



City of Palo Alto

City Council Staff Report

(ID # 1539)

Report Type: Consent Calendar

Meeting Date: 3/21/2011

Summary Title: City Attorney Employment Agreement

Title: Approval of City Attorney Employment Agreement with Molly S. Stump

From: City Manager

Lead Department: Human Resources

Attached is the proposed employment agreement with Molly S. Stump. It was prepared with the assistance of outside counsel Greg Stepanacich who was selected by our Interim City Attorney. Mr. Stepanacich and I believe that the contract is consistent with the Term Sheet previously negotiated. Ms. Stump has reviewed and approved the Agreement.

Council is requested to approve the employment agreement with effective date April 18, 2011.

Attachment:
Employment Agreement

Attachments:

- PA_Employment Agreement Stump (DOC)

Prepared By: Elizabeth Egli, Administrative Assistant

Department Head: Sandra Blanch,

City Manager Approval: James Keene, City Manager

EMPLOYMENT AGREEMENT

THIS AGREEMENT is between the City of Palo Alto, a municipal corporation and chartered city ("City") and Molly S. Stump ("Stump"). It is effective on the latest date next to the signatures on the last page.

This Agreement is entered into on the basis of the following facts, among others:

A. City, acting by and through its duly elected City Council, desires to employ Stump as its City Attorney subject to the terms and conditions set forth in this Agreement, the Palo Alto Municipal Code and in the Charter of the City of Palo Alto (the "Charter").

B. The Charter provides, among other things, that the City Attorney shall be appointed by, and serve at the pleasure of the City Council.

C. Stump desires to be employed by the City as its City Attorney, subject to the terms and conditions set forth in this Agreement, the Palo Alto Municipal Code, the Charter, the Palo Alto Merit System Rules and Regulations as they are applicable to Council-appointed officers, and all other applicable laws, resolutions and policies.

D. City and Stump desire to establish specific terms and conditions relating to compensation and benefits, performance evaluations, and related matters.

E. The City Attorney serves on an at-will basis, with no expectation of continued employment.

F. Stump desires a predictable amount of severance pay should her employment be terminated with or without cause.

BASED UPON THE FOREGOING, CITY AND STUMP AGREE AS FOLLOWS:

1. Employment. City will appoint and employ Stump as City Attorney with the City of Palo Alto and Stump will accept the appointment and employment for the City for an indefinite term to begin on April 18, 2011 ("Employment Start Date"). In the event Stump does not actually report for or commence work on April 18, 2011, the Employment Start Date will be the date, if any, as otherwise mutually agreed by the parties.

2. Duties of the City Attorney. Stump shall perform the duties established for the City Attorney by the Charter, Palo Alto Municipal Code and direction of the City Council and as otherwise provided by law, ordinance or regulation. Stump agrees to comply with all federal, state and local laws, ordinances, rules and regulations applicable to or associated with these duties.

2.1. Full Energy and Skill. Stump shall devote her full energy, skill, ability, and productive time to the performance of her duties under this Agreement.

2.2. No Conflict. Stump shall not engage in any employment, activity, consulting service, or other enterprise, for compensation or otherwise, which is actually or potentially in conflict with, inimical to, or which interferes with the performance of her duties under this Agreement. Stump acknowledges that she is subject to the various conflict of interest requirements found in the California Government Code and state and local policies and regulations.

2.3. Permission Required For Outside Activities. Stump shall not engage in any employment, activity, consulting service, or other enterprise, for compensation or otherwise, without the express, written permission of the City Council.

3. Compensation. While performing the duties of City Attorney, Stump shall be compensated as provided in this Section 3.

3.1. Compensation. Stump shall receive an initial base annual salary of Two Hundred Eight Thousand Three Hundred Seventy Five and No/100th Dollars (\$208,375.00) commencing on the Employment Start Date, subject to authorized or required deductions, prorated and paid on City's regular paydays. Stump shall be an exempt employee under applicable wage and hour law and her base salary shall be compensation for all hours worked. City agrees that the amount of Stump's base annual salary shall not decrease, except as part of a permanent decrease that is consistent with the Fair Labor Standards Act and that is applicable to either all Council Appointed Officers or all City Executive Staff (which includes all Council Appointed Officers).

3.2 Performance Reviews and Salary Adjustments.

3.2.1. Initial Performance Reviews. The City Council will meet with Stump within approximately 90 days of reporting to work to provide an initial performance review. The 90-day review will be followed by a mid-year review.

3.2.2. Standard Annual Reviews. Not less than once each year commencing on or after the first anniversary of reporting to work, the City Council shall meet with Stump for the express purpose of evaluating her performance as City Attorney.

3.2.3. Salary Adjustments. Stump shall receive the same general cost of living adjustment ("COLA"), if any, provided to Management and Professional Personnel without the need to amend this Agreement. In its sole discretion and where warranted, the City Council may award labor market or internal adjustments to base salary. In connection with the standard annual review, as provided above, the City Council shall annually consider incentive pay based on performance, but the ultimate decision in this regard is within the sole discretion of the City Council.

4. Regular Benefits and Allowances. Except as otherwise provided in this Agreement, Stump will be eligible for, and shall receive, all regular benefits (i.e., health insurance, PERS contribution paid by City, etc.) and vacation, sick leave, and management leave as are generally provided to management employees pursuant to the City Council-approved

Compensation Plan for Management and Professional Personnel and Council Appointees, as it currently exists and may be changed from time to time.

5. Additional Benefit Terms and Allowances. In addition to the benefit terms specified in section 4, the following additional benefit terms and allowances shall apply to Stump:

5.1. Standard New-Tier Pension. Stump shall be enrolled in and shall be a member of the California Public Employees' Retirement System ("PERS"), with benefits as provided under the City's contract with PERS, including the 2% @ 60 miscellaneous formula applicable to new employees. Employee contributions shall be paid as provided in the Compensation Plan for Management and Professional Personnel and Council Appointees, as it currently exists and may be changed from time to time.

5.2. 401(a) Defined Contribution Retirement Plan. The City shall pay \$1,250 per month to a 401(a) retirement plan account established for Stump. Stump may make additional contributions to the legal maximum.

5.3. 457 Retirement Plan. Stump shall be eligible, at her discretion, to make voluntary contributions to the City's 457 plan, to the maximum extent allowed under the plan documents or by law.

5.4. Standard Auto Allowance and Parking. Stump shall receive the standard automobile allowance provided in the Compensation Plan for Management and Professional Personnel and Council Appointees, as it currently exists and may be changed from time to time. Such allowance is currently \$325.00 per month. The City will provide parking at the Civic Center without charge to Stump.

5.5. Vacation Leave upon Start of Employment. In recognition of her prior public service, Stump will be credited with vacation leave at a rate of 180 hours annually, prorated and credited according to City's normal procedures. Effective at the start of Stump's second year of service and thereafter, Stump will be credited with vacation leave at the rate applicable to an employee with nineteen or more years of continuous service, currently a rate of 200 hours per year, prorated and credited according to City's normal procedures. On the Employment Start Date, Stump will be credited with 80 hours of vacation leave, in addition to the accruals noted in this paragraph.

5.6. Sick Leave upon Start of Employment. On the Employment Start Date, Stump will be credited with 96 hours of sick leave, in addition to the standard accruals provided in the Compensation Plan for Management and Professional Personnel and Council Appointees, as it currently exists and may be changed from time to time.

6. Additional Expenses of Employment. City shall pay or reimburse (at City's option) for the following usual and customary employment expenses:

6.1. The cost of any fidelity or other bonds required by law for Stump.

6.2. The cost of mandatory dues for the State Bar of California.

6.3 Professional Development Reimbursement as provided under the Compensation Plan for Management and Professional Personnel and Council Appointees, as it currently exists and may be changed from time to time. Stump shall be provided with the greater of the standard annual benefit or the reasonable expense necessary to attend not less than 2 (two) League of California Cities City Attorney Conferences per year.

7. Duration of Employment. Stump understands and agrees that she has no constitutionally protected property interest in her employment as City Attorney. She waives any and all rights, if any, under the Merit System Rules and Regulations, including without limitation, the right to pre- or post-disciplinary due process. She understands and agrees that she works at the will and pleasure of the City Council and that she may be terminated, or asked to resign, at any time, with or without cause. Stump may terminate this Agreement (terminating all employment) upon 30 days written notice to the City Council.

7.1. Severance Pay. If Stump is asked to resign or is terminated as City Attorney, she shall receive a cash severance payment or payments (without interest) at intervals specified by Stump, equaling six (6) months salary and benefits calculated at the date of termination. The six (6) month severance benefit will increase by one month for each completed year of service, to a maximum of nine (9) months. (By way of example, after one year of service, the severance benefit will be seven [7] months, after two years it will be eight [8] months and after three years or more it will be nine [9] months.)

7.2. Non-Payment of Severance under Certain Conditions. If the termination of Stump is the result of conviction of a felony, she shall not be paid any severance pay.

8. Indemnification. The City will defend and pay any costs and judgments assessed against Employee arising out of an act or omission by Employee occurring in the course and scope of Employee's performance of her duties under this Agreement in accordance with the provisions of Government Code Sections 825, 995, and 995.2 through 995.8.

9. Miscellaneous.

9.1. Notices. Notices given under this Agreement shall be in writing and shall be either: a) served personally; or b) sent by facsimile (provided a hard copy is mailed within one (1) business day); or c) delivered by first-class United States mail, certified, with postage prepaid and a return receipt requested; or d) sent by Federal Express, or some equivalent private mail delivery service. Notices shall be deemed received at the earlier of actual receipt or three (3) days following deposit in the United States mail, postage prepaid. Notices shall be directed to the addresses shown below, provided that a party may change such party's address for notice by giving written notice to the other party in accordance with this subsection.

CITY:

Attn: Mayor
City of Palo Alto

250 Hamilton Avenue
Palo Alto, CA 95901
Phone: (650) 329-2571
FAX: (650) 328-3631

STUMP:

Molly S. Stump
250 Hamilton Avenue
Palo Alto, CA 94301
Phone: (650) 329-2171
FAX: (650) 329-2646

9.2. Entire Agreement/Amendment. This Agreement constitutes the entire understanding and agreement between the parties as to those matters contained in it, and supersedes any and all prior or contemporaneous agreements, representations and understandings of the parties. This Agreement may be amended at any time by mutual agreement of the parties, but any such amendment must be in writing, dated and signed by the parties, and attached hereto.

9.3. Applicable Law and Venue. This Agreement shall be interpreted according to the laws of the State of California. Venue of any action regarding this Agreement shall be in the proper court in Santa Clara County.

9.4. Severability. In the event any portion of this Agreement is declared void, such portion shall be severed from this Agreement and the remaining provisions shall remain in effect, unless the result of such severance would be to substantially alter this Agreement or the obligations of the parties, in which case this Agreement shall be immediately terminated.

9.5. Waiver. Any failure of a party to insist upon strict compliance with any term, undertaking, or condition of this Agreement shall not be deemed to be a waiver of such term, undertaking, or condition. To be effective, a waiver must be in writing, signed and dated by the parties.

9.6. Representation by Counsel. Stump and City acknowledge that they each did, or had the opportunity to, consult with legal counsel of their respective choices with respect to the matters that are the subject of this Agreement prior to executing it.

9.7. Section Headings. The headings on each of the sections and subsections of this Agreement are for the convenience of the parties only and do not limit or expand the contents of any such section or subsection.

Dated: _____

CITY OF PALO ALTO

By _____
Sid Espinosa,
Mayor

Dated: _____

Molly S. Stump

Attest:

City Clerk

Approved as to Form:

By: _____