



**CITY OF ELK GROVE
CITY COUNCIL STAFF REPORT**

AGENDA TITLE: Resolution of the City Council Authorizing the Mayor to Execute an Employment Agreement with the City Attorney

MEETING DATE: May 11, 2016

SUBMITTED BY: Mayor Gary Davis
Jacqui Langenberg, Human Resources Manager

DEPARTMENT HEAD: City Council

RECOMMENDED ACTION:

Adopt a resolution authorizing the Mayor to execute an employment agreement with Jonathan P. Hobbs for the position of City Attorney.

BACKGROUND INFORMATION:

The position of City Attorney is subject to appointment by the City Council. Jonathan P. Hobbs has served as City Attorney since August of 2011 through a contract with the law firm of Kronick, Moskovitz, Tiedemann & Girard ("KMTG"). Prior to that, and since City incorporation, Mr. Hobbs has served as legal counsel for the City in various capacities, including serving as the Planning Commission attorney, serving as Interim City Attorney in 2007, and providing special counsel services to the City as requested from time to time.

City Attorney legal services are currently paid on an hourly basis under the contract with KMTG. The City Council and the City Attorney now wish to bring the position of City Attorney in-house with the City pursuant to the proposed employment agreement.

ANALYSIS

Attached is the proposed employment agreement with the City Attorney. On behalf of the City, the agreement has been reviewed and approved by independent outside legal counsel from the law firm of Best, Best & Krieger.

Under the agreement, the City Attorney's starting base salary would be \$250,000 per year. Other compensation and benefits are set forth in the agreement, including health and retirement benefits. The City Attorney would be an at-will employee. The employment would be terminable at any time by either party, subject to the payment of one year's salary and benefits as severance if the City Council terminates the employment without cause. The proposed start date for the City Attorney as an in-house employee would be July 1, 2016, subject to adjustment, if necessary. Mr. Hobbs would serve as contract City Attorney through KMTG until the date of the transition in-house.

FISCAL IMPACT:

The cost of the City Attorney position is annually included in the City's budget. Bringing the position in-house should reduce the reliance on outside counsel and, in turn, should reduce legal expenses to the City in an estimated amount of not less than \$50,000 per year, and perhaps more.

ATTACHMENTS:

1. Resolution
 - A. Employment Agreement – City Attorney

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
AUTHORIZING THE MAYOR TO EXECUTE AN EMPLOYMENT AGREEMENT
WITH THE CITY ATTORNEY**

WHEREAS, the Office of the City Attorney has been established within the City of Elk Grove, and

WHEREAS, the City Council is authorized to appoint a City Attorney; and

WHEREAS, since August of 2011, Jonathan P. Hobbs has served as City Attorney through a legal services contract with the law firm of Kronick, Moskovitz, Tiedemann & Girard and has provided various other legal services to the City since incorporation of the City; and

WHEREAS, the City Council and the City Attorney now wish to bring the position of City Attorney in-house with the City.

NOW, THEREFORE, BE IT RESOLVED that the Mayor is authorized to execute an employment agreement with Jonathan P. Hobbs as City Attorney in substantially the form attached hereto as Exhibit A.

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 11th day of May 2016.

GARY DAVIS, MAYOR of the
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:

JASON LINDGREN, CITY CLERK

JENNIFER A. ALVES,
ASSISTANT CITY ATTORNEY

EXHIBIT A

CITY OF ELK GROVE



EMPLOYMENT AGREEMENT

CITY ATTORNEY

This Employment Agreement (“Agreement”) is made and entered into this 12th day of May, 2016, by and between the City of Elk Grove, California, a municipal corporation (“City”) and Jonathan P. Hobbs (“Employee”).

SECTION 1. DUTIES

City hereby employs Employee full-time as City Attorney to perform the functions and duties specified in the laws of the State of California, Ordinances and Resolutions enacted by City, as well as the applicable job description, and to perform such other duties and functions as the City Council shall from time to time assign.

Employee shall faithfully, diligently, and to the best of Employee's abilities, perform all duties that may be required under this Agreement. Employee agrees that Employee has a duty of loyalty and a general fiduciary duty to the City. Employee shall devote the whole of Employee's working time, skill, experience, knowledge, ability, labor, energy, attention, and best effort exclusively to the City's business and affairs. Employee shall not engage in any employment, activity, consulting service, or other enterprise, for compensation or otherwise, which is actually or potentially in conflict with, inimical to, or which interferes with the performance of Employee's duties. Further, Employee shall not, during the term of this Agreement, individually, as a partner, joint venture, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of the City of Elk Grove.

SECTION 2. TERM OF AGREEMENT

Employee shall commence work for the City as a City employee on July 1, 2016 (“the Effective Date”). This Agreement shall thereafter continue in full force and effect for an on-going and indefinite term until such time as either party terminates this Agreement pursuant to the provisions hereof. Employee's employment as City Attorney shall be at will. This means



that Employee may be terminated from his employment with the City at any time, without cause, and without notice, subject to the provisions hereof.

SECTION 3. SALARY

A. City agrees to pay Employee an annual base salary for services rendered in the amount of two hundred fifty thousand dollars (\$250,000) (“Base Salary”) payable in installments at the same time as other employees of the City are paid.

B. Employee shall receive annual compensation cost of living increases to the Base Salary at a rate equal to the Consumer Price Index – All Urban Consumers for the San Francisco-Oakland-San Jose, California region as published by the U. S. Department of Labor, Bureau of Labor Statistics, based on the amount of the City Attorney’s salary as may be adjusted from time to time. The City Attorney’s salary shall not be adjusted downward as a result of a decrease in the above-referenced Consumer Price Index.

C. In addition, the City Council may, in its sole discretion, grant increases and/or performance incentives to Employee. In accordance with Section 7 below, the City Council shall conduct periodic evaluations of Employee’s performance. However, the mere fact that the City Council conducts a performance evaluation of Employee shall not entitle Employee to any change in salary or benefits.

SECTION 4. BENEFITS

Employee shall receive the following benefits:

A. City shall provide one hundred percent (100%) of the cost for health, dental, and vision insurance for the Employee and for the Employee's dependents in the same manner, and at the same level, as City provides for such benefits in the City's flexible benefits and/or cafeteria plan for other Executive Management employees. Employee shall receive Armadacare or similar supplemental health coverage consistent with other Executive Management employee benefits.

B. City shall provide one hundred percent (100%) of the cost for life and disability insurance for the Employee in the same manner as City provides for such benefits in the City's flexible benefits and/or cafeteria plan for other Executive Management employees.

C. City shall provide one hundred percent (100%) of the cost of the Employer’s share of PERS contributions. Employee shall provide one hundred percent (100%) of the cost of the Employee’s share of PERS contributions.

D. City shall match 100% of Employee’s contributions to an IRC § 457, or equivalent, deferred compensation plan up to a maximum of 6% of Employee’s Base Salary. City shall also contribute an additional amount equivalent to 3% of Employee’s Base Salary to an IRC § 414(h)(2) deferred compensation plan, consistent with the Internal Revenue Code and



regulations governing such contributions. The 414(h)(2) contributions, although designated as employee contributions, shall be paid by the City as employer. Employee shall not be entitled to cash out the 414(h)(2) contributions.

E. Employee shall receive a car allowance of five hundred dollars (\$500.00) per month and a phone/technology allowance of one hundred dollars (\$100.00) per month.

SECTION 5. LEAVE

A. Annual Leave. City shall include Employee in its Annual Leave Program and provide him with an annual accrual of two hundred forty (240) hours of Annual Leave. At the commencement of his employment with the City, Employee shall be credited with one hundred twenty (120) hours of Annual Leave. Employee shall accrue Annual Leave in the manner described in the City's Personnel Rules and Regulations and shall be subject to the cap on accrual of such leave as described therein. Employee shall not accrue Annual Leave in excess of four hundred eighty (480) hours. In May and November of each year, Employee shall be entitled to sell back to City up to eighty (80) hours of Annual Leave (for a total of one hundred sixty (160) hours annually).

B. Administrative Leave. On July 1 of each year, Employee shall receive eighty (80) hours of Administrative Leave for that fiscal year. Employee shall not have the right to accrue Administrative Leave from year to year. Employee shall be entitled to sell back to City up to 50% of Administrative Leave annually, or such greater percentage as may be authorized by the City's Personnel Rules and Regulations.

SECTION 6. TERMINATION OF AGREEMENT; POSSIBLE SEVERANCE

A. Termination by City. Employee understands and agrees that Employee has no constitutionally-protected property or other interest in Employee's employment as City Attorney. Employee understands and agrees that Employee works at the will and pleasure of the City Council, and that Employee may be terminated, or asked to resign, at any time, with or without cause or advance notice. Notice of termination shall be provided to Employee in writing. "Termination," as used in this Agreement, shall also include: (i) a request by a majority of the City Council that Employee resign; (ii) a material reduction in the powers and authority of the City Attorney (excluding placement on paid administrative leave).

B. Termination by Employee. Employee may voluntarily terminate employment at any time by giving not less than thirty (30) days' notice.

C. Severance Benefit. If Employee is asked to resign by a majority of the City Council or is terminated as City Attorney without cause, then Employee shall receive a one-time, lump sum cash payment equivalent to the sum of Employee's then-current monthly salary multiplied by twelve (12) and the cash value of Employee's then-current monthly medical



premiums multiplied by twelve (12) as of the effective date of termination of employment. Eligibility for such severance payment is expressly conditioned upon Employee's execution of (i) a waiver and release of any and all of Employee's claims against City, and (ii) a covenant not to sue. All normal payroll taxes and withholdings as required by law shall be made with respect to any amounts paid under this Section.

All severance payments under this section and any legal criminal defense payments under section 10, if any, are subject to, and shall be interpreted to comply with, the limitations set forth in California Government Code section 53260, concerning the maximum cash settlement in an employment contract, and California Government Code sections 53243 through 53243.4, limiting and/or restricting payment or continued retention of severance payments and/or legal criminal defense payments should Employee be convicted of a crime involving an abuse of office or position. "Abuse of office or position" for purposes of this Agreement, shall be as defined in Government Code section 53243.4 which provides: "'abuse of office or position' means either of the following: (a) An abuse of public authority, including, but not limited to, waste, fraud, and violation of the law under color of authority. (b) A crime against public justice, including, but not limited to, a crime described in Title 5 (commencing with Section 67) or Title 7 (commencing with Section 92) of Part 1 of the Penal Code."

D. Ineligibility for Severance (Termination for Cause; Voluntary Resignation). Notwithstanding the terms in this Section 6, Employee shall not be eligible to receive, and the City shall not be obligated to pay, and shall not pay, any severance amounts or continue any benefits, if Employee is terminated for Cause. Cause, as used herein, shall mean, and be limited to, a termination for any of the following reasons: (i) conviction of a felony or other crime involving moral turpitude (ii) fraud, material dishonesty, or gross negligence in the Employee's performance of his duties as City Attorney; (iii) death or permanent disability rendering Employee unable to perform the essential functions of the job; (iv) civil liability for a violation of statute or law constituting misconduct in office. In the event the City Council terminates Employee for Cause, Employee's sole remedy shall be a judicial action in declaratory relief to determine whether there was Cause. If the court determines there was no Cause, Employee shall receive the severance pay provided in this Section 6, but no other damages, litigation costs or expenses, or attorneys' fees. Further, City shall not be obligated to pay any severance amounts or continue any benefits in the event Employee voluntarily resigns his employment.

SECTION 7. PERFORMANCE EVALUATION

Annually, or at such other time as desired by the City Council, the City Council and Employee shall meet to evaluate the performance of Employee. The City Council may, in its sole discretion, use any professional assistance in establishing standards, including but not limited to an agreed-upon facilitator. Nothing in this provision shall be construed to require City Council to grant Employee pay increases based on the performance standards, if any, mentioned above nor to limit in any manner the discretion of City Council to grant or not pay increases. Nor shall anything in this Agreement be construed to require City Council to evaluate Employee solely upon the performance standards, if any, mentioned above, nor to limit the discretion of



City Council to evaluate Employee as it deems necessary in the sole discretion of the City Council.

SECTION 8. PROFESSIONAL DEVELOPMENT, PROFESSIONAL ASSOCIATIONS, AND OUTSIDE ACTIVITIES

City shall pay Employee's annual State Bar of California membership dues. During appointment as City Attorney, and subject to the City Council's budgetary approval of funds for such purpose, Employee may attend and/or participate in professional activities, including, but not limited to, the State Bar of California conferences and events, Sacramento County Bar Association conferences and events, the League of California Cities conferences and events, and such other national, regional, and local associations, provided that Employee's ability to perform his duties as City Attorney is not compromised. Employee shall be paid his regular salary and benefits while traveling to, attending, or participating in professional activities, and shall be entitled to expense advances and/or reimbursement in accordance with City policy applicable to other employees. Employee shall be entitled to reimbursement for the actual costs of the following expense categories that he incurs as a result of the professional development activities authorized in this section: airfare, rental car, conference fees, meals, and lodging, consistent with City policy and subject to annual budget appropriations. Employee shall notify the City Council in writing in advance of any absences of more than one day related to such professional development activities. If Employee wishes to engage in other outside professional activities (e.g. teaching, consulting, expert witness testimony, speaking, or other non-City connected business for which compensation is paid), he shall seek and obtain express prior consent of the City Council. Employee will take personal leave time for all such outside activities of this nature should such activities interfere with the City Attorney's regular City duties.

SECTION 9. REIMBURSEMENT FOR EXPENSES

Employee shall be entitled to reimbursement of reasonable business-related expenses subject to the requirements and restrictions of generally-applicable City reimbursement policies.

SECTION 10. BONDING/INDEMNIFICATION

City shall bear the full cost of any fidelity or other bonds required of Employee under any law or ordinance. The City shall defend, hold harmless, and indemnify Employee against any tort, civil rights, personnel, discrimination, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act of omission occurring in the performance of Employee's duties in accordance with the provisions of California Government Code Section 825 and provide a defense in accordance with California Government Code Section 995. The City may decline to defend and/or indemnify only as permitted by the California Government Code. The City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment therefrom. This provision shall survive any termination or resignation of the Employee or expiration of this Agreement. This section is not intended to provide any rights in excess of those rights provided by state law.



SECTION 11. MISCELLANEOUS

A. City, in consultation with Employee, shall fix any other terms and conditions of employment as City may determine from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Municipal Code, or any other law. No such terms and conditions shall be binding upon the parties to this Agreement unless and until they are reduced to writing and signed by both parties. Neither party may rely upon such terms and conditions without such an executed writing.

B. Unless otherwise specifically provided herein, all provisions of the Municipal Code and regulations and rules of City relating to vacation and sick leave, retirement system contributions, holidays and other fringe benefits and working conditions as they now exist or hereafter may be amended, also shall apply to Employee as they would to other City Executive Management employees. Except for terms expressly addressed by this Agreement, all other terms of the City's Personnel Rules and Procedures and benefits programs shall apply. To the extent there is an inconsistency between the Personnel Rules and Procedures or benefits programs, the terms of this Agreement shall apply.

C. In the event that Employee voluntarily resigns his position with Employer, Employee shall provide a minimum of thirty (30) days written notice unless the parties agree otherwise. Except as otherwise set forth herein, if Employee voluntarily resigns his employment, he shall not be entitled to any severance pay nor continued compensation and benefits except as otherwise required under state or federal law.

SECTION 12. NOTICES

Notices pursuant to this Agreement shall be in writing given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

CITY

Mayor
City of Elk Grove
8401 Laguna Palms Way
Elk Grove, CA 95758

EMPLOYEE

Jonathan P. Hobbs, City Attorney
City of Elk Grove
8401 Laguna Palms Way
Elk Grove, CA 95758

or

Employee's home address on file with the City's Human Resources Department.



Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to the civil judicial process. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service or into a traceable overnight delivery service (e.g. Federal Express or similar).

SECTION 13. GENERAL PROVISIONS

A. The text herein shall constitute the entire agreement between the parties, and supersedes any and all other writings, documents, correspondence, agreements or understandings, either oral or in writing, between the parties hereto with respect to the employment of Employee by City. Each party to this Agreement acknowledges that no representation, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding on either party.

B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee.

C. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

D. Employee may not assign this Agreement in whole or in part.

E. This Agreement shall be governed by the laws of the State of California. The venue for any and all litigation arising from this Agreement shall be in the state superior or federal courts located in Sacramento County, California.

F. This Agreement may be modified or amended, or any of its provisions waived, only by a subsequent written agreement executed by each of the parties. The parties agree that this requirement for written modifications cannot be waived and any attempted waiver shall be void.

G. This Agreement shall be deemed to incorporate by reference the provisions of Sections 53243 *et seq.* of the Government Code, as it may be amended or renumbered.

H. Employee and City agree and acknowledge that the provisions of this Agreement have been arrived at through negotiation and that each party has had a full and fair opportunity to revise the provisions of this Agreement and to have such provisions reviewed by legal counsel, and that both parties agree that they either have had the provisions of this Agreement reviewed by legal counsel or have voluntarily chosen not to do so. Employer expressly agrees and acknowledges that the City Attorney was not representing the City of Elk Grove regarding the



terms of this Agreement. The parties agree any ambiguities in construing or interpreting this Agreement shall not be resolved against the drafting party. The titles of the various sections are merely informational and shall not be construed as a substantive portion of this Agreement.

IT IS SO AGREED:

“EMPLOYEE”

JONATHAN P. HOBBS

IT IS SO AGREED:

CITY OF ELK GROVE,
a Municipal Corporation

By: _____
GARY DAVIS
Mayor, City of Elk Grove

APPROVED AS TO FORM:

By: 
STACEY N. SHESTON
Special Legal Counsel for the City

ATTEST:

By: _____
JASON LINDGEN
City Clerk, City of Elk Grove