



CITY OF WHEATLAND

CITY COUNCIL MEETING STAFF REPORT

July 11, 2023

SUBJECT: Council Consideration and Adoption of Resolution approving an Employment Agreement with Brian Wittmer for position of Police Chief

PREPARED BY: Bill Zenoni

Recommendation

Staff recommends that the City Council adopt Resolution No. 28-23 approving an employment agreement with Brian Wittmer for the position of Police Chief.

Background/Discussion

Police Chief Damiean Sylvester retired from his position effective July 8, 2023. After completion of a thorough recruitment process, six applications for the Police Chief position were received. The six applications were reviewed by the City Manager, Police Chief and City Council Ad-hoc Committee members, Council-member McIntosh and Council-member Shelton. From the six applications received, the top three candidates were selected to be interviewed by a professional panel consisting of the Yuba County Sheriff, Yuba County District Attorney, Yuba County Police Chief and Orland City Manager. From that process, Brian Wittmer was selected as the most qualified candidate for this position. Mr. Wittmer has 27 years of public safety experience and has most recently served as the Acting Commander of the Yuba Sutter Area for the California Highway Patrol.

An employment agreement appointing Brian Wittmer to the position of Police Chief is attached. The proposed agreement includes, but is not limited to, the following substantive provisions:

- Section 2, Term: provides that the agreement will remain in effect for a period of three years.
- Section 4, Hours: provides that this is a full-time, salaried management position.
- Section 5, Compensation: Salary of \$58.82 per hour. The Police Chief will be provided with 40 hours of administrative leave, \$300 per month payment in-lieu of receiving City health benefits, a monthly telephone allowance of \$75 and reimbursement of uniform expenses up to \$1,000 per year. The Police Chief will receive a life insurance policy, participate in the City's disability insurance programs and will accrue vacation and sick leave in the same manner as other City employees.

Alternatives

The City Council may choose not to approve the proposed employment agreement, in which case the City would need to revisit one of the other candidates or undertake a new recruitment process.

Fiscal Impact

No fiscal impact as the position is funded in the current adopted budget.

Attachments

1. Resolution No. 28-23
2. Employment Agreement

RESOLUTION NO. 28-23

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF WHEATLAND APPROVING AN EMPLOYMENT
AGREEMENT WITH BRIAN WITTMER FOR SERVICES AS WHEATLAND
POLICE CHIEF**

WHEREAS, a vacancy currently exists for the position of City of Wheatland Police Chief; and

WHEREAS, Brian Wittmer has applied for and is qualified to assume the duties of this position; and

WHEREAS, the City Council wishes to enter into an Employment Agreement with Brian Wittmer for services as Police Chief.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Wheatland that the attached Employment Agreement between the City of Wheatland and Brian Wittmer is hereby approved and the City Manager is directed to execute the agreement.

PASSED AND ADOPTED by the City Council of the City of Wheatland on this 11th day of July, 2023 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Attest:

Robert Coe, *Vice-Mayor*

Lisa J. Thomason, CMC
City Clerk

**AGREEMENT BETWEEN THE CITY OF WHEATLAND
AND BRIAN WITTMER FOR POLICE CHIEF SERVICES**

This Agreement ("Agreement") is made and entered into this 12th day of July, 2023, by and between the City of Wheatland, a municipal corporation ("City") and Brian Wittmer, an individual ("Wittmer"), who agree as follows:

1. **Employment.** City hereby appoints and employs Wittmer as Police Chief of the City, and Wittmer hereby accepts such employment, on and subject to the terms and conditions of this Agreement.

2. **Term.** This Agreement shall remain in effect for a three-year term, until July 11, 2026, unless sooner terminated as provided by the termination provision below.

3. **Duties.** Wittmer shall perform those duties and have those responsibilities that are commonly assigned to a Chief of Police of a city in California, and as may be further set forth in the Wheatland Municipal Code. Wittmer also shall perform such other duties and responsibilities as assigned by the City Manager from time to time. Wittmer at all times shall act in the best interests of the City and perform his duties in a competent and professional manner.

4. **Hours.** Wittmer acknowledges that his position is a full-time, salaried management position that is exempt from the accrual of overtime. It is anticipated that Wittmer shall work an average of five days per week. However, that time may vary depending on the City's needs. Wittmer shall not engage in any conduct, other employment, or business, commercial or professional pursuits, whether for compensation or otherwise, that would interfere with his responsibilities and duties to City or that would reflect unfavorably upon the interests of City. Any outside employment, consulting or business conducted by Wittmer during the term of this Agreement requires the prior written approval of the City Manager.

5. **Compensation.**

(a) For all services to be rendered by Wittmer under this Agreement, City shall provide to Wittmer a salary as listed in the City of Wheatland Salary Schedule in the amount of \$58.82 per hour, consistent with the Step 1 Police Chief classification adopted by the City of Wheatland effective July 1, 2023. Upon the date of his annual employment review, and with the approval of the City Manager, Wittmer will be eligible for salary increases from Step 1 to Step 2, and the following year from Step 2 to Step 3, as provided by the applicable salary schedule. Salary shall be paid at the times and in the same manner as other City employees are paid.

(b) Wittmer shall be entitled to receive any cost of living or similar increase granted by City to General Employee Association member employees during the term of this Agreement.

(c) Wittmer shall not be compensated for overtime hours worked or otherwise earn or be entitled to compensatory time off for hours worked in excess of eight hours per day or 40 hours per week and shall not otherwise be entitled to any other incentive pay.

(d) Wittmer shall receive 40 hours of Administrative Leave annually. Administrative leave hours do not accrue and will expire if they are not used by December 31 in the year in which they were earned, and these hours have no cash value in the event any unused balance is remaining upon termination of Agreement;

(e) Wittmer shall receive \$300 per month in lieu of health benefits.

(f) Wittmer shall be entitled to participate in the City of Wheatland MissionSquare 401(a) program with a 7% City match to a required 3% employee contribution.

(g) Wittmer shall receive a \$75 phone allowance consistent with the phone allowance granted by the City to other City employees.

(h) City shall provide Wittmer a group life insurance policy not to exceed \$75,000 as provided to the city's miscellaneous employees.

(i) Wittmer shall participate in City's disability insurance programs in the same manner as other public safety employees.

(j) Wittmer shall accrue sick and vacation leave at the same rate as City's miscellaneous employees and is eligible for pay out of unused vacation leave upon termination of employment, consistent with the Personnel Rules then in effect.

(k) City-related direct business expenses shall be reimbursed to Wittmer by the City. Itemized documentation shall be required for any such reimbursement. Reimbursement for uniform expense shall not exceed \$1,000 per year.

(l) City authorizes Wittmer to take home an unmarked vehicle equipped with emergency lights and radio. This practice is designed to help facilitate the Chief of Police's ability to respond to scenes, meetings, hospitals, multi-agency events and critical incidents as quickly as possible. It is understood that Wittmer may not use the City vehicle for personal use other than driving to and from work.

(m) City shall budget for travel and conference expenses and membership in professional organizations in order for Wittmer to attend official meetings and occasions in an amount that is reasonably adequate to continue the professional development of Wittmer and to reasonably pursue necessary official and other functions for City. In adopting the budget, the City has discretion to set what it deems an appropriate number for attendance at conferences and meetings and membership in professional organizations.

(n) Except as provided for in this Agreement, Wittmer's employment shall be governed by the City Personnel Rules and Regulations Manual (City Resolution No. 42- 19), as such rules and regulations may be amended by City from time-to-time. If any term or condition of this Agreement is inconsistent or in conflict with a term or condition in the Personnel Rules

and Regulations Manual, the provision in this Agreement shall govern. If any term or condition of this Agreement is inconsistent or in conflict with a federal or state law, the law shall govern.

6. **Ownership of Documents.** Every document, report, study, spreadsheet, worksheet, plan, specification, drawing, map, photograph, computer model, computer disk, magnetic tape, CAD data file, computer software and any other writing or thing prepared by Wittmer during the term of his employment (the "Work") shall be the property of City. City shall have the right to use, modify, reuse, reproduce, publish, display, broadcast and distribute the Work and prepare derivative and additional documents or works based on the Work without further compensation to or permission from Wittmer.

7. **Termination.** This Parties intend for this Agreement to create an at-will employment relationship. This Agreement may be terminated prior to its expiration date in any one of the following ways:

(a) By mutual agreement of the parties, expressed in writing.

(b) By Wittmer, upon giving City not less than 30 days prior written notice of his election to resign from employment and terminate this Agreement.

(c) By the death of Wittmer.

(d) By City, for cause, upon giving to Wittmer written notice of immediate termination. The written notice of termination shall specify: (1) the particular cause(s) and the facts and circumstances justifying the termination of the Agreement for cause, and (2) the opportunity of Wittmer to meet with the City Council on the reasons for his termination. If Wittmer requests a meeting, the meeting will be held at the City Council's earliest convenience in a closed session, unless Wittmer requests an open session. After the meeting, the City Council may affirm, modify, or reverse its discretion to terminate for cause. For purposes of this Agreement, the following will justify termination for cause: willful breach of duty; habitual neglect of duty; gross insubordination; conviction of a crime involving moral turpitude; conduct that makes it impossible or impracticable to perform the duties under this Agreement or that seriously impedes City operations; conduct that tends to bring discredit to City; conduct unbecoming an employee in public service; mishandling of City funds; any intentional misrepresentation or fraud in connection with the performance of his duties; theft of City property; violation of law; or a material breach of this Agreement.

(e) By City, upon action of the City Manager, without cause, upon giving Wittmer 30 days prior written notice of termination.

Upon termination of the Agreement, the City and Wittmer are released from any and all duties and obligations to the other, except as provided for in this Agreement.

8. **Eligibility for Severance Pay.** In the event the employment relationship is terminated for cause, Wittmer shall not be entitled to severance pay. If the employment relationship is terminated

without cause, Wittmer will be eligible to receive severance pay in the amounts set forth below, if he executes a separation agreement as provided by the City:

- (a) Upon completion of one year of service under the contract, Wittmer is eligible for one month of severance pay;
- (b) Upon completion of two years of service under the contract, Wittmer is eligible for two months of severance pay; and
- (c) Upon completion of three years of service under the contract, and if the City elects to extend the contract, Wittmer could be eligible for three months of severance pay.

9. **Entire Agreement.** The parties intend this writing to be the sole, final, complete, exclusive, and integrated expression and statement of the terms of their contract concerning the subject matter addressed in the Agreement. This Agreement supersedes all prior oral or written negotiations, representations, contracts, or other documents that may be related to the subject matter of this Agreement, except those other documents that may be expressly referenced and incorporated in this Agreement as provided above.

10. **Notices.** Any notice to be given to Wittmer shall be sufficiently served if given to him personally or if deposited in the United States Mail, regular pre-paid mail, or with a recognized overnight delivery service such as UPS or FedEx, addressed to him at his most recent residence address as shown on the City's payroll records. Any notice to be given to City shall be addressed to the City Council and delivered or mailed to the City Clerk at City Hall.

11. **Successors and Assigns.** This Agreement is personal to Wittmer. He may not transfer or assign the Agreement or any part of it. Subject to this restriction on transfer and assignment, this Agreement shall bind, and inure to the benefit of, the successors, assigns, heirs, and legal representatives of the parties.

12. **Amendments.** This Agreement may be amended only by a subsequent writing approved and signed by both parties. Any amendment by City must be approved by the City Council at a noticed public meeting. Individual City Council members do not have the authority, express or implied, to amend, modify, waive, extend or in any way alter this Agreement or the terms and conditions of Wittmer's employment.

13. **Waiver.** The waiver at any time by either party of its rights with respect to a default or other matter arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent default or matter.

14. **Construction and Interpretation.** The parties agree and acknowledge that this Agreement has been arrived at through negotiation and that each party has had a full and fair opportunity to revise the terms of this Agreement. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting party will not apply in construing or interpreting this Agreement.

15. **Partial Invalidity.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

16. **Governing Law and Venue.** Except as otherwise required by law, this Agreement shall be interpreted, governed by, and construed under the laws of the State of California. The County of Yuba will be venue for any state court jurisdiction and the Eastern District of California will be venue for any federal court litigation concerning the enforcement or construction of this Agreement.

CITY OF WHEATLAND

BRIAN WITTMER

Bill Zenoni, City Manager

Brian Wittmer

Attest:

Lisa Thomason, City Clerk