



MEMORANDUM

TO: CITY COUNCIL

FROM: JAMES A. BERGMAN, CITY MANAGER

SUBJECT: CONSIDERATION OF CONCURRENCE AND CONFIRMATION OF APPOINTMENT OF CHIEF OF POLICE

DATE: AUGUST 22, 2017

RECOMMENDATION:

It is recommended the City Council concur and confirm the City Manager's appointment of Beau D. Pryor as the City's new Chief of Police.

SUMMARY OF ACTION:

Concurrence and confirmation by the City Council will allow the City Manager to appoint Beau D. Pryor as the Chief of Police.

IMPACT ON FINANCIAL AND PERSONNEL RESOURCES:

The position is fully funded in the FY 2017-18 Annual Budget.

BACKGROUND:

According to Arroyo Grande Municipal Code Section 2.34.010, the Chief of Police shall be appointed by the City Manager with the concurrence and confirmation of the City Council. The Chief of Police position became vacant on August 9, 2017 with the retirement of Steven Annibali.

ANALYSIS OF ISSUES:

The City Manager's selection for appointment of the new Chief of Police is Beau D. Pryor who has been a Police Officer for the City of Arroyo Grande for 23 years. Commander Pryor's experience within the Police Department is extensive and has included: Motorcycle Traffic Officer (first in the City), Senior Police Officer, Detective, Sergeant, Detective Sergeant, and Commander. Additionally, Commander Pryor has served as a Field Training Officer, a Special Response Team member, and a Bicycle Patrol Officer. During his five years at the rank of Commander, Mr. Pryor has been an effective member of the management and leadership team and has been working closely with the former Chief to develop the experience and knowledge needed to become the Chief of Police. For the last eight months, Commander Pryor has successfully served as the Acting Chief of Police.

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If confirmed, Commander Pryor's employment as Chief of Police will become effective on August 25, 2017. The salary range for the Chief of Police is \$11,005 to \$13,383 per month. Mr. Pryor's salary will be \$11,502 per month. The other terms and conditions in the attached agreement are consistent with the prior Chief of Police and other Department Directors.

ALTERNATIVES:

The following alternatives are provided for the Council's consideration:

- Concur and confirm the appointment of Beau D. Pryor as the City's new Chief of Police;
- Do not concur and confirm the appointment of Beau D. Pryor as the City's new Chief of Police and direct the City Manager to consider a different appointment;
- Provide other direction to staff.

PUBLIC NOTIFICATION AND COMMENTS:

The Agenda was posted at City Hall and on the City's website in accordance with Government Code Section 54954.2. At the time of report publication, no further comments had been received.

Attachments:

1. Agreement

**AGREEMENT BETWEEN THE CITY OF ARROYO GRANDE
AND BEAU D. PRYOR**

THIS AGREEMENT is made and entered into in the City of Arroyo Grande on this ____ day of _____, 2017, by and between the CITY OF ARROYO GRANDE, a municipal corporation of the State of California, hereinafter referred to as "CITY," and Beau D. Pryor, an individual, hereinafter referred to as Pryor for employment as Chief of Police Chief.

WITNESSETH:

WHEREAS, the CITY desires to employ the services of a well qualified Chief of Police; and

WHEREAS, Pryor has demonstrated experience and qualifications for the CITY'S position of Chief of Police; and

WHEREAS, the CITY wishes to retain the services of Pryor to provide the services of Chief of Police, and other administrative and management services.

NOW, THEREFORE, in consideration of their mutual promises, obligations and covenants hereinafter contained, the parties hereto agree as follows:

1. **TERM OF AGREEMENT.** The term of this Agreement shall be from August 25, 2017 ("Commencement Date") until terminated by either party hereto as provided herein.

2. **TERMINATION.**

a. **CITY** may terminate this Agreement without cause at any time. It is understood and agreed that the employment relationship established hereby shall be "at will," except however, that termination of this Agreement by CITY without good

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cause is recognized by CITY to create the potential for hardship and monetary loss to Pryor and that such damages are, at the inception hereof, incapable of calculation and therefore, as liquidated damages, and not as a penalty, any termination pursuant to this subsection a. shall require the payment by CITY to Pryor of the value of four (4) months of Pryor's annual salary and health (medical, dental, and vision) benefits at the value of the City's contribution rate at the time of separation for the benefit plans in which Pryor and Pryor's dependents are then enrolled. Acceptance of said liquidated damages by Pryor shall be in lieu of any and all other remedies of Pryor, whether legal or equitable in nature, and in consideration of the acceptance thereof.

b. **CITY** may terminate this Agreement for good cause. In the event Pryor is terminated for good cause, then City shall have no obligation to pay the sum designated in subsection a. above. For purposes of this Agreement, "good cause" shall include, but not necessarily be limited to, any of the following:

- (1) A material breach of the terms of this Agreement;
- (2) Misfeasance;
- (3) Malfeasance;
- (4) A failure to perform his or her duties in a professional and responsible manner consistent with generally accepted standards of the profession;
- (5) Conduct unbecoming the position of Chief of Police or likely to bring discredit or embarrassment to City.

c. Pryor may terminate this Agreement upon 30 calendar days' written notice to City. Pryor shall be paid through the effective date of such termination, but shall be entitled to no additional salary or benefits.

d. Should CITY terminate this Agreement pursuant to subsection a. above, Pryor shall be paid in one lump sum, net of all applicable taxes.

e. Notwithstanding Section 6 hereof, in the event any court of competent jurisdiction shall rule that the employment of Pryor may not be regarded as "at will" due to any statute or case law, subsection a.) shall be inapplicable.

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f. City's termination of this Agreement may be effectuated by the City Manager with the concurrence and confirmation of the City Council.

g. If within six months from the Commencement Date, an open Commander position exists and Pryor no longer desires to serve in the position of Chief of Police, Pryor at his sole option, may choose to vacate the position of Chief of Police and assume the position of Commander, at which time this Agreement will terminate.

3. **DUTIES.** CITY hereby agrees to employ the services of Pryor to perform the functions and duties of the position of Chief of Police, under the direction of the City Manager and Pryor agrees to perform those functions and duties to the best of Pryor's abilities, and Pryor shall perform exclusively for the CITY, unless otherwise expressly permitted in writing by the CITY to hold any other concurrent employment or to work for compensation for any other person or entity while performing for the CITY pursuant to this Agreement.

4. **COMPENSATION.** Compensation shall be paid by the City to Pryor biweekly or as otherwise provided for employees of the CITY by the City Council in the amounts and inclusive of such benefits as provided herein.

a. **Salary.** Salary shall be determined by the City Manager within the position classification range established by the City Council.

b. **Expenses.** CITY shall pay miscellaneous expenses as may be incurred from time to time in the course of CITY business that are in conformance with CITY policies. Such expenses shall include attendance at civic organization meetings/events and participation in professional activities, including, but not limited to, the California Police Chiefs' Association, the League of California Cities, California Peace Officers' Association and the International Association of Chiefs of Police. Reimbursement for travel expenses shall be in conformance with the City's travel policy, the Department's travel budget, and City Manager authorization.

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c. City Vehicle. In lieu of an automobile allowance, Pryor shall be provided a City vehicle for business use in conformance with City policies.

d. Other Benefits. Pryor shall be entitled to all monetary and other benefits including, but not limited to, health, dental, vision, life and long-term disability insurance, deferred compensation, retirement, uniform allowance and such other benefits as holiday leaves, annual leave, and workers' compensation as other management employees of the CITY receive regardless of how or when modified in the past or hereafter.

5. **ASSIGNS**. This Agreement shall not be assigned or subcontracted by either party without the written consent of the other party. Consent may be denied for any reason or no reason.

6. **VALIDITY**. Should any provision, section, or subsection of this Agreement be declared invalid or unenforceable by any court of competent jurisdiction, such ruling shall not affect any other provisions hereof, and the unaffected provisions shall remain in full force and effect.

7. **COVENANT**. This Agreement has been executed and delivered in the State of California, and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. All duties and obligations of the parties created hereunder are performable in the City of Arroyo Grande and the County of San Luis Obispo shall be that venue for any action, or proceeding that may be brought or arise out of, in connection with or by reasons of this Agreement.

8. **ENTIRE AGREEMENT**. Except as provided herein, this Agreement constitutes the whole Agreement between the parties hereto. This Agreement may not be modified or altered except as provided herein, or as otherwise mutually agreed to in writing between the parties hereto.

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9. **EFFECT OF WAIVER.** The failure of either party to insist upon strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

10. **ABUSE OF OFFICE OR POSITION.** Notwithstanding anything to the contrary in this subsection, pursuant to the requirements set forth in Government Code Section 53243.2, if Pryor is convicted of a crime involving an abuse of Pryor's office or position, all of the following shall apply: (a) if Pryor is provided with an administrative leave pay pending an investigation, Pryor shall be required to fully reimburse CITY such amounts paid; (b) if CITY pays for the criminal legal defense of Pryor (which would be in its sole discretion, as it is generally not obligated to pay for a criminal defense) Pryor shall be required to fully reimburse CITY such amounts paid; and (c) if this Agreement is terminated, any severance pay and severance benefits related to the termination that Pryor may receive from CITY shall be fully reimbursed to CITY or shall be void if not yet paid to Pryor. For purposes of this Section, abuse of office or position means either: (i) an abuse of public authority, including, but not limited to, waste, fraud, and violation of the law under color of authority; or (ii) crime against public justice.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed the day and year first above written.

APPROVED AS TO FORM:

**CITY OF ARROYO GRANDE,
A Municipal Corporation**

Heather K. Whitham, City Attorney

By: _____
James A. Bergman, City Manager

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I have read and agree to the Employment Agreement as contained herein:

Beau D. Pryor
Chief of Police

Date