

STAFF REPORT

DATE: December 1, 2020
TO: City Council
FROM: Janet Emmet, Director Human Resources
SUBJECT: City Manager Appointment and Employment Agreement

Recommendation

Approve the attached Resolution authorizing the employment agreement with Mike Webb for the position of City Manager. Authorize approval of budget adjustments as necessary to implement contract.

Fiscal Impact

The City Manager position was already fully funded in fiscal year 2019/2020 at an amount that assumed annual cost of living increases (cola's) of 2% per year as is consistent with the City's long range budget model.

As a result of the compensation package below being partially effective retro-actively to the pay period following January 27, 2020 Council meeting, the net impact to the fiscal year 2019/2020 budget is a savings of \$4,647.98.

The position is funded in the fiscal year 2020/2021 budget. The ongoing cost of the contract package above that which is already budgeted is \$14,158.21. As a result, the supplemental budget request (fiscal impact above the FY2020-2021 Adopted Budget) due to the contract adjustments is \$14,158.21.

Background and Analysis

City Manager Mike Webb was appointed to the position of City Manager effective December 4 2017. Prior to his appointment to City Manager, Mr. Webb previously served the City for over twenty years, including as Community Development and Sustainability Director and Assistant City Manager.

At the time of his appointment as City Manager, he entered into a contract with the city with a term of three years that continues through December 4, 2020. In late 2019, the City Council conducted a formal evaluation of Mr. Webb's performance as City Manager. Based upon the results of that evaluation, on January 27, 2020, the City Council commenced discussions on a contract with Mr. Webb by which he would continue -in the position of City Manager. The successor contract was initially expected to be brought forward for City Council approval in May 2020. However, due to the need to focus attention on the city's response to the Covid-19 pandemic, further discussion of the renewal of his contract had to be put on hold by the City Manager and City Council.

Based on its continued evaluation of his work, the City Council wishes to express its appreciation for the excellent performance and leadership Mr. Webb has shown throughout his tenure as City Manager, but in particular during the last eight challenging months. In recognition of his service, and its belief that his continued service to the City of Davis will serve the interests of the public, the City Council has determined that it wishes to consider a contract with Mr. Webb that would extend his service to the city for five years

In reviewing compensation factors for the successor contract, the following issues have been considered by the City Council:

1. The base annual salary for the position of City Manager has not been adjusted in six years -- since December 2014.
2. The compensation provided to the City Manager is not competitive with the compensation provided to city managers of other comparable agencies in our region as demonstrated in a compensation study included in Attachment 3.
3. The City Manager's current pay level is creating compaction issues with other executive staff of the City, resulting in a situation that does not reflect sound personnel management practices.

Taking into consideration of these three factors, the following compensation package is recommended:

1. Effective the pay period following initial discussions on a success contract that took place January 27, 2020:
 - a. 4% market adjustment
 - b. 2% cost of living adjustment (cola) – consistent with 2% cola granted to City employees effective July 1, 2019.
 - c. Pension cost sharing arrangement consistent with pension cost sharing implemented for City employees effective July 1, 2019
 - d. Reinstatement of longevity pay - benefits for which Mr. Webb had previously qualified but that he had lost by virtue of his appointment to City Manager in 2017.
2. Effective the pay period following July 1, 2020:
 - a. 2% cola – consistent with the 2% cola granted to City employees for fiscal year 2020-2021.
 - b. Pension cost sharing arrangement -- consistent with pension cost sharing implemented for City employees.
3. Mr. Webb -voluntarily accepted a pay reduction for fiscal year 2020-21 equal to 56 hours of furlough leave commensurate with all employees. His pay reduction will continue through the current fiscal year, consistent with the terms of furloughs accepted by other city employees.
4. In implementing furloughs for miscellaneous employees including non-safety executive staff, employment contracts were extended by two fiscal years, including a 2% cola and pension cost sharing formula for July 1, 2021 and July 1, 2021. The contract extension and cola was not applicable to the City Manager.

5. The above pension cost sharing formula will apply to the City Manager. However, under the proposed contract extension, future cost of living increases that may be applicable to executive management are not automatic for the City Manager but could be granted at the discretion of the City Council.
6. Contract language provides discretion for the City Council to grant a performance bonus of up to 3% of annual pay each calendar year of the new contract term.

The current compensation for the position of City Manager is below the market median for comparable positions. A compensation study was reviewed with salary data as of late 2019. The base pay for Davis City Manager is below median by 14.61%. The total cash compensation is below median by 22.63% and total compensation (benefits based on a 2018 comparison) is below median by 21.84%.

Implementation of the compensation package for the new contract will bring the base annual salary for City Manager to 5.82% below median, total cash compensation to 3.11% below median, and total compensation to 3.03% below median.

Internal compaction has developed over the years to where the current total cash compensation for the position of City Manager is below the total cash compensation paid to some City of Davis executive staff. Implementation of the compensation package for the new contract will bring the total cash compensation to 13% above the next highest executive management position.

Attachments

1. Resolution
2. Employment Agreement
3. Compensation Study

RESOLUTION 20- SERIES 2020

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAVIS
APPROVING THE APPOINTMENT OF AND
EMPLOYMENT AGREEMENT WITH CITY MANAGER
AND AUTHORIZING MAYOR TO EXECUTE SAME**

WHEREAS, the City Manager and the City Council have reached agreement on matters relating to the continued appointment and employment conditions of the City Manager, as reflected by the written contract amendment which is attached hereto and made a part hereof; and

WHEREAS, this Council finds that the provisions and agreements contained in said Employment Agreement are fair and proper and in the best interest of the City;

WHEREAS, the Employment Agreement provides for cost-sharing of the employee contribution to pension cost pursuant to Government Code Section 20516(a);

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DAVIS DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The continued appointment of and the Employment Agreement between the City and Mike Webb attached hereto and incorporated herein, are hereby approved.

Section 2. The City shall share the cost of the employee-paid contribution to CalPERS for Mike Webb, a Classic Miscellaneous Member, as provided by Section 5.e of the Employment Agreement.

Section 3. The Mayor is hereby authorized and directed to execute said agreement on behalf of the City of Davis.

PASSED AND ADOPTED by the City Council of the City of Davis on this 1st day of December, 2020, by the following vote:

AYES:

NOES:

ABSENT:

Gloria Partida
Mayor

ATTEST:

Zoe Mirabile, CMC
City Clerk

EMPLOYMENT AGREEMENT BETWEEN THE CITY OF DAVIS AND MICHAEL WEBB

THIS EMPLOYMENT AGREEMENT (the “Agreement”) is between the City of Davis, a municipal corporation (the “City”) and Michael Webb (“Employee”). It is effective on the latest date next to the signatures on the last page (the “Effective Date”). As of the Effective Date going forward, this Agreement supersedes the prior employment agreement established December 4, 2017, which would have been effective through December 4, 2020. The following Agreement alters terms and conditions of the prior Agreement from the Effective Date forward, and extends the agreement to December 4, 2025.

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

A. The City Council of the City desires to continue employing Employee as the City Manager of the City, and Employee desires to accept this continued appointment.

B. The City and Employee desire to establish specific terms and conditions relating to compensation and benefits, performance evaluations, and related matters.

C. The City is experiencing an unprecedented financial situation as a result of the COVID-19 pandemic necessitating significant fiscal reductions. This Agreement is entered into to recognize Employee’s leadership through certain compensation adjustments. However, to the extent City Unrepresented Management is subject to cost-savings measures, such as work furloughs, salary reductions, changes to health or welfare benefits and allowances, or any other change to the monetary terms, Employee will be subject to the same downward adjustment and adhere to the change in terms as applicable to Unrepresented Management. In the event such cost-saving measures are subsequently eliminated (i.e, former salary or benefit levels are

restored), Employee will receive the same restoration of salary or benefits as Unrepresented Management.

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

1. Employee Appointed. The City appoints and employs Employee as City Manager, and Employee accepts the appointment and employment, having begun work as City Manager on December 4, 2017. The City Manager shall also serve as the Executive Director of the Successor Agency to the City of Davis Redevelopment Agency and any similar City of Davis agencies. In accordance with current procedures, Employee shall account for his time expensed on behalf of said agencies in order for the City to be reimbursed by said agencies for the provision of Employee's services.

2. Duties of Employee. Employee shall perform the duties established for the City Manager by State law, the Davis Municipal Code, the City Manager job description, the directions of the City Council, or as otherwise provided by law, ordinance, or regulation.

(a) Full Energy and Skill. Employee shall faithfully, diligently, and to the best of Employee's abilities, perform all duties that may be required under this Agreement. Employee agrees that Employee has a duty of loyalty and a general fiduciary duty to the City. Employee shall devote the whole of Employee's working time, skill, experience, knowledge, ability, labor, energy, attention and best effort exclusively to the City's business and affairs.

(b) No Conflict. Employee 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

Employee's duties. Further, Employee shall not, during the term of this Agreement, individually, as a partner, joint venture, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of the City of Davis (except for stock ownership in any company whose capital stock is publicly held and regularly traded) without prior approval of the City Council. For and during the term of this Agreement, Employee further agrees, except for a personal residence or residential property acquired or held for future use as Employee's personal residence, not to invest in any other real estate property improvements within the corporate limits of the City without the prior consent of the City Council.

(c) Outside Activities. Employee shall not spend more than eight hours per month in teaching, consulting, expert witness testimony, speaking, or other non-City connected business for which compensation is paid without express prior consent of the City Council. Employee will take personal leave (i.e. vacation time) for all outside activities of this nature.

(d) Hours of Work. The position of City Manager is an FLSA-exempt position. Employee is expected to engage in those hours of work that are necessary to fulfill the obligations of the City Manager's position. Employee does not have set hours of work, as the City Manager is expected to be available at all times. It is recognized that Employee must devote a great deal of time to the business of the City outside of the City's customary office hours, and to that end Employee's schedule of work each day and week shall vary in accordance with the work required to be performed and in accordance with any specific direction provided by the City Council.

3. Term. This Agreement shall be effective from the Effective Date through December 4, 2025 unless terminated earlier by either party in accordance with the provisions set forth in Paragraph 8 or by the event of the death or permanent disability of Employee.

(a) The Term of this Agreement shall automatically renew and extend for an additional five (5) year term beginning on December 4, 2025, unless written notice not to renew and extend is given by the City to Employee no later than six (6) months prior to the renewal date (i.e. not later than June 4, 2025). If notice of non-renewal is given by the City, the Agreement shall remain in effect for the remaining term and Employee will be expected to continue Employee's duties for the remainder of the Agreement term, unless the Agreement is terminated earlier under Paragraph 8 below. The parties expressly agree that notice of non-renewal shall not be deemed a termination triggering any severance payment whatsoever.

4. Initial and Annual Evaluations. Each year on or about the anniversary of the Effective Date, or at a time mutually agreed upon by the City Council and Employee, the City Council shall conduct an evaluation of Employee's performance and provide guidance and direction regarding the City Council's goals and objectives which Employee shall be tasked with implementing.

5. Compensation.

(a) Salary. Effective the pay period following approval of this agreement the base annual salary shall be Two Hundred Sixty-one Thousand One Hundred Sixty-nine Dollars (\$261,169) reflecting the following pay adjustments:

- i. In recognition of the salary for City Manager receiving no adjustment since December 2014, a 4% market adjustment

effective the pay period following the initiation of negotiations on this contract which occurred during the January 27, 2020 City Council meeting.

- ii. Consistent with fiscal year 2019-2020 cost of living adjustment provided to employees of the City's miscellaneous executive managers as approved by Resolution 18-150, 2% cost of living increase effective the pay period following January 27, 2020.
- iii. Consistent with fiscal year 2020-2021 cost of living adjustment provided to employees of the City's miscellaneous executive employees as approved by Resolution 18-150, 2% cost of living increase effective the pay period following July 1, 2020.

(b) Performance Bonus. Upon completion of each evaluation, the City Council may, at its sole discretion, award Employee a performance bonus based upon his performance and accomplishment of the City Council's goals and objectives. The amount of the bonus, if any, shall be determined by the City Council and shall not exceed 3% of Employee's annual base salary in effect the date evaluation is completed, subject to applicable payroll tax withholdings and deductions. Performance Bonus is pension not reportable compensation. Eligibility shall be based on each calendar year of the contract beginning January 1, 2021.

(c) Annual Salary Adjustments. In addition to any performance bonus, at the City Council's sole discretion, salary adjustments may be given to Employee at or around the time of the annual review and evaluation by the City Council. Any such salary adjustment will be memorialized as an amendment to this Agreement and, if not already

provided for there, on the City’s publicly-available pay schedule. The City shall perform a compensation study for the City Manager position, evaluating total compensation (salary and benefits) with comparable agencies, on or about December, 2021 and December, 2023.

Longevity Pay. In recognition of the substantial contribution to the community made by employees as a result of the length of his City service, the City shall provide Employee the longevity pay indicated below to be effective the pay period following January 27, 2020:

<u>Service Term</u>	<u>Longevity Pay</u>
After five (5) years of service with the City	2.5% increase above base pay
After ten (10) years of service with the City	Additional 2.5% increase above base pay
After fifteen (15) years of service with the City	Additional 2.5% increase above base pay
After twenty (20) years of service with the City	Additional 2.5% increase above base pay
After twenty-five (25) years of service with the City	Additional 2.5% increase above base pay

The maximum longevity pay is a twelve and a half percent (12.5%) increase above the employee’s base pay.

Longevity pay is earnable special compensation within the meaning of Section 20636 of the California Government Code and Section 571(a)(1) of the CalPERS regulations and/or as defined pensionable compensation in the California Government Code and the CalPERS regulations as amended.

(d) Technology and Transportation Allowance. In recognition of the significant demands placed on the position of City Manager and the need for the Employee to have continuously available information and communications for business-related purposes, Employer shall provide Employee with an allowance of \$200 per month. The allowance shall be used for procuring technology-related equipment and services that enhance Employee’s ability to perform his duties, including cell phone; expenses associated with increasing and ensuring

accessibility as a result of Shelter in Place orders; and travel expenses associated with ensuring accessibility and responsiveness to the needs of the City and community.

(e) Pension Cost Sharing – The classification of City Manager shall be subject to the same pension cost sharing provision as applied to miscellaneous executive managers as described below.

Beginning the pay periods following January 27, 2020 and July 1, 2020, Employee shall make additional pension “cost sharing” contributions of zero to one percent (0% - 1%) per year or shall receive additional increases to base salary of zero to one percent (0% - 1%) pursuant to the below cost sharing model.

Effective the pay period following January 27, 2020:

CalPERS projected total employer contribution rate as a percentage of payroll (CalPERS actuarial valuation for miscellaneous plans– June 30, 2016) for fiscal year 2019-2020 is 39.7%. To the extent the actual total employer contribution rate is higher than 39.7%, Employee will contribute a correspondingly increased contribution up to an additional one percent (1%) effective the pay period following approval of this Agreement. (For example, if the total contribution rate is actually 40.2%, an employee’s contribution would increase by 0.5% of base pay.) To the extent the actual total employer contribution rate is lower than 39.7%, Employee will receive an additional increase in base pay of up to one percent (1%) effective the pay period following approval of this Agreement. (For example, if the total contribution rate is actually 39.2%, employees would receive an increase in base pay of 0.5%.)

For July 1, 2020:

CalPERS projected total employer contribution rate as a percentage of payroll (CalPERS actuarial valuation for miscellaneous plans – June 30, 2016) for fiscal year 2020-2021 is 42.5%. To the extent the actual employer contribution rate is higher than 42.5%, Employee will contribute a correspondingly increased contribution up to an additional one percent (1%) effective the pay period following July 1, 2020. To the extent the actual total employer contribution rate is lower than 42.5%, Employee will receive an additional increase in base pay of up to one percent (1%) effective the pay period following July 1, 2020. The examples provided in subsection (a) above also apply to the 2020 deviations from the projected rate.

For July 1, 2021:

CalPERS projected total employer contribution rate as a percentage of payroll (CalPERS actuarial valuation for miscellaneous plans– June 30, 2018) for fiscal year 2021-2022 is 45.4%. To the extent the actual total employer contribution rate is higher than 45.4%, the

employee will contribute a correspondingly increased contribution up to an additional one percent (1%) effective the pay period following July 1, 2021. (For example, if the total contribution rate is actually 45.9%, an employee's contribution would increase by 0.5%) To the extent the actual total employer contribution rate is lower than 45.9%, the employee will receive an additional increase in base pay of up to one percent (1%) effective the pay period following July 1, 2021. (For example, if the total contribution rate is actually 44.9%, employees would receive an increase in base pay of 0.5%.)

For July 1, 2022:

CalPERS projected total employer contribution rate as a percentage of payroll (CalPERS actuarial valuation for miscellaneous plans – June 30, 2018) for fiscal year 2022-2023 is 47.4%. To the extent the actual total employer contribution rate is higher than 47.4%, the employee will contribute a correspondingly increased contribution up to an additional one percent (1%) effective the pay period following July 1, 2022. To the extent the actual total employer contribution rate is lower than 47.4%, the employee will receive an additional increase in base pay of up to one percent (1%) effective the pay period following July 1, 2022. The examples provided in subsection (a) above also apply to the 2021 deviations from the projected rate.

The above cost sharing shall be capped as follows:

CLASSIC Miscellaneous Members – Total sum of the employee contribution rate (currently 8% + 0.4% Cost Share effective the pay period following 7/1/2020) plus any additional contribution(s) under this provision shall not exceed 10.4% by the end of the revised contract term.

Any cost sharing resulting from this agreement shall be effective in accordance with Government Code Section 20516 and shall extend for the duration of this contract and any subsequent contract unless revised by way of a CalPERS Contract Amendment. Any cost sharing resulting from this agreement will be deducted on a pre-tax basis, unless otherwise directed by the IRS.

6. Regular Benefits and Allowances. Except as otherwise provided in this Agreement, Employee will be eligible for, and shall receive, all regular health and welfare benefits (e.g., insurance, miscellaneous employee PERS retirement and contributions paid by the City, deferred compensation, etc.) as are provided to employees of the City's miscellaneous executive managers, as they may from time to time be amended or adjusted. Employee shall pay eight percent (8%) of the employee portion of the CalPERS retirement cost or the combined contribution

rate(s) (both employee and employer). If Employee obtains non-City health coverage elsewhere (and provides appropriate documentation of coverage), Employee will receive \$500 per month cash-in-lieu of benefits. If an available benefit from the City's Cafeteria Plan is not selected by Employee (i.e. health and welfare benefits), and Employee has not utilized the entire allowable cafeteria plan dollar amounts, Employee may receive a cash out in lieu of benefits not to exceed \$500.00 per month subject to applicable taxes and withholdings. Nothing shall prevent the City Council from providing Employee benefits in addition to those provided to the executive management employees. To the extent there is any inconsistency between the benefits available to the majority of miscellaneous executive managers, the terms of this Agreement shall control.

7. Additional Benefits and Allowances. In addition to the benefits specified in Section 6, Employee shall receive the following additional benefits and allowances consistent with those provided to the miscellaneous executive management employees.

(a) Vacation; Management Leave; Sick Leave;

(i) Vacation. Employee shall be eligible for and receive the same vacation benefits as are provided to other exempt management employees.

(ii) Management Leave. Employee shall accrue, on a pro rata basis each pay period, ten (10) days of management leave per calendar year to be used at Employee's discretion, subject to the fulfillment of Employee's duties.

(iii) Leave Cash Out. Employee may elect to cash out leave up to 120 hours per calendar year. Irrevocable election must be submitted prior to hours being accrued.

(iv) Sick Leave. Employee shall be allowed to use paid sick

leave and be absent from work because of personal illness/injury or the illness/injury of immediate family members (as identified in California Labor Code section 233) for such time as is reasonably necessary or during otherwise unpaid medical leaves provided by law. Sick leave includes attendance at doctor's appointments or related medical activities. Employee shall accrue sick leave in the same manner and in the same amount as that provided to employees in the management employee bargaining unit. Accrued Sick Leave is not eligible for a cash-out at any time by Employee and any remaining accrued Sick Leave at time of Employee's retirement will be governed by the rules and restrictions as detailed in the then-existing PERS contract.

(b) Life Insurance. The City will provide a \$100,000 life insurance policy for Employee at no cost to Employee.

8. Termination of Employment.

(a) No Property Interest. Employee understands and agrees that Employee has no constitutionally-protected property or other interest in Employee's employment as City Manager. Employee understands and agrees that Employee works at the will and pleasure of the City Council, and that Employee may be terminated, or asked to resign, at any time, with or without cause, by a majority vote of its members. Notice of termination shall be provided to Employee in writing. "Termination," as used in this Agreement, shall also include 1) a request that Employee resign; 2) a reduction in salary or other financial benefits to Employee in a significant amount which is inconsistent with a reduction in salary or financial benefits for employees in the executive management unit; 3) a material reduction in the powers and authority of the City Manager (excluding placement on paid administrative leave); or 4) the elimination of the City Manager position. Any such notice of termination or act constituting

termination shall be given at or effectuated at a duly noticed regular or special meeting of the City Council.

(b) Termination Immediately Before or Following City Council Election. No action by the City Council to terminate Employee, other than for gross mismanagement or an act of moral turpitude (as described in Section 8(e)), will be made within ninety (90) days either before a City Council election or immediately following a City Council election. Nothing in this paragraph alters the “at will” status of Employee’s employment with City.

(c) Notice Required of Employee. Employee may voluntarily terminate employment at any time by giving not less than sixty (60) days’ notice.

(d) Severance. If Employee is asked to resign or is terminated as City Manager, then Employee shall be paid for any accrued, but unused, vacation and management leave, but not accrued sick leave. Upon compliance with the conditions in this Section, Employee shall also be eligible to receive two severance benefits: first, a cash payment equivalent to the sum of Employee’s then-current monthly salary multiplied by five (5) months (or by the remaining number of months in the Agreement term, whichever is less); and second, continuation of Employee’s monthly COBRA-eligible health benefits, at then-current levels and subject to Employee’s required contribution(s) (if any), multiplied by five (5) months (or by the remaining number of months in the Agreement, or until the time Employee obtains other employment, whichever is less). Eligibility for severance benefits are expressly conditioned upon Employee’s execution of (i) a waiver and release of any and all of Employee’s claims

against the City, its Councilmembers, officers, and employees, and (ii) a covenant not to sue any of those parties

Unless determined otherwise by the City Council in its sole discretion, the cash payment will be made on a pro-rated, monthly basis over the number of months involved. All normal payroll taxes and withholdings as required by law shall be made with respect to any amounts paid under this section. Employee expressly agrees to provide notice to the City within two (2) business days of accepting employment elsewhere, and the City's obligation to pay for any further health benefits shall terminate upon Employee's acceptance of such alternative employment.

(e) Ineligibility for Severance Under Certain Conditions. If the termination of Employee is the result of gross mismanagement and/or an act or acts of moral turpitude, Employee shall not be paid any severance pay except as provided in the remainder of this subsection. In such an instance, Employee's sole remedy shall be a judicial action in declaratory relief to determine whether there was substantial evidence of gross mismanagement and/or an act or acts of moral turpitude. If the court determines there was not substantial evidence, Employee shall receive the severance pay provided in this subsection, but no other damages or litigation expenses.

9. Payment of Expenses of Employment. The City shall pay the following usual and customary employment expenses.

(a) The cost of any fidelity or other bonds required by law for the City Manager position.

(b) The cost to defend and indemnify Employee to the full extent of the law as provided by the California Government Claims Act (Government Code §810 *et seq.*), or otherwise. The City will determine, in its sole discretion, whether to compromise and settle any such claim or suit against Employee and the amount of any settlement or judgment rendered thereon.

(c) Subject to Budget Approval, reasonable dues for Employee's membership in professional organizations associated with the office of City Manager. The City will allow Employee reasonable time away from the City to participate in the annual conferences of these organizations.

(d) Subject to Budget Approval, the cost of attending conferences or other events (i.e. retirement dinners, out-of-town meetings, professional seminars, etc.) necessary for the proper discharge of Employee's duties. The City will not reimburse Employee for any expenses related to membership in service clubs.

(e) Subject to Budget Approval, the cost of Professional Development/training, not to exceed \$5,000 per fiscal year. The City will allow Employee reasonable time away from the City to attend professional development training.

10. Miscellaneous.

(a) Notices. Notices given under this Agreement shall be in writing and shall be:

- (i) served personally; or
- (ii) sent by facsimile (provided a hard copy is mailed within one

(1) business day); or

(iii) delivered by first-class United States mail, certified, with postage prepaid and a return receipt requested; or

(iv) Sent by Federal Express, or some equivalent private overnight delivery service.

Notices shall be deemed received at the earlier of actual receipt or three (3) days following deposit in the United States mail or overnight delivery service. 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:

City of Davis
Attn: Mayor
23 Russell Boulevard
Davis, CA 95616
Phone: (530) 757-5602
Fax: (530) 757-5603

EMPLOYEE:

Michael Webb
23 Russell Blvd
Davis, CA 95616
Phone: 530-757-5602
(home address & phone as on file)

(b) Compliance with Government Code §§53243, 53243.1, & 53243.2.

If Employee is convicted of a crime involving an abuse of Employee's office or position, all of the following shall apply:

(i) If Employee is provided with administrative leave pay pending an investigation, Employee shall be required to fully reimburse the City for such amounts paid;

(ii) If the City pays for the criminal legal defense of Employee (which would be in its sole discretion, as it is not generally required to pay for a criminal defense), Employee shall be required to fully reimburse the City such amounts paid; and

(iii) If this Agreement is terminated based on actions underlying such conviction, any cash settlement related to the termination that Employee may receive from the City shall be fully reimbursed to the City by Employee or void if not yet paid to Employee.

(iv) For this subsection, “abuse of office or position” means either (a) an abuse of public authority, including waste, fraud, and violation of the law under color of authority, or (b) a crime against public justice, including but not limited to a crime described in Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

(c) 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.

(d) Attorney’s Fees. Except as provided elsewhere in this Agreement, if any legal action or proceeding is brought to enforce or interpret this Agreement, the prevailing party, as determined by the court, shall be entitled to recover from the other party all reasonable costs and attorney’s fees, including such fees and costs as may be incurred in enforcing any judgment or order entered in any such action.

Nothing in this subsection shall be read to prevent the parties from agreeing to some alternative method of dispute resolution. If such a method is agreed to, any final determination shall include an award of attorney's fees and costs by the presiding officer.

(e) 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.

(f) 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.

(g) Representation by Counsel; No Presumption of Drafter. The parties acknowledge and agree that they were, or had the opportunity to be, represented individually by legal counsel with respect to the matters that are the subject of this Agreement and that they are fully advised with respect to their respective rights and obligations resulting from signing this Agreement. The Parties further agree that this Agreement shall not be interpreted or construed against or in favor of either Party by reason of who caused this Agreement to be drafted and that this Agreement is the product of the representation of each Party by independent legal counsel.

(h) Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Employee and the City agree that venue for any dispute shall be in Yolo County, California.

(i) 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.

(j) No Assignment. Employee may not assign this Agreement in whole or in part.

Dated: _____

CITY OF DAVIS

By _____
Mayor

Dated: _____

EMPLOYEE

Michael Webb

Attest:

City Clerk

Approved as to Form:

City Attorney

Total Compensation Comparison Agency Summary Chart

		MEDIAN							
		Base Salary		Total Cash		Total Compensation			
Survey Classification	City of Davis Maximum Base Salary	Labor Market Median Base Salary	% City of Davis Is Above or Below Labor Market Median	City of Davis Total Cash	Labor Market Median Total Cash	% City of Davis Is Above or Below Labor Market Median	City of Davis Total Comp	Labor Market Median Total Comp	% City of Davis Is Above or Below Labor Market Median
City Manager	\$217,200	\$248,930	-14.61%	\$219,600	\$269,303	-22.63%	\$222,501	\$271,093	-21.84%

The agencies used in the comparison study are as follows:

- Elk Grove
- Fairfield
- Folsom
- Lodi
- Rancho Cordova
- Roseville
- Sacramento
- Vacaville
- West Sacramento
- Woodland