

# GALLOWAY WETTERMARK & RUTENS, LLP

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February 15, 2019

Mr. Dillon Nettles  
Post Office Box 6179  
Montgomery, AL 36106-0179

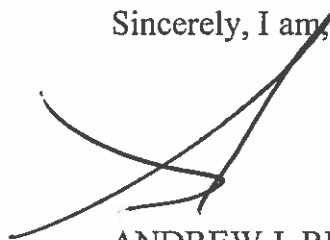
Dear Mr. Nettles:

I have the pleasure of representing the City of Saraland, Alabama. Chief James C. West has forwarded me a letter requesting records under the Alabama Open Records law. In response to that request, I am enclosing documents bates labeled Sara 001-055.

In addition, please be advised that all law enforcement officers with the City of Saraland are compliant with *Alabama Code* Section 36-21-46 concerning minimum standards training. The City does not regularly maintain materials concerning this training. Furthermore, all officers also comply with *Alabama Code* Section 36-21-51 concerning continuing education requirements. The City does not regularly maintain and keep training materials and information supplied pursuant to that course work.

If you have any questions, please do not hesitate to contact me.

Sincerely, I am,



ANDREW J. RUTENS  
For the Firm

AJR/fmf

Enclosures

#### **1.102 PRIMARY OBJECTIVE:**

The Saraland Police Department's role is to enforce the law in a fair and impartial manner, recognizing both the statutory and judicial limitations of police authority and the constitutional rights of all persons.

#### **1.105 APPREHENSION OF OFFENDERS:**

The administration of criminal justice consists of identification, arrest, prosecution, punishment, and rehabilitation of the violator; the objective of which is voluntary compliance with the law. Once a crime has been committed, the duty of the department is to initiate the criminal justice process by identifying and arresting the perpetrator, to obtain necessary evidence, and to cooperate in prosecution of the case.

As the certainty of swift and sure punishment serves as an effective deterrent to crime, so must the department strive to solve all crimes and bring the perpetrators to justice.

#### **1.401 HUMAN RELATIONS:**

Members and employees will not speak in a manner which may be perceived as downgrading, or use words which may be considered derogatory. Contacts with the public must be conducted in a manner which will formulate a favorable attitude toward the department. Employees shall not act in a manner which exhibits bias, prejudice, or discrimination. Employees shall be receptive to citizens who seek advice, guidance, or assistance. Members and employees will use such firmness as is reasonably necessary under the circumstances.

#### **1.702 EMPLOYMENT DISCRIMINATION AND HARASSMENT POLICY:**

(1) General. It is a violation of Saraland Police Department Policy to harass or discriminate against individuals because of their race, color, national origin, religion, sex, age, handicap, disability, veteran status, or any other protected status. The Police Department will vigorously investigate and impose sanctions when investigation confirms that discrimination has occurred.

#### **2.111 DUTY IN THE USE OF FORCE TO AFFECT A SEARCH WARRANT:**

Searches should be conducted in a manner that is the least destructive of property and/or possessions. Every effort will be made to restore searched premises to its original condition. Where a panel, wall, or other fixed object must be moved or removed, it will be done in such a manner as will cause the least damage and repair cost to the property.

Every search warrant obtained and executed by officers of the Saraland Police Department will be in accordance with Federal and State law.

## **2.200 USE OF FIREARM:**

Deadly force will be used to protect the officer, another officer, or another citizen from death or serious bodily harm.

Deadly force will be used to prevent the escape of a fleeing felon who has committed such a violent crime that the officer has good reason to believe that the use of such force is necessary to prevent imminent, or at least a substantial likelihood of, death or serious bodily harm to himself or another citizen if the fleeing felon is not immediately apprehended.

Use of deadly force will comply with Federal and State Law.

## **2.201 PROHIBITED USE OF FIREARMS:**

A member is specifically prohibited from using his firearm when:

- (1) The use of warning shots in any situation is prohibited;
- (2) When there is a reasonable cause to believe the person to be fired upon is a juvenile, except in defense of life or serious bodily harm, where all other reasonable means available have been exhausted;
- (3) Shooting at a moving vehicle is prohibited, unless justification is covered under 2.200 or the person being pursued is using the vehicle as a deadly weapon against the officer or another person. Any officer firing at a moving vehicle must consider the surrounding circumstances, such as other traffic, innocent bystanders, occupied dwellings, and innocent passengers in the vehicle being pursued.

## **2.204 USE OF FORCE IN SHOOTINGS AND/OR DEATHS:**

The Chief of Police will determine the status of any member/employee involved in the use of force involving injury to any person, by means of a firearm, and any use of force resulting in the death of a subject(s) by means of a firearm or any other tool or weaponry.

## **2.205 DUTY IN THE USE OF FORCE:**

A member may use only that force necessary to effect an arrest or otherwise accomplish an assigned task lawfully. Each member is specifically charged with knowing and remaining competent in the law of the United States and the State of Alabama with regard to when and how force may be used. Force that an officer uses to gain control over a subject is divided into the following categories:

- (1) Officer/citizen-verbal direction
- (2) Soft hand control
- (3) Electronic incapacitation devices
- (4) Freeze +P aerosol restraint
- (5) Intermediate weapons
- (6) Lethal force

## **2.206 DEADLY FORCE:**

Deadly force may be used in defense of life or when authorized by Federal and State Law in the performance of a lawful duty when all other reasonable means available have been exhausted.

## **2.208 LESS LETHAL FORCE – DEFINITION:**

Less Lethal Force is Defined as, "Force that is neither likely to cause death or serious injury, but the possibility of a fatality, however remote, does exist. Use of Less Lethal Force Technology and Equipment is defined as, "Those items which, when used properly, are less likely to result in death or serious physical injury than force commonly referred to as 'deadly'."

## **2.209 LESS LETHAL LAUNCHER – USE OF FORCE:**

The use of Less Lethal Launchers constitutes a Use of Force and its usage is placed on the Use of Force Continuum at the High Level in the Use of Force.

## **2.210 LESS LETHAL LAUNCHERS:**

Officers may request the use of a Less Lethal Launcher to control a dangerous or violent subject(s) when deadly force does not appear to be justified and/or necessary; attempts to subdue a subject by other conventional tactics have been, or will likely be ineffective for the situation at hand; or there is reasonable expectation that it is unsafe for officers to approach within contact range of the subject(s).

Less Lethal Launchers are extended range impact weapons that have the capability of delivering the following projectile payloads:

Bean Bag – 12 gauge extended range impact weapon containing a bean bag  
Liquid Pain Compliance Round – Round contains liquid instead of OC or Paint.

## **2.211 LESS LETHAL LAUNCHER – PROCEDURE FOR USE:**

Only Designated Certified Officers who have successfully completed the Department's Less-Lethal Launcher Training Program will be authorized to check out and/or deploy an appropriate launcher for which they are certified, and will deploy only the weapon system(s) with which they have qualified. Only properly functioning AND charged launchers shall be carried in the field.

An authorized Less-Lethal Launcher may be used:

- (1) When necessary to defend the officer or others from force or the threat of force that could cause injury to any person;
- (2) To effect an arrest of a person who actions demonstrate Active Resistance or Aggression to arrest;
- (3) When it would be unsafe or impractical to approach a person to deploy OC from a canister, deploy the Taser System or to use the ASP Baton;
- (4) When a higher level of force may be justified, but an opportunity exists to use a Less-Lethal Launcher before these other options are deployed;
- (5) When lower levels of force would be ineffective or inappropriate and an arrest of the person is the officers' objective;
- (6) With the approval of a Sergeant or above, a Less-Lethal Launcher may be used to disperse an unruly or rioting crowd threatening unlawful property damage, or physical violence. A verbal warning shall be given over the public address system of a patrol vehicle or bullhorn prior to deployment to permit the crowd's participants to disperse; or
- (7) When considered necessary by the S.W.A.T. Commander in the execution of a Felony Search Warrant(s), Detail(s), and "Call Out" Situation(s).

Each discharge, including accidental discharges, of a Less-Lethal Launcher will be verbally reported to a supervisor immediately, followed by a written report documenting events leading up to the discharge as well as the outcome of the event. This will be submitted in conjunction with a completed Use of force form.

When deploying a Less Lethal Launcher, officers will avoid intentionally aiming for and/or striking the face, eyes, neck, spine, and/or groin of the suspect.

All Less-Lethal Launchers will be stored in the Division Property Room or in a designated and secured area. All Less-Lethal Launchers assigned to officers will be stored in the officer's assigned vehicle and will remain stored in their cases while in the vehicles, with the safety on.

## **2.212 LESS LETHAL LAUNCHER – OFFICERS RESPONSIBILITIES:**

Division Commanders will ensure that personnel who are trained in the use of the Less-Lethal Launchers, carry it on duty when available, and will review each use of a Less-Lethal Launcher by officers within their command to ensure compliance with S.P.D. Rules & Regulations. Division Commanders will ensure that any incident involving the discharge or deployment of a Less-Lethal Launcher is documented and forwarded up the chain of command. They will also ensure that only trained & certified officers deploy the Less Lethal Launchers and respond to the scenes in which a shift supervisor authorizes the use of a Less-Lethal Launcher. Shift Supervisors will respond to any scene where a Less Lethal Launcher has been requested and will submit a report documenting the events leading up to the discharge and outcome of the incident including a Use of Force Report.

Field Officers will upon encountering a situation that may require the use of a Less-Lethal Launcher, request the assistance of an officer equipped with said launcher and attempt to maintain proper cover and containment, when practical, and continue de-escalation attempts until the arrival of the Less Lethal Launcher. Upon hearing the verbal warning of "303" given by the Discharging Officer, field officers will immediately break contact with the intended target(s) and create distance so the Less Lethal projectile(s) can be deployed.

Discharging Officers will request a supervisor to respond to the scene, if not already present, and shall give a verbal warning of "303", loudly and clearly, before dispensing Less Lethal projectiles, thereby giving other officers the opportunity to clear from the target. After notification, the Discharging Officer does not have to wait until the supervisor arrives before deploying the Launcher if the situation necessitates immediate usage.

The discharging officer and assisting officers will render basic medical aid and/or call for appropriate additional medical attention to be administered to persons struck by Less Lethal projectiles.

## **2.213 LESS LETHAL RECERTIFICATION:**

Officers must re-qualify annually to maintain their certification to operate Less Lethal Launchers

Annual re-certification training will normally be completed during SPD In-Service Training and only Certified Less Lethal Launcher Instructors will be allowed to conduct said training and/or provide demonstrations of the equipment. Operator Certification level is not sufficient for the purposes of training or demonstrations.

## **2.214 ELECTRONIC INCAPACITATION DEVICES:**

The decision to use an electronic control device will be based upon the same criteria an officer uses to deploy O.C. spray or other non-lethal equipment. The decision will be made dependent on the subject's actions or the amount of threat facing the officer. The subject must be actively resisting. The use of this device must be reasonable and necessary.

### **TASER**

The TASER is a less-lethal, conducted-energy weapon that uses either propelled wires or manually applied contacts to conduct energy to a target, thereby controlling and overriding the central nervous system of the body. The TASER is an additional police tool which provides a less-lethal force option which may be deployed either from a distance, or when in contact with a threat. Using the TASER may reduce the need for other types of physical force which may result in injury or death to the offender, officer, or others. The TASER is not meant to be used in deadly force situations.

Any member who carries any TASER weapon system must first complete a TASER certification course and have approval from the Chief of Police. Officers will only carry the TASER system(s) approved by the Chief of Police or his designee. This includes any equipment needed to maintain the TASER weapon system; i.e., nitrogen cartridge, batteries, etc.

The TASER weapon system should **NOT** be deployed in the following situations:

- (1) Any suspect the officer believes to be saturated with or in the presence of highly flammable or combustible materials or fluids.
- (2) Any subject who may receive serious injuries resulting from a fall from TASER use; i.e., elevated areas, rooftops, etc.
- (3) Any female who is obviously or known to be pregnant.
- (4) The facial area of the head.
- (5) The TASER will not be used to punish or attempt to gain information from a person.

Prior to deployment of a TASER weapon system, the person deploying must insure the TASER is the tool selected and is not a firearm. The officer should announce, if feasible, that a TASER is going to be deployed.

The preferred target area for a frontal application of the TASER should be the lower center mass area. (See illustration below)

The preferred target area for a rear application of the TASER should be on any area of the back of the body from the shoulders down. (See illustration below)

The head, particularly the face, should not be targeted unless absolutely necessary and that level of force can be justified.

After deployment, action will be taken to care for the injured. When the suspect is restrained and in compliance with officers, paramedics will be called to assess the suspect and determine if any further medical treatment is needed.

Where the taser has been deployed remotely, removal of the probes and any first aid will be rendered on the scene, when practical, by the trained medical personnel.

Photographs will be taken of the probe or contact impact sites along with any other injuries received during the incident. The probes, once recovered, will be treated as a biohazard, placed points down into the expended cartridge and secured by tape. This will all be impounded as evidence as soon as practicable.



## **2.217 USE OF CHEMICAL AGENTS:**

The decision to employ chemical agents is the responsibility of the ranking member present. Chemical agents will not be used until all other reasonable efforts to control an incident have failed.

## **2.218 OLEORESIN CAPSICUM AEROSOL RESTRAINT (O.C.):**

The Department has approved Freeze +P (O.C.) as a tool that can provide a means by which an officer can defend himself or another from injury and a means of controlling an offender when an officer is facing resistance in the form of active aggression.

No officer shall carry any Freeze +P Aerosol Restraint in which he/she has not had certified training.

Officers may only carry authorized Freeze +P Aerosol Restraint products in an approved holder. It shall never be displayed or pointed at another individual in the form of horseplay.

At no time shall an officer unnecessarily brandish or use the Freeze +P as an intimidating device unless the officer is attempting to prevent further escalation of force.

Application of Freeze +P against large groups of people will be at the command of the Chief of Police or the designated commander.

Any time Freeze +P is used for controlling an offender; the application of the aerosol will end when the offender discontinues resistance or aggression. Freeze +P is not, under any circumstances, to be used as "punishment" or as a coercive tool once an individual is under control.

Freeze +P products are irritating to the eyes, nose, and skin. Any time an officer uses Freeze +P for the purpose of subject control, the officer will ensure that the subject will receive adequate decontamination as soon as possible. If the symptoms have not dissipated in 45 minutes, the subject will be given medical attention.

When an officer has utilized Freeze +P to control a subject, the officer will advise the jail personnel to prevent the unnecessary contamination of other jail occupants or custody personnel.

Any time an officer finds it necessary to use Freeze +P for subject control, the officer will immediately contact a supervisor, advise him of the nature of the incident, and complete a Use of Force Form.

## **2.219 APPROVED CHEMICAL AGENTS:**

Officers shall carry only chemical agents which have been approved by the Department.

**2.220 FIRST AID:**

When a chemical agent has been applied, first aid shall be administered as soon as practicable.

## **2.405 MOBILE VIDEO EQUIPMENT GUIDELINES:**

Mobile Video Equipment should be used, whenever possible, to record the following:

- (1) All vehicle pursuits
- (2) All traffic stops
- (3) All field interviews
- (4) All accident scene investigations
- (5) Any dispatched call where contact is made with the public within the visual field of the camera.
- (6) Any other law enforcement related activity in which documentation may be needed for the prosecution of a criminal case, or for Officer Safety.

Once Mobile Video Equipment is activated it should not be turned off until all Law Enforcement related activity has stopped.

All audio and video data recorded with Saraland Police Department equipment is the property of the Saraland Police Department and no video or data will be copied, reproduced, released or shown to any non-departmental persons or entities without a Subpoena and/or the approval of the Chief of Police or the Chief's Designee.

### **DIGITAL EQUIPMENT**

Mobile Video Equipment will be set up so that the camera is automatically activated when blue lights are turned on. The Officer can also activate the equipment through the provided lapel microphone or manually activate the equipment in the vehicle on the display panel. The equipment will continue to record until the operator manually stops the recording, the hard drive is full, or the car battery is fully discharged.

NOTE: Vehicles equipped with the Digital Video System will be downloaded each time the officer makes a drug arrest, DUI arrest (evidence for court proceedings), or for any other traffic stop in which the officer may need the video for court proceedings.

Video clips that will be used as evidence in court will be maintained by the arresting officer and reviewed by his/her supervisor. This video clip will be part of the arresting officer's physical evidence.

The operator must wear the provided lapel microphone and ensure that the microphone has been synced and is recording by verifying that the transmitting LED is lit when the equipment is in record mode. The operator must keep in mind that from the front of the vehicle if the red recording LED on the camera can not be seen then the operator is not in the field of view of the camera. If the vehicle is also equipped with a covert microphone in the rear of the vehicle, then that microphone must be activated manually on the display panel to record. The display panel will remain on unless a prisoner is in the vehicle where covertness is needed.

Officers must ensure daily that the video equipment and lapel microphones are in working order, which includes the camera coming on when the lights are activated. If any equipment problems occur, officers are required to immediately notify their supervisor, document the problem on a vehicle maintenance form and turn the vehicle and form in to the Vehicle Maintenance Officer for repair.

## 6.000 DEFINITIONS:

Within this Departmental Manual, the following terms or phrases will be used to designate the title or carry the meaning listed:

- (1) Chain of Command: The system of superior-subordinate relationship that sets out responsibility and describes authority.
- (2) Charge: Any accusation of a violation of any policy, rule, or procedure of the Department.
- (3) City: The City of Saraland and the Police Jurisdiction.
- (4) Deadly Force: Force calculated or likely to cause death or great bodily harm.
- (5) Department: The City of Saraland Police Department.
- (6) Departmental Uniform: The uniform authorized for general and ceremonial wear and to which the public would generally be exposed on a day-to-day basis.
- (7) Divisional Directive: Information concerning the operation, policy, or procedures of a specific division within the Department.
- (8) Emergency: A sudden, unexpected occurrence that could produce a situation of death or serious injury to a human being in which immediate action may help.
- (9) Employee: Non-sworn personnel employed by or assigned to the Saraland Police Department.
- (10) General Order: An order issued by the Chief of Police which causes a change in policy or procedure of a permanent nature. A general order is the only order which can cause a change in the Department manual.
- (11) His: Refers to masculine and feminine gender.
- (12) Identification Number: The assigned employee permanent identification number for all members and employees.
- (13) Light Duty: Those assignments of a nature that will not aggravate an injury or infirmity.
- (14) Line Officer: Any officer, regardless of rank, whose primary duty is responding to calls for service and/or investigations.
- (15) May: Permissible.
- (16) Member: Refers to sworn personnel employed by or assigned to the Saraland Police Department.
- (17) Memorandum: Any form of written communication for information; a suggestion for improvement of Departmental operations; the issuing of particular instructions; etc.

- (18) Off Duty: That period during which an employee is free from assigned duty.
- (19) Off-Regular-Duty Police Service: Any police service rendered by an officer during a period of time not within a regularly assigned tour of duty.
- (20) On Duty: That period when an employee is in pay status as reflected on the Daily Assignment Sheet.
- (21) Order: An instruction, either verbal or written, issued by a Superior Officer.
- (22) Personnel Order: Information concerning transfers, assignments, special details, days off due to overtime, vacations, promotions, and disciplinary action.
- (23) Policy: Policy consists of principles and values which guide the performance of a departmental activity. Policy is not a statement of what must be done in a particular situation; rather, it is a statement of guiding principles which should be followed in activities which are directed toward attainment of objectives.
- (24) APOSTC: The Alabama Peace Officers Standards and Training Commission.
- (25) Procedure: A procedure is a method of performing an operation or a manner of proceeding on a course of action. It differs from policy in that it directs action in a particular situation to perform a specific task within the guidelines of policy.
- (26) Relief From Duty: Temporary prohibition of performance of duty, with or without pay.
- (27) Restricted Area: Any area so designated by the Chief of Police or his designated representative where normal access is restricted to authorized persons
- (28) Rule: A rule is a specific prohibition or requirement which is stated to prevent deviations from policy or procedure. Rules allow little deviation other than for stated exceptions.
- (29) Special Order: Information concerning activities, procedures, or details of a limited duration. A special order may be initiated by any Division Commander with the approval of the Chief of Police.
- (30) Specification: A detailed description of an act or omission which constitutes a violation of any Policy, Rule, or Procedure of the Department, etc.
- (31) State: The State of Alabama.
- (32) Subordinate Officer: Sworn personnel of a rank or grade lower than another member of the Department.
- (33) Superior Officer: Sworn personnel of a rank or grade higher than another member of the Saraland Police Department.
- (34) Supervisor: The person charged with the responsibility of seeing that the objectives of the Department are carried out by subordinate personnel.

(35) Unit: Any subdivision of a division which is responsible for a particular or specialized area of police activity.

(36) Will/Shall: Mandatory in nature.

MARKET ANALYSIS  
STRATEGIC PLANNING  
RETAIL RECRUITMENT  
RETAIL DEVELOPMENT  
CONFERENCE REPRESENTATION  
INCENTIVES CONSULTING

VIA USPS PRIORITY MAIL EXPRESS &  
ELECTRONIC MAIL

December 14, 2018

City of Saraland, Alabama  
943 Saraland Blvd. South  
Saraland, Alabama 36571  
Attention: Mayor Howard Rubenstein

RE: Professional Services Agreement to Provide Consulting Services, dated February 9, 2018 (the "Consulting Agreement"), by and between the City of Saraland, Alabama (the "Client") and Retail Strategies, LLC (the "Consultant") - Waiver of Termination Notice Period



retail strategies

Dear Mayor Rubenstein:

Retail Strategies is excited to meet with you and the additional leaders of the community Monday January 21<sup>st</sup>, 2019 to share our efforts over the past year. We understand that before any additional investments are made in to this effort the City Council would first like to hear our report, progress, and ask pertinent questions regarding our efforts. We are also aware that the timeframe pursuant to Section 6.A. of the Consulting Agreement (which provides that the Client may terminate the same at any time of for any reason upon delivery of 30 days' prior written notice to the Consultant) conflicts with our scheduled date.

With the sincere desire to continue our relationship with the City of Saraland for 2019 and the remaining term of the Consulting Agreement, we are waving the 30-day notice provision; if, after our meeting in January, you would like to continue or discontinue the Consulting Agreement prior to the start of Year Two, we will honor your request at any time subsequent to our meeting and prior to February 9, 2019.

Should you have any additional questions, please contact me directly at (205) 482-1347.

Sincerely,

RETAIL STRATEGIES  
P.O. BOX 531247,  
BIRMINGHAM, AL 35253  
WWW.RETAILSTRATEGIES.COM

Scott vonCannon  
COO  
scott@retailstrategies.com

Sara 015



arutens gallowayllp.com

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**From:** Hyland, Charles E. <CHYLAND@mawss.com>  
**Sent:** Sunday, December 16, 2018 3:31 PM  
**To:** arutens gallowayllp.com; McCrory, Bud  
**Subject:** FW: Spanish Fort Water-Confidential settlement offer

Andy –

The comments in red and green below are some thoughts from me and Bud.

Thanks.

Charles

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**From:** Hyland, Charles E.  
**Sent:** Sunday, December 16, 2018 3:26 PM  
**To:** McCrory, Bud  
**Subject:** FW: Spanish Fort Water-Confidential settlement offer

Bud –

I like what you have put together. I just added one or two comments in green below.

Thanks.

Charles

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**From:** McCrory, Bud  
**Sent:** Friday, December 14, 2018 2:29 PM  
**To:** Hyland, Charles E.  
**Subject:** RE: Spanish Fort Water-Confidential settlement offer

Let me know your thoughts?

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**From:** arutens gallowayllp.com [mailto:arutens@gallowayllp.com]  
**Sent:** Friday, December 14, 2018 11:43 AM  
**To:** Hyland, Charles E.; McCrory, Bud; Jackie McConaha; 'Frank Taylor'; mhunter gallowayllp.com  
**Subject:** Spanish Fort Water-Confidential settlement offer

The following is what I just received from the mediator as an offer of settlement from Spanish Fort Water:

- A. *MAWSS will maintain ownership of the Causeway line and continue to have sole responsibility for all maintenance and repair obligations associated therewith.***  
***MAWSS will move the meter location to the end of the most recent repair. SF will take ownership of the line from the new meter location heading east. This will allow SF Water to keep their current customers who are connected to this line.***

- B. SFWS will agree to a rate of \$1.64/1,000g. of water delivered to SFWS as metered. This rate will become effective January 1, 2019. The effective rate for all times prior to January 1, 2019 shall be \$1.56/1,000g. The effective rate October 1, 2017 was \$3.75/1,000g. The effective rate October 1, 2018 was \$4.13/1,000g. The consumption requirement increased from 223,000,000 to 234,150,000 from October 2017 to October 2018. Since SF paid the past rate of \$1.56 up to this point, all past due amounts must be paid by January 31, 2019 and the rate of \$4.13/1,000 g. will remain. The effective rate October 1, 2019 will be \$4.54/1,000 g. and the consumption requirement will increase to 263,000,000 as identified in a letter to the SF Board dated April 6, 2017. This \$4.54/1,000 g. rate and consumption requirement will remain for the 2020 year. At the end of 2020, based on the minimum consumption requirement, MAWSS should have collected approximately \$1,900,000. This will cover half the current repair cost. After 2020, the SF rate will be solely based on a current COS study as identified below. The \$1.64/1,000 rate they are proposing is much less than the amount they were paying two years ago to North Baldwin for much less water under a contract with them. Based on a conversation with SF Water representatives I believe that rate they were paying was around \$ 1.85/1,000. If they feel \$ 1.85/1,000 is a fair amount for a neighboring utility to charge to recover their cost of service I don't see how they think our cost would be \$ 1.64/1,000. Have we or can we ask for a copy of any agreement they have or had with North Baldwin Utilities to buy water and agreements with anyone else they have bought water from or sold water to since 2001?**
- C. MAWSS will have the authority to raise its rates on the first of each calendar year. However, any such rate increase must be based on a demonstrable increase in MAWSS's cost of performance of its duties under the Water Purchase Agreement as amended and shall not include costs associated with the increased capitalization of MAWSS's system to charge for its actual cost of service pursuant to the following rate formula. No rate increase shall exceed five percent (5%) per year. MAWSS has the authority to raise rates at its discretion to cover the cost associated with providing water to SF.**

**Rate will be established annually to reflect actual costs based on year of service, which is then true-up to reflect actual costs incurred by MAWSS to provide service. This true-up would be based on actual results after the audit is released or known.**

**MAWSS will perform a COS every 3 years to determine the cost of providing water to SF. This will establish a rate to cover the "True" cost of providing water to SF. This COS will be communicated to SF and the rate will be effective as**

**identified the following calendar year. Rates may be adjusted annually depending on other cost identified in providing water.**

**1.) The wholesale rate which SFWS will pay will be its allocable share of the cost of service calculated as follows:**

- a) An allowance for the direct operating expenses (costs of operation and maintenance) of the capital assets allocated to wholesale service. A comprehensive list of these assets will need to be adopted and will include water supply assets; water treatment assets and assets related to primary water conveyance (e.g. facilities with a line size equal to or greater than sixteen inches (16") in pipe diameter). The rate shall not include any component for recovery of any costs or expenses allocated to the provision of retail service or depreciation expense of the above listed assets.**

**A- F**

**MAWSS will use the AWWA method for a COS study when identifying the "True" cost of providing water to SF.**

- b) An allowance for administration and utility management expenses which are not included in item a), above. A comprehensive list of these expenses will need to be adopted (e.g. labor cost, total allocated wholesale operating expense to total system operating expense, etc.). Further, the categories of cost to be included as administration and utility management must be defined (e.g., They should not include customer service, field service, and other related management costs).**

**c) An allowance for a rate of return equal to the weighted average cost of debt for all bonds and loans outstanding multiplied by the net original cost of investment (depreciated assets not gross assets), on all allocated wholesale related utility capital assets, less any contributed capital received by MAWSS for such assets.**

**d) The subtraction from a – d of any interest income related to fund balances allocable to wholesale service and other operating revenues received from wholesale customers.**

**e) The addition or subtraction of any amount determined by an annual true-up amount based on these defined actual costs which are reasonable and necessary and actually incurred in connection with the provision of service. Should SFWS disagree with the amount of the true-up or methodology by which it was determined, MAWSS shall allow SFWS to audit said true-up source information.**

**f) The rate to be charged on a 1,000 gal basis will be the total allocated system costs which benefit wholesale service (a-e, above) divided by the total**

**finished water produced to provide potable water service to all customers of the system.**

**D. MAWSS acknowledges that SFWS is no longer subject to the take-or-pay provision included in the 2008 Contract.**

**The take or pay provision will remain in place at the amount shown above until half the current repair cost is paid in full. Once paid, the COS study will dictate the needed consumption amount to cover the cost to provide water.**

**E. MAWSS will agree to release SFWS from any and all claims for past-due amounts and/or late fees.**

**To cover the SF responsibility for the repair, past due amounts must be paid in full by January 31, 2019.**

Obviously, this won't be acceptable. Based upon how low they are on the water rate (regardless of the fact they don't even discuss repair costs for what has already been done), I am somewhat disheartened about our ability to make any meaningful progress next week. However, I don't want to give the judge the perception we are the ones pulling the plug on mediation. I do want to get this to Commissioners Bell, Zoghby and Webber, but I would like us to discuss it first.

Andrew J. Rutens, Esq.  
Galloway, Wettermark,  
& Rutens LLP  
3263 Cottage Hill Rd  
Mobile, AL 36609  
(251) 476-4493  
<http://gallowayllp.com>



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STATE OF ALABAMA)  
COUNTY OF MOBILE)

**CODICIL TO FEBRUARY 7, 2011 CONTRACT  
FOR CHIEF OF POLICE BETWEEN  
THE CITY OF SARALAND, ALABAMA  
AND  
JAMES C. WEST**

---

THIS CODICIL to the February 7, 2011 employment contract between Chief James C. West and the City of Saraland, made and entered into this the 9th day of March, 2012, by and between the City of Saraland, a Municipal Corporation of the State of Alabama, acting by and through its Mayor, Dr. Howard Rubenstein, with approval and consent of the City Council, (hereinafter referred to as "MAYOR" or "CITY"), party of the first part, and JAMES C. WEST, (hereinafter referred to as "CHIEF"), party of the second part.

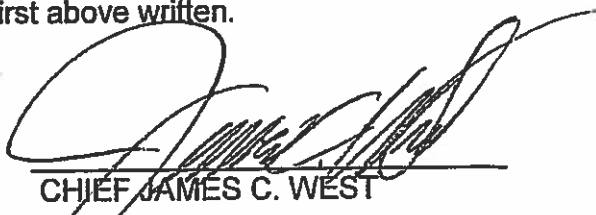
WHEREAS, the CITY desires to amend the employment contract between the City and Chief James C. West so as to increase his compensation as outlined in Section 4.01 of the original contract from the original stated contract amount of Seventy-Three Thousand, Five Hundred and 00/100 (\$73,500.00) DOLLARS for a twelve (12) month period to Eighty Thousand and 00/100 (\$80,000.00) DOLLARS, and;

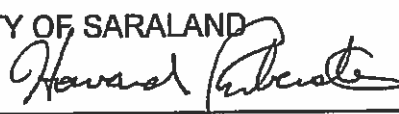
WHEREAS, all other provisions in the February 7, 2011 employment contract are to remain the same.

NOW, THEREFORE, in consideration of the premises, the mutual undertakings and benefits to accrue to the parties and to the public, the parties hereto agree to amend Section 4.01 of the February 7, 2011 employment contract and substitute the

figure of Eighty Thousand (\$80,000.00) DOLLARS for the original contract figure of Seventy-Three Thousand, Five Hundred 00/100 (\$73,500.00) as compensation for twelve (12) month periods as provided in the original employment contract. The parties recognize that the Chief has received two (2) merit system raises since the execution of the February 7, 2011 employment contract. It is the intent of the parties that the Chief's current rate of pay will be increased to the Eighty Thousand (\$80,000.00) DOLLAR figure as of the effective date of the change. The effective date of this change will be March 10, 2012. All other terms, provisions and requirements of the February 7, 2011 employment contract to remain the same.

IN WITNESS WHEREOF, the duly authorized officers and representatives have executed this Codicil as of the day and year first above written.

BY:   
CHIEF JAMES C. WEST

CITY OF SARALAND  
BY:   
Hon. HOWARD RUBENSTEIN,  
As Its Mayor  
(Authorized Signature)

This Contract was approved by Mayor Howard Rubenstein of the City of Saraland, Alabama on this the 9<sup>th</sup> day of March, 2012.

STATE OF ALABAMA  
COUNTY OF MOBILE

I, the undersigned Notary Public, in and for said State and County, hereby certify that JAMES C. WEST, whose name is signed to the foregoing Codicil to the February 7, 2011 Contract for Chief of Police, and who is known to me, acknowledged before me on

this date that, being informed of the contents of said document, he executed the same voluntarily and agrees to be bound by the same.

2012. Given under my hand and seal this the 9<sup>th</sup> day of March

Denise D. Yruiga  
NOTARY PUBLIC  
Commission Expires: Oct 8, 2014  
NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: Oct 8, 2014  
BONDED THROUGH NOTARY PUBLIC UNDERWRITERS

STATE OF ALABAMA  
COUNTY OF MOBILE

I, the undersigned Notary Public, in and for said State and County, hereby certify that HOWARD RUBENSTEIN, as MAYOR of the CITY OF SARALAND, whose name as such Officer is signed to the foregoing Codicil to the Contract for Chief of Police, and who is known to me, acknowledged before me on this date that, being informed of the contents of said document, he executed the same on the day same bears date as the act and deed of the Corporation, after being duly authorized to do so.

2012. Given under my hand and seal this the 9<sup>th</sup> day of March

Denise D. Yruiga  
NOTARY PUBLIC  
Commission Expires: Oct 8, 2014  
NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: Oct 8, 2014  
BONDED THROUGH NOTARY PUBLIC UNDERWRITERS

THE WITHIN INSTRUMENT PREPARED BY:

Andrew J. Rutens  
GALLOWAY, WETTERMARK, EVEREST, RUTENS & GAILLARD, LLP  
Attorneys at Law  
Post Office Box 16629  
Mobile, Alabama 36616  
(251) 476-4493

STATE OF ALABAMA)  
COUNTY OF MOBILE)

CONTRACT FOR DIRECTOR OF PUBLIC SAFETY AND  
CHIEF OF POLICE  
BETWEEN  
THE CITY OF SARALAND, ALABAMA  
AND  
JAMES C. WEST

---

THIS CONTRACT made and entered into this the 9<sup>th</sup> day of August, 2016, by and between the City of Saraland, A Municipal Corporation of the State of Alabama, acting by and through its Mayor, Dr. Howard Rubenstein, with approval and consent of the City Council, (hereinafter referred to as "MAYOR" or "CITY"), party of the first part, and James C. West, (hereinafter referred to as "DIRECTOR/CHIEF"), party of the second part. This contract supersedes the <sup>March 9, 2012</sup> ~~November~~ <sup>2012</sup> ~~2011~~ contract between the parties. The parties acknowledge and agree that the DIRECTOR/CHIEF accrued \$98.34 unused and accrued vacation hours and 646.34 unused and accrued sick time hours that will be carried forward and will serve as the beginning balances for vacation and sick time.

WHEREAS, the CITY desires to engage the DIRECTOR/CHIEF to render certain professional services, (hereinafter referred to as "SERVICES"), in connection with performing the function of Chief of Police for, and as employee of, the CITY;

WHEREAS, the CITY desires the DIRECTOR/CHIEF to render SERVICES more particularly described in Exhibit "A" entitled Scope of Services attached hereto and made a part hereof by reference, in connection with his employment with the CITY;



WHEREAS, the DIRECTOR/CHIEF represents that he is capable, able and qualified to perform the SERVICES in a manner which is responsive to the needs of the CITY in all respects;

WHEREAS, the purposes of this Contract are the following:

- A) The DIRECTOR/CHIEF shall act as the Director of Public Safety/Chief of Police of the CITY Police Department. He shall administer the Department of Public Safety and Operate the Police Department in accordance with rules and regulations as established by:
  - 1) The charter of the CITY;
  - 2) The laws of the State of Alabama;
  - 3) The MAYOR and COUNCIL;
  - 4) All laws, rules, ordinances and regulations covering the Department of Public Safety and the Police Department.
- B) The DIRECTOR/CHIEF shall, during the term of this Contract, use his best efforts to promote the interest of the CITY. The DIRECTOR/CHIEF agrees to devote such time, attention, skill and knowledge necessary to effectively and efficiently perform the services herein described.
- C) The DIRECTOR/CHIEF shall reside in the City of Saraland for the term of this Contract.
- D) During the term of this Contract, the DIRECTOR/CHIEF will maintain his status as a sworn law enforcement officer as the term is defined under Alabama law.

NOW, THEREFORE, in consideration of the premises, the mutual undertakings and benefits to accrue to the parties and to the public, the parties hereto agree as follows:

**EMPLOYMENT OF DIRECTOR/CHIEF**

**1.01:** The CITY hereby engages the DIRECTOR/CHIEF and the DIRECTOR/CHIEF hereby agrees to faithfully and diligently perform the SERVICES set

forth in Exhibit "A", in accordance with the terms and conditions contained in this Contract.

## **SECTION 2**

### **SCOPE OF SERVICES**

**2.01:** The DIRECTOR/CHIEF shall perform and carry out, in a satisfactory manner, the SERVICES as described in Exhibit "A".

**2.02:** The SERVICES include all conferences and consultations deemed necessary by the CITY to properly and fully perform the SERVICES.

## **SECTION 3**

### **TIME OF PERFORMANCE**

**3.01:** The DIRECTOR/CHIEF shall commence performance of this Contract immediately upon his execution of this Contract, and shall serve as DIRECTOR/CHIEF up to an until their reappointment or their successor is appointed by the CITY. This event will not occur until at least November 7, 2016. The SERVICES shall be undertaken in such sequence as to assure the proper and expedient achievement of the objectives of this Contract for the period of time stated herein. In no event shall the completion dates or times stated therein, if any, be extended, except in accordance with the provisions of Section 11 herein.

## **SECTION 4**

### **COMPENSATION**

**4.01:** The CITY agrees to pay the DIRECTOR/CHIEF for the complete and proper performance of SERVICES hereunder a pro rata rate based on a yearly salary of One Hundred and One Thousand, Six Hundred, Seventy-Three and 60/100

(\$101,673.60) DOLLARS for the period of time from August 9, 2016 until November 7, 2016. The pro rata figure will be payable in equal bi-weekly payments, less required deductions for Social Security, Federal and State income taxes, and other deductions mutually agreed upon by the parties. The DIRECTOR/CHIEF is eligible for an annual two percent (2%) cost of living increase to coincide with each subsequent municipal annual budget during the term of this Contract. The eligibility for this increase will be at the City Council's discretion. In addition, should the City provide blanket raise increases to all Department Heads within the City, the Council shall have the discretion to approve an increase in an amount up to the amount of blanket increase provided to the other Department Heads. The Council is also given the discretion to adjust the pay rate of the DIRECTOR/CHIEF so as to ensure that he is the highest paid member of the Saraland Police Department.

**4.02:** The DIRECTOR/CHIEF may, at any time during the term of this Contract, participate in the health care benefit programs, including major medical and dental coverage, available to CITY employees, the cost of which shall be borne by the CITY in the same manner, fashion and rate as offered and provided to all other CITY employees.

**4.03:** The CITY shall provide the DIRECTOR/CHIEF with a prorated figure of fifteen (15) sick days per year and fifteen (15) vacation days per year during this Contract. The parties acknowledge that the DIRECTOR/CHIEF is carrying forward vacation day and sick days from his prior contract with the City. Sick days shall be defined as time off to the DIRECTOR/CHIEF with pay for illness or injury to himself or to anyone within the DIRECTOR/CHIEF's immediate household. During the term of this

Contract, the DIRECTOR/CHIEF will not accrue more than a total of 280 hours of vacation time. If the DIRECTOR/CHIEF does not utilize his vacation time, and as a result will be in a position to exceed the two-hundred and eighty (280) hour threshold, the accrual of vacation time under this provision will cease until such time as the DIRECTOR/CHIEF has used vacation time in such a manner as to not allow for the accrual of vacation time in excess of the two-hundred and eighty (280) hundred hour limit.

Unless agreed otherwise, the DIRECTOR/CHIEF shall be paid seventy-five percent (75%) of any accumulated sick days, and one hundred percent (100%) of any accumulated vacation days at the expiration of this Contract. The rate of compensation for all accumulated, but unused, sick or vacation days shall be compensable at the DIRECTOR/CHIEF's salary rate in effect at the time of the expiration of this Contract.

**4.04:** The DIRECTOR/CHIEF shall notify the City Clerk of the number of sick days and vacation days used in each preceding month.

**4.05:** The CITY shall contribute matching funds to the State retirement fund for the DIRECTOR/CHIEF in the same manner as for other City employees.

## **SECTION 5**

### **METHOD OF PAYMENT**

**5.01:** Payment for the proper performance of the SERVICES shall be made bi-weekly.

## SECTION 6

### INDEMNITY

**6.01:** The CITY agrees to defend and hold harmless, within legally applicable statutory limits for damages, the DIRECTOR/CHIEF against and from all liabilities, obligations, damages, penalties, claims, costs and expenses, (including, without limitation, fees and expenses of attorneys, except witnesses and other consultants, who are employed with the prior approval of the MAYOR), which may be imposed upon, incurred by or asserted against the DIRECTOR/CHIEF by reason of activities of the DIRECTOR/CHIEF undertaken pursuant to his duties and within the scope of his employment contract. This Contract specifically denies indemnity to the DIRECTOR/CHIEF for intentional, willful and wanton and/or criminal acts of the DIRECTOR/CHIEF.

## SECTION 7

### INSURANCE

**7.01:** The CITY and the DIRECTOR/CHIEF understand and agree that duty related injuries shall be covered by the provisions of the Alabama Workers Compensation Act.

## SECTION 8

### TERMINATION

**8.01:** Except as provided for in Sections 3.01 hereinabove, the CITY may terminate this Contract without just cause at any time, (termination for just cause is addressed in paragraph numbered 8.02 herein), by giving written notice to the DIRECTOR/CHIEF of such termination, (hereinafter referred to as a "NOTICE OF

TERMINATION"), specifying the effective date thereof, at least thirty (30) days prior to the effective date of such termination. If this Contract is terminated in accordance with this paragraph, the CITY will pay the DIRECTOR/CHIEF the remaining amount due under the terms and conditions of this Contract, or for three (3) months, whichever period is less, less allowable deductions for Federal and State income taxes. Payment under this provision will be made as soon as is authorized by the City Council. Payment under this provision shall constitute full and complete payment and, upon acceptance, in accord and satisfaction of any claims of whatsoever kind or nature under this Contract. However, should this Contract not be renewed, the DIRECTOR/CHIEF will not be entitled to any severance compensation as this agreement is not self-renewing except by the written mutual assent of the parties.

**8.02:** The CITY may terminate this Contract for cause by issuing a NOTICE OF TERMINATION to the DIRECTOR/CHIEF, at least twenty-four (24) hours before the effective date of the termination, should the DIRECTOR/CHIEF:

- 1) Fail to fulfill in a timely, expeditious and proper manner, his obligations under this Contract, including those items enumerated in Exhibit "A" attached hereto;
- 2) Violate any of the covenants, agreements or stipulations of this Contract;
- 3) Commit an act of misfeasance, malfeasance or nonfeasance; or
- 4) Violate any State Criminal Statutes or any Federal Criminal Statutes.

**8.03:** After receipt of a NOTICE OF TERMINATION and except as otherwise directed by the CITY, the DIRECTOR/CHIEF shall:

- 1) Stop work under this Contract on the date and to the extent specified in the NOTICE OF TERMINATION;

- 2) As of the date the termination is effective, present all DIRECTOR/CHIEF's records and submit to the CITY such records, reports and/or other documents as the CITY shall specify, all pertinent keys to files, and carry out such directives as the CITY may issue concerning the safeguarding or disposition of files and property. The DIRECTOR/CHIEF shall also return any firearms and police property issued to him as part of his employment as DIRECTOR/CHIEF.

8.04: Notwithstanding the information stated herein, the DIRECTOR/CHIEF will have the right to voluntarily terminate this Contract after giving the CITY a proper notice, and remaining in service for a sufficient time to allow the CITY to seek a suitable replacement. Such time shall not exceed three (3) months except by mutual agreement between the parties hereto.

8.05: Should the DIRECTOR/CHIEF exercise his right under 8.04 herein, the parties agree that this Contract will terminate on the last day of the DIRECTOR/CHIEF's employment and that the CITY shall not be liable for any compensation beyond that date unless mutually agreed upon.

## SECTION 9

### CONFLICT OF INTEREST

9.01: The DIRECTOR/CHIEF covenants that he presently has no interest and shall not acquire any interest, direct or indirect, which would conflict, in any manner or degree, with the performance of the SERVICES as the Director of Public Safety or the Chief of Police under this Contract. The DIRECTOR/CHIEF further covenants that, in the performance of this Contract, no person having any such interest shall be employed.

The DIRECTOR/CHIEF further covenants that no officer, member or employee of the CITY, and no other public official who exercises any functions or responsibilities in

the review of approval of the undertaking or carrying out of this Contract, has any personal or financial interest, direct or indirect, in this Contract or in the proceeds thereof.

## **SECTION 10**

### **COMPLIANCE WITH LAWS AND SECURITY REGULATIONS**

**10.01:** The DIRECTOR/CHIEF shall be in compliance with and shall require all employees to comply with all applicable laws and regulations.

## **SECTION 11**

### **AMENDMENTS**

**11.01:** The CITY may consider it in its best interest to change, modify or extend a term or condition of this Contract, or the CITY may request the DIRECTOR/CHIEF to perform additional SERVICES. Any such change or modification, which is mutually agreed upon by the CITY and the DIRECTOR/CHIEF, shall be incorporated in written amendments, (hereinafter referred to as "AMENDMENTS"), to this Contract. Such AMENDMENTS shall not invalidate this Contract, nor relieve or release the DIRECTOR/CHIEF or the CITY from any of their obligations under this Contract.

**11.02:** No AMENDMENT to this Contract shall be effective and binding upon the parties, unless it expressly makes reference to this Contract, is in writing, is signed and acknowledged by duly authorized representatives of both parties and is approved by the City Council or governing body.



**SECTION 12**

**FAIR EMPLOYMENT PRACTICES**

**12.01:** In accordance with the United States Constitution and all Federal Legislation and regulations governing fair employment practices and equal employment opportunity, including, but not limited to, Title VII of the Civil Rights Act of 1964, (P. O. 88-3523, 78 stat. 252), and the United States Department of Justice Regulations, (28 C.F.R. Part 42), issued pursuant to that Title and in accordance with the Alabama Constitution and all State laws and regulations governing fair employment practices and equal employment opportunity, including, but not limited to, the Alabama Civil Rights Act and the Alabama Handicapped Civil Rights Act, the DIRECTOR/CHIEF agrees that he will not discriminate against any person, employee, consultant or applicant for employment with respect to his/her tenure, terms, conditions or privileges of employment or hire because of his/her religion, race, color, national origin, age, sex, height, weight, marital status, or handicap that is unrelated to the individual's ability to perform the duties of a particular job or position.

**SECTION 13**

**NOTICES**

**13.01:** All notices, consents, approvals, requests and other communications, (herein collectively referred to as "NOTICES"), required or permitted under this Contract shall be given, in writing, signed by the DIRECTOR/CHIEF, and mailed by first-class mail and addressed as follows:

IF TO THE DIRECTOR/CHIEF:  
CHIEF JAMES WEST

SARALAND CITY HALL  
716 Highway 43 South  
Saraland, Alabama 36571

IF TO THE CITY:

MAYOR HOWARD RUBENSTEIN  
SARALAND CITY HALL  
716 Highway 43 South  
Saraland, Alabama 36571

**SECTION 14**

**MISCELLANEOUS**

**14.01:** This Contract shall be governed by and construed in accordance with the laws of the State of Alabama. Should any provision of this Contract be declared or be determined by any Court of competent jurisdiction, or other proper legal authority to be wholly or partially void, illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining parts, terms or provisions shall not be affected thereby, and said void, illegal, unenforceable, or invalid part, term or provision shall be deemed not to be a part of this Contract, and the remaining provisions of this Contract shall be valid and enforceable to the fullest extent permitted by law.

**14.02:** The DIRECTOR/CHIEF has been advised to consider the terms of this Contract and he has been given the opportunity to discuss the terms of this Contract with his legal counsel, and that the terms of this Contract were determined through negotiation between the DIRECTOR/CHIEF and the City.

**14.03:** This instrument, including Exhibit "A" attached hereto, which is made a part of this Contract, contains the entire agreement between the parties and all prior negotiations and agreements are merged herein. Neither party has made any representations except those expressly set forth herein, and no rights or remedies are,

or shall be acquired by either party by implication or otherwise unless expressly set forth herein.

**14.04:** Unless the context otherwise expressly requires, the words "herein", "hereof" and "hereunder", and other words of similar import, refer to this Contract as a whole and not to any particular Article, Section or other subdivision.

**14.05:** The headings of the Sections of this Contract are for convenience only and shall not be used to construe or interpret the scope of intent of this Contract or in any way affect the same.

**14.06:** This Contract, and all actions arising hereunder, shall be governed by, subject to, and construed according to the laws of the State of Alabama. The parties agree that any controversy, dispute or claim involving the DIRECTOR/CHIEF and the CITY OF SARALAND, ALABAMA, its subsidiaries, agent, officials or employees, and arising out of or relating in any manner to the DIRECTOR/CHIEF's employment, including but not limited to, claims based on or arising from an alleged breach of contract, tort or claim seeking any form of remedy in tort, to the rules of the American Arbitration Association and in accordance with the Federal Arbitration Act at 9 U.S.C. § 1, et. seq. Judgment upon the award rendered may be entered in any court having jurisdiction. The DIRECTOR/CHIEF and the CITY, its subsidiaries, agents and employees agree and understand that arbitration has been chosen instead of litigation to resolve any disputes between these parties. The parties understand that they have forfeited the opportunity to go to court to resolve any dispute between the DIRECTOR/CHIEF and the CITY, its subsidiaries, agents or employees. The parties acknowledge that the DIRECTOR/CHIEF's employment evidences and involves a

transaction in interstate commerce. The parties agree that the DIRECTOR/CHIEF and the CITY, its subsidiaries, agents and employees voluntarily and knowingly waive any right to have a jury trial either pursuant to arbitration under this clause or pursuant to a court action.

**14.07:** For the purposes of the hold harmless provisions contained herein, the term "CITY" shall be deemed to include the City of Saraland, and all other associated, affiliated or subsidiary entities, now existing or hereafter created, their agents and employees.

**14.08:** As used herein, the singular shall include the plural, the plural the singular, and the use of any gender shall be applicable to all.

**14.09:** The CITY shall furnish to the DIRECTOR/CHIEF, at its own expense, the following:

- A) Provide office space, furnishings, and appropriate necessary personnel to provide services;
- B) Provide the same benefits received by Saraland Police Department members such as uniforms, weapons and supplies, etc.;
- C) Provide an emergency response police vehicle to be used twenty-four (24) hours per day, equipped with police radios, telephone services and a personal beeper/pager. The DIRECTOR/CHIEF agrees to comply with all City policies concerning the use of this vehicle, to include personal and extra territorial uses for this vehicle;
- D) Provide a cellular phone device, the use of which will be governed by the City of Saraland Cell Phone Use Policy.

IN WITNESS WHEREOF, the duly authorized officers and representatives have executed this Contract as of the day and year first above written.

BY: *James C. West*  
JAMES C. WEST

CITY OF SARALAND

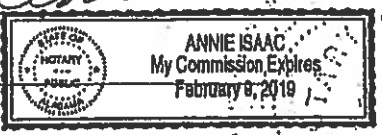
BY: *Howard Rubenstein*  
Hon. HOWARD RUBENSTEIN,  
As Its Mayor  
(Authorized Signature)

This Contract was approved by Mayor Howard Rubenstein of the City of Saraland, Alabama on this the 9<sup>th</sup> day of August, 2016.

STATE OF ALABAMA  
COUNTY OF MOBILE

I, the undersigned Notary Public, in and for said State and County, hereby certify that James C. West, whose name is signed to the foregoing Contract for Director of Public Safety and Chief of Police, and who is known to me, acknowledged before me on this date that, being informed of the contents of said document, he executed the same on the day same bears date as the act and deed of the Corporation, after being duly authorized to do so.

Given under my hand and seal this the 9<sup>th</sup> day of August 2016.

*Annie Isaac*  
NOTARY PUBLIC  
Commission Expires: 

STATE OF ALABAMA  
COUNTY OF MOBILE

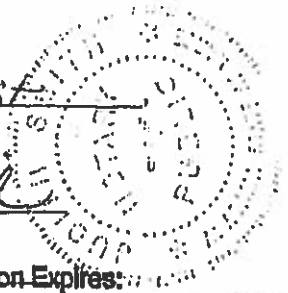
I, the undersigned Notary Public, in and for said State and County, hereby certify that HOWARD RUBENSTEIN, as MAYOR of the CITY OF SARALAND, whose name as such Officer is signed to the foregoing Contract for Director of Public Safety and Chief of Police, and who is known to me, acknowledged before me on this date that, being informed of the contents of said document, he executed the same on the day same bears date as the act and deed of the Corporation, after being duly authorized to do so.

Given under my hand and seal this the 9<sup>th</sup> day of August, 2016.

Judith E. Smith

NOTARY PUBLIC

Commission Expires: My Commission Expires:  
July 8, 2020



THE WITHIN INSTRUMENT PREPARED BY:

Andrew J. Rutens  
GALLOWAY, WETTERMARK, EVEREST, RUTENS & GAILLARD, LLP  
Attorneys at Law  
Post Office Box 16629  
Mobile, Alabama 36616  
(251) 476-4493

## EXHIBIT "A"

The Director of Public Safety shall serve as a department head. The essential job duties shall include, but not be limited to, the following:

- (1) Plans, organizes, directs and coordinates with Police Chief all police services and activities including maintenance of law and order; protection of life and property; regulation of traffic; apprehension, arrest and detention of law violators, community policing; and maintenance of police records.
- (2) Plans, organizes, directs and coordinates with Chief of Fire and Rescue all fire and rescue services for the City of Saraland including safety and communications programs, and the scheduling of all training programs.
- (3) Plans, organizes, directs and coordinates with the Animal Services Director the operation of an animal shelter, including apprehending, impounding, and disposing of stray or vicious animals, feeding and care animals; and maintenance and cleaning of facilities, vehicles and equipment.
- (4) Serves as the liaison between the Emergency Management Agency Director and the Mayor; serves as command coordinator, either personally or through command staff, for events, incidents, or activities involving the joint participation of the department and the Emergency Management Agency.
- (5) Directs, facilitates, and participates in developing the department's long range strategic plans and annual work plans; assigns, monitors, reviews, and evaluates work activities, projects, and program to support annual work plans.
- (6) Establishes goals and objectives for efficiency of services, and continually reviews and evaluates work outcomes, and methods; establishes appropriate service and staffing levels; allocates resources accordingly; ensures readiness of department and equipment.
- (7) Ensures subordinates conduct themselves in a professional, respectful manner, exercising their authority with appropriate discretion and treating all citizens in a fair and equitable manner.
- (8) Directs the selection, supervision, training and evaluation of departmental staff and employees; as allowed by the Rules and Regulations of the Mobile County Personnel Board they have authorization to initiate disciplinary proceedings and issue discipline as necessary; reviews departmental responses to grievances to ensure policy application, and provides input and direction on complaints and other sensitive personal matters.
- (9) Oversees the development and administration of the department's budget; identifies funding opportunities and revenue sources to meet growing demands for services; make requests for additional funding for staffing, equipment, materials and supplies.
- (10) Oversees the development of procedures, work rules and performance standards to assure the efficient and safer operation of the department in compliance with city standards, federal, state and local laws.
- (11) Exercises purchasing and budgetary control; reviews and gives departmental approval to specifications for new equipment.

- (12) Addresses civic, professional, community groups, and the media regarding the activities and programs of the department to promote public understanding of the department's work, and establishes positive public relations.
- (13) Monitors critical, special, and unusual events and provides briefings to the mayor and other public officials and informs the public.
- (14) Plans, organizes, directs and coordinates all municipal garage services and activities including maintenance of all municipal vehicles.
- (15) Ensures logistical support to operations in the Department of Public Safety.

The CHIEF is a Department Head and is responsible for the planning, direction and contract of all activities of the police department. The CHIEF works with much independence, however, and reports to and consults with the Director of Public Safety, Mayor and Public Safety Committee of the City Council in determining major policies. The CHIEF is also required to attend all Council Meetings and report to the Council on Department activities when requested. Supervision by the CHIEF is exercised over the police department supervisors, officers and civilian personnel.

The CHIEF is responsible for directing the activities of the police department supervisors and officers and other civilian personnel; reviews completed work, records and reports of subordinates for accuracy; recommends salary and promotional advancements; requisitions equipment and supplies for police department; schedules work and activities of personnel; directs and develops a training program including general law enforcement, firearms and other employee development training programs; controls expenditures of departmental appropriations; maintains cooperative working relationships with other law enforcement agencies and with City officials; makes speeches to community organizations; promotes community policing techniques and public relations; and performs other related work as required.

It is further agreed that the CHIEF shall, subject to the approval of the Director of Public Safety, the MAYOR and COUNCIL for the CITY:

- A) Review and approve the departmental budget before submission to the Director of Public Safety;
- B) Receive and resolve any complaints concerning the operation of the Police Department and its personnel;
- C) Impose and/or review discipline of Police and Civilian personnel in the Police Department;
- D) Interview and make recommendations for hiring of new employees to the Director of Public Safety;
- E) Prepare recommendations to the Director of Public Safety for promotions and discharges based upon performance and due process as budget permits;
- F) Make and/or recommend as appropriate, commendations, suspensions, transfers and otherwise direct employees within the Department, subject to any rules and regulations of the Mobile



County Personnel Board, Rules and Regulations of the Saraland Police Department and its standard General Operational Procedural Orders:

- G) Act as custodian of all Department of Police property, books, records and equipment, as well as property held as evidence;
- H) Attend all stated Council meetings.

STATE OF ALABAMA)  
COUNTY OF MOBILE)

**CONTRACT FOR CHIEF OF POLICE  
BETWEEN  
THE CITY OF SARALAND, ALABAMA  
AND  
JAMES C. WEST**

---

THIS CONTRACT made and entered into this the 7<sup>th</sup> day of February, 2011, by and between the City of Saraland, A Municipal Corporation of the State of Alabama, acting by and through its Mayor, Dr. Howard Rubenstein, with approval and consent of the City Council, (hereinafter referred to as "MAYOR" or "CITY"), party of the first part, and James C. West, (hereinafter referred to as "CHIEF"), party of the second part.

WHEREAS, the CITY desires to engage the CHIEF to render certain professional services, (hereinafter referred to as "SERVICES"), in connection with performing the function of Chief of Police for, and as employee of, the CITY;

WHEREAS, the CITY desires the CHIEF to render SERVICES more particularly described in Exhibit "A" entitled Scope of Services attached hereto and made a part hereof by reference, in connection with his employment with the CITY;

WHEREAS, the CHIEF represents that he is capable, able and qualified to perform the SERVICES in a manner which is responsive to the needs of the CITY in all respects;

WHEREAS, the purposes of this Contract are the following:

- A) The CHIEF shall act as the Chief of Police of the CITY Police Department and shall administer the Department rules and regulations as established by:
- 1) The charter of the CITY;
  - 2) The general laws of the State of Alabama;
  - 3) The MAYOR and COUNCIL;
  - 4) All laws, rules, ordinances and regulations covering the Police Department.
- B) The CHIEF shall, during the term of this Contract, use his best efforts to promote the interest of the CITY. The CHIEF agrees to devote such time, attention, skill and knowledge necessary to effectively and efficiently perform the services herein described.
- C) The CHIEF shall reside in the City of Saraland for the term of this Contract. The CHIEF agrees to move to the City of Saraland within 180 days of his appointment and shall reside in the City of Saraland during the term of this Contract.
- D) During the term of this Contract, the Chief will maintain his status as a sworn law enforcement officer as the term is defined under Alabama law.

NOW, THEREFORE, in consideration of the premises, the mutual undertakings and benefits to accrue to the parties and to the public, the parties hereto agree as follows:

#### **EMPLOYMENT OF CHIEF**

**1.01:** The CITY hereby engages the CHIEF and the CHIEF hereby agrees to faithfully and diligently perform the SERVICES set forth in Exhibit "A", in accordance with the terms and conditions contained in this Contract.

## **SECTION 2**

### **SCOPE OF SERVICES**

**2.01:** The CHIEF shall perform and carry out, in a satisfactory manner, the SERVICES as described in Exhibit "A".

**2.02:** The SERVICES include all conferences and consultations deemed necessary by the CITY to properly and fully perform the SERVICES.

## **SECTION 3**

### **TIME OF PERFORMANCE**

**3.01:** The CHIEF shall commence performance of this Contract within thirty (30) days of his execution of this Contract, and shall serve as CHIEF for a period of forty-eight (48) months from the date of execution hereof. The first 12 months shall be a probationary period during which time either party can terminate this contract. In addition, the CHIEF and CITY acknowledge that this Contract is subject to ratification and approval by the Saraland City Council that takes office in November of 2012, pursuant to regular municipal elections in 2012. In further material inducement to enter into this agreement, should the Contract not be ratified and approved by the Council after it takes office in November of 2012, the Chief shall be entitled to three (3) months pay as provided in Section 8.01. The SERVICES shall be undertaken in such sequence as to assure the proper and expedient achievement of the objectives of this Contract for the period of time stated herein. In no event shall the completion dates or times stated therein, if any, be extended, except in accordance with the provisions of Section 11 herein.

## SECTION 4

### COMPENSATION

**4.01:** The CITY agrees to pay the CHIEF for the complete and proper performance of SERVICES hereunder the sum of Seventy-Three Thousand, Five Hundred and 00/100 (\$73,500.00) DOLLARS for the first twelve (12) months of this Contract, payable in equal bi-weekly payments, less required deductions for Social Security, Federal and State income taxes, and other deductions mutually agreed upon by the parties. At the expiration of twelve months the CITY may maintain the same amount of pay, or may provide an increase in the pay rate. Any increase in the pay rate after the first twelve months is in the sole discretion of the CITY, through the City Council. The CHIEF may be eligible for any applicable merit raises, or cost of living increases provided to other department heads during the term of this Contract. The eligibility for these increases will be at the City Council's discretion.

**4.02:** The CHIEF may, at any time during the term of this Contract, participate in the health care benefit programs, including major medical and dental coverage, available to CITY employees, the cost of which shall be borne by the CITY in the same manner, fashion and rate as offered and provided to all other CITY employees.

**4.03:** The CITY shall provide the CHIEF with twelve (12) sick days per year and twelve (12) vacation days per year for the first year of this Contract, then 15 days per year thereafter during the CHIEF's tenure. Sick days shall be defined as time off to the CHIEF with pay for illness or injury to himself or to anyone within the CHIEF's immediate household. During the term of this Contract, the CHIEF will not accrue

more than a total of 200 hours of vacation time. If the CHIEF does not utilize his vacation time, and as a result will be in a position to exceed the two-hundred (200) hour threshold, the accrual of vacation time under this provision will cease until such time as the CHIEF has used vacation time in such a manner as to not allow for the accrual of vacation time in excess of the two-hundred (200) hundred hour limit.

The CHIEF shall be paid seventy-five percent (75%) of any accumulated sick days, and one hundred percent (100%) of any accumulated vacation days at the expiration of this Contract. The rate of compensation for all accumulated, but unused, sick or vacation days shall be compensable at the CHIEF's salary rate in effect at the time of the expiration of this Contract.

**4.04:** The CHIEF shall notify the City Clerk of the number of sick days and vacation days used in each preceding month.

**4.05:** The CITY shall contribute matching funds to the State retirement fund for the CHIEF in the same manner as for other City employees.

## **SECTION 5**

### **METHOD OF PAYMENT**

**5.01:** Payment for the proper performance of the SERVICES shall be made bi-weekly.

**SECTION 6**

**INDEMNITY**

**6.01:** The CITY agrees to defend and hold harmless, within legally applicable statutory limits for damages, the CHIEF against and from all liabilities, obligations, damages, penalties, claims, costs and expenses, (including, without limitation, fees and expenses of attorneys, except witnesses and other consultants, who are employed with the prior approval of the MAYOR), which may be imposed upon, incurred by or asserted against the CHIEF by reason of activities of the CHIEF undertaken pursuant to his duties and within the scope of his employment contract. This Contract specifically denies indemnity to the CHIEF for intentional, willful and wanton and/or criminal acts of the CHIEF.

**SECTION 7**

**INSURANCE**

**7.01:** The CITY and the CHIEF understand and agree that duty related injuries shall be covered by the provisions of the Alabama Workers Compensation Act.

**SECTION 8**

**TERMINATION**

**8.01:** Except as provided for in Sections 3.01 hereinabove, the CITY may terminate this Contract without just cause at any time, (termination for just cause is addressed in paragraph numbered 8.02 herein), by giving written notice to the CHIEF of such termination, (hereinafter referred to as a "NOTICE OF TERMINATION"), specifying the effective date thereof, at least thirty (30) days prior to the effective date of

such termination. If this Contract is terminated in accordance with this paragraph, the CITY will pay the CHIEF the remaining amount due under the terms and conditions of this Contract, or for three (3) months, whichever period is less, less allowable deductions for Federal and State income taxes. Payment under this provision will be made as soon as is authorized by the City Council. Payment under this provision shall constitute full and complete payment and, upon acceptance, in accord and satisfaction of any claims of whatsoever kind or nature under this Contract. However, should this Contract not be renewed, the CHIEF will not be entitled to any severance compensation as this agreement is not self-renewing except by the written mutual assent of the parties.

**8.02:** The CITY may terminate this Contract for cause by issuing a NOTICE OF TERMINATION to the CHIEF, at least twenty-four (24) hours before the effective date of the termination, should the CHIEF:

- 1) Fail to fulfill in a timely, expeditious and proper manner, his obligations under this Contract, including those items enumerated in Exhibit "A" attached hereto;
- 2) Violate any of the covenants, agreements or stipulations of this Contract;
- 3) Commit and act of misfeasance, malfeasance or nonfeasance; or
- 4) Violate any State Criminal Statutes or any Federal Criminal Statutes.

**8.03:** After receipt of a NOTICE OF TERMINATION and except as otherwise directed by the CITY, the CHIEF shall:



- 1) Stop work under this Contract on the date and to the extent specified in the NOTICE OF TERMINATION;
- 2) As of the date the termination is effective, present all CHIEF's records and submit to the CITY such records, reports and/or other documents as the CITY shall specify, all pertinent keys to files, and carry out such directives as the CITY may issue concerning the safeguarding or disposition of files and property. The CHIEF shall also return any firearms and police property issued to him as part of his employment as CHIEF.

**8.04:** Notwithstanding the information stated herein, the CHIEF will have the right to voluntarily terminate this Contract after giving the CITY a proper notice, and remaining in service for a sufficient time to allow the CITY to seek a suitable replacement. Such time shall not exceed three (3) months except by mutual agreement between the parties hereto.

**8.05:** Should the CHIEF exercise his right under 8.04 herein, the parties agree that this Contract will terminate on the last day of the CHIEF's employment and that the CITY shall not be liable for any compensation beyond that date unless mutually agreed upon.

## SECTION 9

### CONFLICT OF INTEREST

**9.01:** The CHIEF covenants that he presently has no interest and shall not acquire any interest, direct or indirect, which would conflict, in any manner or degree, with the performance of the SERVICES as the Chief of Police under this Contract. The CHIEF further covenants that, in the performance of this Contract, no person having any such interest shall be employed.

The CHIEF further covenants that no officer, member or employee of the CITY, and no other public official who exercises any functions or responsibilities in the review

of approval of the undertaking or carrying out of this Contract, has any personal or financial interest, direct or indirect, in this Contract or in the proceeds thereof.

## **SECTION 10**

### **COMPLIANCE WITH LAWS AND SECURITY REGULATIONS**

**10.01:** The CHIEF shall be in compliance with and shall require all employees to comply with all applicable laws and regulations.

## **SECTION 11**

### **AMENDMENTS**

**11.01:** The CITY may consider it in its best interest to change, modify or extend a term or condition of this Contract, or the CITY may request the CHIEF to perform additional SERVICES. Any such change or modification, which is mutually agreed upon by the CITY and the CHIEF, shall be incorporated in written amendments, (hereinafter referred to as "AMENDMENTS"), to this Contract. Such AMENDMENTS shall not invalidate this Contract, nor relieve or release the CHIEF or the CITY from any of their obligations under this Contract.

**11.02:** No AMENDMENT to this Contract shall be effective and binding upon the parties, unless it expressly makes reference to this Contract, is in writing, is signed and acknowledged by duly authorized representatives of both parties and is approved by the City Council or governing body.

## **SECTION 12**

### **FAIR EMPLOYMENT PRACTICES**

**12.01:** In accordance with the United States Constitution and all Federal Legislation and regulations governing fair employment practices and equal employment

**14.05:** The headings of the Sections of this Contract are for convenience only and shall not be used to construe or interpret the scope of intent of this Contract or in any way affect the same.

**14.06:** This Contract, and all actions arising hereunder, shall be governed by, subject to, and construed according to the laws of the State of Alabama. The parties agree that any controversy, dispute or claim involving the CHIEF and the CITY OF SARALAND, ALABAMA, its subsidiaries, agent, officials or employees, and arising out of or relating in any manner to the CHIEF's employment, including but not limited to, claims based on or arising from an alleged breach of contract, tort or claim seeking any form of remedy in tort, to the rules of the American Arbitration Association and in accordance with the Federal Arbitration Act at 9 U.S.C. § 1, et. seq. Judgment upon the award rendered may be entered in any court having jurisdiction. The CHIEF and the CITY, its subsidiaries, agents and employees agree and understand that arbitration has been chosen instead of litigation to resolve any disputes between these parties. The parties understand that they have forfeited the opportunity to go to court to resolve any dispute between the CHIEF and the CITY, its subsidiaries, agents or employees. The parties acknowledge that the CHIEF's employment evidences and involves a transaction in interstate commerce. The parties agree that the CHIEF and the CITY, its subsidiaries, agents and employees voluntarily and knowingly waive any right to have a jury trial either pursuant to arbitration under this clause or pursuant to a court action.

**14.07:** For the purposes of the hold harmless provisions contained herein, the term "CITY" shall be deemed to include the City of Saraland, and all other

## EXHIBIT "A"

The CHIEF is a Department Head and is responsible for the planning, direction and control of all activities of the police department. The CHIEF works with much independence, however, and reports to and consults with the Mayor and Public Safety Committee of the City Council in determining major policies. The CHIEF is also required to attend all Council Meetings and report to the Council on Department activities when requested. Supervision by the CHIEF is exercised over the police department supervisors, officers and civilian personnel.

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- F) Make and/or recommend as appropriate, commendations, suspensions, transfers and otherwise direct employees within the Department, subject to any rules and regulations of the Mobile County Personnel Board, Rules and Regulations of the Saraland Police Department and its standard General Operational Procedural Orders;
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