

ADMINISTRATIVE REPORT

Date: August 15, 2018

Agenda Item No.: 6A

Council Action Date: August 27, 2018

To: City Council

**From: Deputy Mayor Matt LaVere
Councilmember Erik Nasarenko**

**Subject: Adoption of a Resolution Appointing an Interim City Manager and
Approval of an Employment Agreement for an Interim City
Manager**

RECOMMENDATION

It is recommended that City Council:

- a. Adopt a resolution appointing Donald Penman as Interim City Manager.
- b. Approve an Employment Agreement with Donald Penman as Interim City Manager.

PREVIOUS COUNCIL ACTION

November 27, 2017 - City Council approved an employment agreement with Assistant City Manager Daniel Paranick to perform the duties of Interim City Manager effective December 29, 2017, following City Manager Mark Watkins' retirement on December 28, 2017.

SUMMARY

Interim City Manager Daniel Paranick is resigning from the City effective August 24, 2018 to accept employment with another local agency. The City is in the process of completing a recruitment for a permanent City Manager. An Interim City Manager is necessary to fill this critical administrative role until a new City Manager is on-board. Council considered candidates for an Interim City Manager and a recommendation to fill the temporary vacancy is being proposed.

DISCUSSION

City Manager Mark Watkins retired on December 28, 2017 and Assistant City Manager Daniel Paranick was appointed by City Council as Interim City Manager. Interim City

Manager Daniel Paranick has subsequently submitted his resignation, effective August 24, 2018, to accept other employment.

Recruitment is currently underway for a permanent City Manager. It is estimated that completing the selection process, including a background investigation and negotiating an agreement with a candidate, may take until mid-September. The new City Manager may need to provide up to a four-week notice to his/her current employer. As such, an Interim City Manager is necessary between the time of Mr. Paranick's last day of employment and when the new City Manager commences employment sometime mid to late October.

City Council considered candidates for the Interim City Manager and selected retired City Manager Donald Penman to perform the duties of City Manager during the completion of the recruitment process and to prevent stoppage of vital public services. The attached employment agreement between the City and Donald Penman will allow him to perform the duties as City Manager on an interim basis. The interim appointment is in compliance with Government Code Sections 7522.56 and 21221(h), which allow retired annuitants of the California Public Employees' Retirement System (CalPERS) to work in a limited term appointment under specific rules.

Deputy Mayor Matt LaVere and Councilmember Erik Nasarenko met with Mr. Penman to discuss the proposed recommendations.

Analysis

The City Manager is typically the highest paid employee in the organization serving as the Chief Executive Officer. During the interim period, Mr. Penman is expected to pursue the completion of objectives established by City Council and lead the organization in an effective manner. As such, City Council negotiators are recommending approval of the attached Employment Agreement providing Interim City Manager Penman a salary of \$111.5406 per hour, which is within the proposed salary range for City Manager. There are no proposed benefits for Mr. Penman in accordance with CalPERS requirements.

Public Engagement

In conformance with Senate Bill 1436, enacted as Chapter 175 of the Statutes of 2016, effective January 1, 2017, City Council is required to make an oral report of any recommended actions to increase compensation and/or benefits for an executive prior to final action.

IMPACTS

Fiscal Impacts: The City Manager is a regularly allocated position within the City's budget. The costs associated with an Interim City Manager can be covered in the FY 2018-2019 budget.

ALTERNATIVES

- Approve a different salary for Interim City Manager Penman.

Prepared by Human Resources Director Elizabeth Foushee for:

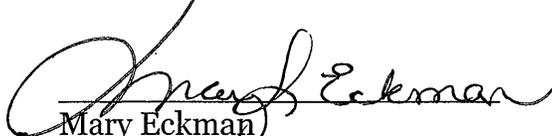


Matt LaVere
Deputy Mayor



Erik Nasarenko
Councilmember

Reviewed as to fiscal impacts



Mary Eckman
Interim Finance and Technology Director

ATTACHMENT(S)

- A Resolution Appointing an Interim City Manager
- B Retired Annuitant Employment Agreement for Interim City Manager

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ATTACHMENT A

**RESOLUTION APPOINTING
AN INTERIM CITY MANAGER**

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RESOLUTION NO. 2018- _____

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF SAN BUENAVENTURA,
CALIFORNIA, APPOINTING DONALD E.
PENMAN AS INTERIM CITY MANAGER
UNDER GOVERNMENT CODE SECTION
21221(h)**

WHEREAS, Mark Watkins resigned from his position of City Manager on December 28, 2017; and,

WHEREAS, Donald E. Penman ("Penman") has specialized skills and knowledge required for the continued successful operation of the public business of the City of San Buenaventura; and,

WHEREAS, The City of San Buenaventura is in the process of recruiting for a permanent City Manager; and,

WHEREAS, Penman possesses the necessary and specialized skills to perform the functions of City Manager during recruitment, and to prevent stoppage of vital public service; and,

WHEREAS, The City Council of the City of San Buenaventura hereby appoints Penman to the position of Interim City Manager under Government Code Section 21221(h), an appointment deemed to be for interim purposes and requiring specialized skills, effective August 27, 2018, and for a period not to exceed six (6) months, or when the City hires a permanent replacement, whichever is earlier, and subject to a limit of 960 hours for all CalPERS employers in a fiscal year; and,

WHEREAS, The appointment of Penman under Government Code Section 21221(h) shall only be made once; and,

WHEREAS, The compensation of Penman shall not be less than the minimum nor exceed the maximum published pay schedule for the vacant position of City Manager. Penman shall not receive

any benefits, incentives, or compensation in addition to the hourly rate.

NOW, THEREFORE, the City Council of the City of San Buenaventura does hereby resolve, determine, find, and order as follows:

SECTION 1. Don Penman is appointed Interim City Manager, effective August 27, 2018, based on the terms described in the Retired Annuitant Employment Agreement for Interim City Manager.

PASSED AND ADOPTED this 27th day of August, 2018.

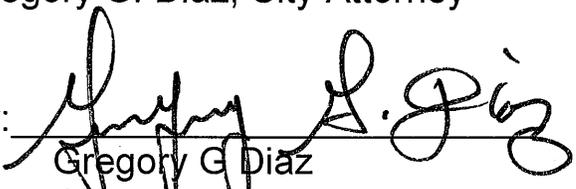
Neal Andrews, Mayor

ATTEST

Antoinette M. Mann, MMC, CRM
City Clerk

APPROVED AS TO FORM
Gregory G. Diaz, City Attorney

By:


Gregory G. Diaz
City Attorney

8/14/2018

ATTACHMENT(S)
EXHIBIT A Retired Annuitant Employment Agreement for Interim
City Manager

ATTACHMENT B

**RETIRED ANNUITANT
EMPLOYMENT AGREEMENT FOR
INTERIM CITY MANAGER**

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**RETIRED ANNUITANT EMPLOYMENT AGREEMENT
For the Position Of
INTERIM CITY MANAGER**

This Employment Agreement ("Agreement") is made and entered into this _____ day of August 2018, by and between the CITY OF SAN BUENAVENTURA ("CITY"), a California Charter city and municipal corporation, and DONALD E. PENMAN ("PENMAN"), an individual, on the following terms and conditions:

RECITALS

A. CITY desires to employ the services of PENMAN as its Interim City Manager, temporarily, to carry out the duties and responsibilities of City Manager as provided for by the City's Charter, in consideration of and subject to the terms, conditions, and benefits set forth in this Agreement.

B. PENMAN desires to accept employment as Interim City Manager in consideration of and subject to the terms, conditions, and benefits set forth in this Agreement.

C. PENMAN represents that he is a retired annuitant of CalPERS within the meaning of Government Code § 21221(h) and acknowledges that his compensation is statutorily limited as provided in Government Code § 21221(h). PENMAN represents that, as of the effective date of this Agreement, he has not worked for another CalPERS state or contracting agency as a retired annuitant during the CITY's 2018-2019 fiscal year, and that he therefore acknowledges that he is restricted to working no more than 960 hours for CITY, a state agency or other CalPERS contracting agencies (collectively "CalPERS Agencies") during CITY's 2018-2019 fiscal year. PENMAN represents that he has not received unemployment compensation from any CalPERS agencies during the 12-month period preceding the effective date of this Agreement. PENMAN further represents that his CalPERS retirement date became effective prior to the 180-day period preceding the effective date of this Agreement.

D. CITY has determined that it is necessary to hire PENMAN, a retired annuitant, because the position of Interim City Manager requires special skills, and PENMAN, by virtue of his significant experience as City Manager and Interim City Manager in other cities, has those special skills.

OPERATIVE PROVISIONS

In consideration of the promises and covenants contained herein, the parties agree as follows:

1. Position and Duties.

1.1 Position. PENMAN accepts employment with CITY as its Interim City Manager and shall perform all functions, duties and services set forth in Section 1.4[Duties] of this Agreement. PENMAN shall provide service at the direction and under the supervision of the City Council. It is the intent of the parties that PENMAN, as the Interim City Manager, shall keep the City Council fully apprised of all significant ongoing operations of CITY. Toward that end, PENMAN shall report directly to the City Council and will periodically, or as may be otherwise specifically requested by the City Council, provide status reports to the City Council on his activities and those of CITY.

1.2 Term. This Agreement shall become effective and executed both by PENMAN and CITY's Mayor, which date shall be the date first referenced above. PENMAN shall commence the performance of his duties as the Interim City Manager on August 27, 2018 or at such later date as the parties hereto shall agree in writing ("Commencement Date"). This Agreement shall expire as of the first of the following to occur: (i) 5:00 p.m. on Friday, February 22, 2019;(ii) upon the employment commencement date of a permanent City Manager employed by CITY; (iii) upon PENMAN working his 960th hour for CITY during the 2018-2019 fiscal year, including hours worked for other CalPERS agencies during such fiscal year; or (iii)upon termination of the Agreement by either PENMAN or CITY as provided in Section4 [Termination] of this Agreement.

1.3 At-Will. PENMAN acknowledges that he is an at-will, temporary employee of CITY who shall always serve at the pleasure of the City Council during the period of his service hereunder. The terms of CITY's personnel rules, policies, regulations, procedures, ordinances, and resolutions regarding City Administrative Personnel (collectively "Personnel Policies") , as they may be amended or supplemented from time to time, shall not apply to PENMAN, and nothing in this Agreement is intended to, or does, confer upon PENMAN any right to any property interest in continued employment, or any due process right to a hearing before or after a decision by the City Council to terminate his employment, except as is expressly provided in Section 1.2 [Term] or Section 4 [Termination] of this Agreement. Nothing contained in this Agreement shall in any way prevent, limit or otherwise interfere with the right of CITY to terminate the services of PENMAN, as provided in Section 1.2 [Term] or Section 4 [Termination]. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of PENMAN to resign at any time from this position with CITY, subject only to the provisions set forth in Section 1.2 [Term] or Section 4 [Termination]of this Agreement. This at-will employment Agreement shall be expressly subject to the rights and obligations of CITY and PENMAN, as set forth in Section 1.2 [Term] or Section 4 [Termination] below.

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1.4 Duties. PENMAN shall serve as the Interim City Manager and shall for the Term of the Agreement be vested with the powers, duties and responsibilities of the City Manager as set forth in the City's Charter, the terms of which are incorporated herein by reference. PENMAN shall provide service at the direction and under the supervision of the City Council. It is the intent of the parties that the Interim City Manager shall keep the City Council fully apprised of all significant ongoing operations of CITY. Toward that end, PENMAN shall report directly to the City Council and will periodically, or as otherwise specifically requested by the City Council, provide status reports to the City Council on his activities and those of CITY. It is the intent of the City Council for the Interim City Manager to function as the chief executive officer of CITY's organization. Without additional compensation, PENMAN shall provide such other services as are customary and appropriate to the position of Interim City Manager, including serving as the Executive Director of the City's Successor Agency to the former Redevelopment Agency, with such additional services assigned from time to time by the City Council as may be consistent with California law and the City Charter. PENMAN shall devote his best efforts and full-time attention to the performance of these duties. Notwithstanding PENMAN's duties as Interim City Manager, nothing in this Agreement shall be construed to prohibit direct communications between the City Council and employees of CITY in a manner that is consistent with the City's Charter, personnel rules, administrative policies, and City Council policies.

1.5 Hours of Work. PENMAN shall devote the time necessary to adequately perform his duties as Interim City Manager. The parties anticipate that PENMAN will work a sufficient number of hours per week allocated between regular business hours and hours outside of regular business hours including, without limitation, attendance at regular and special City Council meetings, attendance at activities of Directed Organizations (as defined below), and attendance at such community events and CITY functions as the City Council may direct. Toward that end, PENMAN shall be allowed reasonable flexibility in setting his own office hours, provided the schedule of such hours provides a significant presence at City Hall, reasonable availability to the City Council, CITY staff, and members of the community during regular CITY business hours and for the performance of his duties and of CITY business. However, in no event shall PENMAN be required to work more than 960 hours per fiscal year for CITY, including hours worked for other CalPERS Agencies during the 2018-2019 fiscal year. The position of Interim City Manager shall be deemed an exempt position under California wage and hour law.

1.6 Directed Organizations. The City Council desires PENMAN to be reasonably active in statewide, regional and/or local organizations as directed by the City Council that are deemed necessary to maintain and contribute to the advancement of CITY's interests and standing ("Directed Organizations"). These Directed Organizations may include, without limitation, participation in the Ventura Council of Governments, Southern California Association of Governments, the California Contract Cities Association, the Independent Cities Association and the League of California of Cities. CITY agrees to budget and, consistent with that budget, pay for the dues and

subscriptions of the Interim City Manager necessary for his participation in the Directed Organizations.

1.7 Other Activity. In accordance with Government Code Section 1126, during the period of his employment, PENMAN shall not accept, without the express prior written consent of the City Council, any other employment or engage, directly or indirectly, in any other business, commercial, or professional activity (except as permitted under Section 1.6 [Directed Organizations]), whether or not to pecuniary advantage, that is or may be competitive with CITY, that might cause a conflict of interest with CITY, or that otherwise might interfere with the business or operation of CITY or the satisfactory performance of PENMAN's duties as Interim City Manager.

2. **Compensation.**

2.1 Rate of Pay. For all services performed by PENMAN as the Interim City Manager under this Agreement, CITY shall pay PENMAN compensation at the rate of \$111.5406 per hour according to the payroll schedule in place for CITY employees paid bi-weekly subject to the limitations provided below.

2.1.1 Compliance with CalPERS requirements. It is the intent of the parties to compensate PENMAN only to the extent permitted under Government Code § 21221(h) and corresponding CalPERS regulations and policy statements. The Rate of Pay is within the established salary range for City Manager \$246,690.91 per year and \$118.6014 per hour. PENMAN acknowledges that he will be compensated at the lesser rate of \$111.5406 per hour and will not receive any benefits, incentives, compensation in-lieu of benefits, or any other form of compensation.

2.1.2 Recordation and Reporting of Hours Worked. PENMAN will comply with all applicable CalPERS regulations governing employment after retirement, including the recordation and reporting of all hours worked for CITY to CalPERS as may be required. CITY shall assist in any such reporting obligations to CalPERS. Additionally, PENMAN shall keep CITY continually apprised of any hours worked by PENMAN for other CalPERS Agencies during the term of this Agreement.

2.2 Benefits.

2.2.1 No Benefits. Pursuant to Government Code §21221(h) and related CalPERS regulations and policy statements, PENMAN shall not receive from CITY any benefits CITY commonly provides to its employees, including without limitation health, dental, or vision insurance coverage, life insurance, employee assistance programs, and similar benefits.

3. Vacation and Leave.

3.1 No Leave. PENMAN and CITY agree that PENMAN, in accordance with Government Code Section 21221(h) and related CalPERS regulations and policy statements, shall not be provided or accrue any personal time off, vacation, sick leave, administrative leave, paid holidays or similar leave benefits.

4. Termination.

4.1 By CITY. This Agreement may be terminated by CITY for any reason thirty (30) days after providing written notice to PENMAN of such termination. CITY 's only obligation in the event of such termination will be payment to PENMAN of all compensation then due and owing as set forth in Section 2.1 [Rate of Pay] up to and including the effective date of termination. However, this Agreement may be terminated immediately if necessitated by changes to Cal PERS statutory or regulatory requirements.

4.2 By PENMAN. This Agreement may be terminated by PENMAN for any reason thirty (30) days after providing written notice to CITY of such termination. CITY shall have the option, in its complete discretion, to make PENMAN's termination effective at any time prior to the end of such period, provided CITY pays PENMAN all compensation as set forth in Section 2.1 [Rate of Pay] then due and owing him through the last day actually worked.

4.3 No Notice for Expiration. Nothing in this Section 4 [Termination] shall be construed to require either party to give advance written notice for the Agreement to expire as set forth in Section 1.2 [Term].

4.4 Termination Obligations. PENMAN agrees that all property, including, without limitation, all equipment, tangible Proprietary Information (as defined below), documents, records, notes, contracts, and computer-generated materials furnished to or prepared by him incident to his employment belongs to CITY and shall be returned promptly to CITY upon termination of PENMAN's employment. PENMAN's obligations under this subsection shall survive the termination of his employment and the expiration of this Agreement.

5. Proprietary Information.

"Proprietary Information" is all information and any idea pertaining in any manner to the business of CITY (or any CITY affiliate), its employees, clients, consultants, or business associates, which was produced by any employee of CITY during his/her employment or otherwise produced or acquired by or on behalf of CITY. Proprietary Information shall include, without limitation, trade secrets, product ideas, inventions, processes, formulae, data, know-how, software and other computer programs, copyrightable material, marketing plans, strategies, sales, financial reports, forecasts,

and customer lists. All Proprietary Information not generally known outside of CITY' s organization, and all Proprietary Information so known only through improper means, shall be deemed "Confidential Information." During his employment by CITY, PENMAN shall use Proprietary Information, and shall disclose Confidential Information, only for the benefit of CITY and as is, or may be, necessary to perform his job responsibilities under this Agreement. Following termination, PENMAN shall not use any Proprietary Information and shall not disclose any Confidential Information, except with the express written consent of CITY. PENMAN's obligations under this Section shall survive the termination of his employment and the expiration of this Agreement.

6. Conflict of Interest.

PENMAN represents and warrants to CITY that he presently has no interest, and represents that he will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or interfere in any way with performance of his services under this Agreement.

7. General Provisions.

7.1 Recitals. The recitals, inclusive of all facts and representations, are incorporated into this Agreement as if set forth in the Operative Provisions.

7.2 Vehicle Operation. PENMAN shall operate any vehicle used in connection with the performance of his duties as Interim City Manager in a safe manner and otherwise in observance of all established traffic safety laws and ordinances and shall maintain a valid California automobile's driver's license during the period of employment.

7.3 Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be effective upon delivery by hand or three (3) business days after deposit in the United States mail, postage prepaid, certified or registered, and addressed to CITY at the address below, and or at the last known address maintained in PENMAN's personnel file. PENMAN agrees to notify CITY in writing of any change in his address during his employment with CITY. Notice of change of address shall be effective only when accomplished in accordance with this Section.

City's Notice Address:

City of San Buenaventura
501 Poli Street
Ventura, CA 93001
Attn: Mayor and City
Council

Interim City Manager's Address:

Donald E. Penman
[Deliver to last updated address in personnel file]

7.4 Indemnification. Subject to, in accordance with, and to the extent provided by the California Government Claims Act [Government Code Section 810 *et seq.*], CITY will indemnify, defend, and hold PENMAN harmless from and against any action, demand, suit, monetary judgment or other legal or administrative proceeding, and any liability, injury, loss or other damages, arising out of any act or omission occurring during PENMAN's tenure as Interim City Manager.

7.5 Bonding. CITY shall bear the full cost of any fidelity or other bonds required of the Interim City Manager under any law or ordinance.

7.6 Integration. This Agreement is intended to be the final, complete, and exclusive statement of the terms of PENMAN's employment by CITY. This Agreement supersedes all other prior and contemporaneous agreements and statements, whether written or oral, express or implied, pertaining in any manner to the employment of PENMAN, and it may not be contradicted by evidence of any prior or contemporaneous statements or agreements. To the extent that the practices, policies, or procedures of CITY, now or in the future, apply to PENMAN and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control.

7.7 Amendments. This Agreement may not be amended except in a written document signed by PENMAN, approved by the City Council and signed by CITY's Mayor.

7.8 Waiver. Failure to exercise any right under this Agreement shall not constitute a waiver of such right.

7.9 Assignment. PENMAN shall not assign any rights or obligations under this Agreement. CITY may, upon prior written notice to PENMAN, assign its rights and obligations hereunder.

7.10 Severability. If a court or arbitrator holds any provision of this Agreement to be invalid, unenforceable, or void, the remainder of this Agreement shall remain in full force and effect.

7.11 Attorneys' Fees. In any legal action, arbitration, or other proceeding brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

7.12 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, with venue proper only in Ventura County, State of California.

7.13 Interpretation. This Agreement shall be construed, according to its fair meaning, and not in favor of or against any party. By way of example and not in limitation, this Agreement shall not be construed in favor of the party receiving a benefit

nor against the party responsible for any language in this Agreement. Captions are used for reference purposes only and should be ignored in the interpretation of the Agreement. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, cancelled superseded or changed by any oral agreement, course of conduct, waiver or estoppel.

7.14 Acknowledgment. PENMAN acknowledges that he has had the opportunity to consult legal counsel regarding this Agreement, that he has read and understands this Agreement, that he is fully aware of its legal effect, and that he has entered into it freely and voluntarily and based on his own judgment and not on any representations or promises other than those contained in this Agreement.

IN WITNESS WHEREOF, CITY has caused this Agreement to be signed and executed on its behalf by its Mayor and duly attested to by its City Clerk, and PENMAN has signed and executed this Agreement, as of the date first indicated above.

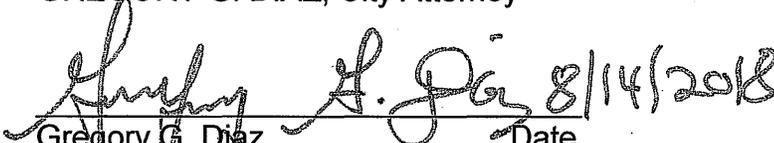
CITY OF SAN BUENAVENTURA

Neal Andrews, Mayor

ATTEST:

Antoinette Mann, MMC, CRM
City Clerk

APPROVED AS TO FORM
GREGORY G. DIAZ, City Attorney



Gregory G. Diaz Date
City Attorney

INTERIM CITY MANAGER

Donald E. Penman
Donald E. Penman