



CITY COUNCIL AGENDA REPORT



DEPARTMENT: City Attorney

MEETING DATE: June 18, 2024

STAFF REFERENCE: Craig Steele, City Attorney

AGENDA LOCATION: AR-1

GOVERNMENT CODE SECTION 84308 APPLIES: No

TITLE: New Employment Contract with City Manager

OBJECTIVE: To approve a 3-year new employment contract for Dylan Feik, the Monrovia City Manager, to be effective on July 1, 2024

BACKGROUND: The City Council has completed its annual evaluation of Dylan Feik's performance as City Manager. After the conclusion of the evaluation, and given that the term of the original agreement is expiring, the City Council directed the City Attorney to prepare a new employment agreement for City Council review. The new agreement would include a compensation adjustment, revise the timing of the annual performance evaluation and future potential compensation adjustments, and increase the available severance benefit as of the City Manager's fifth employment anniversary, all for consideration and discussion in open session. Mr. Feik has informed us that he agrees to the terms of the proposed contract, subject to the approval of the City Council.

ANALYSIS: The most recent evaluation period was delayed for various reasons, and Mr. Feik's salary has not been adjusted since October of 2022. The attached proposed employment contract includes many of the same provisions that are in the current employment contract between the City and Mr. Feik. However, the new agreement does not contain certain provisions that are no longer applicable, such as provisions regarding moving expenses and Mr. Feik's initial performance evaluation. There are also some new provisions included in the attached proposed employment contract. The new provisions in the proposed contract that would take effect on July 1, 2024, if approved, include the following:

- Mr. Feik's annual salary is increased by 8%, from \$238,470.72 to \$257,548.38. This salary increase is retroactive to October 22, 2023, which is his anniversary of hire and the date a 2023 adjustment would have taken place, had the evaluation not been delayed.
- Mr. Feik's compensation may be adjusted not more than once annually, after June 30, 2025.
- The City Council will conduct Mr. Feik's next annual performance evaluation on or about June 30, 2025, and annually thereafter.
- In the event that the City terminates this agreement without cause on or after October 22, 2024, Mr. Feik will be entitled to six months' severance payment. Until that time, the existing three months' severance benefit remains in effect.

In connection with Mr. Feik's annual evaluation, and as part of the City's overall compensation evaluation, staff analyzed the city manager salaries included in the market survey of mid-management and executive management compensation. This market survey included data on city manager salaries in the cities of Arcadia, Azusa, Beverly Hills, Burbank, Glendale, Monterey Park, and Pasadena. The average city manager annual salary based on this survey data is \$301,856.40. Mr. Feik's current salary of \$238,470.72 is 21% below that average. The proposed salary increase will put Mr. Feik's base salary closer to the average city manager salary included in this survey data. The proposed salary increase will also bring Mr. Feik's salary to a point that is 5% above the City Department Director top step, through

calendar year 2025. The term of the agreement is three years, with an automatic one-year extension each year thereafter, until terminated by either party.

FISCAL IMPACT: The annualized costs of salary and benefits for this position are covered in the existing budget. The salary adjustment is 8% above Mr. Feik's existing salary and can be absorbed in the existing fiscal year budget as well as next year's budget.

OPTIONS: The following options are presented for consideration:

1. Approve the Employment Contract as presented and agreed to by Mr. Feik, or
2. Reject the Employment Contract and provide further direction to the City Attorney.

RECOMMENDATION: Staff recommends that the City Council approve the Employment Contract between the City of Monrovia and Dylan Feik.

COUNCIL ACTION REQUIRED: If the City Council concurs, the appropriate action would be a motion to approve the Employment Contract between the City of Monrovia and Dylan Feik in the form attached to this staff report.

EMPLOYMENT CONTRACT FOR CITY MANAGER

The City of Monrovia, as represented by its City Council, hereinafter referred to as Employer, and Dylan Feik, hereinafter referred to as Employee, in consideration of the mutual promises made herein, agree as follows:

ARTICLE 1. TERM OF EMPLOYMENT

Section 1.01. Term. This agreement shall be effective on July 1, 2024 (“Effective Date”), for a term of three (3) calendar years. Employee shall be employed as an “at will” employee, subject only to such limitations on termination as are imposed by Article 6 hereof. Each calendar year, on the anniversary of the Effective Date and commencing as of the first anniversary, the term of this agreement shall automatically be extended for one (1) additional calendar year, unless this agreement is terminated earlier by either party pursuant to Article 6. Such automatic extensions shall not increase the severance benefit payable pursuant to Section 6.02. Employee agrees that he serves at the will and pleasure of the City Council.

ARTICLE 2. DUTIES AND OBLIGATIONS OF EMPLOYEE

Section 2.01. General Duties. Employee shall serve as the City Manager of the City of Monrovia, and in such other Executive capacities of Employer’s subsidiary agencies as designated by the City Council and the Municipal Code (all such capacities are hereinafter collectively referred to as “City Manager”). Employee’s duties and responsibilities shall be those duties and responsibilities commonly assigned to a City Manager in a California general law city, and as described in Title 2 of the Monrovia Municipal Code and any other act of the City Council, as the same may be amended from time to time. In his capacity as City Manager, Employee shall do and perform all services, acts, or things necessary or advisable to manage and conduct the affairs of Employer in a lawful and professional manner, subject at all times to the policies set by the City Council of Monrovia and applicable laws, ordinances, regulations, policies and administrative procedures of the United States, the State of California, Employer, or any agency thereof.

Section 2.02. Devotion to Employer’s Business. (a) Employee shall devote his entire professional time, ability, and attention to the business of Employer during the term of this contract.

(b) Employee shall not engage in any other business duties or pursuits whatsoever, or directly or indirectly render any services of a business, commercial, or professional nature to any other person or organization, whether for compensation or for profit, without the prior written consent of the City Council of Monrovia.

(c) Notwithstanding the foregoing, employee shall be permitted to conduct or engage in limited teaching and other formal classroom and/or instructional programs for compensation without obtaining the prior consent of the City Council, so long as such activities do not interfere with Employee’s primary duty as City Manager or constitute a conflict of interest under applicable law.

(d) This agreement shall not be interpreted to prohibit Employee from making passive personal investments permitted under, and pursuant to, the laws, ordinances, regulations, and policies of the United States, State of California, Employer and agencies thereof.

Section 2.03. Corporate Surety Bond. Employer shall secure and provide, at its cost, any corporate surety bond required by Section 2.04.090 of the Monrovia Municipal Code.

ARTICLE 3. COMPENSATION OF EMPLOYEE

Section 3.01. Compensation. (a) As compensation for the services to be performed hereunder, Employee shall receive an initial salary of \$257,548.38 per year, payable in equal installments, except that such initial salary shall be retroactive to October 22, 2023. Such compensation is, and shall remain, in effect as of October 22, 2023 and shall be paid to Employee at the same times and in the same manner as payments are made to other City management employees, subject to normal payroll deductions as directed by Employee. Employee shall receive the retroactive payment of such initial salary at the end of the first full pay period of July 2024.

(b) Except as limited in Section 3.01(c), said compensation may be adjusted, by resolution of the City Council and without further amending this agreement, not more than once annually, after June 30, 2025. Any such adjustment shall be paid starting with the first pay period after an Annual Performance Evaluation is completed and the compensation adjustment is approved, in an amount subject to negotiation between Employer and Employee. A compensation adjustment is not required by this agreement and in no event shall any annual adjustment in compensation exceed five percent (5%) of Employee's base annual salary for the immediately previous year.

(c) The parties may mutually agree to defer or forego all or any part of an annual salary adjustment in times of economic hardship, such as a year when General Fund revenue does not increase as projected.

Section 3.02. Performance Evaluations (a) **Goals and Objectives.** At the conclusion of each Annual Performance evaluation, the City Council and Employee shall agree on a written set of reasonable goals and objectives for the subsequent year of employment. This written set of mutually agreed upon reasonable goals and objectives shall provide the basis for the Annual Performance Evaluation, as defined herein.

(b) **Annual Performance Evaluation.** On or about June 30, 2025, and annually thereafter, the City Council shall conduct an evaluation of Employee's performance. The City Council may engage an outside party to facilitate the evaluation at its sole discretion. Nothing in this paragraph is intended to prohibit the City Council from evaluating Employee's performance at any additional time during the term of this agreement. The purpose of the annual performance evaluation shall be to provide feedback to the Employee regarding Employee's performance against goals and objectives, to establish goals and objectives for the following year, to determine whether any compensation adjustment pursuant to Section 3.01(b) is warranted, and to determine whether to award Employee a Performance Bonus subject to the criteria set forth below in Section 3.02(c). The performance evaluation shall generally be based on two components:

(1) The Employee's and the Organization's achievement of pre-determined and adopted strategic goals and objectives, established jointly by the City Council and Employee (75%); and

(2) The status of the Council-Manager relationship, as measured by a mutually acceptable evaluation instrument (25%).

(c) **Performance Bonus.** At the conclusion of an annual performance evaluation, the City Council may determine to award Employee with a one-time discretionary Performance Bonus in recognition of either (1) continued exceptional performance or (2) a singular exceptional achievement on behalf of the City. Whether a bonus is given, and the amount thereof, shall be subject to the sole and absolute discretion of the City Council and, if awarded, shall be decided in an open and public meeting of the City Council. Employee shall not be eligible to receive more than one (1) such Performance Bonus in any fiscal year. The maximum amount of the Performance Bonus in any year shall not exceed five percent (5%) of the Employee's annual base salary for the just-concluded fiscal year. The parties agree and acknowledge that the maximum amount of bonus if any, set forth in this Section is intended to serve as a maximum limit only, and that the City Council retains complete discretion whether to award a Performance Bonus and, if so, the amount of said Bonus up to the maximum amount set forth herein.

ARTICLE 4. BENEFITS

Section 4.01. Fringe Benefits. Except as specifically provided herein, Employer shall provide the same fringe benefits including, without limitation, retirement and health benefits, to Employee as are provided to other Management Employees specified in Appendix C of the then-current City of Monrovia Personnel Rules and Regulations and any subsequent or amended personnel rule or regulation applicable to Management Employees and not in conflict with this agreement. Employee acknowledges receipt of a copy of said Appendix C prior to his execution of this agreement. Notwithstanding the foregoing, and in addition to any contribution amounts set out in said Exhibit C, as part of the City's CalPERS response plan, Employee shall contribute \$325.00 per month **and** the applicable full employee-paid percentage (currently 6.75%) of his annual salary to CalPERS as a portion of the cost of CalPERS benefits and employer paid member contributions ("EPMCs").

Section 4.02. Automobile Allowance. Employee shall receive a monthly automobile allowance of \$450.00 in lieu of having an automobile provided to him by the City for business and personal use. Employee shall be solely responsible for maintaining the records necessary for personal tax purposes.

Section 4.03. Professional Development. Employer hereby agrees that it is in the Employer's best interest that the Employee set aside a reasonable period of time each year for his continuing education and professional development. Employer agrees to budget and pay for Employee's professional dues and subscriptions, and to facilitate Employee's continuation and full participation in national, state and local associations and organizations (including, without limitation, ICMA, League of California Cities, the California City Management Foundation, and San Gabriel Valley City Managers' Association) in an amount not to exceed \$4,000.00 annually.

Section 4.04. Leave Accrual. Except as provided herein, Employee shall accrue the same leave time benefits as provided to other Management Employees as specified in Appendix C of the then-current City of Monrovia Personnel Rules and Regulations, and any subsequent or amended applicable personnel rule or regulation. Employee's accrued leave time as of the Effective Date of this Agreement shall carry over into the new Agreement's term. Each fiscal year, Employee may request to be paid in-lieu of using Executive Leave, Vacation Leave, and Management Leave using City's normal "cash out" policies and procedures, and such payment shall be limited to a cumulative total of no more than 250 combined accrued hours per fiscal year subject to applicable caps on accrual.

ARTICLE 5. ADDITIONAL PROVISIONS IN PERSONNEL RULES

Section 5.01. General. The Personnel Rules and Regulations of the City of Monrovia, as amended from time to time, shall govern the non-monetary compensation (including certain benefits) to which Employee may be entitled, except to the extent that items of compensation and/or benefits are specified in this agreement, in which case this agreement shall control. Matters so governed by the Personnel Rules include (without limitation): management leave, sick leave, PERS contributions, life insurance, long term disability insurance, health benefits and fringe benefits. The Personnel Rules and Regulations shall not govern separation or discipline rights and procedures, as Employee is an “at will” contracted employee.

ARTICLE 6. TERMINATION OF EMPLOYMENT

Section 6.01. Termination for Cause. (a) Employer reserves the right to terminate this agreement if Employee commits such acts of dishonesty, fraud, misrepresentation or other acts of moral turpitude or personal misconduct as the City Council reasonably believes would interfere with the continuing ability to effectively perform his duties or if, by words or deed, Employee breaches a material term of this agreement or abandons his employment as City Manager. Employer may, at its option, terminate this agreement for the reasons stated in this Section 6.01 by giving written notice of termination to Employee without prejudice to any other remedy to which Employer may be entitled either at law, in equity, or under this agreement. In the case of a termination for cause, Employer shall not be liable to employee for any severance benefit or payment.

Section 6.02. Termination Without Cause. (a) This agreement shall be terminated automatically upon the death of the Employee, or at the expiration of its term.

(b) Employer, in its absolute discretion, may terminate this contract without cause by providing at least thirty (30) days prior written notice of termination to the Employee pursuant to the terms of Monrovia Municipal Code Section 2.04.060. If the Employer terminates this agreement on or prior to October 21, 2024 for a reason other than those described in Section 6.01 or 6.02(a), it shall pay Employee a lump sum amount equal to three (3) months’ salary, or a lump sum amount equal to six (6) months’ salary if said termination is on or after October 22, 2024, and cost of benefits for Employee and Employee’s dependents (if applicable) at the then-current rates of compensation. Notwithstanding the foregoing, Employer shall not terminate this agreement without cause during or within the 120-day period immediately following any regular municipal election at which a member of the City Council is elected, or the date on which a new member of the City Council is appointed pursuant to applicable State law. The severance benefit payable under this Section 6.02(b) is in addition to, and independent of, any severance payment or benefit offered to City Managers by the California Joint Powers Insurance Authority, while City is a Member, to which Employee may be entitled.

Section 6.03. Termination by Employee. Employee may terminate his obligations under this agreement by giving Employer at least thirty (30) days written advance notice. The City Council may waive the Employee’s notice requirement. During the period prior to such a termination by Employee, he shall continue to devote full time and effort to the business of the City and shall cooperate fully with Employer in any transition to a new management employee. Employee shall not be entitled to receive any severance benefit if Employee terminates this agreement.

ARTICLE 7. GENERAL PROVISIONS

Section 7.01. Entire Agreement. This agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the employment of Employee by Employer and contains all of the covenants and agreements between the parties with respect to that employment in any manner whatsoever. Each party to this agreement acknowledges that no representation, inducement, promise, or agreement, orally or otherwise, has been made by any party, or anyone acting on behalf of any party, which is not embodied herein, and that no other agreement, statement, or promise not contained in this agreement shall be valid or binding on either party.

Section 7.02. Modifications. Any modification of this agreement will be effective only if it is in writing, approved by the City Council as required by law and signed by both parties.

Section 7.03. Effective 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, or 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.

Section 7.04. Partial Invalidity. If any provision of this agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

Section 7.05. Law Governing Agreement. This agreement shall be governed by and construed in accordance with the laws of the State of California, as if mutually drafted by both parties.

Section 7.06. Indemnification. City shall defend, save harmless, and indemnify Employee, in the manner provided by Government Code Sections 825 and 995, from and against any tort, liability claim or demand, or other legal action arising out of an alleged act or omission occurring in the course and scope of the performance of Employee’s duties as City Manager .

Executed on _____, 2024, at Monrovia, California.

CITY OF MONROVIA (“EMPLOYER”)

BY _____
Becky Shevlin, Mayor
City of Monrovia

ATTEST

BY _____
Alice Atkins, MMC, City Clerk
City of Monrovia

APPROVED AS TO FORM

BY _____
Craig A. Steele
City Attorney

DYLAN FEIK (“EMPLOYEE”)

BY _____
Dylan Feik