

CITY MANAGER EMPLOYMENT AGREEMENT

This CITY MANAGER EMPLOYMENT AGREEMENT (“Agreement”) is made and entered into as of this 24th day of July, 2012, by and between the CITY OF HERMOSA BEACH, a California general law city and municipal corporation (hereinafter “City”), and THOMAS B. BAKALY, an individual (hereinafter “Employee”).

RECITALS

- A. City desires to engage the services of Employee and Employee desires to accept employment as City Manager of the City of Hermosa Beach.
- B. The City Council desires to:
- (1) Encourage the highest standards of fidelity and public service on the part of Employee;
 - (2) Secure and retain the services of Employee and to provide inducement for him to remain in such employment;
 - (3) Make possible full work productivity and independence by assuring Employee’s morale and peace of mind with respect to future security; and
 - (4) Provide a just means for terminating Employee's services at such time as he may be unable fully to discharge his duties, or when City may desire otherwise to terminate his employment.
- C. The parties further desire to establish certain benefits and certain conditions of Employee's employment.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants hereinafter contained the parties agree as follows:

1. Appointment/Duties. As of the effective date set forth in Section 2, City appoints and agrees to employ Employee and Employee accepts employment as City Manager of City to perform the functions and duties specified in City's Municipal Code and the Government Code of the State of California, and to perform such other

legally permissible and proper duties and functions as the City Council may from time to time assign. Employee shall not consult or engage in other non-City connected business or employment without the prior knowledge and express written approval of the City Council.

2. Term. This Agreement is effective commencing September 4, 2012 and shall continue in effect unless terminated by either party as provided in Section 3 herein.

3. Termination and Resignation.

A. Employee's employment with the City is on an at-will basis. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Council to terminate, by a majority vote of the City Council, the services of Employee without cause, at any time, subject only to the City providing written notice to Employee, and complying with paragraph D of this Section 3 and Section 2.12.110 through 2.12.140 of the Municipal Code. Notwithstanding the foregoing, notice of termination shall not be given during or within a period of ninety (90) days succeeding any general municipal election held in the City at which members of the City Council are elected.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign at any time from his position with City, subject only to Employee providing thirty (30) days prior written notice to the City. Employee's resignation shall be deemed accepted upon delivery of a written resignation to the Mayor, or if the Mayor is unavailable, the Mayor Pro Tem.

C. Notwithstanding the provisions of Paragraph A of this Section 3, in the event Employee is terminated by City for "cause," then City may terminate this Agreement immediately and Employee shall be entitled to only the compensation accrued up to the date of termination. As used in this section, "cause" shall mean any of the following:

- (1) Conviction of any felony.
- (2) Conviction of a misdemeanor arising directly out of the City Manager's duties pursuant to this Agreement.
- (3) Conviction of any crime involving moral turpitude.

- (4) Removal from office by the Grand Jury.
- (5) Willful abandonment of duties.
- (6) A pattern of repeated, willful and intentional failure

to carry out clear and legally constituted policy decisions of the City Council made by the City Council as a body.

(7) Failure to competently discharge duties as determined in two consecutive sets of written findings approved by a majority of the City Council not earlier than the first anniversary of this Agreement, and no less than three months apart. Examples of incompetent discharge of duties include, but are not limited to, failure to meet statutory or contractual deadlines within Employee's area of authority and negligent hiring or supervision of employees under Employee's direct supervision leading to City liability. Employee will be provided an opportunity to respond to the findings prior to the effective date of termination.

D. In the event Employee is terminated by the City Council at any time that Employee is still willing and able to perform the duties of City Manager, and the termination is without cause as "cause" is defined in Paragraph C above, then, subject to the limitations set forth in Government Code Section 53260, and upon delivery to the City of an executed Separation Agreement and release of all claims in a form acceptable to the City within 30 days of his termination, the City shall pay Employee a lump sum cash payment equal to six (6) month's base salary and health benefits (i.e. excluding all other benefits), in addition to cash-out of earned vacation and sick leave balances to which Employee would ordinarily be entitled upon termination. The word "termination" in this paragraph shall include a reduction in salary (other than an across-the-board reduction applicable to all senior level employees) or other financial benefits of Employee or Employee's resignation, if preceded by a formal request by a majority of the City Council that he resign.

4. Revolving Door. Employee shall comply with Government Code § 87406.3 for a period of one year after separating from service with City. This section will survive termination of this Agreement.

5. Compensation. City agrees to pay Employee for the services required by this Agreement a monthly base annual salary of One Hundred Eighty-five

Thousand Dollars (\$185,000.00) payable in installments at the same time as other employees of the City are paid. Employee is eligible to earn and receive an annual performance-based bonus, in the sole discretion of the City Council, in an amount not to exceed 7% of base salary, following an annual performance evaluation by the City Council and based on Employee's overall performance and his achievement of mutually agreed goals. Employee shall not be entitled automatically to receive cost of living adjustments afforded to City's classified employees or department head level executives, but the City Council may in its discretion take the cost of living index into consideration when adjusting Employee's compensation.

At the time of his annual performance evaluation, or at any other time desired by the City Council, City agrees to evaluate Employee's salary and/or any other benefits Employee receives under this Agreement and to make modifications in such amounts and to such an extent as City Council in its discretion may determine that it is desirable to do so based on Employee's performance and such other information as Employee may submit as Employee deems relevant to this determination, including evidence of salaries paid to city managers in comparable cities.

6. Hours of Work. Employee shall generally work when City Hall is open for business as determined by the City Council. As of the effective date of this Agreement, City Hall operates on a 4/10 schedule and is closed on Fridays; however, the City Council reserves the right in its discretion to modify the 4/10 work schedule and nothing in this Agreement entitles Employee to a four-day work week. In addition, Employee's duties may involve expenditures of time in excess of forty (40) hours per week, and will also include time outside normal office hours such as attendance at City Council and other meetings. Employee shall be exempt from paid overtime compensation and from Fair Labor Standard Act work hours restrictions and may modify his schedule within reason to adjust for attendance at meetings at night and during other times outside of ordinary business hours,

7. Retirement and Insurance Benefits.

A. Retirement. City shall contribute to employer's and employee's portion of Employee's membership in the Public Employees Retirement System pursuant to the "2% at 60" PERS plan formula until such time as the

Memorandum of Understanding or other applicable contractual arrangement with the City's department head level executives is amended to require that such executives pay the employee portion. At such time, Employee will contribute and bear the cost of the employee's portion of PERS membership. Employee shall pay any legally required Social Security withholding.

B. Deferred Compensation. City will contribute \$8,000 per calendar year towards Employee's participation in any deferred compensation plan offered by City.

C. Medical Insurance. City will provide Employee \$917.18 to be applied towards a cafeteria plan for purchase of medical, dental, and vision insurance at Employee's election. This sum will be increased annually by the amount of the increase, if any, in premium cost. At Employee's election, City will pay for an annual physical examination at the medical facility of City's choice.

D. Life Insurance. City will at its expense provide Employee a term life insurance policy in the face amount of \$200,000.

E. Disability Insurance. City will at its expense provide disability insurance for Employee's benefit, per the disability insurance plans selected by City, as follows:

- (1) Short Term Disability: \$2,775 per week
- (2) Long Term Disability: \$9,000 per month

If Employee utilizes the Long Term Disability Plan, he shall not accrue vacation, sick leave, holiday pay and any other allowances after the 90th day of disability.

F. Other Insurance. City shall provide and pay for all other insurance provided to other employees mandated by State law.

G. Waiver. Employee waives any other insurance benefits not specifically enumerated herein.

8. Sick Leave, Vacation and Holidays.

A. Sick Leave. Employee shall earn six (6) hours of sick leave per month until a balance of 176 hours is achieved and eight (8) hours per month thereafter, up to a maximum accrual of 500 hours. After 176 hours is accrued, Employee

may cash out the amount over 176 hours annually at 100% of salary. Sick leave shall be used only in case of sickness or disability of Employee or a member of his immediate family. Upon termination of this Agreement, Employee may cash out 100% of accrued sick leave.

B. Vacation. Employee shall earn 178 hours of vacation per year. Employee may elect to cash out unused vacation in excess of eighty (80) hours at any time; accrued vacation in excess of four hundred (400) hours will be automatically cashed out at Employee's then current base salary rate. In the first year of service under this Agreement, Employee may take vacation time in excess of his then earned vacation hours; provided, however, should Employee terminate this Agreement pursuant to paragraph 3.B, the cash value of the excess shall be withheld from Employee as a payroll deduction or otherwise reimbursed to the City.

C. Management Leave. Employee shall be provided one hundred (100) hours of management leave each calendar year. Management leave will not accrue or carry over from year to year nor does it have any cash value. Management leave will be prorated for partial years' service.

D. Holidays. Employee shall be entitled to the same number of paid holidays per year as provided to other City employees.

E. Bereavement Leave. Employee is entitled to three (3) days of bereavement leave due to the death of a member of his family. Bereavement leave does not accrue or carry over from year to year nor does it have any cash value.

9. Professional Development. City agrees to budget for and pay travel and subsistence expenses of Employee for professional travel, official travel, meetings necessary to pursue official and other functions for the City and to continue professional development of Employee, to the extent deemed reasonable by the City Council.

10. Memberships. City agrees to pay Employee's membership dues in the International City/County Manager's Association ("ICMA"), California City Manager's Association, California League of Cities and other similar organizations to which City is a member, at City expense with prior City Council approval. Employee shall have a reasonable right to attend meetings of such organizations. City agrees to pay

for such other professional membership dues and subscriptions as are approved in advance by the City Council in the annual budget.

11. General Expenses. City recognizes that certain expenses of a nonpersonal and job affiliated nature may be incurred by Employee. City agrees to reimburse Employee for reasonable expenses that are submitted within thirty (30) days for approval and that are supported by expense receipts, statements or personal affidavits, and an audit thereof in like manner as other demands against the City. In the event a City vehicle is not available and Employee must use his personal vehicle for City business, Employee will be reimbursed at the then current mileage rate established by the Internal Revenue Service.

12. Evaluation of Performance. On or about the six (6)-month anniversary of the commencement of this Agreement, the City Council shall review and provide Employee with an evaluation of his performance based on criteria established by the Council with Employee's assistance and shall establish performance goals for the balance of the first year of Employee's service. The City Council shall conduct such evaluation and goal-setting at least annually thereafter. In the annual evaluation, the Council and Employee shall jointly define such goals and performance objectives that they determine necessary for the proper operation of the City and for the attainment of the Council's policy objectives and shall further establish a relative priority among those goals and objectives. Notwithstanding the foregoing, the City Council may evaluate Employee and provide him with a written evaluation at any time, and may in its discretion synchronize Employee's annual performance evaluations to correspond to the City's fiscal year or the calendar year.

13. Other Terms and Conditions of Employment. The City Council may from time to time fix other terms and conditions of employment relating to the performance of Employee provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Municipal Code, or other applicable law.

14. Assembly Bill 1344 Compliance. To the extent CITY provides: (i) paid leave to Employee pending an investigation; (ii) funds for the legal criminal defense of the Employee; and/or (iii) a cash settlement to Employee related to the termination of

the Employee pursuant to Paragraph 3 of this Agreement and Government Code Section 53243 et seq., Employee shall fully reimburse the City for any and all amounts paid by the City which fall within subsections (i) through (iii) of this section in the event that the Employee is convicted of a crime involving the abuse of his office or position.

15. Relocation to California. City will reimburse Employee (or pay a vendor directly) up to \$25,000 for relocation expenses, including without limitation, house-hunting visits to the Hermosa Beach area, rent or mortgage payments and other expenses related to moving.

16. General Provisions.

A. The text herein shall constitute the entire agreement between the parties.

B. If Employee dies or becomes incapacitated during the term of this Agreement, any accrued and unpaid wages provided by the terms of this Agreement shall be paid by City to Employee's spouse.

C. If any provision or portion hereof contained in this Agreement is held to be unconstitutional, invalid or unenforceable the remainder of this Agreement or portion thereof shall be deemed severable and shall not be affected and shall remain in full force and effect provided that the principal purposes of the Agreement are not thereby frustrated.

D. City agrees to defend and indemnify Employee in accordance with the California Government Code.

E. City shall bear the cost of any fidelity or other bonds required of Employee under any law or ordinance.

F. This Agreement may be changed or amended by the mutual written consent of City and Employee. Any benefits to Employee under this Agreement may be increased or added to by motion of the City Council without formal amendment to the Agreement at a regular meeting of the City Council.

G. Employee is expected to conform to the ICMA Code of Ethics and must comply with all applicable provisions of the City's conflict of interest code.

H. In the event of a dispute in the interpretation or application of the provisions of this Agreement, the parties agree to consider utilization of alternative dispute resolution prior to initiating litigation.

IN WITNESS WHEREOF the parties have executed this Agreement as of the day and year first above written.

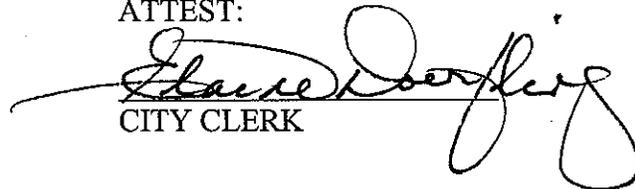
EMPLOYEE


THOMAS B. BAKALY

CITY OF HERMOSA BEACH

By: 
MAYOR

ATTEST:


CITY CLERK