



Office of the City Manager

CONSENT CALENDAR
October 11, 2022

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: LaTanya Bellow, Deputy City Manager
Subject: Appointment of Director of Police Accountability

RECOMMENDATION

Adopt a Resolution confirming the appointment of Hansel Aguilar to be the Director of Police Accountability and approving an employment contract to be effective October 24, 2022 at an annual salary of \$200,000.

FISCAL IMPACTS OF RECOMMENDATION

The salary and benefits for the Director of Police Accountability are included in the FY 2023 and FY 2024 Adopted Budget for the Office of the Director of Police Accountability. The annual salary for Hansel Aguilar is \$200,000, which is within the salary range for the position that was approved by City Council on May 25, 2021.

CURRENT SITUATION AND ITS EFFECTS

Pursuant to Resolution 69,531-N.S. that was adopted by the City Council on July 28, 2020, City staff has taken the following action so that the Police Accountability Board can commence its work on July 1, 2021:

- Issued an application to solicit community interest in the Police Accountability Board ("Board") and on June 1, 2021, the Mayor and City Council adopted Resolution 69,916-N.S. consisting of appointments of the nine (9) members to the Board.
- On May 25, 2021, the City Council adopted Resolution amending Resolution 69,538- N.S. to establish the unrepresented classification of Director of Police Accountability with a monthly salary range of \$11,862.93 - \$17,794.40, effective May 25, 2021.

The Human Resources Department hired a consultant agency Bret Byers Group to conduct a nationwide search for the Director of Police Accountability. As a result, Hansel Aguilar was selected. The search for the Director of Police Accountability for the City of Berkeley, began in earnest in the spring of 2022 following an extensive community engagement process. The position profile was developed with input from a wide range of key stakeholders was published April of 2022. The search was national in scope and resulted in receiving 17 applications which were reviewed initially by the

executive search firm. The initial screening review resulted in 11 competitive candidates which were presented to the City Manager and Deputy City Manager. The City Manager and Deputy City Manager review process resulted in the pool of potential candidates being narrowed to 6 semi-finalists who were then interviewed by two different panels: a community panel and a panel of technical experts. The results of those interviews were a recommendation to the City Manager and City Attorney to interview ultimately 5 semi-finalists. The City Manager recommended a total of five candidates to be interviewed by the City Council. Those interviews occurred in July of 2022 and September of 2022. The result was a finalist who is being announced October 11, 2022. His bio follows.

Mr. Aguilar is well qualified to serve as the City's Director of Police Accountability. Hansel Aguilar has considerable civilian oversight and criminal justice experience including serving as a law enforcement officer in Northern Virginia, as an in-house misconduct investigator for a youth development non-profit in Northern Virginia, a misconduct investigator at the D.C. Office of Police Complaints (OPC), an inaugural member of the Fairfax County Police Civilian Review Panel (PCR), a member of the George Mason University Police Advisory Board Implementation Committee and serving as the first Executive Director of the City of Charlottesville Police Civilian Oversight Board (PCOB), formerly known as the Police Civilian Review Board. His career in public service also includes experience in the non-profit sector and governmental arena. Specifically, he has served as an intake paralegal for various legal aid agencies, as an AmeriCorps Volunteer, a volunteer manager for a Virginia area non-profit, site manager for a non-profit, day-labor center, and as a Partnership Specialist with the U.S. Census Bureau.

As a practitioner of civilian oversight, Mr. Aguilar has been an active participant and contributor to the National Association of Civilian Oversight of Law Enforcement (NACOLE). He has collaborated in the NACOLE Review, as a moderator and presenter at various annual conferences and a subcommittee member supporting various NACOLE initiatives. Mr. Aguilar holds a B.A. in Criminal Justice and Sociology from Rutgers University and a Master of Arts degree in Sociology from George Mason University where he is currently a PhD candidate disserting. His research interests lie primarily in the intersection of transnationalism, crime and human rights.

BACKGROUND

In 1973, a ballot measure was adopted to establish a Police Review Commission for the community to participate in setting Police Department policies, practices, and procedures and to provide a means for investigation of complaints against sworn employees of the Police Department. The existing Police Review Commission consists of nine (9) commissioners that are appointed by the Mayor and City Council, and is supported by three (3) full-time equivalent employees.

On November 3, 2020, Berkeley voters adopted Measure II, a Charter Amendment that established the Office of the Director of Police Accountability that consists of a new

position, Director of Police Accountability, and the Police Accountability Board. The Police Accountability Board replaces the existing Police Review Commission. Pursuant to Measure II, the purpose of the Police Accountability Board is to promote public trust through independent, objective, civilian oversight of the Berkeley Police Department, provide community participation in setting and reviewing Police Department policies, practices, and procedures, and to provide a means for prompt, impartial and fair investigation of complaints brought by members of the public against sworn employees of the Berkeley Police Department. The Director of Police Accountability, a position to be filled by the City Council at a noticed public meeting, is responsible for investigating complaints filed against sworn employees of the Berkeley Police Department, carrying out the work of the Police Accountability Board, and overseeing the day-to-day operations of the Office of the Director of Police Accountability, amongst other responsibilities as outlined in Measure II. Both the Police Accountability Board and Director of Police Accountability are independent of the City Manager, except for administrative purposes, and report to the Mayor and City Council.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

Mr. Aguilar has an extensive background in civilian police oversight and public administration and as a long-standing employee with the City of Charlottesville. As a practitioner of civilian oversight, Mr. Aguilar has been an active participant and contributor to the National Association of Civilian Oversight of Law Enforcement (NACOLE). He has collaborated in the NACOLE Review, as a moderator and presenter at various annual conferences and a subcommittee member supporting various NACOLE initiatives. He was a candidate for the at-large Board member position in the 2022 NACOLE election, but did not receive the votes to secure the position.

Mr. Aguilar holds a B.A. in Criminal Justice and Sociology from Rutgers University and a Master of Arts degree in Sociology from George Mason University where he is currently a PhD candidate disserting. His research interests lie primarily in the intersection of transnationalism , crime and human rights. He is well qualified to assume the responsibilities of the Director of Police Accountability.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

LaTanya Bellow, Deputy City Manager, City Manager's Office (510) 981-7012

Attachment:

1: Resolution

Exhibit A: Employment Contract

RESOLUTION NO. ##,###-N.S.

APPOINTMENT OF HANSEL AGUILAR AS DIRECTOR OF POLICE
ACCOUNTABILITY

WHEREAS, Section 125 of the City Charter provides that the Director of Police Accountability shall be appointed by the City Council to implement Measure II adopted on November 3, 2020, oversee the operations of Office of the Director of Police Accountability and carryout the work of the Police Accountability Board; and

WHEREAS, Hansel Aguilar has an extensive background in civilian police oversight and public administration and has been an active participant and contributor to the National Association of Civilian Oversight of Law Enforcement; and

WHEREAS, Mr. Aguilar received a B.A. in Criminal Justice and Sociology from Rutgers University and a Master of Arts degree in Sociology from George Mason University where he is currently a PhD candidate disserting.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council hereby confirms the City Manager's recommendation of Hansel Aguilar as the Director of Police Accountability, with an annual salary of \$200,000 on the same terms and conditions as other, regular at will employees to be effective October 24, 2022.

AGREEMENT

This Agreement is made and entered into on ____, 2022, between the City of Berkeley, a Charter City, organized and existing under the laws of the State of California (“City”), and Hansel Aguilar (“Mr. Aguilar”). The City and Mr. Aguilar are referred to herein collectively as the “Parties.”

This Agreement is made with reference to the following facts and objectives:

- A. The Office of the Director of Police Accountability is established by the Charter of the City of Berkeley (“City Charter”), Article XVIII, Section 125, Subsection (1).
- B. The City invests the City Council with the sole authority to appoint the Director of Police Accountability; and the City Council desires to employ the professional services of Mr. Aguilar as the Director of Police Accountability for the City of Berkeley.
- C. Mr. Aguilar agrees to serve as the Director of Police Accountability of the City of Berkeley in accordance with the Berkeley City Charter.
- D. Both the City and Mr. Aguilar wish to set forth in writing the terms and conditions of Mr. Aguilar’s employment as the Director of Police Accountability for the City of Berkeley.

Therefore, in consideration of the mutual promises and covenants set forth herein, the Parties agree as follows:

1. COMMENCEMENT AND TERMINATION

The City Council hereby employs Mr. Aguilar as the Director of Police Accountability, and Mr. Aguilar hereby accepts said employment commencing remotely on October 24, 2022 and in-person on November 28, 2022. Pursuant to Charter Section 125, Subsection (14)(e), Mr. Aguilar is an at-will employee of the City. He shall serve at the pleasure of the City Council, which may remove Mr. Aguilar from office with or without cause. In the event of a no-cause removal from office, Mr. Aguilar shall be eligible to receive severance payment in accordance with the provisions of Sections 3.e through 3.g of this Agreement. In the event that Mr. Aguilar voluntarily resigns his employment, he shall make best efforts to give notice as provided in Section 3.g of the Agreement.

2. DUTIES

Mr. Aguilar shall perform the duties of Director of Police Accountability as set forth in Charter Section 125, including but not limited to those duties set forth in Subsections (12), (14), (16), and (18), as well as any other duties determined by the City Council.

3. COMPENSATION AND EVALUATION

- a. The City shall pay Mr. Aguilar for services rendered by him pursuant to this Agreement an annual base salary of two hundred thousand dollars (\$200,000). Said salary shall be paid on the dates and in the manner consistent with the payroll

procedures in use for City of Berkeley career employees. In addition, Mr. Aguilar shall receive such employee benefits as are provided to the City's regular-at-will employees under the City's Unrepresented Employee Manual, and any cost of living increases Council approves for regular-at-will employees covered by the City's Unrepresented Employee Manual.

The City, in its sole and absolute discretion, may adjust the annual base salary of Mr. Aguilar at such times and to such extent as the City may determine. In exercising its discretionary authority, the City shall act fairly and in good faith with Mr. Aguilar. In no case shall Mr. Aguilar's annual base salary be decreased unless such decrease is a percentage consistent with a decrease applicable to all employees of the City generally.

Within three months of appointment, the City Council shall jointly establish objective, verifiable measures of Mr. Aguilar's performance, to be completed during the first year of Mr. Aguilar's employment. The City Council shall provide Mr. Aguilar with a performance evaluation at the end of the first year or soon thereafter. During the initial performance evaluation, Mr. Aguilar shall present to the City Council his goals and priorities for the Office of the Director of Police Accountability. An assessment of salary increase shall be part of the evaluation process. For each subsequent year during the term of this Agreement, the Parties shall endeavor to establish prospective objective, verifiable measures of performance for the ensuing year. As part of each annual performance evaluation, Mr. Aguilar shall present on goals and priorities for the Office of the Director of Police Accountability and key accomplishments over the past year.

- b. The City shall pay relocation assistance to move Mr. Aguilar's household goods & belongings - three bids will be provided by Mr. Aguilar for the City to select and pay directly.
- c. The City shall also pay a temporary housing allowance of \$4000/month for 6 months. The total payments for this temporary housing allowance shall not exceed \$24,000.
- d. The City makes no representation about the tax consequences of the relocation assistance or temporary housing allowance payments discussed in Section 3(b) and (c) above. Mr. Aguilar is solely responsible for determining the tax consequences of such payments and paying such taxes.
- e. In the event that Mr. Aguilar is removed from office by the City Council without cause and during such time as Mr. Aguilar is able and willing to perform his duties under this Agreement, the City shall (1) provide Mr. Aguilar with notice at least one (1) month in advance of the final date of employment; and (2) pay Mr. Aguilar as severance pay (i) a lump- sum cash payment in an amount equal to two (2) months of salary, for every month of service as the DPA after the date of this Agreement, but under no circumstances shall said payments exceed twelve (12) months of salary; and (ii) any vacation leave accrued as of the date of termination. As a condition precedent to receiving the severance payment discussed in this subsection, Mr. Aguilar must sign a comprehensive release and waiver of all claims against the City

covering all claims surrounding his employment and termination of employment with the City.

- f. Notwithstanding the provisions of Section 3.e, in the event the City Council terminates Mr. Aguilar for cause, the City shall have no obligation to provide any severance pay. As used in this section, "cause" shall mean conviction of, or no contest plea, to a felony or any crime involving moral turpitude or personal gain. In the event the City terminates Mr. Aguilar for cause, Mr. Aguilar shall be entitled only to such salary accrued to the date of termination, and such other termination benefits and payments as are required by law.
- g. In the event that Mr. Aguilar voluntarily and without the official request of the City resigns as Director of Police Accountability, Mr. Aguilar shall make best efforts to provide written notice to the City at least thirty (30) days in advance of the final date of employment, unless the parties agree otherwise. Such resignation shall not be deemed to be a "removal" or "termination" within the meaning and context of the above severance pay provisions

4. VACATION AND SICK LEAVE

- a. Mr. Aguilar shall receive four weeks (160 hours) of vacation leave annually. Annual vacation leave shall be administered in the same manner as vacation is administered for department head employees of the City with regard to timing of credits and buyback policy. Maximum vacation accrual is 320 hours. Mr. Aguilar shall accrue fifteen (15) days of sick leave annually with unlimited accumulation. Sick leave may be used in accordance with policies applicable to department head employees of the City.
- b. The City shall pay for professional dues and subscriptions of Mr. Aguilar necessary for his performance as DPA, subject to any budgetary limitations set by City Council.
- c. The City shall pay travel and meal expenses of Mr. Aguilar for professional and office travel, meetings, and occasions adequate to continue Mr. Aguilar's professional development and to allow him to adequately pursue necessary official functions for the City, subject to budget limitations The City also shall pay tuition, travel, and meal expenses of Mr. Aguilar for short courses, institutes, and seminars that are necessary for his professional development and for the good of the City, subject to budget limitations. All reimbursements for travel and meal expenses shall be processed pursuant to applicable City regulations which apply to all City employees. Mr. Aguilar may request, and the City in its sole discretion may approve for funding, graduate level education programs, which may include reimbursement for tuition, books and travel.

5. AMENDMENT

The City and Mr. Aguilar may at any time mutually agree to amend or terminate this Agreement. Any such agreement must be in writing and signed by the Parties to this Agreement. If the City Charter is amended to conflict with any clause in this Agreement,

the amended City Charter shall control and inconsistent provisions of the contract shall be void and unenforceable.

6. ENTIRE AGREEMENT

This Agreement supersedes any other agreements, written or oral, expressed or implied, between the City and Mr. Aguilar.

7. INDEMNIFICATION

The City shall defend, hold harmless, and indemnify Mr. Aguilar against any claims, demands, or legal actions, whether specious, frivolous, or otherwise, arising out of an alleged act or omission, direct or indirect, occurring within the scope and during the course of Mr. Aguilar’s employment with the City. Mr. Aguilar will cooperate in good faith with the City with respect to defense of such claims, demands, or legal actions. This provision shall not apply where a claim, demand, or legal action is premised on any action or omission by Mr. Aguilar that is felonious or involves moral turpitude.

8. SEVERABILITY

In the event that any term of this Agreement is finally held or determined to be illegal or void by a court having jurisdiction over the City and Mr. Aguilar, the remainder of this Agreement shall remain in full force and effect unless the term or terms held to be illegal or void are wholly inseparable from the remaining provisions of the Agreement. If any part of this Agreement is determined to be illegal or void by a court of competent jurisdiction, the parties shall meet and confer to re-negotiate such illegal or void term(s).

9. GOVERNING LAW

This Agreement shall be governed by the laws of the State of California.

IN WITNESS WHEREOF, the Parties have executed this Agreement which shall be effective upon approval by the City Council.

CITY OF BERKELEY

HANSEL AGUILAR

By _____

By _____

Jesse Arreguin, Mayor

Approved as to Form

By _____

Farimah Faiz Brown, City Attorney