


APPROVED AS TO FORM AND LEGALITY



CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY HONORABLE MAYOR SHENG THAO

RESOLUTION (1) CONFIRMING THE MAYOR'S APPOINTMENT OF G. HAROLD DUFFEY AS INTERIM CITY ADMINISTRATOR FOR THE PERIOD COMMENCING ON JANUARY 31, 2023, AND ENDING AT MIDNIGHT ON MARCH 12, 2023 OR SUCH EARLIER DATE AS THE MAYOR TERMINATES THE APPOINTMENT; AND (2) AUTHORIZING THE MAYOR TO EXECUTE AN EMPLOYMENT AGREEMENT ON BEHALF OF THE CITY WITH G. HAROLD DUFFEY

WHEREAS, Oakland City Charter Article III, Section 305(e), among other things, grants the Mayor the power to "appoint the City Administrator, subject to confirmation by the City Council" and to remove the City Administrator after providing the Council notice thereof; and

WHEREAS, City Administrator Edward D. Reiskin ("Reiskin") has given notice that Reiskin will vacate the position of City Administrator upon the termination of Reiskin's City Council-approved employment agreement at midnight on January 30, 2023; and

WHEREAS, the Mayor wishes to appoint City of Oakland Director of Public Works G. Harold Duffy ("Duffey") as Interim City Administrator, subject to City Council approval, for the period commencing on January 31, 2023 and ending at midnight on March 12, 2023; and

WHEREAS, the Mayor has initiated a search process to recruit and hire a new City Administrator to serve the City of Oakland, however a new person will not be selected by January 30, 2023; and

WHEREAS, Duffey has been identified as the best candidate for the interim appointment for this period in light of Duffey's more than 30 years of administrative and managerial experience in municipal government, including: Duffey's current service as Oakland's Director of Public Works (since 2021), as City Manager of the City of Grand Terrace (2015-2021), as City Manager of the City of Compton (2012-2014), as City Administrator of the City of Oroville (2010-2012), as Chief Assistant Director of the Yolo County Planning, Community Development and Public Works Department (2006-2010), as General Manager of the Integrated Waste Management Division of the City of Sacramento's Department of Utilities (2000-2006), and in positions with the City of Riverside (1992-2000) and San Bernadino County (1988-1992); and

WHEREAS, pursuant to Article IV, section 400 of the Charter of the City of Oakland, the City Administrator may be hired by contract for a term not exceeding four years, provided that no such contract shall prevent the Mayor removing the City Administrator at any time; and

WHEREAS, pursuant to Article III, section 305(e) of the Oakland City Charter, Mayor Thao has appointed Duffey as Interim City Administrator for the period of January 31, 2023 through midnight on March 12, 2023, subject to confirmation by the City Council and subject to Mayor's Thao's power under the City Charter to remove Duffey at any time; and

WHEREAS, Mayor Thao's appointment of Duffey as Interim City Administrator is for the purpose of providing continuity until the Mayor completes the recruitment process for a City Administrator; now, therefore, be it

RESOLVED: That the City Council hereby confirms Mayor Thao's appointment of G. Harold Duffey to serve as Interim City Administrator for the period of January 31, 2023 through midnight on March 12, 2023; and be it

FURTHER RESOLVED: That the Mayor hereby is authorized to execute an employment agreement with G. Harold Duffey for a monthly salary of thirty-one thousand, seven hundred twenty dollars and twenty cents (\$31,720.20) which is within the range for the City Administrator under the City's salary ordinance and including the terms set forth in Exhibit A to this Resolution, for the period of January 31, 2023 through midnight on March 12, 2023; and be it

FURTHER RESOLVED: That funding for the contract will be drawn from the budget for the vacant City Administrator position; and be it

FURTHER RESOLVED: That the agreement and other actions authorized hereunder shall be reviewed and approved by the City Attorney for form and legality prior to execution and filed with the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND
PRESIDENT FORTUNATO BAS

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____
ASHA REED
City Clerk and Clerk of the Council of
the City of Oakland, California

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EXHIBIT A

Employment Agreement

This Employment Agreement (“Agreement”) is made and entered into on January 31, 2023 by the City of Oakland (“City”) and G. Harold Duffey (“Duffey”). The City and Duffey are sometimes referred to in the Agreement individually as the “party” and collectively as the “parties.”

Section 1. Position.

The City agrees to appoint Duffey, City of Oakland Director of Public Works since 2021, as Interim City Administrator effective January 31, 2023. The purpose of Duffey’s appointment is to provide continuity in light of the expiration of City Administrator Reiskin’s employment agreement effective at midnight on January 30, 2023, while the Mayor completes the search for, and the Council confirms the appointment of a City Administrator. Pursuant to City Charter section 902(a), the City Administrator position is not a civil service classification and is not subject to the Oakland Civil Service Rules. In accord with City Charter section 504(m), Duffey shall devote Duffey’s entire time and attention to rendering services to the City required by the position of City and shall not be employed by, retained by, consult with, provide services to, or represent any other person or public or private entity.

Section 2. Compensation.

- A. Duffey shall be paid according to the current City Administrator salary ordinance range on a monthly basis a salary in the amount of thirty-one thousand, seven hundred twenty dollars and twenty cents (\$31,720.20). The monthly salary shall be payable in accordance with the City’s payroll policies less all required withholdings and deductions.
- B. Duffey will continue to receive employee benefits, including but not limited to medical, dental, vision and executive employee level benefits provided by the City.
- C. Duffey will accrue and receive compensation for any leave for which the City Administrator position is eligible in accordance with the provisions of the Memoranda Of Understanding (“MOU”) between the City and its various collective bargaining units, which may be modified by a successor MOU, or City policies, including but not limited to vacation, management, executive and sick leave, provided that Duffey’s accrual and compensation for such leave shall not be less than the compensation Duffey was accruing and receiving as City of Oakland Director of Public Works.
- D. Duffey will receive seven hundred and fifty dollars (\$750) Auto Allowance per month.

E. Duffey will continue to be enrolled in CalPERS retirement system.

Section 3. Deferred Compensation.

The City shall not provide any matching of deferred compensation.

Section 4. Term and Termination of Employment.

- A. This Employment Agreement shall be for the term commencing on January 31, 2023 and ending at midnight on March 12, 2023 ("Term"), subject to the parties acknowledgement and agreement that this Agreement will terminate at midnight on March 12, 2023 or such earlier date as the Mayor terminates this agreement, at which time Duffey will revert to Duffey's position of Director of Public Works.
- B. Pursuant to the Oakland City Charter section 305(e) and 400, the City Administrator serves at the Mayor's pleasure; however, the City Administrator may be hired by contract for a term not exceeding four years, provided that no such contract shall prevent the Mayor from removing the City Administrator at any time. Accordingly, the Mayor may terminate this agreement with Duffey at any time with or without good cause and without prior notice. If the Mayor terminates this Agreement, Duffey will be entitled solely to any accrued unpaid compensation provided under this Agreement up to the effective date of termination of the agreement, less all required withholdings and deductions; Duffey will not be entitled to any severance or any other payments of any kind; and Duffey will revert to Duffey's position as Director of Public Works.
- C. If Duffey decides to voluntarily terminate his position as Interim City Administrator, Duffey shall provide the City with two weeks (14 days) advance written notice unless the Mayor in the Mayor's sole judgment and discretion waives this notice requirement. Upon the effective date of termination of the Agreement, Duffey shall receive only the unpaid accrued compensation to which Duffey is entitled under this Agreement and will revert to Duffey's position as Director of Public Works.
- D. In the event Duffey dies during the Term of this Agreement, Duffey's beneficiaries or those entitled to his estate, shall be entitled to Duffey's accrued unpaid compensation up to the effective date of his death, less all required withholdings and deductions and any other compensation Duffey would be entitled to in Duffey's position as Director of Public Works.

Section 5. Auto Allowance and Parking.

During the Term of this Agreement, the City shall provide an assigned parking space at an adjacent garage. Duffey is entitled to reimbursement for parking expenses Duffey incurs in the course of performing Duffey's duties under this Agreement.

Section 6. Telecommunication.

During the Term of this Agreement, Duffey will continue to be eligible to receive at City expense a smart phone with email and cell service, internet service, and a laptop computer with the capacity for remote access.

Section 7. Professional Membership/Conference Attendance.

- A. The City will continue to pay for professional dues and/or subscriptions that the City heretofore has paid for Duffey as Director of Public Works.
- B. The City will pay for Duffey's travel and subsistence expenses for legitimate City business purposes, provided that Duffey provides documentation to support such expenses.

Section 8. Non-Disclosure of Confidential Information.

The Parties acknowledge that as Interim City Administrator, Duffey is the highest appointed official and an officer of the City. In that capacity Duffy is responsible for, among other things, executing and enforcing all laws and City policies and administering the City's affairs, controlling and administering the City's financial affairs, and supervising, purchasing, and contracting for the City. Duffey acknowledges that, solely by reason of entering into this Agreement and employment with the City, City Confidential Information, as defined below, may be discovered by or disclosed to Duffey. Duffey agrees that Duffey shall not at any time or in any manner, either directly or indirectly, whether or not for compensation, use, divulge, disclose or communicate to any person, firm, corporation or any other entity in any manner whatsoever any Confidential Information concerning any matters affecting or relating to the business of City except for the benefit of the City and only with the express written permission of City after the termination of his employment with the City. Such Confidential Information includes but is not limited to, attorney-client privileged communications, confidential and privileged closed session communications/records, the identification of any of City's licensees, sub-licensees, or any of the information concerning the business of the City, its manner of operation, its plans, and/or other proprietary data where such information is not publicly known and is not otherwise subject to public inspection or disclosure.

Section 9. Conflict of Interest.

Duffey agrees that during or after the Term of this Agreement, he will not, directly or indirectly, participate in or in any way represent, provide advice or input or any other information or assistance/advice to any party who is negotiating with the City any agreement, seeking award of any contract or seeking any grant, permit or any other benefits or who is in an adversarial posture with the City if Duffey was privy to and/or was involved in any manner in such matter or if his administration was responsible for evaluating, drafting, negotiating, making recommendations regarding such matter on behalf of the City during his employment with the City.

Section 10. Non-Disparagement.

Duffey agrees that during and after the Term of this Agreement, Duffey will not make disparaging remarks, nor take any action that is intended, or would reasonably be expected, to harm the City or its reputation or that would reasonably be expected to lead to unwanted or unfavorable publicity to the City, its officers, employees and officials. "Disparaging remarks, comments or statements" are those that impugn the character, honesty, integrity, morality or business acumen or abilities in connection with any aspect of the operation of the City.

Section 11. Interpretation of Agreement.

This Agreement shall be governed by, construed, and enforced pursuant to the laws of the State of California. Any dispute regarding the interpretation or application of this Agreement and any action to enforce or interpret this Agreement shall be resolved by binding arbitration. In the event of a dispute between Duffey and the City with respect to the interpretation of this Agreement or any alleged breach of this Agreement which cannot be settled amicably by agreement of the parties, the dispute shall be submitted to arbitration by a single arbitrator mutually agreed to by Duffey and the City. The award shall be final, binding and conclusive and may be entered in the highest court having jurisdiction. Each of the Parties in any arbitration pursuant to this paragraph shall be responsible for paying their own attorney's fees and costs. Any arbitration shall take place in the City of Oakland, County of Alameda. The Parties expressly consent to the jurisdiction and venue identified in this section and waives any defenses to lack of jurisdiction or venue.

Section 12. Entire Agreement.

This Agreement supersedes any and all agreements, either oral or written, between the parties with respect to the rendering of services to the City by Duffey. It contains all of the representations, covenants and agreements between the parties with respect to Duffey's services. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party that are not contained in this Agreement. No agreement, statement or promise not contained in this Agreement shall be valid or binding.

Section 13. Modification.

Any modification of this Agreement shall be effective only if it is in writing and signed by all parties to this Agreement.

Section 14. Severability.

If any part of this Agreement is determined to be invalid, unlawful or unenforceable, that part shall not be deemed to be part of this Agreement.

Section 15. Survival of Certain Provisions.

The provisions of Sections 8, 9, 10, and 11 shall survive the expiration or other termination of this Agreement.

Section 16. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall constitute an original document, and all of which, when taken together, shall constitute a single document. Fax signatures and electronically transmitted signatures (for example: pdf files) shall constitute original signatures for the purpose of this Agreement.

Section 17. Voluntary Execution.

Duffey acknowledges that Duffey has read and understands this Agreement, is fully aware of its legal effect, has had an opportunity to consult legal counsel and has entered into it freely and based on his own judgment.

CITY OF OAKLAND

Sheng Thao
Mayor

Date

Steven Falk
Interim City Administrator

Date

Approved as to Form and Legality:

Barbara J. Parker
City Attorney

Date

Resolution No. _____ C.M.S. – passed on January 31, 2023 (___ ayes)

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