

RESOLUTION NO. 97- 113

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES
APPROVING THE CITY MANAGER'S EMPLOYMENT AGREEMENT
WITH JAMES L. APP**

WHEREAS, State law and Chapter 2.28 of the El Paso de Robles Municipal Code provide that the City Council is responsible for the appointment, supervision and removal of the City Manager; and

WHEREAS, on or about April 6, 1997, the City Council appointed JAMES L. APP to the position of Interim City Manager; and

WHEREAS, the City Council desires to continue its employment relationship with JAMES L. APP as CITY MANAGER on the terms and conditions set forth in the CITY MANAGER'S EMPLOYMENT AGREEMENT, attached hereto as Exhibit A;

NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED BY THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES AS FOLLOWS:

The CITY MANAGER'S EMPLOYMENT AGREEMENT for the appointment of JAMES L. APP as CITY MANAGER for the City of El Paso de Robles is hereby approved.

On motion of Council Member Swanson, and seconded by Council Member Macklin, and on the following roll call vote, to wit:

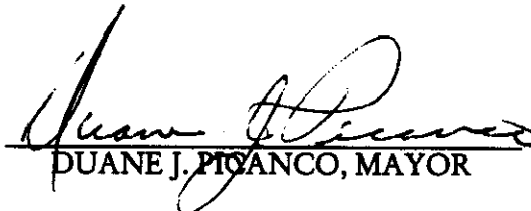
AYES: Baron, Macklin, Swanson, Picanco

NOES:

ABSTAIN:

ABSENT: Iversen

The foregoing Resolution was adopted on August 19, 1997.


DUANE J. PICANCO, MAYOR

ATTEST:


MADELYN PAASCH, CITY CLERK

COPY

EXHIBIT A

CITY MANAGER'S EMPLOYMENT AGREEMENT

THIS AGREEMENT, made and entered into by and between **THE CITY OF EL PASO DE ROBLES**, herein referred to as **CITY**, and **JAMES L. APP**, with reference to the following recitals:

RECITALS

- A. State law and Chapter 2.28 of the El Paso de Robles Municipal Code provide that the Council is responsible for the appointment, supervision and removal of the City Manager.
- B. The City Council acknowledges and accepts the responsibility for supervision of the **CITY MANAGER**.
- C. On or about April 6, 1997, **CITY** appointed **JAMES L. APP** to the position of Interim City Manager.
- D. **CITY** desires to continue its employment relationship with **JAMES L. APP** as **CITY MANAGER**.
- E. **JAMES L. APP** desires to continue his employment relationship as **CITY MANAGER** with **CITY**.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

SECTION 1. DUTIES

CITY hereby appoints **JAMES L. APP** as **CITY MANAGER** effective September 1, 1997. A general description of the duties and responsibilities of the **CITY MANAGER** are set forth in a Council-adopted job description and duty statements for **CITY MANAGER**. **JAMES L. APP** agrees to perform the function and duties of the position and to perform other duties specified by statute and any additional duties as may be assigned from time to time by the Council.

SECTION 2. TERM

- A. This Agreement shall remain in effect indefinitely until the following occurs:

EXHIBIT A

1. The death or substantial incapacity (determined to be of an indefinite nature) of **James L. App**.
2. Termination by either party upon written notice.

In the event that the Agreement is terminated under A.2. above, then **James L. App** shall have the option, at his sole discretion, of returning to the position of Assistant City Manager, with all rights and privileges as provided by CITY ordinances, resolutions or policies on the date of this Agreement, except for compensation, which shall be the greater of the following:

- a. 80% of the **CITY MANAGER'S** base salary at the date written Notice of Termination is given; or
 - b. The Assistant City Manager's base salary of \$72,000.00 adjusted for inflation. Said adjustment to be calculated by the increase in the US Department of Labor, San Francisco, Consumer Price Index (CPI) commencing September 1, 1997. Should this index at some future time become unavailable, a comparable index shall be used.
- B. In the event that **James L. App** is terminated as **City Manager** by the City giving him written notice under A.2. above, and the City Council believes that **James L. App** has done one or more acts which require that he no longer be employed by City in any capacity, or that he be disciplined in some lesser fashion, then the City Council may file charges against him which are alleged to constitute good cause for discipline. If such charges are filed, the City's personnel policies and procedures which provide due process to employees holding a property interest in their employment with the City shall apply, except as follows:
1. Initial Administrative Hearing Officer (Skelly). The City Attorney or his/her designee, shall provide both parties with a list of three (3) independent, qualified Hearing Officers. The parties shall select a Hearing Officer by alternatively striking names until only one name remains; that person shall serve as the Hearing Officer. The party which strikes the first name from the list of the Hearing Officers shall be determined by a toss of a coin. Unless otherwise agreed, the Administrative Hearing shall be conducted within fifteen (15) working days of the selection. The CITY shall bear the cost of the Hearing Officer. Each party shall bear its own cost of representation.
 2. Appeals. The parties shall jointly request a list of five (5) qualified Hearing Officers from the California State Mediation and Counsel Conciliation Service. The parties shall select a Hearing Officer by alternatively striking names until only one name remains; that person shall serve as the Appeals Hearing Officer. The party which strikes the first name from the list of the Hearing Officers shall be determined by a toss of a coin. The CITY shall bear the cost of the Hearing Officer. Each side shall bear its own costs of representation; including

EXHIBIT A

preparation of post-hearing briefs, if any. Decisions of the Hearing Officer shall be final and binding on the parties to the extent permitted by law.

SECTION 3. COMPENSATION

- A. **Salary.** CITY agrees to pay CITY MANAGER for his services a base salary of **Ninety Thousand Dollars (\$90,000.00)** per annum, payable in installments at the same time as other employees of CITY are paid.
- B. **Automobile.** CITY MANAGER'S duties require that he have the use of a personal automobile at all times during his employment with CITY. As reimbursement for the cost of use and operation of such automobile, CITY agrees to pay CITY MANAGER the sum of **Three Hundred Dollars (\$300.00)** per month.
- C. **Benefits.** The CITY MANAGER shall continue to receive all benefits provided to the CITY'S non-represented management staff.

SECTION 4. VACATION, SICK LEAVE, AND ADMINISTRATIVE LEAVE

CITY MANAGER shall continue to receive all vacation, sick leave, and administrative leave benefits provided to the CITY'S non-represented management staff.

SECTION 5. EVALUATIONS

CITY will commence the CITY MANAGER'S evaluation on July 1st of each succeeding year and shall provide the CITY MANAGER with a written evaluation prior to September 1st of each succeeding year.

SECTION 6. OUTSIDE EMPLOYMENT, CONDUCT AND BEHAVIOR

- A. CITY MANAGER may engage in outside activities such as part-time teaching, consulting, or in other similar activities unrelated to CITY business only with the express prior written approval of the Council.
- B. CITY MANAGER shall comply with all local and state requirements regarding conflicts-of-interest and shall avoid personal involvement in situations which are inconsistent or incompatible with the position of CITY MANAGER or give rise to the appearance of impropriety.

SECTION 7. PROFESSIONAL DEVELOPMENT

CITY shall provide funds for certain items, activities and materials deemed necessary and desirable for CITY MANAGER'S continued professional development, participation, growth and advancement for the good of the CITY.


EXHIBIT A

SECTION 8. MISCELLANEOUS


- A. The CITY may set such other terms and conditions of employment as it may determine from time to time, relating to the performance of the position of CITY MANAGER, providing such terms and conditions are not inconsistent with or in conflict with the provisions of this agreement, or any state or local law.
- B. CITY shall provide the defense of CITY MANAGER in any action or proceeding alleging an act or omission within the scope of employment of the CITY MANAGER in conformance with state law (Government Code Section 995 et.seq.).
- C. This instrument contains all of the agreements and promises made between the parties to this Agreement and may not be modified orally in any manner other than by an agreement in writing signed by all the parties to this Agreement.
- D. If for any reason any provisions of this Agreement shall be invalid, it is the intention of the parties hereto that all remaining provisions hereof shall continue and be in full force and be fully effective.
- E. This Agreement shall be governed by the laws of the State of California. The parties agree that in the event any legal action is taken to enforce/interpret any provisions of the Agreement, said action shall be filed in the court of proper jurisdiction within the County of San Luis Obispo.

APPROVAL DATE: August 19, 1997

CITY MANAGER


JAMES L. APP
PURSUANT TO COUNCIL
ACTION OF August 19, 1997


CITY


DUANE J. PICANCO, MAYOR

ATTEST:


MADELYN PAASCH, CITY CLERK

APPROVED AS TO FORM:


IRIS YANG, CITY ATTORNEY