



DISCUSSION ITEMS

Agenda Item # 14

AGENDA REPORT SUMMARY

Meeting Date: June 22, 2021

Subject: Employment Agreement: City Manager

Prepared by: City Council City Manager Recruitment Subcommittee:
Neysa Fligor, Mayor
Anita Enander, Vice Mayor

Reviewed by: Jolie Houston, City Attorney

Requested by: City Council

Attachment(s):

1. City Manager Employment Agreement

Previous Council Consideration: None

Fiscal Impact:

Funds for the salary and benefits associated with this position, including the housing assistance, are included in the budget.

Environmental Review:

Not applicable

Policy Question(s) for Council Consideration:

- Does Council wish to appoint Gabriel Engeland as the permanent City Manager?

Discussion/Summary

On November 24, 2020, the City Council approved the Separation Agreement and General Release between the City of Los Altos and permanent City Manager Chris Jordan. In addition, the City Council appointed Deputy City Manager Jon Maginot to serve as Acting City Manager effective December 6, 2020. The City then appointed Brad Kilger as Interim City Manager on January 12, 2021.

The City Council formed a City Manager recruitment Subcommittee of the Mayor and Vice Mayor and launched its recruitment process in January 2021. The City also hired Ralph Andersen & Associates as the firm to lead a national search for the City's next permanent City Manager. Over a five-month period, the City conducted a Los Altos community survey and held different panel interviews of qualified candidates. Based on the interviews and further review of the qualifications of the different candidates, the City Council has identified Gabriel Engeland as the choice for City Manager.



Subject: Employment Agreement: City Manager

Mr. Engeland was the most qualified based on his experience and professional background. He has held the position of city manager in Sierra Madre, California, and Trinidad, Colorado. Prior to serving as a city manager, Mr. Engeland held other municipal government positions such as Interim Development Services Director and Economic Development Administrator. Mr. Engeland received his Master of Public Administration from the University of Kansas and Master of Science in Human Resource Development with a special focus on Workforce Development from Louisiana State University. He also holds certifications in Emergency Management from the Emergency Management Institute and the Federal Emergency Management Agency (FEMA). Mr. Engeland is an active member of the International City/County Management Association (ICMA).

Attached to this staff report is the City Manager Employment Agreement signed by Mr. Engeland.

Recommendation:

Move to approve the City Manager Employment Agreement.

CITY MANAGER EMPLOYMENT AGREEMENT

This Agreement for Employment of City Manager ("Agreement") is made and entered on this 22nd day of June, 2021, by and between the City of Los Altos ("City"), a California general law municipal corporation, and Gabriel Engeland ("Engeland") (jointly, the "Parties").

RECITALS

WHEREAS, the City Council of the City of Los Altos ("City Council") desires to appoint Engeland to the position of City Manager of the City of Los Altos; and

WHEREAS, it is the desire of the City Council to establish the terms and conditions of employment of Engeland to the position of City Manager of the City of Los Altos ("City Manager"), including the duties, salary, and benefits of employment; and

WHEREAS, Engeland desires to accept employment as City Manager under the terms set forth herein; and

WHEREAS, the City is best served by a City Manager who establishes and maintains a strong partnership with the City Council and the community, and such a partnership is best achieved by the City Manager's involvement in a broad spectrum of community activities and by having a personal stake and interest in the quality of life shared by those who live in the community; and

WHEREAS, the City Manager is an integral part of the City's Emergency Services Team and the City Council has developed a heightened awareness of the value of having the City Manager available during the critical hours immediately following catastrophic events; and

WHEREAS, the City Council believes, therefore, that it is in the best interest of the community for the City Manager to reside within the geographic boundaries of the City, and recognizing the high cost of housing, the City determines that it is in the City's best interest to assist in such housing; and

WHEREAS, the housing assistance shall be in accordance with the terms of this Agreement; and

WHEREAS, the City Council finds that above stated reasons for the housing assistance constitute legitimate "public purposes" for making the housing assistance; and

NOW, THEREFORE, in consideration of the respective and mutual covenants hereinafter contained and made, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed, and subject to all the terms and conditions hereof, the Parties agree as follows:

SECTION 1. EMPLOYMENT, DUTIES AND RESPONSIBILITIES

A. **Appointment of City Manager.** City does hereby agree to employ Engeland in the capacity of City Manager with a work start date of July 19, 2021 ("Effective

Date”). Engeland’s employment is “at-will” and Engeland serves at the pleasure of the City Council.

B. **Duties.** Engeland shall perform the functions and duties specified under the Government Code of the State of California, the Los Altos Municipal Code, and Ordinances and Resolutions of the City, and to perform such other legally permissible and proper duties and functions as the City Council shall from time to time assign.

C. **Term of Agreement.** This Agreement shall commence upon execution by Parties and continue for a period expiring three (3) years after the Effective Date (“Expiration Date”), or until this Agreement is otherwise terminated pursuant its terms. The City Council may consider extending the term of the Agreement at any time during the term of the Agreement, but at a minimum, will consider adding one additional year to the term of the Agreement at the conclusion of each annual review period for Engeland as part of the annual review process. Nothing in this Agreement shall prevent, limit or otherwise interfere with (a) Engeland’s at-will status; (b) the right of the City to terminate the services of Engeland as provided herein; or (c) the right of Engeland to resign from his position as provided herein.

D. **Agreement Term Renewal.** This Agreement shall automatically renew unless the City gives Engeland timely notice of a non-renewal. The City must give Engeland written notice of non-renewal at least six months prior to the Expiration Date and any succeeding expiration dates. Unless such notice of non-renewal is given, this Agreement shall automatically renew, starting on the applicable expiration date (“Renewal Effective Date”), on the terms and conditions set forth herein (as such may be amended from time to time) for an additional one-year term. The City reserves the right to propose changes to the terms and conditions set forth in the Agreement for the additional one-year term, and any such changes that are agreed to by the Parties shall be done pursuant to Section 7F below. This Section 1D, however, in no way prevents the City from exercising its rights under Section 6A.

E. **Hours of Work.** Engeland is expected to devote the necessary time outside normal office hours to the business of the City. To that end, Engeland shall be allowed flexibility in setting his own office hours, provided that Engeland shall work as necessary during customary business hours to satisfactorily perform his City Manager duties and responsibilities and be available to other City staff during customary business hours. This position is exempt from the Fair Labor Standards Act overtime pay requirements; therefore, Engeland shall not be entitled to additional compensation for any work performed in excess of the City’s regular workweek.

Engeland shall keep the City Council and his direct reports aware of his office schedule.

F. **Exclusive Employment.** The employment provided for by this Agreement shall be Engeland’s sole employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to the City and the community, subject to prior approval by the City Council, Engeland may elect to accept limited teaching, consulting or other business opportunities which do not interfere with or create a conflict of interest (or

the appearance of a conflict of interest) with the performance of his duties or obligations under this Agreement, or place the City, the City Council or the Engeland in an unfavorable light.

SECTION 2. COMPENSATION – SALARY AND BENEFITS

A. Salary.

1. Initial Base Salary. City shall pay Engeland an annual base salary of Two Hundred Forty-five Thousand and Ninety-five Dollars (\$245,095) (“Base Salary”). Salary shall be paid in bi-weekly installments at the same time as other employees of City are paid.

2. Changes to Compensation. Should the City Council, upon completion of its annual review of Engeland’s performance pursuant to this Agreement, determine that Engeland has met City’s performance expectations, the City Council may consider an increase in Engeland’s compensation. Said consideration may include factors such as employee performance level, salary survey data and compensation increases granted to other City management employees. Engeland understands and agrees that he has no entitlement to an increase in compensation. City Council will inform Engeland of its decision. Changes to compensation may include adjustment to base salary, bonus, or other discretionary benefits as determined by the City Council.

B. Benefits.

1. CalPERS. Engeland will be enrolled into the California Public Employees Retirement System (CalPERS). The terms of the contract between City and CalPERS and applicable law shall govern the eligibility for and level of benefits to which Engeland is entitled. Based on Engeland’s hire date and date of entry into CalPERS, Engeland shall be classified as a “new member” as defined by Government Code Section 7522.04(e). With respect to retirement compensation and all other relevant respects, City will comply with Government Code Section 7522 *et. seq.*, including but not limited to the employee cost-share, the cap on pension benefits, and the three-year average for calculating final compensation.

As a new member retirement benefits are pursuant to the California Public Employee’s Retirement Reform Act of 2013 (PEPRA) Section 7522.10, employees hired on or after January 1, 2013 will have a retirement formula of 2% @ 62 and will pay 50% of the normal CalPERS retirement cost. Employee contribution is currently set at 6.25% and is subject to change based on CalPERS actuarial. CalPERS formula and benefit are subject to change based on future CalPERS law modifications and City policy. The City does not participate in Social Security nor is it currently enrolled for State Disability Insurance.

2. Benefits. Except as otherwise set forth in this Agreement, in addition to the benefits specified herein, Engeland shall be eligible to participate in any and all employee benefits otherwise accorded to City’s unrepresented employees, and not covered under a Memorandum of Understanding, including without limitation to participation in health, dental, vision and other supplemental benefits, and those benefits may be subject to change.

3. Vacation. As of the Effective Date, Engeland shall be credited with eighty (80) hours of vacation and with the equivalent of 10-11 years of continuance service for

purpose of setting a vacation accrual schedule, thus providing an effective rate of one hundred forty-four (144) hours per year. Engeland shall be entitled to accrue, use, or redeem vacation leave in whatever manner is permitted pursuant to City policy, as same may be amended from time to time by action of the City Council.

4. Sick Leave. As of the Effective Date, Engeland shall be credited with forty (40) hours of sick leave and accrue sick leave at a rate of ninety-six (96) hours per year. Engeland shall be entitled to accrue, use, or redeem sick leave in whatever manner is permitted pursuant to California Labor Code Section 246.5 or any other applicable City policy, as same may be amended from time to time by action of the City Council.

5. Management Leave. As of the Effective Date, Engeland shall be credited with twenty-four (24) hours of Management Leave, and he will thereafter accrue Management Leave at the rate of one hundred twenty (120) hours per year. Engeland shall be entitled to accrue, use, or redeem Management Leave in whatever manner is permitted pursuant to City policy, as same may be amended from time to time by action of the City Council.

SECTION 3. ADDITIONAL EXPENSES

A. **Professional Development, Dues and Subscriptions.** City agrees to pay for the professional dues, subscriptions, and other costs of Engeland deemed necessary for his participation in national, state, regional, and local associations and organizations and in meetings, conferences, and training related thereto, including but not limited to the International City/County Management Association, League of California Cities, and County City Managers' Association, which are considered mutually desirable for his continued professional participation and growth and for the good of the City, subject to budgetary approval and City Council oversight.

B. **Business Expenses.** City shall reimburse Engeland for all necessary and appropriate business expenses, including, but not limited to, the costs of business meetings, business meals, staff functions and special events attended in an official capacity, subject to any guidelines the City Council may impose. Any expenditures must be in conformance with any applicable City reimbursement policy.

C. **Vehicle and Cell Phone Expenses.** Notwithstanding Section 2 above, Engeland: (1) is entitled to an auto allowance the same as the City Directors (that is \$350.00 per month at the Effective Date), which shall not be considered pensionable compensation pursuant to Government Code Section 7522.34(c)(7); (2) shall have access to City pool cars consistent with City policies; and (3) will be provided with a cell phone for business use, however he is not entitled to allowance or reimbursement of expenses associated with use of that cell phone.

SECTION 4. RELOCATION AND HOUSING ASSISTANCE

A. **Relocation Assistance.** City shall provide up to \$15,000 reimbursement to Engeland for actual and documented expenses associated with moving

and temporary storage of household goods for this City Manager position. Reimbursement will be made upon presentation to City of receipt(s) for reasonable costs.

B. Temporary Housing Assistance.

On or about the Effective Date, Engeland agrees to reside within the corporate limits of the City.

1. **Temporary Housing Assistance.** The Parties contemplate that, starting on the Effective Date, and during the term of the Agreement, the City will provide assistance to Engeland for the rental or lease of housing in Los Altos through a cash payment to be dispersed to Engeland in equal payments monthly. The City will bear the actual and reasonable monthly rental or lease cost in the amount of Two Thousand Five Hundred (\$2,500) Dollars per month, which shall not exceed a total annual amount of Thirty Thousand (\$30,000.00) Dollars. The City shall provide this Temporary Housing Assistance for 3 years following the Effective date, or until Engeland decides to purchase a primary residence pursuant to Section 4B2 below, whichever occurs first. Such housing shall be located within the corporate limits of the City. This housing assistance shall not be considered pensionable compensation pursuant to Government Code Section 7522.34(c)(7). Engeland will keep accurate records related to such lease or rental payments.

2. **Primary Residence Purchase Assistance.** If during the term of the Agreement, Engeland decides to purchase a primary residence within the corporate limits of the City, the City agrees to negotiate in good faith an agreement with Engeland whereby the City provides some form of financial assistance toward the purchase of the residence. The amount of the City's assistance and Engeland's contribution, the method of financing, and other elements of a purchase transaction will be determined through good faith negotiations and mutual agreement and documented in an amendment to this Agreement. Engeland's performance of his duties and responsibilities as City Manager will also be factored into such negotiations.

At no time will the City provide both the Temporary Housing Assistance and the Primary Residence Purchase Assistance at the same time.

SECTION 5. PERFORMANCE REVIEW

The intent of the Parties is that there be open and constructive communication between the City Council and City Manager regarding the City Manager's performance and City Council expectations regarding such performance.

A. Initial Performance Expectations. Within sixty (60) days of the Effective Date, the City Council will establish performance expectations for Engeland.

B. **Annual Review.** The City Council shall conduct annual reviews of Engeland's performance on or around the anniversary of the Effective Date. The objective of such review shall be to maintain an optimal working relationship and a mutual understanding and agreement on duties, responsibilities, and priorities between Engeland and the City Council. Performance expectations are an integral part of the evaluation and may be updated from time to time throughout the year.

C. **Use of Facilitator.** Either the City Council or Engeland may request the involvement of an outside facilitator in such annual reviews. Engeland will arrange for such services with a mutually agreed upon facilitator in a manner that ensures the completion of the entire review process in a timely manner and consistent with the terms of the Agreement.

SECTION 6. TERMINATION AND SEVERANCE

A. **Termination by the City.** The following provisions apply to any termination of Engeland's employment by the City:

1. Engeland is an at-will employee who may be terminated for any or no reason, and Engeland shall serve at the will and sole pleasure of the City Council. In the event Engeland is terminated for any reason prior to the expiration of the employment term, or any extension, except as otherwise specifically stated in the Agreement, including subsections 6.A.2, 6.A.5 and 6.B below, City shall pay Engeland a severance payment described herein, provided, however, that such severance payment shall be contingent on Engeland first executing a release and waiver of all rights to sue the City or any city employee or official, which release and waiver shall be drafted by the city attorney or designee.

The severance payment that Engeland shall be entitled to shall be as follows: If the City decides to terminate Engeland, City shall provide six-month's notice and (i) a lump sum payment equal to six (6) months base salary or the number of months left on the unexpired term of the Agreement (whichever is less), (ii) cash out of any accrued leave balances that are compensable (per City policy) upon termination of employment, and (iii) pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA), the City shall reimburse Engeland for COBRA eligible benefits, subject to presentation of receipts, for a six-month period after termination, or until Engeland either secures full-time employment or obtains other health insurance coverage, or the number of months left on the unexpired term of the Agreement, whichever of these events occurs first. Engeland shall notify City within five (5) days of securing new full-time employment or acquiring health insurance coverage. If Engeland is willing and able to perform his duties under this Agreement, Engeland will continue performing his duties as City Manager during the six-month notice period referenced above, unless otherwise approved by the City Council.

Any severance payment shall exclude all other benefits, such as retirement, health, vision, and dental benefits. In addition, vacation and sick leave accrual shall immediately cease upon the date of City's notification to Engeland that his employment will be terminated. The severance pay shall be computed from the effective date of Engeland's termination. The intent of these provisions is to comply with Government Code section 53260.

This Section shall not apply to non-renewal of this Agreement as set forth in Section 1.D.

2. The City may terminate this Agreement immediately for Engeland's willful negligence, dishonesty, fraud or because of his conviction of any felonious act, any other illegal act involving use of Engeland's position for personal gain, any crime involving moral turpitude, any material breach of this Agreement. City shall have no obligation to pay the severance or the other benefits set forth in Section 6.A of this Agreement. Such termination shall herein be referred to as a termination "for cause." Notwithstanding the use of the term "cause" herein, nothing herein contained shall be deemed to create or establish a property right or a right to continuing employment in the position of employment of Engeland or affect City's right to terminate the employment of Engeland with or without cause in accordance with this Agreement.

3. Termination of this Agreement shall require at least three affirmative votes of the City Council at a lawfully called meeting, as provided by the provisions of the Ralph M. Brown Act (California Government Code §54950 et seq.). Effective date of Termination is at the discretion of the City Council. Except for a "for cause" termination pursuant to Section 6.A.2, the City shall take no action to terminate the services of Engeland before the second Tuesday of March immediately following a regular election at which one or more new members are elected to the City Council, thereby allowing new Councilmembers adequate time to assess Engeland's performance.

4. In the event that the City Council formally asks Engeland to resign and he is willing and able to perform his duties under this Agreement and the Los Altos Municipal Code, then Engeland shall be entitled to resign and still receive the severance benefits outlined in section 6.A, provided he agrees to the release and waiver requirements in section 6.A.

5. In the event that, at the time of termination, Engeland is under investigation by any law enforcement agency for any reason that would meet the definition of a "for cause termination" as defined in Section 6.2, City may withhold all or part of such severance pay until it is determined if charges will be filed, and if charges are filed, until final judgment is rendered.

6. Upon termination or expiration of this Agreement, Engeland agrees to cooperate with the City in any pending lawsuit or legal matters in which he may have relevant information.

B. Termination by Manager. Due to the important nature of Engeland's duties to the City, Engeland shall not terminate this Agreement during the initial two (2) year Term of this Agreement without cause, unless City agrees to such termination in writing. Thereafter, Engeland may terminate this Agreement through a resignation by giving the City notice of his intent to resign and providing an effective date for his resignation that is at least thirty (30) days' after he provides notice of his intent to resign. Engeland and the City agree that the City has discretion to select an effective date for the resignation that is earlier than the effective date stated by Engeland. If Engeland terminates this Agreement through a resignation, he is not entitled to receive any severance payment.

In the event Engeland terminates his employment under this Agreement, the provisions of this Agreement and all compensation and benefits owed Engeland under it shall cease upon

the effective date of such termination as determined by City.

SECTION 7. GENERAL PROVISIONS

A. **Indemnification.** City agrees to defend, hold harmless and indemnify Engeland 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 Engeland's duties. City is not required to indemnify Engeland for any illegal acts committed by Engeland but may agree to do so, in its discretion.

B. **Bonding Requirements.** City shall bear full cost of the fidelity bond required of Engeland under any law or ordinance in connection with his duties hereunder. This Agreement shall be deemed void and of no effect if Engeland is unable to qualify for any such fidelity bond prior to the Effective Date.

C. **Other Terms and Conditions.** The Council, in consultation with Engeland shall fix any such other terms and conditions of employment as it may determine from time to time, relating to the performance of Engeland provided such terms and conditions are not inconsistent with or in conflict with the provision of this Agreement or State law.

All provisions of the City Code and regulations and rules of City relating to vacation and sick leave, retirement and pension system contributions, holidays and other fringe benefits and working conditions pertaining to City Department Heads as they now exist or hereafter may be amended, except as otherwise set forth herein also shall apply to Engeland.

D. **Severability.** If any provision, or portion thereof, contained in the Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed servable and shall remain in full force and effect.

E. **Notices.** Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

Mayor and City Council
City of Los Altos
One North San Antonio Road
Los Altos, CA 94022

Gabriel Engeland, City Manager
City of Los Altos
One North San Antonio Road
Los Altos, CA 94022
(or to Engeland's home address on file)

Notices also may be personally served in the same manner as applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission by the United States Postal Service. Either party hereto may change their respective address of record by providing written notice thereof in accordance with this Section.

F. **Amendments.** Any amendments to this Agreement must be in writing and executed by both Parties.

G. **General Provisions.** The text herein shall constitute the entire Agreement between the Parties.

1. No provisions of this Agreement may be modified, waived, or discharged unless such waiver, modification or discharge is agreed to in writing by the City and Engeland. No waiver of either party at any time of the breach of, or lack of compliance with, any conditions or provisions of this Agreement shall be deemed a waiver of other provisions or conditions hereof.

2. This Agreement contains the entire agreement and understanding between the Parties and contains all of the terms and conditions of the Parties' agreement and supersedes any other oral or written negotiations, discussions, representations, or agreements. Engeland acknowledges that he has not relied on any promises, statements, representations, or warranties except as set forth expressly in this Agreement.

3. This Agreement shall be binding upon and shall inure to the benefit of the respective heirs, executors, administrators, successors and assigns of the Parties, provided, however, that Engeland may not assign his obligations hereunder.

4. This Agreement shall be governed by and construed in accordance with the laws of the State of California, and venue for any action concerning this Agreement shall be limited to the Superior Court for the County of Santa Clara.

5. 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.

6. The Parties hereto acknowledge and agree that, although this Agreement has been drafted by City's legal counsel, Engeland has reviewed, or had an opportunity to review, the terms of this Agreement with his legal counsel. Consequently, the doctrine that ambiguities in an agreement should be resolved against the drafting party shall not be employed in connection with this Agreement and this Agreement shall be interpreted in accordance with its fair meaning.

7. Unless provided for otherwise by this Agreement, all provisions of the Los Altos Municipal Code Chapter 2.01 (as amended) entitled "City Manager," which are applicable to the City Manager shall remain in full force and effect.

8. Required provisions of California Government Code 53243-53243.4 (and as subsequently amended) are hereby agreed to and expressly made a part of this Agreement.

In witness hereof, the undersigned have executed this Agreement. This Agreement may be executed in counterparts, and each counterpart shall be deemed a duplicate original. A copy

of a signature shall be deemed equivalent to an original signature. Electronic, fax and email signatures are equally binding as originals.

Gabriel Engeland

_____  _____

CITY OF LOS ALTOS:

By: Neysa Fligor, Mayor

ATTEST:

Andrea Chelemengos, City Clerk

APPROVED AS TO FORM:

Jolie Houston, City Attorney