



Agenda Report

September 22, 2008

TO: CITY COUNCIL

FROM: MAYOR

SUBJECT: APPROVAL OF AGREEMENT FOR EMPLOYMENT BETWEEN THE CITY OF PASADENA AND MICHAEL J. BECK

RECOMMENDATION

It is recommended that the City Council approve the attached Agreement for Employment between the City of Pasadena and Michael J. Beck for his services as City Manager effective October 1, 2008, and approve a journal voucher transferring necessary funds from the General Fund Personnel Reserve to the City Manager's Office budget.

BACKGROUND

The attached agreement provides for the employment of Michael J. Beck in the position of City Manager, effective October 1, 2008. In recent weeks discussions have been completed with Mr. Beck, and the attached represents the agreement reached between the parties.

FISCAL IMPACT

The annual cost of the Agreement is estimated to be approximately \$336,500, including salary and associated benefits. Approximately \$315,000 was appropriated in the FY 2009 Operating Budget for the position of City Manager; staff estimates that approximately \$21,500 in additional funds will be required for the remainder of FY 2009.

Respectfully Submitted,

BILL BOGAARD
Mayor

CONTRACT NO. _____

EMPLOYMENT AGREEMENT - CITY MANAGER

MICHAEL J. BECK

THIS AGREEMENT is entered into on September 23, 2008, by and between the CITY OF PASADENA, a charter city and a municipal corporation of the State of California, herein referred to as "CITY," and Michael J. Beck, herein referred to as "EMPLOYEE."

WITNESSETH:

WHEREAS, it is the desire of CITY to retain the services of EMPLOYEE as City Manager and the desire of the EMPLOYEE to serve in that capacity; and

WHEREAS, it is the desire of CITY to provide certain benefits, establish certain conditions of employment and to set certain working conditions of EMPLOYEE; and

WHEREAS, it is the desire of CITY to: (1) provide inducement for EMPLOYEE to remain in CITY'S employment; (2) make possible full work productivity by providing EMPLOYEE with assurances regarding his employment; and (3) provide an equitable process for terminating EMPLOYEE'S services if that should occur,

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES, COVENANTS AND CONDITIONS HEREIN CONTAINED, THE PARTIES HERETO AGREE AS FOLLOWS:

1. EMPLOYMENT:

CITY hereby agrees to employ EMPLOYEE as City Manager of the City of Pasadena in an at-will capacity, subject to the terms of the Agreement, to perform the functions and duties specified in the City Charter, the Pasadena Municipal Code and the Resolutions and Motions of

the City Council, and to perform such other legally permissible duties and functions as the City Council shall from time to time assign.

2. TERM:

This Agreement shall commence as of October 1, 2008, and shall remain in effect for a term of four (4) years or until earlier terminated by either party, as provided in Section 7, below.

3. COMPENSATION:

A. CITY agrees to pay EMPLOYEE a base salary of \$265,000 (Two Hundred Sixty Five Thousand and No/100 Dollars) annually, subject to legally permissible or required deductions, prorated and paid on CITY'S normal paydays.

B. Upon satisfactory performance and achievement of objectives, as determined by the City Council during the first performance review provided in Section 4, below, EMPLOYEE will be eligible to receive a base salary adjustment resulting in a total base salary not to exceed \$284,000 (Two Hundred Eighty-Four Thousand and No/100 Dollars), effective April 13, 2009. Thereafter, EMPLOYEE'S base salary shall be reviewed by the City Council during the performance review process. Salary increases resulting from such reviews shall be at the discretion of the City Council, in consultation with EMPLOYEE.

C. Beginning September 2010 and annually thereafter, EMPLOYEE shall be eligible for a lump-sum incentive bonus, at the sole discretion of the City Council, for performance substantially above expectations. The City Council will establish specific criteria as the basis of any bonus that may be awarded and such criteria will be delivered in writing to EMPLOYEE before December 31, 2008. EMPLOYEE and CITY agree that the City Council is not obligated to grant an incentive bonus, and that no assurances have been given to EMPLOYEE that any incentive bonus will be granted during the term of this Agreement.

D. Except as otherwise provided in this Agreement and for the entire term of this Agreement, EMPLOYEE shall also receive no less than all other benefits that are generally applicable to non-safety Executive Committee members as of the effective date of this Agreement. Subsequent modifications to benefits will be considered by the City Council periodically as appropriate. For the purposes of this Agreement, benefits include, but are not limited to, retirement benefits, medical insurance, life insurance, sick leave, disability insurance and salary continuation, professional development allowance and expenses, holidays, vacation, bereavement leave, payment of EMPLOYEE'S contribution to the Public Employees' Retirement System, and reimbursement by EMPLOYEE of 3.6% of salary for the sharing of costs of enhanced benefits.

1) Health Insurance/Employee Option Benefit Fund: In addition to the statutory minimum contribution for health insurance under the Public Employees' Medical and Hospital Care Act (PEMHCA or PERS Medical Program) and base dental care program contributions, CITY will provide EMPLOYEE with an optional benefit fund contribution of \$1,000 per month. The contribution may be used to pay health premiums (medical, dependent dental and vision), allocated to the EMPLOYEE'S deferred compensation account or for other options, as provided under the CITY'S flexible benefits plan.

2) Life Insurance: CITY will provide life insurance coverage to EMPLOYEE in an amount equal to one and one-half times his annual base salary, as determined according to the terms and conditions of the applicable plan document. EMPLOYEE may purchase additional coverage at EMPLOYEE'S expense, if available.

3) Long Term Disability: CITY will provide EMPLOYEE with Long Term Disability insurance which pays a benefit of 66 ⅔% of EMPLOYEE'S monthly salary,

subject to a maximum benefit of \$8,000 per month and the other limits, terms and conditions provided under the applicable plan document. EMPLOYEE may purchase supplemental benefits at EMPLOYEE'S expense, if available.

4) Annual Medical Examination: EMPLOYEE will be eligible for an annual medical examination provided through the CITY, at CITY expense.

5) Retirement: EMPLOYEE will be enrolled as a miscellaneous member in CITY'S retirement plan with the California Public Employees' Retirement System ("PERS"), subject to the applicable benefit formula, terms and conditions provided in the contract between CITY and PERS and also subject to applicable law and regulations.

6) Deferred Compensation: EMPLOYEE shall receive a contribution from the CITY for deferred compensation in an amount equal to 100% of the maximum annual contribution to the CITY'S deferred compensation plan permitted under the rules promulgated by the United States Internal Revenue Service which are applicable to the CITY'S § 457 deferred compensation program. The annual contribution to EMPLOYEE'S deferred compensation account shall be made in bi-weekly installments, concurrent with the CITY'S regular payroll, and shall be prorated for the number of months or parts of months worked hereunder should this Agreement not be in effect for an entire calendar year. EMPLOYEE'S rights and interests in the amounts contributed by CITY hereunder shall immediately vest in EMPLOYEE upon payment by CITY into his deferred compensation account, and EMPLOYEE shall be entitled to payment of the full amount of contributions made on his behalf by CITY and all earnings thereon under the terms of the CITY'S Deferred Compensation Plan upon termination of his employment.

7) Vacation: EMPLOYEE will receive 184 hours of vacation time annually, prorated and credited according to CITY'S normal procedures. EMPLOYEE will begin accruing at the specified rate upon reporting for and actually beginning employment and will not otherwise be eligible for an immediate grant or bank of hours. There will be no maximum accrual limit meaning that EMPLOYEE may carry-over all properly accrued and unused vacation time from year to year. At EMPLOYEE'S election, EMPLOYEE may cash-out not more than 120 hours of properly accrued and unused vacation time if EMPLOYEE has used at least two weeks (80 hours) of vacation time during that calendar year.

8) Sick Leave: EMPLOYEE will be granted an initial sick leave bank of 80 hours upon reporting for and actually beginning employment, in addition to annual accrual. EMPLOYEE will be granted 80 hours of sick leave annually, credited according to CITY'S normal procedures. EMPLOYEE'S sick leave accrual will be subject to a maximum of 960 hours. Sick leave may not be cashed-out, but may be converted to PERS service credit at retirement, subject to the CITY'S contract with PERS and to applicable law and regulations.

9) Management Leave: EMPLOYEE may be granted not more than 80 hours of management leave annually. Management leave may not be cashed-out or carried over to subsequent years.

10) Vehicle Allowance/City Vehicle: The CITY will pay a monthly vehicle allowance of \$500. EMPLOYEE will primarily use EMPLOYEE'S personal automobile for CITY business, and will use CITY automobiles on an exception basis only. This provision does not in any way restrict the EMPLOYEE'S use of his personal automobile for personal use. In lieu of the automobile allowance, EMPLOYEE may opt to receive a city-

owned vehicle for EMPLOYEE'S use for CITY business and personal in-state use. CITY will provide fuel, maintenance and insurance for a CITY-owned vehicle.

11) Temporary Rental Housing Assistance: A temporary rental housing assistance benefit will be provided, the form of which is to be determined, to facilitate EMPLOYEE'S presence in the community and his participation in civic and community affairs. The form of the benefit will be mutually agreed by CITY and EMPLOYEE during the first six months of employment. Failure of the parties to agree to a temporary rental housing assistance benefit will not constitute breach of this Agreement, will not entitle EMPLOYEE to a substitute benefit and will not entitle EMPLOYEE to severance pay under Section 7., below. In the event of such failure to reach agreement, this Agreement will otherwise remain in full force and effect without any continuing obligation of the parties to further discuss or consider a temporary rental housing assistance benefit.

12) Additional Equipment/Business Services: CITY will provide EMPLOYEE with a cellular telephone and necessary computer equipment and support and will pay EMPLOYEE'S monthly telephone, internet access and email expenses incurred for CITY business. EMPLOYEE will reimburse CITY for any personal use of said telephone, internet access and email, if any.

13) The City Council may authorize and grant to EMPLOYEE additional compensation or benefits in the future as may be deemed appropriate. Such additional compensation or benefits shall be considered to be within the terms of this Agreement, as if they had been specifically amended into this Agreement, to be applied prospectively, unless City Council acts to provide otherwise.

4. PERFORMANCE EVALUATION

A. The City Council will conduct EMPLOYEE'S first performance review after six months of employment. Subsequent performance reviews will be conducted in September of each year. EMPLOYEE'S evaluation may include joint meetings with the full City Council or any Committee of City Council members designated for this purpose, and may include peer and subordinate input. Said review and evaluation shall be in accordance with specific criteria developed jointly by the City Council and EMPLOYEE. City Council may add to or delete from said criteria as the City Council may from time to time determine, after consultation with EMPLOYEE. The City Council shall provide an adequate opportunity for EMPLOYEE to discuss his evaluation with the City Council.

B. Annually, the City Council and EMPLOYEE shall define, in writing, such specific performance objectives as they determine are necessary for the proper operation of CITY. The objectives must be reasonably attainable within the time limitations agreed to by CITY and EMPLOYEE and within the fiscal constraints of the annual operating and capital budgets and appropriations approved by CITY. Any unforeseen circumstances which may arise which would affect the achievement of the goals and objectives shall be identified in the consideration of EMPLOYEE'S annual evaluation.

C. The City Council and/or EMPLOYEE may desire additional performance evaluations between anniversary dates. Such evaluations shall be less formal and may be conducted without written comments or reports.

5. NOTIFICATION OF LEAVE FROM OFFICE:

EMPLOYEE shall provide the Mayor with reasonable notice prior to taking two or more consecutive vacation or management leave days off.

6. PROFESSIONAL DEVELOPMENT EXPENSES:

A. In addition to the \$1,000 personal development allowance granted to Executive Committee members, CITY agrees to budget and to pay for the professional dues and subscriptions necessary to EMPLOYEE'S participation in national, regional, state and local associations and organizations which are necessary and desirable for his continued professional participation, growth and advancement and for the good of the CITY.

B. CITY agrees to budget and to pay for the travel and subsistence expenses of EMPLOYEE for professional and official travel, meetings and occasions adequate to continue the professional development of EMPLOYEE and to adequately pursue necessary official and other functions for CITY, including but not limited to the Annual Conference of the International City Management Association, the League of California Cities, and such other national, regional, state and local government groups and committees thereof on which EMPLOYEE serves as a member. EMPLOYEE shall pay for all expenses of his spouse if his spouse accompanies him on such trips.

C. CITY agrees to budget and to pay for the travel and subsistence expenses of EMPLOYEE for short courses, institutes and seminars that are necessary for his professional development and for the good of the CITY as determined by the Mayor, in his or her reasonable discretion.

7. TERMINATION AND SEVERANCE PAY:

A. EMPLOYEE is employed at the pleasure of the City Council and is an at-will employee. Subject to the procedural requirement of the City Charter and this Agreement, the City Council may terminate the employment relationship and this Agreement at any time, with or without cause.

B. The CITY will provide the EMPLOYEE with no less than a 60-day notice of intention to terminate his employment. Such notice can be provided at any time. Should the City Council choose to dismiss the EMPLOYEE during the term of this Agreement, the CITY shall compensate the EMPLOYEE with an amount equivalent to one year's base salary in effect at the time of said dismissal. If the EMPLOYEE is terminated before the expiration of the first 45 days after the installation of City Council members as a result of a regular municipal election, EMPLOYEE'S one year severance pay will be increased by the amount of time between the notice and the expiration of the 45-day period. For example, if notice of termination was provided on the tenth day after said installation, the severance period would be one year plus 35 days. Should EMPLOYEE voluntarily resign the CITY will not be obligated to pay any severance pay upon his termination. Should EMPLOYEE be convicted of a felony, or have engaged in acts of malfeasance or misfeasance in the performance of his job duties, or have engaged in any act of moral turpitude, CITY will not be obligated to provide EMPLOYEE with more than forty-eight (48) hours notice of its intention to terminate his employment, and shall not be obligated to pay any severance pay upon his termination.

C. Should EMPLOYEE terminate his employment with CITY, he shall provide at least 60 days notice in writing to the City Council.

D. If the CITY provides notice in accordance with Subparagraph A of this Section 8, EMPLOYEE shall be compensated at full pay and benefits until his scheduled departure. If so requested by the City Council, EMPLOYEE shall continue to use his best efforts and skills to perform his duties during this period and shall fully cooperate with any successor designated by City Council.

8. INDEMNIFICATION:

CITY shall defend, hold harmless and indemnify EMPLOYEE against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the course and scope of EMPLOYEE'S duties, in accordance with the provisions of California Government Code Section 825, and shall provide a defense in accordance with Government Code Sections 995, *et seq.*, subject to the limitations and qualifications contained in said statutes. CITY may compromise and settle any such claim or suit and pay the amount of any settlement or judgment resulting therefrom. The obligation to defend and indemnify EMPLOYEE shall survive the termination or expiration of this Agreement as to liability incurred during the term hereof.

9. BONDING:

CITY shall bear the full costs of any fidelity or other bonds required of EMPLOYEE under any law, ordinance, regulation, contract or covenant.

10. OTHER TERMS AND CONDITIONS OF EMPLOYMENT:

A. The City Council, in consultation with EMPLOYEE, may establish other terms and conditions of employment, as it may determine from time to time are in the best interests of the CITY, 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 City Charter or any other law or regulation.

B. All provisions of the City Charter, the Pasadena Municipal Code, and the regulations and rules of CITY relating to the use or application of vacation and sick leave, retirement and pension system contributions, holidays and other allowances, benefits and terms

of employment as they now exist also shall apply to EMPLOYEE as they would to non-safety Executive Committee members of CITY.

11. NOTICES:

Any notice required or permitted by this Agreement shall be given in writing and by personal delivery or prepaid first class, registered or certified mail, and addressed as follows:

TO CITY: City Clerk
 City of Pasadena
 100 North Garfield Avenue
 Pasadena, CA 91101

TO EMPLOYEE: Michael J. Beck
 City Manager
 100 North Garfield Ave.
 Pasadena, CA 91101

Any such notices shall be deemed given upon delivery, if personally delivered, or, if mailed, upon receipt or upon expiration of three (3) business days from the date of posting, whichever is earlier. Either party may change the address at which it desires to receive notice upon giving written notice of such request to the other party.

12. GENERAL PROVISIONS:

A. The text herein shall constitute the entire Agreement between the parties.

This Agreement sets forth the final, complete and exclusive agreement between CITY and EMPLOYEE relating to the employment of EMPLOYEE by CITY. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The foregoing notwithstanding, EMPLOYEE acknowledges that, except as expressly provided in this Agreement, his employment is subject to CITY'S generally applicable rules, policies and regulations, including those pertaining to employment matters, such as rules

and regulations addressing equal employment opportunity, sexual harassment and violence in the workplace.

B. This Agreement is not assignable by either party.

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

D. This Agreement shall become effective upon signing by both parties and approval of the City Council.

E. 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.

F. Any dispute between the parties regarding the interpretation or application of any provision of this Agreement shall be referred to mediation by a mutually acceptable mediator. Should said mediation fail to resolve such issues, they shall be arbitrated in accordance with the Rules of the American Arbitration Association.

G. EMPLOYEE acknowledges that he has had the opportunity and has conducted an independent review of the financial and legal effects of this Agreement. EMPLOYEE acknowledges that he has made an independent judgment upon the financial and legal effects of this Agreement and has not relied upon any representation of CITY, its officers, agents or employees other than those expressly set forth in this Agreement.

IN WITNESS WHEREOF, CITY has caused this Agreement to be signed and duly executed on its behalf by its Mayor, and duly attested by its City Clerk, and EMPLOYEE has signed and executed this Agreement, as of the day and year first above written.

CITY OF PASADENA,
A municipal corporation

MICHAEL J. BECK, EMPLOYEE

BILL BOGAARD, MAYOR

ATTEST:

MARK JOMSKY, CITY CLERK

APPROVED AS TO FORM:

MICHELE BEAL-BAGNERIS
CITY ATTORNEY