



CITY COUNCIL AGENDA REPORT

Meeting Date: June 17, 2021

From: Michael Roush, Legal Counsel

Subject: Resolution Confirming Pay Schedule for the City Manager Under the City Manager Employment Agreement and Authorizing the Mayor to Sign a Second Amendment to the Employment Agreement

Community Goal: Fiscally Prudent; Community Building

Purpose: Council's approval of this Resolution recognizes the past performance and contribution of City Manager Clay Holstine to the City by confirming the pay schedule and other benefits that the Council adopted for the City Manager in 2019 when Council approved a City Manager Employment Agreement. The proposed Second Amendment extends the term of the City Manager's employment through 2022 and extends benefits.

Recommendation: Adopt Resolution 2021-40 confirming the pay schedule for the City Manager for fiscal year 2021/2022, that results in a 3% increase in salary, with no change in the other benefits provided in the Employment Agreement, as that Agreement was amended in November 2020, and authorizing the Mayor to sign a Second Amendment to the Agreement to address two items discussed in this agenda report and in a form as approved by the City Attorney.

Background The City Council hired City Manager Clay Holstine in 1998 and has entered into a series of employment contracts with Mr. Holstine since that time. The 2019 Employment Agreement set forth a pay schedule for fiscal years 2019/2020, 2020/2021 and for fiscal year 2021/2022, through December 2021, Mr. Holstine's then anticipated retirement date. Mr. Holstine has agreed, however, to continue as City Manager through at least December 31, 2022. Accordingly, for fiscal year 2021/2022, the contract provides for a 3% increase in salary with no change in the benefits, as those benefits were amended in November 2020. The 2019 Employment Agreement is attached as is the Resolution that approved the First Amendment. (Inadvertently, the First Amendment did not get signed but it will be signed and available prior to the June 17 meeting.)

Discussion The salient terms of the contract for fiscal year 2021/2022 are as follows:

1. Bi-weekly salary of \$10,132.73, effective in July 2021
2. 80 hours of administrative leave in August 2021
3. Annual goal setting with Council and performance review by Council
4. Continued residence in Brisbane

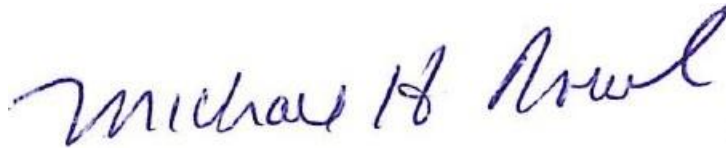
5. The \$200,000 loan has accumulated interest in the amount of \$51,500; loan and interest to be paid to the City within six months of separation. (This will be reflected in the First Amendment.)
6. Supplemental retirement benefits through the Public Agency Retirement Service (PARS) for which the City will pay required contributions (1% at 63 Formula)
7. Other benefits the same as Department Heads

Because Mr. Holstine will continue his employment through the end of 2022, the Employment Agreement will need to be amended to reflect that new end date and that he will be entitled to 80 hours of administrative leave in August 2022. Any salary or other benefit adjustment beginning July 2022 will be considered by the City Council at a later date.

Finally, because the City Manager is considered a "Local Agency Executive" under State law, this item must appear on the Council's regular agenda and the salary and other terms and conditions of the employment contract publicly announced at the meeting before Council takes action on the item. See Government Code, section 54953 (c)(3). It is anticipated the Mayor will make such announcement.

Fiscal Impact There are funds for the City Manager's salary in the City's annual budget.

Measure of Success Confirmation of the pay schedule for the City Manager.



Michael Roush, Legal Counsel

- Attachments**
1. Resolution 2021-40
 2. July 2019 City Manager Employment Agreement
 3. Resolution approving the First Amendment to the Employment Agreement
 4. Draft Second Amendment to Employment Agreement

**ATTACHMENT 1
RESOLUTION NO. 2021-40**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE CONFIRMING THE PAY SCHEDULE FOR THE CITY MANAGER FOR FISCAL YEAR 2021/2022 AS PROVIDED IN THE CITY MANAGER EMPLOYMENT AGREEMENT

Whereas, Clayton Holstine is the appointed City Manager of the City of Brisbane and serves under an Employment Agreement between the City and Mr. Holstine dated July 18, 2019, as amended in November 2020; and

Whereas, the Employment Agreement, as amended, sets forth the City Manager's salary and benefits and has an Appendix A that sets forth a pay rate and schedule for the City Manager in order to satisfy the requirements of Government Code, section 20636 concerning a publicly available pay schedule; and

Whereas, as provided in the Employment Agreement, as amended, and pay schedule, the Council may confirm a salary increase of 3% to the City Manager, effective July 2021; and

Whereas, because Mr. Holstine has agreed to extend the term of the Employment Agreement to December 31, 2022, the Employment Agreement needs to be further amended.

NOW, THEREFORE, the City Council of the City of Brisbane resolves as follows:

Section 1. The pay schedule for the City Manager for fiscal year 2021/2022 as provided in the City Manager Employment Agreement, as amended, is confirmed, thereby resulting in a 3% salary increase, effective July 2021.

Section 2. Appendix A to the Employment Agreement, as amended, sets forth the pay rate and pay schedule for the City Manager's salary, which Appendix satisfies the requirements of a publicly available pay schedule as set forth in Government Code, section 20636.

Section 3. The Second Amendment to the Employment Agreement, a draft of which is attached, is approved, subject to the approval in final form by the City Attorney, after which the Mayor is authorized to sign on behalf of the City.

Section 4. The City Clerk is directed to post the Employment Agreement, including Appendix A, and the amendments to the Employment Agreement, on the City's website under "City Manager Contract."

Section 5. This resolution shall take effect immediately upon its adoption.

Karen Cunningham, Mayor

I hereby certify that the foregoing Resolution No. 2021-XX was duly and regularly adopted at the meeting of the Brisbane City Council on June 17, 2021 by the following vote:

AYES:

NOES:

ABSENT:

Ingrid Padilla, City Clerk

ATTACHMENT 2

EMPLOYMENT AGREEMENT

THIS AGREEMENT is made July 18, 2019 between the CITY OF BRISBANE, a municipal corporation ("City"), and CLAYTON L. HOLSTIN ("Employee"):

RECITALS:

A. City desires to continue to employ Employee as City Manager and to establish certain terms and conditions of employment as hereinafter set forth, including the incorporation of amendments to the prior agreement; and

B. Employee desires to accept such employment as City Manager, pursuant to the terms and conditions of this Agreement,

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

1. Duties.

City employs Employee as City Manager of City, to perform the functions and duties of the City Manager specified in the Brisbane Municipal Code, and as provided by state or federal law, and to perform such other duties, functions, and responsibilities as may from time to time be assigned to Employee by the Brisbane City Council.

2. Hours of Work.

It is recognized that Employee must devote time outside the normal office hours to conduct business of the City. Accordingly, Employee will devote his full time and attention to the performance of Employee's responsibilities as City Manager and shall not engage in any other employment or the conduct of any other business during the term of this Agreement without prior approval of the Brisbane City Council.

3. Term.

a) The term of this agreement shall commence on July 18, 2019 and end of December 30, 2021 subject to the termination provisions in Section 12.

b) Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Brisbane City Council, acting for City, to terminate the services of Employee at any time subject only to the applicable provisions set forth in Sections 12(a) of this Agreement.

c) Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign at any time as City Manager, subject only to Section 12(b) of this Agreement.

4. Salary.

- a) Commencing on the first full pay period of July 2019, the bi-weekly base salary will be \$9551.20 (\$20,694.27/monthly; \$119.39/hour). See the attached Appendix A.
- b) The City Council will annually consider a cost-of-living adjustment of three per cent (3%) for the Employee to be effective with the first full pay period after July 1 in 2020 and in 2021 and, if approved, the salary schedule for 2020 and 2021 is set forth in the attached Appendix A.
- c) Notwithstanding subsection b), at the annual review for 2020 (to be conducted in the first six months of 2020), the City Council and Employee will discuss whether to conduct a salary survey for City Managers of selective cities in the San Francisco Bay Area and potential adjustments of the salary schedule in Appendix A. The City Council acknowledges that this provision was also in the previous Employment Agreement but that the Employee voluntarily waived it in 2016 and 2018.

5. Performance and Salary Reviews.

a) Employee and City Council shall meet annually in closed session to conduct a performance evaluation. Employee shall provide a written report to the Council prior to the session. The written report shall outline performance criteria and accomplishments, the status of the organization, organizational issues including but not limited to departmental performance, staffing, budgetary, planning and other issues the employee or the Council in consultation with the employee believe need to be addressed and/or discussed.

b) As part of providing policy direction and leadership to the City and the City Manager, the City Council will participate in an annual goal setting and priority identification workshop with the City Manager.

6. Vacation and Leave Time.

Employee shall be entitled to the same vacation, holidays, longevity and sick leave as provided to full-time department heads of the City of Brisbane, in accordance with the Memorandum of Understanding as negotiated from time to time between such department heads and the City. For the purposes of accounting, for sick leave and vacation these hours will be merged into one bank of time called personal leave. In addition, the Employee shall be entitled annually to 80 hours of administrative leave that shall be credited in August 2019, August 2020 and August

2021; provided, however, that Employee must use such administrative leave in the year in which it is credited or such leave is lost.

7. Insurance, Retirement Benefits and Management Incentive.

- a) Coverage. Employee shall be provided with the same dental, vision, employee assistance program, long term disability and life insurance coverage as well as the same management incentive plans provided to full time department heads of the City of Brisbane, in accordance with the Memorandum of Understanding as negotiated from time to time between such department heads and the City.
- b) Medical Benefits. City shall make the monthly contributions for Employee's health insurance coverage in an amount equal to the cost of the medical plans he selects under the CalPERS Health Benefits Program Coverage which coverage shall include Employee's eligible dependents if he so elects. If Employee selects the "No Plan" option, City shall contribute a sum equal to the "employee only" contribution from the least expensive plan offered by the CalPERS Health Benefits Program.
- c) Public Employees Retirement System. City shall make the employer contributions on behalf of Employee to the California Public Employees Retirement System, pursuant to the 2.7% at 55 formula retirement plan. In the event CalPERS offers an improved retirement program and such program is adopted by the City for department heads (the non-safety employee group), the same benefit shall be provided to the Employee.
- d) Supplemental Retirement Benefits. The City contracted with Public Agency Retirement Services (PARS) in 2005 for a benefit that provides 1% at 63 formula for the Employee, and the City will pay all required contributions to the PARS plan for Employee.
- e) Supplemental Stipend. In recognition of long-term service with the City of Brisbane, Employee upon retirement will receive from the City a monthly stipend. All of the following conditions shall be met for the Employee to be eligible to receive this benefit.
 - (i) The Employee has a total of 10 years or more municipal government experience with the City of Brisbane.
 - (ii) The Employee retires from service with the City of Brisbane.
 - (iii) The effective date of retirement is within one hundred twenty (120) days of separation from the City of Brisbane.

The City will provide for an amount equal to Kaiser Health Insurance for employee, employee plus 1, or employee plus 2 depending on the level of insurance the employee has in retirement. The amount will change to the Medicare supplement once the employee or dependent is eligible for Medicare. If one covered family member is not in Medicare while another is then the employee will receive the

amount in the combined plan. The benefit will continue through the life of the employee. If the employee changes health care carriers the benefit will cease except in the case of PERS health care plans, an employee may change carriers as long as it the health care plan is still within the PERS umbrella. Furthermore, should the Employee waive his participation in the supplemental stipend program, the waiver shall be irrevocable.

8. Place of Residence, City Loans.

a) Employee will maintain his permanent place of residence within the City of Brisbane.

b) The City has provided a housing loan to the Employee since 2008. The loan consists of two parts. First was a loan for \$300,000 which was paid in full in 2016. The second part is a 20% equity share in the Employee's personal residence in Brisbane. The equity share value was \$200,000 at the time of the loan. The Employee has guaranteed repayment of no less than the \$200,000 regardless of the value of the property, which payment is secured by the Employee's 457 Plan retirement funds (held in trust by the City).

c) The employee may pay part or all of the equity share loan balance at any time without penalty. If the equity share loan is to be paid in full at the time of a sale of the property, then the sales price will determine the calculation for the 20% to be paid to the City (For example, if the sales price were \$1,000,000, then the loan amount to be paid in full would be \$200,000). If the equity share loan is to be paid prior to sale of the property, then the parties will mutually select an appraiser and the appraised value will be used to determine the calculation for the 20% to be paid to the City. In all events, the Employee will pay the equity share loan in full within 6 months of Employee's retirement date or resignation, provided, however, if the City terminates the Employee, the Employee will have one year from the termination date to pay the equity share loan in full.

d) Loan documents shall be maintained in the City Clerk's office.

9. Dues and Subscriptions.

Subject to prior budgetary approval by City, City will pay for the professional dues and subscriptions of Employee necessary for full participation in national, regional, state, and local organizations necessary and desirable for continued professional participation, growth, and advancement, and for the good of the City. This includes membership in the International City and County Managers Associations.

10. Professional Development.

a) Subject to prior budgetary approval by City, City will pay the

travel and subsistence expenses of Employee for professional and official travel, meetings and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official and other functions for City.

b) Subject to prior budgetary approval by City, City will pay for the travel and subsistence expenses of Employee for short courses, institutes and seminars that are necessary for his professional development and for the good of the City, consistent with the City's adopted policies related to travel and per diem expenses.

11. Suspension.

After consultation with Employee, City may suspend Employee with full pay and benefits at any time during the term of this Agreement. Such suspension shall not exceed 90 days.

12. Termination and Severance Pay.

a) If the Employee is terminated by the City, the City shall provide a minimum severance payment equal to one year's salary at the then current rate of pay. This severance shall be paid in a lump sum unless otherwise agreed to by the City and the Employee.

The Employee shall also be compensated for all accrued personal leave time, all paid holidays, longevity leave and administrative leave.

For a minimum period of one year following termination, the City shall pay the cost to continue the following benefits:

- i. Health, Dental and Vision Insurance for the Employee.
- ii. Employee Assistance Program.
- iii. Life Insurance.
- iv. Long-term disability.
- v. Out placement services should the Employee desire them in an amount not to exceed \$15,000.

If the Employee is terminated because of a conviction of a felony, then the City is not obligated to pay severance or benefit costs under this section.

b) The Employee may voluntarily resign his position at any time providing that he shall provide to the City at a minimum 30 days' notice. The Employee will endeavor to provide as much additional notice as he may deem appropriate. Upon the effective date of resignation, the Employee shall be

compensated for all accrued personal leave time, all paid holidays and administrative leave.

13. Disability.

If Employee is permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or health for a period of three (3) consecutive months, or sixty (60) working days over a ninety (90) working day period, City shall have the option to terminate this Agreement, subject to the City's compliance with the Family and Medical Leave Act and Americans With Disabilities Act. Termination pursuant to this Section would not subject City to payment of severance benefits as specified under Section 12 above. However, Employee shall be compensated for any accrued leave time and other accrued benefits on the same basis as any other department head of the City pursuant to the applicable Memorandum of Understanding or the adopted Personnel Rules of the City.

14. Other Terms and Conditions of Employment.

The City Council, in consultation with Employee, shall establish such terms and conditions of employment as it may determine from time to time relating to the performance or compensation of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Brisbane Municipal Code, or any applicable state or federal law.

15. Notices.

Any notice required or permitted to be given pursuant to this Agreement shall be either personally delivered or given by deposit in the U.S. Mail, postage prepaid, addressed as follows:

EMPLOYER: Mayor and Members of the City Council City of Brisbane
50 Park Lane
Brisbane, CA 94005

EMPLOYEE: Clayton L. Holstine
273 Santa Clara Street
Brisbane, CA 94005

Notice shall be deemed given as of the date of personal delivery or three (3) business days after the date of deposit of such written notice in the United States Mail.

16. General Provisions.

a) The text herein shall constitute the entire Agreement between the

parties.

b) This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, personal representatives, successors and assigns of the parties.

c) This Agreement shall become effective on July 18, 2019.

d) If any provision, or any portion thereof contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

IN WITNESS WHEREOF, the City of Brisbane has caused this Agreement, to be signed and executed in its behalf by its Mayor, and duly attested by its City Clerk and Employee has signed and executed this Agreement, both in duplicate, the day and year first above written.

CITY OF BRISBANE



By: _____

Madison Davis
Mayor

ATTEST:



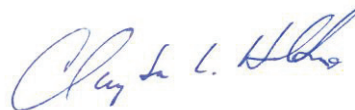
Ingrid Padilla, City Clerk

EMPLOYEE

Approved as to form:



Michael Roush
Legal Counsel



Clayton L. Holstine

CITY OF BRISBANE

Exhibit A

City Manager

Effective Date:
07/18/2019

3.0% Increase

Job Title

City Manager

Monthly
Bi-
weekly
Hourly

Salary

\$20,694.27
\$9,551.20
\$119.39

Effective Date:
07/13/2020

3.0% Increase

Job Title

City Manager

Monthly
Bi-
weekly
Hourly

Salary

\$21,315.09
\$9,837.74
\$122.97

Effective Date:
07/12/2021

3.0% Increase

Job Title

City Manager

Monthly
Bi-
weekly
Hourly

Salary

\$21,954.24
\$10,132.73
\$126.66

ATTACHMENT 3

RESOLUTION NO. 2020-63

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRISBANE APPROVING THE FIRST
AMENDMENT TO THE JULY 18, 2019 EMPLOYMENT AGREEMENT WITH THE CITY MANAGER**

WHEREAS, Clayton Holstine is the appointed City Manager of the City of Brisbane and currently serves under an Employment Agreement between the City and Mr. Holstine dated July 18, 2019; and

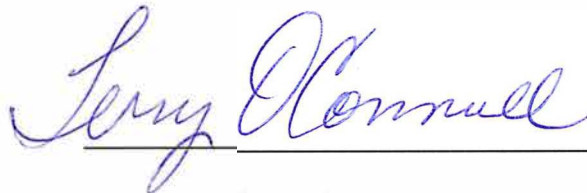
WHEREAS, the City and Mr. Holstine wish to amend the Employment Agreement concerning Mr. Holstine's estimated date of retirement from the City and to revise the terms of the housing assistance the City extended to Mr. Holstine for his residence in Brisbane, as set forth in the agenda report to the City Council from the City Attorney dated November 5, 2020.

NOW, THEREFORE, the City Council of the City of Brisbane resolves as follows:

Section 1. The First Amendment to the July 18, 2019 Employment Agreement between the City and Clayton Holstine is approved, subject to the City Attorney approving the final form of the amendment, and the Mayor is authorized to sign such Amendment, once in final form.

Section 2. The City Clerk is directed to post the First Amendment, once fully executed, on the City's website under "City Manager's Contract".

Section 3. This Resolution shall take effect immediately upon adoption.

A handwritten signature in blue ink, reading "Terry O'Connell", is written over a horizontal line.

Terry O'Connell, Mayor

I hereby certify that the foregoing Resolution was adopted as a regular agenda item at a regularly scheduled meeting of the Brisbane City Council on November 5, 2020 by the following vote:

AYES: Councilmember Conway, Cunningham, Davis, Lentz and Mayor O'Connell

NOES: None

ABSENT: None

ABSTAIN : None

A handwritten signature in blue ink, reading "Ingrid Padilla", is written over a horizontal line.

Ingrid Padilla, City Clerk

ATTACHMENT 4

SECOND AMENDMENT TO EMPLOYMENT AGREEMENT

This Second Amendment to Employment Agreement is made June 17, 2021 between the City of Brisbane, a Municipal Corporation ("City") and Clayton L. Holstine ("Employee").

RECITALS

- A. City and Employee entered into an Employment Agreement on July 18, 2019 by which City employed Employee as the City Manager of the City, setting forth the salary and other benefits provided to the Employee by the City.
- B. The Employment Agreement was first amended in November 2020 concerning the terms and conditions of an equity loan that the City has provided to Employee for his personal residence in Brisbane.
- C. Under the Employment Agreement, Employee is provided 80 hours of administrative leave each August but that provision applies only through August 2021.
- D. Under the Employment Agreement, the term is to end on December 30, 2021, but the City and Employee have agreed that it is in the interests of the City and the community for Employee to remain employed as City Manager through December 2021.
- E. The Employment Agreement needs to be amended to extend the term of employment until December 31, 2022 and to provide 80 hours of administrative leave in August 2022.

NOW, THEREFORE, in consideration of the following, the parties agree as follows:

1. Subsection a) of Section 3 of the Employment Agreement is amended as follows:

"3. Term.

- a) The term of this Agreement shall commence on July 18, 2019 and end on December 31, 2022, subject to the termination provisions of Section 12.
- b) No change.
- c) No change."

2. Section 6 of the Employment Agreement is amended as follows:

"6. Vacation and Leave Time

Employee shall be entitled to the same vacation, holidays, longevity and sick leave as provided to full time department heads of the City of Brisbane, in accordance with the Memorandum of Understanding as negotiated from time to time between such department heads and the City. For the purpose of accounting, for sick leave and vacation, these hours will be merged into one bank of time called personal leave. In addition, the Employee shall be entitled annually to 80 hours of administrative leave that shall be credited in August 2019, August 2020, August 2021, and August 2022, provided, however, that Employee must use such administrative leave in the year in which it is credited or such leave is lost."

3. In all other respects, the terms and conditions of the Employment Agreement, as first amended, shall continue in full force and effect.

IN WITNESS WHEREOF, the City of Brisbane has caused this Second Amendment to be signed and executed in its behalf by its Mayor, and duly attested by the City Clerk, and Employee has signed and executed this Second Amendment the day and year first written above.

CITY OF BRISBANE

EMPLOYEE

Karen Cunningham, Mayor

Clayton L. Holstine

Attest:

Ingrid Padilla, City Clerk

Approved as to form:



Thomas McMorrow, City Attorney