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DATE: May 7, 2014

TO: Honorable Mayor and City Councilmembers

FROM: City Manager's Office

SUBJECT: **ADOPTION OF A RESOLUTION APPROVING AN EMPLOYMENT AGREEMENT BETWEEN THE CITY OF OCEANSIDE AND FRANK MCCOY**

### **SYNOPSIS**

Staff recommends that the City Council adopt a resolution approving an employment agreement between the City of Oceanside and Frank McCoy, Police Chief.

### **BACKGROUND**

Frank McCoy served as Police Chief for the City of Oceanside from January 2, 2006, through October 27, 2013. In October 2013 McCoy retired and was subsequently rehired as Interim Police Chief as a 960 hourly employee. A search was conducted for Police Chief in spring 2014.

The City Manager has reached an employment agreement with Frank McCoy to reinstate McCoy as Police Chief subject to the terms and conditions outlined in the attached employment agreement.

### **ANALYSIS**

The proposed employment agreement is intended to define and clarify the terms and conditions of the Police Chief's employment with the City. The principal features of the agreement are as follows:

1. Reinstatement as Police Chief will commence on May 7, 2014, provided the attached agreement is ratified by the City Council.
2. McCoy shall hold an appointed office serving at the pleasure of the City Manager.
3. McCoy and the City shall file all necessary documents with CalPERS to reinstate McCoy as Police Chief and terminate his retirement.

The agreement has been approved and executed by Mr. McCoy.

**FISCAL IMPACT**

McCoy's annual salary will be \$208,304. He shall receive a 6.5 percent increase to his base salary effective May 1, 2015, and an additional modification equal to the annual Consumer Price Index-All Urban Consumers-San Diego. The current and the proposed FY 2014-15 budgets (account 500010101) will have adequate funds to cover the costs for the Police Chief position.

**COMMISSION OR COMMITTEE REPORT**

Does not apply.

**CITY ATTORNEY'S ANALYSIS**

The resolution has been reviewed by the City Attorney and approved as to form.

**RECOMMENDATION**

Staff recommends that the City Council adopt a resolution approving an employment agreement between the City of Oceanside and Frank McCoy, Police Chief.

PREPARED BY AND SUBMITTED BY:



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Steven R. Jepsen  
City Manager

ATTACHMENTS:

- 1) Resolution
- 2) Employment Agreement

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE APPROVING AN EMPLOYMENT AGREEMENT BETWEEN THE CITY AND FRANK MCCOY

The City Council of the City of Oceanside does resolve as follows:

SECTION 1. The employment agreement between the City of Oceanside and Frank McCoy, a copy of which is attached hereto as Exhibit "A", is approved and relevant terms are effective April 30, 2014.

SECTION 2. The Chief of Police salary is set at \$208,340 effective May 7, 2014.

SECTION 3. The City Manager is authorized to execute the agreement on behalf of the City.

PASSED AND ADOPTED by the City Council of the City of Oceanside, California, this day of \_\_\_\_\_, 2014, by the following vote:

AYES:

NAYES:

ABSENT:

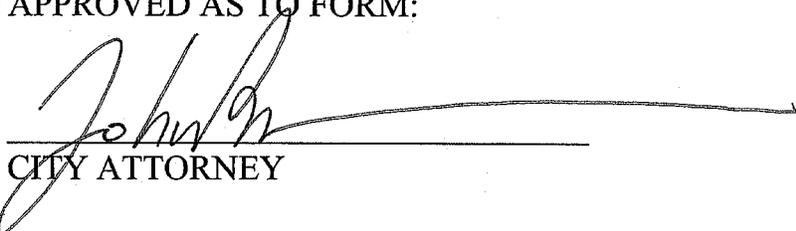
ABSTAIN:

\_\_\_\_\_  
MAYOR, CITY OF OCEANSIDE

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
CITY ATTORNEY

EMPLOYMENT AGREEMENT BETWEEN  
THE CITY OF OCEANSIDE AND  
FRANK MCCOY TO SERVE AS  
POLICE CHIEF

This employment agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2014 by and between the City of Oceanside, California, a charter city (hereinafter called "the City") and Frank McCoy, an individual (hereinafter called "McCoy"), with respect to the employment of McCoy as the Police Chief of the City of Oceanside. The City and McCoy are collectively referred to herein as "the Parties."

**RECITALS**

Pursuant to Oceanside City Code section 25.1, the City created a department of police under the direction and control of the chief of police in accordance with personnel rules and regulations and other provisions of the City Code. The duties of the police chief are set forth in Section 25.3 of the City Code.

McCoy served as Police Chief for the City of Oceanside effective January 2, 2006 through October 27, 2013 when he retired. Since retirement, McCoy has been serving as Interim Police Chief as a 960 hourly employee.

The Parties desire, through this Agreement, to re-appoint McCoy as Police Chief subject to the terms and conditions of this Agreement.

**TERMS OF EMPLOYMENT**

In consideration of the faithful performance of the provisions and covenants set forth herein, the Parties agree as follows:

A. Duration of Employment.

The intent of this Agreement is to provide for the reinstatement of McCoy to the position of Police Chief. McCoy's reinstatement as the Police Chief is effective on May 7, 2014, provided this Agreement is ratified by the City Council.

McCoy shall hold the appointive office of Police Chief at and during the pleasure of the City Manager. McCoy and the City shall file all necessary documents with CalPERS to reinstate McCoy as Police Chief and terminate his retirement. The City makes no representations or warranties concerning the effect this reinstatement will have with respect to future retirement benefits.

B. Provisions Regarding Compensation.

1. The City covenants to compensate McCoy as follows:

- a. McCoy shall receive an annual salary in the amount of \$208,304. McCoy shall receive a 6.5 percent increase to his base salary effective May 1, 2015. In addition, McCoy shall receive a modification to his salary on May 1, 2015 equal to the Consumer Price Index-All Urban Consumers-San Diego ("San Diego CPI-U").
- b. McCoy shall receive sick leave, vacation leave, executive leave, short term disability, long term disability, life insurance, retirement, health, dental and vision benefits determined in the same manner as for executive/department head management employees according to the City's Compensation Plan for Unrepresented Employees as may be established from time to time by the City Council, except as detailed below.

Leave Accrual:

- i. McCoy shall accrue vacation leave at a rate of thirty-year employee.
  - ii. The City shall establish and initial leave bank for McCoy for both vacation and sick leave with the equivalent of one year of such leave hours credited to each account, all of which will be available for use upon employment. 200 hours shall be credited for vacation and 96 hours credited for sick leave. Until McCoy has accrued 200 hours of vacation leave through established leave accrual rates, no additional vacation leave shall be accrued. Until McCoy has accrued 96 hours of sick leave through established leave accrual rates, no additional sick leave shall be accrued. Should McCoy leave employment prior to the accrual of 200 hours of vacation and 96 hours of sick leave, no payout shall be made for any remaining leave balances.
- c. McCoy shall not accrue vacation leave in excess of 360 hours. McCoy shall have the right to cash out 80 hours of vacation leave on an annual basis based upon his base rate of pay.
  - d. McCoy shall be responsible for paying 50% of the total normal cost of the CalPERS pension benefits which is currently 9% of salary.

- e. Deduction in compensation and/or benefits will not occur, except to the extent that such reductions are across the board for all executive management employees.
- f. The City shall provide McCoy a city-vehicle in lieu of a vehicle allowance. In addition, the City shall continue to pay for McCoy's fast-track pass.

C. Performance.

McCoy covenants to perform the duties of Police Chief in a professional manner in accordance with all applicable laws, regulations and policies. McCoy further covenants that during his employment as Police Chief, he will not engage in any other employment without prior advance written approval from the City Manager.

D. Performance Evaluation.

McCoy shall receive an annual performance evaluation from the City Manager. The annual evaluation shall be based on meeting objectives and performance criteria established by the City Manager. The performance will be deemed satisfactory if no annual review takes place.

E. Covenants Regarding Termination.

1. Except as provided in Section E. 2 and E.3, upon termination of McCoy's employment by affirmative action of the City Manager, McCoy shall receive a severance of six months salary based upon his base rate of pay. Such payment shall be paid in a lump sum payment made within 30 days of the effective date of termination.
2. Notwithstanding paragraph E.1 above, the City shall not be obligated to pay, and shall not pay, any amounts if McCoy is terminated because of a criminal charge filed by a prosecuting agency for a violation of any statute or law materially related to performance of duties in office.
3. Pursuant to Government Code § 53243, if McCoy is convicted of a crime involving an abuse of his office, as defined in Government Code § 53243.4, McCoy shall fully reimburse the City for salary paid to McCoy while on paid leave as well as any funds, if any, paid in the sole discretion of the City Council for criminal defense costs. Moreover, McCoy shall fully reimburse the City for any severance paid if convicted of a crime involving an abuse of his office.
4. The City shall not be obligated to pay, and shall not pay, any amounts or

continue any benefits under the provisions of this agreement in the event McCoy voluntarily resigns. McCoy agrees to provide a minimum of thirty (30) calendar day's notice of resignation.

#### F. Dispute Resolution

1. The City and McCoy agree that they will resolve any and all claims, disputes or controversies arising out of or relating to McCoy's candidacy for employment, employment and/or cessation of employment with the City or against any of its current and former officers, directors, employees, attorneys and agents, exclusively by final and binding arbitration before a neutral arbitrator, and that all types of relief available pursuant to the laws under which McCoy's claim(s) arise will be available by arbitration. McCoy understands that any and all claims or disputes the City has against McCoy arising from McCoy's candidacy for employment, employment and/or cessation of employment will also be subject to binding arbitration.
2. The City and McCoy agree that such claims include, but are not limited to, any claims for violation of any alleged contract, express or implied; any covenant of good faith and fair dealing, whether express or implied; and tort; any federal, state or local statute or regulation, including but not limited to, the Federal Fair Labor Standards Act, the California Labor Code and the California Industrial Welfare Commission Order; any federal, state or local statute or regulation based on or related to the Age Discrimination in Employment Act, the California Fair Employment and Housing Act (Government Code § 12900-12996); Title VII, Civil Rights Act of 1964 (42 U.S.C. § 2000-2000(e)-1-17); the Americans With Disabilities Act; the Federal Family Medical Leave Act; and the California Family Rights Act.
3. The City and McCoy understand and agree that they will not be able to raise any of the aforementioned claims in a court of law. In the arbitration, both the City and McCoy will be permitted to conduct minimal discovery such as demands for document production and depositions, and that all disputes concerning the right to minimal discovery will be decided by the arbitrator. The arbitrator will decide the case after hearing the Parties' evidence and preparing a written decision.
4. The City and McCoy also understand and agree that they must request arbitration in writing from the other within a reasonable time not to exceed six months from the date that the dispute arises. The Parties shall equally split the cost of the arbitrator.

5. In the event of such dispute, the Parties shall select an arbitrator to hear the dispute. Failing mutual agreement to an arbitrator, the Parties shall request a list of qualified labor arbitrators from the American Arbitration Association or the State Mediation and Conciliation Service and shall strike names until only one remains. Such individual shall serve as the arbitrator. The arbitration shall be conducted in accordance with California Code of Civil Procedure, commencing at § 1280 et seq. (or any successor or replacement statutes) and the decision of the arbitrator shall be final and binding. Each Party shall bear their own fees and costs associated with this process.

#### G. General Provisions

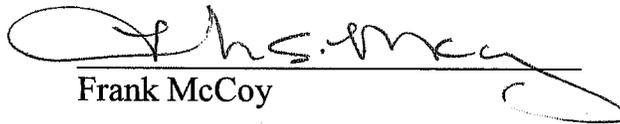
1. This Agreement shall constitute the entire agreement between the Parties as to the subject matter herein and all other prior agreements, arrangements or understandings, oral or written are merged into and superseded by the terms of this Agreement.
2. This Agreement may not be altered, amended, modified or otherwise changed except by a writing signed by the Parties.
3. This Agreement is for the personal services of McCoy and is not assignable.
4. The City reserves the right to revise, modify, delete or add to any and all policies, procedures, work rules, benefits or any other document, except for the policy of at-will employment. However, any such changes will be in writing and will be approved by the City.
5. If any provision or other portion of this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion hereof, shall be deemed severable, shall not be affected by the unconstitutional, invalid or unenforceable provision or portion and shall remain in full force and effect.
6. McCoy agrees and represents that prior to entering into this Agreement, he had the opportunity to consult legal representation of his choice concerning all terms and conditions of this Agreement.

7. The relationship between the City and McCoy is an employment relationship for a public office and is exempt from the provisions of the Fair Labor Standards Act.
8. Neither this Agreement, nor any provision of state statute or local ordinance, rule or resolution creates any property right in favor of McCoy in his employment as Police Chief.
9. When used in this Agreement, the term City Council means the legislative body of the City of Oceanside, including the Mayor and the members of the City Council.
10. In the event of any mediation, arbitration or litigation to enforce any of the provisions of this Agreement, each party shall bear its own attorney's fees and costs.
11. This Agreement is a fully integrated document and supersedes all communications between the parties covering the subject matter of McCoy's employment.

12. This Agreement is the entire agreement between the parties with respect to the subject matter. No promise, representation, or warranty or covenant not included in this Agreement has been or is relied on by any Party hereto. This Agreement may be amended only by a writing executed by both Parties. Any such amendment shall not be effective unless approved by the City Council.

IN WITNESS hereof, the parties have executed this Agreement by their signatures set forth below:

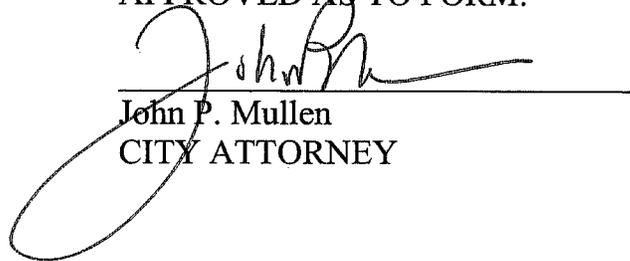
DATED: 4/23/14

  
Frank McCoy

DATED: \_\_\_\_\_

\_\_\_\_\_  
Steve Jepsen  
CITY MANAGER

APPROVED AS TO FORM:

  
John P. Mullen  
CITY ATTORNEY