

RESOLUTION NO. 75-2023

**EXTENDING AND AMENDING THE EMPLOYMENT AGREEMENT
OF THE CITY ATTORNEY**

WHEREAS, on July 31, 1995, the Town of Danville entered into a Professional Services Agreement ("the Agreement") with Robert B. Ewing relating to his services as City Attorney; and

WHEREAS, the Agreement provides that the City Attorney will be evaluated once a year by the Town Council and may be considered for a performance-based increase; and

WHEREAS, the Danville Town Council has evaluated the City Attorney's performance over the past year and has determined that he has performed his duties in a diligent, professional and highly satisfactory manner; and

WHEREAS, based upon such evaluation, the Town Council has determined that it is appropriate to extend the City Attorney's contract and amend the compensation and leave provided under the contract; now, therefore, be it

RESOLVED, by the Danville Town Council that the Agreement shall be extended to provide for a two-year term from August 1, 2023 to August 1, 2025. The extended Agreement shall provide for the following changes in compensation and benefits: in the first year, an increase in salary of 14.5%; and, in the second year a salary increase of 6%; and be it further

RESOLVED that the Mayor is hereby authorized to execute, on behalf of the Town, the amended Employment Agreement with Robert B. Ewing in the form as lodged with the City Clerk.

APPROVED by the Danville Town Council at a regular meeting on October 3, 2023, by the following vote:

AYES: Arnerich, Morgan, Stepper, Storer

NOES: None

ABSTAINED: None

ABSENT: Fong

APPROVED AS TO FORM:

DocuSigned by:
Robert B. Ewing
855C6C40ADBF48F
CITY ATTORNEY

DocuSigned by:
[Signature]
26400074E1784D0
MAYOR

ATTEST:
DocuSigned by:
[Signature]
71735A3F04C942F
CITY CLERK

EMPLOYMENT AGREEMENT

This Employment Agreement is entered into by and between the Town of Danville, a municipal corporation (hereinafter referred to as "Town") and Robert B. Ewing (hereinafter referred to as "Attorney").

A. Recitals

1. Town desires to continue to engage the professional services of Robert Ewing as City Attorney for the Town.
2. Attorney desires to continue to serve in the position of City Attorney with the Town.
3. Both the Town and Attorney desire to specify the terms and conditions of continued employment in a written agreement.
4. This amended agreement is effective as of July 31, 2023.

B. Agreement

1. Term:

- (a) Attorney agrees to remain in the exclusive employ of the Town for a two-year period beginning July 31, 2023.
- (b) Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the Town Council to terminate the services of the Attorney at any time, subject to the provisions set forth in Section 12 of this Agreement.
- (c) Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the Attorney to resign at any time from his position with the Town, subject only to the provision set forth in Section 13 of this Agreement.

2. Duties: Attorney agrees to diligently and faithfully perform the duties of Danville City Attorney. Specific duties include, but are not limited to, the following:

- (a) Attendance at Town Council meetings and other meetings as required;
- (b) Research, preparation and review of ordinances, resolutions, agreements, contracts, leases, written opinions and other documents of a legal nature necessary or requested by the Town Council;
- (c) Provision of all legal advice on behalf of the Town to the Town Council, Town Manager, and other Town officers and employees;
- (d) Representation of the Town, members of the Town Council and other Town officers and employees in litigation as necessary;

- (e) Selection, retention, supervision and monitoring of outside counsel as required;
 - (f) Commencement and prosecution of all criminal actions and civil abatements necessary and appropriate to enforce the Town's ordinances;
 - (g) Monitoring and advising the Town Council and Town staff regarding legislation and case law affecting the Town.
3. **Salary:** For the first year of the contract (July 31, 2023-July 30, 2024) Attorney shall be paid a salary of \$259,577 per year. For the second year of the contract (July 31, 2024-July 30, 2025) Attorney's salary shall be \$275,151.
 4. **Health Benefits:** Attorney shall be entitled to the same health benefits authorized by the Town Council for other regular, full time employees.
 5. **Supplemental Benefit Allowance:** Town shall provide a monthly benefit allowance equivalent to thirty six percent (36%) of Attorney's base pay. Of that amount, up to 36% shall represent the Town's contribution to the Town's pension plan, while any remainder shall be used by Attorney to purchase other fringe benefits of his choice not otherwise provided by the Town for regular, full-time employees.
 6. **Automobile Allowance:** Town shall provide an automobile allowance in the amount of three hundred dollars (\$300) per month. This shall be the sole obligation of the Town to reimburse Attorney for use of his personal vehicle for official business.
 7. **Life Insurance:** Town shall provide term life insurance coverage in an amount equivalent to the annual salary as set forth in paragraph 3.
 8. **Leave:** Attorney shall be provided with five (5) days of General Leave for vacation, illness or other purposes in addition to the amount of general leave provided for all other Town employees with the same years of service with the Town. Attorney shall be entitled to the same number of paid holidays and administrative leave days authorized by the Town Council for all other Town employees. Attorney may, at his option, convert a maximum of 10 days accrued General Leave per year to a cash payment.
 9. **Expense Reimbursement:** Attorney shall be reimbursed by Town for reasonable actual expenses incurred in performance on behalf of the Town, including necessary expenses for authorized travel.
 10. **Professional Development:** Town shall pay Attorney's annual state bar dues. Town shall also pay all costs associated with any training deemed necessary by Attorney to comply with state law mandatory continuing education requirements, including but not limited to the costs of attending the League of California Cities Annual

Conference and the League of California Cities Spring City Attorney's Conference, and the travel costs, meals and accommodations associated therewith.

11. **Outside Employment:** Attorney shall not engage in outside employment without the prior approval of the Town Council.
12. **Termination and Severance Pay:** The Town Council shall have the right to terminate this Agreement at any time by three-fifths (3/5) vote of the Council. Notwithstanding the foregoing, his Agreement shall not be terminated by the Town within six (6) months following any municipal election at which any seat or seats on the Town Council are contested, the purpose being to allow the Council adequate time to objectively assess the Attorney's performance. In the event this Agreement is terminated by the Town, Town shall pay Attorney the equivalent of six (6) months current aggregate salary and benefits. Town may terminate this Agreement without obligation to make any severance payment to Attorney if the termination is based on the Attorney's arrest for any illegal act, or where malfeasance or gross misconduct is involved. If the Attorney commences employment with another governmental agency, severance amounts shall be limited to the period elapsed between termination of employment with the Town and the start of new employment.
13. **Resignation:** In the event Attorney voluntarily resigns his position with the Town prior to expiration of the specified term of employment, then the Attorney shall give the Town sixty (60) days written notice, unless the parties agree otherwise. Under these circumstances the Town would have no severance obligations.
14. **Economic Necessity:** In the event that the Town at any time during the term of this Agreement reduces the compensation of all employees because of economic necessity, the Town Council may, at its discretion, reduce the Attorney's compensation by the equivalent percentage applicable to all other employees.
15. **Performance Review:** The Town Council shall review and evaluate the performance of the Attorney at least once annually. The review and evaluation shall be based upon goals, objectives and performance criteria as jointly developed by the Town Council and Attorney. The objective of performance reviews is to maintain an optimal working relationship, and a mutual understanding and agreement on duties, responsibilities and priorities between Attorney and Town Council. The form of review shall be that which is mutually agreeable to the parties.
16. **Performance Objectives:** At the time of each performance review, Town Council and Attorney shall identify such goals and objectives as the Town Council determines necessary for the proper operation of the Town and for the attainment of the Council's policy objectives. Such objectives shall be jointly agreed to and reasonably attainable within specified time periods. It shall be the responsibility of the Attorney to inform the Council at the earliest possible time if he believes that any of the objectives established by the Council may not be attained.

17. **Hold Harmless:** Town shall hold harmless and defend Attorney from any claim or judgment made against the Attorney and/or the Town and the Attorney to the extent that the claim or judgment results from the Attorney's performance of his lawful duties.
18. **Legal Costs:** Should either party seek to enforce this Agreement or any provision of the Agreement in a court of law and prevail therein, that party shall be entitled to recover from the other party reasonable court costs and attorneys' fees as may be fixed by the court.
19. **Severability:** If any provision or any portion thereof contained in this Agreement is held invalid or unenforceable, the remainder of the Agreement shall not be affected and shall remain in full force and effect.
20. **Entire Agreement:** This Agreement constitutes the entire understanding and agreement between the Town and Attorney. This agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

In witness whereof, the parties hereto have executed this Agreement.



Robert Storer, Mayor



Robert B. Ewing, Attorney

APPROVED AS TO FORM:



Town Manager

10/3/23

Date Approved by the
Danville Town Council