EEOC Settlement by an authorized EEOC official, the EEOC Settlement shall be

deemed made a part of this Agreement by reference without further action of the Parties.

4. Following her retirement effective date, Bailey promises and agrees not to accept or apply for employment or otherwise seek to be hired, rehired, or reinstated by the City. If Bailey applies for employment, re-employment or reinstatement with the City in contravention of this paragraph, the City may reject her application based solely on the promises contained in this paragraph, and Bailey will not have any legal basis to challenge that decision. Bailey agrees that she will possess no rights or claims of any kind whatsoever to employment with the City after her retirement effective date.

5. In consideration of Bailey's dismissal of all actions and disputes in accordance with paragraphs 7 and 8 of this Agreement and the other releases contained in this Agreement, and if Bailey does not revoke her release under the ADEA pursuant to paragraph 26 of this Agreement, and upon execution by the Parties of the Compromise and Release Agreement and approval of the Compromise and Release Agreement by a Workers Compensation Judge in accordance with applicable California workers compensation laws and regulations, and upon execution by the Parties of the EEOC Settlement and approval of the EEOC Settlement by an authorized EEOC official, the City Manager will approve Bailey's application for industrial disability retirement in accordance with all applicable requirements of CalPERS and the PERL. The approved industrial disability retirement will be retroactive to the expiration of Bailey's accrued leaves on June 19, 2014.

6. Bailey understands and agrees that she 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 Bailey's employment with and/or retirement from the City and/or this Agreement and/or the Compromise and Release Agreement and/or the EEOC Settlement other than approval of her industrial disability retirement pursuant to this Agreement and a payment of \$15,000 as required by the Compromise and Release Agreement.

7. By execution of this Agreement and upon its taking effect in accordance with its terms, Bailey dismisses and fully and forever resolves any and all actual and potential grievances, disputes, controversies, claims, actions and lawsuits she has against the City, including without limitation, EEOC charge number 550-2014-00568, and any related claims or causes of action under federal or state law, and all workers compensation claims or causes of action set forth in the Compromise and Release Agreement.

8. In consideration of the foregoing, Bailey, for herself, her 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 Bailey's employment with City, Bailey's retirement from City employment, and/or any act or omission by the City that took place prior to the Parties' execution of this Agreement.

9. In any communications referring to Bailey's former employment with and/or retirement from the City, including, but not limited to, any communications with members of the press or other members of the public, Bailey may disclose only her name, employing department, compensation, hiring and retirement dates, and her final position at the time of retirement.

10. Any communications of the City referring to Bailey's former employment with and/or retirement 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 Bailey, the City will only disclose non-confidential information such as Bailey's name, employing department, compensation, hiring and separation dates, and her final position at the time of retirement. If the City is contacted by any potential future employers about a potential peace officer position for Bailey, the City will disclose any requested information, subject to applicable law. If a member of the public requests that the City provide information regarding Bailey's former employment, the City will only disclose non-confidential information such as her name, employing department, compensation, hiring and retirement dates, and her final position at the time of retirement. The City will disclose that this Agreement has been concluded in accordance with the requirements of California Government Code section 54957.1.

11. 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 Bailey certain rights of privacy in City personnel records regarding Bailey's 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.*

12. 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 Bailey's 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.

13. Bailey 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 Bailey's employment with City, her industrial disability retirement from City employment, and/or any act or omission by the City that occurred prior to the execution of this Agreement. Bailey acknowledges that any and all rights granted to her under Section 1542 of the California Civil Code or any analogous state or federal law or regulation are hereby expressly waived. Bailey recognizes and acknowledges that factors which have induced her to enter into this Agreement might turn out to be incorrect or different from what he had previously anticipated, and Bailey 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.

14. Bailey agrees that she 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 she had, believed she had or contemplated bringing against the City, and/or any facts that lead to her execution of this Agreement. This paragraph is a material term, and Bailey agrees that notwithstanding any other term in this Agreement the City may take action in any court of competent jurisdiction to enforce this term.

15. In further consideration of the foregoing, Bailey agrees, acknowledges and recognizes that nothing contained in this Agreement shall constitute or be treated as an admission of liability or wrongdoing by 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), which liability or wrongdoing is expressly denied.

16. 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 or by this Agreement.

17. Bailey represents and warrants that she has full power to make the releases and agreements contained herein. Bailey expressly represents and warrants that she has not assigned, encumbered or in any manner transferred all or any portion of the claims covered by the releases and agreements contained herein. Bailey

acknowledges and agrees that this warranty and representation is an essential and material term of this Agreement.

18. The Parties acknowledge that this Agreement, the Compromise and Release and the EEOC Settlement constitute the sole and entire agreements of the Parties regarding the subject matter of this Agreement 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 and/or in the Compromise and Release Agreement and/or the EEOC Settlement.

19. Each Party has had the opportunity to participate in drafting of this Agreement. No terms, conditions or provisions of this Agreement shall be construed against one Party and in favor of another by virtue of who actually drafted or circulated this Agreement.

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

21. Notwithstanding any other provision in this Agreement the Parties reserve the right to enforce this Agreement at law and equity in the Superior Court of Sonoma County. The prevailing party shall be entitled to an award of reasonable attorney's fees in any such action.



22. Both Parties shall bear their own attorney's fees in conjunction with this Agreement.

23. 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.

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

25. 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.

26. The Agreement constitutes a comprehensive, general release of any and all claims of any kind whatsoever Bailey 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. Bailey understands and acknowledges that she has been given at least 21 days to consider her release of claims under the ADEA, and in any event that she expressly waives this 21 day notice provision. Bailey acknowledges that she has seven calendar days from the date she executes this Agreement to revoke her release under the ADEA, provided, however, that should Bailey revoke her 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 approve Bailey's application for industrial disability retirement under provision 5.

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

DATED: June 5<sup>th</sup>, 2015 Deann Bailey  
Deann Bailey

DATED: 6-16-15 [Signature]  
John C. Brown, City Manager  
City of Petaluma

APPROVED AS TO FORM:

June 16, 2015  
DATED: ~~June 11, 2015~~

By: [Signature]  
Eric W. Danly  
Petaluma City Attorney

DATED: June 11, 2015  
By: [Signature]  
Ed Brooks  
Attorney for Bailey