



MEMORANDUM

DATE: October 18, 2016

TO: Mayor/Chair Dianne Martinez and City Council/MESA Board

FROM: Michael A. Guina, City Attorney/General Counsel

SUBJECT: **Resolution Of The Board Of Directors Of The Management Of Emeryville Services Authority (MESA) Approving An Amended And Restated Agreement Of Employment Between MESA And Michael A. Guina As City Attorney/General Counsel For The Period Of July 1, 2016 Through June 30, 2018 And Authorizing The Chair Of The Board Of Directors To Execute Said Agreement On Behalf Of MESA**

Resolution Of The City Council Of The City Of Emeryville Approving And Consenting To An Amended And Restated Agreement Of Employment Between The Management Of Emeryville Services Authority And Michael A. Guina As City Attorney/General Counsel For The Period Of July 1, 2016 Through June 30, 2018

RECOMMENDATION

Staff recommends the MESA Board of Directors and City Council review the attached resolutions regarding an Amended and Restated Agreement of Employment (“Amended and Restated Agreement”) between MESA and Michael Guina as City Attorney for a two year period commencing July 1, 2016, and terminating June 30, 2018.

The MESA resolution approves the Amended and Restated Agreement and authorizes the Chair of the Board of Directors to execute the Amended and Restated Agreement with Mr. Guina. The City Council resolution approves and consents to the Agreement between MESA and Mr. Guina. The proposed Agreement is attached as Exhibit A to both resolutions.

BACKGROUND

The MESA retained the services of Michael Guina as City Attorney in 2015 and entered into an Agreement of Employment (the “Agreement”) (Resolution Nos. 15-77; MA 12-15) effective July 1, 2015 for a two year term. The Agreement calls for the parties to meet periodically for the purpose of evaluating the

performance of the City Attorney and to negotiate and consider new contract terms as deemed necessary and appropriate by the parties. Pursuant to the Agreement, the parties entered into negotiations for new terms of employment and wish to enter into an Amended and Restated Agreement, described below.

DISCUSSION

Enclosed as Attachment 1 is a copy of the proposed new employment agreement with the following substantive deal points:

- Section 1 specifies the Amended and Restated Agreement is intended to replace and supersede the Agreement in its entirety and immediately upon the Effective Date of the Amended and Restated Agreement.
- Section 2 of the Agreement provides that as City Attorney for the City of Emeryville, Mr. Guina also serves as the City Attorney for the City of Emeryville Successor Agency, General Counsel of the Emeryville Public Financing Authority, General Counsel of the Emeryville Community Development Commission, and General Counsel of the Management of Emeryville Services Authority.
- Section 3 provides for a two year term commencing July 1, 2016, and terminating on June 30, 2018 and that the parties will meet in good faith to renegotiate the terms of the Amended and Restated Agreement at least three (3) months prior to its expiration.
- Section 4 of the Agreement specifies the City Attorney is an at-will employee.
- Consistent with the at-will status of the City Attorney, Section 5 provides that the MESA Board can terminate the contract prior to its expiration, provided however that the City Attorney is entitled to a severance of no more than six (6) months' pay in addition to the value of any accrued leave. Furthermore, the City Attorney retains the right to resign upon providing no less than sixty (60) days' prior notice.
- Section 5 further provides that the MESA Board may terminate the Agreement prior to expiration, but the City Attorney is entitled to a maximum of six months' severance pay, plus 100% of any accrued vacation and administrative leave, plus 60% of accrued sick leave. The City Attorney may resign upon providing two months' notice, at which time he is entitled to 100% of any accrued vacation and administrative leave, plus 60% of accrued sick leave.

- Section 6 provides for annual evaluations of the City Attorney and includes a reminder that any complaints of a member of the MESA Board that could give rise to discipline or dismissal must be first discussed with the City Attorney in closed session.
- Section 7 provides that the City Attorney shall be paid a Base Salary of \$16,186 per month. The Board may increase the Base Salary following the annual evaluation of the City Attorney. In addition, the City Attorney shall receive the same annual increases to Base Salary as negotiated between MESA and the Confidential Administrative, Managerial and Professional (CAMP) bargaining group. The Current MOU between MESA and CAMP provides for an annual 3% increase.
- Section 8 specifies 4 weeks of vacation, 3 weeks of sick leave, and 80 hours of administrative leave.
- Section 9 provides for the 2% @ 55 formula, and the City Attorney will pay the employee contribution.

FISCAL IMPACT

The salary and benefits have been included in the recently adopted budget for FY 2016-2017 and 2017-2018.

CONCLUSION

Enclosed are resolutions for consideration by the Board of Directors of MESA and the City Council. The MESA resolution would approve the new Agreement and authorize the Chair of the Board of Directors to execute a new two (2) year employment agreement with Michael A. Guina. Further the City Council resolution would approve and consent to the Agreement between MESA and Michael A. Guina.

Respectfully submitted,



Michael A. Guina, City Attorney/General Counsel

Attachments:

1. MESA Resolution
Exhibit A: Proposed Agreement 2016 - 2018
2. City Council Resolution
Exhibit A: Proposed Agreement 2016 – 2018
3. Proposed Agreement 2016 – 2018