

DATE: May 4, 2010
TO: City Council and Redevelopment Agency Board Members
FROM: Mayor and Chair
SUBJECT: City Manager/Executive Director Appointment - Approval of Employment Agreement

RECOMMENDATION

That Council adopts the attached Resolution appointing Frances David as City Manager and that the Redevelopment Agency Board adopts the attached Redevelopment Resolution appointing Frances David as Executive Director and approves the attached Employment Agreement.

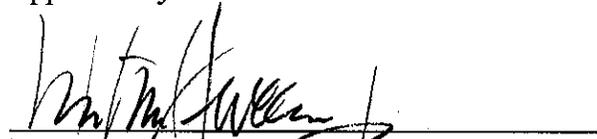
DISCUSSION

Pursuant to the direction of Council, Attachment I is a Resolution appointing Frances David as City Manager and pursuant to the direction of the Redevelopment Agency, Attachment II is a Resolution appointing Frances David as Executive Director, effective immediately. Attachment III is the Employment Agreement as agreed upon by the Council and Ms. David.

FISCAL IMPACT

There is no additional fiscal impact to this action as the amount needed to support the Employment Agreement is consistent with that included in the FY 2010 City budget approved by Council in June 2009.

Approved by:



Michael Sweeney, Mayor/Chair

Attachments:

- Attachment I -- Council Resolution
- Attachment II -- Redevelopment Agency Resolution
- Attachment III -- Employment Agreement

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAYWARD APPOINTING FRANCES DAVID AS CITY MANAGER AND AUTHORIZING THE MAYOR TO EXECUTE AN EMPLOYMENT AGREEMENT

WHEREAS, the position of City Manager is vacant; and

WHEREAS, Ms. Frances David possesses the background, experience, and skills necessary to perform the duties of City Manager consistent with the current priorities, policies, philosophy, and direction established by the Council over the last three years; and

WHEREAS, the Mayor and City Council have reached agreement with Ms. David on the terms of employment;

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Hayward that the Council does hereby appoint Frances David as City Manager, and authorizes the Mayor to execute the agreed upon Employment Agreement to be effective immediately.

IN COUNCIL, HAYWARD, CALIFORNIA, May 4, 2010

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST:
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney for the City of Hayward

REDEVELOPMENT AGENCY OF THE HAYWARD CITY COUNCIL

RESOLUTION NO. RA _____

Introduced by

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF
THE CITY OF HAYWARD APPOINTING FRANCES DAVID
AS EXECUTIVE DIRECTOR

BE IT RESOLVED by the Redevelopment Agency of the City of Hayward that the Agency does hereby appoint Frances David as Executive Director of the Redevelopment Agency effective immediately.

IN COUNCIL, HAYWARD, CALIFORNIA, May 4, 2010

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST:
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney for the City of Hayward

Hayward City Manager Employment Agreement: May 4, 2010 through June 30, 2011

Introduction

This Agreement made and entered into this 4th day of May 2010 by and between the City of Hayward a chartered California City and municipal corporation, (hereinafter called "Employer") and E. Frances David, (hereinafter called "Employee"), an individual, who has the education training and experience in local government management both of whom agree as follows:

Section 1 Term

The term of this agreement shall be for an initial period of fourteen (14) months from May 4, 2010 through June 30, 2011. Thereafter, this Agreement shall be renewed on its anniversary date for terms of one (1) year until terminated by either party or modified by mutual agreement as hereinafter provided. The anniversary date is every June 30.

Section 2 Duties and Authority

Employer agrees to employ the Employee as City Manager to perform the functions and duties specified in Article VII sections 700 et seq. of the Hayward City Charter and such other lawful and appropriate duties and functions as directed by the City Council. Employee shall be a member in good standing of the International City/County Management Association (ICMA) and shall adhere to ICMA principles and tenets. Employee shall maintain current her ICMA Credentialed Manager standing for the term of employment. The Employer agrees to pay Employee's ICMA dues.

Section 3 Compensation

The Employer agrees to pay Employee an annual base salary of \$200,500. The Employer agrees to pay the Employee in equal installments on a bi-weekly basis during the term of this Agreement. The Employee's salary shall be adjusted consistent with the City Council's policy related to equity and Cost of Living Adjustments (COLA) provided executive employees with the City. This results in the following adjustments: October 1, 2010: 3.32% equity increase; COLA as provided other Unrepresented Management Employees.

Section 4 Health Disability Life Insurance and Other Benefits

Upon commencing employment, the Employer agrees to provide and to pay the premiums for health, hospitalization, surgical, vision, dental, and comprehensive medical insurance for the Employee and her dependents equal to that which is provided to all unrepresented management employees of the Employer.

Similarly, the Employer agrees to obtain and to make required premium payments for short term and long term disability insurance coverage for the Employee while this Agreement is in effect. The Employer shall also pay the amount due for term life insurance in an amount equal to \$200,000, including all increases during the life of this Agreement. The Employee shall have the

right to choose the beneficiary on such policies.

In addition to the benefits set forth herein, all actions taken by the City Council relating to salary and benefits for Unrepresented Management Employees shall be considered actions granting the same benefits to Employee, unless mutually agreed otherwise between Employer and Employee.

Section 5 Vacation Sick and Military Leave

Upon commencing employment, the Employee shall be credited with the existing sick and vacation leave hours of accrued leave as reflected in the existing City of Hayward account for Employee from her previous positions as Assistant City Manager and Acting City Manager. Thereafter, Employee shall accrue sick and vacation leave on an annual basis at the rate specified in the previous Employment Letter or at the rate afforded Unrepresented Management Employees, whichever is higher unless and until this Agreement may be changed.

Employee shall be entitled to eighty (80) hours of administrative leave annually as provided in the Salary and Benefits Resolution for Unrepresented Management Employees. Employee shall be entitled to take a total of thirty (30) work days combined leave (i.e., vacation and administrative leave) annually, and shall take no more than fifteen (15) work days of said leave at any one time, exclusive of holidays recognized by the Employer, to which the Employee shall also be entitled.

In the event of termination, either voluntarily or involuntarily, the Employee shall be compensated or accrued sick and vacation time as of the date of termination as provided in the Salary and benefits Resolution for Unrepresented Management Employees.

Section 6 Automobile and Monthly Expense Allowance

To compensate the Employee for automobile and other expenses related to the duties of City Manager, the Employer agrees to provide Employee with a monthly Automobile and Expense Allowance of five hundred dollars (\$500) to compensate the Employee for expenses related to the use, purchase, and/or lease of an automobile while performing her duties as City Manager. Such allowance shall be adjusted annually (at the start of the fiscal year) to reflect increases in the cost of living.

Employee shall be entitled to a cellular phone allowance of one hundred dollars (\$100) a month. Such allowance shall be adjusted annually (at the start of the fiscal year) to reflect increases in the cost of living.

Section 7 Retirement

The Employer agrees to continue the Employee's enrollment into the California Public Employees Retirement System (PERS), and, during the life of this Agreement, to make the appropriate contributions as required to PERS for both the Employee (7%) and the Employer. Employee shall be required to supplement the Employee portion of the PERS contribution by paying one percent (1%) per annum.

Section 8 Termination

Termination of this Agreement may occur under any of the following circumstances:

- A. If a majority of the governing body votes to terminate the Employee at a duly authorized public meeting;
- B. If the Employer, citizens, or Legislature acts to amend any provisions of the Charter, Ordinances, or appropriate enabling legislation pertaining to the role, powers, duties, authority, and responsibilities of the Employee's position, and such amendment substantially changes the form of government, the Employee shall have the right to declare that such amendment constitutes termination;
- C. If the Employee resigns following an offer by the Employer to accept resignation, whether such offer is formal or informal, then the Employee may declare a termination as of the date of the Employee's acceptance of such formal or informal offer;
- D. If either party fails to cure a breach of contract as declared by either Employer or Employee within a 30-day period after the declaration of such breach of contract, provided written notice of such breach of contract is provided in accordance with provisions of Section 17;
- E. If Employee is convicted of a felony or misdemeanor involving moral turpitude, or if it is established that Employee's performance constitutes malfeasance or gross dereliction of duty;
- F. If Employee fails or refuses to follow a direct, lawful order by Employer; and
- G. If Employee violates one or more tenets or ethical principles of ICMA.

Section 9 Severance

- A. Except as expressly provided herein, severance shall be paid to the Employee when employment is terminated in Section 8. If the Employee is terminated, the Employer shall provide a minimum severance payment equal to ninety (90) days salary and benefits at the then-current rate of pay. This severance shall be paid in a lump sum unless otherwise agreed to by the Employer and the Employee. Severance does not include vehicle allowance, cell phone allowance or life insurance. The Employee shall also be compensated for all accrued sick leave, vacation time, all paid holidays and executive leave as provided in the Salary and Benefit Resolution for the Unrepresented Management Employees.
- B. If the Employee is terminated under any of the circumstances set forth in items E, F, or G of the preceding Paragraph 8, the Employer is not obligated to pay severance.

Section 10 Resignation

In the event that the Employee voluntarily resigns her position with the Employer, the Employee shall provide a minimum of ninety (90) days notice unless the parties agree otherwise.

Section 11 Performance Evaluation

Employer will review the performance of the Employee in December, 2010, and at least annually in each succeeding year thereafter, beginning in 2011. Performance reviews will include the identification of mutually agreed upon goals to be achieved by the Employee in the ensuing year, as well as a review of compensation for the coming year.

Section 12 Hours of Work

It is recognized that the Employee must devote a great deal of time outside the normal office hours on business for the Employer, and to that end Employee shall be allowed to establish an appropriate work schedule.

Section 13 Outside Activities

The employment provided for by this Agreement shall be the Employee's sole employment.

Section 14 Indemnification

Beyond that required under Federal, State or Local Law, Employer shall defend, save 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 performance of Employee's duties as City Manager or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities unless the act or omission involved willful or wanton conduct. The Employer shall indemnify employee against any and all losses, damages, judgments, interest, settlements, fines, court costs, and other reasonable other costs and expenses of legal proceedings including attorneys fees, and any liabilities incurred by, imposed upon, or suffered by such Employee in connection with or resulting from any claim, action, suit, or proceeding, actual, or threatened, arising out of or in connection with the performance of her duties. Any settlement of any claim must be made with prior approval of the Employer in order for indemnification, as provided in this Section to be available.

Section 15 Bonding

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

Section 16 Other Terms and Conditions of Employment

The Employer may set such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Hayward City Charter, or any other law.

Section 17 Notices

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

(1) EMPLOYER: Mayor of the City of Hayward
Hayward City Hall
777 B Street
Hayward California 94541

(2) EMPLOYEE: E. Frances David
Address On File

Alternatively, notice required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice in the course of transmission in the United States Postal Service.

Section 18 General Provisions

A. Integration. This Agreement sets forth and establishes the entire understanding between the Employer and the Employee relating to the employment of the Employee by the Employer. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The parties by mutual written agreement may amend any provision of this agreement during the life of the agreement. Such amendments shall be incorporated into and made a part of this agreement.

B. Effective Date. This Agreement shall become effective on the date that is approved by the Hayward City Council.

C. Severability. The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

Dated _____, 2010

Executed by:

Michael Sweeney
Mayor, City of Hayward

E. Frances David

ATTEST:

City Clerk of the City of Hayward

APPROVED AS TO FORM

City Attorney of the City of Hayward