

RESOLUTION NO. 2003-71

A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
AUTHORIZING THE MAYOR AND CITY CLERK
TO EXECUTE, ON BEHALF OF THE CITY, AN
EMPLOYMENT AGREEMENT AND RELATED
AMENDMENT FOR THE CITY MANAGER AND
CITY ATTORNEY POSITIONS

WHEREAS, the California Government Code and Escondido Municipal Code provide for and authorize the City Council to retain the services of a City Manager and City Attorney; and

WHEREAS, the current City Manager, Rolf Gunnarson, has announced his retirement from service effective July 3, 2003; and

WHEREAS, the City Council has conducted interviews and considered candidates, and wishes to implement the statutory authorization and has determined to appoint a new City Manager, effective June 23, 2003; and

WHEREAS, the City Council wishes to implement an Employment Agreement with the City Manager, and amend the current Employment Agreement with the City Attorney to provide for the ongoing management and legal representation of the City;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Escondido, California, as follows:

1. That the above recitations are true.
2. That the Mayor and City Clerk are authorized to execute, on behalf of the City, an Employment Agreement with Clay Phillips providing for his employment as the

Escondido City Manager, effective June 23, 2003. A copy of the Employment Agreement is attached as Exhibit A and is incorporated by this reference.

3. That the Mayor and City Clerk are authorized to execute, on behalf of the City, an Amendment to the Employment Agreement with the City Attorney, effective June 23, 2003, modifying the salary provisions and severance benefit, a copy of which is attached as Exhibit B and is incorporated by this reference.

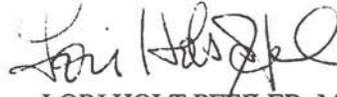
PASSED, ADOPTED AND APPROVED by the City Council of the City of Escondido at a regular meeting thereof this 7th day of May, 2003 by the following vote to wit:

AYES : Councilmembers: D'AGOSTA, GALLO, NEWMAN, PFEILER, WALDRON

NOES : Councilmembers: NONE

ABSENT : Councilmembers: NONE

APPROVED:



LORI HOLT PFEILER, Mayor of the
City of Escondido, California

ATTEST:



MARSHA WHALEN, City Clerk of the
City of Escondido, California

Escondido City Clerk
Original Document

A-2622



CITY OF ESCONDIDO
AT WILL EMPLOYMENT AGREEMENT

This Agreement is made this 7th day of May, 2003.

Between: CITY OF ESCONDIDO
a Municipal Corporation
201 N. Broadway
Escondido, California 92025
("Employer")

And: Clay Phillips
2119 Vintage Place
Escondido, CA 92027
("Employee")

Whereas:

- A. Employer and Employee wish to enter into an Agreement providing for Employee to serve as the City Manager for the City of Escondido, as provided by the California Government Code and Chapter, 2 Article 3 of the Escondido Municipal Code; and
- B. It is the desire of the Employer to provide certain benefits and establish certain conditions of employment of the Employee for the purpose of securing and retaining the services of the Employee; and
- C. Employee desires to be employed as the City Manager for the City of Escondido.

NOW THEREFORE, it is mutually agreed by and between Employer and Employee as follows:

1. Duties. Employer employs Employee as the City Manager of the City of Escondido to perform the function and duties specified by law and in the Escondido Municipal Code, and to perform such other legally permissible and proper duties and functions as the Council shall from time to time assign. It is acknowledged by Employer and Employee that, as provided in Escondido Municipal Code Sections 2-49 and 2-50, the City Manager takes direction from the Council as a whole, provided that the Council may expressly authorize a Council subcommittee, the Mayor, or other council member to give direction on particular matters and such subcommittee, the Mayor, or council member may give direction to the City Manager within the scope of such Council authorization. Employer and Employee understand that no such direction from the Council shall be contrary to or in violation of law or applicable City Manager Code of Professional Responsibility. With respect to such authorizations the Council acts only through duly enacted resolutions, ordinances or, minute action.

2. Term.

- a. This Agreement shall be effective as of June 23, 2003, and shall continue for an indefinite period unless terminated as provided below pursuant to Paragraph 4.
- b. Employee understands that he is an "at will" employee under controlling law and is "at will" serving at the pleasure of the Council pursuant to Chapter 2, Article 3 of the Escondido Municipal Code. Nothing in this Agreement is intended to, nor shall it, prevent, limit or otherwise interfere with the right of the Employer, in the Employer's discretion, to terminate the services of Employee at any time in accordance with said laws and the provisions of this Agreement.
- c. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from his position with Employer, provided he shall first provide forty-five (45) days advance written notice of such resignation to Employer.
- d. Employer reserves the right, but not the obligation, to reopen this Agreement for the purpose of making any revisions Employer deems appropriate on each five year anniversary following the effective date of this Agreement.

3. Salary.

- a. Employer shall pay Employee an annual base salary of \$161,000. This base salary, shall be the base salary under this Agreement, for the purpose of computing Employee's monthly salary and none of such salary shall be paid in advance. Such monthly salary shall be payable at the same time as other employees of the Employer are paid.
- b. Employer may from time to time adjust the monthly salary and/or other benefits of Employee in such amounts and to such extent as the City Council may determine is appropriate, taking into account the City's budgetary needs, its financial resources, and such other factors as the Council may determine to be relevant at the time, provided that no decrease shall be made that is any different than is made to unclassified City employees generally.
- c. In addition to such salary, Employee shall receive the benefits identified in Exhibit A attached and incorporated by this reference. The 7% deferred compensation contribution shall be payable by the City directly to the City's 401K plan for the benefit of the Employee.

4. Termination. This Agreement may be terminated at any time as follows:

a. By Employer.

Employer may terminate this Agreement at any time, either with or without cause, by majority vote of the total authorized membership of the City Council. Termination shall be under one or more of the following subparagraphs:

1. For Cause:

- A. Misconduct. In the event that Employer determines there is good cause to terminate this Agreement due to (1) malfeasance, (2) gross negligence, (3)

fraud, or, (4) conviction of a crime other than a traffic offense or infraction on the part of Employee, Employer shall give Employee notice of termination, which at the option of the Council shall either be effective immediately, or the notice shall specify the intent to terminate and the date the termination will become final. In either case the notice shall be accompanied by a statement of the basis for the termination. In the case of a termination that is effective immediately, Employee shall have the right to present any rebuttal information to the Council, in writing, no later than 10 calendar days after the termination. In the event that the Council gives notice of an intent to terminate at a future date, Employee shall have the right to present any rebuttal information to the Council, in writing, prior to the effective date of the termination. In either case, Employee shall have the right to be represented and to have a hearing before the Council, in open or closed session as authorized by the Brown Act, within 14 days following termination. The Council shall review any rebuttal information provide by Employee and any other relevant material and shall then determine whether to uphold the termination or to rescind it. The Council's decision shall be final. Any actions of the Employer taken under this paragraph shall occur only after the majority vote of the total authorized membership of the City Council.

B. Material Uncorrected Failure to Perform: In the event that Employer determines there is good cause to terminate this Agreement that does not rise to the level of seriousness addressed above in subparagraph 4(a)(1)(A), such as (1) a repeated failure to meet stated, reasonable performance objectives that are within Employee's control, or, (2) uncorrected, material failure to present a positive image to the Council, staff, public or media on behalf of Employer. Employer may terminate the Agreement for cause provided Employer (1) first gives notice to Employee in writing of the alleged failure in performance and a reasonable opportunity to cure the problem, and (2) gives Employee a reasonable opportunity to present evidence to the Council in rebuttal to any alleged failure in performance or of any extenuating circumstances showing that the failure was beyond the control of Employee and (3) Employer will not terminate for cause under this subparagraph 4(a)(1)(B) unless it is determined in writing that the evidence in support of the grounds for termination is substantial taking into account all of the information available to the Council, including any evidence presented by Employee. Any actions of Employer taken under this paragraph shall occur only after the majority vote of the total authorized membership of the City Council.

C. No Severance Benefits. In the event that this Agreement is terminated by Employer pursuant to this subparagraph 4(a) for cause, Employee shall not be entitled to any severance benefits under this Agreement or under any other provision of law or Employer policy or procedure, except for previously accrued vacation and management leave to which Employee is otherwise entitled.

2. For Convenience:

Employer may terminate this Agreement at any time without cause and for its convenience as Employer shall in its sole discretion determine appropriate provided (1) Employee shall be given thirty days notice and an opportunity to be heard, in open or closed session or in writing, as the Council shall

determine consistent with the Brown Act, with respect to the proposed termination before it becomes effective, (2) the Council shall vote by not less than a majority of the total authorized membership of the Council to exercise its termination rights under this subparagraph. Employee shall be offered the severance benefits specified below in Paragraph 5 which he may accept or reject as provided in Paragraph 5.

b. By Employee

Employee may terminate this Agreement at any time, with or without cause, by (1) giving Employer 45 days advance written notice of his intent to terminate, or may terminate sooner by mutual agreement with Employer. In the event that Employee exercises his right to terminate he shall not be entitled to the severance benefits set forth below under Paragraph 5 or to any other similar termination benefits under law or Employer rules and regulations, provided however, that Employee shall be entitled to payment for any vacation, management leave and sick leave earned and unused at the time his notice of termination is effective.

5. Severance. In the event that Employee's employment is terminated by Employer for convenience pursuant to Section 4(2) above, Employee shall be offered and shall be entitled to the severance benefits stated in this Section 5, as follows:

- a. Computation; Items Included. Employer shall offer to Employee, and subject to Employee's exercise of his right to accept or decline severance benefits as set out below, shall pay Employee his salary in effect at the time of termination, including health and dental benefits but excluding other benefits provided by this Agreement, for a period of one year from the date of termination. Such severance benefits shall be paid in addition to payment of any accrued vacation, sick leave, or management leave otherwise payable to Employee.
- b. Separately Negotiated; Waiver. The parties expressly acknowledge and agree that these severance pay provisions have been independently negotiated. Acceptance by Employee of the severance pay benefits provided by this Section 5 shall operate as a full and complete waiver and release of any and all rights, claims, and/or causes of action which Employee may have, or have had, at any time, in the past or in the future, arising out of Employee's employment by Employer, including but not limited to claims for wrongful termination. If Employee wishes to retain any such rights, Employee must decline to accept the severance benefits provided by this paragraph. Employee shall notify Employer of his election to accept or reject these severance benefits within seven days of notice of termination, or within such other time period as the parties may agree to in writing.

Acceptance of the severance benefits under this paragraph will operate as a general release on the part of Employee as to all claims, known or unknown, and Employee specifically waives the provisions of California Civil Code Section 1542 which provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE

MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

- c. The severance provisions of this contract shall not apply in the event Employee is terminated for cause.
6. Additional Benefits. Employer agrees to budget for and pay the travel and subsistence expenses of the Employee's spouse for attendance at any three conferences or educational programs of the League of Cities and the International City Management Association, or similar organizations or subsidiaries thereof. In lieu of the additional benefits provided by this Section, Employee may choose in the alternative to obtain, for his use at home, no more than \$1,000 of computer equipment through the City which shall be compatible with the equipment used by Employee in the course of his employment. This additional benefit shall not be included in the computation of severance benefits provided by Section 5.
7. Management Leave. In addition to Employee's entitlement to holiday and vacation leave on the same basis as is available to other management employees generally in accordance with Section 3 of this Agreement. Employee shall be entitled to fifteen (15) days of management leave annually. Management leave granted pursuant to this provision shall be in lieu of any other management leave available to members of the City management team generally.
8. Conversion of Unused Leave Time to Salary. In addition to any other provision of the City Code authorizing conversion of unused leave time to salary, Employee shall be entitled, as he may determine at his sole discretion, to convert up to ten (10) days of unused leave time (whether vacation, management or reserve time leave) each year during the term of this Agreement to salary. Employee shall exercise his right to convert leave time to salary by giving notice in writing to the Human Resources Director stating the number of days of leave time, if any, which shall be converted to salary. Such notice shall be given between July 1st and October 1st for each year for the term of this Agreement. Employer shall pay the Employee the salary equivalent of the leave time, if any, so concerted within thirty (30) days of delivery of such notice. Any such converted leave time shall not be included in computation of severance benefits pursuant to Section 5.
9. Evaluation. The City Council may review and evaluate the performance of the City Manager on a regular basis. Normally, a review and evaluation may occur on an annual schedule and pursuant to an evaluation form developed by the City Council. Copies of any written evaluation will be provided to the City Manager and he shall be given an opportunity to discuss his evaluation with the City Council.
10. Dispute Resolution.
 - a. Informal Meet and Confer. The parties agree to meet and confer informally as the first step towards resolution of any dispute between them arising out of or related to this Agreement. The Council may be represented by a representative of its choosing, and Employee may be represented as well.
 - b. Council Resolution. If the parties are unable to resolve the matter informally through meet and confer, the matter shall be submitted to the Council for final resolution at a meeting to be held by the Council within 30 days of submittal, and the Council shall

promptly make a final decision, unless Employee and the Council mutually agree to a longer period.

- c. Litigation. Neither party shall commence any litigation, arbitration, or other formal dispute resolution process until the above referenced informal meet and confer session and final Council determination have occurred.

11. General Provisions.

- a. Governing Law. This Agreement shall be interpreted and enforced in conformance with California law.
- b. Entire Agreement. This Agreement together with the exhibits represents the entire Agreement between the parties and supersedes any prior agreements, written or oral, and any representations, written or oral, not expressly included.
- c. Venue. The venue for any litigation to interpret or enforce this Agreement shall be the San Diego Superior Court, Vista Division.
- d. Integration Clause. If any part, provision, paragraph or subparagraph of this Agreement shall be held to be void or unenforceable by a final judgment of a court of competent jurisdiction, then unless that provision is found in such proceeding to be material to this Agreement, said void or unenforceable provision shall be severed from this Agreement and the balance of this Agreement shall remain in full force and effect. In the event that the void or unenforceable provision is found to be material to this Agreement then the entire Agreement shall be voided.
- e. Attorneys Fees. The prevailing party in any litigation to interpret or enforce this Agreement shall be entitled to recover his or its attorneys fees in addition to costs.
- f. Independent Review: Interpretation. Employer and Employee affirm in signing this Agreement that they have each had an opportunity to review and consider this Agreement, and to have it reviewed and to receive advice from independent advisors of their own choosing, including attorneys, and that each knowingly and voluntarily enters into this Agreement. Employer and Employee further affirm that this Agreement was the mutual product of their negotiations, including give and take, and that neither party shall be considered the drafter of this Agreement such that the Agreement is interpreted against that party.

IN WITNESS WHEREOF, the City of Escondido has caused this Agreement to be signed and executed on behalf by its Mayor and duly attested by its City Clerk as authorized by Resolution 2003 - __, and Employee has signed and executed this Agreement as set forth below.

Date: 5-19-03

CITY OF ESCONDIDO

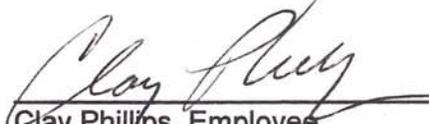

Lori Holt Pfeiler, Mayor

Date: 5-19-03

Attest:


Marsha Whalen, City Clerk

Date: 5/14/03



Clay Phillips, Employee

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY
JEFFREY R. EPP, City Attorney

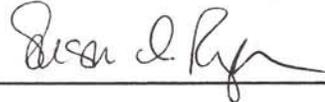
By: 

EXHIBIT A

Auto Allowance	\$450.00 per month
Contribution to City's Deferred Compensation Plan	7% of base salary
Life Insurance	Two times salary
Long Term Disability	Same as management
Worker's Compensation	Per State law
Public Employees Retirement System	Employee's contribution
Health and Dental Coverage	Same as management
Annual Physical Examination	\$300
Vacation	Same as management
Sick Leave	Same as management