

## **EMPLOYMENT AGREEMENT FOR THE CHIEF OF POLICE**

This Employment Agreement (Agreement) is made and entered into by and between the City of Hawthorne, California (City), a municipal corporation, and Gary Tomatani (Tomatani) in order to secure the services of Tomatani as Chief of Police Services (Chief).

City wishes to continue employment of Tomatani as Chief in accordance with the applicable provisions of the Hawthorne Municipal Code and as otherwise provided by law. Tomatani wishes to continue employment as Chief and is willing to do so under the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the above recitals and of the mutual promises and covenants contained herein, City and Tomatani agree as follows:

### **Section 1. DUTIES**

City agrees to employ Tomatani as Chief of Police Services of City. Tomatani will perform such functions and duties as Chief as currently specified by the City and incorporated herein by this reference and will perform other legally permissible and proper duties and functions as required by law and as the City Manager shall from time to time assign. Tomatani agrees to perform all such functions and duties to the best of his abilities.

### **Section 2. TERM**

(A) This Agreement shall be in full force and effect for a period beginning upon its formal City adoption date, March 28, 2023, and terminating as of March 28, 2026, unless extended or terminated prior thereto as otherwise provided for herein.

(B) Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City to terminate the services of Tomatani at any time, subject only to the provisions set forth in Section 4 of this Agreement.

(C) Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Tomatani to retire or resign at any time from his position as Chief with the City, subject only to the provisions set forth in Section 4 of this Agreement.

(D) Nothing in this section shall preclude the termination of this Agreement by mutual consent of both the City and Tomatani.

(E) Nothing in this section shall preclude the City and Tomatani from extending the term of this Agreement beyond its termination date under mutually agreed upon terms and conditions which must be reduced to writing and signed by the City and Tomatani.

### **Section 3. AT-WILL EMPLOYMENT STATUS**

The Chief's employment is at-will.

### **Section 4. TERMINATION OF AGREEMENT**

(A) In the event that the City terminates this Agreement without cause prior to June 30, 2023, then Tomatani shall be entitled to severance pay of a lump sum payment equal to his monthly salary (which includes the bonuses and premium pay provided each month) multiplied by the number of months left on the unexpired term of this Agreement, not to exceed six (6) months, as provided in California Government Code section 53260. The lump sum payment shall be payable within thirty (30) days of the date of termination. This severance pay shall be in addition to any cash out of unused vacation leave or sick leave due to Tomatani upon his severance from City service as provided in section 12 below. Tomatani shall not be entitled to severance should he resign or return to the City's classified civil service.

(B) In the event that City terminates the Agreement for cause, the City shall not be obligated to make any severance payment. For cause, for the purposes of this section, shall mean conviction of a felony or conviction of a crime involving moral turpitude or for causes specified in section 2.52.010 of the Hawthorne Municipal Code. Allegations involving good cause entitle Tomatani to the protections provided by California Government Code section 3300, *et. seq.* Tomatani shall be entitled to appeal any such discharge by requesting an evidentiary hearing before an independent hearing body selected by mutual agreement of the parties or, if the parties are unable to agree, a professional hearing officer selected by mutual agreement from a list provided by the State Mediation and Conciliation Service. The City shall bear the burden of establishing by a preponderance of the evidence that Tomatani has been terminated for cause within the meaning of this Agreement. Costs of the hearing shall be split between the City and Tomatani. If the hearing officer determines that the City did not have cause for termination within the meaning of this Agreement, Tomatani will be entitled to severance pursuant to the provisions of section 4(A).

(C) Tomatani may, at any time during the term of the Agreement, resign from his position of Chief with the City upon written notice. Should he do so, City will not be under any obligation to pay severance benefits. However, Tomatani will be entitled to cash out of any accrued and unused vacation, compensatory or sick leave due to him as provided in section 11 below.

(D) Should City terminate the Agreement without cause, it shall give Tomatani 45 days' written notice.

### **Section 5. BARGAINING UNIT APPLICABLE TO TOMATANI.**

Tomatani has chosen to exercise his rights pursuant to California Government Code section 3508(a) to not be included in any bargaining unit not comprised solely of sworn peace officers. Therefore, as Chief he will not be included in the unit of representation currently represented by the Hawthorne Executive Group and will not be covered by the terms of any Memorandum of Understanding (MOU) entered into between the Hawthorne Executive Group and the City.

For the purposes of California Government Code section 20636(c)(2), City and Tomatani agree that "special compensation" as provided in section 20636 shall be limited to those pay items which are received by sworn peace officer managers included in the unit of representation currently represented by the Hawthorne Police Management Supervisory Group (HPMSG). City and Tomatani further agree that this unit of representation is made up of similarly situated members in the closest related group or class to the Chief.

Except as otherwise provided herein, Tomatani shall be entitled to all compensation and benefits which are received by the employees represented by the HPMSG including, but not limited to, those included in the MOU between the City and HPMSG for as long as Tomatani is a sworn employee of the City. In the event that this agreement conflicts with or supplements the HPMSG compensation and benefits, Tomatani shall receive the benefits set forth in this agreement. The City shall not reduce Tomatani's compensation and benefits regardless of reductions to the compensation and benefits of the HPMSG. Tomatani shall be entitled to any increases in such compensation and benefits provided to the HPMSG.

#### **Section 6. SALARY**

Tomatani's base salary will be \$15,000 per month. For each year, if Tomatani's contract is not terminated, he shall be entitled to an increase in pay by the lesser of five percent (5%) of his then base salary or the cost-of-living adjustment for the respective year.

- (A) Salary will be payable bi-weekly.
- (B) Tomatani understands that as Chief of Police Services he is a department head and a salaried executive employee exempt from coverage under the U.S. Fair Labor Standards Act, 29 U.S.C. Section 201 et seq., and as such is not eligible for overtime compensation for hours worked in excess of 40 in any week.

#### **Section 7: EDUCATIONAL INCENTIVE AND MANAGEMENT DEVELOPMENT PAY**

Tomatani shall be entitled to the educational incentive pay for each rank as covered by the Memorandum of Understanding between the City and the HPMSG which provides in pertinent part as follows:

"Effective June 30, 2012, those employees classified as Police Sergeant, and Police Lieutenant who achieve a Bachelor's Degree shall receive \$275 per month or 3% of base salary per month, whichever is greater."

"Effective June 30, 2012, those employees classified as Police Captain, Police Lieutenant, and Police Sergeant who achieve a Master's Degree shall receive \$550 per month or 3% of base salary per month, whichever is greater."

"Effective July 1, 2017, the monthly limit for the Educational Achievement/Incentive Pay will be \$800."

This Educational Incentive Pay shall be reported to CalPERS as special compensation and therefor compensation earnable, in accordance with California Government Code Section 20636(c)(2) and California Code of Regulations Section 571(a)(2).

Tomatani shall receive the same additional pay increments for Management Development provided in the Memorandum of Understanding entered into between the City and HPMSG (Article 10). In addition, Tomatani shall be entitled to a four (4) percent pay incentive for the completion of the California Police Chiefs Executive Development Certificate Program. As is the case with employees covered by the HPMSG Memorandum of Understanding, this pay shall be reported to CalPERS as special compensation, and therefore compensation earnable, pursuant to California Government Code Section 20636(c)(2) and California Code of Regulations Title 2, section 571(a)(1)

#### **Section 8. USE OF CITY OWNED VEHICLE**

Tomatani shall continue to be provided with a City-owned, take home vehicle, including maintenance and gasoline, for his full use without restriction.

#### **Section 9. PHYSICAL FITNESS INCENTIVE**

Tomatani will be eligible for participation in the City's physical fitness incentive program to include a personalized program for exercise and follow-up workshops. He shall also be eligible for the same incentives currently provided in the Memorandum of Understanding entered into between the City and the HPMSG. This Physical Fitness Pay shall be reported to CalPERS and special compensation, and therefore compensation earnable, pursuant of California Government Code Section 20636(c)(2) and California Code of Regulations Section 571(a)(1)

#### **Section 10. RETENTION PAY**

Tomatani has completed 25 years of service with the City, and will continue to receive retention pay in amount equal to 11% of base salary. The retention pay shall be reported to CalPERS and special compensation, and therefore compensation earnable, pursuant of California Government Code Section 20636(c)(2) and California Code of Regulations Section 571(a)(1)

#### **Section 11. PAID LEAVE BENEFITS**

Tomatani shall be entitled to the same Holiday, Vacation, Compensatory, Floating Holiday, Sick Leave, Bereavement Leave and other paid leave benefits currently received and provided in the Memorandum of Understanding entered into between the City and the HPMSG. In addition, since Tomatani was a captain at the time he was appointed Chief of Police, Tomatani shall be entitled to accrue 40 hours of administrative leave per year, which is the same benefit allotted Captains under the current HPMSG MOU.

**Section 12. EMPLOYEE/DEPENDENT HEALTH, DENTAL, LONG TERM DISABILITY, LIFE INSURANCE, AND VISION INSURANCE.**

(A) Health Insurance. Tomatani shall be entitled to select a health insurance plan offered under the Public Employees Retirement System Health Plans. Regardless of the plan chosen by Tomatani, the City shall pay all premium amounts as they from time to time exist, which are in excess of the following amounts which are to be paid by Tomatani:

Employee Only	\$0.00 per pay period
Employee + One Dependent	\$6.53 per pay period
Employee + Two Dependents	\$11.07 per pay period

(B) Dental Insurance. Tomatani shall be entitled to enroll in the dental insurance plan(s) made available by the City. Regardless of the plan chosen, the City shall pay all premium amounts as they from time to time exist, which are in excess of the following amounts which are to be paid by Tomatani:

Employee Only	\$0.00 per pay period
Employee + One Dependent	\$6.77 per pay period
Employee + Two Dependents	\$12.12 per pay period

(C) Life Insurance and Long Term Disability Insurance.

(1) The City shall provide Tomatani with a term life insurance policy of \$50,000 at a cost to the City not to exceed \$16.00 per month. Additional life insurance may be purchased at Tomatani's own expense.

(2) In conjunction with the term life insurance policy, the City shall also provide Tomatani with an accidental death & dismemberment insurance policy of \$50,000 at a cost to the City not to exceed \$2.00 per month.

(3) The City shall provide Tomatani with a long term disability plan, at a cost to the City not to exceed \$32.00 per month.

(D) Managed Health Network. The City shall make the outpatient element of the Managed Health Network available to Tomatani and all qualified dependents at City cost.

(E) Medical Examination. Tomatani shall be given a complete medical examination at City expense each thirty-six (36) month period. Tomatani shall be entitled to an influenza vaccination annually.

(F) Optical Insurance. The City shall provide Tomatani with an optical plan provided by the Vision Service Plan (VSP) for Tomatani and his dependents, at a cost to the City not to exceed \$16.00 per month. Tomatani shall be responsible for payment of any cost in excess of \$16.00 per month.

(G) The above benefits in subsections (A) through (F) shall not be subject to reduction, but Tomatani shall be entitled to any increases in such benefits provided to members of the HPMSG.

### **Section 13. RETIREMENT BENEFITS**

(A) PERS Pick-Up. The City shall pay the entire nine percent (9%) portion of Tomatani's contribution to PERS. Said contribution shall be designated as 'Employee Contribution'.

The City has adopted and implemented a Resolution pursuant to California Government Code Section 20636(c)(4) and Government Code Section 20691, by which the City shall report to PERS as compensation earnable the City's payment (i.e. pick-up) of the employee's share of the PERS contribution, pursuant to section 414(h)(2) of the Internal Revenue Code, as described above.

(B) 3% at 50 Plan. As a 'Classic Member', the City shall continue to provide Tomatani with the Public Employees Retirement System (PERS) 3% at 50 plan and specified optional public agency contract provisions.

(C) Optional Contract Provisions. The City shall provide the following optional contract provisions:

1. One-year highest compensation (Section 20042)
2. Military service credited as public service (Section 21024)
3. 1959 Survivors Benefit (Section 21573)
4. Post-retirement survivor allowance to continue after remarriage (Section 21635)
5. Pre-retirement death benefit (Section 21548)
6. Continuance of death benefits after re-marriage (Section 21551)

(D) Retiree Health Insurance.

(1) If Tomatani retires and meets the minimum requirements listed below, he shall receive at the City's expense paid health insurance for himself and his dependent spouse. To be eligible for this benefit, Tomatani must actually be receiving retirement benefits from PERS.

*Minimum Requirements:*

- A. 20 years of service in the Hawthorne Police Department
- B. Age 50 years at the time receipt of benefits commences.

(2) Tomatani shall be covered by this provision as long as he is eligible for PERS health insurance coverage.

(3) If Tomatani retires from this City with less than the minimum requirements specified in Section 13 (D)(1), he shall be offered the opportunity to continue his participation in the Group Health Insurance (PERS) in effect at the time. The City agrees to contribute \$136.00 dollars toward this premium per month. Tomatani shall be responsible for any remaining premium cost.

(4) Section 13 (D) (1&3) notwithstanding, retirees and dependents shall continue to receive the same health insurance benefits and at the same cost as active employees, until such time as California law allows municipalities to use minimum vesting (service time) as a requirement to receive such benefits.

#### **Section 14. PROFESSIONAL DEVELOPMENT**

City will pay for travel and subsistence expenses of Tomatani for professional and official travel, meetings, and occasions adequate to continue the professional development of Tomatani and to adequately pursue necessary official functions for the City, including but not limited to meetings of the *International Association of Chiefs of Police* and *California Police Chiefs Association*, the *Los Angeles County Police Chief's Association*, *LA IMPACT*, and membership dues for these and other such national, regional, state and local governmental groups and committees which Tomatani serves as a member, committee-appointee, etc., subject to the City budget and as approved by the City Manager. City will also pay for travel and subsistence expenses of Tomatani for short courses, institutes, and seminars that are necessary for his professional development and for the good of the City as approved by the City Manager.

#### **Section 15. DEFERRED COMPENSATION**

Tomatani may elect to participate in the deferred compensation plan currently covering other City employees.

#### **Section 16. INDEMNIFICATION AND DEFENSE**

City agrees that it will defend, hold harmless, and indemnify Tomatani from any and all demands, claims, suits, actions and legal proceedings brought against him in his official capacity as Department Head, agent, and employee of City, or for any acts, errors or omissions in his personal capacity arising out of the scope and duration of his employment with the City subject to the requirements of the California Government Code and as otherwise permitted by law. This provision shall survive any termination or resignation of Tomatani or the expiration of this Agreement.

#### **Section 17. NOTICES**

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, first class mail, postage prepaid, addressed as follows:

If to the City:	Vontray Norris, City Manager City of Hawthorne 4455 West 126th Street Hawthorne, CA 90250
If to Tomatani:	Gary Tomatani, Chief of Police Services c/o City of Hawthorne Police Department 12501 S. Hawthorne Boulevard Hawthorne, CA 90250

**Section 18. GENERAL PROVISIONS**

1. This Agreement shall constitute the entire agreement between the parties as to the subject matter herein and all other prior agreements, arrangements or understandings, oral or written, are merged into and superseded by the terms of this Agreement. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties unless reduced to writing and signed by the parties.

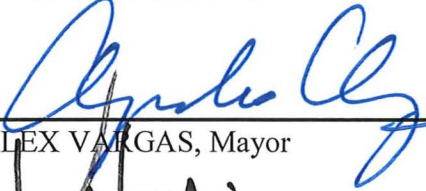
2. If any provision or other portion of this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement shall not be affected and shall remain in full force and effect.

3. The Agreement may be signed in counterparts.


4. The Agreement will become effective as soon as signed and executed by the City Manager and Tomatani, adopted by the City Council and signed and executed by the Mayor of the City.

5. The City shall take all necessary action to effectuate this Agreement including, but not limited to compliance with California Code of Regulations Section 571.

**CITY OF HAWTHORNE**

By   
ALEX VARGAS, Mayor

Dated: 3/29/23

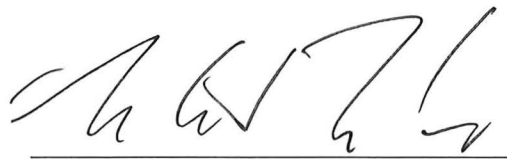
By   
VONTRAY NORRIS, City Manager

Dated: 3.29.23

By   
GARY TOMATANI, Chief of Police

Dated: 4-6-23

*Approved as to form:*

  
ROBERT KIM, City Attorney

Dated: 4/6/23