



TOWN OF TIBURON
1505 Tiburon Boulevard
Tiburon, CA 94920

Town Council Meeting
October 19, 2016
Agenda Item:

CC-3

STAFF REPORT

To: Mayor Tollini and Members of the Town Council
From: Office of the Town Attorney, Benjamin Stock
Subject: Recommendation to approve a one-time payment to the Town Manager as provided in Employment Agreement dated January 4, 2016
Reviewed By: LC

BACKGROUND

On December 2, 2015, the Town Council approved an employment agreement with Greg Chanis to serve as Town Manager (Agreement). Section 5 of the Agreement provides that a first performance evaluation be conducted on or about July 11, 2016, and that subsequent performance evaluations be conducted annually, on or before the anniversary of the Employee's hire. The Agreement also provides that salary adjustments will be considered in conjunction with the performance evaluation, and if the Town Manager's performance is satisfactory, the Council may, in its sole discretion, elect to make a one-time cash payment to the Town Manager as an appropriate incentive to retain the Town Manager.

On August 3, 2016 and on August 17, 2016, the Town Council met in closed session to conduct the referenced performance evaluation. Following that evaluation, Council now has before it whether to award a one time, lump sum, non-recurring payment of \$5,000 to the Town Manager.

FINANCIAL IMPACT

Although the proposed one-time payment will increase the Town Managers compensation by \$5,000 for calendar year 2016, staff believes there are sufficient funds allocated in the Fiscal Year 2016-2017 Administrative Services Budget to cover this expenditure.

RECOMMENDATION

Staff recommends that the Town Council move to approve a Resolution approving a one-time payment of \$5,000.

Exhibits: 1) Draft resolution
2) Town Manager Employment Agreement

Prepared By: Benjamin Stock, Town Attorney

RESOLUTION NO. xx-2016

A RESOLUTION OF THE TOWN COUNCIL
OF THE TOWN OF TIBURON
AUTHORIZING A ONE-TIME PAYMENT OF \$5,000
TO THE TOWN MANAGER FROM THE
ADMINISTRATIVE SERVICES OPERATING BUDGET

WHEREAS, the Town of Tiburon approved an Employment Agreement (“Agreement”) with Greg Chanis (“Employee”) on December 2, 2015, to serve as Town Manager; and

WHEREAS, the Agreement provides that a first employment evaluation be conducted on or about July 11, 2016, and that subsequent performance evaluations be conducted annually, on or before the anniversary of the Employee’s hire;

WHEREAS, the Agreement also provides that salary adjustments will be considered in conjunction with the performance evaluation, and if the Town Manager’s performance is satisfactory, the Council may, in its sole discretion, elect to make a one-time cash payment to the Town Manager as an appropriate incentive to retain the Town Manager;

WHEREAS, the Town Council met in closed session on August 3 and August 17, 2016, to conduct the Employee’s performance evaluation;

NOW, THEREFORE BE IT RESOLVED, that the Town Council of the Town of Tiburon hereby authorizes a one-time, lump sum, non-recurring payment of \$5,000 to the Town Manager from the Administrative Services Operating Budget:

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Tiburon on October 19, 2016, by the following vote:

AYES: COUNCILMEMBERS:

ERIN TOLLINI, MAYOR
TOWN OF TIBURON

ATTEST:

DIANE CRANE IACOPI, TOWN CLERK

Exhibit 1

TOWN MANAGER EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT ("Agreement") is by and between the Town of Tiburon ("Town") and Gregory Chanis ("Employee") and shall be effective as of execution by both parties.

RECITALS

A. The Town desires to employ Employee as its Town Manager in order to retain Employee's many years of 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 contain in this Agreement, the Town employs Employee as its Town Manager, and Employee accepts that employment.

2. **Term.** Employee's Initial Hire Date shall be the date that he actually commences his employment. This shall be on a date to be arranged between Employee and the Town's Mayor, but shall not be later than Monday, January 11, 2016. This Agreement shall continue until terminated pursuant to the terms of this Agreement or until terminated by the event of the death or permanent disability of Employee.

3. **Duties and Hours.**

3.1 **Duties.** Employee shall perform all duties of the Town Manager described in the Town's Municipal Code and such other duties as may from time to time be established by the Town. Employee shall remain in the exclusive employment of the Town and devote Employee's entire professional, work and income-generating time, attention and effort to the business of the Town during the term of this Agreement. 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.

3.2 **Hours of Work.** Employee shall devote the time necessary to adequately perform his duties as Town Manager. The parties expect that a minimum of forty (40) hours per week during regular business hours, as well as additional time outside of the normal business hours, will be required to satisfy this requirement. Toward that end, Employee shall be allowed reasonable flexibility in setting his own office hours, provided the schedule of such hours

provides adequate availability to the Town Council, Town staff, and members of the community during normal business hours and for the performance of Town business.

3.3 **Regional and Professional Activity**. The Council desires Employee to be reasonably active in national, statewide and regional professional organizations that will contribute to Employee's professional development and standing and that will contribute to the advancement of the Town's interests and standing. Toward that end, Employee may, upon advance notice to the Council, undertake such activities as are directly related to his professional development and that advance the interest and standing of the Town. These activities may include, without limitation, participation in the California League of Cities, ICMA, or other similar national, statewide, regional or professional organizations, provided that such activities to not in any way interfere with or adversely affect his employment as Town Manager of the performance of his duties as provided herein. Town shall budget and pay for the dues and subscriptions of Employee necessary for his participation in such organizations. Town shall reimburse Employee's reasonable and necessary travel, business and subsistence expenses as provided in its normal policies and procedures for reimbursement of expenses.

4. **Compensation and Benefits**. Employee shall receive for services to the Town the following compensation and benefits:

4.1 **Base Salary**. Employee shall receive a base salary of One Hundred Ninety Two Thousand Dollars (\$192,000) per year, payable in installments at the same time as other employees of the Town are paid.

4.2 **Standard Management Employee Benefits**. Except as otherwise provided in this Agreement, Employee shall receive all benefits ordinarily accorded to the Town's management personnel as presently set forth in Resolution 24-2015 and such other benefits as may be adopted by the Town during the term of this Agreement. The Town will provide Employee with a One Hundred Twenty Five Dollars (\$125) per month cell phone allowance to be used in conjunction with Town business.

4.3 **Vacation, Sick and Administrative Leave**. The Town will grant Employee five days of vacation leave and five days of sick leave at the commencement of employment. The Town will give credit to Employee for his prior years of public agency management, accordingly, during the first year of employment, Employee will earn 15 days of vacation. This accrual shall increase to 20 days per year at the beginning of the second year of employment and to 25 days per year at the beginning of the fifth year of employment and each year thereafter. Consistent with Council Resolution 24-2015, Employee's maximum accumulation of vacation leave is 40 workdays. Employee shall receive ten (10) days of administrative leave per year.

4.4 **Automobile Allowance.** Employee shall receive an automobile allowance of Four Hundred Dollars (\$400) per month to compensate Employee for the use of his personal vehicle on official Town business.

4.5 **Relocation Assistance.** The Town will reimburse Employee for expenses incurred in relocating to the Tiburon area, up to a maximum of Fifteen Thousand Dollars (\$15,000). Eligible expenses shall include the cost of rental housing to a maximum of three months, storage and movement of personal effects, house-hunting trips and related travel for Employee and Employee's spouse and any other expenses approved by the Budget Committee of the Town Council as necessary and appropriate. Employee shall submit receipts for all expenses for which reimbursement is claimed under this section. All expenses to be reimbursed under this section must be incurred and claimed within a reasonable date of the execution of this Agreement.

4.6 **Retirement.** The Town contracts with the Public Employees Retirement System of California (CalPERS) for a retirement program for its miscellaneous employees. As required by the California Public Employee Retirement Law (PERL), Employee will be enrolled as a CalPERS member and will be subject to the terms and benefits of that plan. As required by PERL, the Town shall provide Employee with the CalPERS 2% @ 62 retirement formula with the highest average 36 month calculation. The parties recognize and agree that the Town is required to comply with all requirements of law governing the CalPERS retirement program, including, but not limited to eligibility and reporting requirements. In implementing this Agreement and related practices, the Town will comply with the requirements of law, and those legal requirements prevail over any inconsistent prior practices or Agreement terms. The Town makes no representation regarding the specific parameters of the retirement program as administered by CalPERS. As required by PERL, Employee shall pay the employee's contribution, which is fifty percent (50%) of normal cost as determined by CalPERS.

4.7 **Cafeteria Medical Plan.** Employee shall receive the same medical benefit as other Town management employees.

4.8 **Internal Revenue Code Compliance.** All provisions of this Section 4 are subject to the provisions and limitations of the Internal Revenue Code and its related regulations as amended from time to time. No requirement of any provision of this Section 4 shall be effective if it would violate any provision of the Internal Revenue Code or its related regulations, and the inability of the Town to effectuate such requirements shall not constitute a breach of this Agreement.

5. **Performance Reviews.** Employee's first Employment performance review shall be completed on or about July 11, 2016 by the Town Council. Performance reviews will be conducted annually on or before the anniversary of Employee's initial hire each year and salary adjustments will be considered in conjunction with the performance evaluation. If the Employee's performance is satisfactory the Council may, in its sole discretion, elect to make a

one-time cash payment to Employee as an appropriate incentive to retain Employee.

6. **At-Will Employment.** Employee's employment is at-will. Employment at-will may be terminated with or without cause and with or without notice at any time by the Town or Employee. Nothing in the 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. The Town will not pay Employee any severance if the termination is for cause. For purposes of this Agreement, cause for termination shall include the following and similar misconduct: theft or attempted theft; material dishonesty; willful or persistent failure to carry out Employee's duties; gross negligence or misconduct; engaging in unlawful discrimination or harassment of employees or any third party while on Town premises or time; conviction or plea bargain of a felony; engaging in conduct tending to bring embarrassment or disrepute to the Town and unauthorized absences. During the proceedings which may be necessary for Town to confirm the cause for termination hereunder, the Town may place Employee on unpaid administrative leave. If the Town terminates Employee's employment for cause, the Town's obligations under Agreement to provide compensation and benefits to Employee shall terminate on the Employee's last day of employment. Employee shall continue to be bound by the provisions of Section 8 of this Agreement.

(b) **Termination Without Cause.** If the Town terminates Employee's employment for any reason other than for cause, the Town shall provide Employee severance payment of six (6) months. There is no express or implied promise made to Employee for any form of continued employment as the Town Manager.

7.2 **Termination by Employee.** Without limiting the at-will status of Employee's employment, Employee may resign from employment upon sixty (60) days prior written notice to Town. If Employee so resigns, the Town's obligations under this Agreement to provide compensation and benefits to Employee shall terminate on Employee's last day of employment. If Employee resigns his employment with the Town, he shall not be entitled to any severance pay nor continued compensation and benefits, except as otherwise required under state or federal law. Upon resignation, Employee shall continue to be bound by the provisions of Section 8 of this Agreement. Should Employee retire, Employee shall provide the Town sixty (60) days written notice.

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 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. **Disability.** The Town shall have the option to terminate this Agreement without further payment of compensation and benefits under Paragraph 4, or severance payment under Paragraph 7(b) if Employee is deceased, permanently disabled, or incapacitated, for a period of two (2) successive weeks beyond any accrued sick leave, or for twenty (20) working days over a thirty (30) working day period.

10. **Conflict of Interest Prohibition.** Employee shall not engage in any activity which is, or may become, a conflict of interest, prohibited contract, or which may create an incompatibility of office as defined under California law. Employee shall complete annual disclosure forms required by law. It is further understood and agreed that because of the duties of the Town Manager within and on behalf of the Town and its citizenry, Employee shall not, during the term of this Agreement, individual, as a partner, joint venture, officer, or shareholder, invest or participate in any business venture conducting business within the corporate limits of the Town, except for stock ownership in any company whose capital stock is publicly held and regularly traded without prior written consent of the Town Council. For and during the term of this Agreement, Employee further agrees, except for a personal residence used as his personal residence, not to invest in any other real estate or property improvements within the corporate limits of the Town, without the prior, written consent of the Town Council.

11. **Abuse of Office.** If the Town provides (i) paid leave salary to the Employee pending an investigation, (ii) funds for the legal criminal defense of the Employee, or (iii) severance pay to the Employee in accordance with section 7.1(b) hereof, then in the event the Employee is convicted of a crime involving an abuse of his office or position as defined in California Government Code Section 53243.4, all such sums paid by the Town to the Employee or for the Employee's benefit shall be fully reimbursed to the Town by the Employee.

12. **Miscellaneous.**

12.1 **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 first class, registered or certified mail, postage prepaid, and return receipt requested.

12.2 **Governing Law.** The State of California law shall govern this Agreement.

12.3 **Severability.** If any term of the Agreement is found by a court to be unenforceable, the remaining terms of this Agreement shall be deemed valid and enforceable to

the fullest extent possible.

12.4 **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with respect to Employee's employment and supersedes any and all prior oral or written negotiations, correspondence, understandings and agreements between the parties.

12.5 **Modifications.** All modifications to this Agreement shall be in writing and signed by both parties.

12.6 **Assignment.** This Agreement is not assignable by either Town or Employee.

12.7 **Claims Against Employee.** In the event of any claim or action against Employee arising from his actions within the course and scope of his employment with the Town, Town shall indemnify, defend and hold Employee harmless from said claim to the full extent provided by Title 1, Div. 3.6 of the California Government code or any successor legislation.

12.8 **Representation.** Employee acknowledges that although this Agreement has resulted from negotiations between the parties, the Town has retained its legal counsel to prepare the Agreement. The parties agree that the normal rule of construction against the drafting party shall not apply. Employee further acknowledges that the Town has advised him to seek the advice of his own attorney and accountant in connection with the signing of this Agreement. Employee further acknowledges that if he has not consulted with his own attorney or accountant, Employee has done so at his own choosing.

IN WITNESS WHEREOF, this Agreement shall be effective as of the day and year upon execution of both parties as indicated below.

Dated: 1-4-16

THE TOWN OF TIBURON:

By: Frank X. Doyle
Frank X. Doyle, Mayor

APPROVED AS TO FORM:

Benjamin L. Stock
Benjamin L. Stock
Town Attorney

EMPLOYEE:

Dated: 12-22-15

By: Gregory Chanis
Gregory Chanis, Employee