Council Priority: Emergency Preparedness

Summary Title: Appointment of Kenneth Dueker as Director of OES

Title: Confirmation of Appointment of Kenneth Dueker as Director of the Office of Emergency Services and Approval of At-Will Employment Contract

From: City Manager

Lead Department: City Manager

Recommendation
The City Manager recommends that the City Council confirm the appointment of Kenneth Dueker as the Director of the Office of Emergency Services and approve the attached at-will employment agreement.

Background
The City Manager is recommending appointment of Kenneth Dueker to serve as the Director of the Office of Emergency Services. During the budget approval process in June 2011, City Council approved Ordinance Number 5131 adding this position to the Table of Organization.

Discussion
In late summer, the City began recruiting for the Director and assessed the qualifications of 54 candidates. In October, seven candidates were interviewed by two panels that included Emergency Operations professionals from within Santa Clara County, public safety managers in from the City’s Fire and Police staff, neighborhood representatives, and members of the City’s Executive Leadership Team. After the panels provided their recommendations, the final five candidates were later interviewed by the City Manager.

Dueker started with Palo Alto as a Reserve Police Officer in the early 1990's and worked in the Field Services Division (Patrol) and the Investigative Services Division (Detectives) in general law enforcement and special operations. He was later assigned to work full-time on disaster planning and community preparedness.

Dueker completed graduate school at Harvard University where he earned a doctorate in law (J.D.). He holds an undergraduate degree, cum laude, from Pomona College (Claremont Colleges). He is also a member of Phi Beta Kappa.
**Resource Impact**
The annual salary for the Director of the Office of Emergency Services will be $125,000. The attached at-will employment agreement for Mr. Dueker reflects the annual salary and the other terms for his continued employment with the City.

**Policy Implications**
The hiring of the Director of the Office of Emergency Services is consistent with the City Council's Emergency Preparedness priorities adopted earlier in the year.

**Attachments:**
- a: Attachment A: Ken Dueker Contract (PDF)

Prepared By: Pam Antil, Assistant City Manager

Department Head: James Keene, City Manager

City Manager Approval: [Signature]
EMPLOYMENT AGREEMENT
BETWEEN CITY OF PALO ALTO
AND
KENNETH DUEKER

THIS AGREEMENT is between the City of Palo Alto, a municipal corporation and chartered city ("City") and Kenneth Dueker ("Dueker"). 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 appointed City Manager and with the approval of its duly elected City Council, desires to employ Dueker as its Director of the Office of Emergency Services ("OES Director") subject to the terms and conditions set forth in this Agreement, the Palo Alto Municipal Code, the Charter of the City of Palo Alto (the "Charter"), and other City rules, procedures, policies and plans.

B. Dueker desires to be employed by the City as its OES Director subject to the terms and conditions set forth in this Agreement, the Palo Alto Municipal Code, the Charter and other City rules, procedures, policies and plans.

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

D. Notwithstanding any provision of the City of Palo Alto Merit System Rules and Regulations, the City desires Dueker to serve on an at-will basis, with no expectation of continued employment, and with no right to pre-or post-separation due process or appeal, and Dueker desires to be employed by City under such terms.

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

1. Employment. City will appoint and employ Dueker as OES Director with the City of Palo Alto and Dueker will accept the appointment and employment for the City for an indefinite term to begin on December 13, 2011. In the event Dueker does not actually report for or commence work on December 13, 2011, the employment start date will be the date, if any, as otherwise mutually agreed by the parties.

2. Duties of the OES Director. Dueker shall perform the duties established for the OES Director by the Charter, Palo Alto Municipal Code, direction of the City Manager, or as otherwise provided by law, ordinance, or regulation. Dueker 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. Dueker shall devote his full energy, skill, ability, and productive time to the performance of his/her duties.
2.2. No Conflict. Dueker 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 his duties. Dueker acknowledges that he 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. Dueker shall not engage in any employment, activity, consulting service, or other enterprise, for compensation or otherwise, without the express, written permission of the City Manager.

3. Compensation. While performing the duties of OES Director, Dueker shall be compensated as provided in this Section 3.

3.1. Compensation. Dueker shall receive an initial base annual salary of One Hundred Twenty Five Thousand Dollars ($125,000.00) commencing on the effective date of the Agreement, subject to authorized or required deductions, prorated and paid on City’s regular paydays. Dueker shall be an exempt employee under applicable wage and hour law and his base salary shall be compensation for all hours worked.

3.2. Salary Adjustments. Not less than once each year, the City Manager shall meet with Dueker for the express purpose of evaluating the performance of Dueker. The City Manager will act in good faith in determining whether to increase the salary of Dueker but the ultimate decision in this regard is within the sole discretion of the City Manager.

4. Regular Benefits and Allowances. Dueker will be eligible for, and shall receive, all regular benefits (i.e., health insurance, PERS contribution to the extent 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, Compensation Plan for Management and Professional Personnel and Council Appointees, as it currently exists and may be changed from time to time.

5. Additional Expenses of Employment. City shall pay the following usual and customary employment expenses:

5.1. The cost of any fidelity or other bonds required by law for the OES Director.

6. Duration of Employment. Dueker understands and agrees that he has no constitutionally protected property or other interest in his employment as Director of the Office of Emergency Services. He 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. He understands and agrees that he works at the will and pleasure of the City Manager and that work may be eliminated and/or he may be terminated, or asked to resign, at any time, with or without cause. Dueker may terminate this agreement (terminating all employment) upon 30 days written notice to the City Manager.
6.1. **Severance Pay.** If Dueker is asked to resign or is terminated as OES Director and has completed one full year of continuous employment, he shall receive a cash severance payment, or payments (without interest) at intervals specified by Dueker, equaling three (3) months salary and benefits at the date of termination.

6.2 **Non-Payment of Severance Under Certain Conditions.** If the termination of Dueker is the result of conviction of a felony, he shall not be paid any severance pay.

7. **Miscellaneous.**

7.1. **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: City Manager  
City of Palo Alto  
250 Hamilton Avenue  
Palo Alto, CA 95901  
Phone: (650) 329-2226  
FAX: (650) 328-3631

Dueker:  
Kenneth Dueker  
250 Hamilton Avenue  
Palo Alto, CA 94301

7.2. **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.

7.3. **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.

7.4. **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.
7.5. **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.

7.6. **Representation by Counsel.** Dueker 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.

7.7 **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: ____________

By ____________________________
City Manager

Dated: 2-7-11

DUEKER

K. Dueker

Attest:

____________________________
City Clerk

Approved as to Form:

By: ____________________________
City Attorney