



Council Meeting: September 30, 2008

SUBJECT: Appointment of City Manager, Approval of Employment Contract and Approval of Budget Modification No. 12

REPORT IN BRIEF

This report requests approval of the appointment of Gary Luebbers as City Manager, approval of the contract establishing the terms and conditions of employment and approval of Budget Modification No. 12.

BACKGROUND

At the City Council meeting of December 11, 2007, the City Council accepted City Manager Amy Chan's notice of retirement. The City Council asked Ms. Chan to continue as City Manager until a new City Manager was appointed and began employment. Following this action, the City Council began the process to select a new City Manager.

The City Council interviewed executive search firms at their study session of March 4, 2008, and the Department of Human Resources provided information regarding recruitment and selection options to the City Council on March 18, 2008. The City Council selected the executive recruitment consulting firm of William Avery & Associates to administer the recruitment and selection process for a new City Manager. The City Council held a study session on April 8, 2008, with Mr. Avery to discuss the plan for the recruitment and selection process. This process included the development of the City Manager position profile; preparation of the recruitment brochure, marketing materials, and advertising plan; candidate outreach; candidate assessment and initial screening; presentation of finalist candidates; candidate interviews; candidate selection/background checks; follow-up City Council interviews, reference checks, and site visits; and formulation and documentation of appropriate compensation and other employment arrangements.

The City Council held a study session on April 8, 2008, with Mr. Avery to review the plan for the City Manager recruitment and selection process. At this study session, the City Council authorized the Mayor to select a City Council subcommittee to assist with the oversight of the City Manager recruitment and selection process. This committee met to discuss key points over the course of process.

At the City Council meeting of May 13, 2008, the City Council approved the position profile for the new City Manager which was included in the recruitment brochure. On May 22, 2008, the City Council subcommittee met to discuss and develop a selection process for candidate assessment, including composition of interview panels. At the City Council meeting of June 10, 2008, the City Council adopted the candidate assessment and interview process as recommended by the City Council subcommittee. On June 18, 2008, a press release and e-mails inviting neighborhood associations and interested community members to participate in the new City Manager selection process was issued by the City's Communication Division. The City Council received a total of 23 applications from community members to serve on the interview panels, 22 of which were presented to the City Council for final selection to the panels. At the Council Meeting of July 22, 2008, the City Council selected 16 community members to participate in the process.

EXISTING POLICY

The City of Sunnyvale City Charter Section 800 established that the City Manager shall be chosen by the City Council. Entering into a contract is consistent with the City of Sunnyvale Charter Section 900.

DISCUSSION

An extensive nationwide search was conducted by William Avery and Associates and included the key components listed above. The candidate interviews were held on August 4, 2008 and included a panel process, with business and community panels as well as a City Council panel, an association/union panel, and an executive panel comprised of department directors. Finalists were recommended to the City Council on August 5, 2008 and follow-up interviews were conducted by the City Council on August 25, 2008. Finally, a site visit to the current employer of the finalist was conducted by three members of the City Council on September 14-15, 2008. As a result of these in-depth interviews and background checking processes, the City Council made an offer to appoint Gary Luebbers as the new City Manager. Mr. Luebbers accepted the offer on September 17, 2008.

Gary Luebbers has served as the City Manager of West Jordan, Utah, a city with a population of 102,000, since December 2000. His previous position was City Manager of Redlands, California, serving from 1993-2000, after holding the position of Assistant City Manager/General Services Director from 1987-1993.

Mr. Luebbers will begin employment on December 2, 2008.

FISCAL IMPACT

The position of City Manager and funding for the position is included in the FY 2008/2009 budget for the Office of the City Manager. The contract with Gary Luebbers provides for a base salary of \$250,000 and certain benefits. The cost of basic benefits provided does not exceed the amount budgeted for the position; however, the Agreement for Services includes relocation assistance and temporary housing expenses beyond what is budgeted. In addition, certain unanticipated expenses for the recruitment process will exceed the budget. Therefore, a budget modification is requested for the following expenses:

Temporary Housing	
(\$3,900 per month x 12)	\$46,800
Relocation from Utah to Sunnyvale	\$25,000
Management Assessment for City Manager candidates	\$ 7,800
Travel expenses for City Council members (3) to Utah	\$ 2,363
Candidate Travel Expense	\$ 3,000
Facility rental, meals for panel interview process	<u>\$ 3,360</u>
Total	\$88,323

Funds needed to cover these additional expenditures are available from the General Fund 20-Year Resource Allocation Plan Reserve. While currently fully balanced to the twentieth year, based on preliminary fiscal year-end results, staff believes that unanticipated operational and project savings realized in FY 2007/2008 will allow this one-time amount to be absorbed without negatively impacting the General Fund’s long-term reserve position as established by the FY 2008/2009 Adopted Budget.

Budget Modification No. 12 has been prepared to appropriate \$88,323 from the 20-Year Resource Allocation Plan Reserve into two activities within the Recruitment, Classification, and Compensation program (Program 755).

**BUDGET MODIFICATION NO. 12
FISCAL YEAR 2008/2009**

	Current	Increase (Decrease)	Revised
General Fund			
<u>Expenditures:</u>			
Activity 755110 – Pre-Employment Services	\$57,967	\$71,800	\$129,767
Activity 755120 – Recruitment Services-Management/Executive	\$235,912	\$16,523	\$252,435
<u>Reserves:</u>			
20-Year Resource Allocation Plan	\$46,145,490	(\$88,323)	\$46,057,167

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, in the Council Chambers lobby, in the Office of the City Clerk, at the Library, Senior Center, Community Center and Department of Public Safety; posting the agenda and report on the City's Web site; and making the report available at the Library and the Office of the City Clerk.

ALTERNATIVES

1. Adopt a resolution approving the appointment of Gary Luebbers to the position of city manager, approve the contract as attached (Exhibit 1 to the Resolution) and approve Budget Modification No. 12.
2. Do not approve the appointment of Gary Luebbers to the position of city manager.

RECOMMENDATION

Recommend approval of Alternative No. 1; adopt a resolution approving the appointment of Gary Luebbers to the position of city manager, approve the contract as attached (Exhibit 1 to the Resolution) and approve Budget Modification No. 12.

Prepared by:

Erwin Young, Director of Human Resources

Reviewed by:

Mary J. Bradley, Director of Finance

Approved by:

Amy Chan, City Manager

Attachments

- A. Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE APPOINTING GARY M. LUEBBERS CITY MANAGER FOR THE CITY OF SUNNYVALE

WHEREAS, Section 800 of the Charter of the City of Sunnyvale provides that the City Manager shall be appointed by the City Council; and

WHEREAS, it is the desire of the City Council to appoint a city manager and to provide certain benefits, establish certain conditions of service, and to set working conditions of the city manager;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYVALE THAT:

1. It appoints Gary M. Luebbers City Manager of the City of Sunnyvale, effective December 2, 2008.
2. The starting salary of the City Manager shall be the sum of \$250,000.00 per year, in accordance with the terms and conditions of the Agreement of Services between the City of Sunnyvale and Gary M. Luebbers, attached hereto as Exhibit "1" and made a part hereof.
3. The City Manager shall be entitled to retirement and other benefits in accordance with the terms and conditions of the Agreement for Services between the City of Sunnyvale and Gary M. Luebbers.

BE IT FURTHER RESOLVED that the City Manager shall also fill the position of Executive Director of the Redevelopment Agency of the City of Sunnyvale.

Adopted by the City Council at a regular meeting held on September 30, 2008, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

APPROVED:

City Clerk
(SEAL)

Mayor

**AGREEMENT FOR SERVICES
BETWEEN CITY OF SUNNYVALE AND GARY M. LUEBBERS**

This Agreement for Services, dated September ____, 2008, is between the City Council of the City of Sunnyvale (“City Council”) and Gary M. Luebbers (“Employee”) for services to be performed by Employee in the position of City Manager.

Section 1. Duties

Employee shall perform the functions and duties specified in Section 802 of the Charter of the City of Sunnyvale, the Sunnyvale Municipal Code, and other legally permissible and proper duties and functions as the City Council shall from time to time assign.

Section 2. Term

This Agreement shall commence December 2, 2008, and extend until terminated as provided hereinafter.

Section 3. Termination/Severance

A. Employee serves at the pleasure of the City Council and nothing herein shall be taken to prevent, limit or otherwise interfere with the right of the City Council to terminate the services of Employee at any time with or without cause. There is no express 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.

B. If Employee is terminated by the City Council while still willing and able to perform the duties of the City Manager, the City agrees to pay Employee, as severance pay, as follows: twelve months pay and benefits for termination on or before December 2, 2010, nine months pay and benefits for termination between December 2, 2010 and December 2, 2012, and six months pay and benefits for termination after December 2, 2012. Employee shall have the option of payment of compensation in one lump sum or bi-weekly over the appropriate period, or some combination thereof. Compensation shall include the extension of non-salary benefits, or the monetary equivalent of City cost of such benefits. Any such payment will release City Council from any further obligations under this Agreement. It is the discretion of the City Council whether the Employee will be required to perform the duties of the City Manager during this time period. Contemporaneously with the commencement and/or delivery of the severance pay herein above set out, Employee agrees to execute and deliver to City Council a release releasing City and City Council members of all claims the Employee may have against City.

C. Notwithstanding paragraph 3.B. above, the City shall not be obligated to pay, and shall not pay, any amounts or continue any benefits under the provision of paragraph 3.B if Employee is terminated for any of the following reasons:

(1) malfeasance, dishonesty for personal gain, moral turpitude, willful or corrupt misconduct or conviction of any felony;

- (2) willfully causing damage to public property or willfully wasting public supplies;
- (3) specific acts or conduct which bring scandal or disrepute to the City;
- (4) insubordination, which shall mean the willful refusal to obey lawful directions of the City Council.

Further, City Council shall not be obligated to pay, and shall not pay, any amount or continue any benefits under the provisions of paragraph 3.B. in the event Employee voluntarily resigns without affirmative action by City to terminate, initiate termination proceedings or request resignation; for example a resignation to pursue other employment or professional opportunities.

D. A decision to terminate the Agreement shall be made in closed session and confirmed in a public meeting. In recognition of Employee's professional status and integrity, 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 his office instead of being terminated if a decision by the City Council to terminate has been made in closed session. In such an event, the public announcement as provided for in paragraph 3.D. will note Employee has resigned and the provision 3.B. will remain applicable.

Section 4. Resignation

A. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from his position as City Manager, or to retire from public service. In the event the Employee voluntarily resigns his position, or retires, Employee shall give City two months notice in advance, unless the parties agree otherwise. In the case of a voluntary resignation or retirement, no severance will be paid to Employee.

Section 5. Salary

A. Annually the City Council shall establish a control point salary for the City Manager which shall be competitive and shall have a reasonable spread above the next highest paid municipal official of the City of Sunnyvale. The starting annual salary is Two Hundred and Fifty Thousand Dollars, (\$250,000.00).

B. The City Manager's compensation shall be evaluated on an annual basis. This evaluation will include consideration of both merit increases and "across-the-board" increases provided to department directors and non-represented management employees. It will also include consideration of the competitive market compensation for city managers in comparable Northern California cities at the time of the performance evaluation. The annual base salary may be increased by written agreement of the parties or by inclusion of the agreed salary amount in any duly adopted ordinance or resolution of the City setting employee salaries. Nothing in this provision shall require the City to use a set formula, or require the City to provide either a merit or other salary increase at the annual evaluation. However, where the annual performance evaluation is good or excellent, the City shall normally adjust the compensation to

provide a reasonable and market-competitive compensation for comparable Northern California cities.

Section 6. Benefits

The City Manager shall be entitled to retirement and other benefits in the Pay Plan applicable to employees in Classification Category “F” as set forth in the City’s then current Salary Resolution, as from time to time amended, except as follows:

A. The City Manager shall be entitled to a monthly vehicle allowance in the amount of \$516. The amount will be evaluated annually to consider any change in the cost of ownership, insurance and maintenance of the vehicle.

B. The City Manager shall be credited with 40 days of PTO effective on his first day of employment with the City. The City Manager shall continue to accrue paid time off at the rate of employees at the 10-25 year longevity rate (34 days PTO/year). At the time of leaving City employment, Employee will take compensation for accrued paid time off in a single lump sum at the then current rate.

D. The City Council shall contribute to the City’s 457 deferred compensation plan on behalf of the City Manager the maximum annual amount allowed by the United States Tax Code for employees age 50 or older (currently \$20,500). Payments shall be made bi-weekly commencing January 2009.

E. City Council agrees to reimburse Employee for reasonable job-related expenses incurred in carrying out his duties as City Manager, subject to reasonable budgetary restrictions.

Section 7. Health Coverage

Employee is entitled to receive medical, dental, and vision coverage in the same manner as Department Directors. It is agreed that, if the City receives reimbursement for said health coverage from Employee’s previous employer, that reimbursement amount shall be contributed by the City into Employee’s 401(a) plan, in accordance with applicable IRS rules and statutes.

Section 8. Relocation Assistance

A. The City Council shall provide Employee with a Temporary Housing Allowance, for temporary housing located within the City of Sunnyvale, in the amount of \$3,900.00 per month, for a period of 12 months commencing on December 2, 2008. If Employee locates and purchases suitable ownership housing prior to the expiration of 12 months, any remaining Temporary Housing Allowance payments up to the 12 month limit may be applied to relocation costs that exceed the \$25,000.00 provided in Paragraph B. for moving expenses, including packing and moving expenses, house search expenses, round trip airfares between West Jordan, Utah and Sunnyvale, fees resulting from the sale of Employee’s current residence, and other reasonable and standard moving expenses for the employee and spouse.

B. City Council shall pay Employee up to \$25,000.00 for relocation costs associated with moving from West Jordan, Utah to Sunnyvale, California, including packing and

moving expenses, house search expenses, round trip airfares between West Jordan, Utah and Sunnyvale, fees resulting from the sale of Employee's current residence, and other reasonable and standard moving expenses for the employee and spouse. Employee shall submit receipts for all relocation expenses claimed.

Section 9. Mortgage Assistance

The City Council shall provide Mortgage Assistance to Employee as provided and subject to the terms in Council Resolution No. 125-89, as amended by Council Resolution No. 160-96. Employee's eligibility for participation in the City's Mortgage Assistance program is conditioned on Employee's application to participate in the Mortgage Assistance program within one year of commencing employment with the City on December 2, 2008, the purchase of a residence within the City of Sunnyvale within one year of commencing employment with the City on December 2, 2008 (as documented by a purchase and sale agreement and the opening of escrow for the purchase of the property) and the actual and continued residence of Employee in the property within the City of Sunnyvale purchased with City Mortgage Assistance.

Section 10. Performance Evaluation

The City Council shall formally review and evaluate the performance of the City Manager by December 2 of each year. Such review and evaluation shall be in accordance with the specific criteria developed by the City Council in consultation with the Director of Human Resources and Employee. The City Council shall provide Employee with their written comments and may discuss the review with Employee, at the choice of either the City Council or the City Manager. The City Manager shall have the right to respond orally or in writing to the evaluation.

The City Council shall also provide an informal mid-year performance review of the City Manager after his first six months of employment and every year thereafter.

Section 11. Indemnification

The City Council shall defend, hold harmless, and indemnify Employee against any tort, professional liability claim, or demand, or civil rights or other legal action, arising out of any act, event or omission occurring in the performance of Employee's professional duties as City Manager, except to the extent that Employee's actions are the result of gross negligence or willful misconduct. The City Council will defend, compromise or settle any such claim or suit, as appropriate, and pay the amount of any settlement or judgment rendered thereon. This indemnification shall extend beyond termination of employment or other expiration of this Agreement, to provide full and complete protection to Employee for acts undertaken or committed by Employee in his capacity as City Manager, regardless of whether receipt of notice or filing of any claim or lawsuit occurs during or following Employee's employment with the City. The extent of defense or indemnification may be limited by the provisions of California State law.

Section 12. Professional Development

City Council acknowledges that participation in local, state and national municipal city manager organizations by the City Manager benefits the City and provides professional development. The City agrees to pay for the City Manager's annual dues for

ICMA, California City Manager Association, Alliance for Innovation and National League of Cities. The City also agrees to provide the City Manager with an annual allocation to cover travel, conference registration, lodging and meals for meetings of these organizations, subject to reasonable budgetary limitations.

Participation on City time is permitted with prior approval of the Mayor or majority of the City Council, when participation is beneficial to the City of Sunnyvale. The City Council encourages Employee to attain positions of leadership in national, state, regional and local associations and organizations relevant to his profession, and agrees to budget and pay for travel and subsistence expenses necessary to discharge his official duties for such associations and organizations.

Section 13. Binding Agreement

This Agreement reflects the complete Agreement between the parties. This Agreement shall be binding and inure to the benefit of the heirs of the estate of Employee.

Section 14. Severability

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

The signatures of the parties below indicate that each has read and understood the Agreement and will abide by the terms stated herein.

This Agreement has been executed by the parties on the dates noted.

ATTEST:

CITY OF SUNNYVALE
CITY COUNCIL

CITY CLERK

MAYOR

Date: _____

Council Member Moylan

Council Member Howe

Council Member Lee

Council Member Hamilton

Council Member Swegles

Council Member Whittum

APPROVED AS TO FORM:

DAVID E. KAHN
City Attorney

GARY M. LUEBBERS

Date: _____