



Agenda Report

File #: 19-0827

AGENDA REPORT REQUEST FOR CITY COUNCIL ACTION

DATE: September 18, 2019

TO: Honorable Mayor and City Council Members

FROM: Legal & Risk Management Department (City Attorney's Office)

SUBJECT:

City Council consideration of Resolution No. 2019-082 appointing Mitchell Lansdell as Interim City Manager and approving employment agreement.

RECOMMENDED ACTION:

That the City Council adopt Resolution No. 2019-082 appointing Mitchell Lansdell as Interim City Manager and approving employment agreement.

ANALYSIS:

With the position of City Manager becoming vacant at close of business on August 16, 2019, the City Council desires to appoint Mitchell Lansdell, who is a retired member of CalPERS, as Interim City Manager. The appointment would be effective as of today's date and would continue, unless terminated early by the City or Mr. Lansdell, until the permanent replacement for the vacant position of City Manager commences his or her employment. Although unlikely, it would also terminate early if Mr. Lansdell reaches 960 hours during this fiscal year (July 1st through June 30th) before a permanent City Manager is selected, as that is a limitation of state law.

Mr. Lansdell has been working in municipal government since 1972, first with the City of Los Alamitos as Recreation Director and Director of Administrative Services. Mr. Lansdell joined the City of Gardena in 1985, first as Assistant City Manager for about 12 years and then as City Manager for almost 20 years (from October 1997 through December 2016).

Mr. Lansdell indicates that he successfully guided the City of Gardena in eliminating a \$5.2M budget deficit and also lead them from possible bankruptcy to investment grade ratings with Moody's and Standard and Poor's. In 2017, the City enjoyed a fund balance of \$21.3M.

Mr. Lansdell has a bachelor's degree and a master's degree in Education.

The attached proposed Employment Agreement reflects Mr. Lansdell's appointment as Interim City Manager, his hourly rate of \$119.896 (calculated pursuant to the requirements of Government Code Section 21221(h)), and the expiration/termination date noted above.

The recruitment for the permanent City Manager is progressing. The application period has closed, and the City Council is expected to begin its review of the applicants this week.

COMMITTEE ACTION:

Not applicable.

STRATEGIC PLAN:

Not applicable.

FISCAL IMPACT:

The fiscal impact is \$4,795.84 for a given 40-hour work week, plus reimbursement for any necessary expenses approved by the City Council pursuant to AP # 01200.001 (e.g. mileage). Funding for Fiscal Year 2019-20 is included in the budget.

ENVIRONMENTAL ANALYSIS:

This action is categorically exempt pursuant to Section 15061(b)(3) of the Guidelines for the California Environmental Quality Act (CEQA), which states that a project is exempt from CEQA if the activity is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. This action merely involves a limited-term employment agreement and thus will not result in any significant effect on the environment.

PREPARED BY: DEAN DERLETH, CITY ATTORNEY/LRM DIRECTOR

REVIEWED BY: EDELIA EVELAND, HUMAN RESOURCES MANAGER

REVIEWED BY: KERRY D. EDEN, ASSISTANT CITY MANAGER/ADMINISTRATIVE SERVICES DIRECTOR

REVIEWED BY: MICHELE NISSEN, ASSISTANT CITY MANAGER

SUBMITTED BY: DEAN DERLETH, CITY ATTORNEY/LRM DIRECTOR

Attachments:

1. Resolution No. 2019-082
2. Employment Agreement (Interim City Manager)

RESOLUTION NO. 2019-082

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF CORONA, CALIFORNIA APPOINTING MITCHELL
LANDSELL AS CITY MANAGER ON AN INTERIM BASIS
AND APPROVING EMPLOYMENT AGREEMENT**

WHEREAS, Government Code Sections 7522.56 and 21221(h) permit the City Council to appoint a California Public Employees' Retirement System ("CalPERS") retired annuitant to a vacant position requiring specialized skills during recruitment for a permanent appointment, and provides that such appointment will not subject the retired person to reinstatement from retirement or loss of benefits so long as it is a single appointment that does not exceed 960 hours in a fiscal year; and

WHEREAS, the position of City Manager became vacant at close of business on August 16, 2019 with the departure of the incumbent employee, Darrell Talbert; and

WHEREAS, in order to retain efficient and uninterrupted operation and management of the City Manager's Office, the City Council desires to retain the services of Mitchell Lansdell, who is a retired member of CalPERS, to serve as Interim City Manager, effective September 18, 2019; and

WHEREAS, Mr. Lansdell has extensive experience in managing, directing and overseeing various city operations given his prior employment as both Assistant City Manager and City Manager for the City of Gardena for more than 30 years; and

WHEREAS, an appointment under Government Code Section 21221(h) requires an active, publicly posted recruitment for a permanent replacement; and

WHEREAS, the current status of this recruitment is ongoing; and

WHEREAS, the 180-day wait period requirement set forth in Government Code Section 7522.56(f) does not apply because Mr. Lansdell has been retired for more than 180 days; and

WHEREAS, this Section 21221(h) appointment shall only be made once and therefore will end on the date immediately preceding the date on which the permanent replacement for the vacant position of City Manager commences his or her employment or, if earlier, the date that this appointment is terminated by the City or Mr. Lansdell; and

WHEREAS, it is understood by the City and Mr. Lansdell that the combined total hours to be served by Mr. Lansdell in any fiscal year, for all CalPERS employers combined

and all retired annuitant positions, shall not exceed the 960-hour limitation set forth in California Government Code Sections Section 7522.56(d), 21221(h) and 21224; and

WHEREAS, the compensation paid to retired annuitants cannot be less than the minimum nor exceed the maximum monthly base salary paid to other employees performing comparable duties, divided by 173.333 to equal an hourly rate; and

WHEREAS, the maximum base monthly salary for this position is \$20,782 and the hourly equivalent is \$119.896, and the minimum base monthly salary for this position is \$20,782 and the hourly equivalent is \$119.896; and

WHEREAS, the hourly rate to be paid to Mr. Lansdell is \$119.896; and

WHEREAS, Mr. Lansdell has not and will not receive any other benefits, incentives, compensation in lieu of benefit or any other form of compensation in addition to this hourly pay rate; and

WHEREAS, pursuant to Government Code Section 7522.56(e)(1), Mr. Lansdell must certify in writing to the City upon accepting an offer of employment that he has not received any unemployment insurance compensation arising out of prior employment with a public employer that is subject to Section 7522.56 during the 12-month period preceding the effective date of this appointment.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CORONA AS FOLLOWS:

SECTION 1. All facts set forth in the background section of this Resolution are true and correct.

SECTION 2. Mr. Lansdell has the specialized skills needed to perform the work required of the City Manager position on an interim basis until a permanent City Manager is appointed by the City and thereafter begins service.

SECTION 3. The City Council hereby appoints Mr. Lansdell as interim City Manager effective September 18, 2019, until the date immediately preceding the date on which the permanent replacement for the vacant position of City Manager commences his or her employment, unless earlier terminated, pursuant to the authority provided under Government Code Sections 21221(h) and 7522.56, pending the recruitment, selection and employment of a permanent City Manager, to provide the specialized skills necessary to manage the City Manager's Office effectively.

SECTION 4. The employment agreement with Mr. Lansdell, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference, is approved by the City Council.

SECTION 5. The Mayor is authorized to execute said agreement on behalf of the City, with such technical amendments as may be deemed appropriate by the Mayor and City Attorney.

PASSED, APPROVED AND ADOPTED this 18th day of September, 2019.

Mayor of the City of Corona, California

ATTEST:

City Clerk of the City of Corona, California

**EXHIBIT “A”
EMPLOYMENT AGREEMENT**

[SEE ATTACHED 5 PAGES]

EMPLOYMENT AGREEMENT (INTERIM CITY MANAGER)

1. PARTIES AND DATE.

This Employment Agreement (“Agreement”) is made by and between the CITY OF CORONA, a municipal corporation (“City”) and Mitchell G. Lansdell (“Employee”), effective September 18, 2019, to provide in writing the terms and conditions of employment as interim City Manager. The City and Employee are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

2. RECITALS.

2.1 Interim City Manager. Due to Employee’s experience and specialized skills, the City desires to employ the services of Employee as City Manager of the City of Corona on an interim basis, and Employee desires to accept employment as City Manager on an interim basis. It is the desire of the Parties through this Agreement to establish conditions of employment and to set working conditions for Employee.

2.2 Temporary Appointment. Employee’s employment is authorized by Government Code Sections 7522.56 and 21221(h), which permit the City Council to appoint a California Public Employees’ Retirement System (“CalPERS”) retiree to a vacant position requiring specialized skills during recruitment for a permanent appointment, and provide that such appointment will not subject the retired person to reinstatement from retirement or loss of benefits, so long as it is a single appointment that does not exceed 960 hours in a fiscal year, inclusive of all hours worked for all CalPERS employers.

2.3 Employee Representations. Employee represents that:

2.3.1 He is a retired annuitant of CalPERS within the meaning of Government Code Sections 7522.56 and 21221(h) (“Statutes”) and acknowledges that his compensation is statutorily limited as provided in Government Code Section 21221(h).

2.3.2 As of the effective date of this Agreement, he has worked approximately 499 hours for a CalPERS state or contracting agency as a retired annuitant during the 2019-20 fiscal year. He acknowledges that he can work up to 960 hours for the City, a state agency or other CalPERS contracting agencies (collectively “CalPERS Agencies”) during any fiscal year. Therefore, he has approximately 461 hours remaining in fiscal year 2019-2020 to provide services to the City as interim City Manager.

2.3.3 He has not received unemployment compensation from any CalPERS Agencies during the 12-month period preceding the effective date of this Agreement.

2.3.4 He has been retired in excess of 180 days and, therefore, is not subject to the waiting period set forth in Government Code Section 7522.56(f).

3. TERMS.

3.1 **Duties.** In accordance with Resolution No. 2019-082, the City Council has appointed Employee as City Manager on an interim basis. Thus, the City shall employ Employee as City Manager of the City on an interim basis to perform the duties and functions pertaining to the City Manager position, and to perform other legally permissible duties and such functions as the City Council shall from time to time assign. The City Council shall have the authority to determine the specific duties and functions which Employee shall perform under this Agreement and the means and manner by which Employee shall perform those duties and functions. Employee agrees to devote all of his business time, subject to the hourly limitation set forth under Section 21221(h), skill, attention, and best efforts to the discharge of the duties and functions assigned to him by the City Council.

3.2 **City Documents.** All data, studies, reports and other documents prepared by Employee while performing his duties during the term of this Agreement shall be furnished to and become the property of the City, without restriction or limitation on their use. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information and other materials either created by or provided to Employee in connection with the performance of this Agreement shall be held confidential by Employee. Such materials shall not, without the prior written consent of the City Council, be used by Employee for any purposes other than the performance of his duties. Nor shall such materials be disclosed to any person or entity not connected with the performance of services under this Agreement, except as required by law.

3.3 Conditions of Employment.

3.3.1 Part Time Authorized. Employee is expected to devote necessary time, within and outside normal business hours, to the business of the City. However, in accordance with Government Code Section 21221(h), Employee shall not work under this Agreement for more than a total of 960 hours in any fiscal year. It is understood by both Parties that employment with other CalPERS employers shall count against the 960 hours per fiscal year limitation. In the event Employee is providing services to any other CalPERS agencies during the term of this Agreement, Employee must notify the City of such employment and disclose on a periodic basis (at a frequency determined by the City) the number of hours Employee is performing services for that other public agency to ensure that the maximum number of hours is not exceeded. Employee shall be allowed to establish a schedule that is less than full time in order to maximize the use of the 960 hours throughout an entire fiscal year; provided, however, that Employee's schedule shall be acceptable to the City Council and shall be established in advance.

3.3.2 No Conflicts. During the term of this Agreement, Employee shall not engage in any business or transaction or maintain a financial interest which conflicts, or reasonably might be expected to conflict, with the proper discharge of Employee's duties under this Agreement.

3.3.3 No Overtime Authorized. The position is a temporary, hourly assignment, but in no event shall Employee be entitled to record overtime or receive compensation therefor. The City, through the City Council, will assign Employee hours to work. Due to the nature of

the position, it is understood that the work day and work week hours may vary, however Employee shall not exceed the limitations set forth in this paragraph. These limitations are in addition to the annual limitation.

3.4 Compensation; No Fringe Benefits.

3.4.1 Compensation. For services rendered pursuant to this Agreement, Employee shall be compensated at the hourly rate of \$119.896. The City has confirmed that this rate is not less than the minimum, nor in excess of the maximum, paid by the City to other employees performing comparable duties (divided by 173.333 to equal an hourly rate) as listed on the City's publicly-available pay schedule. This hourly rate is established pursuant to the requirements of Government Code Section 21221(h) and may only be modified if permitted thereby. The compensation shall be paid at the same time and in the same manner as salaries are usually paid to miscellaneous employees of the City and shall be subject to all applicable taxes, and other required deductions. Such compensation shall be Employee's sole compensation for his service under this Agreement. Notwithstanding the foregoing, the City shall pay for workers' compensation insurance for Employee. Employee shall not be entitled to any additional benefits provided by the City to its employees, including, but not limited to, paid vacation, paid holiday leave, paid sick leave, medical insurance, dental insurance, life insurance, deferred compensation, disability insurance, unemployment insurance, and vehicle allowance.

3.4.2 Reimbursable Expenses. The City shall reimburse Employee for his direct, reasonable and necessary expenses incurred in the performance of his duties, as authorized by the City Council pursuant to the provisions of Policy 01200.001 (Travel & Other Expense Reimbursement Policy).

3.5 Term; Termination.

3.5.1 Term. The term of this Agreement shall be effective as of September 18, 2019 and shall be a single appointment ending on the date immediately preceding the date on which the permanent appointee to the vacant position of City Manager for the City commences his or her employment or, if earlier, the date that this appointment is terminated by the City or Employee in accordance with Section 3.5.2.

3.5.2 Termination. This Agreement may be terminated with or without cause at any time upon thirty (30) days advance written notice given by Employee to City or immediately upon notice by City to Employee. No compensation or severance payment of any kind shall be payable upon termination of this Agreement, other than any compensation due and owing under this Agreement through the last effective date of employment. The Parties understand and agree that the temporary employment relationship created by this Agreement is "at-will" and that the Employee shall serve at the will and pleasure of the City Council, and may be terminated at any time, without notice and with or without cause. Nothing in this Agreement, any statute, ordinance or rule shall prevent, limit or otherwise interfere with the right of the City Council to terminate, without cause or right of appeal or grievance, the services of the Employee at any time and without notice. Notice of termination may be delivered personally or by mail.

3.6 **Notices**. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective Parties

may provide in writing for this purpose, by deposit in the custody of the United States Postal Service, postage pre-paid, addressed as follows:

CITY: Edelia Eveland, Human Resources Manager
City of Corona
400 S. Vincentia Avenue
Corona, CA 92882

EMPLOYEE: Mitchell G. Lansdell
329 Avenida Granada
Long Beach, CA 90814

Alternatively, notices required pursuant to this Agreement may be personally served in the manner as is 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 United States Postal Service.

3.7 Indemnification. The City shall defend, hold 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 services as interim City Manager, except that this provision shall not apply with respect to any intentional tort or crime committed by Employee, or any actions outside the course and scope of his employment as interim City Manager. This provision shall also not apply with respect to any penalties assessed by CalPERS as a result of Employee's appointment as interim City Manager.

3.8 General Provisions.

3.8.1 Entire Agreement. This Agreement constitutes the entire agreement between the Parties, and supersedes and terminates any prior agreement or understanding between the Parties. This Agreement may be amended in writing and signed by both Parties.

3.8.2 Severability. 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.

3.8.3 Bonding. If applicable, the City shall bear the full cost of any fidelity or other bonds required of Employee in the performance of his duties as interim City Manager.

3.8.4 Modification. Any modification to this Agreement will be effective only if it is in writing and signed by both Parties.

3.8.5 Effect of Waiver. The failure of either Party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other Party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

3.8.6 Assignment. Neither this Agreement, nor any right, privilege or obligation of Employee hereunder shall be assigned or transferred by him without the prior written consent of the City Council. Any attempt at assignment or transfer in violation of this provision shall, at the option of the City Council, be null and void and may be considered a material breach of this Agreement.

3.8.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue shall be in Riverside County, California.

3.8.8 No Presumption of Drafter. The Parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the Parties, and this Agreement reflects their mutual agreement regarding the subject matter of this Agreement. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any Party to be the drafter of this Agreement and, therefore, no presumption for or against validity or as to any interpretation hereof, based upon the identity of the drafter shall be applicable in interpreting or enforcing this Agreement.

3.8.9 Assistance of Counsel. Each Party to this Agreement warrants to the other Party that it has either had the assistance of counsel in negotiation for, and preparation of, this Agreement or could have had such assistance and voluntarily declined to obtain such assistance.

IN WITNESS WHEREOF, the City of Corona has caused this Agreement to be signed and executed on its behalf by its City Council, and duly attested by its City Clerk, and Employee has signed and executed this Agreement, both in duplicate, effective on the day and year first above written.

CITY OF CORONA

By:

Jason Scott, Mayor

ATTEST:

Sylvia Edwards, City Clerk

APPROVED AS TO FORM:

Dean Derleth, City Attorney

EMPLOYEE

By:

Mitchell G. Lansdell

CERTIFICATION

I, SYLVIA EDWARDS, City Clerk of the City of Corona, California, do hereby certify that the foregoing Resolution was regularly introduced and adopted at a regular meeting of the City Council of the City of Corona, California, thereof held on the 18th day of September, 2019 by the following vote of the Council:

AYES:

NOES:

ABSENT:

ABSTAINED:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Corona, California, this 18th day of September, 2019.

City Clerk of the City of Corona, California

(SEAL)