

CITY OF ALAMEDA

Memorandum

To: Honorable Mayor and
Members of the City Council

From: Lisa Goldman
Acting City Manager

Date: May 3, 2011

Re: Approve Agreement Appointing John A. Russo as City Manager

BACKGROUND

The contract with Interim City Manager Ann Marie Gallant ended on March 31, 2011. The City Council directed Human Resources Director Karen Willis to begin the recruitment process for the City Manager position.

DISCUSSION

At the January 4, 2011 City Council meeting, the City Council provided input to the Human Resources Director on the qualifications they were seeking in a City Manager. A subcommittee of the City Council comprised of the Mayor and the Vice Mayor was appointed to work with the Human Resources Director on the search effort for a new City Manager. The recruitment was launched on January 12, 2011 and total of 74 applications were received. From these, the City Council subcommittee identified six candidates to invite for a February 19, 2011 interview with the City Council. The City Council selected three finalists.

At the February 15, 2011 City Council meeting, the City Council determined that subsequent to the February 19, 2011 interviews with the City Council, the three finalists would participate in a series of three panel interviews. These panels would be comprised of a community stakeholder panel appointed by the City Council, a bargaining unit panel and a department director panel. At the March 1, 2011 City Council meeting, the City Council appointed the ten members of the Community Stakeholder interview panel. Interviews with the City Manager finalists were conducted on March 25, 2011 by the three interview panels.

From those interviews, the City Council selected a lead candidate, Mr. John A. Russo. The City Council directed that a comprehensive background and reference check on Mr. Russo be conducted which included on-site visits by the City Council to Mr. Russo's current employer, the City of Oakland. On April 19, 2011 the City Council made a conditional offer of employment to Mr. Russo pending the completion of the background investigation. Subsequently, the background investigation was completed. Mr. Russo

has accepted the offer of employment with the City of Alameda and has agreed to assume the responsibilities of City Manager subject to the City Council approval of the contract, a copy of which is attached to this report (Exhibit 1).

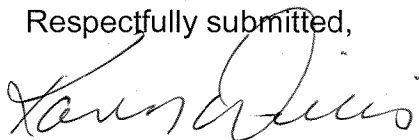
FINANCIAL IMPACT

Funds for this position are already included in the City Manager's department budget in the General Fund. No additional funds are required.

RECOMMENDATION

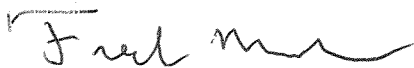
Recommend approval of the City Council's negotiated agreement between the City of Alameda and John A. Russo, appointing John A. Russo as City Manager.

Respectfully submitted,



Karen Willis
Human Resources Director

Approved as to funds and account,



Fred Marsh
Controller

Exhibit:

1. Employment Agreement between John A Russo and the City of Alameda

EMPLOYMENT AGREEMENT

This Agreement is made by and between JOHN A. RUSSO (hereinafter, "Russo"), an individual, and the CITY OF ALAMEDA, CALIFORNIA (hereinafter, "the City"), a California charter city and municipal corporation.

RECITALS

WHEREAS, the City desires to employ the professional services of Russo as City Manager of Alameda; and,

WHEREAS, Russo agrees to serve as the City Manager of Alameda in accordance with the City Charter of Alameda; and,

WHEREAS, both the City and Russo wish to set forth in writing the terms and conditions of Russo's employment as City Manager for Alameda,

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the City and Russo agree as follows:

INTRODUCTION AND TERM

1. EMPLOYMENT

The City hereby agrees to employ Russo in accordance with the terms and conditions set forth below, and Russo accepts the offer of such employment. During the term of the Agreement, City will pay Russo the compensation provided for in this Agreement.

2. TERM

This Agreement shall commence on June __, 2011 and expire on June __, 2016, subject to earlier termination as set forth in paragraphs 14-16 below.

DUTIES AND PROFESSIONAL RESPONSIBILITIES

3. DUTIES

Russo shall serve as the City Manager for the City of Alameda and shall be vested with the authority granted to the City Manager in the Alameda City Charter. Russo shall perform such duties as are necessary for him to exercise the authority vested in the City Manager under the Alameda City Charter. Also, Russo shall perform such duties and undertake such activities as may be assigned from time to time by the City Council, and which are consistent with the position of City Manager.

4. HOURS OF WORK

Russo shall be an exempt employee under FLSA. Russo is expected to devote necessary time outside normal office hours to the business of the City. Russo's schedule of work each day and week may vary in response to the requirements of the work to be performed. Russo is expected to spend sufficient hours at Alameda City Hall to perform his duties.

5. OUTSIDE AND OTHER PROFESSIONAL ACTIVITIES

Russo agrees to devote all of his professional time and attention to the City's business during the term of this Agreement. The parties have agreed that Russo may teach one seminar on Municipal Law at Board Hall School of Law in the spring semester 2012. Such teaching shall not otherwise interfere with Russo's obligations to perform the duties of the City Manager as set forth in paragraph 3.

The City acknowledges a mutual interest with Russo in having Russo, on occasion, undertake limited outside activities, including serving as an officer or a board member of municipal government organizations, or other related activities, provided that such activities do not distract Russo from the performance of his duties as City Manager for Alameda, or otherwise create negative impacts for the City. Prior to undertaking these outside activities Russo shall obtain the approval of the Mayor and the Council.

The City shall pay for reasonable travel expenses incurred by Russo for official travel associated with the pursuit of Alameda's interests including, but not limited to, such other national, regional, state and local government groups or committees upon which Russo may serve as a member.

COMPENSATION TO RUSSO

6. SALARY AND DEFERRED COMPENSATION

Russo shall receive the following compensation for the term of the Agreement:

For the period June __, 2011 to June __, 2012.....\$215,000

The City shall provide to Russo, \$15,000 annually in a 457 deferred compensation plan. Such amount shall accrue to Russo on a monthly basis.

Russo's salary increases, if any, in the second and subsequent years of this Agreement shall be based upon performance. During the first year of his employment, and after completion of approximately six months, Russo and the Council shall jointly establish objective verifiable measures of his performance to be completed during the first year. If, after the first year of employment, Russo has a "meets expectations" or better rating on his annual performance evaluation and he meets or exceeds the mutually agreed upon objective verifiable

measures, he shall receive an annualized increase in his salary for the second year of employment of \$10,000.

For each year of this Agreement thereafter, the parties shall endeavor jointly to establish, prospective objective verifiable measures of his performance for the year. At the conclusion of each year of the Agreement, if Russo has a "meets expectations" or better rating on his annual performance evaluation and he meets or exceeds the mutually agreed upon objective verifiable measures, he shall receive an increase in his salary of \$10,000 for that year of employment.

In the event that the parties are unable to mutually agree upon objective verifiable measures for any relevant period and if for that period Russo receives a "meets expectation" or better rating on his annual performance evaluation, he shall be entitled to receive an annualized increase in his salary of \$10,000 for that year of employment.

If, after the parties have determined the objective verifiable measures, the Council takes action that impacts Russo's ability to meet one of the objectives, he shall notify the Council in writing of that fact and that objective shall be deleted from consideration.

Salary is to be paid at the same intervals and in the same manner as other City Department Heads.

7. DEFERRED COMPENSATION (MONEY PURCHASE PENSION PLAN)

Russo shall be eligible to participate in the deferred compensation plan (money purchase pension plan) to the same extent as City Department Heads.

RETIREMENT, HEALTH & OTHER BENEFITS

8. RETIREMENT

Russo will be covered by the City's "miscellaneous" PERS plan during his employment. The City will pay the mandatory employer contributions for this benefit and Russo will pay the employee contributions in accordance Section 414 (h) (2) of the Internal Revenue Code.

9. VACATION

Russo shall accrue, and may use, up to 25 days (200 hours) of paid vacation annually. Vacation shall be accrued bi-weekly. Russo may carry over accrued but unused vacation time from one year to the next; provided, however, he may not accrue a vacation balance higher than 50 days (400 hours). Upon separation from the City, Russo or, in the case of his death, Russo's heirs, shall be paid for all unused and accrued vacation time. Accumulated vacation balances shall be paid at Russo's salary rate at the effective date of his separation from employment with the City.

In lieu of accrual of vacation leave each pay period in the first year of this Agreement only, the City agrees to advance to Russo a vacation balance of 25 days in order to accommodate pre-existing family/vacation commitments made by Russo prior to the execution of this Agreement. After the first year of this Agreement, Russo will accrue vacation each pay period.

10. OTHER LEAVES

Except as provided in Section 9 above, Russo shall receive the same paid holidays and leave time benefits as other City Department Heads.

11. OTHER FRINGE BENEFITS

Russo shall be provided medical coverage, disability benefits, and dental coverage at the same levels and under the same conditions that are provided to other City Department Heads. The City shall pay such other mandatory employer costs associated with Russo's employment including unemployment compensation, workers' compensation and Medicare contributions.

12. AUTO ALLOWANCE

Russo shall receive \$250 each month as an automobile allowance. The allowance is in exchange for Russo making his personal automobile available for his use for City related business at all times. Russo will also be entitled to mileage reimbursement at standard rates for trips of over 100 miles taken on City business.

13. MEMBERSHIP DUES

The City shall pay (up to a cap of \$2,500) for the professional dues necessary to ensure Russo's participation in such programs that enhance both Russo's standing and the City's reputation, including national, regional, state and local associations and organizations. These organizations will include, but are not limited to, the State Bar of California and the International City Management Association.

SEPARATION FROM EMPLOYMENT

14. RESIGNATION/RETIREMENT

Russo agrees to give the City at least (60) days written notice of the effective date of Russo's resignation or retirement.

15. TERMINATION

The City, through its City Council, may terminate this Agreement prior to the expiration of the term of this Agreement as set forth in paragraph 2, above, at its sole and

absolute discretion, with or without cause. The term "cause" is defined, for the purposes of this Agreement, as set forth in Paragraph 16 below.

If the City terminates this Agreement without "cause" before September 1, 2012, Russo will be paid an amount equal to his full salary and benefits for a period of six (6) months from receipt of written notice of termination. In exchange for the payment of severance, Russo agrees to cooperate with the City in the transition of his duties to a new or interim City Manager. The City shall also reimburse Russo for his COBRA coverage for up to six (6) months following his termination.

If the City terminates this Agreement without "cause" on or after September 1, 2012, Russo will be paid an amount equal to his full salary and benefits for a period of four (4) months from receipt of written notice of termination. In exchange for the payment of this severance, Russo agrees to cooperate with the City in the transition of his duties to a new or interim City Manager. The City shall also reimburse Russo for his COBRA coverage for up to four (4) months following his termination.

16. CAUSE

In the event Russo is terminated for (1) continued abuse of drugs or alcohol which materially affects the performance of his duties; (2) repeated and protracted unexcused absences from the City Manager's office; (3) conviction of a felony; (4) conviction of a misdemeanor involving moral turpitude; (5) acceptance of employment from another source which is inconsistent with full time employment as Alameda's City Manager and in violation of Section 5 of this Agreement; or (6) any material breach of this Agreement, the City shall have no obligation to continue the employment of Russo or to pay any salary or benefits under Section 16 of this Agreement. Any one or more of the above enumerated items constitutes "cause" for purposes of this Agreement.

MISCELLANEOUS PROVISIONS

17. REIMBURSEMENT

Russo is entitled to reimbursement for all sums necessarily and reasonably incurred and paid by him in the performance of his duties. Russo shall submit a claim form to the City for any such claims in the same form and manner as is required by the City's law or by custom and practice among other City Department Heads.

18. BONDS/LEGAL FEES

The City shall pay the full cost of any bonds, fidelity or otherwise, required of Russo under any applicable state or local law or ordinance. In the event of any legal action between Russo and the City to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs; provided however, that the total amount of recoverable fees and costs shall not exceed \$75,000.

19. INDEMNIFICATION

City agrees to defend, hold harmless, and indemnify Russo against any claims, demands, or legal actions, whether specious, frivolous, or otherwise, arising out of an alleged action or omission, direct or indirect, occurring within the scope and during the course of Russo's employment with the City. Russo will cooperate in good faith with the City with respect to the defense of such claims, demands or legal actions.

20. SEVERABILITY

In the event that any term of this Agreement is finally held or determined to be illegal or void by a court having jurisdiction over the City and Russo, the remainder of this Agreement shall remain in full force and effect unless the term or terms held to be illegal or void are wholly inseparable from the remaining portions of the Agreement.

21. PARITY IN CONSTRUING AGREEMENT

Both the City and Russo have had the opportunity to participate in the drafting of this Agreement. Consequently, terms, conditions, or provisions of this Agreement shall not be construed against one party and in favor of the other based upon who actually drafted the Agreement.

22. INTEGRATION CLAUSE

The City and Russo acknowledge that this Agreement constitutes the sole and entire agreement of the parties in this matter and that any modifications may be made only in a writing signed by both the City and Russo. The City and Russo agree that there are no representations, agreements, arrangements or understandings, whether written or oral, between the parties relating to the subject matter of this Agreement which are not fully set forth in this Agreement.

23. NOTICES

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

TO CITY: Mayor and Council
City of Alameda
City Hall
Alameda, CA 94501

TO RUSSO: John A. Russo

City of Alameda:

John A. Russo

Date: _____

Date: _____

Approved As To Form:



Acting _____
City Attorney for Alameda