

SONORA CITY COUNCIL AGENDA REPORT

MEETING DATE: JUNE 18, 2018

TO: CITY COUNCIL

FROM: DOUGLAS L. WHITE, CITY ATTORNEY

SUBJECT: APPROVING A FIFTH AMENDMENT TO THE EMPLOYMENT AGREEMENT FOR CITY ADMINISTRATOR TIMOTHY A. MILLER AND THE CITY OF SONORA

RECOMMENDATION:

Approving a Fifth Amendment to the Employment Agreement (“Fifth Amendment”), in a form approved by the City Attorney, for City Administrator Timothy A. Miller and authorizing and directing the Mayor to execute the Fifth Amendment on behalf of the City.

BACKGROUND:

On January 18, 2011, the Sonora City Council approved the Employment Agreement (“Agreement”) between the City of Sonora (“City”) and Timothy A. Miller. Since that time, there have been four amendments to Mr. Miller’s Employment Agreement, which were all approved by the Sonora City Council (“Council”).

The First Amendment was approved by Council on August 1, 2011 and related to the Mr. Miller retirement. The amendment set forth a four percent (4%) decrease in the Employer Paid Member Contribution (“EPMC”).

The Second Amendment was approved by Council on June 18, 2012 and granted Mr. Miller a five percent (5%) salary increase while he was performing the duties of the Public Works Director. The Second Amendment also provided Mr. Miller with a three percent (3%) Cost of Living Adjustment (“COLA”) for 2013.¹ The Second Amendment also added health and life benefit coverage for the Mr. Miller’s dependents and provided that Mr. Miller would pay the entire eight percent (8%) employee member contribution toward his retirement benefits.

The Third Amendment, which was approved by Council on July 1, 2013, amended the Employee Agreement to allow Mr. Miller the option to use his deferred compensation toward the purchase of retirement service credit.

The Fourth Amendment, which was approved by Council on March 20, 2017, amended the Employee Agreement to increase the amount of vacation and administrative leave Mr. Miller may sell back to the City from eighty (80) hours to two years leave, provided that Mr. Miller

¹ The City Administrator also received a two percent (2%) COLA in both 2016 and 2017. However, those adjustments were approved by resolution and were not included as formal amendments to the City Administrator’s Employee Agreement.

maintained at least a year's worth of accrual in the accrual bank.

The Fifth Amendment contains the following provisions:

1. A five percent (5%) salary increase during the time in which the City Administrator performs the duties of the Administrative Services Director. The Administrative Services Director position has been vacant since November 1, 2017, and the City Administrator has taken over the duties of that position since that time. However, Mr. Miller is requesting a retroactive increase only to the first pay period in 2018, which is January 13, 2018.
2. A two percent (2%) COLA increase, also effective retroactively to the first pay period in 2018, which is January 13, 2018. This increase is in a line with previous COLA increases the City Administrator received (he received two percent (2%) COLA increase in 2016 and 2017) and it is also in line with the salary adjustments other represented City staff will receive this year. Per the terms of the Letter Agreements with the unions, the City's miscellaneous and safety staff will also be receiving a two percent (2%) COLA increase retroactive to the first pay period in January.
3. An amendment allowing the City Administrator the option to receive a payout of up to four hundred and eighty (480) hours of accrued sick leave at his current hourly rate of pay [current contract language] *and* up to an additional two hundred and forty (240) hours of accrued sick leave at fifty percent of his current hourly rate of pay **OR** the option to obtain a payout of up to four hundred and eighty (480) hours of accrued sick leave at his current hourly rate of pay *and* apply up to four hundred and eighty (480) hours of accrued sick leave toward his monthly medical, dental, and/or vision premium costs which occur following the City Administrator retirement date, until the City Administrator become eligible for Medicare.

This amendment allows the City Administrator the same rights regarding sick leave as other managerial employees upon retirement. This same language is currently included in the Sonora Management Employee's Association Memorandum of Understanding at section 5. Thus, allowing the City Manager this same benefit would create consistency among the City's managerial employees.

FISCAL IMPACT

The first two proposed amendments related to salary will have the following estimated financial impact: Approximately eleven hundred dollars (\$1,100) per month increase (inclusive of benefits and payroll taxes) to the City Administrator's salary for a period of approximately 8 months.

The third amendment related to the payout of additional sick leave will have the following estimated financial impact: Up to approximately six thousand dollars (\$6,000) if all of the City Administrator's existing hourly accrual is applied to health benefit premium payments.

OPTIONS

1. Motion to adopt Resolution No. 06-18-2018-C approving the Fifth Amendment; or
2. Modify one or more terms contained in the Fifth Amendment.

ATTACHMENTS

Fifth Amendment to the Agreement Between Timothy A. Miller and the City of Sonora for Employment of City Administrator

Resolution No. 06-18-2018-C approving the Fifth Amendment to the Agreement Between Timothy A. Miller and the City of Sonora for Employment of City Administrator

RESOLUTION NO. 06-18-2018-C

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SONORA APPROVING
THE FIFTH AMENDMENT TO THE AGREEMENT BETWEEN TIMOTHY A.
MILLER AND THE CITY OF SONORA FOR EMPLOYMENT OF CITY
ADMINISTRATOR**

WHEREAS, the City of Sonora City Council ("City Council") desires to continue employment of Timothy A. Miller as the City Administrator; and

WHEREAS, on January 18, 2011, the City Council and Timothy A. Miller (collectively referred to as the "Parties") entered into an employment agreement ("Agreement"), which provided for the terms and conditions of employment for Timothy A. Miller as City Administrator; and

WHEREAS, on or around August 1, 2011, the City Council approved an amendment to the Agreement ("First Amendment"), which provided changes to the Agreement; and

WHEREAS, on or around June 18, 2012, the City Council approved a second amendment to the Agreement ("Second Amendment"), which provided additional changes to the Agreement; and

WHEREAS, on or around July 1, 2013, the City Council approved a third amendment to the Agreement ("Third Amendment"), which provided additional changes to the Agreement; and

WHEREAS, on or around March 20, 2017, the City Council approved a fourth amendment to the Agreement ("Fourth Amendment"), which provided additional changes to the Agreement; and

WHEREAS, the City and the City Administrator now wish to amend the Agreement again ("Fifth Amendment") to adjust the City Administrator salary by five percent (5%) during the time in which the City Administrator is performing the duties of the "Administrative Services Director," and also to increase the City Administrator's salary to provide a two percent (2%) Cost of Living Adjustment ("COLA"). Lastly, the Fifth Amendment will provide the City Administrator with the option to use up to four hundred and eighty hours (480) of accrued sick leave toward medical, dental, and/or vision premium costs following his retirement from City service.

NOW, THEREFORE, BE IT RESOLVED, the City Council approves the Fifth Amendment, attached hereto as **Exhibit A** and authorizes the Mayor to execute and enter into the Agreement on behalf of the City.

PASSED AND ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF SONORA ON THIS 18TH DAY OF JUNE, 2018, BY THE FOLLOWING VOTE:

AYES:
NOES:
ABSENT:

ABSTAIN:

APPROVED:

Connie L. Williams
Mayor of the City of Sonora

ATTEST:

Marijane Cassinetto
Sonora City Clerk

FIFTH AMENDMENT TO AGREEMENT BETWEEN TIMOTHY A. MILLER AND THE CITY OF SONORA FOR EMPLOYMENT OF CITY ADMINISTRATOR

This Fifth Amendment to the Agreement Between Timothy A. Miller and the City of Sonora for Employment of City Administrator ("Fifth Amendment") is made and entered into on this 18th day of June, 2018 ("Effective Date") by and between the City of Sonora ("City"), a California municipal corporation, and Timothy A. Miller ("Employee"), an individual. Each party to this Fourth Amendment may be referred to hereinafter as a "Party" or collectively as the "Parties". There are no other parties to this Fifth Amendment.

RECITALS

A. On January 18, 2011, the Parties entered into the Agreement for Employment of the City Administrator ("Agreement"), which provides the terms and conditions of Employee's employment as City Administrator; and

B. The Parties amended the Agreement on August 1, 2011, ("First Amendment"), which provided changes to the Agreement; and

C. The Parties amended the Agreement on June 18, 2012 ("Second Amendment"), which provided additional changes to the Agreement; and

D. The Parties again amended the Agreement on July 1, 2013 ("Third Amendment"), which provided additional changes to the Agreement; and

E. The Parties again amended the Agreement on March 20, 2017 ("Fourth Amendment"), which provided additional changes to the Agreement; and

F. The Parties now desire to further amend the terms and conditions of the Agreement; and

G. Section 20 subsection F of the Agreement requires a written agreement executed by both Parties to amend or modify the Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

AGREEMENT

Section 1. Incorporation of Recitals. The recitals set forth above are incorporated herein by this reference and made a part of the Fifth Amendment. However, in the event of any inconsistencies between the recitals and section 1 through 11 of the Fifth Amendment, section 1 through 11 will prevail.

Section 2. Effect of Original Agreement. Except as otherwise provided herein, all provisions, defined terms, and obligations in the Agreement, First Amendment, Second Amendment, Third Amendment, and Fourth Amendment will remain in full force and effect. The Parties agree that they continue to be bound by all terms of the Agreement, First Amendment, Second Amendment, Third Amendment, and Fourth Amendment except as modified by this Fifth Amendment. All capitalized terms used in this Fifth Amendment, which are not otherwise defined in this Fifth Amendment shall have the meanings given to such terms in the Agreement, First Amendment, Second Amendment, Third Amendment, and Fourth Amendment.

Section 3. Definition of Agreement. The Agreement, the First Amendment, Second Amendment, Third Amendment, and the Fourth Amendment collectively attached hereto as **Exhibit A**, with this Fifth Amendment collectively make and are defined together to collectively be the "Agreement".

Section 4. Amendments.

1. Section 5, "Salary", subsection A of the Agreement currently reads:

City agrees to pay City Administrator for his services rendered pursuant hereto an initial annual base salary of \$135,000 payable in installments at the same time as other employees of the City are paid. In addition, City agrees, at its sole discretion, to increase said base salary and/or other benefits of City Administrator in such amounts and to such extent that the City Council may determine based upon an annual salary and performance review. [Pursuant to the First Amendment] The City Administrator shall be entitled to a five percent (5%) increase in salary while serving as "Public Works Director." This revision shall be effective with Pay Period 15, July 7, 2012. The City acknowledges that the City Administrator has been serving in this capacity since November 27, 2010 without additional compensation. The City Administrator shall be entitled to a three percent (3%) Cost of Living Adjustment (COLA) effective with Pay Period 2, January 5, 2013.

Section 5, "Salary", subsection A of the Agreement will be amended to include the following:

The City Administrator shall also be entitled to a five percent (5%) increase in salary during the time in which he performs the duties of the City's "Administrative Services Director." This salary increase shall be effective, retroactively, on January 13, 2018. The City acknowledges that the City Administrator has been performing the duties of the Administrative Services Director position since November 1, 2017 without additional compensation. Such 5% salary increase will be removed once a new Administrative Services Director begins employment with the City.

The City Administrator shall also be entitled to a two percent (2%) Cost of Living Adjustment (COLA) effective, retroactively, on January 13, 2018.

2. Section I Subsection C, "Sick Leave", of the Schedule of Benefits to the Agreement currently reads:

Employee shall be credited with six days or forty-eight (48) hours of sick leave on the effective date of this Agreement. Employee shall earn twelve days or ninety-six (96) hours of sick leave each year covered by this Agreement. Sick leave shall accrue at the rate of 3.962 hours per pay period. Accrual shall be unlimited. Employee may sell up to 60 days or four hundred and eighty (480) hours of sick leave upon separation from the City. At Employee's option, upon retirement, all or any unpaid portion of accrued sick leave may be reported to CalPERS to be incorporated in the Employee's Retirement Service Credit balance. Employee may use a maximum of twelve (12) days per fiscal year of sick leave accrual for the purpose of family sick leave.

Section I Subsection C, "Sick Leave", of the Schedule of Benefits will be amended to remove the first sentence which states:

Employee shall be credited with six days or forty-eight (48) hours of sick leave on the effective date of this Agreement.

Section I Subsection C, "Sick Leave", of the Schedule of Benefits will be further amended to remove the fourth sentence which states:

Employee may sell up to 60 days or four hundred and eighty (480) hours of sick leave upon separation from the City.

This sentence shall instead be replaced by:

Upon retirement from the City, the City Administrator may receive a payout of up to (1) four hundred and eighty (480) hours of accrued sick leave at his current hourly rate of pay and (2) up to an additional two hundred and forty (240) hours of accrued sick leave at fifty percent of his current hourly rate of pay. As an alternative, upon retirement from the City, the City Administrator may (1) obtain a payout of up to four hundred and eighty (480)

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hours of accrued sick leave at his current hourly rate of pay and (2) apply up to four hundred and eighty (480) hours of accrued sick leave at his current hourly rate of pay toward the monthly medical, dental, and/or vision premium costs which occur following the City Administrator effective service retirement date up through and including the date when the City Administrator becomes eligible for Medicare.

The rest of Section I Subsection C of the Schedule of Benefits shall remain the same.

Section 5. Integrated Agreement. The Agreement, as modified by this Fifth Amendment contains all of the agreements of the Parties and all previous understandings, negotiations and agreements are integrated into the Agreement.

Section 6. Severability. In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Fifth Amendment are declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Fifth Amendment, which are hereby declared as severable and shall be interpreted to carry out the intent of the Parties herein.

Section 7. Counterparts. This Fourth Amendment may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall be deemed one and the same instrument.

Section 8. Authority. All Parties to this Fourth Amendment warrant and represent that they have the power and authority to enter into this Fourth Amendment and the names, titles and capacities herein stated on behalf of any entities, persons, states or firms represented or purported to be represented by such entities, persons, states or firms and that all former requirements necessary or required by the state or federal law in order to enter into this Fourth Amendment had been fully complied with.

Section 9. Document Preparation. This Fourth Amendment will not be construed against the Party preparing it but will be construed as if prepared by all Parties.

Section 10. Advice of Legal Counsel. Each Party acknowledges that it has reviewed this Fourth Amendment with its own legal counsel, and based upon the advice of that counsel, freely entered into this Fourth Amendment.

Section 11. Attorney's Fees and Costs. If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret provisions of this Fourth Amendment, the prevailing Party shall be entitled to reasonable attorney's fees and costs,

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which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, this Fifth Amendment has been entered into by and between City and Employee as of the Effective Date.

CITY OF SONORA,
a California Municipal Corporation

By: _____
CONNIE L. WILLIAMS, Mayor

Date Signed: _____

Approved as to Form:

By: _____
Douglas L. White, City Attorney

Date Signed: _____

EMPLOYEE
an individual

By: _____
TIMOTHY A. MILLER, an individual

Date Signed: _____

**EXHIBIT A
AGREEMENT**

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