



## STAFF REPORT

**DATE:** May 14, 2019

**TO:** Members of the City Council

*Approved and Forwarded to the City Council*

**FROM:** Derek P. Cole, City Attorney

**SUBJECT: Ninth Amendment to City Manager Employment Agreement**

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### **Background and Analysis**

The City has employed Bryan Montgomery as City Manager since 2005. Mr. Montgomery's employment agreement with the City has been amended eight times and under the latest terms of the agreement and its amendments, Mr. Montgomery's salary is \$19,188 per month.

An annual performance evaluation for Mr. Montgomery was recently completed and Mr. Montgomery received a favorable evaluation. Following the completion of this evaluation, a subcommittee of Mayor Alaura, Councilmember Pope, and the City Attorney met with Mr. Montgomery to discuss changes to Mr. Montgomery's employment agreement. This subcommittee and Mr. Montgomery agreed to present the following terms for approval by the City Council:

- Increase in salary of 4%, retroactive to July 1, 2018. This would result in the salary increasing to \$19,955.38 per month.
- Annual adjustment of Mr. Montgomery's salary in accordance with the Bay Area consumer price index ("CPI") for urban users. This would occur on July 1 of each year and would be based on the difference in the CPI between April of the current year and April of the previous year.
- A prohibition on "without cause" terminations of employment within 90 days of an election
- An increase of three months in severance (from six months to nine months) if the City Manager is terminated "without cause" within 91 and 180 days from the date of an election. (After the 180<sup>th</sup> day, the severance would revert to the six months provided currently.)
- Annual evaluations would need to be completed by April 30 of each year.
- The Council would be required to consider a modification to the policy regarding the application of accrued sick leave by employees with more than 10 consecutive years of employment with the City, for the conversion of all an

employee's accrued sick leave toward service time under CalPERS; however, the cash-out of any accrued sick leave would not exceed 500 hours

### **Fiscal Impact**

The proposed changes to the City Manager's Employment Agreement would result in his receiving an annual salary of \$239,464.56. His previous salary was \$230,256 per month. The annual increase in salary is accordingly \$9,208.56.

In addition, because the salary increase is effective back to July 1, 2018, Mr. Montgomery would also receive \$5,330.57 in back pay (calculated by the difference in salaries from July 1, 2018 through May 31, 2019.)

As noted, the City Manager would receive a CPI adjustment to his salary on July 1 of each year. The Bureau of Labor Statistics has not yet published the percentage increase in the CPI between April 2019 and April 2018. However, the February-to-February increase was 3.5%. If this same percentage were to apply in the April-to-April comparison, the City Manager's salary would be increased to \$249,043.14 effective on July 1 of this year.

It is not possible to provide a precise number associated with the change in the severance provisions. This Staff Report simply notes that the severance the City Manager is owed if terminated without cause includes salary and accrued benefits. If the without-cause termination were to occur within 91 and 180 days of an election, an additional three months of severance would be required to be paid.

Should the Council subsequently approve the change in the accrued sick-leave policy, there would not be any additional cost to the City associated with that change.

### **Staff Recommendation**

Should the City Council wish to approve the above changes to the City Manager's Employment Agreement, it is requested to approve the Ninth Amendment to City Manager Employment Agreement, as drafted.

### **Attachments**

1. Ninth Amendment to City Manager Employment Agreement