



AGENDA REPORT
SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: May 4, 2021

Agenda Item 9-H

Approvals:

City Manager _____

Dept. Head _____

Attorney _____

Finance _____

Department: City Manager (Mayor)

Subject: *APPOINTMENT OF ERIK SUND AS CITY MANAGER*

Fiscal Impact: No. This position is currently fully funded.

Summary: Erik Sund has served as Assistant City Manager since November of 2013 and as Interim City Manager since June of 2020. The City Council has indicated its desire to appoint Mr. Sund as City Manager and to extend an offer of employment to him. He has accepted those terms. Approval of an employment agreement with him requires public Council action.

Background: The San Clemente City Manager resigned on December 17, 2019. On that date, the Council and Mayor initiated the process of retaining a recruitment firm to fill the vacancy and to seek an individual to serve as Interim City Manager until that date.

At a special meeting on April 29, 2021, the Council voted to extend an offer of appointment to Mr. Sund and authorized the Mayor to discuss terms of employment with him. This item is presented as an opportunity for the Council to consider and approve those terms and contract discussed with Mr. Sund. Mr. Sund has indicated his willingness to accept this appointment on the terms contained in the attached agreement.

In order for the City to make this appointment and comply with the law, it is necessary to approve the attached City Manager Employment Agreement with Erik Sund following an oral report of its terms.

Recommended

Action: IT IS RECOMMENDED THAT the City Council:

1. Approve the City Manager Employment Agreement with Erik Sund

Attachments: 1. City Manager Employment Agreement

EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT (Agreement) is entered into by and between the CITY OF SAN CLEMENTE (City) and (Sund) as of May 4, 2021, and is made in regard to the following:

1. Employment:

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

2. Duties:

Sund 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. Sund 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 for three years, starting on May 4, 2021, and shall continue until May 3, 2024, unless earlier terminated in accordance with the terms of this Agreement. On August 1, 2023 and each August 1st thereafter, the Agreement shall be automatically extended for one additional year (i.e., on August 1, 2023 the Term of this Agreement shall be extended to continue through May 3, 2025, on August 1, 2024, the Term of this Agreement shall be extended to continue through May 3, 2026, and so on) unless prior to such date, pursuant to an annual evaluation and by a majority vote of the entire City Council in attendance at any lawfully called meeting, the City Council declares its intention not to extend this Agreement for one additional year. Such decision shall not constitute a termination for purposes of Subsection 3B or Section 16 of 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 Sund's employment without cause or reason, provided that Sund 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, Sund shall be provided severance pay in accordance with Section 16 hereof.

- C. Sund 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 Sund for a period of six (6) months before or after any City Council election, except for "good cause" as defined in Section 16.

4. Devotion to City Business:

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

5. Compensation:

- A. City agrees to pay Sund for services rendered an annual base salary on Grade 99 Step B of the Range Placement Table for the position of City Manager (\$249,117.24), prorated for the balance of the City's 2020-21 fiscal year. Sund shall advance to Step C at the one year anniversary of this Agreement. 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 Sund, which will be administered by the City's deferred compensation provider, and to pay the legal maximum per year into such program for Sund'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. Sund 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 Sund'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. Commencing with the 2021-2022 fiscal year, Sund shall be entitled to receive salary adjustments in compensation (i.e., base salary) that the City Council determines in its discretion to approve for the Executive Group of the City as a whole. 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. Sund's annual compensation may be reduced as 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 Sund's compensation by a percentage greater than the average percentage reduction imposed on the Executive Group, Sund 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 16.

- D. At a public, regular meeting of the City Council, the City Council can agendize as a non-consent item, an increase in the City Manager's base salary above a salary adjustment as defined in Section 5C above in this Agreement.
- E. Except in the case of an increase in the City Manager's base salary above a salary adjustment as defined in Section 5C above in this Agreement, adjustments to Sund'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 Sund's performance during the month of July of each calendar year, commencing in July 2022. Sund will be provided a written performance evaluation in closed session of a regular or special City Council meeting. The City Council shall decide what materials from the evaluation, if any, will be included in Sund's personnel file.

7. Retirement Benefits:

City agrees to keep Sund enrolled as a member of the City's CalPERS retirement plan. City shall pay for City's portion (employer's portion). Sund 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 Sund with the same health, medical, dental, and vision benefits plan or plans which are provided other City employees, and City shall pay for Sund's premiums up to the Family Coverage premium rates for medical, dental and vision coverage. Sund shall have the option of electing out of this insurance coverage and receiving the cash equivalent of the employee-only.

9. Life Insurance:

City agrees to provide Sund with a term life insurance policy in the amount of Two-Hundred Fifty Thousand Dollars (\$250,000) on Sund's life, with a beneficiary to be named by Sund. City agrees to pay the premiums for that policy. Sund 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 Sund with an executive physical examination by a qualified physician or medical facility within Orange County, California, of Sund's choice, with all costs, excluding travel, paid for by the City, and which costs shall not be considered part of Sund's compensation. The physician shall provide the City Council with written confirmation that Sund is fit to perform the essential functions of his position. Such certification shall be treated as confidential information by the City Council. The physician's detailed report shall be provided only to Sund.

11. Allowances and Equipment:

- A. City shall provide Sund 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 Sund the monthly City cost of a "smart phone" or provide a "smart phone" for Sund's use.
- C. City shall provide Sund 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 Sund, so long as it does not interfere with its primary use.

12. Professional and City Business Expenses:

- A. City agrees to pay the professional dues and subscriptions on behalf of Sund which are necessary for Sund's continuation or full participation in international, national, regional, state, or local associations and organizations necessary and desirable for Sund'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 Sund for official travel and attendance at meetings and occasions reasonably adequate to continue the professional development of Sund, and for Sund'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 Sund 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.

13. Leave:

- A. Sund shall be provided with the same Sick Leave and Vacation accrual amounts received by Department Heads. 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. In no case shall the compensation converted for use count toward pensionable pay. Sund shall be eligible for annual payouts of Vacation leave in the same manner as the Department Heads. Any cash amount shall not count towards pensionable pay.
- B. In addition, Sund shall be entitled to ninety-six (96) hours of Administrative Leave annually. One-half the amount shall be made available January 1, and one-half of the amount shall be made available July 1 of each year. At Sund's election, 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.

14. Short and Long-Term Disability Insurance:

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

15. Additional Benefits:

- A. In addition to those benefits set forth in this Agreement, City shall provide Sund with all other benefits provided to the City's Department Heads.
- B. Sund shall be eligible to participate in the City's 401(a) deferred compensation and shall participate in the City's RHS program in the same manner as the City's Department Heads.

16. Acts Entitling Sund to Severance Compensation:

In the event this Agreement is terminated by the City Council for any reason other than for good cause, Sund shall be entitled to a lump sum payment in an amount equal to the sum of nine (9) months of his base pay, as adjusted from time to time as provided in Section 5 above, or the remainder of the term of the Agreement, whichever is less. This severance shall be independent of any other form of severance provided by the City's joint powers insurance authority or other carrier. Sund shall be entitled to continuation of his group medical, dental, and vision insurance benefits, as required under COBRA for the same period as severance payments are made. All COBRA premiums and costs shall be paid by Sund. "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 which adversely impacts his reputation or that of the City, or any such crime.

17. Provisions of Government Code Sections 53243-53244:

- A. In the event that the City provides paid leave to Sund 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, Sund 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 Sund 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, Sund 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 Sund as defined in the terms of this Agreement and Sund subsequently is convicted of a crime involving abuse of his office or position covered by Government Code section 53243.4, Sund shall fully reimburse the City for any funds provided for that purpose.
- D. If Sund is convicted by a state or federal trial court of any felony under state or federal law for conduct arising out of, or in the performance of, his official duties, Sund shall forfeit any contract right or other common law, constitutional, or statutory claim against the City to retirement or pension benefits, however those benefits may be characterized, including lost compensation other than accrued rights and benefits to which he may be entitled under any public retirement system in which he is a member. The forfeiture

provided herein shall be in addition to, and independent of any forfeiture of public retirement system rights and benefits pursuant to Government Code section 7522.74. Sund shall notify the City of any conviction within sixty (60) days of the felony conviction.

18. 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.

19. 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
 910 Calle Negocio
 San Clemente, CA 92672

20. Sund: Erik Sund
at the home address then shown in Employer's files 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 Sund 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.

21. Modifications:

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

22. 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 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.

23. 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.

24. 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: _____
Mayor

Erik Sund

Attest:

City Clerk

Approved as to Form:

City Attorney