

**AGREEMENT**

This AGREEMENT made and entered into this 5<sup>th</sup> day of December, 2007, by and between the CITY OF EL MONTE, a municipal corporation, hereinafter called "Employer," and THOMAS B. ARMSTRONG, hereinafter called the "Employee," both of whom understand as follows:

**WITNESSETH**

WHEREAS, Employer desires to continue to employ the services of Thomas B. Armstrong as Assistant Chief of Police for the City of El Monte in accordance with the EL MONTE MUNICIPAL CODE; and

WHEREAS, Employee desires to continue employment as Assistant Chief of Police for the City of El Monte; and

WHEREAS, it is the desire of Employer, to provide certain benefits, establish certain conditions of employment, and to set working conditions of said Employee; and

WHEREAS, it is the desire of the Employer to (1) secure and retain the services of Employee and to provide inducement for him to remain in such employment, (2) to make possible full work productivity by assuring Employee's morale and peace of mind with respect to future security, and (3) to provide a just means for terminating Employee's services at such time as he may be unable to discharge fully his duties due to disability, or when Employer may otherwise desire to terminate this Employee;

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

**SECTION 1. DUTIES**

Employer hereby agrees to employ Thomas B. Armstrong, as Assistant Chief of Police for the City of El Monte, to perform the duties as directed by the Chief of Police, specified in local ordinance or resolution, California State Code, and to cooperate in such other City-related duties as the Chief of Police from time to time assigns.

**SECTION 2. TERM**

- A. The term of this Agreement shall be for an extension of ten (10) months, from March 1, 2008 through December 31, 2008.
- B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employer to terminate the services of Employee at any time, subject to the provisions set forth in Section 4 of this Agreement.
- C. Employee agrees to remain in the continued employment of Employer from March 1, 2008 through December 31, 2008. During the term of this Agreement,

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Employee shall not directly or indirectly undertake any action of response to any offer of employment by any other employer unless Employee has informed Employer beforehand.

- D. On or before November 1, 2008, Employee may submit a written proposal to Employer for the extension of the term of this Agreement and/or the revision of the provisions of this Agreement and in that event the parties shall enter into good faith negotiations with respect to such proposal. On or before December 1, 2008, Employer shall advise Employee whether or not this Agreement will be extended or revised either as a result of such negotiations, or, if no proposal is submitted by Employee, on the same terms as specified in this Agreement. Nothing contained herein shall be construed to require Employer or Employee to extend the term or revise this Agreement.

### **SECTION 3. RESERVED**

### **SECTION 4. TERMINATION AND SEVERANCE PAY**

- A. In the event Employee is terminated other than for cause by Employer at any time before the expiration of the terms of this Agreement and during such time that Employee is willing and able to perform his duties under this Agreement, then in that event, Employer agrees to pay Employee a lump sum cash payment of one (1) year's then current base salary and longevity pay. In addition, Employer agrees to pay the health premiums for benefits enjoyed by the Employee during the subsequent one-year (1-year) period. However, in the event Employee, because of his conviction of any felony or any offense involving a violation of his official duties, that the Employee has misappropriated public funds, or has engaged in conduct unbecoming a police officer, either during or outside of duty hours which is of such a nature that it causes substantial discredit to the Employer, then in that event Employer shall have no obligation to pay the severance salary and benefits designated in this paragraph.
- B. In the event Employer at any time during the term of this Agreement reduces the salary or other financial benefits of Employee, or in the event Employer refuses to comply with any other provisions benefiting Employee herein, then in that event, Employee may, at his option, be deemed to be "terminated" without cause at the date of such reduction, and at the compensation level with the City prior to that reduction, such refusal to comply to such suggestions within the meaning and context of Subparagraph A above.
- C. In the event Employee voluntarily resigns his position with Employer before expiration of the aforesaid term of his employment Employee shall give Employer sixty (60) days' written notice in advance unless the parties otherwise agree in writing.

## **SECTION 5. DISABILITY**

If Employee is disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or poor health that does not arise out of his employment nor in the course of his employment for a period of four (4) successive weeks beyond any accrued sick leave or for twenty (20) working days over thirty-day (30-day) calendar period, Employer shall have the option to terminate this Agreement, subject to the severance salary of Section 4, Paragraph A above. Employee agrees to submit to a medical or psychological examination by a qualified physician or psychiatrist selected by the Employer, in the event a decision must be made under this section. Employer and Employee shall receive a copy of all medical reports related to the examination.

## **SECTION 6. SALARY**

Employer shall pay Employee for his services rendered pursuant hereto a monthly base salary of ten thousand seven hundred dollars (\$10,700) plus nine percent (9%) longevity payments (nine hundred and sixty three dollars (\$963)), payable in installments at the same time as other employees of the Employer are paid.

## **SECTION 7. PERFORMANCE EVALUATION**

Employer agrees to continue the annual performance review after one year of service under this Agreement and subsequent years thereafter for the term of this Agreement. The Chief of Police's annual review and evaluation shall be in accordance with specific criteria developed jointly by Chief of Police and Employee. Said criteria may be added to or deleted from as the Chief of Police may from time to time determine in his sole discretion

## **SECTION 8. PREVIOUS AGREEMENT**

All terms of employees prior work agreement listed under the Police Mid-Managers Association MOU dated July 1, 2003 to June 30, 2005 shall remain in full force and effect unless expressly amended or deleted by this agreement.

## **SECTION 9. AUTOMOBILE**

Employee shall be provided an automobile by Employer for Employee's exclusive and unrestricted use subject to the same use and driving restrictions as applicable to the City Manager. Employer shall be responsible for paying for liability, property damage and comprehensive liability insurance and for the operation, maintenance and repair. Employee shall be named as an "additional-insured" on any such comprehensive liability insurance policy, and such policy shall cover both professional and personal use of the automobile. For purposes of the calculation of Severance Pay, and Severance Benefits under Section 4 of this Agreement, the benefits conferred upon Employee pursuant to this Section 9 shall in the aggregate constitute Employee's vehicle allowance, and such vehicle allowance shall be deemed to have a value equal to five hundred dollars (\$500) per month.

## SECTION 10. FRINGE BENEFITS

- A. The Employer shall contribute the prevailing 3-Party Kaiser Rate towards the cost of PERS Health medical insurance for Employee. If the Employee does not use the full allotment of medical benefits, the remainder will be paid monthly to the Employee as taxable cash. If the Employee can provide to the Human Resources Officer proof of insurance elsewhere (such as through a spouse), then he may drop medical insurance and take the full rate as described above.
- B. The Employer shall contribute the three party rate for Ameritas insurance towards a dental insurance policy for the Employee and his eligible dependents. If the Employee can provide to the Human Resources Officer proof of insurance elsewhere (such as through a spouse), then he may totally drop dental insurance and take up to \$35 each month as taxable cash.
- C. The Employer shall contribute the three party rate for the Vision Services Plan monthly towards the premium for the Vision Services Plan for the Employee and his eligible dependents. If the Employee does not use the full allotment of vision benefits, the remainder will not be paid to the Employee.
- D. The Employer shall contribute \$50 per month to the Employee towards insurance benefits provided by the City. Upon retirement the Employee shall receive the \$50 contribution each month until age 70 provided such contribution is used towards the payment of City-sponsored insurance plans. The basic benefit structure of the Employer's medical insurance plans shall not be reduced during the term of this Agreement.
- E. The City shall provide Medicare, Medicare supplemental insurance, medical insurance at the prevailing 3-Party Kaiser Rate, dental insurance, long term care insurance with inflation protection as offered by PERS and vision insurance to Employee and to his present spouse and/or future spouses. Upon the Employee's retirement from the City, and thereafter, the City shall pay the premium and any subsequent increases for the medical insurance in effect at the time of the Employee's retirement. Employee and spouse medical coverage will continue until voluntary cancellation of the policy or until the death of either the employee or spouse and coverage extends to separately and individually for both. If upon retirement, the Employee can provide proof of insurance of any of the above policy elsewhere or if a particular insurance is denied then he may take the full rate for that policy as taxable cash.
- F. Employee is granted all benefits granted to the general membership of the El Monte Police Mid-Manager's Association in place at the time of this Agreement. If increased fringe benefits are granted to the general membership of the El Monte Police Mid-Manager's Association during the term of this Agreement, the same or an equivalent increase shall be granted to the Employee.

- G. The City shall pay up to \$12.88 per month toward the cost of long term disability insurance or the rate for Standard Long-Term Disability (whichever is higher) per month towards the cost of long term disability insurance.

**SECTION 11. VACATION**

Employee shall be entitled to an annual vacation of one hundred and sixty (160) hours.

**SECTION 12. SICK LEAVE**

- A. Sick leave shall be accumulated at the rate of ten (10) hours for each calendar month of service. Sick leave shall not be considered as a privilege, but shall be allowed only in case of actual sickness or disability of Employee or within the immediate family. The Employee's sick and vacation hours accrued under his prior position shall be carried over to his newly appointed position.
- B. In order to receive compensation while absent on sick leave, the Employee shall notify the Chief of Police or City Manager.
- C. Upon death or upon service retirement, the Employee shall be paid at the rate of pay in effect upon retirement, for one-half (1/2) of all unused accumulated sick leave. The maximum amount and any remainder shall be reported to PERS for retirement purposes.
- D. Employee shall be reinstated, for sick leave only, the one-half of the uncompensated sick leave accumulated during the Employees prior employment with the City of El Monte.

**SECTION 13. PERSONAL LEAVE**

Employee will be allowed to use up to thirty (30) hours of sick leave per year for the purpose of conducting personal business, which must be performed during normal business hours.

**SECTION 14. ADMINISTRATIVE LEAVE**

Employee shall receive seventy (70) Administrative Leave hours in each calendar year. Administrative Leave hours cannot be carried over year to year, and shall be lost if not used by the end of each calendar year.

**SECTION 15. ANNUAL PHYSICAL**

Employee agrees to submit once per calendar year to a complete physical examination by a qualified physician selected by the Employer. Employer shall pay the cost and receive a copy of all medical reports related to said examination. In the event of a dispute, Employee may furnish a medical report by a qualified physician of his choosing at Employee's cost.

**SECTION 16. DEFERRED COMPENSATION PLAN**

The Employee must join the Deferred Compensation Plan offered by the Public Employees' Retirement System and/or the City's 401(a) plan. The Employer's contribution to said plan shall be a total of nine percent (9%) of the Employee's base salary and longevity pay. The amounts contributed to the Plans are subject to the statutory limits outlined in the Codes of the United States Internal Revenue Service. The Employee may still participate in other City deferred compensation plans in addition to the Plan offered by the Public Employees' Retirement System.

**SECTION 17. IRS SECTION 125C BENEFITS**

The Employee is eligible for benefits payable under IRS Section 125c. As outlined in the IRS Code, the Employee may submit certain out of pocket expenses (such as unreimbursed medical expenses and child care expenses) to the Section 125c Administrator appointed by the Employer. If such out of pocket expenses meet the requirements of the IRS code, these expenses shall be deducted from the Employee's gross pay as reported to the IRS thereby lowering Employee's total tax liability during the year.

**SECTION 18. HOLIDAYS**

Employee will be working a "4/10" week schedule except as modified by this paragraph. The City (Council) recognizes that the Police Chief's position is unique in that it requires him to be available "24/7" and thereby gives him latitude to structure his hours so that he puts a minimum of 40 hours per week as long as schedule of hours is consistent with City's needs.

- A. Holidays and personal leave days will be counted as ten (10) hours.
- B. Following is a list of holidays to be observed by the Employee:
  - 1. Veteran's Day
  - 2. Thanksgiving Day
  - 3. Day After Thanksgiving Day
  - 4. Day Before Christmas
  - 5. Christmas Day
  - 6. Day Before New Year's
  - 7. New Year's Day
  - 8. Martin Luther King, Jr. Birthday
  - 9. President's Day
  - 10. Memorial Day
  - 11. Independence Day
  - 12. Labor Day
  - 13. Admissions Day
  - 14. Floating Holiday
- C. A holiday bank shall be established for the Employee at the rate of ten (10) hours for each holiday which occurs during the year to a maximum of 140 hours per year beginning each calendar year. On or about January 20 of each year hereafter,

the Employee will receive a cash payment for all remaining time in the holiday bank at straight time on the base rate. There shall be no carryover of banked hours from one calendar year to another.

- D. If the Employee leaves the Employer, he shall be paid a pro-rata amount of unused holiday pay. He shall be paid all unused holiday pay equivalent to the number of holidays that occur between January 1 and the date of his termination. For example, if the Employee leaves effective July 1 and has not been paid holiday pay at all during that calendar year, he will be paid a total of fifty (50) hours of holiday pay for New Year's Day, Presidents' Day, Memorial Day and the floating holiday. If, however, the Employee used more holiday hours than have occurred between January 1 and the termination date, the amount of over usage shall be deducted from his accrued leave balances or final pay.
- E. If the Employee has exhausted his accrued holiday pay and a holiday occurs, he must use accrued leave in order to be paid on that day. Vacation pay shall be the first used. If the Employee has no vacation pay, other types of accrued leave may be used. However, the Employee may not use sick leave to be paid for a holiday. If the Employee has exhausted all accrued leave balances on a holiday, he will not be paid on that day.
- F. Holidays falling on Sunday will be observed on the following Monday.

#### **SECTION 19. RETIREMENT**

The City provides retirement coverage through the Public Employees' Retirement System (PERS).

- A. The Employer Contribution Rate is established by the PERS Board of Administration. The City will contribute the full amount of Employee's contribution toward retirement.
- B. Additional Retirement Benefits.
  - 1. "3% at 50" formula as adopted by the City for Safety Employees.
  - 2. 1959 Fourth Level Survivors Benefits as adopted by the City.
  - 3. Post Retirement Survivor Allowance for 50% surviving spouse continuance as adopted by the City.
  - 4. Highest One Year compensation as the period for determining retirement benefits.
  - 5. Conversion of Unused Sick Leave toward service credit.
  - 6. Post Retirement Survivor's Benefit for continuation of benefits after remarriage.
  - 7. Five Percent (5%) Retirement Cost of Living Allowance Maximum for Safety Employees.
  - 8. The City of El Monte elects to pay nine percent of the normal employee contributions as Employer paid member contributions (EPMC) and reports same to PERS as compensation (G.C. 20023 [C][4]).

9. Pre-Retirement Optional Settlement 2 Death Benefit (G.C. 21365.6)
10. Military Service Credit as Public Service (G.C. 20894.3).
11. Retirement Medical Benefits provided to the El Monte Police Department Mid-Managers Association.

#### **SECTION 20. INJURY ON DUTY**

If Employee is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of Employee's duties, Employee shall become entitled to leave of absence while so disabled without loss of salary in lieu of temporary disability payments, or maintenance allowance payments, if any which would be payable for the period of the disability, but not exceeding one year, or until such earlier date as Employee is retired on disability pension or would be retired for disability pension if eligible under PERS requirements. Employee if so disabled may use no other kind of accrued leave during the period of disability. No leave of absence may commence after resignation, whether voluntary or involuntary. All authorized deductions will continue as though Employee was in regular work status.

#### **SECTION 21. DUES AND SUBSCRIPTIONS**

Employer agrees to pay for the reasonable professional dues and subscriptions of Employee, which in Employer's discretion is necessary for his continuation in associations and organizations necessary and desirable for his continued professional participation, growth and advancement and for the good of the Employer.

#### **SECTION 22. PROFESSIONAL DEVELOPMENT**

- A. Employer hereby agrees to pay for reasonable travel and sustenance expenses of Employee for professional and official travel if approved by the Chief of Police, meetings and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official functions for Employer, including the annual conference and meetings of the International Association of Chiefs of Police, California Chiefs of Police Association, Los Angeles County Chiefs of Police Association, Los Angeles County Police Officers Association, FBI National Academy Specialized Training Conferences, San Gabriel Valley Chiefs of Police Association, and San Gabriel Valley Peace Officers Association.
- B. Employer also agrees to pay for the expenses of Employee for workshops and seminars that are necessary for his professional development and for the good of the Employer.
- C. Employer agrees to pay for the expenses of Employee for out-of-state travel in accordance with City policy or as allowed other employees.

#### **SECTION 23. GENERAL EXPENSES**

Employer does recognize that certain expenses of a non-personal and job-affiliated nature are incurred by Employee in conjunction with his responsibilities hereunder and shall

reimburse or pay said general expenses in accordance with existing City policy for other employees.

**SECTION 24. OTHER TERMS AND CONDITIONS OF EMPLOYMENT**

- A. The Employer, in consultation with the Employee, shall fix any other such terms and conditions of employment, as it may determine from time to time relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement.
- B. All employee benefits including but not limited to salary as they may exist for any other employee bargaining unit, or thereafter as may be amended shall also apply to Employee.

**SECTION 25. GENERAL PROVISIONS**

- A. The text herein shall constitute the entire Agreement between the parties.
- B. This Agreement shall be binding upon and insure to the benefit of the heirs at law and executors of Employee.
- C. It is recognized and agreed by the parties that the position of Assistant Chief of Police is an at-will position that will serve at the pleasure of the Employer.
- D. It is recognized and agreed by the parties that the Assistant Chief of Police position will continue to be exempt from the overtime provisions of the Federal Fair Labor Standards Act.
- E. It is agreed that the Employee, will have no property right to his position aside from those granted under Government Code Section 3300 (otherwise referred to as "the Public Safety Officers Procedural Bill of Rights").
- F. It is recognized and agreed that the Employee shall have employment of no specified term except as outlined and limited herein and may be terminated at the will of the Employee or at the will of the Employer.
- G. It is the intention of the Employer that the salary and benefits as provided herein shall maintain a certain percentage in excess of subordinate salaries, who are currently represented by the El Monte Police Mid-Managers' Association, either individually or collectively, the Employee shall immediately receive a salary or benefit increase sufficient to maintain the then current excess percentage.
- H. In the event the Employer refuses to pay the Employee under the Severance Provisions of Section 4A of this Agreement or is in breach of any other provisions of this Agreement, the Employer shall pay the Employee for all reasonable

attorney fees and costs incurred by the Employee in order to enforce the Agreement.

**SECTION 26. BARGAINING UNIT REPRESENTATION**

It is understood by the party that neither Employee nor the positions of Assistant Chief of Police will be represented by any authorized bargaining unit, including the El Monte Top Management Association, due to the eventual dissolution of the aforementioned Association.

**SECTION 27. SEVERABILITY**

If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

IN WITNESS WHEREOF, the City of El Monte has caused this Agreement to be signed in its behalf by its Mayor and duly attested by its City Clerk and Employee has signed and executed this Agreement, both in duplicate, the day and year first above written,

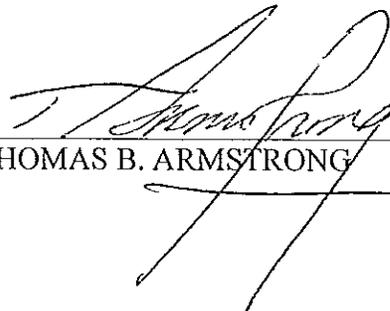
DATED: 12/4/07

EMPLOYER, CITY OF EL MONTE

  
\_\_\_\_\_  
ERNEST GUTIERREZ, MAYOR

DATED: 12/10/7

EMPLOYEE

  
\_\_\_\_\_  
THOMAS B. ARMSTRONG