

EMPLOYMENT AGREEMENT

THIS AGREEMENT is between the City of San Buenaventura, a municipal corporation and chartered city ("City") and Alexander D. McIntyre ("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 agrees to employ Manager as City Manager for an initial term of three years beginning on November 13, 2018 or a date that is mutually agreed upon by the parties, as the official starting date with the City, 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 \$255,000, paid at the regular intervals customarily paid by the City, with appropriate deductions.

3.2. Annual Cost of Living Adjustments. Commencing on July 1, 2019 and on July 1 of each year thereafter, Manager shall be considered for any annual cost-of-living adjustment that other Executive service level employees may receive. There shall be no retroactive payments due from either party for any such increase or decrease.

3.3. Performance Reviews and Adjustments. The City Council shall meet for the express purpose of evaluating the performance of Manager no later than six months of Manager's date of first employment by the City. Upon satisfactory review, Manager shall be considered for a merit increase applied to his base compensation.

3.4. Ongoing Performance Reviews and Adjustments. 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, or other factors. The City Council will act in good faith in determining whether to increase the base salary of Manager, but the ultimate decision in this regard is within the sole discretion of the City Council.

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 leave upon termination or resignation. Unused Administrative leave is not subject to cash out. Manager shall notify the City Council of any vacation or other absences lasting longer than one day. Manager shall receive an initial administrative leave bank of 80 hours and vacation balance of 80 hours.

4.2. Sick Leave. Manager shall receive an initial bank of 96 hours of sick leave and accrue sick leave at 48 hours per year.

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

4.4. Retirement Contribution. City shall contribute \$12,000 (Twelve Thousand Dollars) annually, paid in bi-weekly installments to a 401(a) account. The City shall pay reasonable set-up fees for such plan. The account may be established 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. Manager agrees to contribute to a Retirement Health Savings Plan the same as other employees at the Executive service level.

No later than six months after hire, City shall consider upon satisfactory review an increased contribution to the 401(a) account on an on-going basis.

4.5. Standard Benefits and Allowances. Manager shall receive all holidays, sick leave, health, 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.

4.6. Retiree Health Savings Account. Manager shall participate in the Retiree Health Savings Account in accordance with the City's Executive benefits. No later than six months after hire, City shall consider upon satisfactory review contributing 1% of employee's salary towards the Retiree Health Savings Account on behalf of the employee.

4.7. Technology Allowance. Manager shall be provided by the City a personal computer for home use and receive \$100 per month for the use of his personal cell phone for official City business and any other computer/technology-related device he feels is necessary to complete work assignments. Manager agrees to waive a City-issued cell phone.

4.8. Relocation Stipend. Manager shall receive a \$10,000 one-time payment following the first full pay period for relocation expenses.

5. Affiliated Organizations.

5.1. Affiliated Organizations. City agrees to budget a reasonable amount for and to pay membership fees and dues, of conference and meeting registrations, and the travel and subsistence expenses of Manager for professional development and official travel, meetings and occasions adequate to continue the professional development of the Manager to adequately pursue necessary official and other functions of the City, including, but not limited to, International City/County Management Association (ICMA) conferences. Travel and conference expenses shall be reimbursed for reasonable expenses only, and in accordance with the City's standard policies governing travel and conference expense reimbursement.

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 to any limitations which are now, or which may in the future, be included within the City Charter.

7.1. Severance Pay. Subject to the provisions of this Section, if Manager is asked to resign or is terminated during the first year of employment as City Manager he shall receive a cash payment equivalent to the sum of i) his then-current monthly salary multiplied by twelve (12); and ii) the cash value, as determined by City, of his monthly non-salary benefits multiplied by twelve (12). If Manager is asked to resign or is terminated in year two or subsequent years of employment, a cash payment equivalent to the sum of i) his then-current monthly salary multiplied by nine (9); and ii) the cash value, as determined by City, of his monthly non-salary benefits multiplied by nine (9). 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. 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 Manager is convicted of a crime involving an abuse of his office or position, all of the following shall apply if:

- (1) Manager 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 Manager (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 Manager may receive from City shall be fully reimbursed to City or void if not yet paid to him.

For purposes of Section 7.2, 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.

In addition to Section 7.2 hereof, if City terminates this Agreement (thereby terminating Manager's employment) with Cause, as determined by the affirmative votes of a majority of the members of the City Council at a Regular or Special Meeting of the City Council properly noticed and called in accordance with the Brown Act, Manager shall not be entitled to any additional compensation or payment, including Severance, but shall be entitled only to accrued Base Salary and vacation pay, and any other unused accrued benefit allowances according to their terms. As used in this Agreement, Cause shall only mean any of the following:

- (1) Conviction of, or plea of guilty or nolo contendere to, any crime or offense (other than minor traffic violations or similar offenses) which is likely to have a material adverse impact on the City or on the Manager's reputation;
- (2) Proven failure of the Manager to observe or perform any of his duties and obligations, if that failure continues for a period of thirty (30) business days from the date of his receipt of notice from the City Council specifying the acts or omissions deemed to amount to that failure;
- (3) Repeated failure to carry out a directive or directives of the City Council made by the City Council as a body at a Brown Act-compliant meeting; and
- (4) Any grossly negligent action or inaction by Manager that materially and adversely: (a) impedes or disrupts the operations of City or its

organizational units; (b) is detrimental to employees or public safety; or (c) violates City's properly-established rules or procedures.

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 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.

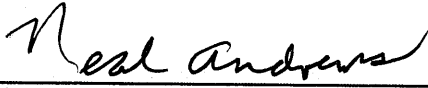
8.5. Waiver. Any failure of a party to insist upon strict compliance with any term, undertaking, or condition of this Agreement shall not be deemed to be a waiver of such term, undertaking, or condition. To be effective, a waiver must be in writing, signed and dated by the parties.

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.

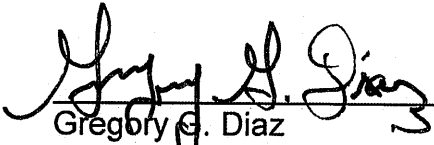
8.7. Section Headings. The headings on each of the sections and subsections of this Agreement are for the convenience of the parties only and do not limit or expand the contents of any such section or subsection.

Dated: October 8, 2018

CITY OF SAN BUENAVENTURA


By 
Neal Andrews
Mayor

Approved as to Form

 10/2/2018
Gregory G. Diaz Date
City Attorney

Dated: _____

MANAGER


Alexander D. McIntyre

**FIRST AMENDMENT
to City Manager Employment Agreement**

This First Amendment ("First Amendment") to Agreement No. 2018-77 is made and entered into between the City of San Buenaventura, a municipal corporation and charter city ("City"), and Alexander D. McIntyre ("City Manager"), parties to the "City Manager Employment Agreement" dated October 8, 2018 ("Agreement").

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, the parties hereto do hereby agree as follows:

1. Section "3.1. Compensation" of the Agreement is hereby amended, effective the first City pay period after the First Amendment is approved by City Council to read as follows:

"3.1. Compensation. City Manager shall receive a base annual salary of \$262,650, to be paid at the regular intervals customarily paid by the City, with appropriate deductions."

2. The City Council has determined to grant a 2.25% cost of living adjustment ("COLA") pursuant to Section 3.2 of the Agreement to be effective July 13, 2019.

3. Section "4.4. Retirement Contribution" of the Agreement is amended, effective the first City pay period after this First Amendment is approved by City Council to read as follows:

"4.4. Retirement Contribution. City shall contribute \$15,000 (Fifteen Thousand Dollars)

annually, paid in bi-weekly installments to a 401(a) account.”

4. Section “4.6 Retiree Health Savings Account” of the Agreement is amended effective the first City pay period after this First Amendment is approved by City Council to read as follows:

“4.6. Retiree Health Savings Account.
Manager shall participate in the Retirement Health Savings Account in accordance with the City’s Executive Benefits. In addition, the City shall contribute 1% (one percent) of City Manager’s base salary towards the Retiree Health Savings account.”

Except as otherwise specifically provided herein, all other provisions of the Agreement remain in full force and effect.

Dated: 6/24/19

CITY OF SAN BUENAVENTURA

By: 
MATT LAVERRE
Mayor


APPROVED AS TO FORM:


GREGORY G. DIAZ
City Attorney

6/10/2019
Date

Dated: 6/24/19

CITY MANAGER

By: 
ALEXANDER D. MCINTYRE