

**CITY OF NEVADA CITY**

**EMPLOYMENT AGREEMENT FOR POLICE CHIEF POSITION**

**DANIEL FOSS**

This Employment Agreement (“Agreement”) for the position of Police Chief is entered into by and between the City of Nevada City (“City”), a general law city, and Daniel Foss (“Foss”), an individual.

**Recitals**

WHEREAS, the City requires the services of a police chief; and

WHEREAS, pursuant to Nevada City Municipal Code Section 2.08.030, the City Manager has the authority to appoint and dismiss the chief of police; and

WHEREAS, Foss has the necessary education, experience, skills, and expertise to serve as the City's Police Chief; and

WHEREAS, the City Manager Sean Grayson (“City Manager”) desires to employ Foss to serve as the Police Chief of the City and to provide certain benefits, establish certain conditions of employment, and to set the working conditions of the Police Chief; and

WHEREAS, the Parties wish to establish the terms and conditions of Foss’s employment as Police Chief to the City through this Agreement.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the Parties mutually agree as follows:

**Agreement**

**1. Appointment and Term.**

Employment as the Police Chief shall be “at will,” subject to the terms of this Agreement, commencing on July 18, 2022, for a term of three (3) years, or until termination or resignation as provided in Paragraph 6. The Parties may, by mutual written agreement, extend Foss’s employment under the term of this Agreement beyond the initial three-year term. The City’s election not to extend or renew this Agreement must be delivered in writing to Foss no later than three (3) months prior to the expiration of the Agreement or any extension thereto.

**2. Duties and Authority.**

Foss shall perform said duties at the pleasure of the City Manager as provided in Nevada City Municipal Code Section 2.08.030. The City agrees to employ Foss as Chief of Police to exercise the powers and authority and to perform the functions and duties specified in the Nevada City Municipal Code and all relevant resolutions, rules, regulations,

procedures, applicable job description(s), and state codes, as they currently or may in the future exist. Foss shall exercise such power and authority and perform such other functions and duties, not inconsistent with this Agreement, as City may legally assign.

**3. Hours of Work.**

Foss is expected to devote necessary time, within and outside normal business hours, to the business of the City. Due to the nature of the position, it is understood that the workday and work week hours may vary. The Police Chief is an exempt position; Foss shall not be eligible for overtime.

**4. Compensation.**

- A. City agrees to compensate Foss for services rendered an annual base salary of \$137,800 (One Hundred Thirty-Seven Thousand Eight Hundred Dollars), subject to deductions and withholding of any and all sums required for federal and state income tax, pension contributions, and all other taxes, deductions or withholdings required by then current state, federal or local law, prorated and paid bimonthly on the City's payroll cycle.
- B. The annual base salary of \$137,800 includes the 6% raise for the Nevada City Police Officers' Association anticipated for July 1, 2022.
- C. Foss's compensation shall be reviewed annually in connection with the annual review or at other times as may be determined by City Manager. Foss has the potential of a salary and benefit adjustment each year as part of an annual performance evaluation. Salary adjustments made under this clause are considered separate from any cost-of-living adjustment that may be made as set forth below.
- D. Any salary adjustment for the term of this agreement is contingent on:
  1. A positive performance evaluation from the City Manager.
  2. Positive advancement toward the City Council's direction to retain and enhance the Nevada City Police Department and adopt a Community Oriented Policy Model for service.
  3. City agrees to adjust Foss's annual salary by the same cost-of-living adjustments on the same percentage and at the same time as may be adjusted for employees in the City's Management and Supervisory MOU.
  4. City shall not at any time during the term of this agreement reduce the base salary, compensation, or other financial benefits of Foss, unless as part of a general City management salary reduction, and then in no greater percentage than the average reduction of those employees covered under the Management and Supervisory MOU or unless otherwise negotiated.

## 5. Other Benefits.

- A. Health Insurance.** The City shall pay the premium for health insurance for Foss including spouse and dependents, for medical coverage (100% for employee and 90% dependent coverage for City plans). Dental and Vision coverage will be provided to Foss as provided to all Management and Supervisory employees per the applicable Memorandum of Understanding (MOU).
- B. Life Insurance, Short Term and Long-Term Disability.** The City shall provide term life insurance and short-term disability and long-term disability benefit options as provided to all Management and Supervisory employees per the applicable MOU.
- C. Deferred Compensation.** The City shall provide Foss \$50 per pay period, not to exceed 26 pay periods annually, into the City 457b deferred compensation plan. The City's obligation to provide the \$50 contribution only arises if Foss elects to also contribute at least \$50 per pay period.
- D. Vacation Leave.** Foss shall receive ten vacation days per year with a starting balance of ten days. Foss shall be allowed to earn vacation credit to a maximum of 240 hours. Foss will not be allowed to earn more than the maximum accrual. Should Foss's vacation leave credits reach the maximum, Foss shall cease to earn any additional vacation credits until the leave balance is reduced sufficiently to allow additional credits to be added without exceeding the maximum accrual unless authorized due to extenuating circumstances by the City Manager.
- E. Holidays.** Foss shall receive fourteen (14) holidays per year as provided to all Management and Supervisory employees per the applicable MOU.
- F. Administrative Leave.** Foss shall receive eighty (80) administrative hours per year as provided to all Management and Supervisory employees per the applicable MOU. This leave may not be accrued, accumulated, or carried over from year to year. This leave will not be paid out upon separation from the City.
- G. Sick Leave.** Foss shall accrue one (1) day per month of sick leave as provided to all Management and Supervisory employees per the applicable MOU.
- H. Retirement.** Foss is a "Classic" Tier 2 Safety member of the California Public Employees Retirement System. Employee will be covered under the City's 2% at 55 formula. Foss's contribution is 8% (eight percent) towards the retirement system. The City will pay the employer's share to PERS, and Social Security and Foss shall pay the employee contribution of Social Security.
- I. Automobile and Cell.**
- A. City will provide the use of a City-owned emergency response vehicle to Foss for the term of this agreement with costs including insurance, maintenance and fuel

covered by City. Any use of a City vehicle shall be for purposes of City business only and not for personal or recreational use.

- B. The City will also provide a cell phone allowance of \$40 per pay period.
- J. Uniform.** The City shall pay Foss an annual uniform allowance of \$1,500 (One Thousand Five Hundred Dollars) for the purchase and maintenance of uniforms. The City will provide Foss the uniform allowance annually in the first pay period in July.
- K. Incentives.** City agrees to provide the following incentive pay to Foss:
  - A. City agrees to provide an Education Incentive to Foss of 7.5% for a job-related Master's Degree.
  - B. City agrees to provide Foss a Certification Incentive of 5% for a POST Management Certificate, and 5% for a POST Executive Certificate.
  - C. City agrees to provide Foss a Longevity Incentive as provided to the Nevada City Police Officers Association with a minimum of 5 (five) years of service to the City.

6. **Termination.**

This Agreement may be terminated at any time upon the mutual written consent of both City and Foss.

- A. Voluntary Resignation.** Foss may terminate this Agreement any time by providing the City not less than thirty (30) calendar days prior written notice.
- B. By City without Cause.** The City may terminate Foss without cause by providing Foss not less than thirty (30) calendar days prior written notice. The City shall pay Foss a severance in the sum equal to three (3) months base salary plus six (3) months COBRA health insurance coverage payments for Foss and covered dependents.
- C. By City with Cause.** The City may terminate Foss for cause, without obligation to make the severance payment to Foss specified in section (B) above, subject to the provisions in Section D below. For purposes of this section, "for cause" shall mean any of the following:
  - a. Foss's material breach of this Agreement;
  - b. Conviction of a felony;
  - c. Conviction of a misdemeanor arising out of Foss's duties under this Agreement;
  - d. Conviction of any crime involving an "abuse of office or position" as that term is defined in Government Code section 53243.4;
  - e. Willful abandonment of duties;
  - f. Repeated failure to carry out a directive or directives of the City Council or City Manager;

- g. A demonstrated overall unsatisfactory performance over two consecutive evaluation periods pursuant to Section 7 below; and
- h. Any other intentional or grossly negligent action or inaction by Foss that materially and substantially impedes or disrupts the performance of the City or its organizational units, or is detrimental to employees or public safety.

**D. Appeal Rights.** In accordance with Government Code section 3304(c), prior to action to terminate this Agreement, whether with or without cause, Foss shall be provided written notice of the proposed action and the reasons for removal from this appointment and shall be provided the right to an administrative appeal. Foss shall have not more than five (5) days after receipt of the written notice under this section to submit a request in writing to the City Manager for the administrative appeal. Such appeal shall be before an independent hearing officer appointed by the City Manager who shall make an advisory recommendation on the matter to the City Manager based solely on a review of the City's written notice (and supporting documentation, if any) documentation submitted by Foss and any oral presentation by Foss or the City.

**7. Performance Evaluation.**

The City Manager shall review and evaluate the Police Chief's performance annually. Nothing in this provision shall be construed to require the City to grant merit increases based on the performance evaluation nor to limit the discretion to grant merit increases. If the Police Chief receives an overall unsatisfactory performance rating in a performance evaluation, the City Manager shall evaluate the Police Chief's performance again in six (6) months.

**8. City Commitments**

- a. The City shall provide the Police Chief with office space, staff, equipment, supplies, automobile allowance, and all other facilities and services adequate for the performance of the Police Chief's duties.
- b. The City shall pay for or provide the Police Chief reimbursement for all actual business expenses. The City shall provide the Police Chief a credit card to charge appropriate and lawful business expenses.
- c. The City agrees to pay the professional dues and subscriptions on behalf of the Police Chief for participation in national, regional, state, or local associations and organizations, as necessary and desirable for the good of the City, and for the Police Chief's continued professional participation and advancement.
- d. The City agrees to pay the travel and subsistence expenses of the Police Chief for purposes such as official functions, meetings, occasions, short courses, institutes and seminars that are necessary for the good of the City or for the professional development of the Police Chief.

9. **Non-Assignment of Agreement.**

This Agreement is intended to secure the individual services of the Foss and is not assignable or transferrable by Foss to any third party.

10. **Governing Law/Venue.**

This Agreement shall be interpreted according to the laws of the State of California. Venue for any action or proceeding regarding this contract shall be in Nevada County.

11. **Enforceability.**

If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

12. **Conflict of Interest.**

Foss shall not engage in any business or transaction or have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties. Foss shall also be subject to the conflict-of-interest provisions of the California Government Code and any conflict of interest code applicable to the Police Chief's City employment. Foss is responsible for submitting to the City Clerk the appropriate Conflict of Interest Statements.

13. **Entire Agreement and Modification.**

This Agreement constitutes the entire understanding of the parties hereto pertaining to the Police Chief employment contract and can only be amended by a writing fully executed by both parties.

14. **Indemnification.**

To the full extent of the law, the City shall defend and indemnify the Police Chief against and for all losses sustained by the Police Chief in direct consequences of the discharge of the Police Chief's duties on the City's behalf for the period of the Police Chief's employment, save and except those losses sustained as a result of the willful act or omission of the Police Chief.

15. **Notices.**

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

a. City:

Attn: City Manager  
City of Nevada City  
317 Broad Street  
Nevada City, CA 95959

Copy to: Dean J. Pucci, City Attorney  
6349 Auburn Boulevard  
Citrus Heights, CA 95621

b. Police Chief:

Daniel Foss  
(Confidential address on file with Human Resources)

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial process. Notice will be deemed given as of the date of personal service or as of the date of deposit of such written notice, postage prepaid, with the United States Postal Service.

16. Counterparts.

This Agreement may be executed in counterparts containing original signatures.

**IN WITNESS WHEREOF**, the City has caused this Agreement to be signed and executed on its behalf by the Mayor, and Foss has signed and executed this Agreement, on the day and year written below.

EMPLOYEE

DATED: June 24, 2022

  
\_\_\_\_\_  
Daniel Foss, Police Chief

CITY OF NEVADA CITY

DATED: June 24, 2022

  
\_\_\_\_\_  
Sean Grayson, City Manager

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Dean J. Pucci, City Attorney