



STAFF REPORT

DATE: OCTOBER 15, 2013
TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS
FROM: MARCO A. MARTINEZ, CITY ATTORNEY
SUBJECT: EMPLOYMENT AGREEMENT FOR CITY MANAGER SERVICES
WITH STEPHEN P. COMPTON

RECOMMENDED ACTION

Staff recommends that the City Council approve an employment agreement for City Manager services with Mr. Stephen P. Compton, subject to any non-substantive changes necessary to comply with any PERS requirements.

BACKGROUND

Former City Manager Rod Foster submitted his resignation on February 13, 2013. Subsequent to the resignation, the City Council entered into an employment services agreement for interim city manager services with Stephen Compton and also hired Bob Murray & Associates to assist the Council in recruiting a permanent replacements. With the assistance of Murray & Associates, the Council conducted a state-wide search for a permanent replacement. The Council reviewed the qualifications of the potential candidates that responded to the City's search and ultimately held interviews with the top candidates.

At the conclusion of those interviews, the Council selected Stephen Compton as the top candidate and directed the City Attorney to negotiate an employment services agreement with Mr. Compton. The Council held several closed session discussions concerning the employment terms and has concluded those negotiations with Mr. Compton.

The final employment agreement for interim city manager services contains the following terms:

1. Provides for an annual salary of \$192,000.
2. Provides for reinstatement of Mr. Compton in the California Public Employee Retirement System (CalPERS), but requires him to pay 7.5% of the City's 8% share like other department heads of the City.
3. Provides for a \$300 per month vehicle allowance with no reimbursement for mileage.
4. Provides that all other benefits including, medical insurance, long term disability insurance, life insurance, sick leave, holidays, vacation, bereavement and family illness leave,

physical examinations benefits will be provided in the same manner and amounts as other department heads.

5. Provides for annual performance evaluations.
6. Provides for termination of the agreement in accordance with Colton Municipal Code, Section 2.16.120 with a 4 month severance payment for terminations without cause.
7. Provides for membership in the International City/County Management Association and compliance with their Code of Ethics.

Mr. Compton's resume and his performance as interim city manager demonstrate that he is an experienced manager with a strong background in finance and utility operations. He is detailed and results-oriented, transparent and believes in the team-concept approach to managing a city.

ENVIRONMENTAL DETERMINATION

No impact.

FISCAL IMPACT

The City will pay Mr. Compton \$192,00 per year. This salary amount (when compared to the amount paid to the previous manager) is almost \$15,000 less. In addition, the contract provides Mr. Compton with certain other benefits that are identical to the benefits provided to other department heads.

ALTERNATIVES

1. Approve staff recommendation.
2. Provide alternative direction to staff.

ATTACHMENT

1. Employment Agreement

CITY OF COLTON

CITY MANAGER EMPLOYMENT AGREEMENT
(STEPHEN COMPTON)

This City Manager Employment Agreement ("Agreement") is entered into as of the _____ day of October 2013 (the "Effective Date"), between the City of Colton (hereinafter referred to as the "City") and Stephen Compton (hereinafter referred to as the "City Manager" or the "Employee"). City and City Manager/Employee are sometimes referred to in this Agreement as "Party" and collectively as "Parties."

RECITALS

WHEREAS, it is the desire of the City Council of the City to retain the services of Employee as City Manager pursuant to the provisions of the Colton Municipal Code ("City Code"), and

WHEREAS, it is the desire of the City Council to provide certain benefits, establish certain conditions of employment and to set certain working conditions of the City Manager.

NOW, THEREFORE, the above named Parties hereby mutually agree and promise as follows:

1. Term.

1.1 Initial Term and Subsequent Terms

This Agreement shall be deemed effective for an initial term beginning on November 1, 2013, and continuing through October 31, 2016 ("Initial Term"), and shall remain in effect for the Initial Term, unless terminated earlier in accordance with Section 9.

2. Compensation.

2.1 Salary

City agrees to pay City Manager, and City Manager agrees to accept from City, as compensation for services rendered by City Manager pursuant to this Agreement, an annual base salary, commencing on the Effective Date, in the amount of One Hundred Ninety Two Thousand Dollars (\$192,000.00) (hereinafter "Annual Base Salary"), payable in installment payments in the same manner and at the same times as salaries of other executive managers of the City are paid.

Commencing in July 1, 2014 and each year thereafter, said Annual Base Salary shall be eligible for upward adjustments subject to the same procedures by which the salaries of other executive managers of City are adjusted for meritorious performance, except that any such adjustments shall be at the sole discretion of the City Council.

The term "Annual Base Salary" as used in this Agreement shall also include any such adjustments approved by the City Council other than payments not eligible to be added to the City Manager's Annual Base Salary pursuant to the terms of any applicable salary resolution of City. The term "Monthly Base Salary" as used in this Agreement shall mean a sum of money equal to one-twelfth (1/12) of City Manager's Annual Base Salary as defined herein.

2. PERS Retirement Benefit & Employee Payment.

City Manager will be reinstating into active CalPERS membership more than six months after his retirement and was not employed by the City prior to January 1, 2013. Therefore, City Manager will be classified as a "new member", as defined under Government Code Section 7522.04(f)(3), for purposes of his retirement benefits. Accordingly, the applicable retirement formula will be 2% at 62. City Manager will contribute 7.5% of the City's share of his PERS retirement contribution.

Final compensation for purposes of calculating City Manager's retirement allowance with respect to the service accrued as a City employee will be equal to the City Manager's highest average PERSable compensation for three (3) consecutive years of employment. As of January 1, 2013, the PERSable compensation of "new members" will be capped at \$136,440, an amount that is subject to adjustment by CalPERS.¹ In addition, the items of compensation used to determine benefits or contributions to CalPERS will be limited to those items of compensation deemed "pensionable compensation" under Government Code Section 7522.34.

2.2 Other Benefits

In addition, and except as otherwise specified herein, City Manager shall receive all such other benefits and compensation that are generally applicable to executive managers of the City as to the date of this Agreement, as the same may be modified from time to time after the date of this Agreement, including but not limited to medical insurance, long term disability insurance, life insurance, sick leave, holidays, vacation, bereavement and family illness leave, physical examinations, and participation in retirement system. The City Manager is entitled to accrue all unused leave, without limit, and in the event the City Manager's employment is terminated, either voluntarily or involuntarily, the City Manager

¹ If the City pays into Social Security for the City Manager position, then the initial cap is \$113,700.

shall be compensated for all accrued vacation time, all paid holidays, all executive leave and all other benefits to the termination date in the same manner as executive managers. For purposes of continuing participation in the City's retiree medical program, the City Manager shall receive the same benefit as the executive managers.

3. Performance Evaluation.

The Council shall review the City Manager's job performance at least once annually around the anniversary date of this Agreement with subsequent annual reviews to occur thereafter unless the parties agree otherwise. The Council shall, in writing and in accordance with criteria and format develop the annual performance reviews and evaluations. The Council shall provide the City Manager a reasonable and adequate opportunity to discuss the City Manager's evaluation with the Council.

The annual performance reviews and evaluations shall be reasonably related to the City Manager's written job description and shall be based, in whole or in part, on goals for the City Manager's performance that are jointly developed and adopted by the Council and the City Manager.

4. Bonds.

City shall bear the full cost of any fidelity or other bonds required of City Manager under any law or ordinance.

5. Transportation and General Business Expenses.

5.1 Vehicle Stipend.

City agrees to pay to the City Manager, during the term of this Agreement and in addition to other salary and benefits herein provided, the sum of \$300,000 per month, as a vehicle allowance to be used to purchase, lease, or own, operate and maintain a vehicle. City Manager shall be responsible for paying for liability, property damage, and comprehensive insurance coverage upon such vehicle and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of said vehicle. This amount shall be recognized as the full payment amount for mileage in lieu of any mileage reimbursement payable by the City. Adjustments shall be made by the City Council, at their sole and absolute discretion, and shall be done at a public meeting.

5.2 General Business Expenses

A. City agrees to budget and pay for professional dues and subscriptions for City Manager necessary for his continuation and participation in national, regional, state and local boards, task-forces, conferences and meetings, associations and organizations

desirable for City Manager’s continued participation, professional growth, and advancement, and for the benefit of the City. At a minimum, such professional dues shall include participation in the International City/County Management Association (ICMA).

B. City agrees to budget and pay for travel and subsistence expenses of City Manager for professional and official travel, board and task-force meetings, and occasions to adequately continue the professional development of City Manager and to pursue necessary official functions for City.

C. City shall provide City Manager with the necessary technology tools, including and not limited to computer, software, cell phone and such other technologies as required by City Manager to perform his duties and to maintain communications.

6. Abuse of Office or Position.

Pursuant to Government Code Sections 53243, 53243.1 and 53243.2, which became effective on January 1, 2012, if City Manager is convicted of a crime involving an abuse of his office or position, all of the following shall apply: (1) if Manager is provided with administrative leave pay pending an investigation, City Manager shall be required to fully reimburse City such amounts paid; (2) if City pays for the criminal legal defense of City Manager (which would be in its sole discretion, as it is generally not obligated to pay for a criminal defense), City Manager shall be required to fully reimburse City such amounts paid; and (3) if this Agreement is terminated, any Severance Pay and Severance Benefits related to the termination that City Manager may receive from City shall be fully reimbursed to City or void if not yet paid to City Manager. For purposes of this Section, abuse of office or position means either: (1) an abuse of public authority, including waste, fraud, and violation of the law under color of authority; or (2) a crime against public justice, including, but not limited to, a crime described in Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

7. Notices.

Any notice required or permitted by this Agreement shall be in writing and shall be personally served upon the other Party, or sent by United States Postal Service, postage prepaid and addressed to the appropriate Party as follow:

| | |
|---------------------|---|
| If to City: | City Attorney City of Colton 650 N. La Cadena Drive Colton, CA 92324 |
| If to City Manager: | Stephen Compton City Manager |

Notice shall be deemed given as of the date of personal service or upon the date of deposit in the course of transmission with the United States Postal Service.

8. Duties, Acceptance of Appointment, Hours of Work, Regional Liaison.

8.1 Duties

City hereby agrees to employ City Manager as City Manager of the City of Colton to perform the functions and duties specified in the City Code of the City of Colton, and to perform such other legally permissible duties and functions as the City Council may from time to time assign. Upon acceptance into membership in ICMA, as noted in Section 5.2(A) above, it is expected that City Manager shall abide by the ICMA Code of Ethics. City Manager is encouraged to participate in community and civic affairs including: Chamber of Commerce, Civic Clubs, etc.

8.2 Acceptance of Appointment

City Manager hereby accepts the appointment as City Manager of the City of Colton subject to all terms and conditions set forth in this Agreement.

8.3 Hours of Work

It is recognized that City Manager devotes a great deal of time outside the normal office hours-schedule, and to that end, he shall be allowed to establish an appropriate work schedule.

9. Termination.

9.1 At-Will Employee

Employee shall serve at the will and pleasure of the City Council. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Council to suspend from duty, remove from office or otherwise terminate the services of City Manager at any time, at the sole discretion of the City Council, as provided in the City Municipal Code. This Agreement may be terminated as follows:

9.2 Termination - Council Vote

As provided in Section 2.16.020 of the Colton Municipal Code, the City Council may remove the City Manager by motion adopted by the affirmative votes of a majority of the members of the City Council. Such action shall be in accordance with the provisions contained in Section 2.16.020.

9.3 Termination - Change in Form of Government

If any of the governing policies pertaining to the role, power, duties, authority, or responsibilities of City Manager are amended to substantially change City's form of government, either by action of the City Council, a duly passed initiative measure or state legislation, City Manager shall have the right to terminate the Agreement.

9.4 Reduction of Salary or Benefits

If the City Council reduces the annual base salary or any other financial benefit of the City Manager in a percentage that is greater than the average reduction of all executive managers, such action shall constitute a termination of this Agreement.

9.5 Resignation

City Manager may voluntarily resign his position as City Manager, after giving City at least thirty (30) days written notice prior to the effective date of such resignation, unless such notice is waived in whole or part by the City Council. In the event the City Manager resigns from his employment with City, the City Manager shall not be entitled to any severance pay.

9.6 Severance

In the event this Agreement is terminated pursuant to any one of sections 2.16.020(A)(3)&(4) & (B)(3) & (4) of the Municipal Code, or 9.3 or 9.4 of this Agreement, the City Manager shall receive a severance payment, in a lump sum, equal to four (4) months of City Manager's then monthly Base Salary ("Severance Pay") in accordance with the provisions of this section. Such severance payment shall be his sole remedy for termination under sections 2.16.020(A)(3)&(4) & (B)(3) & (4) of the Municipal Code, or sections 9.3 or 9.4 of this Agreement. The Severance Pay shall be paid after the City Manager executes a waiver and release agreement prepared by the City Attorney in a form substantially similar to that one set forth as Exhibit "A" to this Agreement.

Notwithstanding the foregoing, if the City Manager is terminated for Cause, as set forth in the Municipal Code, then City Manager shall not be eligible for severance payment. In addition, if this Agreement expires by its terms, no severance shall be received.

10. General Provisions.

10.1 This writing constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior oral or written representations or written agreements on the subject matter hereof, which may have been entered into between the parties. No modification or revision to this Agreement shall be of any force or

effect, unless the same is in writing and executed by the Parties hereto.

10.2 Each Party agrees and 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 agreement, statement, or promise not contained in this Agreement shall not be valid or binding on either Party.

10.3 If any provision, or portion thereof, contained in the Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

10.4 This Agreement shall be governed by and construed in accordance with the law of the State of California. Venue shall be in San Bernardino County.

10.5 This Agreement shall be construed as a whole, according to its fair meaning, and not in favor or against any Party. By way of example and not in limitation, this Agreement shall not be construed in favor of the party receiving a benefit nor against the Party responsible for any particular language in this Agreement.

10.6 Employee 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 representations or promises other than those contained in this Agreement.

11. Other Terms and Conditions of Employment

The City, only upon agreement with City Manager, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the City Manager, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City Code, or any other law, ordinance or City Resolution.

Except as otherwise provided in this Agreement, City Manager shall be entitled to the highest level of benefits that are enjoyed by other executive department heads of the City as provided in the Municipal Code, Personnel Rules and regulations, or by practice.

12. Communications in the Event of Termination

12.1 In the event the City terminates Employee for any reason or no reason, the City and Employee agree that no member of the City Council or employees

directly employed by the City Council shall make any written, oral, or electronic statement to any member of the public, the press, or any city employee concerning the Employee's termination except in the form of a joint press release or statement, which is mutually agreeable to the City and the Employee. The joint press release or statement shall not contain any text or information that is disparaging to either Party. Either Party may verbally repeat the substance of the joint press release or statement in response to any inquiry.

13. Indemnification

13.1 City shall defend, hold harmless and indemnify City Manager against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of any alleged act or omission occurring in the performance of City Manager's duties or resulting from the exercise of his judgment or discretion in connection with the performance of his duties, unless the act or omission involved unlawful conduct. City shall not unreasonably refuse to provide for legal representation at City's expense. Legal representation, provided by City for City Manager, shall extend until a final determination of the legal action including any and all losses, damages, judgment, interests, settlements, fines, court costs, and the reasonable costs and expenses of legal proceedings, including appeals, and including attorneys' fees, and expert witness fees and all other trial and appellate costs, and other liabilities incurred, imposed upon, or suffered by such City Manager in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of City Manager's duties.

13.2 City agrees to pay all reasonable litigation expenses of City Manager throughout pendency of any City-related litigation to which City Manager is a party, witness or advisor to the City. Such expense payments shall continue beyond City Manager's employment with the City as long as litigation is pending. Post-employment, City agrees to pay City Manager for reasonable consulting fees, travel expenses and other costs, when City Manager serves as a witness, advisor or consultant to City regarding pending litigation.

IN WITNESS WHEREOF, the parties have executed this City Manager Employment Agreement on the ____day of October 2013.

[SIGNATURES ON FOLLOWING PAGE]

EMPLOYEE/CITY MANAGER

Stephen Compton

CITY OF COLTON

Sarah Zamora
Mayor

ATTEST:

Eileen Gomez
City Clerk

APPROVED AS TO FORM:

Marco A. Martinez, City Attorney

Exhibit "A"

WAIVER AND RELEASE

I, the undersigned, do hereby acknowledge and attest that I have read and understood section 9.7 of my Employment Agreement with the City of Colton and hereby agree that by accepting four (4) months' severance in the amount of my then-applicable monthly salary, I agree to waive all rights to further claims, remedies, or legal action against the City its officers and employees.

In exchange for receipt of the Severance Payment, I and my representatives, heirs, successors, and assigns do hereby completely release and forever discharge the City of Colton and its related entities and their present and former officers, directors, council members, agents, employees, attorneys, and successors (collectively, "Released Parties") from all claims, rights, demands, actions, obligations, liabilities, and causes of action of every kind and character, known or unknown, mature or unmatured, which I may have now or in the future arising from any act or omission or condition occurring on or prior to the date this waiver is signed whether based on tort, contract (express or implied), or any federal, state, or local law, statute, or regulation (collectively, the "Released Claims"). Released Claims shall also include, but not be limited to, claims for wages or other compensation due, severance pay, bonuses, sick leave, vacation pay, life or health insurance, or any other fringe benefit.

Employee knowingly and voluntarily waives any and all rights or benefits that he may now have, or in the future may have, under the terms of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

By initialing below, the Employee acknowledges that he or she has read and understands this waiver and voluntarily and knowingly is waiving his right under Section 1542 to pursue unknown or unanticipated claims, rights, demands, action obligations, liabilities and causes of action of any kind.

Initials of Employee

Employee shall not file any claim, sue or initiate against any Released Party any compliance review, action, or proceeding, or participate in the same, individually or as a

member of a class, under any contract (express or implied), or any federal, state, or local law, statute, or regulation pertaining in any manner to the Released Claims.

Approved and Agreed to By:

Stephen Compton