



CITY COUNCIL AGENDA REPORT

MEETING DATE: FEBRUARY 15, 2011

ITEM NUMBER: **IV-2**

SUBJECT: CITY MANAGER EMPLOYMENT AGREEMENT

DATE: FEBRUARY 6, 2011

FROM: KIMBERLY HALL BARLOW, CITY ATTORNEY'S OFFICE

PRESENTATION BY: HAROLD W. POTTER, ASSISTANT CITY ATTORNEY

**FOR FURTHER INFORMATION CONTACT: KIMBERLY HALL BARLOW, CITY ATTORNEY,
(714) 754-5399**

RECOMMENDATION:

Consider and approve proposed agreement (Attachment 1) with Thomas R. Hatch to serve as City Manager commencing March 5, 2011.

BACKGROUND:

Council previously selected Assistant City Manager Thomas R. Hatch to succeed Allan Roeder as City Manager upon Mr. Roeder's retirement, effective March 5, 2011. The attached proposed agreement is intended to memorialize the terms and conditions of Mr. Hatch's employment as City Manager.

ANALYSIS:

In the absence of a contract, the City Manager's employment would be governed solely by the California Government Code, the Costa Mesa Municipal Code and adopted Council Policies and Resolutions. Costa Mesa Municipal Code sections 2-97 and 2-224.5 make provision for employment of the City Manager and expressly authorizes the Council to vary these provisions by contract.

ALTERNATIVES CONSIDERED:

The Council could alter any of the provisions of the agreement prior to approval, subject to agreement with Mr. Hatch. The Council could also elect to employ Mr. Hatch without a written agreement, in which case his employment would be governed by statute, ordinance, council policy and the resolution for unrepresented employees.

FISCAL REVIEW:

The estimated annual impact (using FY 11-12 PERS rates) of the attached agreement for City Manager services is \$274,707. The estimated savings in FY 10-11 from filling the City Manager position at a lower step than originally budgeted is \$7,637.

CONCLUSION:

The Council is requested to discuss the proposed agreement and authorize its execution by the Mayor and City Attorney as determined by the Council or to give other direction to staff.

KIMBERLY HALL BARLOW
City Attorney



ALLAN L. ROEDER
City Manager

CITY OF COSTA MESA
CITY MANAGER EMPLOYMENT AGREEMENT

This Agreement (“Agreement”), is entered into on the 15th day of February, 2011, by and between the City of Costa Mesa, a municipal corporation (“City”), and Thomas R. Hatch (“Employee”), and is made in reference to the following facts:

- A. The City, by and through the City Council, desires to enter into this Agreement designating Employee as the City Manager of the City of Costa Mesa (the “City Manager”).
- B. The City desires to provide certain benefits, establish certain conditions of employment, and to set working conditions for Employee as the City’s City Manager; and
- C. Employee desires to serve as the City Manager for the City.

THEREFORE, IT IS AGREED AS FOLLOWS:

1. EMPLOYMENT

1.1 The City Council appoints and employs Employee as the City Manager of the City beginning on or before March 5, 2011 (“Commencement Date), to perform the functions and duties as currently in effect or as hereafter may be established by ordinance, resolution or action of the City Council.

1.2 All articles of the Costa Mesa Municipal Code relating to the position of City Manager are incorporated herein by this reference as though fully set forth at length and made a part of this Agreement.

1.3 Employee hereby agrees to perform the services generally associated with the position of City Manager and as required by this Agreement at the pleasure of the City Council.

2. TERM OF EMPLOYMENT

The term of this Agreement shall begin on March 5, 2011 (the “Commencement Date”). This Agreement may be terminated without cause at any time by either party by providing thirty (30) days written notice to the other party, subject to the requirements of section 5, 6 and 7 of this Agreement.

3. EVALUATION OF PERFORMANCE

During the term of this Agreement, the City Council shall conduct an annual performance evaluation and compensation review of Employee. The evaluation shall be conducted no later than the anniversary of the Commencement Date each year. Neither the failure to conduct such an evaluation or a delay in conducting such an evaluation shall entitle Employee to any additional compensation or damages of any kind.

4. SALARY AND BENEFITS

4.1 Employee shall receive an annual salary of \$207,288 payable in equal installments at the same time as other employees of the City are paid. After the completion of each year of service, Employee may be granted a pay increase.

4.2 Employee shall be included in the same retirement plan provided to other Executive/Confidential Employees as of the approval of this agreement.

4.3 The City agrees to provide Employee with all of the same benefits, such as, but not limited to, automobile allowance, health, dental, vision, long-term disability, retiree healthcare savings, vacation, executive leave, sick leave and life insurance coverage at the highest rate as is being provided to any other non-safety employee of the City. Employee is entitled to reimbursement of expenses related to City business not to exceed \$1,000 per month, subject to budget authorization. The reimbursement requests shall be submitted to the Mayor for approval.

5. TERMINATION AT PLEASURE

This Agreement may be terminated at the City Council's pleasure pursuant to Costa Mesa Municipal Code section 2-135, in which case the City shall be obligated to pay Employee severance equal to nine (9) months of the total compensation employee receives from City under this Agreement. Any such payment may not exceed applicable statutory limits in Government Code section 53260. Employee shall receive said payment as a lump sum payment within thirty (30) days of employee's last day of employment with City. Termination without cause may not be exercised by the City 60 days prior to any City Council election or 90 days following the certification of any City Council election.

6. TERMINATION FOR CAUSE

This Agreement may be terminated by the City Council for cause. After giving notice to Employee that this Agreement is terminated for cause, the City shall have no obligation to continue the employment of Employee or to provide compensation or benefits. The term "cause" shall mean any of the bases of discipline set forth in the City's Personnel Rules, Rule 26, section 1.

7. GENERAL PROVISIONS

7.1 Notices. Any notices to be given hereunder by either party to the other shall be in writing and may be transmitted by personal delivery or by first class mail, postage prepaid. Mailed notices shall be addressed to the parties as follows:

If sent by Employee to the City:

City Clerk
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

If sent to Employee by the City:

Thomas R. Hatch
852 Sonora Road,
Costa Mesa, CA 92626

Notices delivered personally shall be deemed communicated as of the date of actual receipt; mailed notices shall be deemed communicated as of the date of postmark.

7.2 Entire Agreement. The text herein shall constitute the entire agreement between the parties. This Agreement supersedes any and all other agreements, whether oral or written, between the parties hereto with respect to the subject matter hereof and contains all of the covenants and agreements between the parties with respect to said matter, and each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that any other agreement or modification of this Agreement shall be effective only if executed in writing and signed by both the City and Employee.

7.3 Severability. If any provision, or any portion thereof, contained in this Agreement is held to be invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severed, shall not be affected, and shall remain in full force and effect.

7.4 Effect of Waiver. The failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

7.5 Attorneys Fees. In the event any legal proceeding is instituted to enforce any term or provision of the Agreement, the prevailing party in said legal proceeding shall be entitled to recover reasonable attorneys' fees and costs from the opposing party in an amount determined by the Court to be reasonable.

7.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the date and year first above written.

Dated: _____

Thomas R. Hatch, City Manager

Dated: _____

Gary Monahan, Mayor

Attest:

Julie Folcik, City Clerk

Kimberly Hall Barlow, City Attorney