EMPLOYMENT AGREEMENT
BETWEEN THE CITY OF AUBURN AND DAVE SPENCER, FIRE CHIEF

RECITAL

The City Manager has selected Dave Spencer (hereafter, "Department Director") to serve as Fire Chief of the City of Auburn (hereafter, the "City") effective June 11, 2018, and Dave Spencer accepts such employment subject to approval of this employment agreement (hereafter, this "Agreement"), background check, and physical and psychological examinations. Accordingly, the parties agree as follows:

AGREEMENT

1. **Effective Date**

This Agreement shall become effective on July 17th, 2018, and after it has been executed by Department Director and the City Manager and duly approved by Resolution of the City Council.

2. **Term of Employment**

Pursuant to the provisions of the Auburn Municipal Code Section 31.058(I), Department Director serves at the pleasure of the City Manager and on an "at will" basis and has no property interest in or right to his continued employment during the term of this Agreement, subject to the terms and provision of this Agreement as set forth below. This Agreement will remain in full force and effect until one of the parties terminates it as provided in this Agreement.

3. **Duties; Hours of Work**

A. Department Director shall perform those functions and duties specified by State law, the Auburn Municipal Code, any applicable job description, and by direction of the City Manager. Department Director shall perform such duties in accordance with the highest professional and ethical standards of the Department Director position. Department Director shall not engage in any activity, which is, or which may become, incompatible with the City of Auburn or office of Department Director, as provided for by federal, state, and local law. During the term of this Agreement, Department Director shall be exclusively employed by the City, unless prior authorization otherwise is received from the City Manager, which authorization will not be unreasonably withheld.

B. Department Director shall maintain a regular work schedule consistent with that approved for other management employees of the City. Department Director's duties may require more than eight (8) hours per day and/or forty (40) hours per week, and may also include time outside normal office hours such as attendance at City Council and Commission meetings. Department Director is an exempt employee under the Fair Labor Standards Act and shall not be entitled to additional compensation for such time.

4. **Compensation**

A. Department Director shall receive an annual base salary of $145,000 payable in equal semi-monthly payments to be made at the same time as other employees are paid.

B. Department Director's compensation shall be reviewed with the City Manager at least annually in connection with the annual review required by section 16 below or at other times as may be determined by City Manager. Merit based salary increases within the Senior Executive Pay Plan for Department Directors (the "Control Points range") are at the sole discretion of the City Manager during the term of this Agreement, dependent on the quality of job performance by Department Director as determined by the City Manager and the City's fiscal condition.

C. Salary increases are based on merit only and may be revoked in the event Department Director receives an unsatisfactory evaluation, either at the annual evaluation or at any additional evaluation completed by the City Manager. In the event the City Manager revokes a salary increase based on an unsatisfactory evaluation, Department Director's salary shall be decreased to an appropriate step on the Control Points range as determined by the City Manager.

D. The City Manager may, on an annual basis, award special performance one-time cash bonuses not to exceed 15% of Director's base salary. These one-time cash bonuses may be given any time during the year provided the employed received at least a Standard rating on his/her last evaluation. Such one-time cash bonuses are not considered pensionable compensation.

E. Department Director will be responsible for 100% of the employee contribution to the California Public Employees Retirement System (PERS), which, for those employees classified as "safety fire" employees under PERS, is currently 9% for "classic" PERS members and 16.5% for "new" PERS members and subject to change.

5. **Health Insurance**

A. City shall pay up to the following amounts per month for health insurance coverage:

(i) Employee only	$ $682.80
(ii) Employee + spouse	$ $1,365.62
(iii) Employee + family	$ $1,774.69

B. During the term of this Agreement, the following participation formula shall apply: The City will pay eighty percent (80%) and employees will pay twenty percent (20%) of the average increase in premiums occurring in those CalPERS plans offered to City employees in the 95603 zip code area (excluding the highest and lowest cost plans).

C. Department Director may elect not to receive health coverage from the City. Directors who elect not to receive health coverage from the City will be required to sign a release form. Any employee who signs a release form shall receive monthly payments equal to the Employee only coverage amount in effect at the time the release is signed. From time-to-time, said amount will be adjusted as set forth in this Agreement.

6. **Life Insurance**

City shall provide term life insurance in the amount equal to twice the annual base salary of Department Director. Such life insurance shall be provided through the same insurance company providing life insurance to other City employees, or by another insurer acceptable to City.

7. **Administrative and Executive Leave**

A. Department Director shall be entitled to 80 hours' administrative leave per fiscal year (July 1 through June 30). In the event such leave is not used, Department Director may receive equivalent cash compensation therefore, in full or in part, for accrued but unused administrative leave. No amount of unused administrative leave time may be accumulated and carried over past the end of any fiscal year (June 30).

B. Department Director may receive additional executive leave, which may be awarded based upon job performance by the City Manager in an amount between one and five days per fiscal year (July 1 through June 30). No amount of unused

executive leave time may be accumulated and carried over past the end of any fiscal year (June 30) and cannot be cashed out at any time.

8. **Annual Vacation Leave**

A. Department Director shall be entitled to between 12 days (96 hours) and 23 days (184 hours) annual vacation leave dependent upon years of employment with the City as follows:

(i) one through two years of service	12 days (96 hours)
(ii) three through five years of service	15 days (120 hours)
(iii) six through ten years of service	17 days (136 hours)
(iv) eleven through fifteen years of service	21 days (168 hours)
(v) sixteen or more years of service	23 days (184 hours)

B. Department Director may receive equivalent cash compensation, in full or in part, at any time during the year for unused vacation leave. For vacation leave of more than one week at a time, Department Director must provide sufficient notice of his intended vacation absence to the City Manager. Department Director shall accrue no more than twice the number of hours of vacation leave he or she is entitled to annually.

C. Department Director shall be afforded 80 hours of banked vacation leave as of the effective date of this Agreement. Department Director shall not accrue additional vacation leave until Department Director would have accrued those advanced 80 hours' vacation leave in the normal course of employment.

9. **Other Leaves and Benefits**

All other personal leave, family leave, funeral leave, or sick leave shall be as provided to other management employees of the City. City shall afford Department Director such other benefits as are provided to other management employees of the City on the same terms as provided to those employees except as otherwise expressly provided herein.

10. **Automobile Allowance**

In recognition of the fact that the Department Director's normal duties require frequent use of an automobile, Department Director shall be provided a City vehicle in lieu of an automobile allowance.

11. Residency

Department Director and City mutually agree that it is desirable for Department Director to live within close proximity to the City of Auburn to fully and effectively execute Department Director's duties under this Agreement, the Auburn Municipal Code, any applicable job description, and other applicable federal, state, and local law. Department Director hereby agrees to and shall, for the duration of this Agreement, establish and maintain his primary residence within a 30 minute travel time to and from Auburn City Hall located at 1225 Lincoln Way, Auburn, CA 95603.

12. One-Time Relocation Reimbursement

City shall reimburse Department Director for reasonable costs and moving expenses, including, but not limited to, necessary travel and accommodation costs, which are actually incurred and paid in relocating as required by Section 11., in an amount not to exceed $4,000.00. Department Director shall submit a claim to the City's Finance Department, accompanied by written documentation including receipts, for such reimbursement no later than 90 days after the effective date of this Agreement.

13. One-Time Tuition Reimbursement

City shall reimburse Department Director for tuition expenses, actually incurred and paid in a Master's Degree Program of his choosing, in an amount not to exceed $2,500.00. Department Director shall submit a claim to the City's Finance Department, accompanied by written documentation including receipts, for such reimbursement no later than 30 days after such tuition expenses are incurred and paid.

14. Professional Memberships & Meetings; Other Expenses

City recognizes that certain expenses of a non-personal and job-related nature may be incurred by Department Director. City agrees to reimburse Department Director for reasonable expenses which are authorized by the City budget, approved of in advance by the City Manager, and which are supported by expense receipts, statements or personal affidavits, and audited in like manner as other demands against the City.

15. Retirement Program and Deferred Compensation

City shall provide the same PERS retirement benefits to Department Director as are received by other employees of the City who are classified as "safety fire" employees under PERS. "New" members, as that term is defined in the Public Employees' Pension Reform Act of 2013 (PEPRA), will receive retirement benefits

calculated at a benefit formula of 2.7% at age 57. "Classic" PERS (i.e., those members not defined as "new members" under PEPRA) will receive retirement benefits calculated at a benefit formula of 3% at age 50. City shall contribute $50 per month into a deferred compensation plan of Department Director's choice.

16. **Annual Performance Evaluation**

The City Manager shall evaluate Department Director's performance at least once annually. The City Manager and Department Director shall annually develop mutually agreed performance goals and criteria which the City Manager shall use in reviewing Department Director's performance in the following year. It shall be Department Director's responsibility to initiate this review each year. Department Director will be afforded an adequate opportunity to discuss each evaluation with the City Manager.

17. **Indemnification**

City shall defend, hold harmless and indemnify Department Director against any claim, demand, judgment, or action of any type or kind arising within the course and scope of Department Director's employment to the extent required by Government Code Sections 825 and 995.

18. **Other Terms and Conditions of Employment**

A. The City Manager may from time to time fix other terms and conditions of employment relating to the performance of Department Director, provided such terms and conditions are not inconsistent with or in conflict with the provision of this Agreement, the Auburn Municipal Code, or other applicable law.

B. The provisions of the City's Personnel Rules and Regulations ("Rules") applicable to other management employees of the City shall apply to Department Director, except that if the specific provisions of this Agreement conflict with the Rules, the terms of this Agreement shall prevail. Without limiting the generality of the exception noted in the previous sentence, however, no provision of the Rules or this Agreement shall confer upon Department Director a property right in his employment or a right to be discharged only upon cause. Department Director is an at-will employee serving at the pleasure of the City Manager and may be dismissed at any time with or without cause, subject only to the provisions of this Agreement.

C. Department Director shall be exempt from paid overtime compensation and from Social Security taxes other than the mandatory Medicare portion of such taxes.

19. **Termination**

A. Department Director is not part of the competitive (classified) service and therefore is an at-will employee. As an at-will employee, Department Director may be terminated with or without cause, and without advance notice.

B. If Department Director is terminated by the City Manager without cause, Department Director, after termination and upon executing a claim waiver and release of liability, will be entitled to six months of severance pay at Department Director's base salary rate. The severance pay will be paid at the time of separation from City employment.

C. If Department Director is terminated by the City Manager for cause, Department Director is not entitled to any severance pay whether or not advance notice is provided. If Department Director is terminated for cause, Department Director must be given notice of the cause and supporting evidence. Department Director is entitled to meet with the City Manager at which time Department Director may reply orally and/or in writing to the cause and supporting evidence. The meeting is not an evidentiary hearing. There is no right to appeal the City Manager's decision. The City Manager's decision is final. For purposes of this Agreement, the term "for cause" shall include any of the following:

(i) use of alcohol or drugs that impedes performance of duties;
(ii) conviction of a felony or misdemeanor involving moral turpitude (a plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed a conviction for this purpose);
(iii) a proven claim of either sexual harassment or abuse of employees in violation of law or adopted City policy;
(iv) willful and repeated failure to carry out the lawful directives or policy decisions of the City Council or the City Manager; or
(v) willful abandonment of the position or continued and unexcused absence from duty.

D. Department Director may voluntarily terminate employment, by resignation or retirement or some similar other manner, at any time during the term of this Agreement, subject to at least 30 days' written notice by Department Director to the City Manager, unless the City Manager and Department Director agree otherwise. In such case, City shall have no further obligation to provide payments and benefits, including severance benefits, upon the effective date of termination of employment, other than payment of accrued vacation leave or other payments required by law.

20. E. Notwithstanding any other provision of this Section 19. to the contrary, the City Manager shall not terminate Department Director without cause for a period of 120 days following his or her appointment as the City Manager. The purpose of this Subsection 19.E. is to allow a newly-appointed City Manager sufficient time to observe the actions and abilities of Department Director in the performance of his duties under this Agreement, any applicable job description, and other applicable federal, state, and local law. After the expiration of the 120 day period, there shall be no limitation on the City Manager's ability to terminate Department Director without cause in accordance with this Agreement. Nothing in this Subsection 19.E. shall limit the authority of the City Manager to terminate Department Director for cause, or the authority of Department Director to voluntarily terminate employment, in accordance with this Agreement.

21. **Compliance With Law**

This Agreement is subject to all applicable provisions of federal and state law, the provisions of the Auburn Municipal Code, and to any other ordinances, rules, and regulations of the City applicable to the Department Director.

22. **General Provisions**

A. This Agreement constitutes the entire agreement between the parties. City and Department Director hereby acknowledge that they have neither made nor accepted any other promise or obligation with respect to the subject matter of this Agreement.

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

C. Any notice to City pursuant to this Agreement shall be given in writing, either by personal service or by registered or certified mail, postage prepaid, addressed as follows:

City Manager
City of Auburn
1225 Lincoln Way
Auburn, CA 95603-5004.

With a courtesy copy to the City Attorney at the following address or the address then shown in the records of the City for the City Attorney:

Michael G. Colantuono, Esq.
Auburn City Attorney
420 Sierra College Drive, Ste. 140
Grass Valley, CA 95945-5091.

Any notice to Department Director shall be given in a like manner, and, if mailed, shall be addressed to Department Director at the address then shown in City's personnel records. For the purpose of determining compliance with any time limit stated in this Agreement, a notice shall be deemed to have duly given (a) on the date of delivery, if served personally, or (b) on the second calendar day after mailing, if mailed.

D. Venue for any disputes arising from or relating to this Agreement shall lie in the Superior Court for the County of Placer, California. If an action at law or in equity is necessary to enforce or interpret this Agreement, the prevailing party shall be entitled to reasonable and actual attorneys' fees and costs with respect to the action.

E. A waiver of any of the terms and conditions of this Agreement shall not be construed as a general waiver and either party shall be free to enforce any term or condition of this Agreement with or without notice to the other notwithstanding any prior waiver of that term or condition.

23. **Amendments**

This represents the entire agreement between the parties. Amendments to this agreement may be made at such times as approved by the City Manager and Department Director and shall be in writing.

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

DEPARTMENT DIRECTOR

Dated: 7/17/18

Dave Spencer

CITY

Dated: 7/20/18

Robert Richardson, City Manager

APPROVED AS TO FORM:

Dated: 6/11/2018

Gary B. Bell, Assistant City Attorney

ATTEST:

Dated: 6/11/2018

Amy Lind, City Clerk