

RESOLUTION NO. 8446

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAWTHORNE, CALIFORNIA, APPROVING THE FIRST AMENDMENT TO THE CITY ATTORNEY EMPLOYMENT AGREEMENT BETWEEN THE CITY OF HAWTHORNE AND ROBERT M. KIM

WHEREAS, Robert Kim has been employed with the City Hawthorne in the City Attorney's Office for over twenty three years; and

WHEREAS, on April 27, 2021, the City Council of the City of Hawthorne appointed Robert Kim as the Interim City Attorney; and

WHEREAS, at the regularly scheduled City Council meeting of October 12, 2021, Robert Kim was appointed as the City Attorney; and

WHEREAS, City of Hawthorne and Robert Kim entered into the City Attorney Employment Agreement with the term of three years and scheduled to expire on October 27, 2024; and

WHEREAS, During the regularly scheduled City Council meeting of October 24, 2023, the Council met in a closed session to discuss the city attorney's performance evaluation and unanimously voted to extend the term of his employment agreement and appointed councilman Alex Monteiro as the City's negotiator; and

WHEREAS, Councilman Alex Monteiro and the City Attorney Robert Kim met and tentatively agreed on the term and amendments to the City Attorney Employment Agreement.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HAWTHORNE, CALIFORNIA, hereby resolves as follows:

SECTION 1. The foregoing recitals in this Resolution are true and correct.

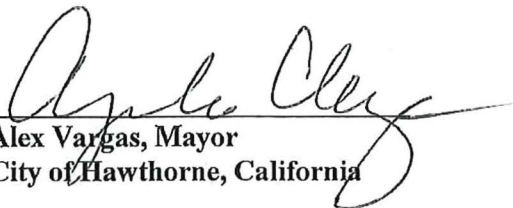
SECTION 2. The City Council hereby approves and authorize the Mayor to execute the First Amendment to the City Attorney Employment Agreement, attached hereto as Exhibit A and incorporated herein by reference with an effective date of December 12, 2023.

SECTION 3. That the City Clerk shall certify to the adoption of this Resolution and shall cause this Resolution and this certification to be entered in the Book of Resolutions of the Council of the City.


SECTION 4. This resolution shall be in full force and effect immediately upon its

passage and adoption thereof.


PASSED, APPROVED and ADOPTED this 12th day of December 2023.



Alex Vargas, Mayor
City of Hawthorne, California

ATTEST:


Dayna Williams-Hunter, City Clerk
City of Hawthorne, California



Robert M. Kim,
City Attorney
City of Hawthorne, California

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) §
CITY OF HAWTHORNE)

I, Dayna Williams-Hunter, the duly elected City Clerk of the City of Hawthorne, California, DO HEREBY CERTIFY that the foregoing Resolution, being Resolution No. 8446 was duly adopted by the City Council of the City of Hawthorne, California, at a regular meeting of the City Council held December 12, 2023, and that it was adopted by the following vote, to wit:

AYES: Councilmembers Manning, Monteiro, Patterson, Reyes English, Mayor Vargas.

NOES: None.

ABSTAIN: None.

ABSENT: None.



Dayna Williams-Hunter
City Clerk
City of Hawthorne, California

EXHIBIT A
(FIRST AMENDMENT TO THE CITY ATTORNEY EMPLOYMENT AGREEMENT)

**FIRST AMENDMENT
TO CITY ATTORNEY EMPLOYMENT AGREEMENT BETWEEN THE
CITY OF HAWTHORNE AND ROBERT M. KIM**

THIS FIRST AMENDMENT TO THE CITY ATTORNEY EMPLOYMENT AGREEMENT with Robert M. Kim (“RMK”), is made and entered into this 12th day of December 2023, by and between the City of Hawthorne and RMK.

RECITALS

A. Reference is hereby made to the City Attorney Employment Agreement (“CA Agreement”) Between the City of Hawthorne and Robert M. Kim with the “effective date” of October 27, 2021.

B. The CA Agreement provided for RMK’s employment as the City Attorney for the City of Hawthorne commencing October 27, 2021 through October 27, 2024 for the beginning salary of \$225,000 to be paid retroactively from October 13th, the date of the city council’s appointment of RMK as the City Attorney.

C. During the regularly scheduled City Council meeting of October 24, 2023 the Council met in a closed session to discuss RMK’s performance evaluation. The council unanimously voted to extend the term of the CA Agreement and appointed Councilman Alex Monteiro as the City’s negotiator.

D. RMK and Councilman Monteiro met and negotiated this First Amendment to the CA Agreement which amends the CA Agreement as follows:

- Section 4: Extend the term of the CA Agreement by three years with the new expiration date of December 12, 2027.
- Section 9(N): Amend for City to pay medical, dental and vision insurance for employee plus two dependents in excess of \$12.12 per pay period to be paid by RMK.
- Section 10: Amend for the City to periodically review RMK’s performance as delineated under Hawthorne Municipal Code plus annually and provide a five percent annual salary increase.
- Section 12: Change medical, dental and vision health insurance coverage premiums to City to pay employee plus two dependents with RMK to contribute \$12.12 per each pay period.

E. Except as otherwise specifically amended herein in this First Amendment, all other terms and conditions contained in the original CA Agreement shall remain in full force and effect.

F. A copy of the CA Agreement is attached hereto, incorporated herein as Exhibit “1”.

NOW, THEREFORE, in consideration of the foregoing Recitals, the agreement of the parties as set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 4 of the CA Agreement is hereby deleted and replaced by a new Section 4 which shall read as follows:

4. The effective date of this agreement shall be December 12, 2023. Unless earlier terminated, this Agreement shall expire on December 12, 2027.

Section 9 (N) of the CA Agreement is hereby deleted and replaced by a new Section 9 (N) which shall read as follows:

9. RMK shall receive the following fringe benefits.

...

N. RMK shall be entitled to medical, dental and vision insurance with the full premiums, employee plus two dependents paid by the City in excess of \$12.12 per pay period paid by RMK.

Section 10 in the CA Agreement is hereby deleted and replaced by a new Section 10 which shall read as follows:

10. The City may periodically review RMK's performance as delineated under Hawthorne Municipal Code Section 2.08. Additionally, there shall be a closed session for Performance Evaluation of the City Attorney to be added to the City Council Meeting Agenda annually on a regularly scheduled City Council meeting date that is closest to the effective date of this Agreement. For each year, RMK's contract is not terminated after his Performance Evaluation, he shall be entitled to an increase in pay by five percent (5%) of his then base salary.

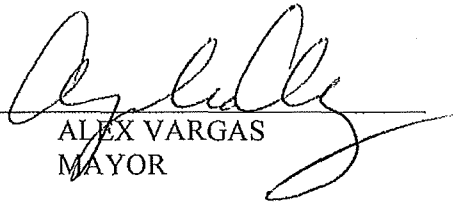
Section 12 of the CA Agreement is hereby deleted and replaced by a new Section 12 which shall read as follows:

12. RMK shall be granted the option of selecting medical insurance coverage from a list of carriers that exist as choices for other current retirees of HEG, except as limited by law. If RMK is receiving health care insurance at the time of his retirement, he shall be entitled to maintain enrollment in the City's health plan, as per the established guidelines and rules of CalPERS. The City shall pay an amount equal to employee plus two dependents in excess of \$12.12 per pay period to be paid by RMK for the health plan in which RMK is enrolled, less any administrative fees required by the plan. If RMK is not enrolled in a health plan at the time of retirement, he shall not be eligible for this benefit.

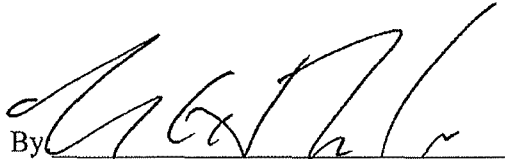
IN WITNESS WHEREOF, this First Amendment to City Attorney Employment Agreement Between the City of Hawthorne and Robert M. Kim has been executed by the duly authorized representatives.

CITY OF HAWTHORNE

DATE:

By: 
ALEX VARGAS
MAYOR

DATE:

By: 
ROBERT M. KIM

ATTEST:

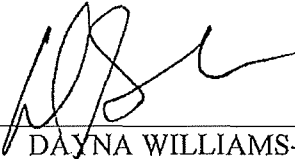
By: 
DAYNA WILLIAMS-HUNTER
CITY CLERK

EXHIBIT 1
(CITY ATTORNEY EMPLOYMENT AGREEMENT – OCTOBER 2021)

**CITY ATTORNEY EMPLOYMENT AGREEMENT BETWEEN THE CITY OF
HAWTHORNE AND ROBERT M. KIM**

This Employment Agreement (Agreement) is entered into by and between the City of Hawthorne (City) and Robert M. Kim (RMK), with reference to the following facts and circumstances:

RECITALS

WHEREAS, RMK has been employed with the City of Hawthorne for twenty-one (21) years as a Deputy City Attorney, Assistant City Attorney, Senior Assistant City Attorney, Interim City Attorney; and

WHEREAS, the City Council voted to approve RMK as the City Attorney on October 12, 2021 at the regularly scheduled City Council meeting; and

WHEREAS, the City Council finds that RMK possess the specialized skills necessary and required for a City Attorney and wishes to approve RMK's employment contract as the City Attorney; and

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the City and RMK agree as follows:

AGREEMENT TO EMPLOY

1. The City agrees to employ the services of RMK as the City Attorney upon the effective date of this Agreement.
2. RMK agrees to accept employment as the City Attorney pursuant to the terms of this employment Agreement.
3. RMK agree to remain in the exclusive employ of the City during the term of this agreement and neither to accept other employment nor to become employed by any other employer unless his employment with the City is terminated. This Paragraph 3 shall not be construed to prohibit occasional teaching, writing, consulting or military reserve service performed on RMK's time off.

EFFECTIVE DATE AND TERM

4. The effective date of this agreement shall be October 27, 2021. Unless earlier terminated, this Agreement shall expire on October 27, 2024.
5. RMK agrees to perform the duties of City Attorney as set forth in Sections 2.08.020 and 2.08.030 of the Hawthorne Municipal Code.
6. The term of the agreement shall be three years.

COMPENSATION

7. City shall compensate RMK at the base salary of \$225,000 annually, to be paid on a bi-weekly basis during the term of this Agreement. Notwithstanding Paragraph 4, the base salary of \$225,000 shall be retroactive to the date of RMK's appointment as the City Attorney, October 13, 2021.

8. RMK is an exempt employee and is not entitled to overtime. RMK's salary shall be subject to withholding and other applicable taxes and shall be payable to RMK on a pro rata basis at the same time as other employees of the City are paid. RMK shall not be a member of the Hawthorne Executive Group (HEG), and the provisions of the HEG MOU shall not apply to RMK unless specifically so provided in this Agreement.

FRINGE BENEFITS

9. RMK shall receive the following fringe benefits.

A. RMK waives the utilization of a City owned vehicle.

B. RMK shall accrue vacation leave at the rate of 8.7 hours per pay period through the term of this Agreement as the City Attorney. Vacation leave shall accrue on an unlimited basis.

C. Upon the effective date of this Agreement, RMK shall accrue sick leave at the rate of 5.06 hours for each bi-weekly pay period in which RMK actually worked, or was on paid leave. RMK will be entitled to receive the value of accumulated sick leave upon separation from employment, whether that be from voluntary resignation, retirement or termination.

D. RMK shall be entitled to one hundred (100) hours of administrative leave per calendar year. Administrative leave shall accrue at the rate of 3.85 hours per bi-weekly pay period and shall accrue on an unlimited basis. RMK will be entitled to receive the value of accumulated administrative leave upon separation from employment, whether that be from voluntary resignation, retirement or termination.

E. If RMK is involved in an industrial accident resulting in loss or inability of work for 10 days, he shall receive full pay for the first seven (7) days of resulting absence from work without loss of accumulated sick leave.

F. Bereavement Leave. In the event of death of a member of RMK's immediate family, defined as spouse, child, step-child, mother, mother-in-law, stepmother, father, father-in-law, stepfather, grandparent, sister, brother, or registered domestic partner with the State of California, RMK shall be entitled to three (3) consecutive working days without loss of pay, and not charged to sick leave, in order to arrange for and attend the funeral, take care of post-death tasks, and grieve. If the circumstances require the employee to travel in excess of 500 miles, one way, to attend said funeral, two (2) additional days without loss of pay or charge to sick leave shall be granted.

G. Auto Allowance. RMK waives the utilization of a city-owned vehicle as

well as a vehicle allowance.

H. **Deferred Compensation.** The City will contribute \$750 per month to RMK toward his 457(b) Deferred Compensation Plan. In addition, the City will match RMK's contribution to the City's 457 Deferred Compensation Plan up to \$400/month.

I. RMK shall be entitled to forty-eight (48) hours of personal holidays per year.

J. RMK may cash out up to 140 hours of sick leave annually.

K. RMK may cash out up to 140 hours of vacation time annually.

L. RMK is entitled to the following City recognized holidays: 1) New Year's Day, 2) Martin Luther King's Day, 3) Presidents' Day, 4) Cesar Chavez' Day, 5) Memorial Day, 6) Independence Day, 7) Labor Day, 8) Veterans day, 9) Thanksgiving Day, 10) Day after Thanksgiving, 11) Christmas Eve, 12) Christmas Day and 13) Juneteenth. If any City recognized holiday falls on an otherwise scheduled closed Friday, RMK shall be entitled to an additional 8 hours of floating holiday time for each such day.

M. RMK shall be paid his regular salary if he is summoned to serve as trial juror, for a period not exceeding ten (10) days, pursuant to City Council Resolution No. 5342.

N. RMK shall be entitled to medical, dental and vision insurance with the full premiums, employee plus one dependent, paid by the City. If RMK enrolls in insurance plans that include coverage for additional dependents or family members, he will be responsible for paying the remainder of the premium amount after the "Employee Plus One Dependent" portions has been subtracted.

O. RMK shall be entitled to life insurance and accidental death and dismemberment, the City's Employee Assistance Program and long term disability program in the same or similar manner as HEG MOU, paid by the City.

P. RMK may enroll in the Flexible Spending Account Plan pursuant to the provisions of Sections 125 and 129 of the Internal Revenue Code which allow employees to allocate a designated portion of their salaries to a Flexible Spending account used to pay (1) health and dental insurance premiums, (2) medical expenses not paid by a health insurance carrier and/or (3) child care expenses. Any amounts so allocated but not expended for those purposes shall be forfeited by the employee. Participation in this benefits is voluntary.

Q. **CalPERS Pick-Up.** The City shall pay to CalPERS an amount equal to 8% of the member's normal contribution as EPMC and shall report the same percent (value) of compensation earnable to CalPERS as additional compensation. Pursuant to the provisions of section 414(h)(2) of the Internal Revenue Code, the 8% contribution will be paid on a pre-tax basis.

R. RMK shall work on a 9/80 schedule that coincides with all other City employees working in City Hall. As an exempt employee, RMK may sometimes have to work

outside or in excess of the regular 9/80 schedule, and shall not be eligible for any overtime payment for such work.

S. The City shall budget for and pay RMK's travel and subsistence expenses for the annual League of California Cities Conference for City Attorneys.

T. The City shall budget for and pay for RMK's annual California Bar Dues.

U. Technology. RMK shall be supplied with both a City-owned smart phone (iPhone or equivalent) and laptop.

PERFORMANCE REVIEW

10. The City may periodically review RMK's performance as delineated under Hawthorne Municipal Code Section 2.08. Additionally, there shall be a Closed Session for Performance Evaluation of the City Attorney to be added to the City Council Meeting Agenda annually on a regularly scheduled City Council meeting date that is closest to the effective date of this Agreement. For each year, if RMK's contract is not terminated after his Performance Evaluation, he shall be entitled to an increase in pay by three percent (3%) of his then base salary.

BENEFITS UPON RETIREMENT

11. As a "miscellaneous employee," the City shall provide to RMK the 3% @ 60 retirement formula. As a Classic Member, his retirement formula will be based upon his one year of highest compensation per Government Code.

12. RMK shall be granted the option of selecting medical insurance coverage from a list of carriers that exist as choices for other current retirees of HEG, except as limited by law. Such insurance coverage shall be provided at no cost to RMK. If RMK is receiving health care insurance at the time of his retirement, he shall be entitled to maintain enrollment in the City's health plan, as per the established guidelines and rules of CalPERS. The City shall pay an amount equal to employee plus one dependent coverage for the health plan in which RMK is enrolled, less any administrative fees required by the plan. If RMK is not enrolled in a health plan at the time of retirement, he shall not be eligible for this benefit.

13. Upon retirement and/or separation from the City, upon RMK's request, will deposit up to 3 months of accrued vacation or administrative leave time to RMK's Deferred Comp Plan.

TERMINATION OF AGREEMENT

14. The City Council may terminate this Agreement pursuant to the provisions of Chapter 2.08 of the Hawthorne Municipal Code. If the City Council terminates this agreement pursuant to Chapter 2.08, RMK shall be paid his entire unused vacation, sick, floating holiday, and administrative leave time. RMK shall be employed "at-will" and shall have no property rights to City employment. RMK shall also be afforded a public hearing pursuant to the requirements of Hawthorne Municipal Code § 2.08.060.

15. **Severance.** Upon early termination of this Agreement by the City Council, RMK shall be entitled to receive a severance package from the City which shall be equivalent to the lesser of (a) six (6) months salary, or (b) the number of months left on the unexpired contract multiplied by RMK's then-current monthly rate. This provision shall be interpreted to comply with the requirements of Government Code section 53260. RMK shall have the option of receiving the severance payment in equal monthly payments or in a lump sum amount. This severance payment(s) shall be paid to RMK upon his completion of the Six Transition Period, if any, under paragraph 12 of this Agreement. This Paragraph 15 shall not apply if the Agreement expires naturally.

Should the City and RMK agree to continue RMK's employment with the City in a position, other than as the City Attorney, the City and RMK can negotiate for a newly created or an existing position. If such continued employment with the City is agreed to by both RMK and the City, RMK shall not receive the aforesaid six (6) months severance pay.

16. **Transition Period.** Upon early termination of this Agreement by the City Council, the City Council may elect to continue employ RMK on his then current rate for up to six (6) months for the purpose of assisting the new City Attorney, Interim City Attorney or Acting City Attorney become reasonably familiarized, updated and acclimated with all pending matters with the City Attorney's Office. During the said six (6) months transition period, RMK will continue to receive the then applicable salary and benefits specified in this Agreement, and shall continue to perform the Duties of Employment as defined under the supervision of the new City Attorney, Interim City Attorney or Acting City Attorney.

17. It is anticipated that, before voluntarily resigning his position, RMK shall give the City at least 30 days prior notice in writing of his intention to resign and shall in such notice state the reasons therefor. If RMK terminates this Agreement and thereby terminating his employment with the City, RMK shall not be entitled to any severance.

18. If City terminates this Agreement for cause, RMK shall not be entitled to any severance. As used in this Agreement, cause shall mean any of the following:

- A. Conviction of felony.
- B. Conviction of a misdemeanor arising out of RMK's duties under this Agreement and involving a willful or intentional violation of law.
- C. Continued willful abandonment of duties following a ten day written notice to cure from the City Council when employed as City Attorney.
- D. A pattern of repeated, willful and intentional failure to carry out materially significant and legally constituted policy decisions of the City Council made by the City Council as a body.

ASSEMBLY BILL 1344 COMPLIANCE

19. To the extent City provides (i) paid leave to RMK pending an investigation; (ii) funds for the legal criminal defense of RMK; and/or (iii) a cash settlement related to the

termination of RMK pursuant to this Agreement and Government Code section 53243 set seq., RMK shall fully reimburse the City for any and all amounts paid by the City which fall within subsection (i) through (iii) of this section in the event that RMK is convicted of a crime involving the abuse of his office or position.

OTHER TERMS & CONDITIONS

20. This is the entire Agreement between City and RMK and supersedes any previous agreements, writings, notes or oral understandings.

21. This Agreement may be amended provided such amendments are approved in a duly convened Brown Act meeting by the City Council.

22. If any provision of this Agreement shall be held invalid by a final decision of a court of law, the remainder shall nevertheless be deemed valid and effective, and it is the intention of the parties hereto that each provision hereof is being stipulated to separately in the event one or more of such provisions should be held invalid.

CITY OF HAWTHORNE

DATE:

By:


ALEX VARGAS,
MAYOR

DATE: 10/27/21

By:


ROBERT M. KIM

APPROVED AS TO FORM:

DATE:

By:

Rebecca Green , ESQ.
Special Counsel to the City Council
City of Hawthorne

termination of RMK pursuant to this Agreement and Government Code section 53243 set seq., RMK shall fully reimburse the City for any and all amounts paid by the City which fall within subsection (i) through (iii) of this section in the event that RMK is convicted of a crime involving the abuse of his office or position.

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CITY OF HAWTHORNE

DATE:

By:


ALEX VARGAS,
MAYOR

DATE:


By:


ROBERT M. KIM

APPROVED AS TO FORM:

DATE: November 5, 2021

By:


Kevin Ennis, ESQ.
Special Counsel to the City Council
City of Hawthorne