

**CITY OF ORANGE  
AGREEMENT FOR EMPLOYMENT  
OF CITY MANAGER**

**THIS AGREEMENT**, made and entered into to be effective on October 4, 2015, by and between the City of Orange, a municipal corporation, hereinafter referred to as "City" and Richard Otto, an individual.

1. The City Council of the City hereby appoints Richard Otto as the City Manager of the City for a period commencing on or about October 4, 2015 and expiring on September 30, 2018, unless otherwise extended or terminated as herein provided.

2. Richard Otto (hereafter, "Interim City Manager") desires to perform the duties of City Manager for the City and hereby accepts such appointment under the terms and conditions set forth in this Agreement.

3. Compensation

a. Effective upon appointment as City Manager, the salary of the City Manager is established at \$17,389.00 per month and shall be paid in the same manner and at the same times as other monthly salaries in the City are paid. During the term of this Agreement if any across the board salary increases are approved for the Non-Safety Executive Management Team listed in Exhibit "A" to Resolution No. 10760 or as such Resolution may be amended, then the City Manager shall be entitled to the same increase.

b. The City Manager's performance shall be reviewed by the City Council at the first meeting in September of each year of this Agreement. At such time the City Council may determine any salary adjustments, extensions or other revisions to this Agreement. It is the responsibility of the City Attorney to agendize the annual performance evaluation, although any member of the City Council may agendize the City Manager's performance review at any time. Annual written evaluations by the City Council, if any, shall be shared and discussed with the City Manager in closed session or individually per the City Council's discretion.

4. Benefits

a. In addition to any benefits provided in this Agreement, City Manager shall receive those benefits and be governed by all applicable rules and regulations related to those benefits

provided for Executive Directors in Resolution No. 10760 or as such Resolution may be amended; provided that it is understood that the City Manager shall continue to pay Miscellaneous Member Contributions to the Public Employee Retirement System at the same level and in the same manner as the Executive Management Team as provided in Resolution No. 10760 or as such Resolution may be amended.

b. City Manager shall receive an annual deferred compensation contribution of \$6,000. The amounts contributed by the City shall be subject to the terms and conditions of the City of Orange Deferred Compensation Plan.

c. In lieu of being provided a City-issued cell phone pursuant to Section 1.63 of the City's Administrative Policy Manual, the City Manager shall receive \$125 per month as reimbursement for any and all cost related to the purchase and use of a cell phone for City-related business.

#### 4. Termination

a. The City reserves the right to terminate this Agreement for any reason prior to September 30, 2018, by providing the City Manager written notice of its election to terminate as authorized by a majority of the City Council and as provided in the Orange Municipal Code and as it may be amended. Such termination shall be effective as set forth in the notice of election to terminate.

b. Except as otherwise provided herein, in the event City Manager is terminated prior to September 30, 2018, the City is obligated to pay City Manager full pay and benefits and CalPERS retirement service credit accrual for nine (9) months, or the actual time left in the contract term, whichever is less. This severance amount shall only be payable, provided that City Manager has executed a release, waiving any rights, claims, or any other actions arising out of termination of this Agreement in a form acceptable to the City Attorney and City Council.

6. Notwithstanding anything contained herein to the contrary, in the event the City Manager is terminated for cause, City Manager shall forfeit any and all benefits and payments he may be entitled to including, without limitation, severance payments and all benefits described in this Agreement. If City Manager determines to contest the finding he was terminated for cause, such determination shall be heard by a hearing officer mutually selected by City Manager and City and if

they cannot agree, by requesting the California Conciliation Service to submit five names of neutrals to hear the matter. Each party may strike two names and the remaining hearing officer shall conduct the hearing. The costs of the hearing officer shall be split equally between City Manager and City. In addition to other grounds as provided in Orange Municipal Code Section 2.16.070, the following shall also be considered grounds for termination for cause:

- a. Performance of outside business interests that conflict directly with the activities and duties as City Manager; but not including educational or professional training programs conducted by City Manager whether for personal financial gain or not;
- b. Refusal to take or subscribe any oath or affirmation that is required by law;
- c. Conviction of a felony or conviction of a misdemeanor involving moral turpitude (a conviction following a plea of nolo contendere is deemed a conviction).

7. The City Manager shall notify the Mayor and City Council in writing of any unexpected absence in excess of nine regular business hours from Orange County. The City Manager shall provide a telephone number(s) where he can be reached during such absences. Said notices shall designate an Acting City Manager who shall be authorized to perform the duties and responsibilities of the City Manager in his absence.

8. In the event the City Manager voluntarily resigns his position with the City before expiration of the term of this Agreement or any extension thereof, he shall give the City Council one (1) month's written notice, unless the parties otherwise agree. In the event of voluntary resignation or expiration of this Agreement, the City Manager is not entitled to the severance payment and benefits described in this Agreement.

9. This Agreement may be amended in writing signed by both parties.

10. This Agreement contains the entire agreement of the parties and no promises or representations not included in this Agreement shall have any force or effect. Each party agrees that they have engaged in arms length bargaining and have been provided the opportunity to have the Agreement reviewed by an attorney of their choice.

11. Neither party may assign the performance of this Agreement.

12. If any provision or portion hereof is held unconstitutional, invalid or unenforceable, the remainder of this Agreement shall be deemed severable and shall not be affected and shall remain in full force and effect, and the City Council and the City Manager shall be deemed to have intended to enter into this Agreement even absent such provision or portion hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective on the date and year first above written.

DATE OF EXECUTION:

CITY OF ORANGE, a municipal corporation,

9/21/15

Teresa E. Smith  
Teresa E. Smith, Mayor

ATTEST:

Mary E. Murphy chief clerk for  
Mary E. Murphy, City Clerk

DATE OF EXECUTION:

RICHARD OTTO, an individual,

09/16/15

[Signature]

APPROVED AS TO FORM:

Wayne W. Winthers  
Wayne W. Winthers, City Attorney



# AGENDA ITEM

September 8, 2015

**TO:** Honorable Mayor and  
Members of the City Council

**FROM:** Wayne W. Winthers *WW*  
City Attorney

Reviewed/Verified By:

Finance Director *KPh*

To Be Presented By: Wayne W. Winthers

<input checked="" type="checkbox"/>	Cons Calendar	<input type="checkbox"/>	City Mgr Rpts
<input type="checkbox"/>	Council Reports	<input type="checkbox"/>	Legal Affairs
<input type="checkbox"/>	Boards/Cmtes	<input type="checkbox"/>	Public Hrgs
<input type="checkbox"/>	Admin Reports	<input type="checkbox"/>	Plan/Environ

## 1. SUBJECT

Employment Agreement with City Manager Richard Otto.

## 2. SUMMARY

The proposed agreement with City Manager Richard Otto provides for a three year term commencing on October 4, 2015. Orange Municipal Code Section 2.16.080 provides that the City Manager shall receive such compensation as determined by the City Council.

## 3. RECOMMENDED ACTION/MOTION

Approve Employment Agreement with City Manager Richard Otto.

## 4. FISCAL IMPACT

The agreement provides for a salary of \$17,389.00 per month for the City Manager.

## 5. STRATEGIC PLAN GOAL(S)

1. Be a fiscally healthy community  
Strategies:
  - b) Expend fiscal resources responsibly.

**6. GENERAL PLAN IMPLEMENTATION**

Not Applicable.

**7. DISCUSSION and BACKGROUND**

At the conclusion of the Closed Session conducted during the January 13, 2015 City Council meeting, the City Council reported that they designated a subcommittee of Mayor Smith and Councilman Murphy to negotiate an employee agreement for Interim and/or City Manager with Richard Otto. The subcommittee has now directed that the City Manager's proposed employment agreement be brought forward for consideration and action with the term commencing on October 4, 2015 and expiring on September 30, 2018, with compensation set at \$17,389.00 per month.

**8. ATTACHMENTS**

Employment Agreement.