

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: 2/22/2005	Department ID Number: AD 05-02

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

SUBMITTED TO: HONORABLE MAYOR CITY COUNCIL MEMBERS

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

PREPARED BY: PENELOPE CULBRETH-GRAFT, CITY ADMINISTRATOR

SUBJECT: AMENDMENT OF EMPLOYMENT AGREEMENT WITH ROBERT F. BEARDSLEY

RECEIVED
 CITY CLERK
 CITY OF
 HUNTINGTON BEACH, CA
 2005 FEB 10 P 12:13

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

Statement of Issue: Should the City Council approve an amendment to Robert F. Beardsley's employment contract?

Funding Source: Not Applicable.

Recommended Action: Approve an amendment to the June 29, 1998 employment contract between the City and Robert F. Beardsley.

Alternative Action(s): Do not approve the contract amendment between the City and Robert F. Beardsley and direct the City Administrator accordingly.

Analysis: In June 1998, Robert F. Beardsley was hired as the City's Director of Public Works, with terms of employment established by a contract approved by the City Council. He has served in that capacity continuously since June 29, 1998.

With Mr. Beardsley's interim appointment as the Acting Assistant City Administrator on January 10, 2005, he has temporarily vacated his duties as the City's Director of Public Works. To maintain the terms of his employment and eventual return to his former position, an amended agreement is necessary.

Environmental Status: Not applicable.

Attachment(s):

City Clerk's Page Number	No.	Description
2	1.	Amendment to Employment Agreement Between the City of Huntington Beach and Robert F. Beardsley

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ATTACHMENT #1

AMENDMENT TO EMPLOYMENT AGREEMENT
BETWEEN THE CITY OF HUNTINGTON BEACH
AND ROBERT F. BEARDSLEY

THIS AMENDMENT is made and entered into between the City of Huntington Beach, a California municipal corporation, hereinafter referred to as "City," and Robert F. Beardsley, hereinafter referred to as "Beardsley."

WHEREAS, Beardsley is currently employed by City as the Director of Public Works, and it is the desire of City to retain the services of Beardsley as Acting Assistant City Administrator until City appoints a permanent Assistant City Administrator; and

It is the desire of City and Beardsley to amend that certain agreement dated June 29, 1998 entitled "Employment Agreement Between the City of Huntington Beach and Robert F. Beardsley," hereinafter referred to as the "Original Agreement," to provide for the appointment of Beardsley as the Acting Assistant City Administrator; and

It is the desire of City to: (1) provide inducement for Beardsley to become the Acting Assistant City Administrator and remain in City's employment; (2) make possible full work productivity by providing Beardsley with assurances regarding his employment; and (3) provide an equitable means for Beardsley to return to his current position upon City's selection of a permanent Assistant City Administrator.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and conditions herein contained, the parties hereto agree as follows:

1. APPOINTMENT AS ACTING ASSISTANT CITY ADMINISTRATOR

Effective January 10, 2005, City hereby appoints Beardsley as the Acting Assistant City Administrator of the City of Huntington Beach to perform the functions and duties of the position as specified by the City Administrator. Beardsley is an appointive City Officer

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and possesses the powers and is subject to the limitations of the Charter and the Municipal Code, including HBMC Chapter 2.76 relating to exclusion from City's personnel system.

2. **TERM**

This Amendment shall remain in effect until a permanent Assistant City Administrator is selected by the City Administrator and approved by the City Council, or until terminated by either party as set forth in Section 3 herein.

3. **TERMINATION**

A. This Amendment will automatically terminate upon City's appointment of a permanent Assistant City Administrator, or as otherwise provided herein.

B. Either party may terminate this Amendment after providing the other party with a thirty-day (30) notice of intention to terminate this Agreement. Such notice can be provided at any time.

C. Upon any termination hereof, Beardsley shall be returned to his previous position with City as Director of Public Works under the terms and conditions contained in the Original Agreement, a copy of which is attached hereto as Exhibit "A" and incorporated by this reference as though fully set forth herein.

4. **COMPENSATION**

During the term of this Amendment, City agrees to pay Beardsley a base salary of Step E of Pay Grade 658, payable in installments at the same time as other employees of City are paid. Beardsley shall receive the same percentage salary adjustment, if any, conferred upon the City's Non-Associated Employees. Except as specifically modified herein, all other terms and conditions of the Original Agreement related to compensation shall remain unchanged, and in full force and effect.

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5. REAFFIRMATION

Except as specifically modified herein, all other terms and conditions of the Original Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, City has caused this Amendment to be signed and duly executed on its behalf by its Mayor and City Clerk, and Beardsley has signed and executed this Amendment on February 10, 2005.


ROBERT F. BEARDSLEY

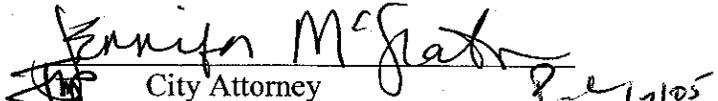
CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California

Mayor

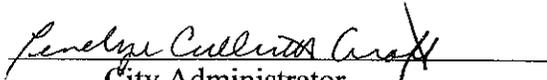
AND

City Clerk

APPROVED AS TO FORM:


Erinna McGrath
City Attorney
2/7/05

INITIATED, REVIEWED AND APPROVED:


Penelope Cullen
City Administrator

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EXHIBIT A

**EMPLOYMENT AGREEMENT BETWEEN
THE CITY OF HUNTINGTON BEACH AND
ROBERT F. BEARDSLEY**

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**EMPLOYMENT AGREEMENT BETWEEN
THE CITY OF HUNTINGTON BEACH AND
ROBERT F. BEARDSLEY**

THIS AGREEMENT is entered into this 29th day of June, 1998, between the City of Huntington Beach, a municipal corporation, subsequently called "City," and Robert F. Beardsley, subsequently called "Department Head."

WITNESSETH

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

The City, through the City Administrator, desires to employ the services of Robert F. Beardsley as a Department Head, Director of Public Works 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 that Department Head; and

It is the desire of the City to:

- (1) Secure and retain the services of the Department Head and to provide inducement for him to remain in such employment;
- (2) To provide a means for terminating Department Head'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

Department Head desires to accept employment as Public Works Director of the City,

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

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SECTION 1. DUTIES. City agrees to employ Robert F. Beardsley as Director of Public Works of the City to perform the functions and duties of that office as set forth in the Municipal Code of 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. The Department Head 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) The Department Head shall serve for an indefinite term at the pleasure of the City Administrator and shall be considered an at-will employee of the City.

(b) Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Administrator to terminate the employment of the Department Head 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 the Department Head 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) Department Head 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 Department Head's time off, and with the advance approval of the City Administrator.

SECTION 3. SALARY. City agrees to pay Department Head for his services rendered pursuant to this Agreement at Range 607, 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, Department Head 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 the Department Head 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 the Department Head, and during such time that Department Head is willing and able to perform his duties under this Agreement, then, the City shall pay to the Department Head a severance payment equal to salary payments which the Department Head would have been receiving over a twelve week period at the Department Head'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 the Department Head 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 the Department Head and the Department Head'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 the Department Head without severance pay:

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- (i) a willful breach of this agreement or the willful and repeated neglect by the Department Head 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 the Department Head 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 the Department Head with written notice of proposed termination which contains the reason and factual basis for such action. Within ten days of such notice, the Department Head 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 the Department Head may respond to the notice of proposed termination. At such meeting, the Department Head 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 Department Head 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 the Department Head any nonsalary benefit customarily available to all Department Heads, or in the event the Department Head resigns following a suggestion, whether formal or informal, by the City Administrator that he or she resign, then, in those events, the Department Head may, at his option, be deemed to be "terminated" at 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 the Department Head 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 the Department Head exercises the option to be deemed terminated.

(d) In the event Department Head voluntarily resigns his position, the Department Head shall give City written notice at least thirty (30) days prior to the last workday, unless the City Administrator and Department Head otherwise agree. Unless there is agreement to the contrary, if the Department Head 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, Department Head 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 Department Head 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 the Department Head. If the Department Head is unable to return to work at that time, City shall have the option to terminate the employment of the Department Head, subject to the requirements imposed on the City by Section 6, paragraph (a).

SECTION 8. PERFORMANCE EVALUATION. The City Administrator shall review and evaluate in writing the performance of the Department Head at least once annually. That review and evaluation shall be in accordance with specific criteria developed in consultation with the Department Head 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 the Department Head.

SECTION 9. PROFESSIONAL DEVELOPMENT. City agrees to budget and pay for professional memberships normally accorded Department Heads, including, but not limited to, State of California Professional Engineering Registration, American Public Works Association, American Society of Civil Engineers (Nation, Los Angeles Section and Orange County Branch), and City Engineers Association of Orange County.. The Department Head 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. The Department Head shall report to the City Administrator any ownership interest in real property within the County of Orange, excluding personal residence. Also, the Department Head 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 the Department Head 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, the Department Head 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 the Department Head against any action, including but not limited to any: tort, professional liability claim or demand, or other noncriminal legal, equitable or administrative action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of the Department Head's duties as an employee or officer of the City, other than an action brought by the City against the Department Head, or an action filed against the City by the Department Head. In addition, the City shall pay the reasonable expenses for the travel, lodging,

meals, and lost worktime of the Department Head should the Department Head be subject to such, should an action be pending after termination of the Department Head. City shall be responsible for and have authority to compromise and settle any action, with prior consultation with Department Head, and pay the amount of any settlement or judgment rendered on that action. Department Head 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 June 29, 1998.
- (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, the City of Huntington Beach has caused this Agreement to be signed and executed on its behalf by its City Administrator and duly attested by its City Clerk, and the Department Head has signed and executed this Agreement, both in duplicate, the day and year first above written.

THE CITY OF HUNTINGTON BEACH:

By: Ray Silver
Ray Silver
City Administrator

By: Robert F. Beardsley
Robert F. Beardsley

ATTEST:

By: Connie Brockway
City Clerk 6/2/98

APPROVED AS TO FORM:

By: Gilbert
City Attorney
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5-22-98
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