



# ***CITY COUNCIL AGENDA REPORT***

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MEETING DATE: June 18, 2013

ITEM NUMBER: CC-15

**SUBJECT: AMENDMENT TO CEO EMPLOYMENT AGREEMENT**

**DATE: JUNE 12, 2013**

**FROM: TOM DUARTE, CITY ATTORNEY'S OFFICE**

**PRESENTATION BY: TOM DUARTE, CITY ATTORNEY**

**FOR FURTHER INFORMATION CONTACT: TOM DUARTE, CITY ATTORNEY, (714) 754-5399**

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## **RECOMMENDATION:**

Consider and approve the proposed amendment to the employment agreement with Tom Hatch, CEO.

## **BACKGROUND AND ANALYSIS:**

On March 5, 2011, council selected Thomas Hatch to serve as CEO of the city of Costa Mesa. Recently, Council conducted a review of the CEO. Upon completion of the review, Council discussed proposed amendments to the CEO employment agreement. The proposed amendments are as follows: Monthly salary increase from \$17,274 (step 5) to \$18,138 (step 6), a monthly car allowance increase from \$477 to \$650, a technology allowance of \$250 a month, a reduction of sick leave from 12 days per year to 6 days per year, a reduction in primary sick leave bank from 480 hours to 221, elimination of secondary sick leave bank, reduction in vacation cap from 424 to 320, and reduction in accrual rate from 212 hours per year (5.3 weeks) to 120 hours per year (3 weeks).

The increase in salary, car allowance, and technology allowance will be retroactive to February 1, 2013. The amendments relating to sick leave and vacation will commence on July 1, 2013. Regarding sick leave, CEO Hatch could use current sick leave hours, and no additional hours would accrue until leave total is below the new sick leave bank cap. For vacation, CEO Hatch could use current vacation leave hours or cash out, and no additional hours would accrue until leave total is below new vacation leave bank cap.

The attached proposed amendment to the employment agreement is intended to memorialize the terms and conditions of employment of the CEO.

In the absence of a contract, the CEO's employment would be governed 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 provide provisions for employment of the CEO and expressly authorizes the Council to vary these provisions by contract.

**ALTERNATIVES CONSIDERED:**

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

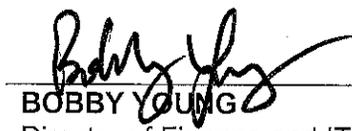
**FISCAL REVIEW:**

The annual impact of the contract changes above are \$15,444, however the FY 13-14 budgetary impacts are only \$5,076. The step increase from Step 5 to Step 6 had already been included in the FY 13-14 proposed budget. The reduction of the vacation accrual rate and of the accumulated vacation bank hours will reduce a potential compensated absence liability payout by approximately \$10,000.

**CONCLUSION:**

Council is requested to consider the proposed amendment to the employment agreement and authorize the Mayor and City Attorney to sign the amendment.

  
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THOMAS P. DUARTE  
City Attorney

  
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BOBBY YOUNG  
Director of Finance and IT

- ATTACHMENTS:    1    Contract Amendment No. 1  
                         2    Current Employment Agreement

**AMENDMENT NUMBER ONE TO  
CITY OF COSTA MESA  
CITY MANAGER EMPLOYMENT AGREEMENT**

This Amendment Number One to City of Costa Mesa City Manager Employment Agreement ("Amendment") is made and entered into this \_\_\_\_ day of June, 2013, by and between the City of Costa Mesa, a municipal corporation ("City") and Thomas R. Hatch ("Employee").

Pursuant to Section 7.2 of the City of Costa Mesa City Manager Employment Agreement ("Agreement"), City and Employee agree to amend the Agreement as follows:

1. Section 4.1 of the Agreement is modified as follows:
  - 4.1 Beginning February 1, 2013, Employee shall receive an annual salary of \$217,656, reflecting a step increase from Step 5 (\$17,274 per month) to Step 6 (\$18,138 per month). This salary shall be 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.
  
2. Section 4.3 of the Agreement is hereby deleted in its entirety and replaced by the following:
  - 4.3 Except as set forth in Section 4.4, 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. Reimbursement requests shall be submitted to the Mayor for approval. Beginning February 1, 2013, Employee shall also receive a technology allowance of \$250 per month.
  
3. Section 4.4 is hereby added to the Agreement to read as follows:
  - 4.4 Notwithstanding Section 4.3 above, the terms set forth in the City of Costa Mesa Benefits Summary Sheet for year 2013, or any other City record setting forth employee benefits:
    - A. Beginning February 1, 2013, Employee's car allowance shall be \$650 per month.

- B. Beginning July 1, 2013, Employee's hours earned per year for sick leave shall be 48 hours, and Employee's maximum accrual of sick leave shall be 221 hours with no eligibility for a Secondary Sick Leave Bank. Employee may utilize previously accrued sick leave hours but shall not accrue additional hours after July 1, 2013 until Employee's Primary Sick Leave Bank is below 221 hours.
- C. Beginning July 1, 2013, Employee's hours earned per year for vacation shall be 120 hours, and Employee's maximum accrual of vacation shall be 320 hours per year. Employee may utilize previously accrued vacation hours but shall not accrue additional hours after July 1, 2013 until Employee's total accrued hours is below 320.

4. All other terms, conditions, and provisions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have set their hand by their duly authorized representatives as of the day and year first above written.

CITY OF COSTA MESA,  
A municipal corporation

\_\_\_\_\_  
Mayor of the City of Costa Mesa

Date: \_\_\_\_\_

THOMAS R. HATCH

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Clerk and ex-officio Clerk  
of the City of Costa Mesa

\_\_\_\_\_  
City Attorney

CITY OF COSTA MESA  
CITY MANAGER EMPLOYMENT AGREEMENT

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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: March 15, 2011

Thomas R. Hatch  
Thomas R. Hatch, City Manager

Dated: \_\_\_\_\_

Gary Monahan  
Gary Monahan, Mayor

Attest:

Julie Fofcik  
Julie Fofcik, City Clerk

Kimberly Hall Barlow  
Kimberly Hall Barlow, City Attorney