Action Item

Agenda Item No. 7

Report to the Auburn City Council

City Manager's Approval

To: Mayor and City Council

From: Robert Richardson, City Manager

Date: July 8, 2013

Subject: Department Director Pay for Performance Agreements

The Issue

Shall the City Council approve the attached Department Director pay for performance agreements?

Conclusion and Recommendation

That the City Council, by resolution, approve the attached pay for performance agreements.

Background

In September of 2008, the City Council approved pay for performance agreements for the City's Department Directors. This program was created to tie compensation more closely to actual performance and develop incentives for high productivity. In 2009, each Department Director voluntarily entered into the Cost Reduction Plan, thereby reducing their compensation by over 12% to assist with the City's budget shortfall during the recession.

Additionally, the City went through a significant downsizing and reorganization in order to balance revenues with expenditures. However, rather than simply reducing services, many Directors have worked tirelessly over these years in order to find new ways of maintaining services at previous levels, innovate new solutions and adapt to an ever changing environment.

Today's public manager must be nimble, bold and thoughtful to succeed in this new environment. These are attributes not often associated with public sector managers. In many cases, Auburn Directors have plowed new ground allowing for a broad series of community improvements and services that are not available to most cities with our funding profile. They have demonstrated that it is not simply an issue of funding, but one of personal commitment, personal talent and a love for the profession. Teamed with fine

staff members and a proactive community, Auburn has emerged in a stable and forward moving position.

Just a few examples of results achieved over the past years include:

- A reduction in Public Safety overtime, despite fewer personnel.
- An entirely new management structure for the Airport that has resulted in the filling of virtually all existing hangars, the construction of new executive hangars during the recession, a strong capital program, and the facility's strongest fiscal position in decades.
- A strong credit rating.
- Over $1 million in Fire grants have been received allowing for a wide range of public safety improvements including substantial work on the Shaded Fuel Break and higher staffing and medical response service levels for citizens.
- Strong reductions in vehicle maintenance costs.
- New partnerships with the public that result in substantial savings in tax payer funds.
- Virtually no reduction in services despite a 30% reduction in staff since the recession.
- A broad and consistent capital program throughout the City.

The City Manager has conducted performance evaluations and is currently recommending the following amendments (Fiscal Impact Section). These represent the first on-going compensation adjustments for these Directors since 2009.

Alternatives

Deny/Alter Contract Amendments

Fiscal Impact

	Salary Restoration	Performance Pay	Cost(Salary & Benefits)
Police Chief	4%	3%	$12,114
Fire Chief	4%	3%	$11,287
Public Works Dir.	4%	3%	$ 9,888

Attachments

Police Chief Employment Agreement
Fire Chief Employment Agreement
Public Works Director Employment Agreement

RESOLUTION NO. 13-

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN ADOPTING AMENDED EMPLOYMENT AGREEMENTS FOR POLICE CHIEF JOHN RUFFCORN, FIRE CHIEF MARK D'AMBROGI, AND PUBLIC WORKS DIRECTOR BERNIE SCHROEDER AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENTS

THE CITY COUNCIL OF THE CITY OF AUBURN DOES HEREBY RESOLVE:

WHEREAS, on November 19, 2007, the City Council of the City of Auburn adopted a Senior Executive Pay for Performance Program Policy; and,

WHEREAS, the goals of the policy are to provide additional strategic tools to assist the City in achieving its goals of providing responsive, innovative services in the most efficient and cost-effective manner; providing performance incentives and flexibility to participating employees; and enabling the City to achieve results by recruiting and maintaining a highly qualified workforce; and

WHEREAS, on September 22, 2008, all eligible Directors entered into Pay for Performance Employment Agreements; and

WHEREAS, the City Manager has performance evaluations to all eligible Department Directors and is recommending amendments to the above listed Employment Agreements,

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Auburn hereby approves the Amended Executive Pay for Performance Employment Agreements for Police Chief John Ruffcorn, Fire Chief Mark D'Ambrogi, and Public Works Director Bernie Schroeder and authorizes the City Manager to execute said Agreements.

DATED: July 8, 2013

_____
Kevin Hanley, Mayor

ATTEST:

_____
Stephanie L. Snyder, City Clerk

I, Stephanie L. Snyder, City Clerk of the City of Auburn, hereby certify that the foregoing resolution was duly passed at a regular meeting of the City Council of the City of Auburn held on the 8th day of July, 2013 by the following vote on roll call:

Ayes:
Noes:
Absent:

_____
Stephanie L. Snyder, City Clerk

EMPLOYMENT AGREEMENT BETWEEN THE CITY OF AUBURN AND JOHN RUFFCORN, POLICE CHIEF
AGREEMENT

1. Effective Date

This Agreement shall become effective when it has been executed by the Department Director and the City Manager and duly approved by Resolution of the City Council.

2. Term of Employment

Pursuant to the provisions of the Auburn Municipal Code Section 31.058(I), Department Directors shall serve at the pleasure of the City Manager and on an "at will" basis during the term of this Agreement, subject to the terms and provision of this Agreement as set forth below.

3. Duties; Hours of Work

A. Department Director shall perform those functions and duties as specified in job classification and by direction of the City Manager. Department Director shall perform such duties in accordance with the highest professional and ethical standards of the Department Director position. Department Director shall not engage in any activity that is, or which may become, incompatible with the City of Auburn, as provided by federal, state, and local law. During the term of this Agreement, Department Director shall be exclusively employed by the City, unless prior written authorization otherwise is received from the City Manager, which authorization will not be unreasonably withheld.

B. Department Director shall maintain a regular work schedule consistent with that approved for other Department Directors of the City. Department Director's duties may involve expenditures in time in excess of eight (8) hours per day and/or forty (40) hours per week, and may also include time outside normal office hours such as attendance at City Council and Commission meetings. Department Director shall not be entitled to additional compensation for this time.

4. Compensation

A. Department Director shall receive an annual base salary of ~~$137,000.00~~141,971.02, payable in equal semi-monthly payments to be made at the same time as other employees are paid.

B. Department Director's compensation shall be reviewed with the City Manager at least annually in connection with the annual review or at any other times as may be determined by the City Manager. Further it is understood that it is the intent of the City Manager to increase salary within the Control Points range, or increase other benefits referred to in this Agreement, dependent upon the quality of job performance by Department Director.

C. Salary increases may be revoked in the event Department Director receives an unsatisfactory evaluation, either at the annual evaluation or at any additional evaluation completed by the City Manager.

D. The City Manager may, on an annual basis, award special performance one-time cash bonuses not to exceed 15% of Director's base salary. These one-time cash bonuses may be given any time during the year provided the employee received at least a Standard rating on his/her last evaluation.

~~E. Consistent with City of Auburn Resolution No. 09-38, adopted March 23, 2009 and effective May 1, 2009, concessions outlined in the "Cost Management Plan" and applicable to all Department Directors will remain in effect. Specifically, Department Director compensation will be reduced by 3.15 percent; Department Director will be responsible for paying the 9.00 percent employee contribution to the California Public Employees Retirement System; and Department Director will earn 2.75 hours of "Mandatory Time Off" each semi-monthly payroll period.~~

5. Health Insurance

City shall pay up to the following amounts per month for health insurance coverage:

Employee only	$ ~~483.79~~555.68
Employee + spouse	$ ~~967.59~~1,111.38
Employee + family	$ ~~1,257.25~~1,444.17

(201~~1~~3 Rates)

During the term of this agreement, the following participation formula shall apply: The City will pay eighty percent (80%) and employees will pay twenty percent (20%) of the average increase in premiums occurring in those CalPERS plans offered to City employees in the 95603 zip code area (excluding the highest and lowest cost plans).

Department Director may elect not to receive health coverage from the City. Directors who elect not to receive health coverage from the City will be required to sign a release form. Any employee who signs a release form shall receive monthly payments equal to the one (1) person coverage amount in effect at the time the release is signed. From time-to-time, said amount will be adjusted as set forth in this Agreement.

6. Life Insurance

City shall provide term life insurance in the amount of two times (2x) the annual base salary. Such life insurance shall be provided through the same insurance company providing life insurance to other City employees, or by another insurer acceptable to City.

7. Annual Vacation Leave

Department Director shall be entitled to 23 days (184 hours) Annual Vacation Leave. Department Director may receive equivalent cash compensation, in full or in part, at any time during the year for unused vacation leave. For vacation leave of more than one week at a time, Department Director must provide sufficient notice of his/her intended vacation absence to the City Manager.

8. Administrative and Executive Leave

Department Director shall be entitled to ten (10) days (80 hours) Administrative Leave per year. In the event such leave is not used, Department Director may receive equivalent cash compensation therefore, in full or part, at any time during the year.

Department Director may receive additional Executive Leave, which may be awarded based upon job performance by the City Manager in an amount between one (1) and five (5) days per year. Executive Leave may not be carried over from year to year and cannot be cashed out at any time.

9. Other Leaves and Benefits

All items relating to employee leaves and benefits shall remain the same as those currently in existence prior to the execution of this Agreement, except as modified herein.

10. Technology Allowance

Department Director will receive a one time technology allowance in the amount of $1,500 for technology purposes with prior authorization from the City Manager.

11. Professional Memberships & Meetings; Other Expenses

The City recognizes that certain expenses of a non-personal and job-related nature may be incurred by Department Director. City agrees to reimburse Department Director for reasonable expenses which have been authorized by the City Budget and approved in advance by the City Manager. Department Director must submit expense receipts, statements or personal affidavits, and audit thereof in like manner as other demands against the City.

12. Retirement / Deferred Compensation Program

City shall provide the same PERS retirement benefits to Department Director as are received by other employees of the City. City shall contribute $50 per month into Department Director's deferred compensation plan.

13. Annual Performance Evaluation

The City Manager shall evaluate Department Director's performance at least once annually. The City Manager and Department Director shall annually develop mutual agreeable performance goals and criteria which the City Manager shall use in reviewing Department Director's performance in the following year. It shall be Department Director's responsibility to initiate this review each year.

14. Indemnification

City shall defend, hold harmless and indemnify Department Director against any claim, demand, judgment, or action of any type or kind arising within the course and scope of Department Director's employment to the extent required by Government Code Sections 825 and 995.

15. Other Terms and Conditions of Employment

A. The City Council may from time to time fix other terms and conditions of employment relating to the performance of Department Director, provided such terms

and conditions are not inconsistent with or in conflict with the provision of this Agreement, the Auburn Municipal Code, or other applicable law.

B. The provisions of the City's Personnel Rules and Regulations ("Rules") shall apply to Department Director to the extent they explicitly apply to the position of Department Director, except that if the specific provisions of this Agreement conflict with the Rules, the terms of this Agreement shall prevail. Without limiting the generality of the exception noted in the previous sentence, however, no provision of the Rules or this Agreement shall confer upon Department Director a property right in his or her employment or a right to be discharged only upon cause. Department Director is not a member of the competitive/ classified service and is an at-will employee serving at the pleasure of the City Manager and may be dismissed at any time with or without cause, subject only to the provisions of this Agreement and specific policies pertaining to the Senior Executive Pay for Performance Program. Notwithstanding any other provision of this Agreement, Department Director shall not violate any policy prohibiting discrimination, harassment, retaliation, workplace violence, or other similar misconduct as set forth in the Rules and in federal, state law, and local law.

C. Department Director shall be exempt from paid overtime compensation and from Social Security taxes other than the mandatory Medicare portion of such taxes.

16. Termination

A. Department Director is not part of the competitive (classified) service and therefore is an at-will employee. As an at-will employee, Department Director may be terminated with or without cause, and without advance notice.

B. If Department Director is terminated by the City without cause, Department Director after termination will be entitled to three months of severance pay at Department Director's base salary rate. The severance pay will be paid at the time of separation from City employment.

C. If Department Director is terminated by the City for cause, Department Director is not entitled to any severance pay whether or not advance notice is provided. If Department Director is terminated for cause, Department Director must be given notice of the cause and supporting evidence. Department Director is entitled to meet with the City Manager at which time Department Director may reply orally and/or in writing to the cause and supporting evidence. The meeting is not an evidentiary hearing. There is no right to appeal the City Manager's decision. The City Manager's decision is final.

D. Department Director may voluntarily terminate his or her employment, by resignation or retirement or some other similar manner, upon at least one month notice. In this circumstance, Department Director is not entitled to any severance pay.

17. Compliance With Law

This Agreement is subject to all applicable provisions of federal, state, and local laws, including the Auburn Municipal Code.

18. General Provisions

A. This Agreement constitutes the entire agreement between the parties. City and Department Director hereby acknowledge that they have neither made nor accepted any other promise or obligation with respect to the subject matter of this Agreement.

B. If any provision or any portion of this Agreement is held to be unconstitutional, invalid or unenforceable, the reminder of the Agreement shall be deemed severable and shall not be affected and shall remain in full force and effect.

C. Any notice to City pursuant to this Agreement shall be given in writing, either by personal service or by registered or certified mail, postage prepaid, addressed as follows:

City Manager
City of Auburn
1225 Lincoln Way
Auburn, CA 95603

Any notice to Department Director shall be given in a like manner, and, if mailed, shall be addressed to Department Director at the address shown in City's personnel records. For the purpose of determining compliance with any time limit stated in this Agreement, a notice shall be deemed to have duly given (a) on the date of delivery, if served personally, or (b) on the second (2nd) calendar day after mailing, if mailed.

D. If an action at law or in equity is necessary to enforce or interpret this Agreement, the prevailing party in that action shall be entitled to reasonable and actual attorneys' fees and costs with respect to the prosecution or defense of the action.

E. A waiver of any of the terms and conditions of this Agreement shall not be construed as a general waiver and either party shall be free to enforce any term or condition of this Agreement with or without notice to the other notwithstanding any prior waiver of that term or condition.

19. Amendments

This represents the entire agreement between the parties. Amendments to this agreement may be made at such times as approved by the City Manager and Department Director and shall be in writing.

Dated: _____

_____
Robert Richardson, City Manager

Dated: _____

_____
John Ruffcorn,
Police Chief

Approved as to form:

Dated:_____

_____
Michael G. Colantuono, City Attorney

EMPLOYMENT AGREEMENT BETWEEN THE CITY OF AUBURN AND MARK D'AMBROGI, FIRE CHIEF

AGREEMENT

1. Effective Date

This Agreement shall become effective when it has been executed by the Department Director and the City Manager and duly approved by Resolution of the City Council.

2. Term of Employment

Pursuant to the provisions of the Auburn Municipal Code Section 31.058(I), Department Directors shall serve at the pleasure of the City Manager and on an "at will" basis during the term of this Agreement, subject to the terms and provision of this Agreement as set forth below.

3. Duties; Hours of Work

A. Department Director shall perform those functions and duties as specified in job classification and by direction of the City Manager. Department Director shall perform such duties in accordance with the highest professional and ethical standards of the Department Director position. Department Director shall not engage in any activity that is, or which may become, incompatible with the City of Auburn, as provided by federal, state, and local law. During the term of this Agreement, Department Director shall be exclusively employed by the City, unless prior written authorization otherwise is received from the City Manager, which authorization will not be unreasonably withheld.

B. Department Director shall maintain a regular work schedule consistent with that approved for other Department Directors of the City. Department Director's duties may involve expenditures in time in excess of eight (8) hours per day and/or forty (40) hours per week, and may also include time outside normal office hours such as attendance at City Council and Commission meetings. Department Director shall not be entitled to additional compensation for this time.

4. Compensation

A. Department Director shall receive an annual base salary of ~~$126,192.00~~130,754.00, payable in equal semi-monthly payments to be made at the same time as other employees are paid.

B. Department Director's compensation shall be reviewed with the City Manager at least annually in connection with the annual review or at any other times as may be determined by the City Manager. Further it is understood that it is the intent of the City Manager to increase salary within the Control Points range, or increase other benefits referred to in this Agreement, dependent upon the quality of job performance by Department Director.

C. Salary increases may be revoked in the event Department Director receives an unsatisfactory evaluation, either at the annual evaluation or at any additional evaluation completed by the City Manager.

D. The City Manager may, on an annual basis, award special performance one-time cash bonuses not to exceed 15% of Director's base salary. These one-time cash bonuses may be given any time during the year provided the employee received at least a Standard rating on his/her last evaluation.

5. Health Insurance

City shall pay up to the following amounts per month for health insurance coverage:

Employee only	$ ~~416.91~~555.68
Employee + spouse	$ ~~833.81~~1,111.38
Employee + family	$ ~~1,083.35~~1,444.17

(~~2008~~ 2013 Rates)

During the term of this agreement, the following participation formula shall apply: The City will pay eighty percent (80%) and employees will pay twenty percent (20%) of the average increase in premiums occurring in those CalPERS plans offered to City employees in the 95603 zip code area (excluding the highest and lowest cost plans).

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6. Life Insurance

City shall provide term life insurance in the amount of two times (2x) the annual base salary. Such life insurance shall be provided through the same insurance company providing life insurance to other City employees, or by another insurer acceptable to City.

7. Annual Vacation Leave

Department Director shall be entitled to between 12 days (96 hours) and 23 days (184 hours) Annual Vacation Leave dependent upon years of employment with the City.

a. One through Two years of service	12 days (96 hours)
b. Three through five years of service	15 days (120 hours)
c. Six through ten years of service	17 days (136 hours)
d. Eleven through fifteen years of service	21 days (168 hours)
e. Sixteen or more years of service	23 days (184 hours)

Department Director may receive equivalent cash compensation, in full or in part, at any time during the year for unused vacation leave. For vacation leave of more than one week at a time, Department Director must provide sufficient notice of his/her intended vacation absence to the City Manager.

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19. Amendments

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Dated: _____

_____
Robert Richardson, City Manager

Dated: _____

_____
Mark D'Ambrogi, Fire Chief

Approved as to form:

Dated:_____

_____
Michael G. Colantuono, City Attorney

EMPLOYMENT AGREEMENT BETWEEN THE CITY OF AUBURN AND BERNARDINE SCHROEDER, PUBLIC WORKS DIRECTOR

AGREEMENT

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B. Department Director shall maintain a regular work schedule consistent with that approved for other Department Directors of the City. Department Director's duties may involve expenditures in time in excess of eight (8) hours per day and/or forty (40) hours per week, and may also include time outside normal office hours such as attendance at City Council and Commission meetings. Department Director shall not be entitled to additional compensation for this time.

4. Compensation

A. Department Director shall receive an annual base salary of ~~$129,500.00~~132,712.53, payable in equal semi-monthly payments to be made at the same time as other employees are paid.

B. Department Director's compensation shall be reviewed with the City Manager at least annually in connection with the annual review or at any other times as may be determined by the City Manager. Further it is understood that it is the intent of the City Manager to increase salary within the Control Points range, or increase other benefits referred to in this Agreement, dependent upon the quality of job performance by Department Director.

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City shall pay up to the following amounts per month for health insurance coverage:

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Employee + family	$ ~~1,102.50~~1,444.17

(201~~0~~3 Rates)

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Department Director may elect not to receive health coverage from the City. Directors who elect not to receive health coverage from the City will be required to sign a release form. Any employee who signs a release form shall receive monthly payments equal to the one (1) person coverage amount in effect at the time the release is signed. From time-to-time, said amount will be adjusted as set forth in this Agreement.

6. Life Insurance

City shall provide term life insurance in the amount of two times (2x) the annual base salary. Such life insurance shall be provided through the same insurance company providing life insurance to other City employees, or by another insurer acceptable to City.

7. Annual Vacation Leave

Department Director shall be entitled to between 12 days (96 hours) and 23 days (184 hours) Annual Vacation Leave dependent upon years of employment with the City.

a. One through Two years of service	12 days (96 hours)
b. Three through five years of service	15 days (120 hours)

c.	Six through ten years of service	17 days (136 hours)
d.	Eleven through fifteen years of service	21 days (168 hours)
e.	Sixteen or more years of service	23 days (184 hours)

Department Director may receive equivalent cash compensation, in full or in part, at any time during the year for unused vacation leave. For vacation leave of more than one week at a time, Department Director must provide sufficient notice of his/her intended vacation absence to the City Manager.

8. Administrative and Executive Leave

Department Director shall be entitled to ten (10) days (80 hours) Administrative Leave per year. In the event such leave is not used, Department Director may receive equivalent cash compensation therefore, in full or part, at any time during the year.

Department Director may receive additional Executive Leave, which may be awarded based upon job performance by the City Manager in an amount between one (1) and five (5) days per year. Executive Leave may not be carried over from year to year and cannot be cashed out at any time.

9. Other Leaves and Benefits

All items relating to employee leaves and benefits shall remain the same as those currently in existence prior to the execution of this Agreement, except as modified herein.

10. Auto Allowance

In recognition of the fact that Department Director's normal duties require frequent use of his/her automobile, Department Director shall be entitled to a monthly auto allowance in the amount of $150.00. This allowance is in lieu of mileage reimbursement or other expenses that may have been incurred by Department Director in connection with hs/her provision and use of his/her own automobile for City purposes. In consideration for said allowance, Department Director shall be responsible for all costs of maintenance and operation of his/her vehicle. Department Director shall at all times maintain automobile liability insurance on any vehicle used by him/her in the course of City employment. Such insurance shall have coverage limits acceptable in form and amounts to City. Department Director shall provide a certificate or evidence of such insurance to City.

11. Technology Allowance

Department Director will receive a one time technology allowance in the amount of $1,500 for technology purposes with prior authorization from the City Manager.

12. Professional Memberships & Meetings; Other Expenses

The City recognizes that certain expenses of a non-personal and job-related nature may be incurred by Department Director. City agrees to reimburse Department Director for reasonable expenses which have been authorized by the City Budget and approved in advance by the City Manager. Department Director must submit expense receipts, statements or personal affidavits, and audit thereof in like manner as other demands against the City.

13. Retirement / Deferred Compensation Program

City shall provide the same PERS retirement benefits to Department Director as are received by other employees of the City. City shall contribute $50 per month into Department Director's deferred compensation plan.

14. Annual Performance Evaluation

The City Manager shall evaluate Department Director's performance at least once annually. The City Manager and Department Director shall annually develop mutual agreeable performance goals and criteria which the City Manager shall use in reviewing Department Director's performance in the following year. It shall be Department Director's responsibility to initiate this review each year.

15. Indemnification

City shall defend, hold harmless and indemnify Department Director against any claim, demand, judgment, or action of any type or kind arising within the course and scope of Department Director's employment to the extent required by Government Code Sections 825 and 995.

16. Other Terms and Conditions of Employment

A. The City Council may from time to time fix other terms and conditions of employment relating to the performance of Department Director, provided such terms and conditions are not inconsistent with or in conflict with the provision of this Agreement, the Auburn Municipal Code, or other applicable law.

B. The provisions of the City's Personnel Rules and Regulations ("Rules") shall apply to Department Director to the extent they explicitly apply to the position of Department Director, except that if the specific provisions of this Agreement conflict with the Rules, the terms of this Agreement shall prevail. Without limiting the generality of the exception noted in the previous sentence, however, no provision of the Rules or this Agreement shall confer upon Department Director a property right in his or her employment or a right to be discharged only upon cause. Department Director is not a member of the competitive/ classified service and is an at-will employee serving at the pleasure of the City Manager and may be dismissed at any time with or without cause, subject only to the provisions of this Agreement and specific policies pertaining to the Senior Executive Pay for Performance Program. Notwithstanding any other provision of this Agreement, Department Director shall not violate any policy prohibiting discrimination, harassment, retaliation, workplace violence, or other similar misconduct as set forth in the Rules and in federal, state law, and local law.

C. Department Director shall be exempt from paid overtime compensation and from Social Security taxes other than the mandatory Medicare portion of such taxes.

17. Termination

A. Department Director is not part of the competitive (classified) service and therefore is an at-will employee. As an at-will employee, Department Director may be terminated with or without cause, and without advance notice.

B. If Department Director is terminated by the City without cause, Department Director after termination will be entitled to three months of severance pay at Department Director's base salary rate. The severance pay will be paid at the time of separation from City employment.

C. If Department Director is terminated by the City for cause, Department Director is not entitled to any severance pay whether or not advance notice is provided. If Department Director is terminated for cause, Department Director must be given notice of the cause and supporting evidence. Department Director is entitled to meet with the City Manager at which time Department Director may reply orally and/or in writing to the cause and supporting evidence. The meeting is not an evidentiary hearing. There is no right to appeal the City Manager's decision. The City Manager's decision is final.

D. Department Director may voluntarily terminate his or her employment, by resignation or retirement or some other similar manner, upon at least one month notice. In this circumstance, Department Director is not entitled to any severance pay.

18. Compliance With Law

This Agreement is subject to all applicable provisions of federal, state, and local laws, including the Auburn Municipal Code.

19. General Provisions

A. This Agreement constitutes the entire agreement between the parties. City and Department Director hereby acknowledge that they have neither made nor accepted any other promise or obligation with respect to the subject matter of this Agreement.

B. If any provision or any portion of this Agreement is held to be unconstitutional, invalid or unenforceable, the reminder of the Agreement shall be deemed severable and shall not be affected and shall remain in full force and effect.

C. Any notice to City pursuant to this Agreement shall be given in writing, either by personal service or by registered or certified mail, postage prepaid, addressed as follows:

City Manager
City of Auburn
1225 Lincoln Way
Auburn, CA 95603

Any notice to Department Director shall be given in a like manner, and, if mailed, shall be addressed to Department Director at the address shown in City's personnel records. For the purpose of determining compliance with any time limit stated in this Agreement, a notice shall be deemed to have duly given (a) on the date of delivery, if served personally, or (b) on the second (2nd) calendar day after mailing, if mailed.

D. If an action at law or in equity is necessary to enforce or interpret this Agreement, the prevailing party in that action shall be entitled to reasonable and actual attorneys' fees and costs with respect to the prosecution or defense of the action.

E. A waiver of any of the terms and conditions of this Agreement shall not be construed as a general waiver and either party shall be free to enforce any term or condition of this Agreement with or without notice to the other notwithstanding any prior waiver of that term or condition.

20. Amendments

This represents the entire agreement between the parties. Amendments to this agreement may be made at such times as approved by the City Manager and Department Director and shall be in writing.

Dated: _____

_____
Robert Richardson, City Manager

Dated: _____

_____
Bernardine Schroeder,
Public Works Director

Approved as to form:

Dated:_____

_____
Michael G. Colantuono, City Attorney

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