OFFICE OF THE CITY MANAGER
CITY OF DALY CITY
333 – 90TH STREET
DALY CITY, CA 94015-1895
(650) 991-8125

PERSONAL AND CONFIDENTIAL

TO: Officer Jamie Bermudez

FROM: Thomas J. Piccolotti, City Manager

DATE: June 2, 2023

SUBJECT: Notice of Intent to Terminate

The purpose of this letter is to provide you with notice pursuant to the Daly City Police Department Policy Manual and *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, of my proposal to terminate you from your position as a Police Officer for Daly City ("City"). If my proposal remains unchanged following completion of any pre-disciplinary review in this matter, then your termination will be effective following completion of the pre-disciplinary process and written notice of your termination.

I. CHARGES UPON WHICH THE PROPOSED TERMINATION IS BASED

This Notice of Intent to Terminate is based on my preliminary determination that you have violated the following rules, policies, and/or provisions:

The Daly City Police Department Police Manual

Section 340.04—General Standards

Members shall conduct themselves whether on- or off-duty, in accordance with United States and California constitutions and all applicable laws, ordinances, and rules enacted or established pursuant to legal authority.

Section 340.3—Directives and Orders

Members shall comply with lawful directives and orders from any department supervisor or person in a position of authority, absent a reasonable and bona fide justification.

Section 340.5.10—Conduct

(h) Criminal, dishonest, disgraceful conduct, whether on-or off-duty, that adversely affects the member's relationship with this department.

(m) Any other on or off duty conduct which any members knows or reasonably should know is unbecoming a member of this department, is contrary to good order, efficiency or morale, or tends to reflect unfavorably upon this department or its members.

The Daly City Police Department Manual of Rules

Section 3.65—Obedience to Laws and Regulations

All members shall observe and obey all Federal, State, and municipal laws and ordinances, all rules and regulations of the Department, and all General Orders or Special Orders of the Department.

Section 4.64--Consumption of Intoxicants

Members shall not consume any alcoholic beverage or intoxicating substance while off duty to the extent that evidence of such consumption is apparent when reporting or duty, or to the extent that ability to perform duty is impaired. Members shall not consume any alcoholic beverage or intoxicating substance, including prescribed drugs that can impair their ability to perform their duties while on duty unless necessary in the performance of a police task and only with the permission of a superior officer. Members shall not at any time be under the influence of alcohol or intoxicating substances while on duty. Members shall not consume illegal drugs at any time.

Section 4.96—Truthfulness

Members are required to be truthful at all times whether under oath or not.

San Mateo County Narcotics Task Force (SMCNTF) Policy

Section 4.4—Rules of Conduct—Basis for Disciplinary Action

a) Violation of any SMCNTF policy, procedure, rule order, directive or requirement

b) Violation of any general order, policy, or procedure of the member's employing agency that is not inconsistent with the orders, policies, and procedures of the SMCNTF

m) Misuse of SMCNTF property or funds

p) Any other failure of good behavior, either during or outside of duty hours, which is of such a nature that causes discredit to the SMCNTF or the agency in which the member is employed.

The Daly City Rules and Regulations of the Classified Service, Rule XVIII, Standards of Employment, Section 10, Causes for Discipline or Discharge

(b) Discourteous treatment of the public, supervisors, other employees
(c) Failure to follow directions, policies and procedures
(e) Inappropriate use of drugs and alcohol
(n) Untruthfulness

(p) Violation of City and/or Department rules, regulations, policies and procedures
(q) Violation of City, State and/or Federal Law(s)

Please note that this Notice of Intent to Terminate is based upon your violation of any one of the above rules and need not be based upon a finding or conclusion that you committed multiple violations. Your violation of any one of the above rules would, in and of itself, support my recommendation that you be terminated.

II. SUMMARY OF FACTS IN SUPPORT OF PROPOSED TERMINATION

A. YOUR AUGUST 27, 2022 DUI ARREST

On August 27, 2022, at approximately 0100, you were driving your SMCNTF-assigned vehicle in Walnut Creek. While driving the vehicle, Walnut Creek Police observed you stopped at a red light at the intersection of North Broadway and Civic Drive. You were stopped half in the left turn lane and half in the southbound lane. When the light turned green, you went through the intersection and swerved across multiple lanes without signaling, causing the Walnut Creek Police to brake in order to avoid colliding with you. As you continued toward the Lincoln Avenue intersection, Walnut Creek Police Corporal Mauro pulled you over. After you were pulled over, you exhibited slurred speech and your body movements were lethargic, consistent with someone who is intoxicated. After Corporal Mauro asked for your identification, you searched for your wallet in the center console of the truck until your girlfriend, [redacted] W1 who was sitting in the backseat of the truck, handed you your wallet. You then pulled out your driver's license and work ID and dropped them twice on the floor of the truck before handing them to Corporal Mauro. When you were asked where you were coming from, you initially said something to the effect of "right around the corner." When asked again, you stumbled on your words and could not form a coherent sentence. At some point, Corporal Mauro observed blood and scratches on the back of your neck. However, it appeared you were unaware of the blood and scratches on the back of your neck. You then reported that you had a firearm locked in the back of the truck, but you had trouble explaining where exactly the firearms were located due to your inability to form coherent sentences. After this, Officers Young and Peters took over the remainder of the DUI investigation.

Officers Young and Peters first arrived on the scene and spoke with [redacted] W1 When asked why she was sitting in the back seat [redacted] W1 said that you wanted to drive home but she told you not to. She said you both were drinking at "Modern" (Modern China Café). You then interrupted [redacted] W1 [redacted] W1 and tried to tell Officer Young where you were coming from, but could not remember the name of the location.

After observing your objective signs of intoxication, the Walnut Creek Police officers conduct a DUI investigation and requested that you step out of the vehicle. When you stepped out of the vehicle, you staggered, prompting Corporal Mauro to ask if you were "going to be ok." You responded in the affirmative.

The officers talking to you smelled a strong odor of alcohol coming from your breath and person and informed you they were going to conduct a Field Sobriety Test ("FST"). You responded "go ahead" and then said "this is bullshit." Officer Young then asked you several pre-FST questions. During the questions you staggered and lost your balance multiple times. Additionally, Officer Young had to ask you to display professional courtesy towards him. He told you that he could tell you were very intoxicated, and as a police officer, you should know you should not be driving. When asked what alcoholic beverages you had, you responded, "I haven't had anything to drink." This answer caused Officer Young to further ask, "Zero alcoholic

drinks?" You replied, "Zero." When asked again whether you were coming from Modern China Café, you responded, "no, I was parked right here." You also stated you did not take any medicine or drugs.

You then performed multiple standard FSTs including the "HGN test," the "Walk and turn" test, "One leg stand" test, and the "Romberg balance" test. When asked if you would provide a voluntary breath sample, you said "Nah." Based on your performance on the FSTs and interactions with the police, you were placed under arrest for driving under the influence of alcohol.

After being transported to Walnut Creek Police Department, you originally consented to a breath test with a Preliminary Alcohol Screening ("PAS") device, but then changed your mind and said "fuck it, go get a warrant." A judge then signed a search warrant authorizing a blood draw at around 0256 hours. At approximately 0304 hours, your blood was drawn and the blood vials were booked into the Department's Evidence room. The Contra Costa County Forensic Laboratory showed that your blood test from that night resulted in a blood alcohol content of 0.269%, over three times the legal limit of .08%.

B. PRE-ARREST CONDUCT ON AUGUST 26 AND 27, 2022

You met your girlfriend at Stadium Pub on the evening of August 26, 2022. You and your girlfriend then went to a nearby bar called Modern China Café and then to another nearby bar called 1515 Restaurant and Lounge. After leaving 1515 Restaurant and Lounge, you operated the SMCNTF vehicle until you were stopped by the Walnut Creek Police Department at approximately 0100 on August 27, 2022.

In your administrative interview, you admitted to drinking and being intoxicated before driving. You said you estimated that you had a beer at Stadium Pub, two (2) shots of tequila at Modern China Café, and over ten (10) drinks of tequila and beer at 1515 Restaurant and Lounge. You stated you felt the feelings of alcohol after you left 1515, and admitted you reasonably believed you were too intoxicated to drive.

C. YOUR USE OF THE SMCNTF VEHICLE ON THE NIGHT OF AUGUST 27, 2022

You were on-call for the SMCNTF on August 26, 2022, and August 27, 2022. However, you arranged for someone else to assume your on-call duties as of 0900 on August 27, 2022. Therefore, you were on-call when arrested at 0100 on August 27, 2022.

You were previously instructed by your direct supervisor at the SMCNTF, to not drink and drive while using the SMCNTF vehicle. During your administrative interview, you stated during your training when you first joined SMCNTF, you were instructed on SMCNTF policies regarding your take-home vehicle. You acknowledged you were not allowed to consume alcohol and drive the vehicle, and that you had a one-on-one conversation with your direct supervisor about not drinking and driving while using the SMCNTF vehicle.

D. YOUR DRUG TOXICOLOGY REPORT

The blood test performed by the Contra Costa County Forensic Laboratory also showed you had 5.9 ng/mL of cannabinoids at the time of your arrest. A criminalist at the Contra Costa County Sheriff's Office stated that this means you consumed tetrahydrocannabinol, also known as THC, at some point prior to the drug test.

During your administrative interview, in response to questions about the presence of cannabinoids in your blood, you stated that you took a couple of CBD pills that [redacted] W1 [redacted] gave you but could not remember when you took them. In her interview, [redacted] W1 [redacted] stated that she takes sleeping pills called

Unisom, which are over the counter, and said that she occasionally takes THC gummies from a friend to help her sleep, but that you have never taken them with her.

E. YOUR 2015 DUI CONVICTION

This incident is your second arrest for DUI. On June 19, 2015, the Campbell Police Department arrested you for driving under the influence. You were subsequently convicted on September 3, 2015, for driving under the influence.

III. ANALYSIS

In *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, the California Supreme Court held that in considering the propriety of public employee disciplinary action:

> "...the overriding consideration in these cases is the extent to which the employee's conduct resulted in, or if repeated is likely to result in harm to the public service.... Other relevant factors include the circumstances surrounding the misconduct and the likelihood of its recurrence."

With this in mind, I am proposing the termination of your employment as a police officer for the reasons below.

The evidence demonstrates that you failed to uphold your duties as a Police Officer of the Daly City Police Department (DCPD) by driving under the influence of alcohol, ingesting cannabinoids, misusing San Mateo County Narcotics Task Force (SMCNTF) property, and lying to fellow police officers about your alcohol use. You demonstrated a clear lack of judgment and inappropriate behavior when you became intoxicated and decided to operate a motor vehicle. Your judgment is further called into question because you were on call with the SMCNTF while intoxicated and the vehicle you were driving was an SMCNTF vehicle. Even with access to Uber, Lyft, or some other taxi, you decided to operate a law enforcement vehicle while extremely intoxicated. Drinking while driving your SMCNTF vehicle was a violation of workplace expectations as well as a directive from a supervisor. Moreover, driving any vehicle under the influence is a crime. Furthermore, in doing so, you created potential harm to yourself, your passenger, and members of the community, while implicating the SMCNTF and the DCPD. Your conduct constitutes both a violation of DCPD and SMCNTF policy and is criminal, disgraceful conduct that has adversely affected the relationship between you and this Department. Your conduct warrants termination.

Additionally, when questioned about how much alcohol you consumed, you stated on two different occasions that you did not consume any alcohol. However, your blood alcohol content reveals that statement was untrue. In your administrative interview, you acknowledged you drank multiple drinks of alcohol and felt the effects of alcohol before driving. Your blood test results showed your blood alcohol level was over three times the legal limit even after being taken in to the Walnut Creek Police Department station. You also admitted you lied to police officers at the scene after being pulled over. You were discourteous and acted improperly toward the other officers. As a member of the DCPD and of the SMCNTF, you are expected to embody a pillar of honesty and truthfulness. Lack of truthfulness is not tolerated in the DCPD—in lying about your alcohol consumption, you have violated policy and abused the trust placed in you by the Department and termination is warranted.

The above conduct also harms the reputation of DCPD with the arresting agency, the Walnut Creek Police Department, as well as the District Attorney's Office of Contra Costa County. Your intoxication, decision to drive

while intoxicated, your criminal activity, your rudeness, and lack of truthfulness reflect poorly not just on yourself, but also on the DCPD. Police Officers are expected to display the highest standard of integrity. Your actions fall well below that standard and in doing so, you harmed the reputation of the Department and your fellow officers.

I note you were convicted of a DUI in 2015 and know the consequences of driving while under the influence. However, you intentionally decided to again engage in this unlawful and dangerous activity, rendering termination even more warranted.

Further, during your administrative interview, you stated that you ingested [redacted] W1 CBD sleeping pills in order to explain the presence of cannabinoids in your blood. However, her testimony contradicted your own. Regardless of when or where it happened, your ingestion of cannabinoids violates the policy against the use of illegal drugs, as cannabinoids, and in particular THC, are illegal under federal law. Your use of any illegal drugs is particularly inappropriate as a member of the SMCNTF and the DCPD.

As a Police Officer of the DCPD, you are expected to maintain the highest level of integrity, responsibility, and competency, carrying out your duties with excellence and diligence. Your misconduct was not only an abuse of the trust placed in you by the Department—but has very serious implications for the DCPD and Daly City in the public eye.

Finally, I note your actions not only violated significant DCPD and SMCNTF rules and policies, but your conduct also violated Citywide policies prohibiting the following: discourteous treatment; failure to follow rules, regulations, directions, policies, and procedures; the inappropriate use of alcohol; untruthfulness; violation of City, City, State and/or Federal Law(s).

For all these reasons, proposing your termination is in the best interests of the Department.

This proposed termination is based on the findings set forth in this notice. However, additional proceedings are pending against you, including a decision from the California Department of Motor Vehicle regarding the termination or revocation of your driver's license due to your conduct in this matter, as well as the criminal charges filed against you by the Contra Costa District Attorney's Office. The City reserves the right to take further disciplinary action against you pending the outcomes of these matters.

IV. WARNING AGAINST RETALIATION

Please be advised that it is illegal and a violation of City policy to retaliate against any person who has participated in providing information regarding this investigation or issuing this disciplinary notice. Any retaliatory conduct constitutes a separate an independent basis for discipline up to and including termination.

V. PRE-DISCIPLINARY RESPONSE TO CHARGES

You have the right to respond to your proposed termination within seven (7) days from the date you received this Notice, either by requesting a *Skelly* conference or by providing a written response, or both. Your contact for requesting the *Skelly* conference and/or providing a written response is Natalie Sakkal, Director of Human Resources. Her email address is nsakkal@dalycity.org. Failure to request a *Skelly* conference or provide a written response within seven (7) days from the date you received this Notice constitutes a waiver of your right to respond prior to final discipline being imposed.

If you request a *Skelly* conference, you have the right to have a representative of your choice at the *Skelly* conference.

VI. DOCUMENTS RELIED UPON IN MAKING RECOMMENDATION

The following documents were considered and relied upon in recommending that you be terminated. They are attached. I have reviewed your personnel file and given it consideration in deciding on the recommended discipline. You are entitled to review your personnel file. Although your personnel file is not attached, if you wish to review your personnel file, please contact Natalie Sakkal to schedule an appointment.

1. Administrative Investigation 22-08
2. Findings & Recommendations 22-08
3. Disciplinary Review Panel Memorandum of March 22, 2023
4. Relevant Excerpts from the DCPD Manual of Rules
5. DCPD Policy Manual, Section 340
6. Relevant Excerpts of the SMCNTF Policy Manual
7. Rule XVIII of the Daly City Rules and Regulations of the Classified Service

CC: Cameron Christensen, Acting Chief of Police
Natalie Sakkal, Director of Human Resources
Rose Zimmerman, City Attorney

Acknowledgment of Receipt:

Received: _____ _____
Jaime Bermudez Date