



## MEMORANDUM

**TO:** CITY COUNCIL

**FROM:** JIM BERGMAN, CITY MANAGER  
DEBBIE MALICOAT, DIRECTOR OF ADMINISTRATIVE SERVICES

**SUBJECT:** CONSIDERATION OF A VOLUNTARY EARLY RETIREMENT PROGRAM

**DATE:** APRIL 10, 2018

**SUMMARY OF ACTION:**

Approval of the Voluntary Early Retirement Program will provide cash incentives to employees that choose to retire before July 1, 2018.

**IMPACT ON FINANCIAL AND PERSONNEL RESOURCES:**

The financial impact will ultimately depend on employee participation in the program. In the short term, incentive payments of \$190,000 to \$365,000 are projected to be paid during FY 2018-19. In the long term, the City will experience savings from vacant and/or eliminated positions as well as retirement savings from new employees hired at lower tier retirement formulas.

**RECOMMENDATION:**

It is recommended the City Council approve the Voluntary Early Retirement Program and appropriate up to \$365,000 in unappropriated General Fund, Water Fund and Sewer Fund balances to support the Program, depending on employee participation.

**BACKGROUND:**

The City is facing a projected budget shortfall in the General Fund as costs, particularly related to retirement, continue to rise faster than increases in revenues. This unsustainable situation must be resolved and City staff is working on a multi-faceted balancing strategy for the upcoming FY 2018-20 Biennial Budget.

The Voluntary Early Retirement Program ("Program") is a budget reduction and restructuring tool that will incentivize employees to voluntarily discontinue City employment in exchange for a one time lump sum payment. Full time regular employees represented by labor unions that have approved the Program and management employees will be eligible to apply for the Program. Incentivizing

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employees to discontinue City employment can minimize or avoid involuntary separations through layoffs or other reductions in the workforce as the City balances the FY 2018-20 Biennial Budget.

**ANALYSIS OF ISSUES:**

Retirement incentive programs are typically designed with several goals in mind. Providing an incentive for employees to move forward into retirement will result in immediate cost savings, either by keeping the position vacant for a period of time or by hiring a new employee with a lower pay rate and/or a lower benefit formula. In addition, incentives can provide upward mobility to the workforce, since often the employees that retire are in higher-ranking positions. Most importantly, increasing the number of vacant positions throughout the City will provide maximum flexibility in reorganizing the workforce in response to current financial constraints. As mentioned, it also minimizes or possibly avoids the need for involuntary separations.

The general parameters of the Program as presented to the labor unions are as follows:

Eligibility Criteria

1. Must be full time regular employee not assigned to the Five Cities Fire Authority
2. If represented, must be in a bargaining group that has approved the Program
3. Must be eligible to retire under the CalPERS service retirement requirements
4. Must voluntarily participate in the Program and agree to sign an Agreement and General Release
5. Must submit an application by May 25, 2018
6. Must retire by July 1, 2018. If after selecting a retirement date, a Participant subsequently decides not to retire, then the Participant shall be deemed to have voluntarily resigned on the selected date

Approval Process

1. Approval is at the City Manager's discretion based on operational need and may include non-discriminatory factors such as location, workload, special skill/knowledge, performance, etc.
2. Approval is not based on seniority
3. All things being equal between two similarly situated employees who apply for the Program, the City Manager may employ a random selection or lottery system if the benefit cannot be provided to both

Separation Amount

Participants complying with the conditions and details of the Program will receive 25% of their base salary in effect on their separation date in a lump-sum payment. This payment will be paid before July 1, 2018, depending on the employee's retirement date.

There are currently eighteen (18) City employees that meet the basic eligibility requirements, in that they are eligible to retire under the CalPERS service retirement requirements. Of these, staff has identified ten (10) as "likely" participants in a

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retirement incentive program based on their years of service. These employees have between 17 and 32 years of CalPERS service, with an average service of 25 years. If all of the 18 eligible employees participated in the Program, the City would pay approximately \$365,000 in retirement incentives. If all 10 “likely” employees participated in the Program, the City would pay approximately \$190,000 in retirement incentives. Payments would range from \$14,000 to \$28,000 with the average payment of approximately \$19,000. Simply by hiring replacement employees at lower retirement formulas, this cost would be recouped in 7 years. However, replacement employees are expected to be hired at lower beginning salaries along with lower benefits, which could generate enough savings to recoup the cost of the Program in less than 2 years.

More important than the savings generated by replacing “like for like” is the potential savings that could be achieved by restructuring or eliminating existing position(s). The Program will be one tool that the City can use in balancing the projected shortfall in the FY 2018-20 Biennial Budget. The total cost of the Program will ultimately depend on which employees participate and how of if the City chooses to replace those positions.

**ALTERNATIVES:**

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

- Approve the Voluntary Early Retirement Program and appropriate funding to support the Program
- Modify components of the Voluntary Early Retirement Program and approve, with appropriation of funding to support the modified Program
- Approve the Voluntary Early Retirement Program but defer appropriation of funding until after participation and final costs are known
- Do not approve the Program or appropriate funding
- Provide other direction to Staff

**ADVANTAGES:**

The Voluntary Early Retirement Program is one tool of many that will be utilized by the City in balancing the upcoming budget. The Program will provide opportunities for current employees to exit the workforce and allow maximum flexibility for the City in determining future staffing organization, while minimizing the need for involuntary reductions. Future savings from lower retirement benefit formulas and/or reorganization of duties will result.

**DISADVANTAGES:**

Voluntary programs such as this cannot guarantee that employees participate or are incentivized to leave the workforce. Involuntary staffing reductions may still be required in order to address the City’s financial circumstances. Additional costs will be incurred to provide the incentives to employees. While future savings is projected to offset the costs of the Program, the exact payback period is unknown at this time.

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**ENVIRONMENTAL REVIEW:**

No environmental review is required for this item.

**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.

Attachment:

1. Voluntary Early Retirement Program Application

# City of Arroyo Grande

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## Voluntary Early Retirement Program Application

### ELIGIBILITY REQUIREMENTS AND INSTRUCTIONS

Participating employees (“Participants”) must be: i) eligible to retire under the CalPERS service retirement requirements, which is the CalPERS normal age of retirement (at least 50 years of age) and vested with CalPERS (minimum 5 years’ service) and ii) an active, full-time CalPERS-benefitted employee not assigned to the Five Cities Fire Authority as of the end of the Application period (May 25, 2018) and iii) if represented, must be in a bargaining group that has approved the program. Eligibility for participation in the Voluntary Early Retirement Program (“Program”) should be verified with the Human Resources Division, prior to submission of an Application. If there is any doubt regarding your eligibility, submit an Application to preserve your potential right to participate in the Program.

You must submit your Application along with your executed Agreement and General Release to Debbie Malicoat, Administrative Services Director, no earlier than Wednesday, April 11, 2018, nor later than 5 p.m. on Friday, May 25, 2018. No early or late Applications and/or executed Agreement and General Releases will be accepted, unless specifically authorized, in writing, by the City Manager. Failure to timely submit an Application and/or an executed Agreement and General Release for any reason whatsoever shall constitute a waiver of your right to participate in this voluntary Program.

### PROGRAM OVERVIEW

1. Participation in the Program is completely voluntary.
2. In order to participate in the Program, Participants will be required to execute a City provided Agreement and General Release pertaining to claims against the City related to participation in the Program, as specified in the Agreement and General Release. After signing the Agreement and General Release, an employee has seven calendar days to revoke the Agreement and General Release, as required by law.
3. Participants must agree to a retirement/separation date no later than June 30, 2018. If after selecting a retirement date, a Participant subsequently decides not to retire, then the Participant shall be deemed to have voluntarily resigned on the selected date.
4. Participants complying with the conditions and details of the Program will receive 25% of their base salary in effect on their separation date in the form of a lump-sum payment

Approval Process

1. Approval is at the City Manager's discretion based on operational need and may include non-discriminatory factors such as location, workload, special skill/knowledge, performance, etc.
2. Approval is not based on seniority
3. All things being equal between two similarly situated employees who apply for the Program, the City Manager may employ a random selection or lottery system if the benefit cannot be provided to both



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## Voluntary Early Retirement Program Application

### APPLICANT INFORMATION

Employee Name: \_\_\_\_\_

Job Title: \_\_\_\_\_

Department: \_\_\_\_\_

Service Retirement/ Separation Date \*: \_\_\_\_\_

\* Eligible service retirement/separation dates are April 12, 2018, through June 30, 2018

I voluntarily choose the following incentive amount based on my voluntary service retirement :

One-time lump-sum payment in the amount of 25% of base salary as of separation date, paid to me.

\_\_\_\_\_

EMPLOYEE SIGNATURE      DATE

Approved:

\_\_\_\_\_

CITY MANAGER      DATE



# City of Arroyo Grande

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## Voluntary Early Retirement Program Agreement and General Release

**CONSULT WITH AN ATTORNEY PRIOR TO SIGNING THIS AGREEMENT AND GENERAL RELEASE. BY SIGNING THIS AGREEMENT AND GENERAL RELEASE, YOU GIVE UP AND WAIVE IMPORTANT LEGAL RIGHTS.**

This Agreement and General Release (“Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between \_\_\_\_\_ (“Employee”) and the City of Arroyo Grande (“City”).

**WHEREAS**, to effectively manage its budget and personnel costs, the City is offering a “Voluntary Early Retirement Program” (“Program”); and

**WHEREAS**, such Program was duly approved by the City Council on April 10, 2018; and

**WHEREAS**, the Program is offered to employees, who are currently employed by the City and eligible for retirement from City service, as defined by the California Public Employees’ Retirement System (“CalPERS”); and

**WHEREAS**, the Program is being offered to eligible employees of the City, who separate from City service during the period beginning April 12, 2018, and ending on or before June 30, 2018 (“Program Retirement Period”); and

**WHEREAS**, eligible employees may choose to participate in the Program, for which the application period begins April 11, 2018, and ends May 25, 2018; and

**WHEREAS**, participation in the Program is voluntary, and Employee has voluntarily chosen to participate in the Program; and

**WHEREAS**, Employee satisfies the eligibility criteria for participation in the Program, namely the following: (i) Employee is eligible to retire per CalPERS requirements for eligibility for service retirement, which is the CalPERS normal age of retirement (at least 50 years of age), and vested with CalPERS (minimum 5 years’ service) and (ii) Employee is an active, full-time CalPERS benefited employee not assigned to the Five Cities Fire Authority as of the end of the Application period for this Program (May 25, 2018) and (iii) employee’s labor union has approved the Program, if applicable; and

**WHEREAS**, Employee agrees to retire from employment with City on a date certain during the Program Retirement Period, and in the event Employee does not retire on such date, Employee shall be deemed to have resigned on that date certain.

**NOW THEREFORE**, Employee and City enter into the following agreement:

(1) **Recitals Incorporated**. The recitals above are material provisions of this Agreement and General Release and are incorporated herein by this reference.

(2) **Employee's Voluntary Service Retirement**. Employee acknowledges that his/her participation in the Program is entirely voluntary, and hereby knowingly and voluntarily, requests retirement/separation from employment with City, to be effective on \_\_\_\_\_ ("Separation Date"), which is during the established Program Retirement Period of April 12, 2018 – June 30, 2018. In the event that Employee does not seek CalPERS service retirement to be effective on the Separation Date, then Employee shall be deemed to have resigned on that date.

Employee also expressly agrees not to seek re-employment or reinstatement to the City at any time, except as a retired annuitant subject to applicable Public Employees' Retirement Law (Gov. Code §20000 et seq.) provisions and CalPERS requirements. If Employee does apply for employment with the City, then Employee agrees that the City shall be entitled to reject, with or without cause, any application for employment or agreement for independent contractor status or any other business relationship with the City made by Employee and the City shall not be liable to Employee for any cause or damages whatsoever. Employee further agrees that any rejection of any such application or offer made is not for a discriminatory or any other illegal purpose and Employee waives all rights to future employment, agreement for independent contractor status or any other business relationship with the City. Employee further acknowledges that, in exchange for the consideration provided herein, Employee is voluntarily separating from City employment and, therefore ineligible for unemployment compensation through the California Employment Development Department and will not apply for unemployment compensation through said government agency.

(3) **Consideration**. In exchange for Employee's participation in the Program and Employee's Separation Date occurring during the Program Retirement Period, the City of Arroyo Grande will provide a payment to Employee in the amount of twenty-five percent (25%) of the Employee's annual base salary then in effect as of the Separation Date ("Program Payment"). Based on anticipated scheduled salary increases between the Effective Date of this Agreement and Employee's Separation Date, the City estimates that such payment will be in the total amount of \_\_\_\_\_ (25% of Employee's anticipated annual base salary of \_\_\_\_\_). Payment will be made in the form of a one-time, lump-sum payment to Employee.

The City shall cause the Program Payment to be made within five (5) business days following Employee's Separation Date. The payment will be made to Employee in the form of a check made payable to Employee to be mailed to Employee at Employee's home address via certified mail return receipt requested.

The lump sum payment provided in this Section 3 shall be subject to all applicable state and federal withholdings as determined appropriate by the City. Employee acknowledges City has provided no advice and made no representations as to the tax consequences of Employee's participation in the Program, and affirms that Employee will be responsible for all tax liability resulting from the acceptance of the Program Payment.

(4) **Health Insurance.** Employee's group health, dental, and vision insurance benefits will terminate effective the last day of the month following his/her Separation Date. Employee's life insurance benefits will terminate effective on his/her retirement date. Subsequent to the Separation Date, Employee may continue City group insurance benefits to the extent allowed under CalPERS (health), COBRA (dental and vision) or other applicable law.

(5) **Payment of Earned Compensation.** On Employee's Separation Date, City will pay to Employee all earned salary, accrued fringe benefits, and/or all other wage compensation/benefits owed to Employee upon separation of employment as required by state, federal or municipal law or any other provisions of the City's ordinances, resolutions, and/or policies. Thereafter, Employee will not be entitled to or accrue any additional leave time, and will not be eligible for any fringe benefits following the Separation Date.

(6) **Waiver and Release of Claims by Employee.** In exchange for the Program Payment provided pursuant to Section 3 herein, to which Employee would not otherwise be entitled, Employee and on behalf of Employee's spouse, heirs, representatives, successors, and assigns, hereby releases, acquits, and forever discharges the City, and each of its predecessors, successors, assigns, officials, employees, representatives, agents, insurers, attorneys, and all persons and entities acting by, through, under, or in concert with any of them, and each of them, from any and all claims, charges, complaints, contracts, understandings, liabilities, obligations, promises, benefits, agreements, controversies, costs, losses, debts, expenses, damages, actions, causes of action, suits, rights, disciplinary appeals and demands of any nature whatsoever, known or unknown, suspected or unsuspected, which Employee now has or may acquire in the future, or which Employee ever had, resulting from, relating to or arising out of Employee's participation in the Program (hereinafter referred to collectively as "Claims"), without regard to whether such Claims arise under the federal, state, or local constitutions, statutes, rules or regulations, or the common law. Employee expressly acknowledges that the Claims forever barred by this Agreement specifically include, but are not limited to, any claims of violation of the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"), the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") or the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), any alleged wrongful termination in violation of public policy, any alleged breach of any express or implied contract for continued employment, any alleged employment discrimination or unlawful discriminatory act. Nothing herein shall be interpreted as a release or waiver of any workers' compensation claims or EEOC claims or in any way prohibit or prevent Employee from participating in any claims or administrative action brought by a state or federal agency, including the Equal Employment Opportunity Commission ("EEOC").

(7) **Specific Acknowledgement of Waiver of Claims Under ADEA and OWBPA.** The Age Discrimination in Employment Act of 1967 (hereinafter referred to as the "ADEA") makes it illegal

for an employer to discharge any individual or otherwise discriminate with respect to the nature and privileges of an individual's employment on the basis that the individual is age forty (40) or older. The Older Workers Benefit Protection Act (hereinafter referred to as the "OWBPA," 29 U.S.C. § 626, et. seq., Pub L 101-433, 104 Stat. 978 (1990)) further augments the ADEA and prohibits the waiver of any right or claim under the ADEA, unless the waiver is knowing and voluntary. By entering into this Agreement, Employee acknowledges that Employee knowingly and voluntarily, for just compensation in addition to anything of value to which Employee was already entitled, waives and releases any rights he or she may have under the ADEA and/or OWBPA. Employee further acknowledges that Employee has been advised and understands, pursuant to the provisions of the ADEA and OWBPA, that:

- a. This Agreement is written in a manner understood by Employee;
- b. Employee is aware of, and/or has been advised of, Employee's rights under the ADEA and OWBPA, and of the legal significance of Employee's waiver of any possible claims Employee currently may have under the ADEA, OWBPA and/or similar age discrimination laws;
- c. Employee is entitled to a reasonable time of at least forty-five (45) days within which to review and consider this Agreement and the waiver and release of any rights Employee may have under the ADEA, the OWBPA and similar age discrimination laws; but may, in the exercise of Employee's own discretion, sign or reject this Agreement at any time before the expiration of the forty-five (45) days;
- d. The waivers and releases set forth in this Agreement shall not apply to any rights or claims that may arise under the ADEA and/or OWBPA after the Effective Date, and Employee agrees that this waiver and release does not apply to any rights or claims that may arise under the ADEA after the Effective Date of this Agreement, or to any other rights or claims whether before or after then;
- e. Employee has been advised by this writing that Employee should consult with an attorney prior to executing this Agreement;
- f. Employee has discussed this waiver and release with, and been advised with respect thereto by, Employee's counsel of choice or labor representative or at least had the opportunity to do so, and Employee represents by signing this Agreement that Employee does not need any additional time within which to review and consider this Agreement;
- g. Employee has seven (7) calendar days following Employee's execution of this Agreement to revoke the Agreement;
- h. Notice of revocation within the seven (7) calendar day revocation period must be delivered, in writing, to Debbie Malicoat, Administrative Services Director, at the City of Arroyo Grande, 300 E. Branch Street, Arroyo Grande, CA 93420 and must state, "I hereby revoke my participation in the Voluntary Early Retirement Program and the Agreement and General Release which I executed;" and

i. This Agreement shall not be effective until all parties have signed the Agreement and seven (7) calendar days have passed since Employee's execution of same. Accordingly, this Agreement shall be effective on the eighth day following execution of this Agreement by both parties ("Effective Date").

(8) **Unknown Claims**. In relation to the release provisions of Paragraphs 6 and 7 above, Employee understands that California Civil Code section 1542 reads as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Employee hereby waives the protection of California Civil Code section 1542.

(9) **Waiver of Additional Claims**. Employee hereby waives any provisions of state or federal law that might require a more detailed specification of the claims being released pursuant to the provisions of Sections 6, 7, and 8 above.

(10) **Revocation Period**. Employee's right to revoke this Agreement prior to the Effective Date requires no explanation or justification on Employee's part. Upon timely submission of a written notice of revocation pursuant to Section 7(h) above, Employee's employment status will return to what it was immediately at the time this Agreement was executed and the City will be immediately released of any further obligation under this Agreement. Revocation of this Agreement shall automatically constitute rescission of Employee's Voluntary Early Retirement Program application. If timely notice of revocation is not received pursuant to Section 7(h) above, then this Agreement shall become effective and Employee's Separation Date from the City will become permanent and irrevocable.

(11) **Advice of Counsel**. The parties hereto have received independent legal advice from their respective attorneys concerning the advisability of entering into and executing this Agreement or have been given the opportunity to obtain such advice. The parties acknowledge that they have been represented by counsel of their own choice in the negotiation of this Agreement, that they have read this Agreement; that they have had this Agreement fully explained to them by such counsel, or have had such opportunity to do so and that they are fully aware of the contents of this Agreement and of its legal effect.

(12) **No Fraud in Inducement**. No party (nor any officer, agent, employee, representative, or attorney of or for any party) has made any statement or representation or failed to make any statement or representation to any other party regarding any fact relied upon in entering into this Agreement, and neither party relies upon any statement, representation, omission or promise of any other party in executing this Agreement, or in making the settlement provided for herein, except as expressly stated in this Agreement.

(13) **Covenant Not To Sue**. Employee represents that Employee has not filed any complaints or charges against the City with any local, state or federal agency or court; that Employee will not do so at any time hereafter for any claim arising up to and including the Effective Date; and that if any

such agency or court assumes jurisdiction of any such complaint or charge against the City on behalf of Employee, whenever or where ever filed, Employee will request such agency or court to withdraw from the matter forthwith. Nothing herein shall be interpreted as a release or waiver of any workers' compensation claims or in any way prohibit or prevent Employee from participating in any claims or administrative action brought by a state or federal agency. If Employee breaches this Section 13 and files a lawsuit based on claims that Employee has released, Employee shall immediately return all sums which were paid to Employee pursuant to Section 3 of this Agreement.

(14) **Governing Law.** This Agreement shall be construed under the laws of the State of California, and any dispute arising hereunder shall be conducted under the jurisdiction of the County of San Luis Obispo Superior Court.

(15) **Enforcement Fees and Costs.** Should any legal action be required to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs in addition to any other relief to which that party may be entitled.

(16) **Severability.** In the event that any term, covenant, condition, provision or agreement contained in this Agreement is held to be invalid or void by any court of competent jurisdiction, the invalidity of any such term, covenant, condition, provision or agreement shall in no way affect any other term, covenant, condition, provision or agreement and the remainder of this Agreement shall still be in full force and effect.

(17) **Full Integration.** This Agreement is the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. This Agreement may be amended only by a further agreement in writing, signed by the parties hereto.

(18) **Joint Drafting.** Each party agrees that it has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the parties agree that same shall not be construed against any party.

(19) **Death Prior to Separation Date.** Employee understands that if he/she dies prior to his/her Separation Date, then this Agreement as well as the Program Payment, is void and neither City nor Employee's heirs shall have any right or obligation defined hereunder.

(20) **Titles.** The titles included in this Agreement are for reference only and are not part of its terms, nor do they in any way modify the terms of this Agreement.

IN WITNESS WHEREOF, City and Employee have executed the Agreement on the day and year first set forth above.

