

## **EMPLOYMENT AGREEMENT**

THIS AGREEMENT is between the City of San Buenaventura, a municipal corporation and chartered city ("City") and Gregory G. Diaz ("City Attorney"). 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 Gregory Diaz as its City Attorney 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 City Attorney 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 Attorney shall be appointed by the City Council and that he may be removed at the pleasure of the City Council.

D. City Attorney 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 City Attorney.

BASED UPON THE FOREGOING, CITY AND GREGORY DIAZ AGREE AS FOLLOWS:

1. Employment. City will employ Gregory Diaz as City Attorney 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 City Attorney. City Attorney shall perform the duties established for the City Attorney 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. City Attorney shall devote his full energy, skill, ability, and productive time to the performance of City Attorney's duties.

2.2. No Conflict. City Attorney 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 City Attorney's duties.

2.3. Permission Required For Outside Activities. City Attorney 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. City Attorney shall be compensated as provided in this Section 3.

3.1. Compensation. City Attorney shall receive a base annual salary of \$195,000, paid at the regular intervals customarily paid by the City, with appropriate deductions.

3.2. Performance Reviews and Salary Adjustments. The City Council shall meet for the express purpose of evaluating the performance of the City Attorney within six months of his date of hire. After the first year of employment and with a successful rating on his performance evaluation, the City Attorney is eligible to receive up to a 5% salary increase at the discretion of the City Council. During each subsequent annual performance evaluation, the City Council may determine whether additional salary adjustments, not to exceed the top step of the position's salary range, will be provided based on performance, market conditions, or other related factors.

4. Benefits and Allowances. City Attorney shall receive the following benefits and allowances.

4.1. Vacation and Administrative Leave. City Attorney shall receive vacation and administrative leave consistent with that provided to employees in the Executive ("E") Unit as outlined in the City's Salary and Benefits Resolution. 160 hours (four weeks) of vacation are provided annually along with 80 hours (two weeks) of administrative leave, accrued subject to standard City plan. City Attorney shall be compensated for the accrued but unused balances of vacation and leave upon termination or resignation. City Attorney shall notify the City Council of any vacation or other absences lasting longer than one day. City Attorney shall receive an initial vacation balance of 160 hours, but shall not accrue additional vacation during his first year of employment.

4.2. Standard Benefits and Allowances. City Attorney shall receive all sick leave and medical, life, 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.

4.3. Automobile. City Attorney shall receive a car allowance of \$350 per month.

4.4. Retirement Contribution. City shall contribute a total of \$12,000 (Twelve Thousand Dollars) annually toward retirement savings. Of the \$12,000 annual amount, \$6,000 will be paid in bi-weekly installments into a 401a Deferred Compensation account and the remaining \$6,000 will be paid in bi-weekly installments into a Retirement Health Saving plan. Both plans are administered by ICMA/RC, and the City shall pay reasonable set-up fees for such plans. Accounts may be established so as to allow City Attorney to make matching contributions should he so desire.

City shall provide City Attorney with CalPERS retirement benefits, subject to a City Attorney-paid contribution, in the same amount and manner as is paid by Miscellaneous City employees in the Executive ("E") Unit. The City shall provide City Attorney 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.

4.5. Moving Reimbursement. Within 12 months from the date of hire, the city shall reimburse City Attorney for reasonable and necessary moving/relocation expenses not to exceed \$10,000.

- Reimbursable items include actual cost to move household items and personal effects (packing and unpacking, and transportation) from the former primary residence to the new residence.
- Receipts for expenses must be provided to the City.
- Should City Attorney voluntarily leave the City for any reason within 12 months from his date of hire, he will be required to reimburse the City for all relocation expenses.

5. Affiliated Organizations. City will pay the reasonable membership fees of organizations of which City Attorney chooses to be a member which are designed to enhance and/or contribute to his knowledge of municipal law, all to be paid from and within the budgetary limitations of the City Attorney's office. Conference participation may include the League of California Cities annual conference and City Attorneys' Department annual conference.

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 Attorney.

6.2. The cost to defend and indemnify City Attorney 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.

6.3. Annual fee for membership in the State Bar of California.

7. Duration of Employment. City Attorney understands and agrees that he has no constitutionally protected property or other interest in his employment as City Attorney. 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 to any limitations which are now, or which may in the future, be included within the City Charter and this Employment Agreement.

7.1. Severance Pay. If City Attorney is asked to resign or is terminated as City Attorney 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) 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. For the purposes of this Section, the failure to renew as provided in Section 1 or the ending of a term of the Contract without renewal shall be deemed termination requiring the payment of severance.

7.2. Crime Involving Abuse of Office or Position. Pursuant to Government Code Sections 53243, 53243.1, and 53243.2, which became effective on January 1, 2012, if City Attorney is convicted of a crime involving an abuse of his office or position, all of the following shall apply if:

- (1) City Attorney is provided administrative leave pay pending an investigation, he shall be required to fully reimburse City such amounts paid;
- (2) City pays for the criminal legal defense of City Attorney (which would be in City's sole discretion, as it is generally not obligated to pay for a criminal defense), he shall be required to fully reimburse City such amounts paid; and,
- (3) This Agreement is terminated, any Severance Pay and Severance Benefits related to the termination that City Attorney may receive from City shall be fully reimbursed to City or void if not yet paid to him.

For purposes of Section 8.2, abuse of office or position means either:

- (1) An abuse of public authority, including waste, fraud, and violation of the law under color of authority; or,

) )  
(2) A crime against public justice, including, but not limited to, a crime described in Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

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 City Attorney shall be addressed either to City Attorney's residence address as then on file with the City or to City Attorney'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. City Attorney 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: 7-8-14

CITY OF SAN BUENAVENTURA

By Cheryl Heitmann  
Cheryl Heitmann  
Mayor

Dated: 7/2/2014

CITY ATTORNEY

Gregory G. Diaz  
Gregory G. Diaz

Approved as to Form

Julie C. Scott  
Julie C. Scott  
Interim City Attorney

**AMENDMENT #1  
to City Attorney 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 Gregory G. Diaz ("City Attorney"), parties to the City Attorney Employment Agreement dated July 8, 2014 ("Agreement").

Section 3.1 Compensation of the Agreement is amended as follows:

3.1 Compensation. City Attorney shall receive a base annual salary of \$199,875, paid at the regular intervals customarily paid by the City, with appropriate deductions.

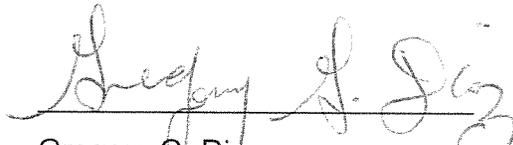
Dated: 9/17/2014

CITY OF SAN BUENAVENTURA

By:   
Cheryl Heitmann  
Mayor

Dated: 9/17/2014

CITY ATTORNEY

  
Gregory G. Diaz

APPROVED AS TO FORM  
Gregory Diaz  
City Attorney

By:   
Keith Bauerle  
Assistant City Attorney