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FILED
OFFICE OF THE CITY CLERK
OAKLAND

APPROVED AS TO FORM AND LEGALITY



CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

RESOLUTION NO. 89563 C.M.S.

INTRODUCED BY HONORABLE MAYOR SHENG THAO

RESOLUTION (1) CONFIRMING THE MAYOR'S APPOINTMENT OF STEVEN FALK AS INTERIM CITY ADMINISTRATOR FOR THE PERIOD COMMENCING ON MARCH 13, 2023 AND ENDING AT MIDNIGHT ON JUNE 30, 2023 OR SUCH EARLIER DATE AS THE COUNCIL CONFIRMS APPOINTMENT OF A CITY ADMINISTRATOR OR THE MAYOR TERMINATES THE INTERIM APPOINTMENT; AND (2) AUTHORIZING THE MAYOR TO EXECUTE AN EMPLOYMENT AGREEMENT ON BEHALF OF THE CITY WITH STEVEN FALK

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 of Reiskin's plans to 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 Steven Falk ("Falk") as Interim City Administrator, subject to City Council confirmation, commencing on March 13, 2023 and ending at midnight on June 30, 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 have been selected by March 13, 2023; and

WHEREAS, Falk has been identified as the best candidate for the interim appointment in light of Falk's more than 30 years of administrative and managerial experience in municipal government, including one year as City Manager of the City of Richmond (2019-2020), 23 years as City Manager of the City of Lafayette (1996-2019), Assistant City Manager of the City of Lafayette (1990-1996), Senior Finance Analyst (1988-1990), Budget Analyst (1986-1988); and

WHEREAS, Falk served as Interim City Administrator for the City of Oakland from March 12, 2020 through May 19, 2020, during which time Falk led the City Administration through the initial months of the global COVID pandemic and provided transition support to the Mayor and City Administration; and

WHEREAS, Falk also served as a Lecturer at the Goldman School of Public Policy at the University of California Berkeley and received numerous awards, including: 2019 Bay Area Metro Award from MTC/ABAG and was also featured on National Public Radio's story For One City Manager, Climate Becomes a Matter of Conscience; 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 Falk as the Interim City Administrator for the period of March 13, 2023 through midnight on June 30, 2023, subject to confirmation by the City Council and subject to Mayor's Thao's powers under the City Charter to remove Falk at any time; and

WHEREAS, Mayor Thao's appointment of Falk 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 Steven Falk to serve as the Interim City Administrator for the period of March 13, 2023 through midnight on to June 30, 2023; and be it

FURTHER RESOLVED: That Mayor Thao hereby is authorized on behalf of the City of Oakland to execute an employment agreement with Steven Falk 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 March 13, 2023 through midnight on June 30, 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:

JAN 31 2023

AYES - FIFE, ~~CHANG~~, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND ~~7~~ PRESIDENT FORTUNATO BAS

NOES - 0

ABSENT - 0

ABSTENTION - 0

excused - Gallo - 1

ATTEST:



ASHA REED

City Clerk and Clerk of the Council of
the City of Oakland, California

EXHIBIT A

Employment Agreement

This Employment Agreement ("Agreement") is made and entered into on March 13, 2023 by the City of Oakland ("City") and Steven Falk ("Falk"). The City and Falk are sometimes referred to in the Agreement individually as the "party" and collectively as the "parties."

Section 1. Position.

The City agrees to employ Falk as Interim City Administrator effective March 13, 2023. The purpose of Falk's appointment is to provide continuity in light of City Administrator Edward D. Reiskin's ("Reiskin") vacation of the position at midnight on January 30, 2023 when Reiskin's employment contract terminated and the necessity of appointing Interim City Administrators 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 accordance with City Charter section 904(m), Falk shall devote his entire time and attention to rendering services to the City required by the position of City Administrator. Accordingly it is expressly understood and agreed that during the term of this Agreement as defined below, Falk 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. Falk shall be paid according to the current City Administrator salary ordinance on a monthly basis 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. Falk will be eligible for employee benefits, including but not limited to medical, dental, vision and executive employee level benefits provided by the City. Falk is eligible for a health-in-lieu payment of three hundred dollars (\$300) per month upon completion and submission of the City's "Medical Waiver Form" to the Human Resources Department.
- C. Falk 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.
- D. Falk will receive seven hundred and fifty dollars (\$750) Auto Allowance per month.

E. Falk will 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 March 13, 2023 and ending at midnight on June 30, 2023 ("Term"), subject to the parties' acknowledgement and agreement that this agreement will terminate at midnight on June 30, 2023 or such earlier date as the Council confirms a City Administrator or the Mayor terminates Falk.
- B. Pursuant to Oakland City Charter sections 35(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 Falk at any time with or without good cause and without prior notice. If the Mayor terminates Falk with or without good cause, this Agreement shall terminate and Falk will be entitled solely to any accrued unpaid compensation provided under this Agreement up to the effective date of termination, less all required withholdings and deductions. Falk will not be entitled to any severance or any other payments of any kind.
- C. If Falk decides to voluntarily terminate his employment and this Agreement with the City, Falk shall provide the City with two weeks (14 days) advance written notice, unless the Mayor in his sole judgment and discretion waives this notice requirement. Upon the effective date of termination, Falk shall receive only the unpaid accrued compensation to which Falk is entitled under this Agreement.
- D. In the event Falk dies during the Term of this Agreement, Falk's beneficiaries or those entitled to Falk's estate, shall be entitled to Falk's accrued unpaid compensation up to the effective date of his death, less all required withholdings and deductions.

Section 5. Auto Allowance and Parking.

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

Section 6. Telecommunication.

During the Term of this Agreement, Falk will 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 not pay for professional dues and/or subscriptions.
- B. The City agrees to pay for Falk's travel and subsistence expenses for legitimate City business purposes, provided that Falk provides documentation to support such expenses.

Section 8. Performance Evaluations

The City may periodically review Falk's performance subject to a process, form, criteria, and format for the evaluation which shall be mutually agreed upon by the Mayor and Falk. At a minimum, the process shall include the opportunity for both parties to: (1) prepare a written evaluation, (2) meet and discuss the evaluation, and (3) present a written summary of the evaluation results. The final written evaluation should be completed and delivered to Falk within 5 business days of the evaluation meeting.

Section 9. Non-Disclosure of Confidential Information.

The Parties acknowledge that as Chief City Administrator, Falk is the highest appointed official and officer of the City. In that capacity Falk 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. Falk acknowledges that, solely by reason of entering into this Agreement and Falk's employment with the City, City Confidential Information as defined below, may be discovered by or disclosed to Falk. Falk agrees that Falk 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 10. Conflict of Interest.

Falk agrees that during or after the Term of this Agreement, Falk 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 Falk 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 11. Non-Disparagement.

Falk agrees that during and after the Term of this Agreement, Falk 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 12. 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 Falk 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 Falk 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 to 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 13. 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 Falk. It contains all the representations, covenants and agreements between the parties with respect to Falk'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 14. Modification.

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

Section 15. 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 16. Survival of Certain Provisions.

The provisions of Sections 9, 10, 11, and 12 shall survive the expiration or other termination of this Agreement.

Section 17. 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 18. Voluntary Execution.

Falk acknowledges that he 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 Falk's own judgment.

CITY OF OAKLAND

Sheng Thao Date
Mayor

Steven Falk Date
Interim City Administrator

Approved as to Form and Legality:

Barbara J. Parker Date
City Attorney

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

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