



Meeting Date: 12/09/08

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input checked="" type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Prepared By: Alan Holmberg, Acting City Attorney Agenda Item No. J-1

Reviewed By: City Manager [Signature] City Attorney [Signature] Finance [Signature] Other (Specify) _____

DATE: December 1, 2008

TO: City Council

FROM: Alan Holmberg, Acting City Attorney [Signature]

SUBJECT: Appointment of City Attorney

RECOMMENDATION

That City Council approve and authorize the Mayor to execute an agreement (Agreement No. A-7127) with Alan Holmberg (Holmberg) appointing Holmberg as the City Attorney and providing terms and conditions concerning his employment as the City Attorney.

DISCUSSION

Holmberg has acted as an Assistant City Attorney for the City of Oxnard since December 4, 2000. He has served as Acting City Attorney since August 1, 2008. City Council has engaged in a recruitment process for the City Attorney position commencing in May 2008. Execution of the attached agreement will appoint Holmberg as the City Attorney on the terms and conditions stated therein.

The agreement provides for terms of employment and compensation comparable to that provided for the City Attorney position in other larger cities in Ventura County and the Southern California area.

FINANCIAL IMPACT

Compensation for the City Attorney position sufficient to defray the cost of the agreement is provided in the Fiscal Year 08/09 budget.

AH/ld

Attachment No. 1 – Employment Agreement

EMPLOYMENT AGREEMENT

This Employment Agreement ("Agreement") is made and entered into in Ventura County, California by and between the City of Oxnard, California ("City") and Alan Holmberg ("Holmberg").

WHEREAS, the Oxnard City Code provides for the retention of a City Attorney by the City Council and establishes certain powers, duties and guidelines with respect to the position of City Attorney; and

WHEREAS, Holmberg has served as Assistant City Attorney since December 4, 2000; and

WHEREAS, Holmberg has served as Acting City Attorney since August 1, 2008; and

WHEREAS, the City Council desires to appoint Holmberg as City Attorney; and

NOW, THEREFORE, City and Holmberg agree as follows:

1. Term. The term of this Agreement shall begin effective December 9, 2008, and shall expire on December 9, 2013.

2. Scope of Services. The City Council appoints Holmberg to serve as City Attorney. Holmberg agrees to provide City with the legal services, advice, assistance, and management skills as may be required of the City Attorney by City Council, and to perform the functions and duties specified for the City Attorney in the Oxnard City Code.

3. Exclusive Employment by City. Holmberg agrees not to engage in non-City connected business during the term of his employment with City without prior written approval of the City Council.

4. Compliance with Laws. Holmberg shall perform these services in accordance with all laws, ordinances and regulations applicable to these services.

5. Compensation.

A. Effective December 15, 2008, City agrees to compensate Holmberg for his services at a base salary of \$203,000 per year.

B. City agrees to pay Holmberg his base salary in twenty-six bi-weekly installments.

C. Unless otherwise agreed in writing by the City Council after a performance review and evaluation, Holmberg's base salary shall be increased on each anniversary of this Agreement by the percentage increase (if any) of the Consumer Price Index for Los Angeles, Riverside and Orange County – All

Urban Wage Earners and Clerical Workers for the twelve month period ending on November 30 immediately preceding the anniversary date.

- D. From the effective date of this Agreement until December 15, 2008, Holmberg shall be compensated at the rate of compensation presently provided for his services as Acting City Attorney.

6. Vehicle Allowance. City agrees to reimburse Holmberg for use of a motor vehicle in the performance of his services in the sum of \$5,000 per year effective December 15, 2008. The vehicle allowance shall be paid in bi-weekly installments together with the base salary.

7. Management Benefits. Holmberg shall be entitled to all benefits and rights afforded top management employees of City, including, but not limited to, annual leave, holiday leave pay, reserve leave program, annual leave redemption, annual leave redemption upon separation from service, cost of living increases, Public Employees Retirement System ("PERS") benefits, the Public Agency Retirement System ("PARS") 3% @ 60 Supplemental Retirement Plan, medical, life, dental, and long-term disability insurance benefits, workers' compensation, any other insurance benefits, and participation in the City-sponsored management and confidential employee wellness program. City agrees that Holmberg shall be entitled to receive any changes to benefits afforded top management employees.

8. Annual Leave.

- A. City agrees that Holmberg, notwithstanding any City policies or rules to the contrary, accumulate up to 2,000 hours in his employee reserve leave bank.
- B. City agrees that by making requests during the time periods provided for all employees to request redemption of annual leave, Holmberg may redeem up to a total of 80 hours of annual leave or reserve leave during each year of the term of this Agreement.

9. Deferred Compensation. City agrees that Holmberg may fully participate to the same extent as other top management employees in any City-sponsored deferred compensation program or 401(a) Plan.

10. Regular Evaluations and Incentive Compensation. City agrees to conduct an evaluation of Holmberg's performance on a regular basis. The evaluation shall be in accordance with criteria developed jointly by City Council and Holmberg. The specific criteria may be modified by City Council after consultation with Holmberg. City Council shall provide Holmberg, upon request, with a summary written statement of the evaluation of the City Council and provide an adequate opportunity for Holmberg to discuss his evaluation with City Council.

11. Reimbursement of Professional Expenses.

- A. City agrees to budget and to pay for the professional dues and subscriptions of Holmberg necessary for his continuation and full participation in national, regional, State and local associations and organizations necessary and desirable for his continued professional participation, growth and advancement for the good of and to further the interests of City.
- B. City agrees to budget for and to pay the travel and expenses of Holmberg to attend professional meetings to continue the growth and development of Holmberg and for Holmberg to adequately pursue necessary official and other functions for City, including but not limited to the League of California Cities and such other national, regional, State and local associations and organizations thereof in which Holmberg is or becomes a member.
- C. City also agrees to budget for and to pay for the travel, costs and expenses of Holmberg for courses, institutes and seminars that are necessary for his professional growth and development for the good of and to further the interests of City.

14. Indemnity. Within the requirements of State law, City agrees to defend, save, hold harmless and indemnify Holmberg 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 performance of Holmberg's duties as City Attorney. City agrees to compromise and settle any such claim, demand or other legal action, and pay the amount of any settlement or judgment rendered thereon to the extent permitted by State law.

15. Leave of Absence with Pay. City may order Holmberg on a leave of absence with full pay and benefits at any time during the term of this Agreement by action of a majority of the City Council.

16. Termination by City.

- A. City may terminate this Agreement at any time for any reason or no reason by providing written notice to Holmberg of the City Council's decision. Such termination shall be effective as of the date stated in the written notice.
- B. In the event of termination under this paragraph by the City Council, and except as provided in subsection D. below, City agrees to continue to pay Holmberg his base salary and to provide Holmberg his top management employee benefits, specified in paragraphs 7, 8, 9 and 10 herein for a period of six (6) months from the date of the notice of termination or until

Holmberg is employed in another position, whichever event occurs first. During this six (6) month period, at City Council's sole discretion, Holmberg shall continue to perform the functions and duties of the position of City Attorney or Holmberg may be placed on leave of absence from his position.

- C. (1) In the event that Holmberg secures and is compensated for other employment with a greater base salary within the six (6) month period set forth in subparagraph B, City's obligation for any payments to Holmberg shall cease as of the date Holmberg begins such other employment.
- (2) If, however, Holmberg secures and is compensated for other employment with a lower base salary within the six (6) month period set forth in subparagraph B, City agrees that as of the date Holmberg begins such other employment, City shall be obligated to pay to Holmberg the difference between Holmberg's base salary at that time as established by this Agreement and the base salary paid to Holmberg from the other employment during any period remaining of the six (6) months specified in subparagraph B.
- D. In the event City terminates this Agreement because of an illegal act or an act involving moral turpitude or misconduct by Holmberg, City shall have no obligation to pay the amount set forth in subparagraph B above.

17. Termination by Holmberg. In the event Holmberg voluntarily terminates this Agreement, Holmberg agrees to provide City with ninety (90) days advance written notice of his termination decision.

18. Ownership of Materials. Upon termination of this Agreement, Holmberg agrees to deliver to City all materials and documents belonging to City.

19. Governing Law. This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced and governed under the laws of such State.

20. Successors. This Agreement shall be binding upon the successors and assigns of City and shall be for the benefit of the heirs at law and executors of Holmberg.

21. Severability. If any provision in this Agreement is held by any court to be unconstitutional, invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.

22. Notices. Any notices to City may be delivered personally or by mail addressed to Mayor, City of Oxnard, 300 West Third Street, Oxnard, California 93030. Any notice to

Holmberg may be delivered personally or by mail addressed to Alan Holmberg, 300 West Third Street, Suite 300, Oxnard, California 93030.

23. Amendment. This Agreement may be amended only in writing signed by both City and Holmberg.

24. Entire Agreement. This Agreement constitutes the entire agreement of City and Holmberg regarding the subject matter herein and supersedes all prior communications, agreements and promises, either oral or written.

CITY OF OXNARD

ALAN HOLMBERG

Dr. Thomas E. Holden, Mayor

Alan Holmberg

ATTEST:

Daniel Martinez, City Clerk

APPROVED AS TO FORM:

Alan Holmberg, Acting City Attorney