

ATTACHMENT A

POST RETIREMENT TEMPORARY EMPLOYMENT AGREEMENT WITH SOON CHO FOR SENIOR CIVIL ENGINEER SERVICES

THIS AGREEMENT FOR POST RETIREMENT TEMPORARY EMPLOYMENT ("Agreement") is made effective as of the 12th day of October 2021 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City") and SOON CHO ("Employee") whose mailing address is 127 Toretta, Irvine, California 92602, with reference to the following:

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City.
- B. City requires temporary Senior Civil Engineer services.
- C. In accordance with Government Code Section 21224(a), a retired person may serve without reinstatement from retirement or loss or interruption of benefits provided by this system upon appointment by the appointing power of a state agency or public agency employer either during an emergency to prevent stoppage of public business or because the retired person has specialized skills needed in performing work of limited duration. These appointments shall not exceed a combined total of 960 hours for all employers each fiscal year. The compensation for the appointment shall not exceed the maximum monthly base salary paid to other employees performing comparable duties as listed on a publicly available pay schedule divided by 173.333 to equal an hourly rate. A retired person appointed pursuant to this section shall not receive any benefit, incentive, compensation in lieu of benefits, or other form of compensation in addition to the hourly pay rate. A retired annuitant appointed pursuant to this section shall not work more than 960 hours each fiscal year regardless of whether he or she works for one or more employers.
- D. The City desires to employ Employee on a provisional "at will" basis and to enter into an Agreement with Employee for temporary Senior Civil Engineer employment ("Position") services upon the terms and conditions in this Agreement.
- E. Employee is willing to accept such temporary employment on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. TERM

The term of this Agreement shall commence on October 12, 2021, or earlier as directed, in writing, by the Community Development Director, and shall end September 30, 2022, unless terminated earlier as provided herein.

2. SERVICES TO BE PERFORMED BY EMPLOYEE

2.1 Services shall include the following: Senior Civil Engineer, as further described in the Job Description attached hereto as Exhibit A and incorporated herein by reference.

2.2 All duties shall be performed in compliance with City ordinances, policies, rules and regulations. Employee shall familiarize him or herself with the City's Employee Manual. At all times, Employee agrees to perform all services related to Employee's employment hereunder faithfully and diligently and to discharge the responsibilities thereof to the best of Employee's ability.

3. COMPENSATION

3.1 As consideration for the performance of specified services under this Agreement, Employee shall be compensated as follows:

3.1.1 Pay of **Seventy Dollars and 92/100 (\$70.92)** per hour for hours worked pursuant to this Agreement. Employee shall be paid on a bi-weekly basis corresponding to the City's payroll schedule and Employee is subject to State and Federal income tax withholdings. \$70.92 per hour shall be considered just compensation and no additional benefits or holiday pay will be provided under this Agreement.

3.1.2 Employee shall maintain and submit complete records of time expended pursuant to this Agreement and corresponding to City's payroll schedule.

4. HOURS

4.1 Hours of work are not guaranteed. Employee's services will be provided on an as needed, per project basis, upon written request of the Department Director or City Manager. Hours of work shall not exceed 30 hours per week.

4.2 It is expressly understood that Employee is a nonexempt Employee and employment is for a provisional, "at will" position.

4.3 Notwithstanding any federal and state laws, regulations or orders, Employee shall not work more than 960 hours during the term of the Agreement in accordance with CalPERS post retirement employment guidelines. The Employee shall be responsible for monitoring the hours worked during these time periods to ensure full compliance. Employee shall not work more than 960 hours during the term of the Agreement in accordance with CalPERS post retirement employment guidelines. The Employee shall be responsible for monitoring the hours worked during these time periods to ensure full compliance.

5. ADMINISTRATION

This Agreement will be administered by the Community Development Department. City's Community Development Director or designee shall be the Administrator and shall have the authority to act for City under this Agreement. The Administrator shall represent City in all matters pertaining to the services to be rendered pursuant to this Agreement.

6. NOTICES

6.1 All notices, demands, requests or approvals, including any change in mailing address, to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided.

6.2 All notices, demands, requests or approvals from Employee to City shall be addressed to City at:

Attn: Seimone Jurjis
Community Development Department
City of Newport Beach
100 Civic Center Drive
PO Box 1768
Newport Beach, CA 92658

6.3 All notices, demands, requests or approvals from City to Employee shall be addressed to Consultant at:

Soon Cho
127 Toretta
Irvine, CA 92602

7. TERMINATION

7.1 Employee's employment is "at will" which means that Employee's employment with City may be terminated at any time, with or without cause, by either party by giving 24 hours prior written notice to the other party.

7.2 Provisional Employee shall mean any person who, pursuant to an Appointment, contract or otherwise, performs work that is generally identified in the Annual Budget and is of limited duration or seasonal in nature.

7.3 Employee's employment status cannot be changed except in writing on a form signed by the Department Director, City Manager and Employee.

7.4 Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from the temporary position with the City.

7.5 No promises or representations regarding regular, full time or permanent employment status have been made to Employee and Employee has no expectation of permanent employment with the City. Furthermore, Employee has no expectation of Civil Service classification, rights or status under this Agreement.

7.6 Upon termination of this Agreement, the City shall pay to Employee that portion of compensation specified in this Agreement that is earned and unpaid prior to the effective date of termination.

8. EFFECT OF PRIOR AGREEMENTS

This Agreement supersedes any prior agreement between the City and the Employee, except that this agreement shall not affect or operate to reduce any benefit or compensation inuring to the Employee of a kind elsewhere provided and not expressly provided in this Agreement.

9. OWNERSHIP OF DOCUMENTS

Each and every report, draft, map, record, plan, document and other writing produced (hereinafter "Documents"), prepared or caused to be prepared by Employee, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Employee or any other party.

10. CONFIDENTIALITY

Employee shall hold and safeguard confidential information in trust for the City and shall not, without the prior written consent of the City, misappropriate or disclose or make available to anyone for use outside the City at any time, either during his employment with the City or subsequent to the termination of his employment with the City for any reason, including, without limitation, termination by the City for cause or without cause, any confidential information, whether or not developed by Employee, except as required in the performance of Employee's duties to the City. All documents, including drafts, preliminary drawings or plans, notes and communications that result from the services in this Agreement, shall be kept confidential unless City authorizes in writing the release of information.

11. CONFLICTS OF INTEREST

11.1 The Employee may be subject to the provisions of the California Political Reform Act of 1974 (the "Act"), which (1) requires such persons to disclose any financial interest that may foreseeably be materially affected by the work performed under this Agreement, and (2) prohibits such persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

11.2 If subject to the Act, Employee shall conform to all requirements of the Act. Failure to do so constitutes a material breach and is grounds for immediate termination of this Agreement by City.

12. OUTSIDE ACTIVITIES

12.1 Employee is expected to devote his/her full time, attention and efforts to the performance of his or her assigned duties. An Employee shall not engage in any outside employment or business activities during his/her workday. An Employee shall not engage in any employment, outside activity, or enterprise that is inconsistent, incompatible or in conflict with, or that interferes with, his/her ability to perform the duties, functions, or responsibilities of his/her Position.

12.2 Employees may obtain and/or maintain employment with persons or entities other than the City or self-employment (outside employment) subject to written approval by the Department Director.

13. STANDARD PROVISIONS

13.1 Recitals. City and Employee acknowledge that the above Recitals are true and correct and are hereby incorporated by reference into this Agreement.

13.2 Compliance with all Laws. Employee shall, at its own cost and expense, comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. In addition, all work prepared by Employee shall conform to applicable City, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of the Department Director and City.

13.3 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Job Description or any other attachments attached hereto, the terms of this Agreement shall govern.

13.4 Waiver. A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

13.5 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

13.6 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

13.7 Amendments. This Agreement may be modified or amended only by a written document executed by both Employee and City and approved as to form by the City Attorney.

13.8 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

13.9 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

13.10 No Attorneys' Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorneys' fees.

13.11 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

CITY OF NEWPORT BEACH,
a California municipal corporation
Date: _____

CITY OF NEWPORT BEACH,
a California municipal corporation
Date: _____

By: _____
Seimone Jurjis
Community Development Director

By: _____
Brad Avery
Mayor

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE
Date: 09/30/21

EMPLOYEE: Soon Cho
Date: _____

By: [Signature] (For)
Aaron C. Harp
City Attorney
09.30.21 amz

By: _____
Soon Cho

ATTEST:
Date: _____

By: _____
Leilani I. Brown
City Clerk

[END OF SIGNATURES]

Attachments:

Exhibit A: Job Description

**EXHIBIT A
JOB DESCRIPTION**



CIVIL ENGINEER, SENIOR

Class Code:
400098

Bargaining Unit: Professional & Technical Association

CITY OF NEWPORT BEACH
Revision Date: Jul 30, 2014

SALARY RANGE

\$51.71 - \$72.74 Hourly
\$4,136.77 - \$5,819.04 Biweekly
\$8,963.00 - \$12,607.92 Monthly
\$107,555.97 - \$151,295.04 Annually

DEFINITION:

To perform advanced level professional engineering work in an area of assignment; to provide technical and some direct supervision to professional and technical engineering staff; and to provide responsible staff assistance to management staff.

DISTINGUISHING CHARACTERISTICS: This is the beginning level technical/supervisor class in the registered professional engineering series. Positions assigned to this class can be distinguished from lower level engineering classes by performance of complex engineering tasks requiring a high degree of knowledge related to all areas of design, plan review and contract administration. Positions assigned to this class can be further distinguished from lower level engineering classes by the performance of lead supervisory activities such as assigning work, monitoring project progress and providing technical assistance and training to other professional and technical staff. This class can be distinguished from higher level engineering classes by limited supervisory responsibility for an assigned section and by assignment of less complex projects.

SUPERVISION RECEIVED AND EXERCISED: Receives direction from higher level management staff. Exercises technical and functional supervision over professional, technical and clerical staff. May exercise direct supervision over assigned professional staff.

ESSENTIAL DUTIES:

The following essential functions are typical for this classification. Incumbents may not perform all of the listed functions and/or may be required to perform additional or different functions from those below, to address business needs and changing business practices:

- Provide lead supervision to professional and technical engineering staff; assign daily work and monitor work progress; evaluate work in progress and provide training and technical assistance;
- Plan work schedules and project assignments;
- Resolve work problems and interpret administrative policies to subordinates, other departments, consultants, contractors and the public;
- Coordinate Section activities with those of other departments and outside agencies and organizations;
- Provide information to the public; respond to and resolve citizen inquiries and complaints;

- Plan, organize, evaluate, and participate in the functions and activities of the section to which assigned including design, cooperative projects, plan review and capital improvement projects;
- Assist in negotiation of right of way agreements, professional services agreement, and cooperative agreements;
- Prepare requests for proposals, and contracts for consulting services; review and check plans of consulting engineers and private contractors; make technical engineering decisions and establish technical criteria;
- Provide information to the public; respond to and resolve citizen inquiries and complaints;
- Process and coordinate underground utility districts with service providers, engineers and property owners; coordinate construction inspection of projects; process records of easements, rights-of-way easements, records of survey and certificates of compliance;
- Check plans for complex projects to determine compliance with applicable codes; check engineering methods used in building design and verify accuracy of structural calculations; check plans and reports for conformance with subdivision improvement plans; tract and parcel maps; grading, street improvement, storm drains, underground utility and landscape plans, drainage and soils reports and other applicable criteria; review City Encroachment Permits, Street Closure Permits, site plans, Special Events Permits and Caltrans encroachment permits for conformance with City standards and state and federal regulations;
- Calculate the quantity, quality and cost of materials; prepare plans and specifications related to assigned project;
- Coordinate or perform the construction inspection of assigned projects, ensure conformance with contract plans, specifications and applicable codes; approve progress payments; approve change orders as needed;
- Administer, design, and review assigned projects; ensure compliance with codes and local regulations;
- Direct the preparation and filing of deeds, maps and legal descriptions as needed;
- Process assessment district proceedings for Public Works projects;
- Regularly and predictably attend work; and
- Perform related duties as assigned.

QUALIFICATIONS:

To perform this job successfully, an individual must be able to perform each essential function. The requirements listed below are representative of the knowledge, skill, and/or ability required.

Knowledge of:

Principles and practices of civil engineering;

Pertinent Federal, State and local rules, regulations and ordinances;

Recent developments, current literature and sources of information regarding civil and

structural engineering;

Basic principles and practices of project management;

Principals of supervision and training; and

Methods, materials, and techniques used in the construction of public works projects.

Ability to:

Prepare plans and drawings neatly and accurately;

Make engineering design computations and check, design, and prepare engineering plans;

Understand and interpret engineering construction plans, specifications and other contract documents;

Perform technical research and solve difficult engineering problems;

Manage a broad range of engineering projects including supervision of professional, technical and consulting staff;

Prepare contracts, agreements, specifications and contract documents;

Conduct comprehensive engineering studies and prepare reports with appropriate recommendations;

Ensure project compliance with State, Federal and local rules, laws and regulations;

Prepare and monitor a program budget;

Interpret and apply pertinent laws, rules and regulations;

Provide lead supervision and training to assigned personnel;

Communicate clearly and concisely, both orally and in writing; and

Establish and maintain cooperative working relationship with those contacted in the course of work.

This position may be required to work overtime hours as needed.

EXPERIENCE & EDUCATION AND LICENSE/CERTIFICATE:

A combination of experience and education that would likely provide the required knowledge and abilities may be qualifying. A typical way to obtain the knowledge and abilities would be:

Experience: Four years of increasingly responsible professional civil engineering experience including some project management responsibilities.

Education: Equivalent to a Bachelor's degree from an accredited college or university with major course work in civil engineering or a related field.

License/Certificate: Due to the performance of some field duties which require the operation of a personal or City vehicle, a valid and appropriate California driver's license and an acceptable driving record are required.

Possession of a Certificate of Registration as a professional civil engineer in the State of California.

Please Note: Candidates deemed most qualified, as reflected in their application materials, will be invited to continue in the recruitment process. The prospective candidate must successfully complete a thorough background review, including being fingerprinted by the Newport Beach Police Department. The resulting report of your conviction history, (if any), will be evaluated along with the other information received in connection with your application. Except as otherwise required by law, a criminal conviction will not necessarily disqualify you from the position. The nature, date, surrounding circumstances, and the relevance of the offense to the position applied for may, however, be considered.

Disaster Service Worker: In accordance with Government Code Section 3100, City of Newport Beach Employees, in the event of a disaster, are considered disaster service workers and may be asked to respond accordingly.