



Staff Report

Date: April 12, 2016

To: City Council

From: Valerie J. Barone, City Manager

Prepared by: Joelle Fockler, City Clerk
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Subject: **Authorize the Mayor to execute an Employment Agreement with Susanne Meyer Brown to serve as City Attorney**

Report in Brief

Following a nationwide recruitment for a permanent City Attorney conducted by Bob Murray and Associates, the City Council met in closed session and authorized an ad hoc subcommittee of Vice Mayor Leone and Councilmember Helix to negotiate an employment agreement with Susanne Meyer Brown, currently the City's Senior Assistant City Attorney. A proposed employment agreement with an annual salary of \$218,700 is attached for Council review and approval.

Recommended Action

Staff recommends that the City Council authorize the Mayor to execute the attached City Attorney Employment Agreement with Susanne Meyer Brown.

Analysis

Following the tragic death of former City Attorney Mark Coon late last year, the City Council hired Libow & Wellman Municipal Law to provide legal services on an interim basis equivalent to the work formerly performed by the City Attorney. The City has now completed its recruitment for a permanent, in-house city attorney. The City Council received 43 applications for the position, and interviewed four qualified finalists. The City Council determined that Susanne Meyer Brown offers the best experience and qualifications of any of the final candidates, and designated Vice-Mayor Leone and Councilmember Helix to negotiate an employment agreement with her and bring it to the City Council for approval.

City Council Agenda Report

Authorize the Mayor to execute an Employment Agreement with Susanne Meyer Brown to serve as City Attorney

April 12, 2016

Susanne Meyer Brown is a senior-level municipal attorney with nearly 20 years of legal experience, with a focus on municipal law, land use, and transactional matters. Ms. Brown received her law degree from the University of California, Hastings College of the Law, and her Bachelor of Arts degree (Magna Cum Laude) from Pomona College. Ms. Brown also holds a California Real Estate Broker's License.

Since 2012, Ms. Brown has served as legal counsel to the City of Concord Planning Commission, as well as numerous City departments, including the Planning Division, Engineering Division, Building Division, Economic Development Division, Housing/CDBG Division, Purchasing, Public Works, and Parks and Recreation. As part of her duties, Ms. Brown provides legal advice aimed at compliance with applicable municipal legal requirements, including the Brown Act, Public Records Act, ethics requirements, CEQA and land use laws.

Ms. Brown previously was a partner with the law firm of Burke Williams and Sorensen (2010-2012), and an attorney at McDonough, Holland and Allen (2004-2010), both of which advise and represent public agencies on a variety of legal matters. Ms. Brown has served as the acting Assistant Town Attorney for the Town of Moraga, and she handled two major asset transfer transactions for the cities of Vallejo and Alameda, involving interaction with the Department of the Navy.

As one of only two city officials, along with the City Manager, appointed directly by the City Council, it is appropriate for the City Attorney to be the second highest paid position in the City. The attached Employment Agreement provides for a 12 month term, renewing each month, at an annual salary of \$218,700. The City Attorney would generally receive the same benefits as other city executives and managers, and the same cost of living and benefits adjustments as other such personnel with the City. The City will also contribute 3% of salary to her 401k.

The agreement is terminable at the will of either party. Should the Council terminate the agreement for just cause, no severance payment is required. Otherwise, the employee is entitled to 9 months' severance pay in salary and health benefits.

Ms. Brown is in agreement with the terms of the contract and is looking forward to serving the City Council and city staff.

Financial Impact

Funds are available in the Budget for the proposed agreement.

Public Contact

The City Council Agenda was posted.

Attachments

1. Proposed Employment Agreement

CITY ATTORNEY EMPLOYMENT AGREEMENT

THIS AGREEMENT entered into on April 14, 2016 is by and between the CITY OF CONCORD, a municipal corporation (hereinafter referred to as "City") and SUSANNE MEYER BROWN, an individual (hereinafter referred to as "Employee").

WHEREAS, the City desires to employ the services of Employee as City Attorney for the City of Concord, and

WHEREAS, Employee desires to serve as the City Attorney for the City of Concord beginning April 14, 2016, and

WHEREAS, Employee and City acknowledge that Employee's employment with the City is regulated exclusively by this Agreement,

NOW, THEREFORE, in consideration of the promises and conditions set forth herein, the parties mutually agree as follows:

1. Employment. City agrees to employ Employee as City Attorney to perform the functions and duties specified in statute and in the ordinances and resolutions of the City, and to perform other legally permissible and proper duties and functions as the City Council may from time to time assign.

2. Obligations of Employee.

(a) Employee shall perform her duties to the best of her ability in accordance with the highest professional and ethical standards of the profession and shall comply with all general rules and regulations established by the City.

(b) Employee shall not engage in any activity which is or may become a conflict of interest, prohibited contract, or which may create an incompatibility of office as defined under California law. Employee shall comply fully with her reporting and disclosure obligations under regulations promulgated by the Fair Political Practices Commission (FPPC).

(c) Employee agrees to remain in the exclusive employ of the City during the term of this Agreement. Employee shall dedicate her full energies and qualifications to her employment as City Attorney, and shall not engage in any other employment except as may be specifically approved

in writing in advance by the City Council. The City Council may withhold approval with or without reason or cause.

3. Term. Effective April 14, 2016, Employee shall be employed as City Attorney for a term of twelve (12) months. The 12 month term shall automatically recommence on the first day of each succeeding month, unless terminated by either party in accordance with the provisions set forth in Paragraph 4, or until terminated by the event of death or permanent disability of Employee, as defined in the City's short and long term disability insurance policies as they may be amended from time to time.

4. Resignation and Termination.

(a) Employee may resign at any time and agrees to give City at least 30 days' advance written notice of the effective date of her resignation.

(b) City may at any time terminate Employee upon seven (7) days' advance written notice; provided, however, that termination may not occur within the one hundred eighty (180) day period immediately following the date of a general or special election at which a Council or Mayoral seat is up for election.

(c) The parties recognize and affirm that: (1) Employee is an "at will" employee whose employment may be terminated by the City with or without cause; and (2) there is no expressed or implied promise made to Employee for any form of continued employment. This Agreement is the sole and exclusive basis for an employment relationship between Employee and City. As a department head, Employee is not entitled to any of the rights set forth in the City's Personnel Rules.

(d) The decision to terminate shall be made in closed session and confirmed in a public meeting. In recognition of Employee's professional status and integrity, in the event of termination, Employee and the City Council shall prepare a joint public statement to be made by the City Council at the public meeting when termination is confirmed.

(e) Employee may choose to resign her office instead of being terminated if an action to terminate has been made in closed session. In such an event, the public announcement, as provided for in Paragraph 4(d) above, will note that Employee has resigned, and Paragraph 5 will remain otherwise applicable.

5. Severance Pay.

(a) In compliance with Government Code section 53260, if Employee is terminated by the City Council while still willing and able to perform the duties of City Attorney, or should Employee choose to resign instead of termination pursuant to Paragraph 4(e) above, City agrees to pay Employee a cash payment equal to nine (9) months' aggregate salary and the City's cost of nine (9) months' health benefits, including dental, life, and long term disability benefits; provided, however, that Employee shall not be entitled to health payments, including dental, life, and long term disability benefits, for any portion of any month in which such health, dental, life, or long term disability coverages remain in effect. For example, if health coverage for Employee remains in effect until the end of the month Employee is terminated, Employee shall not be entitled to a cash payment equivalent to the cost of such coverage. No leave may be accumulated during the severance period. Said cash payments may be paid, at the option of the Employee, in: (1) lump sum upon date of termination; (2) lump sum on January 1 of the calendar year following termination; or (3) nine (9) equal monthly installments. Said payment(s) shall be subject to required withholdings. Such payment shall release City from any further obligations under this Agreement (see Attachment A). If permissible under the City's policies, Employee may choose to have City continue any or all of such health, dental, life, and long term disability benefits coverage(s) for all or any portion of the 9 month severance period in lieu of a prorated portion of the severance amount attributable to such coverage(s), or until Employee finds other employment, whichever occurs first (Government Code section 53261).

(b) To be eligible for such severance pay, employee shall fulfill all of her obligations under this Agreement, and shall sign an Acknowledgment and Release of claims against the City. The Acknowledgment and Release shall be substantially as appended as Attachment A to this Agreement.

(c) Any severance pay received by Employee from City shall be fully reimbursed to City if Employee is convicted of a crime involving an abuse by Employee of her office or position.

(d) Notwithstanding the provisions of Paragraph 5(a)-(c), the Employee may be terminated for cause. As used in this Paragraph, "Cause" shall mean any or all of the following:

- (1) Willful destruction, theft, or misappropriation of City property;

- (2) Continued abuse of non-prescription and prescription drugs or alcohol that materially affects the performance of the Employee's duties;
- (3) Repeated and protracted unexcused absences from the Employee's office and duties;
- (4) Conviction of a crime involving moral turpitude or any felony, provided that Employee may be placed on administrative leave without pay should she be charged with a felony;
- (5) Employee is determined by a court of competent jurisdiction to be liable for damages for dishonesty or fraud;
- (6) Willful violation of any conflict of interest laws or regulations;
- (7) Fraud or dishonesty in securing this appointment;
- (8) Willful violation of State or Federal discrimination laws, including but not limited to discrimination on the basis of race, religious creed, color, national origin, ancestry, sexual orientation, physical or mental disability, marital status, sex or age concerning either members of the general public or City employee(s);
- (9) Willful or unlawful retaliation against any other City official or employee or member of the general public who in good faith reports, discloses, divulges, or otherwise brings to the attention of any appropriate authority any facts or information relative to actual or suspected violations of any law occurring on the job or directly related thereto; or
- (10) Refusal to comply with lawful performance goals, standards, directions, requirements or criteria established by the City Council.

(e) In the event that the Employee is terminated for Cause, the City shall have no obligation to (i) provide Employee more than twenty-four (24) hours notice of same or (ii) pay the Employee any severance payments of any sort. Upon termination pursuant to Paragraph 5(d), Employee shall be compensated in a lump sum for any benefits accrued to the date of termination to

the extent that such benefits are compensable under this Agreement.

(f) In the event the City terminates the Employee for Cause, the City and the Employee agree that neither party shall make any written or oral statements to members of the public or the press concerning the Employee's termination except in the form of a joint press release which is mutually agreeable to both parties. The joint press release shall not contain any text or information that would be disparaging to either party; provided, however, that either party may verbally repeat the substance of any such press release in response to inquiries by members of the press or public. This Paragraph shall not apply to statements made in the prosecution or defense of any litigation arising out of this Agreement.

6. Conditions. Employee further represents, acknowledges, and warrants that:

(a) Employee's execution of the Agreement extinguishes any right, claim, or entitlement she would have had to any other position with City, including any right or entitlement under the City's Civil Service Rules;

(b) Employee's employment rights are expressly and specifically limited to those specified herein;

(c) Employee has no entitlement to any position within the City; and

(d) The position of City Attorney is exempt from the provisions and protections of the City's Civil Service System; that such position may be eliminated at any time; that such employment is expressly "at will", serving at the pleasure of City; and that Employee is terminable with or without cause, as is otherwise provided in this Agreement.

7. Compensation.

(a) City agrees to pay Employee at the annualized base salary of \$218,700 for her services, payable at the same time as other employees of the City are paid and subject to customary withholding.

(b) Thereafter, to the extent allowed by law, Employee shall receive the same cost of living adjustments as provided to Executive Management employees of the City. In addition, the parties may agree at any time to other increases in compensation as may be warranted.

8. Benefits. Except as modified by this Agreement, City shall also provide Employee

the same benefits, including but not limited to health insurance or cash waiver, dental insurance, short and long term disability, holidays, PERS retirement, social security, employee assistance program, tuition reimbursement, as provided to other executive management employees, as a group, and as they may be amended, increased, or decreased. Employee shall also receive the same city contribution to her 401k deferred compensation plan as provided annually to the City's manager group, currently 3% of salary. Notwithstanding the foregoing, however, the Employee's general leave benefits described in paragraph 9 are granted in lieu of vacation and sick leave benefits provided to executive management employees.

9. Leave Benefits.

(a) Employee shall accrue twenty-five (25) days of paid time off per fiscal year. Such general leave shall be used for vacation, other personal leave, medical appointments, disability/illness, family emergency, and/or care of family members.

(b) Employee shall not be subject to any cap with respect to accrual of the paid time off/general leave referred to in subsection (a) of this Paragraph 9.

(c) Employee shall receive ten (10) days (80 hours) of administrative pay per fiscal year. There shall be no accumulation of such leave from year to year.

10. Performance Evaluation. The City Council shall review and evaluate the performance of Employee each year and set goals and objectives for the ensuing year which shall be memorialized in a Performance Plan. Such review and evaluation shall be in accordance with specific criteria developed in the Performance Plan in consultation with Employee and the City Council.

11. Assignment. The City Council is entering into this Agreement in consideration of the personal rendition of the services required by the City Attorney, and Employee shall not assign any of the duties, responsibilities, or obligations of this Agreement except with the express written consent of the City.

12. Exclusive Procedure for Redressing Disputes. The rights and remedies provided in this paragraph are the exclusive means for addressing disputes involving the employment of Employee Susanne Meyers Brown, including release from employment. Employee specifically recognizes and waives her right to initiate judicial and administrative claims against the City, with the

exception of workers' compensation claims. Should Employee believe that her release from employment or other adverse employment action is prohibited by federal or state law, any such claim shall be resolved through final and binding arbitration, and shall not be subject to any court or administrative complaint, process, or cause of action.

In the event of such dispute, the parties shall select an arbitrator to hear the dispute. Failing mutual agreement of an arbitrator, the parties shall request a list of qualified labor arbitrators from the American Arbitration Association and shall strike names until only one remains. Such individual shall serve as the arbitrator. The arbitration shall be conducted in accordance with California Code of Civil Procedure, §1280 et seq. and the decision of the arbitrator shall be final and binding. The parties will have the right to discovery in accordance with Section 1283.05 of the California Code of Civil Procedures.

If the arbitrator concludes that the City has violated Employee's rights, the arbitrator may not require reinstatement, nor may the arbitrator confer attorney's fees or punitive damages. The maximum remedy available shall be limited to the amount listed herein in reference to severance pay (Paragraph 5). The arbitrator shall have no authority to add to, subtract from, or to modify the terms of this Agreement.

13. Amendment. This Agreement may be amended, modified, or changed by the parties provided that said amendment, modification, or change is in writing and approved by both parties.

14. Notices. All notices required herein shall be sent first class mail to the parties as follows:

To **CITY:** City Council
c/o Mayor
City of Concord
1950 Parkside Drive, MS 30
Concord, CA 94519-2578

To **CITY ATTORNEY:** At her personal address on file
with the City

Notices shall be deemed effectively served upon deposit in the United States mail.

15. Entire Agreement. This Agreement contains the entire agreement between the

parties hereto. No promise, representation, warranty, or covenant not included in this Agreement has been or is relied on by any party hereto. This Agreement may only be amended by written instrument signed by Employee and the City Council.

16. Severability. If any provision of this Agreement is invalid or unenforceable, it shall be considered deleted here from and the remainder of the provision and of this Agreement shall be unaffected and shall continue in full force and effect.

17. Headings and Captions. The headings and captions appearing in this Agreement are inserted only as a matter of convenience and in no way limit or affect the substantive terms of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year written above.

By:

Susanne Meyer Brown
City Attorney

CITY OF CONCORD, a municipal corporation

By:

Laura Hoffmeister
Mavor

ATTEST:

By:

Joelle Fockler, MMC
City Clerk

APPROVED AS TO FORM:

By:

Brian M. Libow
Interim City Attorney

FINANCE DIRECTOR'S CERTIFICATION:

I CERTIFY THAT FUNDS ARE AVAILABLE
TO PAY THIS CONTRACT DURING FISCAL
YEAR 2015/2016

Karan Reid
Finance Director

This signature page is attached to the EMPLOYMENT AGREEMENT between the City of Concord and Susanne Meyer Brown is dated April 12, 2016.

Acknowledgment and Release

This is to confirm that the City of Concord (sometimes “City”) has promised to pay me severance in the amount of \$_____payable [in one lump sum, reduced by required withholdings, on or before _____] [in nine (9) equal monthly installments, commencing on _____with the last installment being due and payable on _____]. Subject to the provisions of Paragraph 3, below, this Acknowledgment and Release shall be effective on the date of execution shown below my signature; provided, however, that [if said lump sum is not paid to me] [all of the said installments are not paid to me] then this Acknowledgment and Release shall be deemed null and void and of no effect, *ab initio*.

1. I acknowledge that, in accepting such severance pay, I fully and forever release, discharge and covenant not to sue or otherwise institute or in any way actively participate in, or voluntarily assist in the prosecution of, any legal or administrative proceedings or inquiries against the City of Concord, including without limitation, the City of Concord’s departments, commissions, agencies, boards, subsidiaries, related entities, and current or former officers, directors, elected and appointed officials, agents, employees, or assigns (hereinafter collectively referred to as “City”), with respect to any matter arising out of, connected with, or related in any way to my employment with the City.

2. This is a complete general release that will forever bar me and my heirs, executors, administrators, assignees, and successors from pursuing any claims against the City relating to my employment or the termination thereof. I understand and agree that I am waiving my rights I may have had, now have, or in the future may have, to pursue any and all remedies available to me, under any cause of action arising directly or indirectly from my employment with the City, including, but not limited to: claims of wrongful discharge; constructive termination; emotional distress; defamation; retaliation; breach of contract; breach of covenant of good faith and fair dealing; violation of the provisions of the California Labor Code; claims to unemployment benefits and compensation; violation of the City’s ordinances, regulations, resolutions, personnel rules and other City enactments;

the Meyers-Milias-Brown Act; violations of any memoranda of understanding covering me; and claims under Title VII of the 1964 Civil Rights Act; the Civil Rights Act of 1991; the California Fair Employment and Housing Act; the Americans With Disabilities Act and comparable state statutes and regulations; the Family Medical Leave Act and comparable state statutes and regulations; any and all state and federal whistle-blower statutes and/or freedom of speech causes of action; the California and United States Constitution; the Equal Pay Act of 1963; the Age Discrimination in Employment Act of 1967 (“ADEA”); the Older Workers Benefit Protection Act; the Civil Rights Act of 1866; and any other laws and regulations relating to employment and/or discrimination.

3. With regard to my waiver of rights under the ADEA and Older Workers' Benefit Protection Act ("OWBPA") only (see 29 CFR Section 1625.22), such waiver shall not be deemed to waive rights or claims that may arise after I execute this Acknowledgment and Release (“Release”). I am waiving my rights to sue the City on any basis related to my age. I have been advised and have had an opportunity to consult with an attorney prior to signing this Release. I may revoke my waiver under the ADEA and OWBPA within seven (7) days following my execution of this Release. Such waiver will not become effective or enforceable until such revocation period has passed. I and the City acknowledge and recognize that under 29 U.S.C. section 626 and 29 Code Fed. Regs. Section 1625.22, I am entitled to have twenty one (21) days within which to review and consider this Release. However, under 29 Code Fed. Regs. Section 1625.22(e)(6), the City and I can agree to shorten this review period, and by this Release the City and I hereby agree to shorten said review period to seven (7) days. The City and I agree to shorten the review period because, among other reasons, I wish to expedite receipt of the consideration promised to me by the City so as to stabilize my transition from employment with the City to the pursuit of and securing other opportunities. Consequently, I have been given seven (7) days to consider this particular waiver and after reviewing and considering same, and upon the advice of my attorney, have voluntarily agreed to execute this Release.

4. I understand and expressly agree that this release extends to all claims of every nature and kind, known or unknown, suspected or unsuspected, past, present, or future, arising from or attributed to my employment with the City, and that any and all rights under Section 1542 of the California Civil Code or any analogous state law or federal law or regulation are hereby expressly waived. Section

1542 of the Civil Code of the State of California reads as follows:

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

5. The City and I agree and acknowledge that this Acknowledgment and Release constitutes the entire understanding and agreement of the parties and is the sole and entire agreement on this matter. This Acknowledgment and Release integrates all of the terms and conditions mentioned herein or incidental hereto, and no promises, inducements or agreements, other than those expressed herein, have been made in connection with this Acknowledgment and Release. The City and I further agree and acknowledge that this Acknowledgment and Release may not be modified except through a writing executed by the parties.

I have had the opportunity to consult with legal counsel relative to this Acknowledgment and Release. I have signed this Acknowledgment and Release voluntarily and willingly.

By: _____

Susanne Meyer Brown

Date executed: _____