

**CITY OF DANA POINT  
AGENDA REPORT**

Reviewed By:	
DH	<u>  X  </u>
CM	<u>  X  </u>
CA	<u>  X  </u>

**DATE: JULY 16, 2013**

**TO: CITY COUNCIL**

**FROM: STEVEN WEINBERG, MAYOR**

**SUBJECT: TENTH AMENDMENT TO EMPLOYMENT AGREEMENT FOR CITY  
MANAGER DOUGLAS C. CHOTKEVYS**

**RECOMMENDED ACTION:**

That the City Council approve the Tenth Amendment to the Employment Agreement for the City Manager, and authorize the Mayor to execute the Agreement on behalf of the City.

**DISCUSSION:**

The City Council recently provided a very favorable evaluation of Mr. Chotkevys' service. I am making this contract amendment recommendation based on recognizing not only Mr. Chotkevys' exceptional job performance and tireless service to the community, but also taking into consideration compensation comparisons to other city managers, and the State's recently enacted pension reform measures.

The last amendment to Mr. Chotkevys' contract was effective January 1, 2009, and did not include a salary increase. In response to the downturn in the economy, neither Mr. Chotkevys nor the rest of our City workforce has been afforded salary increases since 2008, or over five years. In spite of this and because of the City's unrivaled record of accomplishment during the past eight (8) years, I feel that it is important that the City recognize the quality of our staff by providing salary and benefits that are competitive with the Orange County cities that we compete with for employees.

**City Manager Compensation Survey**

The current average salary of comparable city managers in Orange County was determined to be \$220,278 (see Supporting Document 1). Mr. Chotkevys' current salary is \$203,483, which is 8.25% below the average salary of city managers included in the City's annual comparative compensation study provided to the City Council.

The current average total compensation, which includes retirement and other benefits, for those same Orange County city managers is \$258,006. Mr. Chotkevys' current total compensation is \$249,791, or 3.29% below the average total compensation.

### Public Employees' Pension Reform Act

The State recently enacted the California Public Employees' Pension Reform Act of 2013 ("PEPRA"). Beginning January 1, 2018, PEPRA establishes that equal sharing of normal pension costs between a city and their employees shall be the standard. Specifically, it shall be the standard that employees pay at least 50% of the cost of their pension, but not to exceed 8% of pay, and that employers not pay any of the required employee contribution (which for Dana Point is 7% of salary). To be clear, this is a legislatively enacted "standard", and is not mandated.

The City can elect to enact equal sharing of normal costs for existing non-represented employees, or something less than equal sharing if it so chooses. For existing represented employees, the City is required to complete the meet and confer process in accordance with the State's Meyers-Milias-Brown Act if it were to consider having represented employees share in paying for their pensions. New employees that are also new to PERS must pay one-half of the normal cost of their pension, not to exceed 8% of pay. The City of Dana Point has, since inception, paid the employee contribution, which is 7% of salary.

In recognition of the forthcoming standard of employees sharing in the cost of their pensions, public agencies have commenced negotiating with their employees a phase-in of sharing pension costs. They are doing this so that the employees do not incur the entire pick up of the employee's share of the retirement costs all at one time. My recommendation herein incorporates the concept of phasing in the City Manager's sharing with the City his share of pension costs.

### Proposed Tenth Amendment

The proposed tenth amendment to Mr. Chotkevys' contract is attached for your consideration as Action Document A. The proposal provides for a 6.9% salary increase effective July 1, 2013, with a portion essentially returned to the City via Mr. Chotkevys paying 4% of his pension costs the first year; the net increase therefore would be 2.9%. Currently his salary is set at \$203,483, and this proposed salary increase would make Mr. Chotkevys' salary \$217,523, which is about \$2,800 below the average of the Orange County city managers included in the previously mentioned survey. His current total compensation including benefits is \$249,791, and this proposed amendment would bring it to \$257,096, which is about \$1,000 below the current average.

The proposal also provides for a subsequent 5.9% salary increase effective July 1, 2014, with Mr. Chotkevys paying an additional 3% of his pension costs; this net increase would also be 2.9%. The effect of the additional 3% contribution toward his pension is that Mr. Chotkevys would be paying the full 7% employee share. The cumulative effect of this increase would put Mr. Chotkevys' salary at \$230,357, and his total compensation at \$264,302. Compared to the total compensation of the other Orange County city managers included in the survey, his total compensation would be roughly 2.4 percent above the average. Note that the average will likely change as other cities negotiate changes to their city manager's contracts over the coming two years.

The City’s FY14 adopted budget includes the equivalent of a 2% bonus for all employees, which was based on the current negotiated Memorandum of Understanding the City has with its represented employees. In order to create a neutral effect on the FY14 budget as a result of this proposed amendment, it is proposed that the City Manager not be afforded the opportunity to receive such a bonus. No bonus is incorporated in the FY15 budget, nor is one in this proposal.

In addition, to achieve a neutral effect on the FY15 budget, it is proposed that the \$12,000 afforded in his contract for the City Manager’s participation in professional organizations be reduced by \$2,000.

**FISCAL IMPACT:**

After incorporating each of the recommended amendments mentioned above, there is sufficient budget in the City’s General Fund to cover the proposed action should the City Council choose to adopt the contract amendment. Any necessary budgetary adjustments will be made by staff subsequent to City Council action.

**ACTION DOCUMENT:**

**Page No.**

A. [City Manager’s 10<sup>th</sup> Amendment to Contract](#) .....4

**SUPPORTING DOCUMENT:**

**Page No.**

1. [City Manager Total Compensation Survey](#) .....9

**ACTION DOCUMENT A****TENTH AMENDMENT TO THE EMPLOYMENT CONTRACT BETWEEN THE CITY OF DANA POINT  
AND DOUGLAS C. CHOTKEVYS**

THIS AMENDED EMPLOYMENT CONTRACT, (the "Agreement") is made so as to be effective as of the 1st day of July, 2013, by and between the CITY OF DANA POINT, a municipal corporation, ("CITY"), and DOUGLAS C. CHOTKEVYS, ("CHOTKEVYS"), collectively the "Parties."

**WITNESSETH**

WHEREAS, CITY is a municipal corporation, the operation of which involves securing the services of a qualified professional City Manager; and,

WHEREAS, CHOTKEVYS currently is CITY's City Manager, and has provided services which have consistently met or exceeded the expectations of the City Council ; and,

WHEREAS, it is the desire of the City Council of CITY to restate various provisions of the CITY's existing agreement with CHOTKEVYS and amend other provisions so as to reflect their desire to continue to retain him as City Manager in light of his positive performance, and to provide certain benefits, establish certain conditions of employment, set certain work conditions, and provide an equitable means of terminating CHOTKEVYS' employment.

NOW, THEREFORE, CITY AND CHOTKEVYS, in consideration of the mutual covenants and agreements herein contained, agree as follows:

1. POSITION AND DUTIES. The City Council of CITY hereby agrees to appoint CHOTKEVYS as City Manager of the City of Dana Point to perform, on a full-time basis, the duties and functions specified in CITY's Municipal Code, ordinances, resolutions, policies and City Manager Job Description, and as required by the Government Code of the State of California, and to perform other legally permissible duties and perform such functions as the City Council shall from time to time assign. The City Council shall have the authority to determine the specific duties and functions that CHOTKEVYS shall perform in accordance with the CITY's Council-Manager ordinance, and shall from time to time evaluate CHOTKEVYS performance, including the means and manner that he uses to perform his duties. CHOTKEVYS agrees to devote all of his business time, skill, attention, and best efforts to the discharge of the duties and functions assigned to him by the City Council during his employment.

This Agreement expressly permits CHOTKEVYS' participation in activities such as occasional teaching and serving on charitable boards for which he may receive compensation so long as the activities occur during CHOTKEVYS off-duty hours, provided that he notifies the City Council in advance of such outside activities, and provided that the activities do not present a conflict of interest as to the City of Dana Point.

2. TERM, TERMINATION AND AT WILL STATUS. This Agreement shall commence on July 1, 2013, and shall remain in effect until terminated by CITY or CHOTKEVYS in accordance with the provisions of this Agreement. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Council to terminate the services of CHOTKEVYS at any time, subject only to the provisions set forth in this Section.

CHOTKEVYS holds his employment at the pleasure of the City Council and is an at will employee. CHOTKEVYS is exempt from CITY's competitive service. The City Council of CITY may terminate CHOTKEVYS' employment at any time, for any reason that is not in violation of the public policy of the State of California, and may give CHOTKEVYS notice of termination at any time. CHOTKEVYS

agrees that no representative of CITY has made or can make any promises, statements, or representations which state or imply that CHOTKEVYS is hired or retained under any terms other than those stated herein.

CHOTKEVYS may voluntarily terminate his employment at any time, for any reason, except he shall give the City Council of CITY thirty (30) days written notice prior to the effective date of the voluntary termination of his employment.

CHOTKEVYS shall not be terminated for a period of six months following any change in the make-up of the composition of the City Council, unless the termination is for misconduct as defined in Section 4 of this Agreement.

If the City Council of CITY terminates CHOTKEVYS' employment or CHOTKEVYS terminates his employment, CHOTKEVYS shall only be entitled to receive: (i) the compensation he is currently due for the work he has already performed as set forth in Section 3 hereof, (ii) a severance payment if he is eligible as described in Section 4 hereof, and (iii) the cash equivalent of any unused Comprehensive Annual Leave as described in Section 3 hereof.

In the event that the City Council at any time reduces CHOTKEVYS' compensation (including either base salary or benefits or both) in an amount 10% greater than is reduced for all CITY department heads, than CHOTKEVYS may, within ten (10) business days, at his option, notify the City Council that he has been deemed to be terminated by the CITY and shall be eligible for benefits in accordance with Section 4 hereof.

3. COMPENSATION. CITY agrees to provide the following compensation to CHOTKEVYS:

a. Base Salary: Effective July 1, 2013, CITY shall pay CHOTKEVYS a base salary of Two Hundred Seventeen Thousand Five Hundred Twenty Three Dollars (\$217,523) with CHOTKEVYS paying four percent (4%) of the new base salary towards the cost of the employee's share of pension costs with applicable payroll taxes withheld. Effective July 1, 2014, CITY shall pay CHOTKEVYS a base salary of Two Hundred Thirty Thousand Three Hundred Fifty Seven Dollars (\$230,357) with CHOTKEVYS paying an additional three percent (3%), for a total of seven percent (7%), of the new base salary towards the cost of the employee's share of pension costs with applicable payroll taxes withheld. Said compensation shall be paid biweekly.

b. Cafeteria Plan: City shall pay One Thousand Three Hundred Seventy-Five Dollars (\$1,375.00) per month to CHOTKEVYS for health, disability, and life insurance as offered in the City's Cafeteria Plan. CHOTKEVYS will be entitled to the same annual increase to the Cafeteria Plan as provided to the other non-represented employees of the CITY.

c. Public Employees Retirement System: The CITY shall enroll CHOTKEVYS in the Public Employees' Retirement System (PERS) 2% at fifty five plan (2 @ 55) and pay on behalf of CHOTKEVYS both the "employer's share" and the "employee's share" of the PERS costs subject to the change in the employee contribution as outlined in Section 3a. Effective July 1, 2014, CHOTKEVYS will pay the employee share of this retirement plan. CHOTKEVYS shall automatically be entitled to at a minimum the same PERS benefits, whether new or amended, as any CITY department head should the Council ever adjust such employee's benefits to exceed those noted above.

Calculations for retirement contributions as reported to CALPERS shall include all monthly compensation that is normally reportable to the IRS and the employer paid member PERS contribution. These amounts shall be reported to CALPERS to the extent allowable by CALPERS. In the event the CITY voluntarily joins or is required by law to join the Federal Social Security System, CHOTKEVYS shall be treated in the same matter as all of CITY's employees.

d. Deferred Compensation: CITY shall make payments on behalf of CHOTKEVYS to the International City Management Association Retirement Corporation (ICMARC), the CITY'S deferred

compensation provider, as deferred compensation. Payments shall be in an amount equal to seven percent (7%) of CHOTKEVYS' annual base salary, paid on a biweekly basis to an account in CHOTKEVYS' name.

e. Comprehensive Annual Leave Time: CITY shall provide CHOTKEVYS with annual leave in the amount of thirty (30) days per year as Comprehensive Annual Leave (CAL). CAL credits shall be accrued at the rate of 9.23 hours per biweekly pay period. Unused CAL credits may be converted to cash pursuant to the provisions of CITY's Personnel Policy related to "Comprehensive Annual Leave."

f. Executive Leave: Effective at the commencement of this agreement, CITY shall provide CHOTKEVYS with annual leave in the amount of eighty (80) hours per calendar year as Executive Leave. Executive Leave must be used by the end of the calendar year and shall not accrue from year to year.

g. Reimbursement of Expenses: CITY shall reimburse CHOTKEVYS for reasonable and ordinary business expenses incurred by CHOTKEVYS in the performance of this Agreement, provided such expenses have been authorized by the City Council in the City's budget.

h. Annual Physical: It is in the CITY's best interest that CHOTKEVYS maintain good health and physical ability to fulfill his duties as City Manager. Toward this end, CITY shall pay the full cost of one complete annual physical examination for CHOTKEVYS, conducted by the physician of his choice. The cost to the CITY shall be offset by any payment made by CHOTKEVYS' health insurance carrier toward the cost of the examination.

i. Vehicle: CHOTKEVYS' duties, as City Manager and Director of Emergency Services for the City of Dana Point, will require that he shall have the exclusive and unrestricted use of an automobile at all times. As a result of these duties, the CITY will provide CHOTKEVYS with an automobile. Because CHOTKEVYS is essentially on 24-hour call and the CITY is within the San Onofre Nuclear Power Plant Emergency Planning Zone, the automobile will be available for both business and personal use (and thus available for use by CHOTKEVYS' properly licensed and insured spouse under CHOTKEVYS' supervision). CITY agrees to maintain and pay for liability, property damage and comprehensive insurance and to pay for the purchase, operation, maintenance, repair or replacement of a CITY provided automobile. CHOTKEVYS agrees to keep the automobile in excellent shape and will make sure that all service is performed per the factory maintenance schedule. As a result of CHOTKEVYS' aforementioned role as Director of Emergency Services and the potential need to relocate a core group of the CITY's emergency management team to an alternate Emergency Operations Center (EOC) or to the site of an emergency situation/response, the CITY provided vehicle will be a four (4) wheel drive vehicle that is supplied and equipped with the appropriate emergency related equipment and be able to accommodate at least eight adult passengers plus cargo.

j. Professional Organizations: CITY shall pay up to Ten Thousand Dollars (\$10,000) annually for the cost of membership in relevant professional organizations and/or the cost of relevant training, career development or educational programs. CHOTKEVYS shall annually provide to the City Council an accounting of the expenditures as set forth in this Section.

k. Equipment: CITY will provide all equipment necessary for completion of CHOTKEVYS' duties including, but not limited to, a cellular telephone, a computer, and such other communication devices deemed necessary for the conduct of CITY's business.

l. Increases Consistent with Department Heads: CHOTKEVYS shall automatically be entitled to receive, at a minimum, the same benefits, and level of benefits, whether new or amended, as any CITY department head. However, the City Council maintains the right, through specific contract provisions, to give higher or additional benefits to CHOTKEVYS as it may deem appropriate.

4. SEVERANCE. CHOTKEVYS and the CITY agree that, except as otherwise provided herein, CITY may terminate the employment of CHOTKEVYS at any time for any reason. In the event the CITY terminates CHOTKEVYS employment, CHOTKEVYS shall be compensated as follows:

a. Payments Following Termination.

CITY shall pay CHOTKEVYS:

1. Six (6) months of compensation as set forth in Section 3, to be paid as a single lump sum; and
2. the cost of six (6) months of "COBRA" medical benefits; to be paid as a single lump sum.

b. Payment After Six (6) Months of Unemployment Following Termination.

CITY is currently a member of the California Joint Powers Insurance Authority (CJPIA) and makes available to CHOTKEVYS an additional six (6) months of compensation and COBRA benefits under the terms of the CJPIA's Special Liability Protection Program. The terms of the CJPIA Special Liability Protection Program may vary from time to time. The terms of CJPIA's Program in effect at the time of termination of CHOTKEVYS' employment will govern. If, at the time of termination of CHOTKEVYS' employment, CITY is no longer a member of the CJPIA, this Section shall not apply.

Notwithstanding the foregoing, if the City Council of CITY terminates CHOTKEVYS' employment due to CHOTKEVYS' misconduct as defined in this Section, CITY shall not make any severance payment to CHOTKEVYS. Misconduct means CHOTKEVYS' violation of any criminal law committed at any time, (except minor traffic offenses) gross negligence or malfeasance.

If CHOTKEVYS terminates his employment, the CITY shall not make any severance payment to CHOTKEVYS.

5. PERFORMANCE EVALUATION. The City Council shall review and evaluate the performance of CHOTKEVYS every six (6) months in March and September of each year. It shall be CHOTKEVYS' responsibility to timely agendize this evaluation, subject to the Mayor's approval. The Mayor shall provide CHOTKEVYS with a summary of the findings of the City Council and provide CHOTKEVYS with adequate opportunity to discuss the evaluation with the City Council. CHOTKEVYS shall be required to submit a list of annual goals and objectives to the City Council prior to each agendized evaluation session. At each evaluation session, CHOTKEVYS shall also submit a summary of the progress in attaining said goals and objectives. Notwithstanding the foregoing schedule, CITY reserves the right for the Mayor or City Council to agendize an evaluation of CHOTKEVYS at any time.

6. INDEMNIFICATION. CITY shall defend, hold harmless, and indemnify CHOTKEVYS against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of this Agreement, or any alleged act or omission occurring in the course and scope of performance of CHOTKEVYS' duties in accordance with the provisions of the California Government Code Section 825.

7. BONDING. CITY shall bear the full cost of any fidelity or other bonds required of CHOTKEVYS under any law or ordinance.

8. ENTIRE AGREEMENT. This Agreement is the complete and final expression of the Parties' agreement related to the matters covered herein. This Agreement contains the entire agreement and understanding between the Parties and contains all of the terms and conditions of the Parties' agreement. This Agreement supersedes all prior or contemporaneous oral or written negotiations, discussions, representations, or agreements between the Parties, if any. No amendment, alteration, extension, or modification of this Agreement shall be binding unless in writing and duly executed by both CITY and CHOTKEVYS.

9. GOVERNING LAW. This Agreement will be governed by and construed in accordance with the laws of the State of California.

10. NO WAIVER. No Party's failure to enforce any provision(s) of this Agreement will be construed in any way as a waiver of such provision(s), nor prevent that Party from enforcing each and every other provision of this Agreement.

11. PARTIAL INVALIDITY. The invalidity or unenforceability of any provision(s) of this Agreement will not affect the validity or enforceability of the other provision(s) hereof.

12. HEADINGS. Section headings used in this Agreement are for convenience only and shall not be considered part of the terms of this Agreement.

DATED: \_\_\_\_\_ 2013.

\_\_\_\_\_  
STEVEN WEINBERG, MAYOR

\_\_\_\_\_  
DOUGLAS C. CHOTKEVYS

ATTEST:

\_\_\_\_\_  
KATHY WARD, CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
A. PATRICK MUNOZ, CITY ATTORNEY

SUPPORTING DOCUMENT 1

City Manager Total Compensation Survey															
June 2013															
(All Amounts in Annual Dollars)															
City	Tenure	Base Salary	Deferred Comp	Retirement Formula	Retirement	Medical	Dental	Vision	STD/LTD	Life	Other	Total	Car/Auto Allowance	Population	City
Laguna Hills ©	22	236,629	17,500	2.0% @ 60	16,564	18,035	1,966	417	4,729	10,271	20,381	326,492	Car	30,344	Laguna Hills
Tustin (H)	1.5	248,000	16,500	2.0% @ 55	7,440	18,168	I/M	I/M	0	569	2,100	292,777	Car	75,540	Tustin
Irvine (H)	8	254,821	0	2.7% @ 55	0	20,857	I/M	I/M	912	1,230	14,291	292,111	Car	223,729	Irvine
Cypress (H)	5	221,472	20,500	2.0% @ 55	15,503	21,800	I/M	I/M	1,153	I/STD	0	280,428	6,000	48,863	Cypress
San Clemente ©	< 1	223,136	17,500	2.0% @ 55	13,834	18,208	I/M	I/M	1,687	1,245	41	275,651	5,400	68,763	San Clemente
Brea (FS)	13	214,776	22,500	2.0% @ 55	10,201	22,272	I/M	I/M	I/M	1,305	0	271,054	Car	40,176	Brea
Lake Forest ©	17	240,656	0	2.0% @ 55	7,861	12,973	1,624	286	3,128	1,383	1,200	269,111	7,160	79,000	Lake Forest
Huntington Beach (FS)	5	247,208	0	2.5% @ 55	3,090	11,238	1,466	222	1,236	25	0	264,485	7,200	202,500	Huntington Beach
Fountain Valley (FS)	retired	235,200	0	2.5% @ 55	0	27,057	I/M	0	1,317	I/M	0	263,574	Car	57,353	Fountain Valley
San Juan Capistrano ©	2	226,807	10,000	2.7 @ 55	0	21,176	1,632	396	1,661	1,171	0	262,843	Car	34,593	San Juan Capistrano
Yorba Linda ©	vacant	220,000	0	2.0% @ 55	15,400	12,240	2,000	VD	1,232	484	5,099	256,455	6,000	68,000	Yorba Linda
Laguna Niguel ©	< 1	220,000	15,000	2.0% @ 60	0	17,292	I/M	I/M	1,562	608	0	254,462	7,500	63,691	Laguna Niguel
Orange (FS)	8	213,072	12,000	2.7% @ 55	0	18,420	I/M	I/M	1,427	450	6,392	251,761	No	140,849	Orange
New port Beach (FS)	4	231,750	0	2.5% @ 55	0	17,568	I/M	I/M	0	105	1,500	250,923	6,000	84,500	New port Beach
Mission Viejo ©	9	214,000	7,500	2.7% @ 55	5,350	15,168	I/M	I/M	1,152	192	7,276	250,638	6,600	98,943	Mission Viejo
<b>Dana Point ©</b>	<b>11</b>	<b>203,483</b>	<b>14,244</b>	<b>2.0% @ 55</b>	<b>14,244</b>	<b>16,500</b>	<b>I/M</b>	<b>I/M</b>	<b>I/M</b>	<b>I/M</b>	<b>1,320</b>	<b>249,791</b>	<b>Car</b>	<b>36,765</b>	<b>Dana Point</b>
Laguna Beach (FS)	2	210,000	4,200	2.5% @ 55	12,600	17,451	1,053	I/M	192	84	396	245,976	6,000	25,000	Laguna Beach
La Habra (H)	6	202,666	0	2.0% @ 55	8,107	23,218	1,625	0	1,160	1,883	0	238,659	Car	61,771	La Habra
Seal Beach (H)	2	190,000	8,000	2.0% @ 55	9,500	16,909	I/M	I/M	976	138	1,200	226,723	6,000	26,010	Seal Beach
Placentia (H)	5	194,448	8,750	2.0% @ 55	0	17,340	980	179	1,300	2,652	0	225,649	6,000	50,323	Placentia
Westminster (H)	< 1	211,000	0	2.5% @ 55	0	11,844	I/M	I/M	882	0	0	223,726	3,000	94,294	Westminster
Rancho Santa Margarita ©	1	187,000	0	2.0% @ 60	0	15,852	I/M	I/M	I/M	0	0	202,852	No	49,764	Rancho Santa Margarita
		<b>220,278</b>	<b>Average</b>									<b>258,006</b>	<b>Average Total Comp</b>		
		<b>220,000</b>	<b>Median</b>									<b>255,459</b>	<b>Median Total Comp</b>		
<p>© = Contract City w/o Police or Fire; (FS) = Full Service City w/ Police and Fire; (H) = Hybrid w/ Police &amp; w/o Fire                      I/M=included in medical cost; I/D=included in dental cost; I/L=included in Life cost; I/STD=included in STD cost                      Total Compensation excludes Car Allowance (difficult to impute value of City provided car due to discretionary nature).                      Medical, Dental &amp; Vision is City contribution towards family coverage.                      "Retirement" is employer discretionary pick-up of employee contribution; excludes mandatory employer contribution.                      "Other" includes items such as cell phone and data allowance, supplemental PARS retirement, RHS account</p>															