

**COUNTY OF ORANGE
EMPLOYMENT AGREEMENT
FOR
PERFORMANCE AUDIT DIRECTOR**

This Employment Agreement for the Performance Audit Director ("AGREEMENT") is made by and between the County of Orange and its Board of Supervisors (collectively, "COUNTY") and PHILIP CHENG (hereinafter "CHENG").

IT IS MUTUALLY AGREED:

1. APPOINTMENT

The COUNTY hereby appoints, and the COUNTY hereby agrees to employ, CHENG as the Performance Audit Director on the terms and conditions specified herein. CHENG hereby agrees to accept this appointment to the position of Performance Audit Director and agrees to become an employee of the COUNTY and serve as an agent of the BOARD.

2. TERM

This AGREEMENT is for a three-year term commencing on April 19, 2013 and ending on April 18, 2016 ("EXPIRATION DATE"). The "EFFECTIVE DATE" of this AGREEMENT shall be the date when (1) this AGREEMENT is signed by both CHENG and the Chairman of the Orange County Board of Supervisors ("BOARD"); and (2) CHENG has verified to the COUNTY his identity and lawful eligibility to work in the United States, as required by federal immigration law.

3. DUTIES, RESPONSIBILITIES, AND AUTHORITY

Under the direction of the BOARD, CHENG shall conduct independent performance audits to systematically assess the efficiency, effectiveness, and accountability of COUNTY operations and to assess the compliance of COUNTY operations with state and federal law, COUNTY ordinances, BOARD policy, and industry best-practices.

As the Performance Audit Director, CHENG shall work directly with the BOARD and in consultation with the County Executive Officer to create a performance audit work plan subject to BOARD approval. CHENG shall manage the employees of the Office of the Performance Audit Director and/or consultant services conducting performance audits to ensure that audits conducted include, among other items, cost effectiveness assessments, best practices analysis, program performance evaluations, workload evaluations, process reengineering, assessments of service level, and assessments of compliance with state and federal laws, COUNTY ordinances, and BOARD policies.

As the Performance Audit Director, CHENG shall make recommendations to the BOARD as to how audit results can be applied to COUNTY operations to reduce costs, increase productivity, improve service delivery, and create higher levels of accountability and

transparency in all of the diverse activities of the COUNTY. CHENG shall review all performance audit results to ascertain that all relevant materials are presented to the BOARD and to assure further that audit findings are properly presented.

4. COMPLIANCE WITH THE LAW

CHENG shall, during the term of this AGREEMENT, comply with all laws and regulations, and all Codified Ordinances of the County of Orange. By signing this AGREEMENT, CHENG acknowledges that, as Performance Audit Director, he is a "designated employee" required to file a statement of economic interests and agrees that he will comply with the Orange County Gift Ban Ordinance (commencing at section 1-3-21 of the Codified Ordinances of the County of Orange). Within three days of the commencement of active employment, and as required by federal immigration law, CHENG will verify his identity and lawful eligibility to work in the United States.

5. PERFORMANCE EVALUATION

The BOARD will evaluate the performance of CHENG both formally and informally on an ongoing basis, as determined by the BOARD. At least annually, however, CHENG shall receive a formal evaluation based on the performance of CHENG as the Performance Audit Director and whether he has complied with and satisfied the BOARD's adopted goals, criteria, and procedures. However, a failure to complete this evaluation will not affect any other provision of this AGREEMENT.

6. COMPENSATION, BENEFITS, AND ANNUAL LEAVE

For services rendered to the COUNTY as Performance Audit Director, CHENG shall be compensated on a salary basis through the EXPIRATION DATE of this AGREEMENT in the annual amount of one hundred and sixty four thousand dollars (\$164,000). In addition, and within thirty (30) days of the EFFECTIVE DATE of this AGREEMENT, the COUNTY shall provide to CHENG forty (40) hours of Annual Leave. CHENG shall accrue annual leave at a rate of two hundred and fifty six (256) hours each year, and shall be entitled to a payoff for accrued, unused annual leave, at the time of separation of employment, in the same manner as other COUNTY Executive Management employees and in accordance with the COUNTY Annual Leave Plan, Amendment 1 to the COUNTY Personnel & Salary Resolution, as updated on July 31, 2007.

As the position of Performance Audit Director is an overtime-exempt executive position, CHENG shall not be entitled to overtime pay under either the Fair Labor Standards Act or California law. CHENG shall receive salary payments in the same manner, and at the same times, as other COUNTY Executive Management employees generally.

CHENG shall receive the same benefits generally provided to other Executive Management (Group II) employees, except as otherwise provided herein or in other acts of the BOARD. As with other COUNTY Executive Management (Group II) employees, the COUNTY shall contribute an amount equal to 5% of CHENG'S biweekly salary to CHENG'S COUNTY

401(a) Plan and shall provide CHENG with a \$765 monthly car allowance. CHENG shall be a member of the Orange County Employees Retirement System, and shall be required to pay for his pension benefit in the same manner as other COUNTY Executive Management (Group II) employees.

7. RESIGNATION/TERMINATION

CHENG shall serve as Performance Audit Director at the sole pleasure of the BOARD. This AGREEMENT may be terminated "at will" by either CHENG or the BOARD at any time, and without notice. Upon termination of this AGREEMENT, CHENG's authority as the Performance Audit Director shall immediately terminate and revert to the BOARD. By signing below, CHENG acknowledges, understands and agrees that this AGREEMENT will automatically terminate, and CHENG shall be dismissed from his position as Performance Audit Director, if CHENG receives or applies for a pension or similar defined-benefit retirement payment from any public pension system during the life of this AGREEMENT.

CHENG is advised and, with his signature below, hereby acknowledges and agrees that he shall have none of the due process rights of a regular, full-time COUNTY employee. As a condition of his appointment, CHENG knowingly, willingly, and voluntarily gives up, waives, and disclaims any and all rights he may have, express or implied, to any notice and/or hearing either before or after termination of this AGREEMENT, and/or to any continued employment with the COUNTY after termination of this AGREEMENT.

In the event the BOARD decides to terminate this AGREEMENT, CHENG shall receive from the COUNTY a severance package consisting of three (3) months of salary only, paid as wages, less any applicable taxes and deductions. However, this AGREEMENT shall terminate automatically, without further action of the BOARD, and CHENG shall not be entitled to this or any other severance package from the COUNTY, if (1) CHENG voluntarily resigns his employment; (2) CHENG elects to apply for a pension or similar defined-benefit retirement from any public pension system; or (3) the COUNTY terminates this AGREEMENT for "good cause" under the legal standard set forth in *Cotran v. Rollins Hudig Hall International, Inc.*, 17 Cal. 4th 93 (1998).

8. MERGER

This AGREEMENT is intended as the final expression of the agreement between the COUNTY and CHENG. The COUNTY and CHENG acknowledge and agree that no representations, inducements, promises and/or agreements, oral or written, have been made by any party or any person acting on behalf of any party, which are not embodied herein. The COUNTY and CHENG also agree that no other agreement, statement, or promise beyond the terms and conditions expressly stated in this AGREEMENT are binding.

9. MODIFICATION

This AGREEMENT may be modified by mutual agreement between the COUNTY and CHENG. However, no waiver or modification of this AGREEMENT shall be valid unless in writing and duly executed by the parties hereto.

10. ACKNOWLEDGEMENT AND CONSENT

By signing below, CHENG and Orange County Board of Supervisors Chairman Shawn Nelson, on behalf of the COUNTY, acknowledge that they each have read and fully understand the terms and conditions of this AGREEMENT, and that they consent and agree to each and every term and condition contained herein. Furthermore, by signing below, CHENG represents that he is legally eligible to accept employment with the COUNTY and, further, that he is not currently receiving a pension or similar defined-benefit retirement payment from any public pension system.

Philip Cheng
PHILIP CHENG

3/22/2013
Date

FOR THE COUNTY OF ORANGE:

Shawn Nelson
Shawn Nelson
Chairman of the Board of Supervisors
County of Orange

3/19/13
Date

Signed and certified that a copy of this document has been delivered to the Chairman of the Board per G.C. Sec. 25103, Reso 79-1535

Attest:

Rolmi Steklar for
Susan Novak
Clerk of the Board of Supervisors
Orange County, California



Approved as to form:
Office of the County Counsel
Orange County, California

By: Leon J. Page
Leon J. Page
Senior Deputy County Counsel