



AGENDA REPORT
SAN CLEMENTE CITY COUNCIL MEETING
 Meeting Date: March 19, 2013

Agenda Item 6-H
 Approvals: [Signature]
 City Manager _____
 Dept. Head _____
 Attorney _____
 Finance _____

Department: City Manager
Prepared By: George Scarborough, City Manager

Subject: *APPROVAL OF PALL GUDGEIRSSON AS CITY MANAGER AND CITY MANAGER EMPLOYMENT CONTRACT*

Summary: At the City Council Meeting of December 4, 2012, the Council declared their intent to appoint the City's current Assistant City Manager, Pall Gudgeirsson, to the position of City Manager, effective March 21, 2013. With my pending retirement on March 20, 2013, the City Council needs to officially appoint Mr. Gudgeirsson to the position of City Manager and approve his employment contract.

The terms of the proposed City Manager contract are very similar to the current contract I have, and the proposed contract has been updated to reflect current legislation, which requires certain employment language be inserted directly into the contract.

The key terms of the contract include an annual salary of \$220,272 and an auto allowance of \$450 per month.

I am recommending that the attached employment contract be approved.

Recommended

Action: STAFF RECOMMENDS THAT the City Council:
 1) Effective March 21, 2013, appoint Mr. Pall Gudgeirsson as the City Manager; and
 2) Approve the attached employment agreement

Fiscal Impact: None. Funds are in the budget for the City Manager salary and benefits.

Attachments: Employment agreement

EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT (Agreement) is entered into by and between the CITY OF SAN CLEMENTE (City) and PALL GUDGEIRSSON (Gudgeirsson) as of March 21, 2013, and is made in regard to the following:

1. Employment:

The City hereby employs Gudgeirsson as the City Manager of the City, and Gudgeirsson hereby accepts that employment.

2. Duties:

Gudgeirsson shall perform those duties and have those responsibilities that are commonly assigned to a City Manager of a general law city in California with a city manager form of government, and as are further set forth in the City's Municipal code. Gudgeirsson shall perform such other legally permissible and proper duties and functions consistent with the office of the City Manager, as the City Council shall from time to time assign.

3. Term:

- A. This agreement shall be effective on March 21, 2013, and shall continue from year to year until Gudgeirsson or City (acting through the City Council) terminates this agreement.
- B. The City, acting through the City Council with an affirmative vote of not less than three (3) members in attendance at a lawfully called meeting, may terminate Gudgeirsson's employment without cause or reason, provided that Gudgeirsson has been given written notice of the meeting and the intention to terminate, with the notice of intention to terminate as part of its agenda at least fifteen (15) calendar days prior to the meeting, with actual notice of termination being given at least thirty (30) calendar days in advance of the effective date of the termination. In the event of such termination, Gudgeirsson shall be provided severance pay in accordance with Section 17 hereof.
- C. Gudgeirsson may resign from his employment as City Manager at any time upon giving thirty (30) calendar days written notice to the City Council during the term of this Agreement.
- D. Notwithstanding any provision in this Agreement to the contrary, the City Council shall not take any action pursuant to paragraph 3B or otherwise to terminate Gudgeirsson for a period of six (6) months before or after any City Council election, except for "good cause" as defined in Section 17.

6H-2

4. Devotion to City Business:

Gudgeirsson's position as City Manager is considered a full-time position. Gudgeirsson shall not engage in any other business, educational, professional or charitable activities that would conflict or materially interfere with Gudgeirsson's performance of his City Manager duties.

5. Compensation:

- A. For the balance of the City's 2012-2013 fiscal year, City agrees to pay Gudgeirsson for services rendered an annual base salary of \$220,272. Said amount shall be payable in bi-weekly installments at the same time and in the same manner as other employees of the City are paid.
- B. In addition to base salary, City agrees to provide a Section 457 deferred compensation program for Gudgeirsson, which will be administered by the City's deferred compensation provider, and to pay the legal maximum (currently \$17,500) per year into such program for Gudgeirsson's benefit. This amount shall be paid in monthly installments at the same time and in the same manner as other City employees' deferred compensation payments are made. Gudgeirsson shall have the right, to the extent and to the levels permitted by law, to increase or decrease the amount contributed by City to deferred compensation, with an equal but opposite increase or decrease in Gudgeirsson's base salary under Section 5A above (as said amount is adjusted in future fiscal years pursuant to Section 5C below). Any increase or decrease shall not count toward pensionable income.
- C. In future fiscal years (commencing with the 2013-2014 fiscal year), Gudgeirsson shall be entitled to receive cost-of-living adjustments in compensation (i.e., base salary) that the City Council determines in its discretion to approve for the Executive Group of the City. For purposes of this Agreement, "Cost-of-Living" means California Consumer Price Index for Urban Wage Earners and Clerical Workers as calculated by the Department of Industrial Relations. This provision excludes adjustments made to individual members of the Executive Group to bring those members' compensation in line with similar positions in other jurisdictions. Gudgeirsson's annual compensation may be reduced at the same time and in the same amounts as any across-the-board reduction that is imposed on the members of the City's Executive Group; provided, however, in the event that the City Council reduces Gudgeirsson's compensation by a percentage greater than the

average percentage reduction imposed on the Executive Group, Gudgeirsson shall have the right within thirty (30) calendar days after the City Council takes such action to notify the City Council that he deems the Agreement to be terminated by the City, in which case he shall receive severance benefits pursuant to Section 17.

- D. At a public regular meeting of the City Council, the City Council can agendaize as a non-consent item, an increase in the City Manager's base salary above a cost-of-living adjustment as defined above in the Agreement.
- E. Except in the case of an increase in the City Manager's base salary above a cost-of-living adjustment as defined above in the Agreement, adjustments to Gudgeirsson's base salary approved by the City Council from time to time pursuant to this Agreement shall not require an amendment to this Agreement to be effective. Such may be set forth in a salary resolution approved by the City Council at a regularly-scheduled meeting of the City Council.

6. Performance Evaluation:

The City Council shall evaluate Gudgeirsson's performance during the month of March of each calendar year, commencing in March 2014. Gudgeirsson will be provided a written performance evaluation in closed session of a regular or special City Council meeting.

7. Retirement Benefits:

City agrees to keep Gudgeirsson enrolled as a member of the City's retirement plan. City shall pay for City's portion (employer's portion). Gudgeirsson shall pay the same percentage of the "employee's portion" as all other "Classic employees" in the Executive group.

8. Health, Medical, Dental, and Vision Benefits Insurance:

City shall provide Gudgeirsson with the same health, medical, dental, and vision benefits plan or plans which are provided other City employees, and City shall pay for Gudgeirsson's employee-plus-one premium rate for medical, dental and vision coverage as Gudgeirsson currently has. Gudgeirsson shall have the option of electing out of this insurance coverage and receiving the cash equivalent of the employee-plus-one medical contribution.

9. Life Insurance:

City agrees to provide Gudgeirsson with a term life insurance policy in the amount of Two-Hundred Fifty Thousand Dollars (\$250,000) on Gudgeirsson's life. City agrees to pay the premiums for that policy. Gudgeirsson shall also be entitled to participate in any group life insurance program approved by the City Council for all employees.

10. Physical Examination:

Each year, City shall provide Gudgeirsson with an executive physical examination by a qualified physician or medical facility within Orange County, California, of Gudgeirsson's choice, with all costs, excluding travel, paid for by the City, and which costs shall not be considered part of Gudgeirsson's compensation.

11. Allowances and Equipment:

- A. City shall provide Gudgeirsson with a Four-Hundred and Fifty Dollar (\$450) per month automobile allowance, payable in bi-weekly installments at the same time and in the same manner as other employees who receive automobile allowances.
- B. City shall reimburse Gudgeirsson the monthly City cost of a 'smart phone' or provide a 'smart phone' for Gudgeirsson's use.
- C. City shall provide Gudgeirsson with a City-owned laptop computer, tablet, or iPad with access to the City's computer system and the Internet, for use at his residence, primarily for conducting City business; provided, however, that it is expressly understood that the equipment may be subject to personal use by Gudgeirsson, so long as it does not interfere with its primary use.

12. Closing Cost and Moving Expenses

This section does not apply to Gudgeirsson inasmuch as Gudgeirsson currently resides within the city of San Clemente city limits.

13. Professional and City Business Expenses:

- A. City agrees to pay the professional dues and subscriptions on behalf of Gudgeirsson which are necessary for Gudgeirsson's continuation or full participation in international, national, regional, state, or local associations and organizations necessary and desirable for Gudgeirsson's professional participation, growth, or for the good of the City. Furthermore, the City shall budget and pay for the professional dues and subscriptions to such additional organizations as may be approved by the City Council.

- B. City agrees to pay the business travel and subsistence expenses of Gudgeirsson for official travel and attendance at meetings and occasions reasonably adequate to continue the professional development of Gudgeirsson, and for Gudgeirsson's reasonable pursuit of necessary official and other functions for the City; including, but not limited to, national, regional, state, and local conferences, community events, governmental groups and committees upon which Gudgeirsson serves as a member. Notwithstanding the above, the number of conferences or meetings City will pay for each year and attendance at out-of-state conferences and meetings shall be at the discretion of the City Council as set forth in the City's budget.

14. Leaves:

- A. Gudgeirsson shall be provided with the same Sick Leave and Vacation accrual amounts received prior to Gudgeirsson's appointment to City Manager. There shall be no maximum amount that Sick Leave may accrue. Vacation may accrue to two-and-one-half (2 ½) times the annual accrual. Gudgeirsson may convert any "new" Vacation hours earned but not used after being appointed City Manager to salary and allocated to pretax contributions to any City-sponsored deferred compensation plan or to an Internal Revenue Service Section 125 Flexible Benefits Plan or to such other use that Gudgeirsson may designate. In no case shall the compensation converted for use count toward pensionable pay.
- B. In addition, Gudgeirsson shall be entitled to twelve (12) days of Administrative Leave. Any unused Administrative Leave at the end of a calendar year shall be placed into a Retirement Health Savings (RHS) plan, according to City rules, and any remaining balance shall be paid out in cash. Any cash amount shall not count towards pensionable pay.

15. Short and Long-Term Disability Insurance

City shall provide Gudgeirsson with the same State Disability Insurance (SDI) and long-term disability insurance provided to full-time employees, with premiums paid by the City.

16. Additional Benefits:

- A. In addition to those benefits set forth in this Agreement, City shall provide Gudgeirsson with all other benefits provided to members of the City's Department Heads.

- B. Gudgeirsson shall be eligible to participate in the City's 401(a) deferred compensation and RHS program in the same manner in which Gudgeirsson participated prior to Gudgeirsson's appointment as City Manager.

17. Acts Entitling Gudgeirsson to Severance Compensation:

In the event this Agreement is terminated by the City Council for any reason other than for good cause, Gudgeirsson shall be entitled to severance pay in an amount equal to the sum of six (6) months of his base pay, deferred compensation, retirement benefit, and automobile allowance, as the same are adjusted from time to time as provided in Sections 5 and 7 above. At the end of Gudgeirsson's first year of employment, the severance pay amount shall be increased to nine (9) months. Thereafter, the severance amount shall be increased by one (1) month for each of Gudgeirsson's next three (3) years of employment, up to a maximum of twelve (12) months. In addition, Gudgeirsson shall be entitled to continuation of his group medical, dental, and vision insurance benefits, as required under COBRA. All COBRA premiums and costs shall be paid by Gudgeirsson. "Good Cause" in this Agreement means a material breach of this Agreement, misappropriation of public funds, malfeasance in office, conviction of a felony or a crime involving moral turpitude as determined by a court of competent jurisdiction, or a nolo contendere plea to any felony or any such crime.

18. Provisions of Government Code Sections 53243-53243.4

- A. In the event that the City provides paid leave to the Gudgeirsson pending an investigation of a crime involving abuse of his office or position covered by Government Code section 53243.4 and should that investigation lead to a conviction, Gudgeirsson shall fully reimburse the City for any salary provided for that purpose.
- B. In the event that the City provides funds for the legal criminal defense of Gudgeirsson pending an investigation of a crime involving abuse of his office or position covered by Government Code section 53243.4 and should that investigation lead to a conviction, Gudgeirsson shall fully reimburse the City for any funds provided for that purpose.
- C. In the event that the City provides a cash settlement related to the termination of Gudgeirsson as defined in the terms of this Agreement and Gudgeirsson subsequently is convicted of a crime involving abuse of his office or position covered by Government Code section 43243.4, Gudgeirsson shall fully reimburse the City for any funds provided for that purpose.

19. Enforcement of this Agreement:

The prevailing party in any action brought to enforce this Agreement or resolve any dispute or controversy arising under the terms and conditions hereof shall be entitled to payment of reasonable attorney fees.

20. Notices:

Any notices to be given hereunder by either party to the other in writing may be effected either by personal delivery or by US Mail. Mailed notices shall be addressed to the parties as set forth below, but each party may change its address by written notice given in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated and receive as of five (5) calendar days following the date of mailing:

CITY: City of San Clemente
Attention: Mayor
100 Avenida Presidio
San Clemente, CA 92672

GUDGEIRSSON: Pall Gudgeirsson
323 Camino San Clemente
San Clemente, CA 92672

21. Entire Agreement:

This Agreement represents the entire agreement between the parties and supersedes any and all other agreements, either oral or in writing, between the parties with respect to the employment of Gudgeirsson by City, and contains all of the covenants and agreements between the parties with respect to that employment. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by either party, or anyone acting on behalf of either party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding upon either party.

22. Modifications:

Any modifications to this Agreement shall be effective only if in writing and signed by both of the parties hereto.

23. Effect of Waiver:

The failure of either party to insist upon strict compliance with any of the terms, covenants or conditions of this Agreement by to 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 an other times.

24. Partial Invalidity:

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

25. Governing Law:

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

This Agreement is entered into as of the date first set forth above.

CITY OF SAN CLEMENTE

By: _____

PALL GUDGEIRSSON

Approved as to Form:

Attest:

City Clerk