

157017--0

EMPLOYMENT AGREEMENT
BY AND BETWEEN THE
CITY OF PHOENIX
AND
MICHAEL G. SULLIVAN

This **EMPLOYMENT AGREEMENT** ("Agreement") is entered into on this 1st day of September 2022 (the "Effective Date"), by and between the City of Phoenix, Arizona and **MICHAEL G. SULLIVAN** (the "Executive"). Executive and the City are each referred to as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, the City undertook a search to identify an Interim Police Chief ("Chief") for the Phoenix Police Department ("PPD"); and

WHEREAS, following that search, and after reviewing the credentials of Executive and completing an initial executive background check, the City has concluded that Executive possesses the leadership, management, and administrative qualities that would allow him to be an effective Interim Chief for PPD; and

WHEREAS, Executive has expressed his willingness to serve as PPD Police Interim Chief and both parties agree Executive satisfies the requirements for this temporary full time employee position ("position"); and

WHEREAS, the City desires to employ Executive as Interim Police Chief for PPD and Executive desires to accept the position on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing and the terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

I. RECITALS.

The foregoing recitals are incorporated into and made a substantive part of this agreement.

II. CANDIDATE REPRESENTATIONS.

Executive represents that he meets the qualifications for the position of Interim Chief, that all information he provided during the City's examination of his qualifications was and is true and accurate, and that there are no disqualifying matters in his background that were undisclosed.

Executive acknowledges and agrees that, upon approval of this Agreement by the Phoenix City Council, he will promptly relocate his residence to the City of Phoenix and continue to reside within the City of Phoenix during the term of this Agreement.

III. DUTIES.

As Interim Chief, Executive shall diligently and faithfully carry out the following duties and responsibilities:

- A. As the Interim Chief of PPD, Executive shall be charged with the effective and impartial enforcement of all applicable laws and regulations of the City, the State of Arizona, and the United States for the protection of all who live or work in the City or who visit the City.
- B. Executive will be accountable for leading the PPD consistent with the department's Mission and Vision Statement, which states:

Mission

We will serve, protect and reduce crime in Phoenix while treating everyone with dignity and respect.

Vision

It is the vision of the Phoenix Police Department to deliver exceptional police service; to work collaboratively with our community and our employees as a unified team to foster the highest level of trust and safety; and to value, support and invest in our employees.

- C. As PPD Interim Chief, Executive will perform the duties normally assigned to the Police Chief of a large metropolitan region with responsibility for leading, planning, organizing, directing, staffing, and coordinating police operations.

- D. Executive's duties shall require him to:

- (1) Manage, administer and direct PPD's functions and operations to enhance public safety and to protect the public interest;
- (2) Manage PPD's finances responsibly, and ensure expenditures are made consistent with applicable law and budgets approved by the City Council;
- (3) Build positive relationships with members of the City of Phoenix community and develop strategies that will promote responsive and courteous public service by PPD officers;
- (4) Supervise and direct the activities that will assist the PPD in its Department of Justice pattern and practice investigation, and any future consent decree or settlement agreement and work closely with the City Manager or his designee and the City Attorney to develop a list of priorities and plans for reform;
- (5) Ensure that crimes reported within the City of Phoenix are tracked and categorized appropriately;
- (6) Provide policy advice to the City Manager; and
- (7) Carry out such other duties and responsibilities as the City Manager shall determine to be desirable or necessary, provided such terms and conditions are not inconsistent with the terms and conditions of this Agreement and any applicable laws or statutes.

IV. TERM.

The term (the "Term") of this Agreement shall be one year (12 months) from the Effective Date and may be extended by the parties mutual consent for up to twenty four months, in whatever increments the parties may agree upon.

Executive will be expected to begin employment in Phoenix no later than Monday, September 12, 2022. Beginning on the first day of employment after the Effective Date, the Executive shall serve as Interim Police Chief and will be paid beginning that date.

V. COMPENSATION AND BENEFITS.

During the Term, Executive shall receive the following compensation and benefits:

A. Base Salary.

Executive's base salary shall be \$232,000 per year, minus withholdings.

B. Defined Contribution Plan.

The City shall contribute to a 401(a) plan on Executive's behalf an amount equal to nine percent (9%) of gross annual base salary. If contributions from all sources exceed the federal maximum allowed for 401(a) defined contribution plans, excess City contributions will be contributed to the 457(b) up to the annual IRS defined maximum. If the full amount of the excess City contributions cannot be contributed to the 457(b) Deferred Compensation Plan due to federal 457(b) deferred compensation plan contribution limits including catch-up provisions, the balance of the City contributions converts to ordinary wages per the City's pay ordinance.

C. Leave.

The parties acknowledge that the duties of the PPD Interim Chief extend twenty-four hours a day. Executive shall accrue vacation and sick leave consistent with the policies generally applicable to City employees, and Executive shall be paid out for accrued but unused vacation and sick leave, subject to the same conditions as such leave is paid to other similarly situated employees. Executive agrees to ensure that accurate and complete records of his leave time are maintained. Further, Executive acknowledges and agrees that his base salary takes his extended duties into account and that he shall not be entitled to receive payment for overtime.

D. Other Benefits.

Executive shall receive the same life insurance benefits as well as access to other voluntary benefits on the same terms those benefits are made available to city employees and in accordance with the generally applicable terms of those policies as they exist from time to time. Executive will also receive a communications allowance of \$120 per month (\$1,440 per year).

F. Relocation Expenses.

Executive shall be reimbursed for actual and reasonable short-term relocation expenses to a residence within the City of Phoenix. Reimbursement will also include one trip to coordinate housing arrangements up to a total maximum of \$5,000. All costs shall be supported by appropriate receipts.

G. Professional Development.

The City shall pay for professional membership dues, travel, subsistence expenses incurred by Executive for professional conferences, continuing education programs, law enforcement institutes and similar seminars which are necessary for his professional development and for the good of the Department and of the City, as determined by the City Manager or his designee.

VI. SEPARATION FROM EMPLOYMENT.

A. Termination by the City for Just Cause. Executive may be terminated for "just cause" by the City Manager, acting on behalf of the City, and nothing in this Agreement shall affect the rights of the City or of the City Manager in that respect. A termination for Just Cause shall be effective immediately upon notice to Executive, and his right to salary or compensation and his service shall end immediately upon delivery of such written notice. "Just Cause" for purposes of this section shall include, but not be limited to, the following:

(1) The willful failure to perform Executive's material duties, unless the failure is remediable, and Executive has cured the deficiency within thirty (30) days of receiving written notice of the deficiency from the City Manager or his designee;

(2) Any material breach of this Agreement, unless the failure is remediable, and Executive has cured the deficiency within thirty (30) days of receiving written notice of the deficiency from the City Manager or his designee;

(3) Executive's intentional breach of any material PPD policy or applicable City Policy;

(4) Indictment for any criminal offense constituting a felony or serious misdemeanor, or the commission of any act that could constitute grounds for terminating a uniformed member of PPD; or

(5) Mental or physical incapacitation that extends for longer than thirty (30) days and is not as a result of employment.

B. Termination by the City Without Cause.

The City may terminate this Agreement at any time without cause, upon written notice to Executive. "Termination without cause" is defined as any basis for termination other than the bases specifically enumerated in Section VI-A of this Agreement as "Just Cause" termination bases. If Executive is terminated without just cause at any time during the term of this Agreement, he shall be paid the remaining balance due under the term of this Agreement in regular bi-weekly payments as if he remained employed.

C. Resignation by Executive.

If Executive voluntarily resigns prior to the end of the term of this Agreement, after the Effective Date, Executive must give at least ninety (90) days' written notice. In the event of a resignation, Executive shall only receive accrued salary for services performed until the effective date of his resignation, and the payout of any leave required by this Agreement and applicable City policies.

VII. AZPOST STANDARDS.

Executive is required to complete a background investigation consistent with Arizona Peace Officer Standards in 13 Arizona Administrative Code (13 A.A.C., hereafter "AZPOST"). Employment is contingent upon passing the background and failure to pass is considered just cause to immediately terminate employment under Section IV.a.

Prior to starting employment, Executive must provide the City with detailed and complete training records for an AZPOST certificate for waiver of training process. AZPOST will determine what training is required by Executive, and Executive shall then pass all blocks of the Arizona Post Comprehensive Final exam which are required within six months of the Effective Date. Executive will also satisfactorily perform the practical demonstrations of proficiency in physical conditioning, vehicle operations, pursuit operations, and firearms, including firearms qualifications as required by AZPOST. The city will provide the Executive necessary support for AZPOST certification

Section IV.c, will not apply if Executive fails to complete any AZPOST requirements

VIII. INDEMNIFICATION.

A. To the fullest extent allowed by law, the City shall defend, indemnify, and hold harmless Executive, or his estate, in any civil or criminal action or proceeding seeking any kind of relief including compensatory or punitive damages, arising out of any act or omission that occurred while Executive was properly exercising or performing his job duties and responsibilities within the scope of his employment, so long as Executive was acting in good faith, did not act in a way that violates an applicable law, and did not act in an intentionally tortious matter.

B. Further, the City shall indemnify and save harmless Executive in the amount of any compensatory damages obtained against him in any judgment, or in the amount of any settlement; provided that Executive's act(s) or omission(s) underlying the judgment or settlement occurred while Executive was properly exercising or performing his job duties and responsibilities within the scope of his employment, so long as Executive was acting in good faith, did not act in a way that violates an applicable law, and did not act in an intentionally tortious matter.

C. Notwithstanding the foregoing, by law, the City cannot legally contract to pay any punitive damages which arise from Executive's conduct. While the City cannot legally agree prospectively to satisfy punitive damages awards without limitation or qualification, in the unlikely event that any punitive damages are assessed against Executive, the City's retained counsel will file appropriate post-trial motions seeking to overturn such damages and will exhaust the appropriate appeals within the Arizona court system or to the United States Court of Appeals for the Ninth Circuit at no expense to Executive. If such appeals are unsuccessful in reversing any award of punitive damages against Executive and the verdict becomes final, the City Attorney will then make an independent evaluation of the evidence upon which the verdict was based and recommend to the City Manager that the City pay the judgment if in the City Attorney's opinion, the evidence does not support or warrant punitive damages under the law of Arizona.

Furthermore, nothing herein shall require the City to pay the costs of any criminal defense or any fines or penalties associated with any criminal action or proceeding which results in the conviction of Executive. Notwithstanding the foregoing, the City's obligation to indemnify Executive hereunder

is contingent on his fully assistance and cooperate in any proceedings in which the City will provide indemnification to Executive.

D. This provision shall survive the termination of this Agreement for any reason.

IX. MERGER CLAUSE.

This Agreement contains the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written.

X. AMENDMENTS.

This Agreement may be amended only by the mutual consent of all Parties. Any amendment must be in writing and executed by all Parties and approved by the City Council. Thereafter, the original Amendment shall be affixed to the original of this Agreement.

XI. WAIVER.

Any waiver of any provision of this Agreement shall not be deemed to be a waiver of any other provision or of a subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

XII. SEVERABILITY CLAUSE.

If any provision or other portion of this Agreement is held unconstitutional, invalid, or unenforceable by a court of competent jurisdiction, it shall be deemed severable and the validity of the remainder of the Agreement shall not be affected by the unconstitutional, invalid, or unenforceable provision or portion.

XIII. RESOLUTION OF DISPUTES.

The exclusive jurisdiction for the filing of any claim or the adjudication of any Dispute shall be in the federal or state courts located in Arizona, and the exclusive venue for a Dispute shall be the Circuit Court for Phoenix Arizona or in the United States District Court for the District of Arizona. For purposes of this Agreement, the term Dispute shall mean any claim that arises out of or relates in any way to this Agreement or to the Employee's employment, including but not limited to claims of wrongful termination or failure to provide benefits, and excluding only workers' compensation claims and claims for benefits under the State of Arizona's Unemployment Insurance laws or any other matter under the jurisdiction of the Labor Interim Chief. The parties agree that before judicial relief is sought, the Mayor and the Employee shall meet face to face in an effort to resolve the dispute.

XVI. NOTICES.

Notices relating to this Agreement shall be effective when hand-delivered to the following:

To City:

Lori Bays, Assistant City Manager
200 W. Washington St., 12th floor
Phoenix, AZ 85003

To Executive:

Michael G. Sullivan, Interim Chief
301 Balsam Drive
Severna Park, Maryland 21146

XVII. ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement of the parties respecting the matters set forth herein. No oral agreement, representation or agreement not expressed herein in writing shall be binding upon or inure to the benefit of the parties or their heirs at law or the personal representative of Executive.

IN WITNESS WHEREOF, the Parties have entered into this Agreement effective as of the day and year first above written.

Executive



Michael G. Sullivan

City of Phoenix, a municipal corporation
Jeffrey Barton, City Manager

By


Assistant City Manager

ATTEST:

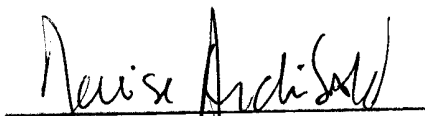
APPROVED AS TO FORM:

Cris Meyer
Phoenix City Attorney

By:


Chief Assistant City Attorney

City Clerk


09.01.2022