



TOWN OF FAIRFAX
COUNCILMEMBER MEMORANDUM
February 1, 2017

TO: Mayor and Town Council

FROM: Mayor Reed
Council Member Goddard

SUBJECT: Approval of amended and restated employment agreement with the Town Manager

RECOMMENDATION

Approve the amended and restated employment agreement with Garrett Toy, Town Manager.

DISCUSSION

In 2015, the Town Council, in response to the Grand Jury report on labor negotiations, stated the following: "The Town of Fairfax will, consistent with the example of adopting ordinances after an initial and second reading, place final tentative employee agreements on two successive Town Council agendas - the first for discussion of the agreement, the second for Council vote (R2.5). We will begin implementation commencing in Fiscal Year 2016/2017."

While employment agreements with the Police Chief and Town Manager aren't agreements with bargaining groups (i.e., MOU's), in the spirit of labor agreement transparency, we are following the process to place the agreements on the agenda for two consecutive Council meetings. We placed this item on the Town Council's January 18, 2017 consent calendar as a "notice." Tonight, the agreement is on the agenda for the Council's approval.

Based on the Town Manager's recent positive performance review, the Council subcommittee, consisting of the Mayor and Vice-Mayor of 2016, are recommending the Town Manager's employment agreement be amended as follows:

- 1) Effective 12/1/2016, the Manager's annual base salary will increase from \$176,000 to \$183,000.
- 2) In addition, since Employee's annual evaluation would have been conducted in December of 2016, in February of 2017, Employee shall receive a one-time payment of the difference between the 12/1/16 base salary and the 1/1/2017 base salary.

The revision has been incorporated into an amended and restated agreement to eliminate the need to track amendments to the original contract.

FISCAL IMPACT

The increase can be absorbed within the Adopted FY16-17 budget. During the mid-year Budget review, we anticipate that projected expenditure savings will be able to offset this added cost.

ATTACHMENT

Amended and Restated Employment Agreement

AGENDA ITEM # 9

AMENDED AND RESTATED EMPLOYMENT AGREEMENT

This AMENDED AND RESTATED **EMPLOYMENT AGREEMENT** (“Agreement”) is effective as of January 18, 2017 and replaces the Amended and Restated Employment Agreement dated December 1, 2015, the Amended and Restated Employment Agreement of April 1, 2015, the Amended and Restated Employment Agreement of June 4, 2014, the Employment Agreement of January 11, 2013, and Amendment No. 1 to Employment Agreement dated September 5, 2013, by and between the **Town of Fairfax** (the “Town”) and **Garrett Toy** (“Employee”).

RECITALS

- A. The Town desires to employ Employee as its Town Manager in order to retain Employee’s experience, skills, abilities, background and knowledge, and is willing to engage Employee on the terms set forth below.
- B. Employee desires to work in the employ of the Town as its Town Manager and is willing to do so on the terms set forth below.

NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE RECITALS AND OF THE MUTUAL PROMISES AND CONDITIONS OF THIS AGREEMENT, IT IS AGREED AS FOLLOWS:

1. **Employment.** On the terms and conditions contained in this Agreement, the Town employs Employee as its Town Manager, and Employee accepts that employment.
2. **Term.** This Agreement shall remain in full force and effect from January 11, 2013, at 12:01 a.m., until terminated by the Employer or Employee, as provided for in Section 7 of this Agreement.
3. **Duties.** Employee shall perform all duties of the Town Manager described in Chapter 2.08 of the Town’s Municipal Code and such other duties as may, from time to time, be established by the Town. Employee agrees that he will, to the best of his ability and experience, at all times loyally and conscientiously perform all the duties and obligations required of him by the terms of this Agreement. Employee will devote his full time to his duties and agrees that his employment with the Town will be his sole employment, unless otherwise agreed to in advance by the Town and Employee. However, Employee may engage in charitable endeavors not involving employment or activities related to the business of the Town, so long as such outside activities do not interfere with Employee’s duties under this Agreement.
4. **Compensation and Benefits.** Employee shall receive for Employee’s services to the Town the following compensation and benefits:
 - 4.1 **Base Salary.** Employee shall receive a base salary of One Hundred Twenty Thousand Dollars (\$ 120,000) per year payable at the same time and in the same manner as other employees of the Town. Effective 7/1/2013, the Employee’s base salary shall increase to \$127,500 per year. Effective 1/1/2014, the Employee’s base salary shall increase to \$130,000 per year. Effective 6/4/14, Employee’s base salary shall increase to \$135,000 per year. In addition, since Employee’s annual evaluation would have been conducted in January of 2014, in June of 2014, Employee shall receive a one-time payment of the difference between the 6/4/14 base salary and the 1/1/2014 base salary. Effective 7/1/2014, Employee’s base salary shall increase to \$140,000 per year. Effective 3/16/15, Employee’s base salary shall increase to \$146,000 per year. Effective 12/1/15, Employee’s base salary shall increase to \$176,000 per year. Effective 12/1/16, Employee’s base salary shall increase to \$183,000. In addition, since Employee’s annual evaluation would have been conducted in December of 2016, in February of 2017, Employee shall receive a one-time payment of the difference between the 12/1/16 base salary and the 1/1/2017 base salary. The Town’s publically available salary schedule is hereby amended accordingly.

- 4.2 **Additional Compensation.** The Town may, at its sole discretion, decide to award Employee additional compensation in the future on such terms as it deems appropriate.
- 4.3 **Standard Management Employee Benefits.** Employee shall receive all benefits provided to the Town's management personnel, including any cost of living adjustments granted to Town management personnel, except that no additional COLA shall apply for the 2013/2014, 2014/2015, 2015/2016, or 2016/2017 fiscal year. Employee shall have, initially, 15 days of annual vacation per year of service and, thereafter, shall accrue vacation leave on a basis as specified for the Town's management employees. The first annual vacation (15 days) shall be credited to Employee upon execution of this Agreement and all subsequent years will be accrued in the same manner of other management employees.
- 4.4 **Administrative Leave.** In recognition of the long hours required to accomplish the requirements of Employee's job, including attendance at numerous meetings outside normal working hours, Employee shall receive twenty (20) days of administrative leave per fiscal year. Employee shall be allowed to cash out up to ten (10) days of administrative leave each fiscal year. This administrative leave may be carried over to subsequent fiscal years, but may not be cashed out upon separation from the Town.
- 4.5 **Automobile Allowance.** Employee shall receive \$300 each month for use of his private automobile on official Town business.
- 4.6 **Life Insurance.** Employee shall be insured with a life insurance policy selected and paid for by the Town with a face value of One Hundred Fifty Thousand Dollars (\$150,000). Employee shall for all purposes be deemed the owner of the policy.
- 4.7 **Professional Development.** The Town shall pay on Employee's behalf all annual International City County Management Association ("ICMA") dues and expenses related to attendance at the ICMA annual conference. The Town shall also pay on employee's behalf all expenses associated with attendance by Employee at one League of California Cities conference per year.
- 4.8 **Retirement.** The Town shall fund 100% of the Employer's contribution to the Public Employees Retirement System ("PERS"). The Employee shall fund 100% of the Employee's contribution to PERS.
5. **Performance Reviews.** Employee's first employee performance review shall be completed on or about six months after the first day of employment, at which time the Employee's salary and severance will also be reviewed. Subsequent performance reviews shall occur on an annual basis, commencing in the month of December. The review of the performance of the Employee shall be subject to a process, form, criteria, and format for the evaluation, which shall be mutually agreed upon by the Employer and Employee. The evaluations shall be private and confidential, and the results shall be summarized and discussed in closed session, to the extent permitted by law. The Employee's salary and benefit package shall also be reviewed on an annual basis concurrent with the performance review.
6. **At-Will Employment.** Employee's employment is employment at-will. Employment at-will may be terminated with or without cause and with notice as provided for in Section 9.1 of this Agreement at any time by the Town or Employee. Nothing in this Agreement shall limit the right of the Town or Employee to terminate employment at-will.
7. **Termination of Employment.**
- 7.1 **Termination by Town.**
- (a) **Termination for Cause.** Without limiting the at-will status of Employee's employment, the Town may at any time terminate Employee's employment for cause.

“Cause” shall mean any of the following:

- (i) Conviction of a felony;
- (ii) Conviction of a misdemeanor arising out of Employee’s duties under this Agreement and involving a willful or intentional violation of law;
- (iii) Willful abandonment of duties;
- (iv) A pattern of repeated, willful and intentional failure to carry out materially significant and legally constituted policy decisions of the Town Council made by the Town Council as a body or persistent and willful violation of properly established rules and procedures; and
- (v) Employee takes an action or knowingly fails to act on a matter, which materially and substantially impedes or disrupts the performance of the Town, or is substantially detrimental to employee safety or public safety.

If the Town terminates Employee’s employment for cause, the Town’s obligations under this Agreement to provide compensation and benefits to Employee shall terminate on the Employee’s last day of employment.

- (b) **Termination without Cause.** If the Town terminates Employee’s employment for any reason other than for Cause per Section 7.1(a), the Town’s obligations under this Agreement to provide compensation and benefits to Employee shall continue for a period of six (6) months following the Employee’s last day of employment. Employee shall continue to be bound by the provisions of Section 8 of this Agreement.
- (c) **Government Code Compliance.** Any other term of this Agreement notwithstanding, the maximum compensation and benefits that Employee may receive under this Agreement as a result of termination shall not exceed the limitations provided in Government Code §§53260 – 53264. Further, in the event Employee is convicted of a crime involving an abuse of office or position, Employee shall reimburse the Town for any paid leave or cash settlement (including severance), as provided by Government Code §§53243 – 53243.4

7.2 **Termination by Employee.** Without limiting the at-will status of Employee’s employment, Employee may resign from employment upon thirty (30) days prior written notice to the Town. If Employee so resigns, the Town’s obligations under this Agreement to provide compensation and benefits to Employee shall terminate on the Employee’s last day of employment.

8. **Confidentiality.** During the course of employment or at any other time, Employee agrees not to disclose, communicate, use to the detriment of the Town or for the benefit of any other person (including Employee), or misuse in any way, any confidential information or data concerning the Town. Employee acknowledges and agrees that all such confidential information received by Employee will be received in confidence and as a fiduciary of the Town

9. **Miscellaneous.**

9.1 **Notices.** Any notice required or permitted under this Agreement shall be in writing and shall be deemed to have been given on the date of delivery if delivered personally or by overnight courier, or three (3) days after mailing if mailed by registered or certified mail, postage prepaid, and return receipt requested.

9.2 **Modifications.** All modifications to this Agreement shall be in writing and signed by both parties.

9.3 **Survival of Obligations.** The provisions of Paragraphs 7.1(b) and 8 shall survive the expiration or termination of this Agreement or any part hereof.

Notwithstanding the provisions of this Paragraph, the provisions of Paragraph 4.6 shall survive only should Employee assume payment of all premiums for the aforementioned life insurance policy upon expiration or termination of this Agreement subject to the provisions of paragraph 7.1(b).

Town of Fairfax:

Employee:

Mayor

Garrett Toy

Date: _____

Date: _____

Attest:

Town Clerk

Date: _____