



# CITY OF WHEATLAND

## CITY COUNCIL MEETING STAFF REPORT

January 14, 2019

**SUBJECT:** Council Consideration and Adoption of Resolution No. 04-20 approving an Employment Agreement with Damiean Sylvester for position of Police Chief

**PREPARED BY:** Jim Goodwin

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### **Recommendation**

Staff recommends adopting Resolution No. 04-20 approving the Employment Agreement as presented.

### **Background/Discussion**

Damiean Sylvester has been selected as the new Chief of Police for the City of Wheatland. The attached employment agreement defines the terms of that engagement.

The agreement is for three years effective January 13, 2020 and terminates January 12, 2023 if not extended by action of the City Council.

### **Alternatives**

The City Council may choose not to approve the proposed Employment Agreement.

### **Fiscal Impact**

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

### **Attachments**

1. Resolution No. 04-20
2. Damiean Sylvester Employment Agreement

**RESOLUTION NO. 04-20**  
**APPROVING AN EMPLOMENT AGREEMENT WITH DAMIEAN SYLVESTOR FOR**  
**SERVICES AS WHEATLAND POLICE CHIEF**

**WHEREAS** A vacancy exists for the position of City of Wheatland Police Chief; and

**WHEREAS** Wheatland Police Sergeant Damiean Sylvester is qualified for the position;  
and

**WHEREAS** the City Council wishes to enter into an Employment Agreement with Mr. Sylvester for services as Police Chief;

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Wheatland hereby approves the attached Employment Agreement and directs the City Manager to execute the agreement.

**PASSED AND ADOPTED** by the City Council of City of Wheatland, State of California this 14<sup>th</sup> day of January 2020, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

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Rick West, Mayor

**AGREEMENT BETWEEN THE CITY OF WHEATLAND  
AND DAMIEAN SYLVESTER FOR CHIEF OF POLICE SERVICES**

This Agreement ("Agreement") is made and entered into this 14<sup>th</sup> day of January 1, 2020, by and between the City of Wheatland, a municipal corporation ("City") and DAMIEAN SYLVESTER, an individual ("Sylvester"), who agree as follows:

1. **Employment.** City hereby appoints and employs Sylvester as police chief of the City, and Sylvester 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 January 13, 2023, unless sooner terminated as provided by the termination provision below.

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

4. **Hours.** Sylvester acknowledges that his position is a full-time, salaried management position. It is anticipated that Sylvester shall work an average of five days per week. However, that time may vary depending on City's needs. Sylvester 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 Sylvester during the term of this Agreement requires the prior approval of the City Manager.

5. **Compensation.**

(a) For all services to be rendered by Sylvester under this Agreement, City shall provide to Sylvester a salary as listed in the City of Wheatland Salary Schedule in the amount of \$53.01 per hour, consistent with the Step 1 Police Chief classification adopted by the City of Wheatland effective July 1, 2019. Upon the date of his annual employment review, and with the approval of the City Manager, Sylvester will be eligible for salary increases from Step 1 to Steps 2 and/or 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) Sylvester 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) Sylvester shall receive medical, dental, and vision benefits in the same manner as any other General Employee Association member employee pursuant to the WGEA Memorandum of Understanding ("MOU"). Sylvester's medical (Kaiser GF Plan 50),

dental and vision benefits shall be fully compensated by City. Sylvester shall be responsible for 20 percent of the cost of any medical insurance premium if insuring spouse and/or child.

(d) Sylvester 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.

(e) In consideration of Sylvester's prior law enforcement service, Sylvester shall accrue vacation benefits at the highest level provided in the Personnel Rules (currently 160 hours annually). Sick leave shall be earned at the same rate as other full-time employees;

(f) Sylvester shall be entitled to participate in the City of Wheatland ICMA-RC 401(a) program with a 7% city match to a required 3% employee contribution.

(g) Sylvester shall receive a phone allowance consistent with the phone allowance granted by City to other city employees.

(h) Because Sylvester's duties may require the use of an automobile, City shall reimburse Sylvester for mileage incurred while performing City business (exclusive of commuting mileage) at the current Internal Revenue Service mileage rates. Sylvester shall be required to obtain a rider on his personal automobile insurance naming City as an additional insured, and City shall reimburse Sylvester for any direct expenses related thereto.

(i) City-related direct business expenses shall be reimbursed to Sylvester by City. Itemized documentation shall be required for any such reimbursement.

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

(k) Except as provided for in this Agreement, Sylvester'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 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, blueprint, specification, drawing, map, photograph, computer model, computer disk, magnetic tape, CAD data file, computer software and any other writing or thing prepared by Sylvester 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 Sylvester.

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 Sylvester, 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 Sylvester.

(d) By City, for cause, upon giving to Sylvester 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 Sylvester to meet with the City Council on the reasons for his termination. If Sylvester requests a meeting, the meeting will be held at the City Council's earliest convenience in a closed session, unless Sylvester 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 Sylvester 30 days prior written notice of termination.

Upon termination of the Agreement, the City and Sylvester 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, Sylvester shall not be entitled to severance pay. If the employment relationship is terminated without cause, Sylvester 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, Sylvester is eligible for one month of severance pay; and

(b) Upon completion of two years of service under the contract, Sylvester is eligible for two months of severance pay.

- (c) Upon completion of three years of service under the contract, and if the City elects to extend the contract, Sylvester 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 Sylvester shall be sufficiently served if given to him personally or if deposited in the United States Mail, regular pre-paid mail, addressed to him at his most recent residence address as shown on the Agency 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 Sylvester. 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 Sylvester'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

DAMIEAN SYLVESTER

Jim Goodwin, City Manager

Damiean Sylvester

Attest:

Lisa Thomason, City Clerk