

Agreement No. 2013-007

City Council Approved: 2-25-13

EMPLOYMENT AGREEMENT

THIS AGREEMENT is between the City of San Buenaventura, a municipal corporation and chartered city ("City") and Mark Watkins ("Manager"). It is effective on the latest date next to the signatures on the last page.

This Agreement is entered into on the basis of the following facts, among others:

A. City, acting by and through its duly elected City Council, desires to employ Manager as its City Manager subject to the terms and conditions set forth in this Agreement and in the Charter of the City of San Buenaventura (the "Charter").

B. City and Manager desire to establish specific terms and conditions relating to compensation and benefits, performance evaluations, and related matters.

C. The Charter provides, among other things, that the City Manager shall be appointed by the City Council and that he may be removed at the pleasure of the City Council.

D. Manager desires a predictable amount of severance notice and severance pay should his employment be terminated.

E. City, mindful of the frequency, administrative disruption, and expense of employment-related litigation, desires to prevent litigation arising from any termination of the employment relationship with Manager.

BASED UPON THE FOREGOING, CITY AND MANAGER AGREE AS FOLLOWS:

1. Employment. City will to employ Manager as City Manager for an initial term of three years, subject to termination at any time and payment of severance as provided in Section 7. Thereafter, this Agreement shall be extended automatically for successive one year terms indefinitely, subject to termination at any time and payment of severance as provided in Section 7.

2. Duties of Manager. Manager shall perform the duties established for the City Manager by the Charter, San Buenaventura Municipal Code, direction of the City Council, or as otherwise provided by law, ordinance, or regulation.

2.1. Full Energy and Skill. Manager shall devote his full energy, skill, ability, and productive time to the performance of Manager's duties.

2.2. No Conflict. Manager shall not engage in any employment, activity, consulting service, or other enterprise, for compensation or otherwise, which is actually or potentially in conflict with, inimical to, or which interferes with the performance of Manager's duties.

2.3. Permission Required For Outside Activities. Manager shall not engage in any employment, activity, consulting service, or other enterprise, for compensation or otherwise, without the express permission of the City Council.

3. Compensation. Manager shall be compensated as provided in this Section 3.

3.1. Compensation. Manager shall receive a base annual salary of \$222,000, paid at the regular intervals customarily paid by the City, with appropriate deductions.

3.2. Annual Cost of Living Adjustments. Commencing on July 1, 2014 and on July 1 of each year thereafter, Manager's base annual salary shall be automatically adjusted without further Council action by an amount equal to one-half (1/2) of any increase or decrease during the preceding twelve (12) months in the California Consumer Price Index for Urban Wage Earners and Clerical Workers as calculated by the Department of Industrial Relations ("Index") as soon as certified CPI data are posted. There shall be no retroactive payments due from either party for any such increase or decrease.

3.3. Triennial Cost of Living True Up. Beginning on July 1, 2016, and at the end of each three years thereafter, Manager's base salary shall be automatically adjusted without further Council action to include the full compounded Index change at the end of the three year period, and further adjusted to reflect any base salary adjustments made pursuant to Section 3.4 below. There shall be no retroactive payments due from either party for any such increase or decrease.

3.4. Performance Reviews and Adjustments. The City Council shall meet for the express purpose of evaluating the performance of Manager within six months of Manager's date of first employment by the City. Not less than once each year thereafter, or more frequently if desired by the City Council, the City Council shall meet for the express purpose of evaluating the performance of Manager and determining whether to adjust his base salary to reflect performance, market conditions, the Index or other factors. The City Council will act in good faith in determining whether to increase or decrease the base salary of Manager, but the ultimate decision in this regard is within the sole discretion of the City Council.

3.5. Performance Based Compensation. Manager is eligible to earn a performance-based single payment of up to 7% (seven percent) of base salary annually, based on assessment of performance solely by Council. Eligibility for the bonus shall be based upon receiving an overall average rating on Manager's annual performance evaluation conducted by the City Council of at least 3.0 on a 7-point scale (1 being best and 4 being average). The bonus shall also be contingent upon achieving specific annual goals established at each year's anniversary evaluation process.

4. Benefits and Allowances. Manager shall receive the following benefits and allowances.

4.1. Vacation and Administrative Leave. Manager shall receive four weeks of vacation and two weeks of administrative leave, accrued subject to standard City plan. Manager shall be compensated for the accrued but unused balances of vacation and leave upon termination or resignation. Manager shall notify the City Council of any vacation or other absences lasting longer than one day. Manager shall receive an initial vacation balance of 160 hours, but shall not accrue additional vacation during his first year of employment.

4.2. Automobile. Manager shall receive a car allowance of \$500 per month.

4.3. Retirement Contribution. City shall contribute \$12,000 (Twelve Thousand Dollars) annually, paid in bi-weekly installments to a 401(a) or 457 account administered by ICMA/RC. The City shall pay reasonable set-up fees for such plan. The account may be established so as to allow Manager to make matching contributions should he so desire. City shall provide Manager with CalPERS retirement benefits, subject to a Manager-paid contribution, in the same amount and manner as is paid by Miscellaneous City employees in the Executive ("E") Unit. The City shall provide Manager with all deferred compensation contribution benefits in accordance with the City's standard benefit package for employees at the Executive service level, and such benefits shall commence in accordance with such provisions regularly maintained by the City and in effect at the time, this Agreement becomes effective.

4.4. Standard Benefits and Allowances. Manager shall receive all sick leave, medical, life, deferred compensation and disability benefits in accordance with the City's standard benefit package for employees at the Executive service level, and such benefits shall commence in accordance with such provisions regularly maintained by the City and in effect at the time this Agreement becomes effective.

5. Affiliated Organizations.

5.1. Affiliated Organizations. City will pay the reasonable membership fees of those organizations of which Manager chooses to be a member which are designed to enhance his knowledge of municipal governance.

6. Additional Expenses of Employment. City shall pay the following usual and customary employment expenses:

6.1. The cost of any fidelity or other bonds required by law for the City Manager.

6.2. The cost to defend and indemnify Manager to the full extent of the law as provided by the California Tort Claims Act (Government Code sections 810, *et seq.*), or otherwise to the extent allowed by law.

7. Duration of Employment. Manager understands and agrees that he has no constitutionally protected property or other interest in his employment as City Manager. He understands and agrees that he works at the will and pleasure of the City Council and that he may be terminated, or asked to resign, at any time, with or without cause, subject only any limitations which are now, or which may in the future, be included within the City Charter.

7.1. Severance Pay. If Manager is asked to resign or is terminated as City Manager he shall receive a cash payment equivalent to the sum of i) his then-current monthly salary multiplied by nine (9); ii) the cash value, as determined by City, of his monthly non-salary benefits multiplied by nine (9); iii) an additional one week of salary and non-salary benefits for every year of employment with the City (partial year shall count as a full year for this purpose). The monthly non-salary benefits shall be those specified in section 4. All normal withholdings as required by law shall be made with respect to any amounts paid under this section.

7.2. Non-Payment of Severance under Certain Conditions. If the termination of Manager is the result of malfeasance in the performance of his duties on behalf of the City, or conviction of a felony or other crime of moral turpitude, he shall not be paid any severance pay except as provided in the remainder of this subsection. In such an instance, his sole remedy shall be a judicial action in declaratory relief to determine whether there was substantial evidence of malfeasance in the performance of his duties or non-felonious crimes of moral turpitude. If the court determines there was not substantial evidence, Manager shall receive the severance pay provided in Section 7.1, but no other damages, costs or attorneys fees.

8. Miscellaneous.

8.1. Entire Agreement/Amendment. This Agreement constitutes the entire understanding and agreement between the parties as to those matters contained in it, and supersedes any and all prior or contemporaneous agreements, representations and understandings of the parties. This Agreement may be amended at any time by mutual agreement of the parties, but any such amendment must be in writing, dated, and signed by the parties.

8.2. Notices. All notices pursuant to this Agreement shall be hand-delivered or delivered by first class mail and shall be deemed delivered on the date of mailing. All notices to the City shall be addressed to the Mayor of the City of San Buenaventura. All notices to Manager shall be addressed either to Manager's residence address as then on file with the City or to Manager's business address at the City.

8.3. Applicable Law; Venue. This Agreement shall be interpreted according to the laws of the State of California. Venue of any action regarding this Agreement shall be in the proper court in Ventura County.

8.4. Severability. In the event any portion of this Agreement is declared void, such portion shall be severed from this Agreement and the remaining provisions shall remain in effect, unless the result of such severance would be to substantially alter this Agreement or the obligations of the parties, in which case this Agreement shall be immediately terminated.

8.5. Waiver. Any failure of a party to insist upon strict compliance with any term, undertaking, or condition of this Agreement shall not be deemed to be a waiver of such term, undertaking, or condition. To be effective, a waiver must be in writing, signed and dated by the parties.

8.6. Representation by Counsel. Manager and City acknowledge that they each did, or had the opportunity to, consult with legal counsel of their respective choices with respect to the matters that are the subject of this Agreement prior to executing it.

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8.7. Section Headings. The headings on each of the sections and subsections of this Agreement are for the convenience of the parties only and do not limit or expand the contents of any such section or subsection.

Dated: 2-28-13

CITY OF SAN BUENAVENTURA

By Mike Tracy
Mike Tracy
Mayor

Dated: 2-28-13

MANAGER

Mark Watkins
Mark Watkins

Approved as to Form

Ariel Pierre Calonne

Ariel Pierre Calonne
City Attorney

**AMENDMENT #1
to City Manager Employment Agreement**

This first amendment ("Amendment") is effective September 15, 2014, and is made and entered into by and between the City of San Buenaventura, a municipal corporation and chartered city ("City") and Mark Watkins ("Manager"), parties to the City Manager Employment Agreement dated February 28, 2013 ("Agreement").

Section 3.1 Compensation of the Agreement is amended as follows:

3.1 Compensation. Manager shall receive a base annual salary of \$229,825.64, paid at the regular intervals customarily paid by the City, with the appropriate deductions.

IN WITNESS WHEREOF, the parties have executed this Amendment the day and year first above written.

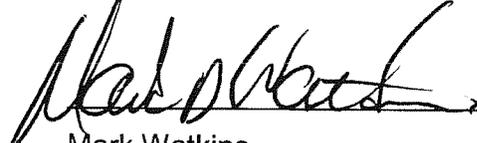
Dated: 9/17/2014

CITY OF SAN BUENAVENTURA

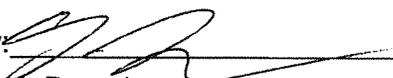
By: 
Cheryl Heitmann
Mayor

Dated: 9/17/2014

MANAGER


Mark Watkins

APPROVED AS TO FORM
Gregory Diaz
City Attorney

By: 
Keith Bauerle
Assistant City Attorney

