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DATE: April 5, 2006  
TO: Honorable Mayor and City Councilmembers  
FROM: Personnel Department  
SUBJECT: **ADOPTION OF A RESOLUTION APPROVING AN EMPLOYMENT AGREEMENT BETWEEN THE CITY OF OCEANSIDE AND JOHN P. MULLEN**

**SYNOPSIS**

Staff recommends that the City Council adopt the resolution approving an employment agreement between the City of Oceanside and John P. Mullen, City Attorney.

**BACKGROUND**

The City Council has reached an employment agreement with John P. Mullen to define certain terms and conditions of his employment as City Attorney. Pursuant to the Agreement, the City Council met in Closed Session and voted to appoint Mr. Mullen as the City Attorney. The City Attorney's annual salary is set at \$169,000 effective March 23, 2006. The matter is now being brought before the City Council for formal approval of a contract respecting specific terms of appointment.

**ANALYSIS**

The proposed employment agreement is intended to define and clarify the terms and conditions of the City Attorney's employment with the City. The principal features of the agreement are as follows:

1. Consistent with the provisions of Government Code section 36506 the term of the employment is at will and "during the pleasure of the City Council." The agreement clearly states that Mr. Mullen has no property right in the job and no expectancy of any particular duration of employment.
2. The agreement establishes the annual base salary for the City Attorney at the rate of \$169,000. In addition, the agreement clarifies that the salary includes compensation for the Attorney's services as the General Counsel of the Community Development Commission and the Harbor Attorney of the Small Craft Harbor District. The agreement also specifies the negotiated fringe benefits.

3. The law requires that the compensation of a city attorney be established by resolution adopted at a public meeting.

The agreement has been approved and executed by Mr. Mullen.

**COMMISSION OR COMMITTEE REPORT**

Does not apply.

**CITY ATTORNEY'S ANALYSIS**

The resolution has been reviewed by the City Attorney and approved as to form.

**RECOMMENDATION**

Staff recommends that the City Council adopt the attached resolution approving an employment agreement between the City of Oceanside and John P. Mullen, City Attorney.

PREPARED BY:

  
\_\_\_\_\_  
Brian J. Kammerer  
Personnel Director

SUBMITTED BY:

  
\_\_\_\_\_  
Steven R. Jepsen  
City Manager

REVIEWED BY:

Michelle Lawrence, Assistant to the City Manager \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE APPROVING AN EMPLOYMENT AGREEMENT BETWEEN THE CITY AND JOHN P. MULLEN

The City Council of the City of Oceanside does resolve as follows:

SECTION 1. The employment agreement between the City of Oceanside and John P. Mullen, a copy of which is attached hereto as Exhibit "A", is approved and relevant terms are made retroactive to March 23, 2006.

SECTION 2. The City Attorney's salary is set at \$169,000, effective March 23, 2006.

SECTION 3. The Mayor is authorized to execute the agreement on behalf of the City.

PASSED AND ADOPTED by the City Council of the City of Oceanside, California, this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by the following vote:

AYES:

NAYES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
MAYOR, CITY OF OCEANSIDE

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

*Robert Hamilton*, ASSISTANT  
CITY ATTORNEY

**EMPLOYMENT AGREEMENT BETWEEN THE CITY  
OF OCEANSIDE AND JOHN P. MULLEN**

This employment agreement is entered into this 23rd day of March, 2006, by and between the City of Oceanside, California, a general law city (hereinafter called "the City") and John P. Mullen, an individual (hereinafter called "Mullen") with respect to the employment of Mullen as the City Attorney of the City.

**RECITALS**

Pursuant to Government Code section 36505, the City Council of the City of Oceanside appoints the City Attorney.

The parties desire, through this agreement, to determine certain matters relating to the terms and conditions of the employment of Mullen as the City Attorney for the City.

**TERMS OF EMPLOYMENT**

In consideration of the faithful performance of the provisions and covenants set forth herein, the City and Mullen agree as follows:

A. Duration of Employment.

Pursuant to the provisions of Government Code section 36506, Mullen shall hold the appointive office of City Attorney at and during the pleasure of the City Council. He shall also serve as General Counsel of the Community Development Commission and the Harbor Attorney for the Small Craft Harbor District.

B. Provisions Regarding Compensation.

1. The City covenants to compensate Mullen as follows:

- a. Mullen shall receive an annual salary in an amount established by City Council. The amount of the annual salary is \$169,000.
- b. Mullen shall receive vacation, sick leave, executive leave, short term disability, long term disability, retirement and health and dental benefits determined in the same manner as for executive/department head management employees according to the City's executive management compensation plan as may be established from time-to-time by the City

Council. Mullen shall also receive a sufficient number of hours off for the purpose of meeting the minimum annual requirement for mandatory continuing legal education established by the California Bar. Mullen shall receive paid holidays in the same manner as other executive /department head management employees.

Mullen shall commence employment with 80 hours of vacation and in addition shall commence employment with a vacation accrual rate which equals three weeks per year with a cap of 360 hours.

Mullen will be provided with 96 hours of sick leave effective the first day of employment as a loan against future accruals.

- c. The City shall pay Mullen's annual membership dues for the California State Bar and the dues for one other professional attorney organization selected by Mullen.

2. Provisions Regarding Compensation.

- a. The annual compensation for the City Attorney position will be adjusted in the same timeframe as any adjustments to the City Manager's compensation to ensure compensation parity between the positions. Adjustments to compensation shall be made by resolution. Adjustments shall be effective as of the date established by the resolution making the adjustments.
- b. Notwithstanding the provisions of paragraph B.2.a., above, the City Council may at any time after an evaluation conducted according to the provisions of Government Code section 54957, or for other legitimate business reasons, adjust the compensation paid to Mullen. Nothing in this paragraph is intended to authorize an adjustment of salary in closed session contrary to the provisions of state statute.
- c. Mullen shall be provided with an additional leave bank for the accumulation of vacation leave. Such leave time shall be added to the leave bank whenever the accrued amount equals or exceeds 360 hours. Additionally, up to 80 hours of vacation may be annually converted to compensation at the discretion of the City Attorney.

- d. The City will provide an additional twelve and one half percent (12.5%), or the maximum allowable by law, of the City Attorney's annual salary to deferred compensation through a plan or provider approved by the City Attorney.
- e. Deductions in compensation and/or benefits will not occur except to the extent that such reductions are across the board for all executive management employees.
- f. Mullen shall receive an automobile use allowance of three hundred fifty dollars (\$350) per month.

3. Covenants Regarding Termination.

- a. Upon termination of employment upon affirmative action by the City Council, or upon resignation in lieu of termination upon affirmative request or notice of potential termination by the City Council, other than a termination or resignation covered by Paragraph B.3.b., below, the City shall pay to Mullen severance based upon a base of six (6) months compensation, inclusive of deferred compensation for the six month period. The City shall continue to pay for COBRA health insurance coverage for Mullen, his spouse and family (employee and dependents' coverage) under the City's health, dental, and eye care insurance plans, as well as any other benefits or compensation accruing to his employment as City Attorney, for the six month period, including but not limited to vacation, sick leave, automobile allowance, floating holiday and executive leave. Such payment may be paid in a single lump sum payment made on the effective day of the termination or resignation, or a future date, agreed upon by the City and Mullen.
- b. Notwithstanding Paragraph B.3.a., above, the City shall not be obligated to pay, and shall not pay, any amounts or continue any benefits under the provisions of paragraph B.3.a., if Mullen is terminated because of a crime of moral turpitude or a violation of statute or law constituting misconduct in office. Further, the City shall not be obligated to pay, and shall not pay, any amounts or continue any benefits under the provisions of Paragraph B.3.a., in the event Mullen voluntarily resigns without any affirmative City

Council action to terminate, initiate termination proceedings or request resignation; for example, a resignation to pursue other employment or professional opportunities.

- c. Mullen agrees to provide the City thirty (30) days notice of voluntary resignation from the City Attorney position during the term with this agreement.

C. Performance.

Mullen covenants to perform the duties of the office of City Attorney in a good and professional manner as his full-time employment. Mullen covenants that during his employment as City Attorney he will not engage in any other employment in conflict with his employment with the City of Oceanside.

D. Miscellaneous Provisions.

1. The relationship between the City and Mullen is an employment relationship for a public office and is exempt from the provisions of the Fair Labor Standards Act.
2. Neither this agreement, nor any provision of state statute or local ordinance, rule or resolution creates any property right in favor of Mullen in his employment in the office of the City Attorney.
3. When used in this agreement, the term City Council means the legislative body of the City of Oceanside, including the mayor and the members of the city council.
4. In the event of any mediation, arbitration or litigation to enforce any of the provisions of this agreement, each party shall bear its own attorneys' fees and costs.
5. This agreement is the entire agreement between the parties with respect to the subject matter. No promise, representation, warranty or covenant not included in this agreement has been or is relied on by any party hereto. This agreement may be amended only by a writing executed by both parties.

IN WITNESS hereof, the parties have executed this agreement by their signatures set forth below:

DATED: \_\_\_\_\_

  
\_\_\_\_\_  
JOHN P. MULLEN

DATED: \_\_\_\_\_

\_\_\_\_\_  
MAYOR OF THE CITY OF OCEANSIDE

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY CLERK

  
\_\_\_\_\_  
ASSISTANT  
CITY ATTORNEY