



OFFICE OF THE CITY ATTORNEY
Long Beach, California

NB-45

CHARLES PARKIN
City Attorney

MICHAEL J. MAIS
Assistant City Attorney

PRINCIPAL DEPUTIES

Gary J. Anderson
Charles M. Gale
Anne C. Lattime
Howard D. Russell

April 14, 2020

DEPUTIES

David R. Albers
C. Geoffrey Allred
Taylor M. Anderson
Richard F. Anthony
William R. Baerg
Sarah E. Green
Monica J. Kilaita
Nicholas J. Masero
Dawn A. McIntosh
Lauren E. Misajon
Matthew M. Peters
Katrina R. Pickett
Arturo D. Sanchez
Chelsea N. Trotter
Todd Vigus
Amy R. Webber
Erin Weesner-McKinley
Theodore B. Zinger

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Recommendation to approve an employment agreement with Thomas B. Modica to serve as City Manager.

DISCUSSION

Pursuant to Section 300 of the City Charter and the deliberations of the City Council at Closed Sessions on March 24, 2020 and April 7, 2020, the City Council authorized the terms of an agreement with Thomas B. Modica to serve as the City Manager commencing April 14, 2020.

The City shall pay the City Manager a salary of \$290,656.00 for a twelve (12)-month period, at the hourly rate of \$139.26 per hour.

The City Attorney's office respectfully submits for approval the attached employee agreement for Thomas B. Modica to serve as City Manager. Attached hereto as Attachment "A" is the employment agreement for Thomas B. Modica.

SUGGESTED ACTION

Approve recommendation.

Very truly yours,

CHARLES PARKIN, City Attorney

By

ERIN M. WEESNER-MCKINLEY
Deputy City Attorney

EWM:bg A20-02361
01136998.docx
Attachment

ATTACHMENT "A"

AGREEMENT

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2
3 THIS AGREEMENT is made and entered, in duplicate, as of _____,
4 2020 for reference purposes only, by and between the CITY OF LONG BEACH, a
5 municipal corporation ("City"), and THOMAS B. MODICA ("Manager").

6 WHEREAS, it is the desire of the Council to employ Thomas B. Modica as
7 Manager, commencing on April 14, 2020; and

8 WHEREAS, the Council and the Manager desire to incorporate certain
9 conditions of employment, working conditions and benefits of the Manager into a written
10 agreement;

11 NOW, THEREFORE, in consideration of the mutual covenants herein
12 contained, the parties agree as follows:

13 1. Duties. City hereby agrees to employ Thomas B. Modica as City
14 Manager of the City of Long Beach, California to perform the functions and duties specified
15 in Section 302 of the City Charter of the City and such other legally permissible and proper
16 duties and functions as the Council shall from time to time assign. The Manager shall
17 assume the office of City Manager and begin performance of such duties on April 14, 2020.

18 2. Term.

19 A. Council and Manager both acknowledge that Section 300 of the
20 City Charter of the City provides that the Manager may only be employed for an
21 indefinite term.

22 B. Nothing in this Agreement shall prevent, limit or otherwise
23 interfere with the right of the Council by a majority vote of all members to terminate
24 the services of the Manager at any time, without notice, subject only to the
25 provisions set forth in Subsections A, B, and C of Section 3 of this Agreement. The
26 Mayor shall have the power to veto an action by Council to terminate Manager
27 pursuant to and in accordance with the provisions of Section 213.

28 C. Nothing in this Agreement shall prevent, limit or otherwise

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ATTACHMENT "A"

1 interfere with the right of the Manager to resign at any time from his position with
2 City, subject only to Subsection C of Section 3 of this Agreement.

3 3. Termination and Severance Pay.

4 A. If the Manager is involuntarily terminated by action of the
5 Council during the first twenty-four (24) months of Manager's employment
6 hereunder and if the Manager is willing and able to perform his duties under this
7 Agreement, then City shall pay to Manager a lump sum cash payment equal to
8 twelve (12) months' aggregate salary and the cash equivalent of the Manager's
9 fringe benefits for said twelve (12) month period. Further, the Manager shall be paid
10 for any accrued sick leave, vacation, holidays, compensatory time and other
11 accrued but unpaid or unused benefits provided. The Manager may at his option
12 accept the "lump sum" payment or remain on the City payroll for a twelve (12) month
13 equivalent period of time. This period of time shall be calculated by the Department
14 of Human Resources so that the value is equivalent to the twelve (12) month
15 lump sum pay out described above, however, if the Manager is terminated because of his
16 conviction of a felony or any offense involving a violation of his official duties, or for
17 any unlawful act involving personal gain to him, or because of his legal
18 disqualification from office, then City shall have no obligation to pay the twelve (12)
19 month lump sum or equivalent designated in this paragraph.

20 B. If the Manager is involuntarily terminated by action of the
21 Council at any time after the first twenty-four (24) months of Manager's employment
22 hereunder and if the Manager is willing and able to perform his duties under this
23 Agreement, then City shall pay to Manager a lump sum cash payment equal to six
24 (6) months' aggregate salary and the cash equivalent of the Manager's fringe
25 benefits for said six (6) month period. Further, the Manager shall be paid for any
26 accrued sick leave, vacation, holidays, compensatory time and other accrued but
27 unpaid or unused benefits provided. The Manager may at his option accept the
28 "lump sum" payment or remain on the City payroll for a six (6) month equivalent

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1 period of time. This period of time shall be calculated by the Department of Human
2 Resources so that the value is equivalent to the six (6) month lump sum pay out
3 described above, however, if the Manager is terminated because of his conviction
4 of a felony or any offense involving a violation of his official duties, or for any unlawful
5 act involving personal gain to him, or because of his legal disqualification from office,
6 then City shall have no obligation to pay the six (6) month lump sum or equivalent
7 designated in this paragraph..

8 C. If the Council at any time, without the consent of the Manager,
9 reduces the salary or other financial benefits of the Manager in a greater percentage
10 than an applicable across-the-board reduction for all employees of City, or if City
11 refuses, following notice, to comply with any other provision benefitting the Manager
12 herein, then the Manager may, at his sole option and provided that he gives notice
13 to the Council within thirty (30) days after the effective date of such reduction, be
14 deemed to be "terminated" at the date of such reduction or such refusal of City to
15 comply within the meaning and context of the severance pay provisions of this
16 Agreement.

17 D. If the duties, responsibilities or authority of the office of
18 Manager are substantially reduced by an amendment of the City Charter, Manager
19 may, at his sole option and provided that he gives notice to the Council within thirty
20 (30) days after the effective date of such reduction, be deemed to be "terminated"
21 within the meaning and context of the severance pay provisions of this Agreement.

22 E. If the Manager elects voluntarily to resign his position with City
23 in a situation other than that described in subsections C and D, above, the Manager
24 shall give to the Council a minimum of thirty (30) days' notice; and he shall not be
25 entitled to severance pay.

26 4. Disability. If the Manager is permanently disabled or is otherwise
27 unable to perform his duties because of sickness, accident, injury, mental incapacity or
28 health for a period of four (4) consecutive weeks beyond any accrued sick leave, or for

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1 twenty (20) working days over a thirty (30) working day period beyond any accrued sick
2 leave, Council shall have the option to terminate this Agreement, subject to the severance
3 pay provisions of subsection A of Section 3 of this Agreement by giving to the Manager
4 notice of such termination. However, the Manager shall be paid for any accrued sick leave,
5 vacation, holidays, compensatory time and other accrued but unpaid or unused benefits
6 provided to the Manager by the terms of this Agreement.

7 5. Compensation.

8 A. City shall pay to Manager for his services performed hereunder
9 a base salary of \$290,656.00 for each twelve (12)-month period. Five percent (5%)
10 of the Manager's salary is conditioned on Manager residing within the City of Long
11 Beach. Should the Manager not live in Long Beach, the Manager is required to
12 inform the City Council and salary will be reduced by five percent (5%). Subsequent
13 salary adjustments may also be determined from time to time by Council and
14 established by Resolution of the Council.

15 B. Manager's salary shall be automatically adjusted on July 1,
16 2021, and on July 1st of each year thereafter, equivalent to the most recent upward
17 change in the annual average of the Consumer Price Index ("CPI") as published by
18 the United States Department of Labor for the Los Angeles-Long Beach-Anaheim
19 metropolitan area ("Automatic CPI Adjustment") in a similar manner as provided to
20 the other major officials of the City under the Charter in Section 203 unless the
21 Council, by majority vote, elects to withhold the adjustment after an evaluation of
22 Manager's performance. Notice of the Council's action to withhold the automatic
23 CPI adjustment shall be provided no later than thirty (30) days before the effective
24 date of the automatic CPI adjustment. The Council shall not withhold the Automatic
25 CPI Adjustment for more than three times in a five-year period.

26 C. The City shall pay Manager a maximum of seven percent (7%)
27 of his salary into the Manager's Deferred Compensation account. The City's
28 contribution shall be up to seven percent (7%) of Manager's salary or the Internal

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1 Revenue Service (IRS) 457 contribution limit, whichever is less.

2 6. Performance and Salary Evaluation. The Council shall review and
3 evaluate the performance and the salary of the Manager at least annually. Said review
4 and evaluation shall be in accordance with specific criteria, goals and objectives for the
5 City and Manager developed jointly by the Council and the Manager. Criteria, goals and
6 objectives may be added or deleted as the Council may from time to time determine, in
7 consultation with the Manager. Such criteria, goals and objectives shall be generally
8 attainable within the applicable time limitations, annual operating and capital budgets and
9 appropriations. The Council shall provide an adequate opportunity for the Manager to
10 discuss his evaluation with the Council.

11 7. Fringe Benefits; Other Terms and Conditions of Employment. In
12 addition to the benefits specifically enumerated herein for the Manager, all of the provisions
13 of the City Charter, as well as City's Personnel Ordinance, Salary Resolution and other
14 rules and regulations of the City relating to vacation and sick leave, retirement and pension
15 system contributions, holidays, health and life insurance, physical examinations, and other
16 fringe benefits and working conditions as they now exist or hereafter may be amended,
17 shall also apply to the Manager as they would to the other management employees of City.
18 The Assistant City Manager shall perform the functions and duties specified in Section 302
19 of the City Charter in the Manager's absence.

20 8. Executive Leave. Manager shall be entitled to fifteen (15) days of
21 executive leave (as such term is defined in the City's Personnel Ordinance) each calendar
22 year. In the event that Manager foregoes the taking of such executive leave (or portion
23 thereof), Manager shall be paid a sum computed by multiplying Manager's hourly rate of
24 compensation by the number of executive leave hours which the Manager has not utilized
25 during the calendar year. The Council recognizes that vacation time is important and shall
26 not unreasonably deny or suspend use of vacation time by the Manager.

27 9. Mileage Allowance. The City shall pay to the Manager a monthly
28 mileage allowance in the same manner as provided for other Department heads in the

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1 City's Salary Resolution including the ability to use the City's electric charging stations at
2 no charge to the Manager.

3 10. Indemnification. Subject to the provisions of this Agreement, City
4 shall defend, save harmless and indemnify Manager against any claim for negligent tort or
5 omissions, professional liability claim or demand, or other legal action, arising out of an
6 alleged negligent act or omission occurring in the performance of his duties as City
7 Manager. Said indemnification shall extend beyond termination of employment to provide
8 full and complete protection to Manager for any acts undertaken or committed in his
9 capacity as City Manager, regardless of whether the notice of filing of a lawsuit for such
10 tort, claim, demand, or other legal action occurs during or following employment as the City
11 Manager.

12 11. Bonds. City shall pay for or provide any fidelity or other bonds required
13 of the Manager under any law, rules or regulation.

14 12. Notices. Notices hereunder shall be in writing and personally delivered
15 or deposited in the U.S. Postal Service, first class, postage prepaid, addressed as follows:

- 16 City: Offices of the Mayor and City Council
- 17 Eleventh Floor
- 18 411 West Ocean Boulevard
- 19 Long Beach, California 90802
- 20 City Attorney: Ninth Floor
- 21 411 West Ocean Boulevard
- 22 Long Beach, California 90802
- 23 City Manager: City Manager
- 24 Tenth Floor
- 25 411 West Ocean Boulevard
- 26 Long Beach, California 90802

27 Notice shall be deemed given as of the date of personal delivery or as of the
28 date of deposit in the mail.

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13. General Provisions.

A. This Agreement constitutes the entire understanding between the parties and supersedes all other agreements, oral or written, with respect to the subject matter herein.

B. This Agreement shall not be amended except in a written amendment which expressly refers to this Agreement, is signed by the parties and authorized by a vote of the Council.

C. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Both parties shall comply with all laws, ordinances, rules, regulations and the City Charter with respect to the subject matter of this Agreement.

D. This Agreement shall be binding on and inure to the benefit of the heirs and legal representatives of the Manager.

E. The provisions of this Agreement are severable and, if any provision or any portion of this Agreement is held to be unconstitutional, invalid, or unenforceable by a court of law, the remainder of this Agreement shall be severed and shall be enforced s severed

F. This Agreement is not intended or designed to or entered for the purpose of creating any benefit or right for any person or entity of any kind that is not a party to this Agreement.

G. The failure or delay of the City or the Council to exercise any right or remedy hereunder shall not operate as a waiver of that or any other right or remedy. No waiver of any breach shall be effective unless in writing and signed by the party waiving the breach; the waiver of any breach shall not constitute a waiver of any other or subsequent breach. The payment of money by the City shall not operate as a waiver of any provision hereof.

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1 IN WITNESS WHEREOF, the parties hereto have caused this document to
2 be executed, in duplicate, with all of the formalities required by law.

3 CITY OF LONG BEACH, a municipal
4 corporation

5 _____, 2020 By _____
6 City Manager

7 "City"

8 _____, 2020 By _____
9 Thomas B. Modica

10 "Manager"

11 This Agreement is approved as to form on _____, 2020.

12
13 CHARLES PARKIN, City Attorney

14
15 By _____
16 Deputy

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