



MEMORANDUM

TO: CITY COUNCIL

FROM: TIMOTHY J. CARMEL, CITY ATTORNEY *TC*

SUBJECT: CONSIDERATION OF CITY MANAGER EMPLOYMENT AGREEMENT

DATE: APRIL 22, 2014

RECOMMENDATION:

It is recommended the City Council approve a new Employment Agreement ("Agreement") with the City Manager.

IMPACT ON FINANCIAL AND PERSONNEL RESOURCES:

Approval of the Agreement will result in an increase to the FY 2014-15 General Fund Budget of \$15,236. The budget will be amended to reflect the change as part of the year-end budget amendments. Sufficient funds are projected to be available to cover this cost and maintain a balanced budget. Staff has also prepared long-range financial projections to ensure the costs can be maintained in the future with ongoing revenues, which is determined to be feasible under a number of alternative economic scenarios.

BACKGROUND:

The City Manager has not received an equity adjustment in salary for over six (6) years. His salary is more than 23% below the median city manager salary in San Luis Obispo County.

ANALYSIS OF ISSUES:

The City Manager has effectively led the City through the Great Recession with almost no reduction or disruption in City services. His creativity in restructuring City departments and best utilizing personnel and resources were critical in moving the City through economic hard times.

The proposed salary increase for the City Manager is consistent with the criteria and formula established for the management compensation adjustments:

- A 3% Cost of Living Adjustment, effective July 4, 2014; and
- An equity adjustment of 7.5% based upon his current salary being 23.04% below the County median for city managers, effective July 4, 2014.

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With the salary increase, the City Manager will still be more than 12% below the median salary for city managers within the County.

In order to effectuate the change to the City Manager's salary a new Employment Agreement has been prepared. It should be noted that the new Agreement includes a provision (added to Section 6.B.) mandated by the passage of AB 1344 in response to the abuses in Bell, California. It requires reimbursement of any cash settlement related to termination of employment if the employee is convicted of a crime involving an abuse of his or her position.

ALTERNATIVES:

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

- Approve the proposed Employment Agreement;
- Modify as appropriate and approve the Employment Agreement;
- Do not approve the Employment Agreement;
- Provide direction to staff.

ADVANTAGES:

Approval of the proposed Employment Agreement will help address a significant inequity in the City Manager's compensation.

DISADVANTAGES:

The recommendation will increase costs.

ENVIRONMENTAL REVIEW:

No environmental review is required for this item.

PUBLIC NOTIFICATION AND COMMENTS:

The Agenda was posted in front of City Hall on Thursday, April 17, 2014 and on the City's website on Friday, April 18. No comments were received.

EMPLOYMENT AGREEMENT

THIS AGREEMENT, made and entered into this 22nd day of April, 2014, by and between the **CITY OF ARROYO GRANDE**, a municipal corporation of the State of California (the "City"), and **STEVEN DUANE ADAMS**, an individual (the "Employee"), both of whom understand as follows:

WITNESSETH:

WHEREAS, City desires to continue to employ the services of Employee as the City Manager as provided by State law and the Arroyo Grande Municipal Code; and

WHEREAS, it is the desire of City to establish certain conditions of employment and to set working conditions of Employee; and

WHEREAS, it is the desire of City to (a) secure and retain Employee and to provide inducement for him to remain in such employment; (b) to make possible full work productivity by assuring Employee's morale and peace of mind with respect to future security; (c) to act as a deterrent against malfeasance or dishonesty for personal gain on the part of Employee; (d) to provide a just means for terminating Employee's services at such time as he may be unable to fully discharge his duties or when City may desire to otherwise terminate his employment; and

WHEREAS, Employee desires to continue employment as City Manager of City; and

WHEREAS, this Agreement shall supersede and replace the previous Employment Agreement between the parties dated October 22, 2013.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

Section 1: Term.

- A. City hereby agrees to continue to employ Employee as City Manager for an indefinite term.
- B. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of Employee to resign at any time from his position with City, subject only to the provision set forth in Section 6, Paragraph A., of this Agreement.
- C. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City Council to terminate the services of Employee at any time, with or without good cause, subject only to the provisions set forth in Section 6, Paragraphs B. and C., of this Agreement.

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D. Except as otherwise specified herein, Employee agrees to remain in the exclusive employment of City and not become employed by any other employer until a termination date is effected as hereinafter provided.

Section 2: Duties.

City hereby agrees to continue to employ Employee as City Manager to perform the functions and duties specified in the Arroyo Grande Municipal Code and as provided by State and Federal law and to perform other legally permissible and proper duties and functions as the City Council shall from time to time assign.

Section 3: Salary.

City agrees that Employee's annual base salary shall be increased to \$157,294 commencing on July 4, 2014, which increase includes both an equity adjustment and a cost of living increase for fiscal year 2014-15. The annual base salary is payable in equal installments at the same time as other employees of City are paid.

Section 4: Other Compensation.

City agrees to provide Employee additional compensation and benefits as provided to other management employees of the City, and any future overall cost of living adjustments approved by the City Council for management employees.

Section 5: Performance Evaluation.

City agrees to increase the base salary and/or other benefits of Employee in such amounts and to such extent as the City Council may determine that it is desirable to do so on the basis of annual performance evaluation which shall occur no later than the end of October of each year.

The performance evaluation shall be in accordance with specific criteria developed jointly by the City Council and Employee. Such criteria may be added to or deleted as the City Council may from time to time determine in consultation with Employee.

Section 6. Resignation and Termination.

A. In the event Employee voluntarily resigns his position with City, Employee shall give City forty-five (45) days written notice in advance, unless the parties otherwise agree. Should Employee fail to give such period of notice, then Employee shall pay to City as liquidated damages the sum of \$40 per working day for the difference between the number of actual days of prior notice and forty-five (45) days.

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- B. It is understood and agreed that the employment relationship established hereby shall be “at-will”. In the event Employee is terminated by the City Council during such time that Employee is willing and able to perform his duties under this Agreement, then, in that event, City agrees to pay Employee a lump sum cash payment equal to six (6) months salary and benefits in effect at the time of termination (limited to the following: PERS, medical, dental, and vision insurance).

Notwithstanding anything to the contrary in this subsection, pursuant to the requirements set forth in Government Code Section 53243.2, regardless of the term of this Agreement, if the Agreement is terminated, any cash settlement related to the termination that Employee may receive from City shall be fully reimbursed to City if Employee is convicted of a crime involving an abuse of his office or position.

In the event Employee is terminated for good cause, then City shall have no obligation to pay the sum designated in this paragraph. For the purpose 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 duties in a professional and responsible manner consistent with generally accepted standards of the profession;
- (5) Conduct unbecoming the position of City Manager or likely to bring discredit or embarrassment to City.

“Good cause” shall not mean a mere loss of support or confidence by a majority of the Council.

- C. In the event City at any time during this Agreement reduces the salary or other financial benefits of Employee in a greater percentage than an applicable across-the-board reduction for all employees of City, or in the event City

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refuses, following written notice, to comply with any other provision benefiting Employee herein, or Employee resigns following a formal suggestion by the City Council that he resign, then, in that event, Employee may, at his option, be deemed to be “terminated” at the date of such reduction or such refusal to comply, within the meaning and context of Paragraph B. above.

Section 7: Outside Professional Activities.

Employee, with prior written approval of the City Council, may undertake outside professional activities for compensation, including consulting, teaching, speaking, and writing provided such activities do not interfere with Employee’s normal duties and are not done with any existing vendors or contractors of City. Under no circumstances shall such outside activities create a conflict of interest with the duties of Employee and the interests of City.

Section 8: Suspension.

City may suspend Employee with full pay and benefits at any time during the term of this Agreement.

Section 9: Fringe Benefits.

City shall provide and pay for fringe benefits at the Department Director level in accordance with the adopted annual Resolution establishing wages and benefits for management employees.

Section 10: Annual Leave.

Employee shall accumulate Annual Leave in accordance with the adopted annual Resolution establishing wages and benefits for management employees.

Section 11: Automobile.

Employee shall provide his own automobile. City shall provide Employee a \$400 monthly automobile allowance. Employee shall receive no reimbursement for travel mileage within a fifty (50) mile radius of City; for any required City travel mileage outside the fifty (50) mile radius, Employee shall be reimbursed for mileage at the rate as set forth by the City Council.

Section 12: Physical Examination.

Employee may receive an annual physical examination at City's expense.

Section 13: Other Terms and Conditions of Employment.

City, in consultation with Employee, shall fix, in writing, any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Arroyo Grande Municipal Code, or any applicable State or Federal law.

Section 14: Notices.

Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Services, postage prepaid, addressed as follows:

EMPLOYER: City of Arroyo Grande
Attn: City Clerk
300 E. Branch Street
Arroyo Grande, CA 93420

EMPLOYEE: Steven D. Adams
1597 Chilton Street
Arroyo Grande, CA 93420

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

Section 15: General Provisions.

The text herein shall constitute the entire agreement between the parties. Any amendments to this Agreement must be in writing and executed by both parties.

This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee.

This Agreement shall become effective commencing April 22, 2014. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

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IN WITNESS WHEREOF, the City of Arroyo Grande has caused this Agreement to be signed and executed in its behalf by its Mayor, and duly attested by its City Clerk, and Employee has signed and executed this Agreement, both in duplicate, the day and year first above written.

EMPLOYEE:

STEVEN D. ADAMS

**EMPLOYER:
CITY OF ARROYO GRANDE**

By:_____
TONY FERRARA, MAYOR

ATTEST:

KELLY WETMORE
CITY CLERK

APPROVED AS TO FORM:

CARMEL & NACCASHA, LLP

By:_____
TIMOTHY J. CARMEL
CITY ATTORNEY