

Council/Agency Meeting Held: _____	_____ City Clerk's Signature
Deferred/Continued to: _____	
<input type="checkbox"/> Approved <input type="checkbox"/> Conditionally Approved <input type="checkbox"/> Denied	
Council Meeting Date: August 15, 2005	Department ID Number: AS-05-020

**CITY OF HUNTINGTON BEACH
REQUEST FOR CITY COUNCIL ACTION**

SUBMITTED TO: HONORABLE MAYOR CITY COUNCIL MEMBERS

SUBMITTED BY: PENELOPE *Penelope Culbreth Graft* GRAFT, CITY ADMINISTRATOR

PREPARED BY: CHARLES THOMAS, ACTING DIRECTOR OF ADMINISTRATIVE SERVICES

SUBJECT: APPROVE EMPLOYMENT AGREEMENT BETWEEN THE CITY OF HUNTINGTON BEACH AND PAUL EMERY AS A DEPUTY CITY ADMINISTRATOR

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 CITY OF
 HUNTINGTON BEACH
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Statement of Issue, Funding Source, Recommended Action, Alternative Action(s), Analysis, Environmental Status, Attachment(s)

Statement of Issue:

A recruitment has been completed for the two positions of Deputy City Administrator. As a result, the City Administrator is recommending the appointment of Paul Emery to one of the positions as required by the City Charter.

Funding Source:

The position of Deputy City Administrator is a budgeted position in the fiscal year 2004/2005. No additional funding is required.

Recommended Action:

1. Approve the appointment of Paul Emery to the position of Deputy City Administrator, and
2. Approve and authorize execution by the City Administrator the Employment Agreement between the City of Huntington Beach and Paul Emery for the position of Deputy City Administrator.

Alternative Action(s):

Do not approve the appointment of Paul Emery for the position of Deputy City Administrator.

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REQUEST FOR ACTION

MEETING DATE: August 15, 2005

DEPARTMENT ID NUMBER: AS-05-020

Analysis:

On March 21, 2005, the Huntington Beach City Council approved changes to the citywide Table of Organization. The changes included the deletion of the Assistant City Administrator and Administrative Services Director positions and the addition of two Deputy City Administrators. One Deputy City Administrator would be assigned for internal City services while the other would work with development related City Departments.

A Request for Proposal (RFP) process was initiated to identify and hire a consultant to conduct a recruitment for two Deputy City Administrators. The following consulting firms submitted proposals: Avery and Associates, The Davis Company, The Mills Group, Alliance Resources, Robert Consulting Group and Bob Murray and Associates. The proposals were reviewed and evaluated and a contract for professional services was awarded to Avery and Associates to conduct the recruitment. Avery and Associates is well known and respected in the field of executive recruitment in the public sector.

The recruitment for was positive and resulted in 86 applications for the two positions. The applications were screened and six candidates were invited to an interview panel focusing on development services. The panel consisted of Fire Chief Duane Olson, City Attorney Jennifer McGrath, Building and Safety Director Ross Cranmer, City of Huntington Beach Community Services Commission Chairperson Dominick Tomaino, community member Steve Bone, and Huntington Beach Chamber of Commerce President Joyce Riddell.

City Administrator Dr. Penelope Culbreth-Graft conducted follow-up interviews with the finalists as recommended by the interview panel. As a result, she recommends City Council approval to appoint Paul Emery to the position of Deputy City Administrator for development services effective August 16, 2005. Mr. Emery has approximately 17 years of public employment experience, including as the Deputy Director of Public Works for the City of Huntington Beach for four years. He has been serving as the Acting Director for the Department since January of 2005. His resume is attached.

Environmental Status:

N/A

Attachment(s):

City Clerk's Page Number	No.	Description
3	1.	Employment Agreement between the City of Huntington Beach and Paul Emery for the position of Deputy City Administrator
13	2.	Resume of Paul Emery

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ATTACHMENT #1

**EMPLOYMENT AGREEMENT BETWEEN
THE CITY OF HUNTINGTON BEACH AND
PAUL EMERY**

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**EMPLOYMENT AGREEMENT BETWEEN
THE CITY OF HUNTINGTON BEACH AND
PAUL EMERY**

THIS AGREEMENT is entered into between the City of Huntington Beach, a California municipal corporation, subsequently called "City," and Paul Emery, subsequently called "Emery."

WITNESSETH

The City Administrator has been empowered to appoint and remove Deputy City Administrators, with approval of the City Council; and

The City, through the City Administrator, desires to employ the services of Paul Emery as a Deputy City Administrator of the City of Huntington Beach; and

It is the desire of the City to provide certain benefits, establish certain conditions of employment, and to set working conditions of Emery; and

It is the desire of the City to:

- (1) Secure and retain the services of Emery and to provide inducement for him to remain in such employment;
- (2) To provide a means for terminating Emery's service at such time as he may be unable fully to discharge his duties due to disability or when City may otherwise desire to terminate his employ; and

Emery desires to accept employment as a Deputy City Administrator of the City;

NOW, THEREFORE, in consideration of the mutual covenants here contained, the parties agree as follows:

SECTION 1. DUTIES. City agrees to employ Emery as a Deputy City Administrator of the City to perform the functions and duties of that office as set forth in the Municipal Code of

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the City of Huntington Beach and the City Charter, and to perform other legally permissible duties and functions as the City Administrator shall from time to time assign. Emery shall devote his full attention and effort to the office and perform the mentioned duties and functions in a professional manner.

SECTION 2. STATUS AND TERM.

(a) Emery shall serve for an indefinite term at the pleasure of the City Administrator and shall be considered an at-will employee of the City. Emery's first day of work pursuant to this Agreement shall be August 16, 2005.

(b) Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Administrator to terminate the employment of Emery at any time, subject only to the provisions set forth in Section 6, paragraphs (a), (b) and (c) of this Agreement, and Section 401 of the Charter of the City of Huntington Beach.

(c) Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of Emery to resign at any time from his position with the City, subject only to the provisions set forth in Section 6, paragraph (d), of this Agreement.

(d) Emery agrees to remain in the exclusive employ of City for an indefinite period and shall neither accept other employment or become employed by any other employer without the prior written approval of the City Administrator until notice of resignation is given.

The term "employed" (and derivations of that term as used in the preceding paragraph) shall include employment by another legal entity or self employment, however, shall not be construed to include occasional teaching, writing, consulting, or military reserve service performed on Emery's time off, and with the advance approval of the City Administrator.

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SECTION 3. SALARY. City agrees to pay Emery for his services rendered pursuant to this Agreement at Range 637, Step E of the City's classification and compensation plan or resolutions or ordinances from time to time enacted that govern such compensation.

SECTION 4. OTHER BENEFITS. In addition to the foregoing benefits, Emery shall also receive all such other benefits that are generally applicable to nonassociated employees (department heads) hired after December 27, 1997, as set forth in Exhibit A, attached hereto.

SECTION 5. ADMINISTRATIVE LEAVE. City Administrator may place Emery on Administrative Leave with full pay and benefits at any time during the term of this Agreement.

SECTION 6. TERMINATION AND SEVERANCE PAY.

(a) Except as provided in subsection (b), in the event the City Administrator terminates the employment of Emery, and during such time that Emery is willing and able to perform his duties under this Agreement, then, the City shall pay to Emery a severance payment equal to salary payments which Emery would have been receiving over a twelve week period at Emery's current rate of pay in effect on the day prior to the date of termination. In addition, for the lesser of ninety (90) calendar days after the date of termination or the time Emery secures health and medical insurance through attainment of comparable employment, the City shall maintain and pay for health, medical, disability, the continuation of retirement benefits and life insurance in such amounts and on such terms as have been received by Emery and Emery's dependents at the time of such termination; however, no other or additional benefits shall accrue during this ninety (90) calendar-day period.

(b)(1) Notwithstanding subsection (a) above, the following reasons shall constitute grounds to terminate the employment of Emery without severance pay:

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(i) a willful breach of this agreement or the willful and repeated neglect by Emery to perform duties that he or she is required to perform;

(ii) conviction of any criminal act relating to employment with the City;

(iii) conviction of a felony.

(2) Prior to the time that the City Administrator terminates Emery without severance pay for any of the reasons set forth in Section (b)(1) above, and only in that case, the City Administrator shall provide Emery with written notice of proposed termination which contains the reason and factual basis for such action. Within ten days of such notice, Emery may request an opportunity to respond to the reasons and factual basis provided by the City Administrator. If such a request to respond is made, the City Administrator shall conduct a meeting, which may be informal in nature, at which Emery may respond to the notice of proposed termination. At such meeting, Emery may be represented by an attorney of his choice and present evidence or information relevant to the reasons and factual basis set forth in the notice of proposed termination. Subsequently, the decision of the City Administrator as to whether reasons set forth in Section (b)(1) exist or do not exist shall be final as between the parties.

(c) In the event the City at any time during the term of this Agreement reduces the salary of Emery from its then current year level, except as part of an across-the-board reduction for all department heads of City, or in the event City refuses, following written notice, to extend to Emery any nonsalary benefit customarily available to all department heads, or in the event Emery resigns following a suggestion, whether formal or informal, by the City Administrator that he or she resign, then, in those events, Emery may, at his option, be deemed to be "terminated" at

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05agree/Emery Deputy City Administrator

the date of such reduction or such refusal to extend or such suggestion of resignation within the meaning and context of the severance pay provision in paragraph (a) above; provided that such option to be deemed terminated must be exercised by written notice from Emery to the City Administrator within ten (10) working days of notification of such reduction, refusal to extend, or suggestion of resignation. In that event, the severance payment shall be calculated from the date Emery exercises the option to be deemed terminated.

(d) In the event Emery voluntarily resigns his position, Emery shall give City written notice at least thirty (30) days prior to the last workday, unless the City Administrator and Emery otherwise agree. Unless there is agreement to the contrary, if Emery fails to provide such notice to the City Administrator, any right to accrued benefits for sick pay shall terminate.

(e) It is understood that after notice of termination in any form, Emery and City will cooperate to provide for an orderly transition. Specific responsibilities during such transition may be specified in a written separation agreement.

SECTION 7. DISABILITY. If Emery is totally disabled or otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or ill health, he or she shall be eligible for Disability Leave upon exhausting all accrued sick leave and vacation leave, and duty injury leave if applicable. Disability Leave shall be unpaid and shall be approved by the City Administrator for a time period of up to three (3) months. The length of such time period of the Disability Leave shall be dependent upon the length of the disability as demonstrated by Emery. If Emery is unable to return to work at that time, City shall have the option to terminate the employment of Emery, subject to the requirements imposed on the City by Section 6, paragraph (a).

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SECTION 8. PERFORMANCE EVALUATION. The City Administrator shall review and evaluate in writing the performance of Emery at least once annually. That review and evaluation shall be in accordance with specific criteria developed in consultation with Emery and City Administrator. Those criteria may be added to or deleted from as the City Administrator may from time to time determine, in consultation with Emery.

SECTION 9. PROFESSIONAL DEVELOPMENT. City agrees to budget and pay for professional memberships normally accorded department heads. Emery shall also receive paid leave, plus registration, travel and reasonable expenses for short courses, conferences and seminars that are necessary for his personal development and, in the judgment of the City Administrator, for the good of the City, and subject to budget limitations and to established travel policies and procedures.

SECTION 10. FINANCIAL DISCLOSURE. Emery shall report to the City Administrator any ownership interest in real property within the County of Orange, excluding personal residence. Also, Emery shall report to the City Administrator any financial interest greater than Ten Thousand Dollars (\$10,000) in value in a firm doing work for the City or from which the City intends to make a purchase. Such reporting shall be made in writing by Emery to the City Administrator within ten (10) calendar days of the execution of this agreement and further within ten (10) calendar days of acquisition of that interest in real property. Additionally, Emery shall report in writing to the City Administrator any financial interest greater than Ten Thousand Dollars (\$10,000) in value in a firm doing work for the City or from whom the City intends to make a purchase immediately upon notice of the intended work or purchase.

SECTION 11. INDEMNIFICATION. City shall defend and indemnify Emery against any action, including but not limited to any: tort, professional liability claim or demand, or other

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noncriminal legal, equitable or administrative action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Emery's duties as an employee or officer of the City, other than an action brought by the City against Emery, or an action filed against the City by Emery. In addition, the City shall pay the reasonable expenses for the travel, lodging, meals, and lost worktime of Emery should Emery be subject to such, should an action be pending after termination of Emery. City shall be responsible for and have authority to compromise and settle any action, with prior consultation with Emery, and pay the amount of any settlement or judgment rendered on that action. Emery shall cooperate fully with the City in the settlement, compromise, preparation of the defense, or trial of any such action.

SECTION 12. GENERAL PROVISIONS.

- (a) The text here shall constitute the entire Agreement between the parties.
- (b) This Agreement shall become effective commencing August 16, 2005.
- (c) If any provision, or any portion of any provision, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or any portion of it, shall be deemed severable, shall not be affected and shall remain in full force and effect.
- (d) No amendment of this Agreement shall be effective unless in writing and signed by both parties here.

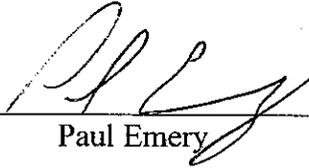
IN WITNESS WHEREOF, the City of Huntington Beach has caused this Agreement to be signed and executed on its behalf by its City Administrator, and Emery has signed and

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executed this Agreement, both in duplicate, on August _____, 2005.

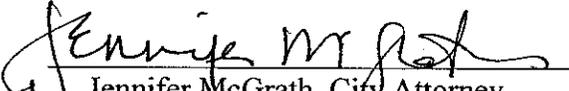
THE CITY OF HUNTINGTON BEACH:

By: _____
Penelope Culbreth-Graft
City Administrator



Paul Emery

APPROVED AS TO FORM:



Jennifer McGrath, City Attorney

8/15/05

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05agree/Emery Deputy City Administrator

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ATTACHMENT #2

Paul Emery

Paul Emery

Employment History

2005- Present

City of Huntington Beach

Acting Director of Public Works

Serving as Acting Director of Public Works since January 2005, directing the activities of the four operating divisions of public works. Provide supervision to over 230 full time personnel in the delivery of infrastructure projects and services. Represent the City of Huntington Beach Public Works Department to outside community organizations including the Chamber of Commerce, Downtown Business Association and various neighborhood groups. Serve as a member of the city Executive Team in the development and coordination of city policies and programs.

2001-2005

City Of Huntington Beach

Deputy Director of Public Works

Direct/coordinate the work of Maintenance, Engineering, Transportation and Utilities Divisions in the delivery of public works services. Provide supervision over 90 full time personnel and performance review for over 230 full time professional, technical and field personnel. Oversee the development, implementation and ongoing review of a \$60 million annual operating budget and a \$31 million Capital Improvement Program. Coordinate the development of the Department work programs measuring business unit performance in relation to overall City goals and objectives.

1996 - 2001

City of Santa Ana

Maintenance Services Manager

Management of the City of Santa Ana Public Works Agency Maintenance Division. Oversight off of the delivery of maintenance services to the City including street maintenance, striping, signs, sweeping, street trees and graffiti removal. Leadership in the development of division performance objectives, process improvements and innovative product delivery. Supervision of a staff of sixty-five including selection, promotion, training, employee relations and the response to grievances and other personnel board matters. Member of the City management team in negotiations with the six hundred member Service Employees International Union (SEIU) in the development of the multi-year memorandum of understanding (MOU). Lead the development of the deferred capital program including the analysis of the valuation and the identification of the resources necessary to upgrade the infrastructure inventory.

1993 - 1996

City of Santa Ana

Project Manager - Maintenance

Management of maintenance projects including contractual administration of street tree, street painting, graffiti removal and weed abatement projects. Preparation, implementation and oversight of the Division's \$10 million operating budget. Responsible for all Division liability claim administration including investigation, response to interrogatories, depositions and testifying in court. Division representative to the Agency Management Information Systems (MIS) committee providing oversight in the purchase and implementation of information systems including the City's Geographic Information System (GIS).

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1990 – 1993

City of Santa Ana

Project Manager – Transportation Planning

Management of capital projects from conceptual planning through project construction/ completion, including the selection, retention and administration of professional services in construction management, engineering and architectural services. Duties included the preparation and oversight of the City's Capital Improvement Program, coordinating the development of the multi-year CIP with the input of multiple agencies. Project Manager for the City of Santa Ana \$78 million Police Administration and Holding facility project. Grant application submittals and oversight for the utilization of intergovernmental resources.

1988 – 1990

City of Santa Ana

Management Analyst

Responsible for developing Public Works Agency annual budget involving over twenty activities budgets, three enterprise funds, and multiple capital funding sources. Departmental financial system development including monthly reports on activity expenditures, revenue forecasting, and capital project expenditures. Administrative duties including departmental newsletter and liability claim tracking.

Education

1986 - 1989 California State University, Fullerton
Masters, Public Administration

1981 – 1983 University of California, Davis
Bachelor of Arts, Political Science
Outstanding Graduating Senior – awarded for academic and athletic achievements.

1979 – 1981 Fullerton Community College
Associate of Arts, Political Science
Graduate with Scholastic Honors
Stephen Joyner Memorial Award – awarded for leadership and citizenship.

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