



# City of Huntington Beach

## INTER-DEPARTMENT COMMUNICATION

**TO:** Honorable Mayor and City Councilmembers  
**FROM:** Dave Kiff, Interim City Manager *DK/ke*  
**DATE:** August 2, 2019  
**SUBJECT:** Supplemental Communication for Administrative Item No. 20  
on the August 5, 2019 City Council/Public Financing Agenda

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Submitted for your consideration is Attachment 1 to Administrative Item No. 20 – Resolution No. 2019-55 approving a City Manager Employment Agreement, including Exhibit A, the proposed employment agreement between the City and Oliver Chi.

**Recommended Action:**

Review and consider the proposed City Manager employment agreement, and if appropriate, adopt Resolution No. 2019-55, ***“A Resolution of the City Council of the City of Huntington Beach Appointing Oliver Chi as City Manager.”***

If approved, the minutes will reflect that Administrative Item No. 20 was approved ***as amended by supplemental communication.***

c: Robin Estanislau, City Clerk

### SUPPLEMENTAL COMMUNICATION

Meeting Date: 8-5-2019

Agenda Item No.: 20 (19-835)

RESOLUTION NO. 2019-55

A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF HUNTINGTON BEACH  
APPOINTING OLIVER CHI AS CITY MANAGER

WHEREAS, Article II, Section 200 of the City Charter ("Charter") of the City of Huntington Beach provides for a Council-Manager form of government; and

Article IV, Sections 400 and 401 of the Charter set forth the selection process as well as the duties and obligations of the City Manager; and

The City Council of the City of Huntington Beach has conducted a national search to fill the City's top administrative position of City Manager; and

The City Council has sought candidates for the City Manager position based on the duties and qualifications set forth in the City Charter of the City of Huntington Beach; and

The City Council of the City of Huntington Beach desires to appoint Mr. Oliver Chi to the position of City Manager for the City of Huntington Beach, effective September 30, 2019; and

Mr. Chi desires to provide said services as City Manager to the City under the terms and conditions set forth in the Agreement attached to this Resolution as Exhibit A; and

Mr. Chi represents that he is willing and qualified to provide such services to the City;

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Huntington Beach that it hereby approves the attached Employment Agreement with Mr. Oliver Chi shown as Exhibit A to this Resolution.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at the City Council's regular meeting held on Monday, August 5<sup>th</sup>, 2019.

REVIEWED AND APPROVED:

\_\_\_\_\_  
Interim City Manager

\_\_\_\_\_  
Mayor

INITIATED AND APPROVED:

\_\_\_\_\_  
Interim City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney *NW*

**EMPLOYMENT AGREEMENT  
BETWEEN THE CITY OF HUNTINGTON BEACH AND OLIVER CHI  
FOR THE OFFICE OF CITY MANAGER**

Following the City Council's adoption of Resolution 2019-\_\_\_, this AGREEMENT is made and entered into this \_\_\_ day of August, 2019 by and between the CITY OF HUNTINGTON BEACH, a California Municipal corporation, hereinafter referred to as "CITY" and Oliver Chi, hereinafter referred to as "MR. CHI." CITY and MR. CHI may be collectively referred to as "Parties."

**RECITALS**

WHEREAS, the City Council of the City of Huntington Beach has conducted a national search to fill the CITY's top administrative position of City Manager; and

WHEREAS, the City Council has sought candidates for the City Manager position based on the duties and qualifications set forth in the City Charter of the City of Huntington Beach; and

WHEREAS, per City Charter Section 400 (c), the candidate selected was chosen on the basis of his executive and administrative qualifications, including his actual experience in and knowledge of accepted practice as regards the duties of the office of City Manager; and

WHEREAS, the City Council desires to retain the services of MR. CHI as City Manager of the City of Huntington Beach; and

WHEREAS, the City Council of the City of Huntington Beach desires to provide certain benefits, establish certain conditions of employment and to establish working conditions for MR. CHI; and

WHEREAS, MR. CHI desires to provide said services as City Manager to the CITY under the terms and conditions hereinafter set forth; and

WHEREAS, MR. CHI represents that he is willing and qualified to provide such services to the CITY;

THEREFORE, in consideration of the respective mutual covenants and promises hereinafter contained and made subject to all of the terms and conditions hereof, the Parties hereto do hereby agree as follows:

## **SECTION 1. DUTIES**

- a) The CITY hereby agrees to retain the services of MR. CHI as City Manager to perform the proper administration of all affairs of the CITY, including the functions and duties specified in Section 401 of Article IV of the Huntington Beach City Charter, as of the date of this AGREEMENT and as may be amended in the future, and to perform other legally permissible and proper duties and functions as designated by the City Council from time to time.
- b) MR. CHI shall prepare and implement an annual plan of Organizational Goals and Objectives which may be incorporated into an annual evaluation tool to assess performance.
- c) MR. CHI may exercise only those powers expressly granted to him as City Manager through the Huntington Beach City Charter, the Huntington Beach Municipal Code, any Resolution, or any minute action of the Council.
- d) MR. CHI will conscientiously and loyally perform all of the duties, expressed or implied, required of him by the terms of this AGREEMENT, the Huntington Beach City Charter, the Huntington Beach Municipal Code, and the duties that may be delegated to him by the City Council.
- e) MR. CHI understands and agrees that he shall:
  - i. Devote his time, ability and attention to matters of CITY and the City Council of not less than the regular business hours of the CITY.
  - ii. Perform his duties within the budget adopted by the City Council.

## **SECTION 2. TERMS OF AGREEMENT**

- a) MR. CHI agrees to remain in the exclusive employment of the CITY and not to become otherwise employed while this AGREEMENT is in effect. MR. CHI agrees that any other employment engaged in by him shall not interfere with the performance of his duties under this AGREEMENT. The term "employment" (and derivations of that term) shall include employment by another legal entity or self-employment. However, the term shall not be construed to include occasional teaching, writing, or military reserve service performed on MR. CHI's time off, and with advance approval of the City Council.

- b) CITY hereby appoints and retains MR. CHI to serve as City Manager for the City of Huntington Beach and MR. CHI hereby accepts such employment with the CITY beginning on September 30, 2019, or such earlier date that MR. CHI and CITY agree, and continuing until MR. CHI or City Council terminates this AGREEMENT pursuant to Section 3.
  
- c) The term of this AGREEMENT shall be for four years, commencing on September 30, 2019 and ending on September 30, 2023, unless terminated by either party hereto as provided herein. On or about September 29, 2023, and annually on each succeeding anniversary of MR. CHI's start date, the term of this AGREEMENT shall be automatically extended for one additional year unless prior to such date by majority vote of the total membership of the City Council at a regular meeting and in compliance with the City Charter, including Charter Section 404(d), the City Council takes formal action to not extend this AGREEMENT for one additional year. Any such decision by the City Council to not extend the Term by one additional year shall constitute a termination of this AGREEMENT upon completion of the remaining three-year term.
  
- d) This AGREEMENT in its entirety may be renegotiated at any time so long as CITY and MR. CHI desire and mutually agree to such terms in writing.
  
- e) The City Council shall conduct a performance evaluation of MR. CHI not less than twelve (12) months after commencement of MR. CHI's term of employment, and annually thereafter by no later than June 30<sup>th</sup> in each year during the term of this AGREEMENT. The annual performance evaluation shall include goals set forth by the City Council. However, MR. CHI acknowledges and accepts the fact that the City Council as an employer has the right to schedule an evaluation session at any time in accordance with the notice and all other requirements of the Brown Act. As a result of the performance evaluation and at the City Council's sole discretion, the City Council may provide a salary increase and/or performance bonus.

### **SECTION 3. TERMINATION**

- a) This AGREEMENT may be terminated by the City Council for cause or misconduct by MR. CHI. After giving notice to MR. CHI that this AGREEMENT is terminated for cause or misconduct, the CITY shall have no obligation to continue the employment of MR. CHI or to provide compensation or benefits, including severance. For purposes of termination, "cause" is defined as willful breach of duty by MR. CHI in the course of employment or habitual neglect of duty by MR. CHI in the course of employment or continued incapacity of MR. CHI to perform the duties of employment as City Manager. In addition, cause is defined as:

- i. MR. CHI being charged with, or entering a guilty plea or plea of *nolo contendere* to, or being convicted of, an offense which is a felony or crime of moral turpitude in the State of California;
  - ii. MR. CHI's willful misconduct or gross negligence;
  - iii. MR. CHI's act of material dishonesty with or theft from the CITY;
  - iv. If MR. CHI is determined by a court of competent jurisdiction or the State of California's Fair Political Practices Commission (FPPC) to have knowingly and unlawfully participated in a governmental decision in which he had a conflict of interest as defined in Government Code Section 87100 et seq. or Government Code Section 1090 et seq.
  - v. Failure to follow a lawful directive of the City Council after written notice of said failure is provided to MR. CHI approved by four (4) or more affirmative votes of the Council's seven (7) members.
  - vi. Continued abuse of drugs or alcohol that materially affects the performance of MR. CHI's duties.
  - vii. Repeated and unexcused absences from the City Manager's Office and duties.
  - viii. Violation of any provision of the ICMA Code of Ethics for which the ICMA has sanctioned MR. CHI.
- b) This AGREEMENT may be terminated by the City Council without cause at any time. If MR. CHI is terminated by the City Council without cause, then MR. CHI is entitled to severance pay as follows: nine (9) months' base salary and benefits if terminated without cause during the first twelve (12) months of MR. CHI's employment; then six (6) months' base salary and benefits if terminated without cause during the thirteenth (13<sup>th</sup>) and subsequent months of MR. CHI's employment. MR. CHI shall also be entitled to payout of any unused accrued vacation leave, but no payout for accrued but unused sick leave or executive leave shall be made at termination.
- c) In the event the AGREEMENT is terminated by the City Council without cause, MR. CHI shall have the option to receive severance pay in either a lump sum or may continue to be paid on the normal payroll schedule until all severance pay has been provided.
- d) MR. CHI may voluntarily terminate this AGREEMENT any time upon forty-five (45) days' written notice to the City Council and shall not be entitled to any severance pay or benefits upon such voluntary termination. City Council maintains discretion to accept MR. CHI's resignation immediately and forego the notice period.
- e) Nothing in this AGREEMENT shall prevent, limit, or otherwise interfere with the right of the City Council to terminate the services of MR. CHI at any time, at the sole discretion of the

City Council, in accordance with the Huntington Beach City Charter, as the same may be amended from time to time, and in accord with the provisions contained herein.

- f) Communications in the Event of Termination. In the event the CITY terminates MR. CHI for any reason or no reason, the CITY and MR. CHI agree that no member of the City Council or CITY employees acting on behalf of the CITY shall make any written, oral, or electronic statement to any member of the public, the press, or any CITY employee concerning MR. CHI's termination except in the form of a joint statement, which is mutually agreeable to the CITY and MR. CHI. The joint statement shall not contain any text or statement that is disparaging to either party. Either party may verbally repeat the substance of the joint statement in response to any inquiry.

#### **SECTION 4. COMPENSATION**

MR. CHI shall receive, as starting salary for his performance of the duties of City Manager, the sum of \$260,000.00 per year, payable in installment payments in the same manner and same times as the salaries of other members of the CITY's Executive Management are paid.

#### **SECTION 5. EMPLOYEE BENEFITS**

- a) Except as otherwise provided herein, MR. CHI shall be granted the same package of benefits as is being provided to CITY's Executive Management employees on the effective date of this AGREEMENT. All future changes to the package of benefits provided to CITY's Executive Management employees shall apply to the level of benefits for MR. CHI unless the Parties so agree. All such benefits, and the benefits described hereunder shall be deemed "fringe benefits" herein. This includes the CITY's continued participation and contributions of CITY obligations to the Public Employees Retirement System (PERS), group health, dental and related insurance programs (family coverage) in accordance with the PERS contract with CITY. MR. CHI shall be enrolled in the CalPERS 2.5% at 55 retirement plan, and MR. CHI shall pay the employee contribution percentage provided for in the current salary resolution, as same may be amended from time to time in the future. At the date of this AGREEMENT, the MR. CHI's contribution percentage is eight percent (8%) of salary.
- b) In lieu of mileage reimbursement, CITY agrees to provide MR. CHI with an automobile allowance in the amount of Four Hundred Fifty Dollars (\$450.00) per month for business. Such allowance shall be paid together with customary monthly payroll practices. MR. CHI will primarily use MR. CHI's personal auto for CITY business, and will use CITY vehicles on an exception basis only. This provision does not in any way restrict MR. CHI's use of his personal automobile for personal use.



- c) Leave.
  - i. General Leave. MR. CHI shall accrue, and have credited to his personal account, General Leave starting at the rate of a 5+ year employee of the CITY (as of the date of this AGREEMENT, this amount is 200 hours per year). MR. CHI shall be credited with a General Leave bank of forty (40) hours upon commencement of employment. This credited General Leave will not be subject to pay at separation if MR. CHI separates from employment for any reason during the first year of this AGREEMENT.
  - ii. Executive Leave. MR. CHI shall be credited with an Executive Leave bank of forty (40) hours upon commencement of employment. MR. CHI shall be credited with one-hundred (100) hours Executive Leave per year automatically. Executive leave is not intended to create a cash benefit. MR. CHI shall not take executive leave as cash/cash out at any time.
  
- d) MR. CHI shall also be entitled to holidays, Leave Without Pay and Bereavement Leave on the same basis as Executive Management employees of CITY are receiving. Any future change to the holiday or leave benefits provided to CITY's Executive Management employees shall apply to the level of holiday or leave benefits for MR. CHI unless the Parties otherwise agree.
  
- e) CITY shall bear the full cost of any fidelity or other bonds required of MR. CHI relating to his service as City Manager under any law or ordinance.
  
- f) Should MR. CHI relocate to reside within Huntington Beach, CITY will reimburse MR. CHI for temporary rental expenses of up to \$3,500.00 per month for up to six months, provided that the temporary rental expenses to be reimbursed are supported by documentation and/or receipts.
  
- g) Home Loan, Equity Sharing Agreement. The City shall enter into a Housing Loan and Equity Sharing Agreement ("LOAN/EQUITY AGREEMENT") with MR. CHI, in a form approved by the Mayor and City Attorney and pursuant to the following terms and conditions:
  - i. An interest rate of 0.5% higher than the CITY's most recent investment portfolio rate of return, as of the date of the LOAN / EQUITY AGREEMENT;
  - ii. A limit on the amount of the loan set at not more than six times MR. CHI's annual base salary;
  - iii. Upon the sale of the home, MR. CHI will provide the CITY with 50% of any equity appreciation in the value of the home and property – this covenant shall be recorded with the County

- iv. MR. CHI shall execute a Personal Guarantee to ensure that if the value of the home and property decrease upon sale, that MR. CHI will be responsible for repaying the full price of the loan to the CITY, including interest;
- v. The loan must be repaid within eighteen (18) months of MR. CHI's leaving MR. CHI's post as City Manager;
- vi. In the event that MR. CHI repays the loan without the home being sold, then MR. CHI and CITY shall agree upon an appraiser and appraisal to estimate any equity gain or loss at the time of loan repayment, and the CITY shall receive 50% of any equity gain; and
- vii. This loan is not forgivable.

## **SECTION 6. MEMBERSHIP AND SUBSCRIPTIONS**

- a) CITY agrees to budget and pay professional dues and subscriptions on behalf of MR. CHI which are reasonably necessary for MR. CHI's continued participation in national, regional, state or local associations and organizations necessary and desirable for MR. CHI's continued professional participation, growth, and advancement or for the good of CITY including the International City/County Management Association (ICMA), the California City Management Foundation (CCMF) and League of California Cities. Furthermore, CITY shall budget and pay for the professional dues and subscriptions to such additional organizations as approved by the City Council.
- b) CITY agrees to budget and pay the travel and subsistence expenses of MR. CHI for official travel, meetings, and occasions reasonably adequate to continue the professional development of MR. CHI and reasonably pursued necessary official and other functions for CITY, such as the annual conference of the International City/County Management Association (ICMA), conferences of the League of California Cities, meetings of the Orange County City Managers Association (OCCMA) and other such national, regional, state and local government groups and committees of which MR. CHI serves as a member, as approved by City Council.
- c) MR. CHI shall be subject to the CITY's Travel and Meeting Reimbursement Policy.

## **SECTION 7. FINANCIAL DISCLOSURE**

- a) MR. CHI shall report to the CITY any ownership interest in real property within the County of Orange, excluding MR. CHI's personal residence. Also, MR. CHI shall report to the CITY any financial interest greater than Ten Thousand Dollars (\$10,000.00) in value in a firm doing work for the CITY or from which the CITY intends to make a purchase. Such reporting shall be made in writing by MR. CHI to the CITY within ten (10) calendar days of

the execution of this AGREEMENT and, further, within ten (10) calendar days of the acquisition of that interest in real property. Additionally, MR. CHI shall report in writing to the CITY any financial interest greater than Ten Thousand Dollars (\$10,000.00) in value in a firm doing work with the CITY or from whom the CITY intends to make a purchase immediately upon notice of the intended work or purchase.

- b) MR. CHI shall complete and file all required Fair Political Practices Commission (FPPC) forms, including Form 700 Statement of Economic Interests.

## **SECTION 8. INDEMNIFICATION**

Subject to the provisions of this AGREEMENT, CITY shall defend, save harmless, and indemnify MR. CHI against any claim for negligent tort or omissions, professional liability claim or demand, or other legal action, whether groundless or otherwise, arising out of an alleged negligent act or omission occurring in the performance of his duties as City Manager in accordance with the provisions of California Government Code Section 825. Said indemnification shall extend beyond termination of employment to provide full and complete protection to MR. CHI by CITY for any acts undertaken or committed in his capacity as City Manager, regardless of whether the notice of filing of a lawsuit for such tort, claim, demand, or other legal action occurs during or following employment with CITY.

## **SECTION 9. CONFIDENTIALITY**

MR. CHI acknowledges that in the course of his employment with the CITY, MR. CHI will be given access to or will have access to confidential and proprietary documents and information relating to the CITY, its residents, businesses, employees, and customers ("Confidential Information"). Such Confidential Information may include, but is not limited to, all information given to or otherwise accessible to MR. CHI that is not public information or would be exempt from public disclosure as confidential, protected, exempt, or privileged information. MR. CHI shall hold all Confidential Information in trust for the CITY's benefit and shall not disclose the Confidential Information to others without the expressed written consent of the CITY. All Confidential Information shall be promptly returned to the CITY immediately upon the effective date of any termination or resignation.

## **SECTION 10. 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 mail, postage prepaid. Mailed notices shall be addressed to the Parties as follows:

If sent by MR. CHI to CITY:

City of Huntington Beach  
Human Resources Department  
2000 Main Street  
Huntington Beach, California 92648

If sent to MR. CHI by CITY:

To MR. CHI's address on file with the Human Resources Department

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.

#### **SECTION 11. ATTORNEY'S 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 not be entitled to recover reasonable attorney's fees and costs from the opposing party.

#### **SECTION 12. REIMBURSEMENT TO CITY REQUIRED**

Notwithstanding the foregoing, the following provisions requiring reimbursement for certain compensation and/or indemnification provided to MR. CHI by the CITY apply:

- a) Paid Leave. Pursuant to Government Code section 53243, in the event that MR. CHI is convicted of a crime involving the abuse of his office or position, as defined by Government Code section 53243.4, with the CITY, any paid leave or salary provided by the CITY for the time period in which the MR. CHI is under investigation for such crimes shall be fully reimbursed by MR. CHI to the CITY.
- b) Legal Defense. Pursuant to Government Code section 53243.1, in the event that MR. CHI is convicted of a crime involving abuse of his office or position, as defined by Government Code section 53243.4, MR. CHI shall fully reimburse the CITY for all the costs of his legal criminal defense if a defense has been provided at CITY expense.
- c) Severance. Pursuant to Government Code section 53243.2, in the event that MR. CHI is convicted of a crime involving abuse of his office or position, as defined by Government Code section 53243.4, MR. CHI shall fully reimburse the CITY for any cash settlement,

including but not limited to severance pay, paid to MR. CHI related to his termination under this AGREEMENT.

### **SECTION 13. ENTIRE AGREEMENT**

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 CITY and MR. CHI.

### **SECTION 14. VALIDITY**

The validity in whole or in part of any provision of this AGREEMENT shall not void or affect the validity of any of the other provisions of this AGREEMENT.

### **SECTION 15. AGREEMENT VOLUNTARY AND KNOWING**

MR. CHI agrees and acknowledges that he has had an opportunity to consult legal counsel in regard to this AGREEMENT, that he has read and understands this AGREEMENT, that he is fully aware of its legal effect, and that he has entered into it freely and voluntarily and based on his own judgment and not on any representation or promises other than those contained in this AGREEMENT. MR. CHI agrees that this AGREEMENT should be interpreted as if mutually prepared and without the same being construed for or against any party.

### **SECTION 16. GOVERNING LAW**

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

### **SECTION 17. 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.

IN WITNESS WHEREOF, the CITY has caused this AGREEMENT to be signed and executed on its behalf by the City Council, and MR. CHI has signed and executed this AGREEMENT, both in duplicate, the day and year first above written.

CITY MANAGER:

CITY OF HUNTINGTON BEACH

\_\_\_\_\_  
Oliver Chi

\_\_\_\_\_  
Mayor Erik Peterson

APPROVED AS TO FORM:

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