

DECEMBER 7, 2021

CITY COUNCIL MEETING

ADMINISTRATIVE REPORT ITEM NO. 19, EIGHTH AMENDMENT TO CITY MANAGER
EMPLOYMENT AGREEMENT

REVISIONS TO STAFF REPORT AND ATTACHMENT 9



STAFF REPORT

CITY of YORBA LINDA

ADMINISTRATION DEPARTMENT

DATE: DECEMBER 7, 2021

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: DAVID CHRISTIAN, ASSISTANT CITY MANAGER

SUBJECT: EIGHTH AMENDMENT TO CITY MANAGER EMPLOYMENT AGREEMENT

RECOMMENDATION

It is recommended that the City Council review and approve the "Eighth Amendment Employment Agreement" ("Eighth Amendment") that amends the City Manager's employment agreement with the City and appropriate the necessary amounts in the FY 21-22 budget.

BACKGROUND

On July 2, 2013 the City of Yorba Linda and City Manager Pulone entered into an Employment Agreement ("Original Agreement") whereby Mr. Pulone was employed as City Manager for the City pursuant to the terms and conditions set forth in the Original Agreement. The Original Agreement has since been amended seven times – on October 7, 2014 (First Amendment), on October 6, 2015 (Second Amendment), on November 15, 2016 (Third Amendment), on September 19, 2017 (Fourth Amendment), on October 2, 2018 (Fifth Amendment), on August 6, 2019 (Sixth Amendment) and on September 15, 2020 (Seventh Amendment).

DISCUSSION

The Eighth Amendment updates the following matters pertaining to the terms of employment for the City Manager:

- A one-time bonus payment for the City Manager equal to 4.0% of base salary which is non-cumulative and non-PERSable.
- A salary increase for the City Manager of 2.0% based on merit and performance effective as of October 1, 2021.
- Term of contract will be extended for one additional year through September 30, 2024.

All other terms of the contract will remain unchanged.

EIGHTH AMENDMENT TO CITY MANAGER EMPLOYMENT AGREEMENT

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FISCAL IMPACT

The 4.0% one-time payment equates to ~~\$10,382.17~~\$10,589.81 and will be paid using American Rescue Plan Act funds received by the City to replenish lost revenue due to the pandemic. The 2.0% salary increase equates to \$5,191.09 per year bringing the total annual salary to \$264,745.42. An appropriation will be made to the current year's budget for the necessary amounts.

ALTERNATIVES

Do not approve the Eighth Amendment to the City Manager Employment Agreement.

ATTACHMENTS

1. Original Employment Agreement
 2. First Amendment Employment Agreement
 3. Second Amendment Employment Agreement
 4. Third Amendment Employment Agreement
 5. Fourth Amendment Employment Agreement
 6. Fifth Amendment Employment Agreement
 7. Sixth Amendment Employment Agreement
 8. Seventh Amendment Employment Agreement
 9. Proposed Eighth Amendment Employment Agreement
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EIGHTH AMENDMENT EMPLOYMENT AGREEMENT

This Eighth Amendment Employment Agreement between the City of Yorba Linda (“City”) and Mark Pulone (“Pulone” or “Manager”) (“Eighth Amendment Employment Agreement”) is made this 7th day of December, 2021.

RECITALS

A. City and Manager entered into an Employment Agreement dated July 2, 2013 (“Original Agreement”), a First Amendment Employment Agreement dated October 7, 2014, a Second Amendment Employment Agreement dated October 6, 2015, a Third Amendment Employment Agreement dated November 15, 2016, a Fourth Amendment Employment Agreement dated September 19, 2017, a Fifth Amendment Employment Agreement dated October 2, 2018, a Sixth Amendment Employment Agreement dated August 6, 2019, and a Seventh Amendment Employment Agreement dated September 15, 2020, whereby Pulone was employed as City Manager for the City of Yorba Linda pursuant to the terms and conditions set forth in Original Agreement as subsequently amended.

B. Manager desires to continue serving as City Manager of the City of Yorba Linda, and the City desires to continue Pulone as City Manager of the City of Yorba Linda on the terms and conditions set forth in the Original Agreement, subject to the amendments and modifications hereinafter stated.

AGREEMENT

NOW, THEREFORE, the parties agree to the following amendment to the terms and conditions of Manager’s employment:

1. Section 4(a) Salary is amended to state:

“Effective October 1, 2021, City Council grants Manager an increase in his current base salary of \$259,554.33 based on merit and performance in accordance with the provisions of Section 4(a) of Original Agreement. The merit and performance increase is 2.0%. Therefore, effective October 1, 2021, City agrees to pay Manager an annual base salary, exclusive of benefits, in the sum of \$264,745.42, payable in installments at the same time and by the same methods as other City employees are regularly paid. In addition thereto, at least thirty (30) days prior to Manager’s Anniversary Date (August 5th), the Council shall conduct a performance evaluation of Manager, and if a majority of the Council deems Manager to have successfully performed up to the Anniversary Date may, in their sole discretion, grant Manager an increase in base salary based on merit and performance consistent with the City’s compensation policy in effect at the time of said increase. City and Manager agree to review Manager’s salary and benefits at the time of Manager’s performance evaluation in 2022 and subsequent years thereafter.

Council may, in its discretion, reduce the salary of Manager due to budgetary constraints, on condition that any such reduction shall not exceed the average reduction applicable to all management employees of the City at the time of reduction and Manager’s salary.

Furthermore, Manager, in his sole discretion may elect not to receive any salary increase that may be granted hereunder; provided, however, if Manager elects not to receive a salary increase provided hereunder, said salary increase shall be subsequently implemented, on a prospective basis only, upon written request of Manager.”

One-Time Off-Salary Schedule Non-PERSable Bonus of 4%:

City shall also pay Manager a one-time off-salary schedule bonus of 4% calculated on Manager’s ~~current~~ salary in the amount of ~~\$10,382.17~~\$10,589.81. Payment shall be made on the next regular payment date for all employees of the City following City Council approval of the Eighth Amendment Employment Agreement at a regular City Council meeting. It is the specific intent of the parties that this one-time off-salary schedule payment shall not be characterized as and shall not be reportable to CalPERS as compensation or compensation earnable within the definitions of Government Code §§ 20630, 20636, and 20636.1.

2. Section 11 ENTIRE AGREEMENT is amended to state:

“Except as herein stated, all other terms and conditions of the Original Employment Agreement dated July 2, 2013, as amended in the First Amendment Employment Agreement dated October 7, 2014, as amended in the Second Amendment Employment Agreement dated October 6, 2015, as amended in the Third Amendment Employment Agreement dated November 15, 2016, as

amended in the Fourth Amendment Employment Agreement dated September 19, 2017, as amended in the Fifth Amendment Employment Agreement dated October 2, 2018, as amended in the Sixth Amendment Employment Agreement dated August 6, 2019, and as amended in the Seventh Amendment Employment Agreement dated September 15, 2020, shall remain in full force and effect until changed or terminated pursuant to the provisions of Section 3 of Original Employment Agreement.

This First, Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Amendment Employment Agreement and Original Employment Agreement contain the Entire Agreement between the parties concerning the subject matters set forth therein, and no promise, representation, warranty or covenant not included in this Eighth Amendment Employment Agreement, Seventh Amendment Employment Agreement, Sixth Amendment Employment Agreement, Fifth Amendment Employment Agreement, Fourth Amendment Employment Agreement, Third Amendment Employment Agreement, Second Amendment Employment Agreement, First Amended Employment Agreement or Original Employment Agreement have been or is relied upon by any party hereto concerning the offer and acceptance of employment described therein.”

3. Section 13 EFFECTIVE DATE AND TERM is amended to state:

The Effective Date of this Eighth Amendment Employment Agreement is October 1, 2021, and the term is for three (3) years until September 30, 2024.

IN WITNESS WHEREOF, the parties hereto have executed this Eighth Amendment Employment Agreement as of the date first set forth hereinabove.

Date: December 7th, 2021

Eighth Amendment Employment Agreement approved by City Council in open session at a regular City Council meeting and reflected in the minutes pursuant to Government Code sections 53262 and 54956(b).

CITY:

Mayor

MANAGER:

Mark Pulone

ATTEST:

City Clerk

APPROVED AS TO FORM:

Todd Litfin, City Attorney