

*STAFF REPORT**CITY OF OCEANSIDE*

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DATE: September 12, 2007

TO: Honorable Mayor and City Councilmembers

FROM: Human Resources Department

SUBJECT: **ADOPTION OF A RESOLUTION APPROVING AN EMPLOYMENT AGREEMENT BETWEEN THE CITY OF OCEANSIDE AND PETER A. WEISS**

**SYNOPSIS**

Staff recommends that the City Council adopt the resolution approving an employment agreement between the City of Oceanside and Peter A. Weiss, City Manager.

**BACKGROUND**

The City Council has reached an employment agreement with Peter A. Weiss to define certain terms and conditions of his employment as City Manager. Pursuant to the Agreement, the City Council met in Closed Session and voted to appoint Mr. Weiss as the City Manager. The City Manager's annual salary is set at \$185,620 effective August 23, 2007. The matter is now being brought before the City Council for formal approval of a contract respecting specific terms of appointment.

**ANALYSIS**

The proposed employment agreement is intended to define and clarify the terms and conditions of the City Manager's employment with the City. The principal features of the agreement are as follows:

1. Consistent with the provisions of Government Code section 36506 the term of the employment is at will and "during the pleasure of the City Council." The agreement clearly states that Mr. Weiss has no property right in the job and no expectancy of any particular duration of employment.
2. The agreement establishes the annual base salary for the City Manager at the rate of \$185,620. In addition, the agreement clarifies that the salary includes compensation for the Manager's services as the Executive Director of the Community Development Commission and the Executive

Director of the Small Craft Harbor District. The agreement also specifies the negotiated fringe benefits.

3. The law requires that the compensation of a city manager be established by resolution adopted at a public meeting.

The agreement has been approved and executed by Mr. Weiss.

**COMMISSION OR COMMITTEE REPORT**

Does not apply.

**CITY ATTORNEY'S ANALYSIS**

The resolution has been reviewed by the City Attorney and approved as to form.

**RECOMMENDATION**

Staff recommends that the City Council adopt the attached resolution approving an employment agreement between the City of Oceanside and Peter A. Weiss, City Manager.

PREPARED BY:

SUBMITTED BY:

  
\_\_\_\_\_  
Brian J. Kammerer  
Human Resources Director

  
\_\_\_\_\_  
Michelle Skaggs Lawrence  
Deputy City Manager

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
OCEANSIDE APPROVING AN EMPLOYMENT AGREEMENT  
BETWEEN THE CITY AND PETER A WEISS

The City Council of the City of Oceanside does resolve as follows:

SECTION 1. The employment agreement between the City of Oceanside and Peter A. Weiss, a copy of which is attached hereto as Exhibit "A", is approved and relevant terms are made retroactive to August 23, 2007.

SECTION 2. The City Manager's salary is set at \$185,620, effective August 23, 2007.

SECTION 3. The Mayor is authorized to execute the agreement on behalf of the City.

PASSED AND ADOPTED by the City Council of the City of Oceanside, California, this  
day of \_\_\_\_\_, 2007, by the following vote:

AYES:

NAYES:

ABSENT:

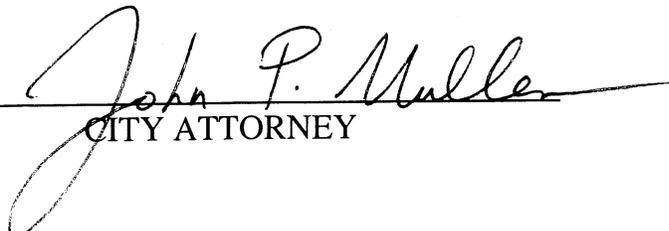
ABSTAIN:

\_\_\_\_\_  
MAYOR, CITY OF OCEANSIDE

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
CITY ATTORNEY

**EMPLOYMENT AGREEMENT BETWEEN  
THE CITY OF OCEANSIDE AND PETER A. WEISS**

This employment agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, by and between the City of Oceanside, California, a general law city (hereinafter called "the City") and Peter A. Weiss, an individual (hereinafter called "Weiss") with respect to the employment of Weiss as the City Manager of the City.

**RECITALS**

Pursuant to Government Code section 34851 et seq., the City of Oceanside has established a city manager form of government.

The general powers and duties of the City Manager are generally established by Article II of Chapter 2 of the Oceanside City Code (commencing with Section 2.4) and by other provisions of the City Code, other ordinances, resolutions, policies of the City Council and state statute.

The parties desire, through this Agreement, to determine certain matters relating to the terms and conditions of the employment of Weiss as the City Manager for the City.

The City Manager of the City also serves as the Executive Director of the Oceanside Community Development Commission and as the Executive Director of the Oceanside Small Craft Harbor District. The City Council has authorized the City Manager to provide those management services and the City is compensated for such services by those entities.

**TERMS OF EMPLOYMENT**

In consideration of the faithful performance of the provisions and covenants set forth herein, the City and Weiss agree as follows:

A. Duration of Employment.

The intent of this Agreement is to provide for the appointment of Weiss to the City Manager position. Weiss's appointment as the City Manager is effective August 23, 2007.

Pursuant to the provisions of Government Code section 36506, Weiss shall hold the appointive office of City Manager at and during the pleasure of the City Council.

B. Provisions Regarding Compensation.

1. The City covenants to compensate Weiss as follows:

- a. Weiss shall receive an annual salary in the amount of \$185,620. Weiss shall perform the duties of Executive Director of the Community Development Commission and the Executive Director of the Small Craft Harbor District as a part of the regular duties of his office and shall receive no additional or supplemental compensation from the City or from either entity for the provision of such services.
- b. The City will provide an additional twelve and one half percent (12.5%), or the maximum allowable by law, of the City Manager's annual salary to deferred compensation through a plan or provider approved by the City Manager. The City Manager shall retain the discretion to adjust the allocation of salary to deferred compensation annually to the maximum extent allowed by law.
- c. Weiss shall receive sick leave, executive leave, short term disability, long term disability, retirement and health and dental benefits determined in the same manner as for executive/department head management employees according to the City's executive management compensation plan as may be established from time-to-time by the City Council. Weiss shall receive paid holidays in the same manner as other executive/department head management employees.
- d. Weiss shall be provided with an additional leave bank for the accumulation of vacation leave. Such leave time shall be added to the leave bank whenever the accrued amount equals or exceeds 240 hours. Additionally, Weiss shall have the option to convert to compensation up to 80 hours of vacation and/or unused leave time at his discretion.

- e. Deduction in compensation and/or benefits will not occur, except to the extent that such reductions are across the board for all executive management employees.
- f. The City shall pay Weiss a monthly vehicle allowance equivalent to \$400 per month.
- g. The City shall pay Weiss's annual membership dues in the International City/County Management Association (ICMA) and the dues for one other professional city manager organization selected by Weiss.
- h. It is the City's desire to support and encourage professional growth of the City Manager. As such the City agrees to pay reasonable expenses for continuing education programs for Weiss. Such programs to include professional seminars and training classes.

C. Performance.

Weiss covenants to perform the duties of the office of City Manager in a good and professional manner as his full-time employment. Weiss covenants that during his employment as City Manager he will not engage in any other employment without prior advance approval from the City Council.

D. Performance Evaluation.

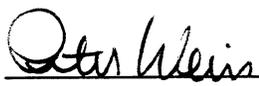
1. The annual facilitated evaluation shall be based on meeting mutual objectives and performance criteria established jointly by the City Manager and City Council.
2. The performance review shall be completed in March of each year beginning in the year 2008. The performance will be deemed satisfactory if no annual review takes place.
3. The performance review shall be coordinated by a facilitator retained as an independent contractor by the City.

E. Covenants regarding termination.

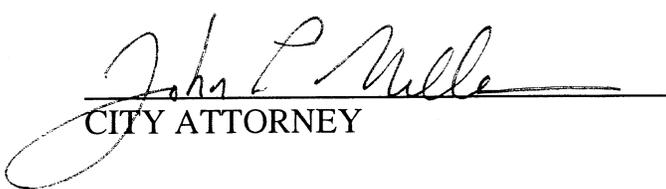
1. Upon termination of Weiss's employment by affirmative action of the City Council, or upon his resignation in lieu of termination at the affirmative request of the City Council, the termination of the agreement shall be based on a base standard of twelve (12) months compensation as severance pay. Such payment shall be paid in a lump sum payment made on the effective date of termination or resignation; or Weiss shall have the option of being placed in a Paid Administrative Leave status for any or all the this twelve month period. In addition, the City shall continue to pay for the COBRA cost of health insurance coverage for Weiss, his spouse and family (employee and family coverage) under the City's health, dental and vision insurance plan for twelve (12) months.
2. In the event Weiss elects to be placed on paid administrative leave in accordance with paragraph E.1 above, Weiss shall defend, indemnify and hold harmless the City and its employees, agents, and officers from and against all claims for damages for personal injuries, death or property damage arising out of acts or omissions of Weiss, his agents or employees during the period of time while Weiss is on paid administrative leave. The obligations of this paragraph shall survive termination of this Agreement.
3. Notwithstanding paragraph E.1., above the City shall not be obligated to pay, and shall not pay, any amounts if Weiss is terminated because of a criminal charge filed by a prosecuting agency related to a violation of any statute or law materially related to performance of duties in office.
  - a. The City shall not be obligated to pay, and shall not pay, any amounts or continue any benefits under the provisions of this agreement in the event Weiss voluntarily resigns to pursue other employment, professional opportunities or for other personal reasons. Weiss agrees to provide a minimum of thirty (30) calendar days notice of resignation.
4. Miscellaneous Provisions.
  - a. The relationship between the City and Weiss is an employment relationship for a public office and is exempt from the provisions of the Fair Labor Standards Act.

- b. Neither this Agreement, nor any provision of state statute or local ordinance, rule or resolution creates any property right in favor of Weiss in his employment in the office of the City Manager.
- c. When used in this Agreement, the term City Council means the legislative body of the City of Oceanside, including the Mayor and the members of the City Council.
- d. In the event of any mediation, arbitration or litigation to enforce any of the provisions of this Agreement, each party shall bear its own attorneys' fees and costs.
- e. This Agreement is a fully integrated document and supersedes all communications between the parties covering the subject matter of Weiss's employment.
- f. This Agreement is the entire agreement between the parties with respect to the subject matter. No promise, representation, warranty or covenant not included in this Agreement has been or is relied on by any party hereto. This Agreement may be amended only by a writing executed by both parties. Any such amendment shall not be effective unless approved by the City Council.

IN WITNESS hereof, the parties have executed this Agreement by their signatures set forth below:

DATED: 8-23-07  \_\_\_\_\_  
 PETER A. WEISS

DATED: \_\_\_\_\_  
 \_\_\_\_\_  
 MAYOR OF THE CITY OF OCEANSIDE

ATTEST: APPROVED AS TO FORM:  
 \_\_\_\_\_  \_\_\_\_\_  
 CITY CLERK CITY ATTORNEY