



TOWN OF FAIRFAX

STAFF REPORT

September 4, 2013

TO: Mayor and Town Council

FROM: Mayor Reed
Vice-Mayor Weinsoff

SUBJECT: Approving an employment agreement with the Town Manager

RECOMMENDATION

Authorize the Mayor to execute an employment agreement with Garrett Toy, Town Manager.

DISCUSSION

Based on the Town Manager's positive performance review and the recent revisions to the Memorandum of Understanding (MOU) with SEIU and the management resolution, the Council subcommittee, consisting of the Mayor and Vice-Mayor, are recommending the Town Manager's employment agreement be amended as follows:

- Effective 7/1/2013- base pay increases to \$127,500
- Effective 7/1/2013- employee pays 100% of employee share of PERS (represents 2% more than what the Manager was previously paying)
- Effective 1/1/2014 base pay increases to \$130,000
- Continue to provide 20 days of administrative leave with ability to cash out 5 days each fiscal year (this is in recognition of the long hours needed to accomplish the employee's job)
- Severance (without cause) increases from 4 months to 6 months

The net effect of these revisions represents an overall 4% increase in compensation to the Town Manager in Jan 2014.

FISCAL IMPACT

The proposed increase has a nominal impact and can be absorbed within the Adopted FY13-14 budget.

ATTACHMENTS

Agreement

AGENDA ITEM # 6

EMPLOYMENT AGREEMENT

This **EMPLOYMENT AGREEMENT** ("Agreement") is effective as of January 11, 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.
 - 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 ordinarily accorded to the Town's management personnel, including any cost of living adjustments granted to Town management personnel. 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 5 days of administrative leave each fiscal year. This administrative leave can be carried over to subsequent fiscal years, but cannot 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. 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.
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

(vi) 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.

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).

10. **Entire Agreement.** This is the entire agreement between the parties. It replaces and supersedes any and all oral agreements between the parties, as well as any prior writings. Modifications and amendments to this agreement, including any exhibit or appendix, shall be enforceable only if they are in writing and are signed by authorized representatives of both parties.

On Behalf of the Fairfax Town Council:

Accepted By:

John Reed, Mayor

Garrett Toy

Date: _____

Date: _____