

**ORDINANCE NO. 1538**

**AN ORDINANCE AUTHORIZING THE INTERIM CITY ADMINISTRATOR TO ENTER INTO AN EMPLOYMENT CONTRACT BETWEEN THE CITY OF CANBY AND BRET J. SMITH; AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City of Canby has employed Bret J. Smith as Chief of Police since January 18, 2010; and

**WHEREAS**, Bret J. Smith has been and continues to be in good standing with the City of Canby; and

**WHEREAS**, Bret J. Smith wants to officially retire in the Oregon PERS system as of September 30, 2020; and

**WHEREAS**, the City of Canby would like Bret J. Smith to work back as Chief of Police until April 1, 2021;


**NOW, THEREFORE, THE CITY OF CANBY, OREGON, ORDAINS AS FOLLOWS:**

**Section 1.** The Interim City Administrator is hereby authorized on behalf of the City to enter into an Agreement with Bret J. Smith to continue a Chief of Police for the City. A copy of the Employment Agreement is attached hereto as Exhibit "A."

**Section 2.** The effective date of this Ordinance shall be September 16, 2020.

**Section 3.** In so much as it is in the best interest of the citizens of the City of Canby, Oregon to provide continued staffing levels of police services without further delay, and to better serve the citizens of Canby, an emergency is hereby declared to exist and this ordinance shall therefore take effect immediately upon its enactment after final reading.

**SUBMITTED** to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, September 2, 2020 ordered posted as required by the Canby City Charter; and scheduled for second reading on Wednesday, September 16, 2020, commencing at the hour of 7:00 PM in the Council Chambers located at 222 NE 2<sup>nd</sup> Avenue, 1<sup>st</sup> Floor Canby, Oregon.

  
\_\_\_\_\_  
Melissa Bisset  
City Recorder

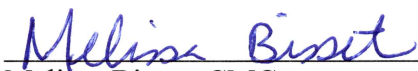
**PASSED** on second and final reading by the Canby City Council at a regular meeting thereof on the 16<sup>th</sup> day of September 2020, by the following vote:

YEAS 4

NAYS 0

  
\_\_\_\_\_  
Brian Hodson  
Mayor

ATTEST:

  
\_\_\_\_\_  
Melissa Bisset, CMC  
City Recorder

**Amendment to the Employment Conditions for Position of Chief of Police  
Contract / Agreement for Employment between the City of Canby and Bret J. Smith**

This Agreement for employment is entered into between the City of Canby, Oregon, an Oregon municipal corporation (City), and Bret J. Smith.

**RECITALS**

- A. Bret J. Smith is presently employed with the City as a regular, full-time Chief of Police.
- B. Bret J. Smith has indicated his intent to retire from employment with the City effective September 30, 2020.
- C. Bret J. Smith desires to return to employment with the City after retirement as a contract employee, and the City is willing to allow Bret J. Smith to return to employment as provided in this agreement.

**AGREEMENT**

Now, therefore, in consideration of the foregoing and the mutual covenants and obligations set forth in this Agreement, it is hereby agreed to as follows:

- 1. Upon his retirement from employment with the City effective September 30, 2020, the City agrees to employ Bret J. Smith and Bret J. Smith agrees to work for the City in the same position, retaining his appointment as Chief of Police, with the same duties as that position in which he was employed at the time of his retirement, and shall perform such other duties as may, from time to time, be assigned. Bret J. Smith will retain his current level of seniority and the same date of appointment (January 18, 2010). No probationary period will apply.
- 2. The term of this Agreement shall be for six (6) months, beginning October 1, 2020 and ending April 1, 2021; or, unless and until prohibited by Oregon law. During the term of his employment, Bret J. Smith will serve "at will" and either party may terminate this agreement at any time. If Bret J. Smith resigns or the City elects to terminate this agreement, at least thirty (30) days' notice will be given to the other party.
- 3. In the event employment is terminated during such time that Bret J. Smith is willing and able to perform the duties under this Agreement, the City shall pay Bret J. Smith a lump sum cash payment (severance pay) equal to the remaining months (ending April 1, 2021) and the aggregate base salary, including health insurance and any other benefits he normally would have received if he continued working. In the event Bret J. Smith's employment is terminated for just cause, because of an indictment for an illegal act, or



convicted of a crime involving moral turpitude, the City shall have the right to terminate Bret J. Smith's employment and this Agreement without the obligation to pay any severance pay as designated in this paragraph. Provided, that after Indictment for an illegal act, Bret J. Smith is not convicted or enters into a plea agreement within six (6) months of the Indictment, the City shall pay the severance amount to Bret J. Smith. Severance amounts shall be paid within thirty (30) days of the date of termination, unless otherwise provided.

4. At the commencement of his employment under this agreement, Bret J. Smith will receive a bi-weekly gross salary equal to his salary at the time of his retirement (and will be subject to regular withholding and payroll taxes). In addition, Bret J. Smith will receive the same merit increases and annual cost of living adjustments as all City of Canby, non-represented employees. Bret J. Smith may work a Monday through Friday schedule, a 5/8 or 4/10 forty (40) hours work week, subject to approval by the City Administrator.
5. Bret J. Smith will also be entitled to the following benefits:
  - a. Bret J. Smith will carry-over and maintain any/all current accrued Administrative (fifty-five (55) hours) and Personal Leave (eight (8) hours) and will be entitled to be paid/credited for any unused Administrative and Personal Leave upon termination of his employment, as allowed by the City's Policy. Bret J. Smith will retain his current rate of accrual for any/all Administrative and Personal Leave as allowed by City Policy.
  - b. Bret J. Smith will carry-over and maintain any/all current accrued Vacation Leave and will be entitled to be paid/credited for any unused Vacation Leave upon termination of his employment as allowed by the City's Policy. Bret J. Smith will retain his current rate of accrual for any/all Vacation Leave.
  - c. Bret J. Smith will carry-over and maintain any/all accrued Sick Leave and will be entitled to be paid/credited for any unused Sick Leave upon termination of his employment as allowed by the City's Policy. Bret J. Smith will retain his current rate of accrual for any/all Sick Leave.
  - d. The City and Bret J. Smith originally entered into an Employment Agreement on January 18, 2010; and on October 1, 2020, Bret J. Smith will start withdrawing retirement benefits from Oregon Public Employees Retirement System (PERS) and PERS rules disallows the City to continue making payments for the employee portion into the program. Therefore, the City agrees to compensate Bret J. Smith during the service period of this Agreement (October 1, 2020 to April 1, 2021); the City shall pay the "employer" portion for the employee retirement program (if



applicable) under the Oregon Public Employees Retirement System. In addition to Bret J. Smith's salary and benefits, the City shall start contributing the "employee" portion payment into Bret J. Smith's Deferred Compensation Program, an amount equal to 6% of the employee's salary, effective October 1, 2020.

The following sections of the City of Canby policies and procedures are superseded by this Contract Agreement and will not apply to:

- a. Time Off and Leaves of Absence:
    - Vacation
    - Administrative and Personal Leave
    - Sick Leave
  - b. Employment Status:
    - Probation
  - c. Employee Benefits:
    - PERS (Public Employees' Retirement System) Benefits
6. The City agrees to provide Bret J. Smith the same coverage and pay the same premium rate/schedule portion for the City's health, dental and vision insurance, life insurance and long term disability plan as provided for regular, full-time, non-representative, police/law enforcement employees (as that in which he was employed at the time of his retirement).
  7. The City and Bret J. Smith acknowledge that Bret J. Smith will be a retired public employee receiving benefits under the Oregon Public Employee Retirement System (PERS), and is subject to the laws, rules and regulations governing employment of PERS police officer retirees.
  8. Bret J. Smith will, at all times during his employment under this agreement, meet and maintain compliance with all fitness standards required by the City for the position in which he is employed.
  9. This is a Contract Agreement for employment under and subject to the City's Policy and Procedures, other than those exceptions noted in this Agreement, and Bret J. Smith is subject to those policies and procedure and to the Canby Police Department's Policies and Procedures; to include any amendments that may occur from time to time.
  10. Integration: This Agreement supersedes and incorporates all prior agreements between the parties and constitutes the entire agreement between the parties. No other agreement, promise or understanding between the parties that is not set forth herein shall be binding or enforceable.



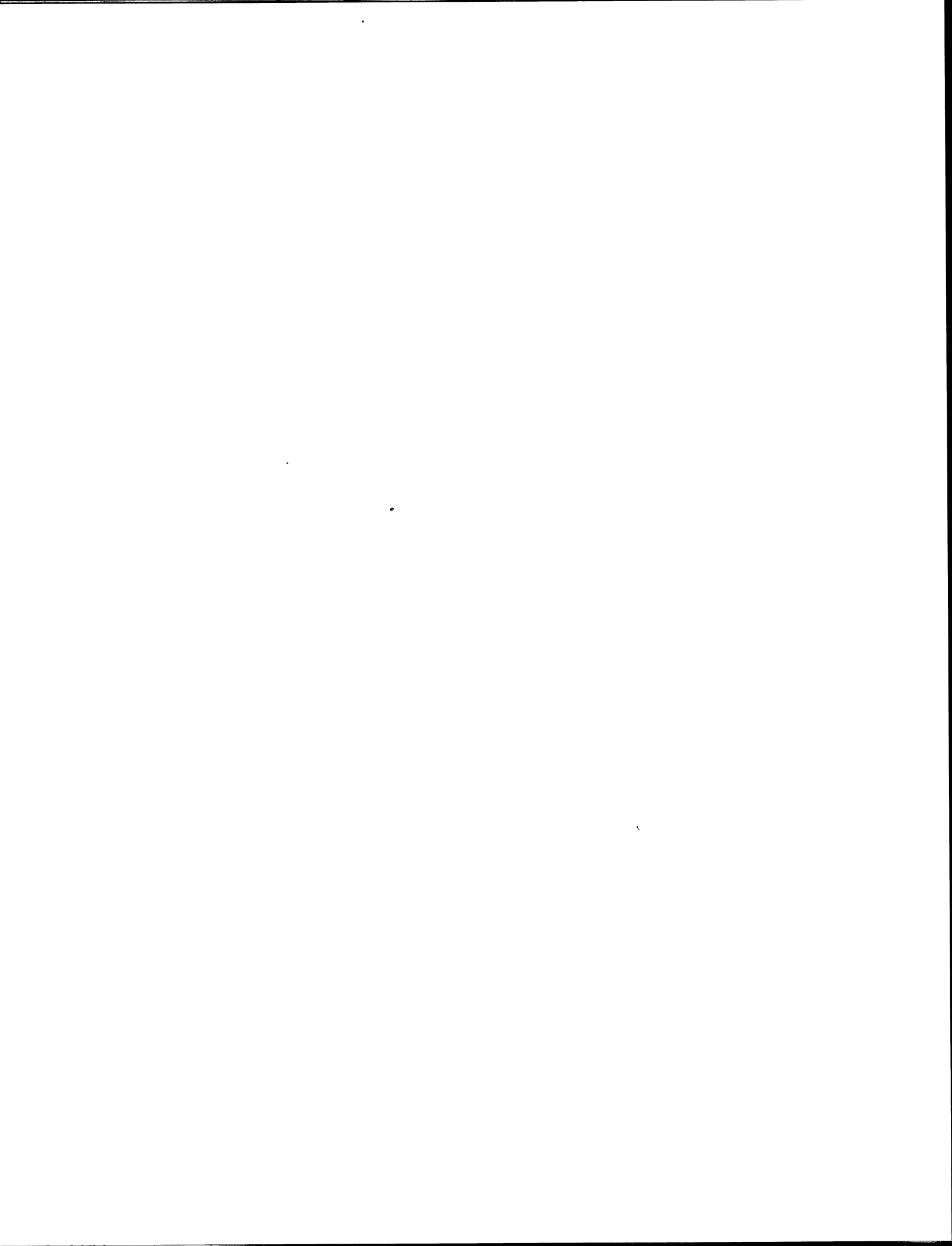


**This Contract / Agreement is effective October 1, 2020.**

As representative witnesses with the City of Canby, Oregon, the following individuals have executed this Agreement:

By: \_\_\_\_\_  
**Interim City Administrator**                      **Chief of Police**  
**Joseph Lindsay**                                      **Bret J. Smith**

Date: \_\_\_\_\_                      Date: \_\_\_\_\_



**AFFIDAVIT OF POSTING**

**STATE OF OREGON** )  
 )  
**County of Clackamas** ) ss:  
 )  
**CITY OF CANBY** )

I, Melissa Bisset, being first duly sworn, depose and say that I am the City Recorder for the City of Canby, Clackamas County, Oregon, a City duly incorporated under and by virtue of the laws of the State of Oregon.

That on the 2<sup>nd</sup> day of September, 2020 the Council for said City of Canby held a Regular City Council Meeting, at which meeting Ordinance No. 1538 was read for the first time and passed by the vote of said Council and was then and there ordered posted in at least three (3) public and conspicuous places in said City for a period of five (5) days prior to the second reading and final vote on said Ordinance, as provided in Section 2 of Chapter 8 of the Charter of the City of Canby, and

Thereafter, on the 2<sup>nd</sup> day of September, 2020, I personally posted said Ordinance in the following three (3) conspicuous places, all within the said City of Canby, to wit:

- 1. Canby Civic Building – Front Doors
- 2. Canby Post Office
- 3. City of Canby Web Page

That since said posting on the date aforesaid, the said Ordinance will remain posted in the said three (3) public and conspicuous places continuously for the period of five (5) days and until the very 16<sup>th</sup> day of September, 2020.

*Melissa Bisset*  
\_\_\_\_\_  
Melissa Bisset, City Recorder

Subscribed and sworn to before me this 8<sup>th</sup> day of September, 2020.

*Erin Elizabeth Burckhard*  
\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: September 4, 2022



