



DATE: March 4, 2015

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 MICHELLE SKAGGS LAWRENCE**

SYNOPSIS

Staff recommends that the City Council adopt a resolution approving an employment agreement between the City of Oceanside and Michelle Skaggs Lawrence, Interim City Manager.

BACKGROUND

On February 18, 2015, the City Council unanimously appointed Michelle Skaggs Lawrence to the position of Interim City Manager. The terms and conditions of her employment are set forth in the proposed employment agreement. The Interim City Manager's annual salary is set at \$231,840 effective February 18, 2015. 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 Interim 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 Ms. Lawrence 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 Interim City Manager at the rate of \$231,840. 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 agreement provides for Ms. Lawrence to resume her position of Assistant City Manager upon the appointment of a permanent City Manager subject to the terms and conditions of her preexisting employment agreement.
4. 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 Ms. Lawrence.

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

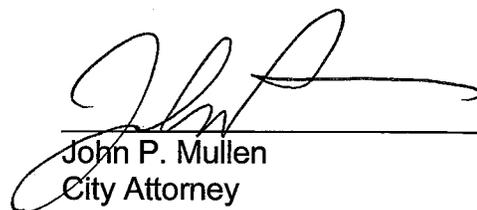
Staff recommends that the City Council adopt the attached resolution approving an employment agreement between the City of Oceanside and Michelle Skaggs Lawrence, Interim City Manager.

PREPARED BY:

SUBMITTED BY:



Patricia Nunez
Human Resources Director



John P. Mullen
City Attorney

1 RESOLUTION NO. _____

2 A RESOLUTION OF THE CITY COUNCIL OF THE CITY
3 OF OCEANSIDE APPROVING AN EMPLOYMENT
4 AGREEMENT BETWEEN THE CITY AND MICHELLE
5 SKAGGS LAWRENCE

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

7 SECTION 1. The employment agreement between the City of Oceanside and Michelle
8 Skaggs Lawrence, a copy of which is attached as Exhibit A, is hereby approved.

9 SECTION 2. The Interim City Manager's salary shall be \$231, 840 effective February
10 18, 2015.

11 SECTION 3. The Mayor is authorized to execute the agreement on behalf of the City.
12 If the mayor is unavailable, the Deputy Mayor is authorized to execute the agreement.

13 PASSED AND ADOPTED by the City Council of the City of Oceanside, California, this
14 day of _____, 2015, by the following vote:

15 AYES:

16 NAYES:

17 ABSENT:

18 ABSTAIN:

19 _____
20 MAYOR, CITY OF OCEANSIDE

21 ATTEST:

22 _____
23 CITY CLERK

24 APPROVED AS TO FORM:

25 _____
26 *John P. Muller*
27 _____
28 CITY ATTORNEY

**EMPLOYMENT AGREEMENT BETWEEN
THE CITY OF OCEANSIDE AND
MICHELLE SKAGGS LAWRENCE TO SERVE AS
INTERIM CITY MANAGER**

This employment agreement is entered into this Fourth day of March, 2015 by and between the City of Oceanside, California, a charter city (hereinafter called "the City") and Michelle Skaggs Lawrence, an individual (hereinafter called "Lawrence") with respect to the employment of Lawrence as the Interim 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 statutes.

The parties desire, through this Agreement, to determine certain matters relating to the terms and conditions of the employment of Lawrence as the Interim City Manager for the City while the City conducts a recruitment for the permanent City Manager.

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.

The parties intend through this Agreement to enable Lawrence to resume her position of Assistant City Manager under the terms and conditions of her current employment agreement following the appointment of a permanent City Manager.

TERMS OF EMPLOYMENT

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

A. Duration of Employment.

The intent of this Agreement is to provide for the appointment of Lawrence to the Interim City Manager position. This appointment is effective February 18, 2015.

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

B. Provisions Regarding Compensation.

1. The City covenants to compensate Lawrence as follows:

- a. Lawrence shall receive an annual salary in the amount of \$231,840. Lawrence 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 her office and shall receive no additional or supplemental compensation from the City or from either entity for the provision of such services.
- b. Lawrence 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 and in accordance with her employment contract for the position of Assistant City Manager.
- c. Lawrence 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.
- d. Lawrence shall be responsible for paying 50% of the total normal cost of the CalPERS pension benefits which is currently 8% of salary.

- 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 Lawrence a monthly vehicle allowance equivalent to \$400 per month.
- g. The City shall pay Lawrence's annual membership dues in the International City/County Management Association (ICMA).

C. Performance.

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

D. Performance Evaluation.

1. The annual evaluation, if applicable, will be based on meeting objectives and performance criteria established jointly by the City Manager and City Council.
2. The performance review generally is anticipated to be completed in March of each year. 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 Lawrence's employment from the Interim City Manager position by affirmative action of the City Council without reinstatement to the Assistant City Manager position, or upon her resignation in lieu of termination at the affirmative request of the City Council, Lawrence shall receive a severance of twelve (12) months salary based upon her base rate of pay. Such payment shall be paid in a lump sum payment made of the effective date of termination or resignation. In addition, the City shall continue to pay for the COBRA cost of health insurance coverage for Lawrence and eligible dependents under the City's health, dental and vision insurance plan for twelve (12) months.

2. Notwithstanding paragraph E.1., above, the City shall not be obligated to pay, and shall not pay, any amounts if Lawrence 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.
3. Pursuant to Government Code § 53243, if Lawrence is convicted of a crime involving an abuse of office, as defined in Government Code § 53243.4, Lawrence shall fully reimburse the City for salary paid to her 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, Lawrence shall fully reimburse the City for any severance paid if convicted of a crime involving an abuse of his office.
4. 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 Lawrence voluntarily resigns during her tenure as Interim City Manager, or in the event a permanent City Manager is selected and Lawrence resumes her position of Assistant City Manager under the terms of her existing employment agreement. Lawrence agrees to provide a minimum of thirty (30) calendar day's notice of voluntary resignation. Lawrence waives the notice requirements regarding termination in Oceanside City Code Section 2.14.

F. Dispute Resolution.

1. The City and Lawrence agree that they will resolve any and all claims, disputes or controversies arising out of or relating to Lawrence'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 Lawrence's claim(s) arise will be available by arbitration. Lawrence understands that any and all claims or disputes the City has against Lawrence arising from her candidacy for employment, employment and/or cessation of employment will also be subject to binding arbitration. The parties also agree that in any arbitration conducted pursuant to this section, the arbitrator is limited to awarding no more than the "maximum cash settlement" permitted by state law, currently specified in Government Code section 53260(a)-(b)(2).
2. The City and Lawrence 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 Lawrence 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 Lawrence 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 Lawrence 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 Lawrence agrees to contribute to the cost of the arbitration to the same extent it would cost Lawrence to file a civil action in the county where Lawrence 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 Lawrence 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. Lawrence agrees and represents that prior to entering into this Agreement, she had the opportunity to consult legal representation of her choice concerning all terms and conditions of this Agreement.
7. The relationship between the City and Lawrence 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 Lawrence in her employment in the office of the Interim 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 Lawrence'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: 2-20-15



Michelle Skaggs Lawrence

DATED: _____

MAYOR OF THE CITY OF OCEANSIDE

APPROVED AS TO FORM:



CITY ATTORNEY