



**CITY COUNCIL  
AGENDA REPORT**

**TYPE OF ITEM: Info/Consent**

**AGENDA ITEM NO.: 1**

**DATE:** June 7, 2016

**TO:** City Council

**FROM:** Stephen Fischer, City Attorney

**SUBJECT:** City Manager Employment Agreement Extension

**CONTACT:** Stephen Fischer, City Attorney  
Stephen.Fischer@oxnard.org, 385-7483

**RECOMMENDATION:**

That the City Council approve and authorize the Mayor to execute a First Amendment to the Employment Agreement between City of Oxnard and Greg A. Nyhoff (Agreement No. 6609-14-CA) to extend the term of the Agreement two years to May 31, 2019, increase the rate of annual leave accrual, and reduce the amount of annual leave redemption.

**BACKGROUND**

On April 15, 2014, the City Council approved Agreement No. 6609-14-CA (the "Agreement") with Greg Nyhoff providing the terms and conditions concerning his employment as the City Manager. The Agreement was for an initial period of three (3) years from June 1, 2014 to May 31, 2017. The Agreement also provided for accrual of annual leave at a rate of one hundred twenty (120) hours per year and allowed redemption of up to eighty (80) hours of unused leave annually.

The City Council has evaluated the City Manager's performance and determined that, based on satisfactory performance, to extend the term of the Agreement two (2) years to May 31, 2019, to increase the rate of annual leave accrual two hundred (200) hours, and reduce the amount of leave redemption to sixty (60) hours annually. The modification relating to leave accrual and redemption conform to the benefit levels for Unrepresented Executive Employees set forth in Resolution No. 14,883. The First Amendment also specifies that the City Manager's next performance evaluation shall occur in June of 2017.

**FINANCIAL IMPACT**

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Funding for the City Manager's compensation and benefits sufficient to defray the cost of the First Amendment to Agreement No. 6609-14-CA is provided in the approved budget.

**ATTACHMENTS:**

Attachment A - Nyhoff - Oxnard City Manager Agreement.First Amendment

Attachment B - 6609 - Nyhoff City Manager Agreement.Approved

## Agreement No. 6609-14-CA

**FIRST AMENDMENT TO EMPLOYMENT AGREEMENT  
BETWEEN CITY OF OXNARD AND GREG A. NYHOFF**

This First Amendment ("First Amendment") to the Employment Agreement between City of Oxnard and Greg A. Nyhoff ("Agreement") is made and entered into in the County of Ventura, State of California, this 7th day of June, 2016, by and between the City of Oxnard, a municipal corporation ("City"), and Greg A. Nyhoff ("Nyhoff"). This First Amendment amends the Agreement entered into on April 15, 2014, by City and Nyhoff.

City and Nyhoff agree as follows:

1. In Section 1 of the Agreement, the first sentence is amended to read as follows: "The term of this Agreement shall be for an initial period of five (5) years from June 1, 2014 to May 31, 2019."
2. As of the date of this First Amendment, in Section 6.A of the Agreement, the term "at the rate of one hundred twenty (120) hours per year" is deleted and replaced with the term "at the rate of two hundred (200) hours per year".
3. Section 6.C of the Agreement is amended to read as follows: "Nyhoff may redeem up to sixty (60) unused annual leave hours annually in accordance with the rules for application of benefit levels adopted by City Council Resolution No. 14,883, as such rules may be amended by subsequent City Council resolution, provided that Nyhoff's right to redeem unused leave shall not be contingent on Nyhoff's years of service."
4. City and Nyhoff acknowledge that the 2015 annual performance evaluation of Nyhoff was not completed until May of 2016 and the parties agree that Nyhoff's next performance evaluation shall occur in June of 2017.
5. As so amended, the Agreement remains in full force and effect.

CITY OF OXNARD

GREG A. NYHOFF

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 Tim Flynn, Mayor

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 Greg A. Nyhoff

ATTEST:

APPROVED AS TO FORM:

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 Daniel Martinez, City Clerk

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 Stephen M. Fischer, City Attorney

**EMPLOYMENT AGREEMENT  
BETWEEN CITY OF OXNARD AND GREG A. NYHOFF**

This Employment Agreement ("Agreement") is entered into this 15<sup>th</sup> day of April, 2014, by and between the CITY OF OXNARD, a municipal corporation, ("City") and GREG A. NYHOFF ("Nyhoff"), an individual who has education, training and experience in local government management and who, as a member of ICMA, is subject to the ICMA Code of Ethics.

WHEREAS, the Oxnard City Code provides for the appointment of a City Manager by the City Council, and establishes certain powers, duties, and guidelines with respect to the position of City Manager; and

WHEREAS, the City Council desires to employ Nyhoff to serve as City Manager for the City; and

WHEREAS, the City Council desires to provide Nyhoff with certain specified benefits and to establish certain terms and conditions of employment; and

WHEREAS, Nyhoff represents that he possesses the qualifications, skills and experience to satisfactorily perform the duties of City Manager for the City.

NOW, THEREFORE, City and Nyhoff agree as follows:

1. Term. The term of this Agreement shall be for an initial period of three (3) years from June 1, 2014 to May 31, 2017. This Agreement shall automatically be renewed on its anniversary date for a one (1) year term unless notice that the Agreement shall terminate is given at least two (2) months before the expiration date. If the Agreement is not renewed, all compensation, benefits and requirements of the Agreement shall remain in effect until the expiration of the term of the Agreement unless Nyhoff voluntarily resigns.

2. Duties and Authority. City agrees to employ Nyhoff as City Manager to perform the functions and duties specified in the Oxnard City Code and the California Government Code, and to perform other legally permissible and proper duties and functions.

3. Compensation.

City agrees to pay Nyhoff an annual base salary of Two Hundred Sixty-Five Thousand Dollars (\$265,000.00) payable in installments at the same time that the other employees of the City are paid.

4. Relocation, Moving and Transition Expenses.

A. City agrees to reimburse reasonable expenses associated with moving Nyhoff and Nyhoff's family and personal property to Oxnard. Nyhoff will obtain three (3) bids for moving expenses, and provide these copies to City. Nyhoff shall keep track of actual costs, and submit to

City with receipts. City will reimburse up to the lowest of the actual costs of the three (3) bids, provided the reimbursement pursuant to this Section 4.A. shall not exceed Ten Thousand Dollars (\$10,000).

B. City agrees to partially reimburse Nyhoff for housing costs until such time as Nyhoff sells his home in Modesto or the end of nine (9) months, whichever occurs first. Such payment shall be Two Thousand Dollars (\$2,000) per month, with the first payment due June 15, 2014.

C. City agrees to reimburse Nyhoff for airfare, hotel room and car rental expenses incurred by Nyhoff and Nyhoff's spouse for a maximum of two (2) trips to Oxnard for the purposes of researching local housing and for Nyhoff to meet with City's Council and staff.

5. Health and Life Insurance Benefits. City agrees to provide health, hospitalization, surgical, vision, dental and comprehensive medical insurance for Nyhoff and his dependents equal to that which is provided to all other Top Management employees of the City or, in the event no such plan exists, to provide coverage for Nyhoff and dependents. City's contribution toward the premiums for said health, dental and vision coverage shall not be less than that which City contributes to other Top Management employees. Notwithstanding any policy or provision to the contrary, such benefits shall be provided as of June 1, 2014.

6. Vacation, Sick, and Administrative Leave.

A. Nyhoff shall accrue annual leave, which City provides to Top Management employees in lieu of sick leave and/or vacation leave, at the rate of one hundred twenty (120) hours per year, provided that, during the first year of this Agreement, accrual shall occur as follows: sixty (60) hours of annual leave will be credited upon assuming office and sixty (60) hours will be credited on December 1, 2014.

B. Nyhoff shall on January 1 of each calendar year be credited with eighty (80) hours of administrative leave, forty (40) hours of which shall be credited upon assuming office.

C. Nyhoff may redeem forty (40) unused annual leave hours and forty (40) unused administrative leave hours annually in accordance with City Administrative Policy E-5, provided that Nyhoff's right to redeem unused leave shall not be contingent on Nyhoff's years of service.

7. Vehicle Allowance. City agrees to pay to Nyhoff, during the term of this Agreement and in addition to other salary and benefits herein provided, the sum of Three Thousand Six Hundred Dollars (\$3,600) per year, payable in equal installments each pay period, as a vehicle allowance to be used to purchase, lease, or own, operate and maintain a vehicle. Nyhoff shall be responsible for paying for liability, property damage, and comprehensive insurance coverage upon such vehicle and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of said vehicle. City shall reimburse Nyhoff at the IRS standard mileage rate for any business use of the vehicle beyond the greater Oxnard area. For purposes of this Section, use of the vehicle within the greater Oxnard area is defined as travel to locations within a 75-mile radius of the Oxnard City Hall.

## 8. Retirement.

A. During the term of this Agreement, City agrees that Nyhoff shall be enrolled in the California Public Employees Retirement System (PERS). Nyhoff shall pay the total 7% "Employee's share," and City shall pay 100% of "Employer's share" of PERS contributions on behalf of Nyhoff.

B. City shall permit Nyhoff to participate in any City-sponsored deferred compensation program or 401(a) Plan, and City shall match Nyhoff's contribution to such deferred compensation program or 401(a) Plan up to three percent (3%) of Nyhoff's base salary.

## 9. General Business Expenses.

A. In its discretion, City shall budget for and pay travel and subsistence expenses of Nyhoff for professional and official travel, meetings, courses, institutes and seminars to continue his professional development and to adequately pursue necessary official and other functions on behalf of the City, including but not limited to, the annual conference of the League of California Cities, the International City/County Management Association, and such other regional, state, and local governmental groups and committees.

B. City acknowledges the value of having Nyhoff, at City's discretion, participate and be directly involved in local or regional clubs, associations and organizations necessary and desirable for Nyhoff's continued professional participation, growth and advancement, and for the good of the City. Accordingly, City may, at its discretion, pay for the reasonable membership fees and/or dues to enable Nyhoff to become an active member in local civic clubs or organizations, provided however that City shall pay Nyhoff's professional dues and subscriptions to the International City/County Management Association (ICMA).

10. Termination. The following circumstances shall be deemed a termination of this Agreement:

A. The majority of the City Council votes to terminate Nyhoff at a duly authorized closed or open meeting.

B. If the City, its citizens or the State of California acts to amend any provisions of the Oxnard City Code or California law pertaining to the role, powers, duties, authority, responsibilities of Nyhoff's position that substantially changes the city manager form of government, Nyhoff shall have the right to declare that such amendments constitute termination.

C. If City reduces the base salary, compensation or any other financial benefit of Nyhoff, unless it is applied in no greater percentage than the average reduction of all City employee's, such action shall constitute a breach of this Agreement and will be regarded as a termination.

D. If a majority of the City Council requests the resignation of Nyhoff, then Nyhoff may, at his option, deem himself terminated within the meaning of this Section 10.

E. Either party declares a breach of contract and such breach is not cured within a 30-day cure period. Written notice of a breach of contract shall be provided in accordance with the provisions of Section 20.

11. Severance.

A. Severance shall be paid to Nyhoff when employment is terminated as defined in Section 10.

B. If City terminates this Agreement during which time Nyhoff is ready, willing and able to perform the functions and duties set forth herein, then City agrees to provide Nyhoff with six (6) months salary, including benefits, provided, however, that if City terminates Nyhoff prior to June 1, 2015, City agrees to provide Nyhoff with nine (9) months salary, including benefits, provided that the payments pursuant to this Section shall not exceed the amounts determined pursuant to Article 3.5 (commencing with Section 53260) of Chapter 2 of Part 1 of Division 2 of Title 5 of the California Government Code. Pursuant to California Government Code Section 53243.2, any lump severance payment paid to Nyhoff under this section shall be fully reimbursed by Nyhoff to the City if Nyhoff is convicted of a crime involving an abuse of his office or position, including as set forth in California Government Code Section 53243.4.

12. Resignation. If Nyhoff voluntarily resigns his position with City, Nyhoff shall provide a minimum of sixty (60) days advance notice unless the parties agree otherwise.

13. Performance Evaluation. City shall annually review the performance of Nyhoff in June subject to a process, form criteria, and format for the evaluation, which shall be mutually agreed upon by City and Nyhoff. The process at a minimum shall include the opportunity for both parties to: (1) prepare a written evaluation, (2) meet and discuss the evaluation, and (3) present a written summary of the evaluation results. The final written evaluation should be completed and delivered to Nyhoff within thirty (30) days of the evaluation meeting.

14. Hours of Work. It is recognized that Nyhoff must devote a great deal of time outside the normal office hours on business for City, and to that end Nyhoff shall be allowed to establish an appropriate work schedule. The schedule shall be appropriate to the needs of the City and shall allow Nyhoff to faithfully perform his assigned duties and responsibilities.

15. Outside Activities. The employment provided for by this Agreement shall be Nyhoff's sole employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to City and the community, Nyhoff may elect, with the prior written approval of the City Council, to accept limited teaching, consulting or other business opportunities with the understanding that such arrangements shall not constitute interference with or a conflict of interest with his responsibilities under this Agreement.

16. Residency. Nyhoff agrees to maintain residence within the corporate boundaries of the City of Oxnard.

17. Indemnification. The City shall provide Nyhoff the defenses and indemnities as provided by Government Code Section 825 and any related provision of the California Government Code related to indemnification of public employees for those claims or actions arising out of an act or omission occurring within the scope of his employment as the City Manager. This covenant shall survive the termination of this Agreement.

18. Bonding. City shall bear the full cost of any fidelity or other bonds required of the Nyhoff under any law or ordinance.

19. Other Terms and Conditions of Employment. City, only upon agreement with Nyhoff, shall fix any such other terms and conditions of employment as it may determine from time to time, relating to the performance of Nyhoff, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Oxnard City Code, or any other law.

20. Notices. Notice pursuant to this Agreement shall be given by depositing in the custody of the United States Postal Service, postage prepaid, addressed as follows:

CITY: City of Oxnard, City Clerk  
305 West Third Street  
Oxnard, CA 93030

NYHOFF: City of Oxnard, City Manager  
300 West Third Street  
Oxnard, CA 93030

Alternatively, notice required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice in the course of transmission in the United States Postal Service.

## 21. General Provisions.

A. Integration. City and Nyhoff agree that this Agreement constitutes the entire agreement of the parties regarding the subject matter described herein and supersedes all prior communications, agreements, and promises, either oral or written. The parties by mutual written agreement may amend any provisions of this Agreement during the life of the Agreement. Such amendments shall be incorporated and made a part of this Agreement.

B. Binding Effect. This Agreement shall be binding on the City and Nyhoff as well as their heirs, assigns, executors, personal representatives and successors in interest.

C. Effective Date. This Agreement shall become effective on June 1, 2014.

D. Severability. The invalidity or partial invalidity of a portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement



is held to be invalid the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

E. Ownership of Materials. All of Nyhoff's writings, reports and other documentation generated as the result of this Agreement are and shall be the property of the City.

F. Non-Assignment. This Agreement is for professional and unique services of Nyhoff, which are personal to the City. This Agreement is not transferable or assignable by Nyhoff.

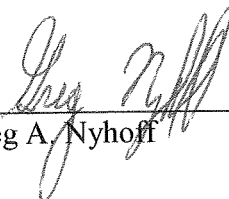
G. Governing Law. This Agreement and the rights and obligations of the parties shall be governed and interpreted in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

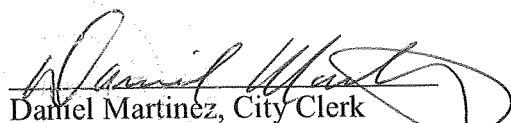
CITY OF OXNARD

GREG A. NYHOFF

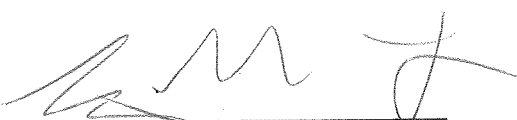
  
 Tim Flynn, Mayor

  
 Greg A. Nyhoff

ATTEST:

  
 Daniel Martinez, City Clerk

APPROVED AS TO FORM:

  
 Stephen M. Fischer, Interim City Attorney