



2003 SEP 18 PM 6:26

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September 30, 2004

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HONORABLE CITY COUNCIL
Oakland, California

President De la Fuente and Members of the City Council:

RESOLUTION AUTHORIZING THE CITY TO ENTER INTO SETTLEMENT AND EMPLOYMENT AGREEMENTS WITH ROBERT BOBB ("BOBB"), FORMER CITY MANAGER, PURSUANT TO WHICH BOBB WILL RELEASE CLAIMS HE MAY HAVE AGAINST THE CITY AND PROVIDE TRANSITION ASSISTANCE AND SERVICES TO FACILITATE A SMOOTH, EFFECTIVE CONTINUATION OF CITY SERVICES FOR A TOTAL AMOUNT NOT TO EXCEED TWO HUNDRED SEVENTY FIVE THOUSAND DOLLARS (\$275,000.00)

Introduction

On July 1, 2003, Mayor Jerry Brown and former City Manager Robert Bobb announced that he was leaving his post as City Manager. Mr. Bobb is entitled to receive payment for accrued vacation and certain other benefits upon his separation from City service. A dispute arose between the City and Mr. Bobb regarding the precise amount of accrued vacation and other benefits that he is entitled to receive based on his tenure in the City and his employment contracts. The City desires and Mr. Bobb has agreed to assist the City in accomplishing a smooth and efficient transition of City administration and management.

On July 29, 2003, the City Council reported out of closed session that with respect to "Anticipated Litigation", item one on the Closed Session agenda, the City Council had authorized an agreement resolving all matters related to former City Manager Robert Bobb's employment for an amount not to exceed \$275,000, inclusive of all accrued benefits, cost of living (COLAs), salary increases, and providing for Mr. Bobb to provide transition assistance and services to facilitate a smooth, effective continuation of City services. Councilmember Reid made the motion and Councilmember Brooks seconded the motion. The motion passed with 7 ayes. Councilmember Quan voted no.

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**ORA/COUNCIL
SEP 30 2003**

FILED
OFFICE OF THE CITY CLERK
OAKLAND
OAKLAND CITY COUNCIL

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2003 SEP 18 PM 6:26

RESOLUTION No. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER

RESOLUTION AUTHORIZING THE CITY TO ENTER INTO SETTLEMENT AND EMPLOYMENT AGREEMENTS WITH ROBERT BOBB ("BOBB"), FORMER CITY MANAGER, PURSUANT TO WHICH BOBB WILL RELEASE CLAIMS HE MAY HAVE AGAINST THE CITY AND PROVIDE TRANSITION ASSISTANCE AND SERVICES TO FACILITATE A SMOOTH, EFFECTIVE CONTINUATION OF CITY SERVICES FOR A TOTAL AMOUNT NOT TO EXCEED TWO HUNDRED SEVENTY FIVE THOUSAND DOLLARS (\$275,000.00)

WHEREAS, in 1997 the City Council appointed Bobb as City Manager with the full authority of the position of City Manager as provided in the Charter of the City of Oakland; and

WHEREAS, the City and Bobb entered into an employment agreement ("Employment Agreement") for an initial three-year term, commencing on November 17, 1997 and then Mayor Elihu Harris and Bobb subsequently executed an amendment to the Employment Agreement which provides, among other things, for an extension of the term; and

WHEREAS, Bobb and the City have certain disputes regarding both the enforceability and the interpretation of aspects of the Employment Agreement; and

WHEREAS, the Employment Agreement specifies Bobb's annual base salary and entitles Bobb to receive annual salary increases "in the same manner and in an amount not less than the average given all City employees"; and

WHEREAS, the Employment Agreement provides that Bobb shall accrue vacation and sick leave and Executive Management leave on the specific terms set forth in the Employment Agreement, a \$750.00 per month automobile allowance, and further provides that Bobb shall "receive all such Executive Management Employee benefits that are currently authorized to be received, or that may be received in the future by executive management employees of the City"; and

WHEREAS, the Employment Agreement requires that the City contribute \$7,500 per year on behalf of Bobb into a deferred compensation plan; and

WHEREAS, on July 1, 2003, Bobb's employment as City Manager ceased and the Mayor and Bobb jointly announced that Bobb was leaving his position as City Manager and an Interim City Manager was appointed by the Mayor on July 2, 2003; and

WHEREAS, the City is required by law to pay Bobb for accrued vacation and salary for services performed up to the date of his separation, and Bobb contends and the City disputes that the City is required to pay Bobb for accrued sick leave and management leave under the terms of the

Employment Agreement and City policies; and Bobb has asserted that the amount currently due under the Employment Agreement is in excess of \$400,000 for accrued vacation, sick leave, management leave, as well as cost of living (“COLA”) and merit salary increases for which Bobb contends and the City disputes that he was eligible and that he has not taken; and

WHEREAS, a dispute has arisen between the parties hereto both as to the applicability and interpretation of the Employment Agreement, as well as the amount of accrued vacation and salary increases Bobb is entitled to, and whether Bobb is entitled to cash out any sick leave or management leave pursuant to the Employment Agreement and/or City policies and as to Bobb’s entitlement to COLA and merit salary increases; and

WHEREAS, The City and Bobb desire to settle and resolve the various disputes between them without the risk, expense and uncertainty of litigation, and

WHEREAS, City desires that Bobb provide transition assistance and assistance on projects designated by the Mayor and/or City Manager to facilitate smooth, effective and efficient continuation of City services, programs and management; and

WHEREAS, Bobb agrees to provide transition assistance and assistance on projects designated by the Mayor and/or City; and

WHEREAS, based on the foregoing, the parties are amenable to resolving the said disputes and all matters related to Bobb’s employment for an amount not to exceed \$275,000; now therefore be it

RESOLVED: that the City Council authorizes the City to enter into agreements with Bobb that resolve all matters related to Bobb’s employment for an amount not exceed \$275,000 and that provide for Bobb’s transition assistance and assistance on projects designated by the Mayor and/or City Manager to facilitate smooth, effective and efficient continuation of City services, programs and management.

IN COUNCIL, OAKLAND, CALIFORNIA, _____ 2003

PASSED BY THE FOLLOWING VOTE:

AYES- BRUNNER, CHANG, MAYNE, NADEL, REID, SPEES, WAN AND PRESIDENT
DE LA FUENTE

NOTES-

ABSENT-

ABSTENTION-

Attest: _____

Ceda Floyd
CITY CLERK AND CLERK OF THE COUNCIL
OF THE CITY OF OAKLAND, CALIFORNIA

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ORA/COUNCIL

SEP 30 2003

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into by and between, Robert C. Bobb (hereinafter referred to as "Bobb") and the City of Oakland (hereinafter referred to as "City"), on the date of its full and complete execution by the parties hereto, provided that it shall have no force or effect until approved by the City Council.

RECITALS

WHEREAS, in 1997 the City Council appointed Bobb as City Manager with the full authority of the position of City Manager as provided in the Charter of the City of Oakland; and

WHEREAS, the City and Bobb entered into an employment agreement ("Employment Agreement") for an initial three-year term, commencing on November 17, 1997 and then Mayor Elihu Harris and Bobb subsequently executed an amendment to the Employment Agreement which provides, among other things, for an extension of the term; and

WHEREAS, Bobb and the City have certain disputes regarding both the enforceability and the interpretation of aspects of the Employment Agreement; and

WHEREAS, the Employment Agreement specifies Bobb's annual base salary and entitles Bobb to receive annual salary increases "in the same manner and in an amount not less than the average given all City employees"; and

WHEREAS, the Employment Agreement provides that Bobb shall accrue vacation and sick leave and Executive Management leave on the specific terms set forth in the Employment Agreement, a \$750.00 per month automobile allowance, and further provides that Bobb shall "receive all such Executive Management Employee benefits that are currently authorized to be received, or that may be received in the future by executive management employees of the City"; and

WHEREAS, the Employment Agreement requires that the City contribute \$7,500 per year on behalf of Bobb into a deferred compensation plan; and

WHEREAS, on July 1, 2003, Bobb's employment as City Manager ceased and the Mayor and Bobb jointly announced that Bobb was leaving his position as City Manager and an Interim City Manager was appointed by the Mayor on July 2, 2003; and

WHEREAS, the City is required by law to pay Bobb for accrued vacation and salary for services performed up to the date of his separation, and Bobb contends, and the City disputes that the City is required to pay Bobb for accrued sick leave and management leave under the terms of the Employment Agreement and City policies; and Bobb has asserted that the amount currently due under the Employment Agreement is in

excess of \$400,000 for accrued vacation, sick leave, management leave, as well as cost of living ("COLA") and merit salary increases for which Bobb contends and the City disputes that he was eligible and that he has not taken; and

WHEREAS, a dispute has arisen between the parties hereto both as to the applicability and interpretation of the Employment Agreement, as well as the amount of accrued vacation and salary increases Bobb is entitled to, and whether Bobb is entitled to cash out any sick leave or management leave pursuant to the Employment Agreement and/or City policies and as to Bobb's entitlement to COLA and merit salary increases; and

WHEREAS, The City and Bobb desire to settle and resolve the various disputes between them without the risk, expense and uncertainty of litigation, and

WHEREAS, City desires that Bobb provide transition assistance and assistance on projects designated by the Mayor and/or City Manager to facilitate smooth, effective and efficient continuation of City services, programs and management; and

WHEREAS, Bobb agrees to provide transition assistance and assistance on projects designated by the Mayor and/or City; and

WHEREAS, based on the foregoing, the parties are amenable to resolving the said disputes in accordance with the terms of this Agreement;

NOW THEREFORE, in consideration of the mutual covenants herein contained the parties hereto agree as follows:

CONSIDERATION

Section 1. The City acknowledges that Bobb will receive a new employment agreement ("New Employment Agreement") with the City for an Exempt Limited Duration position, effective upon the date of Bobb's termination from the position of City Manager, July 1, 2003. The term of the new position will be from July 1, 2003 through the close of regular business hours on Friday, July 2, 2004.

Section 2. The parties have agreed to compromise and settle Bobb's claims by entering into the New Employment Agreement and by the City paying to Bobb the sum of One Hundred Twelve Thousand Four Hundred Twenty-five Dollars (\$112,425) (the "Settlement Amount") in respect of Bobb's claims for accrued vacation, sick leave, management leave, as well as COLA and merit salary increases as described above. The releases given by each of the parties in Section 3 hereof are given in consideration of the execution and performance of all the material terms of the New Employment Agreement to be performed by the other and the payment by the City of the Settlement Amount. The Settlement Amount shall be paid without interest in 26 equal bi-weekly installments at the times that City employees are generally paid and commencing at the time of the first payment to Bobb under the New Employment Agreement. The parties expect that payments made to Bobb for the period after the commencement of the term of the

Employment Agreement and before this Agreement becomes effective may differ from the amounts called for under this Agreement and the New Employment Agreement and they agree to adjust any overpayment or underpayment as promptly as practicable.

Section 3. Mutual Release and Waiver of Claims

(a) Bobb fully waives and releases and forever discharges the City and anyone connected with it, including its elected officials, agents, employees, departments, management staff, City Council, Councilmembers, and their successors and assigns, and the City hereby waives and releases Bobb, from any and all claims of any and every kind, nature, and character, known and unknown, suspected or unsuspected, including any and all claims, demands, costs, contracts, lawsuits, charges, complaints and liabilities of every kind, whether in law or in equity, employment-related or otherwise, as well as for attorney's fees and costs, which Bobb or the City may now have, have in the future, or has ever had, which arise in whole or in part from, or relate to, Bobb's employment with the City up to the date of the execution of this Agreement.

(b) The releases and waivers set forth in Section 3(a), above, are intended to cover any and all claims which Bobb may have against the City and/or its elected officials, agents, employees, departments, management staff, City Council, Councilmembers, and their successors and assigns, and any and all claims which the City may have against Bobb, which arise out of or relate to Bobb's employment by the City prior to the execution of this Agreement as well as any and all claims which arise out of events resulting in or which led to Bobb's ceasing to be employed as City Manager, and/or the events which occurred subsequent to his resignation as a result of contact with anyone associated with the City, including but not limited to, any and all claims arising from racial discrimination, sex discrimination, sexual harassment, disability discrimination, denial of medical leave, or age discrimination, as well as any and all claims, rights, demands, and causes of action arising in contract, whether express or implied, or tort, or under any common law theories, or any covenants of good faith and fair dealing, or under any federal, state or municipal statute, executive order, regulation or ordinance including but not limited to the Americans with Disabilities Act, the Rehabilitation Act of 1973, the Family Medical Leave Act, the California Family Rights Act, California Labor Code, the California Unruh Act, Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment and Housing Act, as amended, Age Discrimination in Employment Act ("ADEA"), discrimination on the bases prohibited by the federal Constitution, California Constitution, state, federal or municipal statutes including but not limited to 42 USC Section 1981, 1983 and 1985, the California Unfair Competition Act and the California Unruh Act and the City Charter.

(c) Civil Code Section 1542 Waiver and Release: The parties expressly acknowledge that this Agreement is intended to include in its effect, without limitation, a full and final release of all unknown, undisclosed, unanticipated claims or damages which may have arisen, or may arise from Bobb's employment with, resignation and/or separation from employment with the City. Therefore, Bobb hereby waives any and all rights or benefits which he now, or in the future, may have under the terms of section 1542 of the California Civil Code, which provides as follows:

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

(d) Notwithstanding the foregoing Bobb does not release any claim he may have to defense and/or indemnification under Section 6 I. of the Employment Agreement or under state or local law.

Section 4. Confidentiality. To the same extent required of executive level City employees Bobb shall maintain the confidentiality of all information which was confidential as of the time Bobb ceased to be employed as City Manager, as well as any confidential information that he is privy to during the term of this Agreement.

Section 5. Arbitration. Any dispute regarding the interpretation or application of this Agreement shall be submitted to an arbitrator for final and binding resolution. The arbitration shall be conducted pursuant to the Employment Dispute Resolution Rules of the American Arbitration Association. The arbitrator shall be a person agreed to by both parties; provided that if the parties do not reach agreement within fourteen (14) calendar days, each party shall designate an arbitrator and the designated arbitrators shall select a single arbitrator to hear the dispute. The non-prevailing party shall pay the arbitrator's and any court reporter's fees and the attorneys' fees and costs of the prevailing party.

Section 6. Legal Representation; Right to Consult Attorney Under ADEA. Bobb acknowledges that he has been advised to consult an attorney before executing this Agreement and that he has had legal counsel review this Agreement and represent him during the course of negotiations that led to this Agreement. Bobb further represents that he has executed this Agreement freely, knowingly and voluntarily with a full understanding of its terms after independent investigation, and without fraud, duress or undue influence.

Section 7. Time to Execute Agreement. This Agreement is contingent upon Bobb's execution and delivery hereof no later than twenty-one (21) days after Bobb receives an executed final copy of this Agreement from the City, although he may accept the offer by signing and delivering the Agreement to the City before that date.

Section 8. Revocation Period. Bobb shall have up to twenty-one (21) days from the date immediately following his execution of this Agreement during which he may revoke his acceptance ("Revocation Period"). Any such revocation must be communicated to and received by the City in writing no later than midnight on the twenty-first day of the Revocation Period. Bobb is hereby advised that this Agreement shall not become effective or enforceable until the Revocation Period has expired.

Section 9. Applicable Law. This Agreement shall be governed by the laws of the State of California.

Section 10. Entire Agreement. The parties hereto agree that this Agreement together with the New Employment Agreement constitutes their entire agreement regarding the matters addressed herein and regarding Bobb's employment with the City up to the date of his execution of this Agreement and his departure from the position of City Manager. Further the parties agree that this Agreement and the New Employment Agreement supersede any prior or contemporaneous writings, understandings and/or promises related to Bobb and Bobb's employment with the City, up to the date of his execution of this Agreement and his departure from the position of City manager, whether oral or written. In entering into this Agreement, Bobb has not relied on any representation made by City or any of its representatives, except as expressly set forth herein in writing. This Agreement may not be modified, altered or changed except in a writing signed by all parties and authorized by the City Council, if required. If any part of this Agreement shall be determined to be invalid, unlawful or unenforceable, that part shall not be deemed to be a part of this Agreement.

IT IS SO AGREED:

CITY OF OAKLAND

ROBERT C. BOBB Dated: _____

CITY MANAGER Dated: _____

Approved:
REED SMITH CROSBY HEAFEY

Approved as to form and legality:

By: _____
WALTER EDWIN THOMAS
Attorneys for Robert C. Bobb

JOHN A. RUSSO
City Attorney

EMPLOYMENT AGREEMENT

This agreement ("Agreement") is made and entered into this ____ day of _____, 2003 by and between the City of Oakland ("City") and Robert Bobb ("Bobb"), provided that it shall be of no force or effect unless it is approved by resolution of the City Council. The City and Bobb are referred to in the Agreement as the "parties."

WHEREAS, it is the desire of the City to retain the employment services and professional knowledge and expertise of Bobb; and

WHEREAS, Bobb has provided valuable services to the City as its City Manager, and the City desires to retain his services in order to effectuate an orderly and informed transition of City administration and management;

NOW THEREFORE, the parties agree as follows:

Section 1. Position.

The City hereby agrees to employ Bobb as an Exempt Limited Duration Employee to perform services associated with effectuating an orderly transition of City management, administration and programs and services.

Section 2. Salary and Benefits

The position will have a salary for the term of the Agreement, of One Hundred Sixty-two Thousand Five Hundred Seventy-five Dollars (\$162,575) less an amount determined by the City to be the value of two weeks of vacation (the "Vacation Accrual Amount"). The salary amount net of the Vacation Accrual Amount shall be payable in 26 equal bi-weekly installments at the times that City employees are paid, subject to required withholding taxes and subject to the reduction specified in Section 6, below. On expiration of the term of Bobb's employment he will be paid an additional amount equal to the Vacation Accrual Amount, less any required withholding. The parties expect that prior to the time of execution of this Agreement Bobb will have been paid in respect of this Agreement and under the Settlement Agreement referred to herein estimated amounts which differ from the actual amounts called for hereunder and under the Settlement Agreement. Any overpayment or underpayment will be adjusted in the pay period(s) next following the date of execution. The City shall continue to pay Bobb's dental, vision and medical benefits in the same manner and amounts as it pays such benefits for other City employees. The City shall make no contributions to any deferred compensation program on Bobb's behalf during the term of this Agreement. Bobb shall accrue vacation and sick leave during the term of this Agreement on the same basis as non-management City associates accrue such leave. Bobb shall not be entitled to management leave, nor shall Bobb receive an automobile allowance or free parking.

Section 3. Term

The term of this Agreement shall be for the period commencing on July 1, 2003 and ending upon the close of the City's regular business hours on Friday, July 2, 2004. Upon expiration of this term or termination of the Agreement, Bobb shall be separated from City employment.

Section 4. Duties

During the term of this Agreement Bobb shall provide transition assistance to the Mayor and/or City Manager to facilitate an efficient and effective continuation of City services, programs and management which are particularly within the knowledge, expertise and skill of Bobb as the result of his tenure as City Manager. Such transition assistance shall include providing any and all information, advice, expertise, and assistance necessary to facilitate a smooth transition, including but not limited to any assistance, at the times (with reasonable prior notice) and in the manner, reasonably requested by, the Mayor and/or City Manager regarding City-related issues, projects, negotiations, financial matters, historical information, status reports and memoranda summarizing the status and history of transactions or issues.

Section 5. Incompatible Employment and Activities

The parties recognize that Bobb intends to pursue other business interests and that he has accepted a position with the City of Washington, D.C. Notwithstanding that position, Bobb shall not engage in any outside employment or activities that would be incompatible, conflict with or limit Bobb's ability to perform the duties specified in this Agreement. However, where practicable, the Mayor and/or City Manager shall give reasonable and specific advance notice of the services desired of Bobb and any desired response time. If the discharge of Bobb's duties hereunder requires that he travel to Oakland, he shall do so at his own expense.

Section 6. Retirement

Deductions will be made from Bobb's bi-weekly paychecks in an amount totaling three percent (3%) of Bobb's salary for the purpose of paying a portion of the costs of Public Employees' Retirement System ("PERS") retirement benefits. The City shall pay over such deducted amounts as necessary to maintain Bobb's PERS benefits to the full extent available.

Section 7. Termination of Agreement

(a) For Cause. After providing ten (10) days written notice describing the alleged breach and opportunity to cure, the City may terminate this Agreement prior to its expiration only for cause consisting of malfeasance, abandonment of employment, unreasonable refusal to provide timely services in response to reasonable requests for services, willful breach, habitual neglect to perform his duties under this Agreement, conviction of a felony unrelated to a traffic offense or willful refusal to provide information and/or assistance required by this Agreement. In the event of termination for cause, the City shall be entitled to separate Bobb from City service

immediately and pay him no further compensation or benefits under the terms of this Agreement or City policies.

(b) Without Cause. Bobb shall be entitled to terminate this Agreement by providing the City written notice; in such event, Bobb shall be entitled to payment of compensation due under the Agreement to the date of termination.

Section 8. Arbitration

Any dispute regarding the interpretation or application of this Agreement shall be submitted to an arbitrator for final and binding resolution and the Employment Dispute Resolution of the American Arbitration Association. The arbitrator shall be a person agreed to by both parties; provided that if the parties do not reach agreement within fourteen (14) calendar days, each party shall designate an arbitrator and the designated arbitrators shall select a single arbitrator to hear the dispute. The non-prevailing party shall pay the arbitrator's and any court reporter's fees and the attorneys' fees and costs of the prevailing party

Section 9. Entire Agreement.

The parties agree that this Agreement and a Settlement Agreement executed approximately concurrently constitute their entire agreement regarding the matters addressed herein, namely the terms and conditions of Bobb's employment as an Exempt Limited Duration employee. This Agreement and the Settlement Agreement supersede any prior or contemporaneous writings, understandings and/or promises related to Bobb's employment as an Exempt Limited Duration employee, whether oral or written. Bobb has not relied on any representation or promise made by City or any of its representatives, except as expressly set forth herein in writing. This Agreement may be modified, altered or changed only by a writing signed by all parties and authorized by the City Council, if required.

_____ Dated: _____
Deborah Edgerly
City Manager
(Resolution No. _____)

_____ Dated: _____
Robert Bobb

Approved as to form and legality:

_____ Dated _____
John A. Russo
City Attorney

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