



DATE: October 16, 2013

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 STEVEN R. JEPSEN**

SYNOPSIS

Staff recommends that the City Council adopt the resolution approving an employment agreement between the City of Oceanside and Steven R. Jepsen, City Manager.

BACKGROUND

The City Council has reached an employment agreement with Steven R. Jepsen 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. Jepsen as the City Manager. The City Manager's annual salary is set at \$231,840.40 effective November 18, 2013. 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. Jepsen 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 \$231,840.40. 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. Jepsen.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

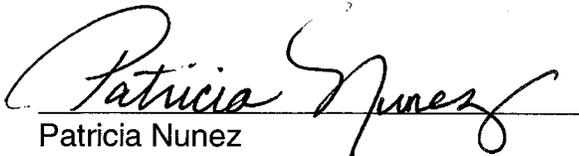
The resolution has been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

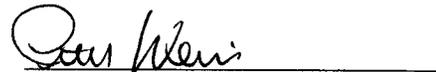
Staff recommends that the City Council adopt the attached resolution approving an employment agreement between the City of Oceanside and Steven R. Jepsen, City Manager.

PREPARED BY:

SUBMITTED BY:



Patricia Nunez
Human Resources Director



Peter A. Weiss
City Manager

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE APPROVING AN EMPLOYMENT AGREEMENT BETWEEN THE CITY AND STEVEN R. JEPSEN

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

SECTION 1. The employment agreement between the City of Oceanside and Steven R. Jepsen, a copy of which is attached hereto as Exhibit "A", is approved.

SECTION 2. The City Manager's salary is set at \$231,840.40, effective November 18, 2013.

SECTION 3. The Mayor is authorized to execute the agreement on behalf of the City. If the Mayor is unavailable, the Deputy 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 _____, 2013, 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
STEVEN R. JEPSEN TO SERVE AS
CITY MANAGER

This employment agreement is entered into this 7th day of October, 2013 by and between the City of Oceanside, California, a charter city (hereinafter called "the City") and Steven R. Jepsen an individual (hereinafter called "Jepsen") with respect to the employment of Manager as the City Manager of the City.

RECITALS

Pursuant to Government Code section 34951 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 of Oceanside and state statute.

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

The City Manager of the City also serves and 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 Jepsen agree as follows:

A. Duration of Employment.

The intent of this Agreement is to provide for the appointment of Jepsen to the City Manager position. Jepsen's appointment as the City Manager is effective November 18, 2013.

Pursuant to the provisions of Government Code § 36506, Jepsen 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 Jepsen as follows:

- a. Jepsen shall receive an annual salary in the amount of \$231,840.40. Jepsen shall perform the duties of Executive Director of the Oceanside Community Development Commission and the Executive Director of the Oceanside 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. Jepsen shall receive sick leave, vacation leave, executive leave, short term disability, long term disability, life insurance, retirement and health, dental and vision benefits determined in the same manner as for executive/department head management employees according to the City's Compensation Plan for Unrepresented Employees as may be established from time to time by the City Council except as detailed below. Jepsen shall receive paid holidays in the same manner as other executive/department head management employees.
 - a. Leave Accrual:
 - i. Jepsen shall accrue vacation leave at a rate of 7.69 hours for each eighty (80) hours spent in a pay status.
 - ii. Jepsen shall accrue the full accrual of seventy (70) hours of Fiscal Year 2014 Executive Leave hours on the first date of employment. Thereafter accrual shall be in accordance with the Compensation Plan for Unrepresented Employees.
- c. An initial leave bank shall be established for vacation and sick leave with 173.3 hours credited to each account, all of which will be available for use upon employment. Until Jepsen has accrued 173.3 hours of vacation leave through established leave accrual rates, no additional vacation leave shall be accrued. Until Jepsen has accrued 173.3 hours of sick leave through established leave accrual rates, no additional sick leave shall be accrued. Should Jepsen leave employment prior to the normal accrual of the vacation and/or sick leave, no payout shall be made for any remaining leave balances.
- d. Jepsen 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 300 hours.

- e. Jepsen shall be responsible for paying 50% of the total normal cost of the CalPERS pension benefits which is currently 8% of salary.
- f. 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.
- g. The City shall pay Jepsen a monthly vehicle allowance equivalent to \$400 per month.
- h. The City shall pay Jepsen's annual membership dues in the International City/County Management Association (ICMA) and the dues for one other professional city manager organization selected by Jepsen.
- i. It is the City's desire to support and encourage professional growth of the City Manager. As such the City agrees to pay up to \$2,000 per year for continuing education programs for Jepsen. Such programs to include professional seminars and training classes.
- j. The City shall pay Jepsen's relocation costs of \$10,000.00 on the first paycheck following the first day of employment for relocation expenses.

C. Performance.

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

D. Performance Evaluation.

1. The annual facilitated evaluation shall be based on meeting mutually 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 2014. The performance will be deemed satisfactory if no annual review takes place.
3. The performance review shall be coordinated as determined by the City Council.

E. Covenants regarding termination.

1. Upon termination of Jepsen'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, Jepsen shall receive a severance of twelve (12) months salary based upon his base rate of pay. Such payment shall be paid in a lump sum payment made of the effective date of termination or resignation; or Jepsen shall have the option of being placed in a Paid Administrative Leave status for any or all of the twelve (12)-month period. In addition, the City shall continue to pay for the COBRA cost of insurance coverage for Jepsen and his eligible dependents under the City's health, dental and vision insurance plan for twelve (12) months if severance is accepted in a lump sum. If Jepsen elects to be placed on Paid Administrative Leave, the City will continue to pay its share towards the health, dental and vision insurance and pension benefits for the duration of the Paid Administrative Leave under the same terms outlined for Executives in the Compensation Plan for Unrepresented Employees.
2. In the event Jepsen elects to be placed on paid administrative leave in accordance with the Paragraph E.1., above, Jepsen 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 the acts or omissions of Jepsen, his agents, or employees during the period of time while Jepsen is on paid administrative leave. The obligations of this paragraph shall survive the 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 Jepsen is terminated because of a criminal charge filed by a prosecuting agency for a violation of any statute or law materially related to performance of duties in office.
4. Pursuant to Government Code § 53243, if Jepsen is convicted of a crime involving an abuse of his office, as defined in Government Code § 53243.4, Jepsen shall fully reimburse the City for salary paid to Jepsen while on paid leave as well as any funds, if any, paid in the sole discretion of the City Council for criminal defense costs. Moreover, Jepsen shall fully reimburse the City for any severance paid if convicted of a crime involving an abuse of his office.
5. 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 Jepsen voluntarily resigns. Jepsen agrees to provide a minimum of thirty (30) calendar day's notice of resignation.

F. Dispute Resolution

1. The City and Jepsen agree that they will resolve any and all claims, disputes or controversies arising out of or relating to Jepsen's candidacy for employment, employment and/or cessation of employment with the City or against any of its current and former officers, directors, employees, attorneys and agents, exclusively by final and binding arbitration before a neutral arbitrator, and that all types of relief available pursuant to the laws under which Jepsen's claim(s) arise will be available by arbitration. Jepsen understands that any and all claims or disputes the City has against Jepsen arising from Jepsen's candidacy for employment, employment and/or cessation of employment will also be subject to binding arbitration.
2. The City and Jepsen agree that such claims include, but are not limited to, any claims for violation of any alleged contract, express or implied; any covenant of good faith and fair dealing, whether express or implied; and tort; any federal, state or local statute or regulation, including but not limited to, the Federal Fair Labor Standards Act, the California Labor Code and the California Industrial Welfare Commission Order; any federal, state or local statute or regulation based on or related to the Age Discrimination in Employment Act, the California Fair Employment and Housing Act (Government Code § 12900-12996); Title VII, Civil Rights Act of 1964 (42 U.S.C. § 2000-2000(e)-1-17); the Americans With Disabilities Act; the Federal Family Medical Leave Act; and the California Family Rights Act.
3. The City and Jepsen understand and agree that they will not be able to raise any of the aforementioned claims in a court of law. In the arbitration, both the City and Jepsen will be permitted to conduct minimal discovery such as demands for document production and depositions, and that all disputes concerning the right to minimal discovery will be decided by the arbitrator. The arbitrator will decide the case after hearing the parties' evidence and preparing a written decision.
4. The City and Jepsen also understand and agree that they must request arbitration in writing from the other within a reasonable time not to exceed one year from the date that the dispute arises, and that Jepsen agrees to contribute to the cost of the arbitration to the same extent it would cost Jepsen to file a civil action in the county where Jepsen applied for employment and/or was employed.
5. In the event of such dispute, the parties shall select an arbitrator to hear the dispute. Failing mutual agreement to an arbitrator, the parties shall request a list of qualified labor arbitrators from the American Arbitration Association or

the State Mediation and Conciliation Service and shall strike names until only one remains. Such individual shall serve as the arbitrator. The arbitration shall be conducted in accordance with California Code of Civil Procedure, commencing at § 1280 et seq. (or any successor or replacement statutes) and the decision of the arbitrator shall be final and binding. Each party shall bear their own fees and costs associated with this process.

G. General Provisions

1. This Agreement shall constitute the entire agreement between the parties as to the subject matter herein and all other prior agreements, arrangements or understandings, oral or written are merged into and superseded by the terms of this Agreement.
2. This Agreement may not be altered, amended, modified or otherwise changed except by a writing signed by the parties or the duly authorized representatives of the parties to this Agreement.
3. This Agreement is for the personal services of Jepsen and is not assignable.
4. The City reserves the right to revise, modify, delete or add to any and all policies, procedures, work rules, benefits or any other document, except for the policy of at-will employment. However, any such changes will be in writing and will be approved by the City.
5. If any provision or other portion of this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion hereof, shall be deemed severable, shall not be affected by the unconstitutional, invalid or unenforceable provision or portion and shall remain in full force and effect.
6. Jepsen agrees and represents that prior to entering into this Agreement, Jepsen has had the opportunity to consult legal representation of his choice concerning all terms and conditions of this Agreement.
7. The relationship between the City and Jepsen is an employment relationship for a public office and is exempt from the provisions of the Fair Labor Standards Act.
8. Neither this Agreement, nor any provision of state statute or local ordinance, rule or resolution creates any property right in favor of Jepsen in his employment in the office of the City Manager.
9. 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.

10. In the event of any mediation, arbitration or litigation to enforce any of the provisions of this Agreement, each party shall bear its own attorney's fees and costs.
11. This Agreement is a fully integrated document and supersedes all communications between the parties covering the subject matter of Jepsen's employment.
12. This Agreement is the entire agreement between the parties with respect to the subject matter. No promise, representation, or 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: 10-7-13



Steven R. Jepsen

DATED: _____

MAYOR OF THE CITY OF OCEANSIDE

APPROVED AS TO FORM:



CITY ATTORNEY