

City of Los Alamitos

Agenda Report Consent Calendar

July 21, 2015
Item No: 8E

To: Mayor Richard D. Murphy and Members of the City Council

From: Lisa Kranitz, Assistant City Attorney

Subject: Amendment to City Manager Employment Agreement

Summary: A market evaluation survey was conducted for the City Manager's position and it was determined that the salary should be increased and the term of employment extended.

Recommendation: Authorize the Mayor to execute the Amendment to City of Los Alamitos Employment Agreement for Non-Represented Employee (City-Manager).

Background

On October 21, 2013 the City Council entered into an Employment Agreement with Bret Plumlee as City Manager. The Agreement was for a three-year period commencing November 20, 2013 and starting with a base salary of \$170,000. On December 19, 2014, the City Manager received a bonus of \$4,250 in accordance with the Agreement, but this amount was not added to the base salary.

The Agreement provided that on or about April 15, 2015, the City Council would conduct a salary survey relating to the position of the City Manager. If it was determined that the City Manager's salary was under market, the City Council could, in its sole discretion, raise the salary.

Discussion

After reviewing the salary survey of adjacent cities, the City Council provided direction to negotiate the following changes to the City Manager's employment agreement:

- Extend the agreement through June 30, 2018;
- Provide for an automatic 3.5% increase effective July 1, 2015, July 1, 2016 and July 1, 2017; and

- Provide that the City Manager may also be entitled to up to a two percent (2%) performance based incentive bonus on June 30, 2016, June 30, 2017, and June 30, 2018.

The City Manager is agreeable to these terms with the following clarifications:

- The 3.5% increase would be added to the base salary.
- The performance evaluation date would be changed from November 19th of each year to June 30th of each year.

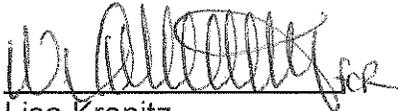
As these clarifications were consistent with the direction provided by the City Council, they have been incorporated into the Amendment.

Fiscal Impact

Sufficient funds are available in the Fiscal Year 2015/16 Budget to account for the aforementioned changes to the City Manager's Employment Agreement.

Submitted and Approved By:

Fiscal Impact Reviewed By:



Lisa Kranitz
Assistant City Attorney



Jason Al-Imam
Administrative Services Director

- Attachments:*
1. *Amendment to City of Los Alamitos Employment Agreement for Non-Represented Employee (City Manager)*
 2. *City of Los Alamitos Employment Agreement for Non-Represented Employee (City Manager)*
 3. *Salary Survey*

**AMENDMENT TO
CITY OF LOS ALAMITOS
EMPLOYMENT AGREEMENT
FOR
NON-REPRESENTED EMPLOYEE
(CITY MANAGER)**

This Amendment to Employment Agreement (hereafter "Amendment") is made and entered into this 21st day of July, 2015 by and between the City of Los Alamitos, a municipal corporation (hereafter "City") and Bret Plumlee (hereafter "Employee"), in order to provide in writing the terms and conditions of employment for City Manager services. City and Employee are sometimes individually referred to herein as "Party" and collectively as "Parties."

The City Council of Los Alamitos (hereafter "City Council") and Employee entered into an Employment Agreement dated October 21, 2013 ("Agreement"). The Parties desire to amend that Agreement as set forth herein.

SECTION 1. Section 3.2.1 of the Agreement is hereby amended to read as follows:

3.2.1 Term. The Agreement became effective on November 20, 2013 ("Effective Date"). This Amendment shall be effective as of July 1, 2015 and shall extend the term of the Agreement through and including June 30, 2018.

SECTION 2. Section 3.3 of the Agreement is hereby amended to read in its entirety as follows:

3.3 Salary/Performance Incentive.

3.3.1 Employee's base salary shall be One Hundred Seventy Thousand Dollars (\$170,000.00).

3.3.2 Effective July 1, 2015 Employee shall receive an automatic 3.5% increase. Employee shall also receive an automatic 3.5% increase on July 1, 2016 and on July 1, 2017. These annual increases shall be added to the base salary.

3.3.3 On June 30, 2016, June 30, 2017, and June 30, 2018, Employee may also be entitled to up to a two percent (2%) performance based incentive bonus. Any performance based increase shall be dependent upon Employee's success in implementing the performance plan described in section 3.5 of the Agreement, as well as other issues deemed relevant by the City Council, within the City Council's sole and absolute discretion. Any performance bonus awarded shall be provided as a lump sum payment and shall not be added to the base salary.

3.3.4 Employee's salary shall be payable bi-weekly at the same time as other employees of City are paid.

SECTION 3. Section 3.5 of the Agreement is hereby amended by changing the performance evaluation date from the anniversary date of the Effective Date of the Agreement to June 30th of each year commencing in 2016.

SECTION 4. This Amendment constitutes the entirety of the changes to the Agreement. Except as set forth herein, all other provisions of the Agreement remain in full force and effect.

CITY OF LOS ALAMITOS

By: _____
Richard Murphy, Mayor

Attest: _____
Windmera Quintanar, CMC City Clerk

EMPLOYEE

By: _____
Bret Plumlee

APPROVED AS TO FORM:

Cary S. Reisman, City Attorney

CITY OF LOS ALAMITOS
EMPLOYMENT AGREEMENT
FOR
NON-REPRESENTED EMPLOYEE
(CITY MANAGER)

1. PARTIES AND DATE

This Employment Agreement (hereafter "Agreement") is made and entered into this 21st day of October, 2013 by and between the City of Los Alamitos, a municipal corporation (hereafter "City") and Bret Plumlee (hereafter "Employee"), in order to provide in writing the terms and conditions of employment for City Manager services. City and Employee are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS

The City Council of Los Alamitos (hereafter "City Council") desires to employ the services of Employee as City Manager for the City and Employee desires to accept employment as City Manager. It is the desire of the Parties through this Agreement to provide for certain benefits, establish conditions of employment, and to set working conditions for Employee.

3. TERMS

3.1 Duties.

3.1.1 Designated Duties. City hereby agrees to employ Employee as City Manager of City to perform the functions and duties in accordance with applicable State Law, the City's Charter and Municipal Code, as well as the approved City job description for the position, a true and correct copy of which is attached hereto, marked Exhibit "A" and incorporated herein by reference. Employee shall also perform other legally permissible and proper duties and functions as the City Council shall from time-to-time assign.

3.1.2 Control and Supervision. Employee shall serve at the will and pleasure of the City Council, subject to the terms of this Agreement, and will be under the day-to-day supervision and direction of the City Council.

3.1.3 City Council Meetings. Employee shall attend all City Council meetings, unless excused or directed otherwise by the City Council.

3.1.4 Moonlighting. Employee will focus his/her professional time, ability, and attention on City business during the term of this Agreement. To the extent consistent with applicable law, Employee shall not engage in any other business duties or pursuits whatsoever, or directly or indirectly, render any services of a business, commercial, or professional nature to

any other person or organization, whether for compensation or otherwise, without the prior written consent of the City Council, except that:

(a) The expenditure of reasonable amounts of time not in conflict with the City's needs and interests, for educational, charitable, community, and professional activities, shall not be deemed a breach of this Agreement and shall not require prior consent; and

(b) This Agreement shall not be interpreted to prohibit Employee from making passive personal investments or conducting private business affairs if those activities do not materially interfere with the services required under this Agreement or create conflicts of interest.

3.1.5 City Documents. All data, studies, reports and other documents prepared by Employee while performing his duties during the term of this Agreement shall be furnished to and become the property of the City, without restriction or limitation on their use. All ideas, memoranda, specifications, plans, procedures, drawing, descriptions, computer program data, input record data, written information, and other materials either created by or provided to Employee in connection with the performance of this Agreement shall be held confidential by Employee to the extent required by law. Such material shall not, without the prior written consent of the City Council, be used by Employee for any purposes other than the performance of his duties. Nor shall such materials be disclosed to any person or entity not connected with the performance of services under this Agreement, except as required by law.

3.2 Term; Termination; Severance Pay.

3.2.1 Term. This Agreement shall become effective on November 20, 2013, (Effective Date") and shall continue for thirty-six (36) months thereafter through and including November 19, 2016.

3.2.1 Termination. The Parties understand and agree that the employment relationship created by this Agreement is "at-will" and that Employee shall serve at the will and pleasure of the City Council, and may be terminated at any time, without notice and with or without cause, but subject to the terms of this Agreement and the City's Charter and Municipal Code.

3.2.3 Automatic Termination. This Agreement, and Employee's employment, shall automatically terminate and Employee shall not be entitled to any severance payment, except for compensation for accrued and unused vacation and administrative leave, upon the happening of any of the following events:

(a) Upon mutual agreement in writing by both Parties to terminate this Agreement;

(b) Upon resignation of Employee;

(c) Upon the death of Employee;

(d) When Employee has been unable to perform all or substantially all of the essential functions of his position, with or without reasonable accommodation, due to illness or other disability for a period of three (3) months, provided, however, whenever required by applicable law, Employee shall be entitled to use accrued, but unused, sick leave before this three (3) month period begins to run;

(e) Upon the natural expiration of the Term of this Agreement, as provided for herein.

3.2.4 Termination Without Cause; Severance. In the event Employee is terminated without cause at such time as Employee is willing and able to perform his duties under this Agreement, other than under an Automatic Termination instance as provided for in Section 3.2.3, the City agrees to pay Employee a maximum severance payment equal to the lesser of: (1) six (6) months base salary (as described in Section 3.3. below) or (2) the unexpired Term of this Agreement (as described in Section 3.2.1 above) ("Severance Payment") if less than 6 months remain on the Agreement. The Severance Payment shall be Employee's sole remedy for a termination without cause. The Severance Payment shall be paid in one lump sum on the effective date of termination. Upon termination, Employee shall also be entitled to compensation for accrued and unused vacation and administrative leave.

3.2.5 Notice for Resignation. In the event Employee voluntarily resigns his position with City, then Employee shall give City a minimum of thirty (30) days advance notice, unless the Parties agree otherwise. Upon voluntary resignation, Employee shall be entitled to accrued vacation and administrative leave, but not to the Severance Payment described in Section 3.2.4 above.

3.2.6 Termination for Cause; Procedure. Except as provided in Subsection (f) below, in the event Employee is terminated for cause, City shall have no obligation to pay the Severance Payment described in Section 3.2.4 above. However, Employee shall be entitled to compensation for accrued and unused vacation and administrative leave. Subject to Section 707 of the City Charter, the following procedures shall apply to any termination for cause:

(a) At least thirty (30) calendar days before the effective date of any termination for cause, the City shall deliver to Employee a written specification of the charges or other reasons upon which "cause" is alleged, as well as the specific effective date of termination. After furnishing Employee with written notice of his intended termination for cause and without the need to wait for the thirty (30) day appeal/hearing period discussed below to expire, the City Council may suspend him from duty, but his base salary shall continue for thirty (30) days from the effective date of suspension, regardless of the effective date of termination.

(b) Employee shall have seven (7) calendar days from the receipt of the notice to challenge such termination for cause by delivery of a written response to such specifications. Within such seven (7) day period, Employee may also demand a hearing upon the specifications. Failure to submit a written response or demand a hearing within the seven (7) calendar day period shall constitute a waiver of such right, and the City Council's determination shall be final.

(c) If a hearing is demanded, such hearing shall be held pursuant to Section 707 of the City Charter, unless the Parties agree to an alternative procedure or alternative hearing body or officer. No hearing shall be held in public unless requested by Employee. No special notice (e.g. newspaper notice) shall be required for the hearing, other than agenda noticing required by the Brown Act if the hearing is held before the City Council. Regardless of the date issued, the decision of the City Council or other hearing body or officer shall be binding, final as of the effective date of termination provided for in the notice under subsection (a) above, and without right of further appeal.

(d) The issue to be determined in the hearing shall be whether the specification(s) alleged constitute "cause" pursuant to this Agreement and whether the specifications are supported by a preponderance of the evidence.

(e) The Parties acknowledge that a requested hearing for cause shall be held at the earliest possible date, and to that extent, they shall cooperate in selecting a date for the hearing which shall be not later than sixty (60) days following the City's notice of termination for cause.

(f) In the event the City Council or other hearing body or officer concludes in favor of Employee that no cause exists, Employee shall be entitled only to the appropriate amount of severance pay and benefits as he would have received if terminated without cause pursuant to Section 3.2.4 above. Employee shall not have any reinstatement rights.

(g) If a written response is submitted, but no hearing is demanded, the City Council shall review its decision based upon Employee's written response. However any determination by the City Council after reviewing such written response, where no hearing has been demanded, shall be final and without right of appeal.

3.2.7 Government Code Provisions. In accordance with Government Code section 53423 through 53243.4, if Employee is paid any leave salary pending an investigation, if City provides funds for the legal criminal defense of Employee, or if Employee receives any cash settlement related to the termination of this Agreement, including the Severance Payment specified above, and Employee is subsequently convicted of a crime involving the abuse of his office as defined by Government Code section 53243.4, Employee shall fully reimburse City for such monies paid. This provision shall survive termination of this Agreement.

3.3 Salary/Performance Incentive.

3.3.1 Employee's salary shall be One Hundred Seventy Thousand Dollars (\$170,000.00) each year (base salary).

3.3.2 At the end of each year, Employee may also be entitled to up to a three percent (3%) performance based incentive bonus. Any performance based increase shall be dependent upon Employee's success in implementing the performance plan described in section

3.5 below, as well as other issues deemed relevant by the City Council, within the City Council's sole and absolute discretion.

3.3.2.1 Any performance bonus awarded at the end of year one shall be provided as a lump sum payment and shall not be added to the base salary for year two.

3.3.2.2 Any performance bonus awarded at the end of years two or three shall be paid as a lump sum payment, but the bonus shall be considered part of Employee's base salary.

3.3.3 On or about April 15, 2015 the City Council shall conduct a market evaluation survey relating to the position of City Manager. If the City Council determines that Employee's salary is under market, the City Council, may, in its sole discretion, determine that Employee's salary should be raised based on this survey. Any adjustment in salary will be made effective July 1, 2015. Should Employee's base salary be adjusted pursuant to this section and if the base salary adjustment exceeds 3% equivalent for the entire calendar year, then the Employee shall no longer be entitled to any performance incentive bonus pursuant to section 3.3.2 above for years two or three.

3.3.4 Employee's salary shall be payable bi-weekly at the same time as other employees of City are paid.

3.4 Fringe Benefits.

3.4.1 Miscellaneous Benefits. Except as otherwise set forth herein, Employee shall be entitled to those holidays, bereavement, temporary disability and jury duty benefits provided to Executive Management employees in Resolution No. 2013-02, the Salary and Benefit Resolution for Non-Represented Employees of the City of Los Alamitos ("Salary and Benefit Resolution"), which is attached hereto as Exhibit "B".

3.4.2 Vacation, Sick and Administrative Leave Benefits. Employee shall be entitled to the following:

(a) Employee shall accrue sick leave at the rate of 8 hours per calendar month;

(b) Employee shall be entitled to forty (40) hours administrative leave on an annual basis;

(c) Employee shall accrue vacation leave at the rate of 120 hours per year, to be accumulated on a bi-weekly basis at a pro-rated amount equivalent to the annual amount.

(d) Employee shall provide as much written notice as possible to the City Council when Employee plans on using more than one day's worth of administrative or

vacation leave. Absent extenuating circumstances, in no event shall the notice be less than seven (7) calendar days.

(e) All other use, accrual and cash out issues governing leave benefits shall be in accordance with the applicable provisions of the Salary and Benefit Resolution (Exhibit B).

3.4.3 Disability, Health and Life Insurance: Physical Examinations. City agrees to provide contributions for hospitalization, surgical and comprehensive medical, optical and dental insurance for Employee and his dependents, as provided for Executive Management employees in the Salary and Benefit Resolution, except that the City shall contribute toward the payment of premiums for health, dental and optical insurance for Employee and his dependents up to One Thousand Four Hundred Dollars (\$1,400.00) per month in years one, two, and three. Any contribution necessary to maintain benefits under any insurance program in excess of the City's monthly contribution shall be borne entirely by Employee. Employee shall also be entitled to the same long term disability insurance and physical examination benefits that are provided for Executive Management employees in the Salary and Benefit Resolution. Premium contributions shall continue for year three subject to the outcome of the market survey referred to in paragraph 3.3.3.

3.4.4 Retirement.

(a) City agrees to execute all necessary agreements to enroll Employee as a "Classic" Employee in the Public Employee's Retirement System of the State of California (hereafter "PERS").

(b) Employee shall be entitled to the same retiree medical benefits provided for Executive Management employees in the Salary and Benefit Resolution. Retirement benefits are provided for Executive Management personnel under the 2.7% at 55 Plan of PERS, Level 4 of the 1959 Survivor Benefit and the Pre-Retirement Option 2 Death Benefit.

(c) City shall pay the employer share of the PERS retirement contribution as actuarially determined by PERS for each fiscal year covered by the Agreement for the 2.7% at 55 retirement benefit level.

(d) City shall pay one hundred percent (100%) of Employee's share of the PERS retirement contribution, which currently amounts to 8% of salary, for the entire term of this agreement.

3.4.5 Auto Allowance. Employee shall provide his own vehicle to be used in the performance of his duties and City shall provide Employee with a car allowance in the amount of Seven Hundred Dollars (\$700.00) per month. Employee shall at all times maintain automobile liability insurance with a minimum liability coverage of \$250,000 for each person and \$500,000 for each occurrence or \$500,000 aggregate.

3.4.6 Deferred Compensation. Employee shall have the option of participating in the City's deferred compensation plan.

3.4.7 Cellular Telephone. During the term of this Agreement City shall provide Employee with a City issued cellular phone to be used in accordance with City policy. City shall pay for the cellular phone expenses. Employee shall be required to execute City's standard cellular telephone use agreement.

3.4.8 Professional Organizations. Participation in professional and service organizations, appointive boards and committees and voluntary programs by Employee is encouraged, provided such participation is consistent with the responsibilities of the City Manager of the City and the goals and priorities set by the City Council for Employee. Employee shall inform the City Council before commencement of any such activities. In accordance with City policy, City will provide membership fees for such organizations and will reimburse reasonable conference fees, and travel and subsistence expenses incurred in Employee's professional and official travel, meetings, and conferences within the scope of the annual budget within the City Council's discretion. Employee must provide copies of receipts or other detail to the Finance Department prior to receiving reimbursement of business expenses. Payment for travel expenses and reimbursement for expenses shall be in accordance with the City's current Travel and Reimbursement Policy attached hereto as Exhibit C.

3.5 Performance Evaluation.

Within forty-five (45) days of the Effective Date of this Agreement, the City Council shall conduct a noticed closed session meeting to develop a performance plan for Employee for the upcoming year. A new performance plan shall be developed as part of the annual performance evaluation process. The performance plan shall be the basis for the City Council's performance evaluation process. The performance plan may be amended from time to time by a majority vote of the City Council. The City Council shall also perform an annual performance evaluation of Employee, which shall be conducted on or about the anniversary date of the Effective Date of this Agreement and which shall be focused in part on Employee's success in implementing the performance plan. The City Council may conduct performance evaluations during a noticed closed session more often than annually, whenever the City Council believes one is necessary.

3.6 Notices

Notices pursuant to this Agreement shall be given by deposit in the United States mail, postage pre-paid, addressed as follows:

CITY:	City of Los Alamitos	EMPLOYEE:	Bret Plumlee
	3191 Katella Avenue		
	Los Alamitos, CA 90720		
	ATTN: Mayor		

With a copy to: Cary Reisman, City Attorney
Wallin, Kress, Reisman & Kranitz, LLP
2800 28th Street, Suite 315
Santa Monica, CA 90405

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notices shall be deemed given as of the date of personal service or three days after deposited in the United States mail.

3.7 General Provisions.

3.7.1 Entire Agreement. The text herein shall constitute the entire agreement between the Parties and shall supersede any other agreements, whether written or oral.

3.7.2 Severability. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, by a court of competent jurisdiction, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

3.7.3 Salary and Benefit Resolution for Non-Represented Employees. The terms and provisions of the Salary and Benefits Resolution, as it now exists on the Effective Date of this Agreement, shall be applicable to Employee only to the extent it is not inconsistent with this Agreement, and this Agreement shall take precedence over the Salary and Benefits Resolution with respect to any inconsistencies in its interpretation or enforcement.

3.7.4 Bonding. City shall reimburse Employee the full cost of any fidelity or other bonds required of Employee in the performance of his duties as City Manager.

3.7.5 Modification. Any modification of this Agreement must be in writing and signed by both Parties to be effective.

3.7.6 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 conditions, 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 any or all other times.

3.7.7 Assignment. Neither this Agreement, nor any right, privilege or obligation of Employee hereunder, shall be assigned or transferred by him without the prior written consent of the City Council. Any attempt at assignment or transfer in violation of this provision shall, at the option of the City Council, be null and void and may be considered a material breach of this Agreement.

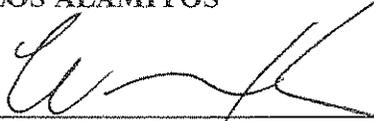
3.7.8 Law Governing Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue shall be in Orange County, California.

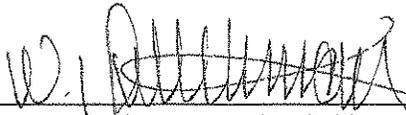
3.7.9 No Presumption of Drafter. The Parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the Parties and this Agreement reflects their mutual agreement regarding the subject matter of this Agreement. Because of the nature of such negotiations and discussions, it would be

inappropriate to deem any Party to be the drafter of this Agreement and, therefore, no presumption for or against validity or as to any interpretation hereof, based upon the identity of the drafter shall be applicable in interpreting or enforcing this Agreement.

3.7.10 Assistance of Counsel. Each Party to this Agreement warrants to the other Party that it has either had the assistance of counsel in negotiation for, and preparation of, this Agreement, or could have had such assistance and voluntarily declined to obtain such assistance.

CITY OF LOS ALAMITOS

By: 
Warren Kusumoto, Mayor

Attest: 
Windmera Quintanar, CMC City Clerk

EMPLOYEE

By: 
Bret Plumlee

APPROVED AS TO FORM:


Cary S. Reisman, City Attorney

CITY OF LOS ALAMITOS
City Manager Salary Survey - North-West Orange County Cities

	Garden Grove	Buena Park	Westminster	Huntington Beach	La Palma	Seal Beach	Cypress	Average		Los Alamitos
Annual Salary	270,744.00	225,914.00	212,418.36	247,208.00	160,000.00	213,140.16	212,500.00	220,274.93	50,274.93 29.57%	170,000.00
Benefits (Annualized):										
Health Insurance/Cafeteria Plan	14,400.00	12,430.00	14,400.00	11,730.34	9,185.88	10,149.48	19,992.72	13,184.06		16,800.00
Deferred Compensation	0.00	0.00	0.00	0.00	2,600.00	10,000.00	17,500.00	4,300.00		0.00
Automobile Allowance	10,020.00	0.00	3,000.00	7,200.00	3,900.00	6,000.00	4,800.00	4,988.57		8,400.00
Wellness Benefit	0.00	0.00	0.00	0.00	500.00	0.00	0.00	71.43		0.00
Retirement (Employee Portion Paid by City)	0.00	0.00	0.00	0.00	0.00	2,131.40	8,500.00	1,518.77		13,600.00
Cash Out Provisions In Lieu of Time Off										
Vacation Hours - up to	0.00	0.00	0.00	9,508.00	7,692.31	16,395.40	8,173.08	5,966.97		6,538.46
Sick Leave Hours - up to	0.00	0.00	0.00	0.00	3,846.15	0.00	0.00	549.45		
Total Annual Salaries and Benefits	295,164.00	238,344.00	229,818.36	275,646.34	187,724.34	257,816.44	271,465.80	250,854.18	35,515.72 16.49%	215,338.46