

**EMPLOYMENT AGREEMENT
BETWEEN THE CITY OF MANHATTAN BEACH AND MARK DANAJ**

RECITALS

- A. The City of Manhattan Beach ("City") desires to hire a City Manager.
- B. Mark Danaj ("Employee") represents that he is qualified to perform the duties of City Manager.
- C. The Parties acknowledge that the City Manager is committed to the ideals of the International City Management Association ("ICMA"). The Parties mutually desire that the City Manager be subject to and comply with the ICMA Code of Ethics.
- D. The City Manager commits to comply with the ICMA Code of Ethics.
- E. City and Employee wish to enter into an Employment Agreement that sets forth the rights and obligations of the parties.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Employee agree as follows:

1. **TERM.** Employee shall commence his service on July 7, 2014 which shall also be deemed the effective date of this Agreement ("Effective Date"); provided, however, this Agreement will not be effective unless and until Employee actually reports for work and assumes the duties of City Manager, with the Effective Date adjusted accordingly. Unless sooner terminated as provided in this Agreement, the initial term of this Agreement shall be for three years from the Effective Date. However, nothing in this Agreement is intended to prevent employee from resigning with at least 90 days written notice.

2. **DUTIES AND AUTHORITY.** Employee shall exercise the powers and perform the duties of the position of City Manager as set forth in the Manhattan Beach Municipal Code ("Municipal Code"), the City's personnel rules, regulations and procedures and the City Manager job description, as each of them currently or may in the future exist. At the option of the City, Employee shall serve as Executive Director of or a representative to any other authority or agency created by or staffed by City. Employee shall exercise such other powers and perform such other duties as City, by the City Council, may from time to time assign.

3. **EMPLOYEE'S OBLIGATIONS.** Employee shall devote his full energies, interests, abilities and productive time to the performance of this Agreement, and utilize his best efforts to promote City's interests. Employee shall not engage in any activity, consulting service or enterprise, for compensation or otherwise (together "Outside Employment"), which is actually or potentially in conflict with or inimical to, or which materially interferes with, his duties and responsibilities to City. Additionally, Employee shall not undertake any Outside Employment except with the consent of the City Council.

4. SALARY AND BENEFITS.

A. **Base Salary.** City shall pay Employee a monthly base salary of \$20,833.33. At its sole discretion, the City Council shall consider merit adjustments commensurate with Employee's performance in accordance with the evaluation process pursuant to Section 5 of this Agreement. Employee's salary shall be subject to withholding and other applicable taxes, and shall be payable to Employee at the same time as other employees of City are paid. Employee shall be exempt from the overtime pay provisions of California law (if any) and federal law.

B. **Employment Benefits.** In addition to base salary, City shall provide to Employee the following benefits:

(1) **Holidays.** Employee shall be entitled to the holidays listed below, with pay. Employee's salary includes holiday pay. Accordingly, Employee shall not be entitled to any additional salary or compensation for working on a holiday.

- a. New Year's Day,
- b. Martin Luther King Day,
- c. President's Day,
- d. Memorial Day,
- e. Independence Day,
- f. Labor Day,
- g. Columbus Day,
- h. Veteran's Day,
- i. Thanksgiving Day,
- j. Friday following Thanksgiving Day, and
- k. Christmas Day.

(2) **General Leave.** Employee shall accrue general leave at the rate of 280 hours annually, prorated and credited each pay period. On the Effective Date, Employee shall be credited 160 hours of general leave so that Employee may take all or any portion of such 160 hours while accruing such leave under the terms of this Agreement. When possible, general leave shall be scheduled with the City Council at least two weeks in advance. Employee may accrue general leave not to exceed a limit of 840 hours. Once Employee's accrual reaches the 840-hour limit, all further accruals will cease and Employee will not be eligible for further accruals until his accrued general leave balance falls below the 840-hour limit.

(3) **Group Medical, Dental and Vision Insurance.** During the term of his employment, Employee and his eligible dependents shall participate in the City's CalPERS group medical program under the Public Employees' Medical and Hospital Care Act and dental and vision insurance plans in accordance with the terms and conditions of such act, plan or program on the same basis as Management/Confidential employees of the City.

(4) **Life Insurance.** Employee will receive City paid life insurance under the City's group policy with a benefit that is two times annual base salary, subject to a maximum of \$500,000. Medex Travel Assist will be included with the coverage.

(5) **Automobile.**

a. City shall provide to Employee a monthly automobile allowance of \$400.00. Such amount is designed to reimburse Employee for all costs associated with the use of Employee's automobile for City business, including but not limited to all applicable costs of automobile liability insurance, maintenance, operating expenses, depreciation and interest.

b. Employee shall maintain all records required by applicable California and federal law concerning use of such automobile, including without limitation records to substantiate personal and City-related use of such automobile.

c. Employee currently has an automobile liability insurance policy with \$100,000/300,000/50,000 maximum coverage, combined single limit coverage against any injury, death, loss or damage as a result of wrongful or negligent acts arising out of the operation of the automobile. Unless otherwise required by the City, Employee will maintain a policy with such coverage and limits throughout the term of this Agreement.

(6) **Retirement Plan.** Employee shall be covered by the Public Employees' Retirement System plan applicable to current miscellaneous employees of City in accordance with the terms and conditions of that plan as it now exists or as it may be changed from time-to-time in the future. In addition, City will provide a retiree medical benefit at the existing department head level until Medicare eligibility or age 65.

(7) **Technology.** At no cost to Employee, City shall provide Employee with the use of a City-owned laptop or tablet computer and a smart phone subject to applicable City policies and procedures.

(8) **Long and Short Term Disability Insurance.** Employee will receive City paid Long Term Disability coverage under the City's group policy with a plan benefit that pays 60% of salary after a 60-day waiting period. City shall pay the cost for the City's Short Term Disability Insurance plan.

(9) **Professional Development and Civic Organization Dues.**

a. City shall pay all reasonable and necessary business expenses, including travel, conference, meals, lodging and meeting expenses incurred in obtaining continuing education within the state and the ICMA annual meeting, in accordance with the City budget, resolutions and state law, as applicable. Upon prior City Council approval, City shall pay all reasonable and necessary business expenses, including travel, conference, meals, lodging and meeting expenses incurred outside the state. In addition, Employee will be eligible for a tuition and

textbook reimbursement benefit not to exceed \$2,500 per year for school attendance, according to the terms applicable generally to employees.

b. City shall pay all reasonable and necessary dues and fees for local or regional civic organizations in accordance with the City budget.

(10) Bonding. City shall bear the full cost of any fidelity or other bonds required of Employee under any law, or City ordinance or resolution by virtue of his employment with the City.

(11) Deferred Compensation Plan. Employee shall be entitled to participate, at Employee's sole expense, in the City's 457 deferred compensation plan in accordance with the terms and conditions of that plan. In addition, a City contribution of \$17,500 shall be made to a 401(a) plan and a City contribution equal to two percent of Employee's salary shall be made to a Retiree Health Savings Plan in accord with the terms, conditions and procedures of the 401(a) plan document and provisions of the Internal Revenue Code, including related regulations.

(12) Designation of Recipients Pursuant to Government Code Section 53245. Employee may file with the City a designation of a person who, notwithstanding any other provision of law, shall, on the death of Employee, be entitled to receive all warrants or checks that would have been payable to Employee had he survived. Employee may change the designation from time to time. Any person so designated shall claim such warrants or checks from the City. On sufficient proof of identity, City shall deliver the warrants or checks to the claimant. A person who receives a warrant or check pursuant to this section is entitled to negotiate it as if he or she were the payee.

(13) Additional Benefits. Employee shall be entitled to participate in City's healthcare and/or dependent care expense accounts at his own expense, subject to the applicable terms and conditions. Employee shall also be entitled to use City's on-site fitness center, subject to City policies for such use.

(14) Moving and Temporary Housing Allowance. As a result of accepting the position as City Manager with City, Employee will relocate from his current residence to another residence that is in or near the City. City shall reimburse or pay the expenses of moving his family and personal property, as follows:

a. Moving Allowance. In consideration for relocation, City shall reimburse or pay for actual and reasonable moving expenses, not to exceed \$15,000.00. Moving expenses may include professional labor (other than family, relatives and friends), packing services, packing supplies, rented moving equipment, transport, temporary storage and insurance. To be eligible for reimbursement, moving expenses must be incurred within one year of the Effective Date and submitted to City for reimbursement, with reasonable documentation, within six months after being incurred. The Employee shall provide evidence of actual moving expenses by securing quotations from three professional moving companies. The City Council, in its sole and absolute discretion, may extend these time limits for circumstances outside of Employee's control.

b. Temporary Housing Allowance. The City shall provide Employee with a temporary housing allowance for temporary housing located within the local area, up to in the amount of \$3,500 per month, for an initial period of up to three months. If Employee does not secure permanent housing within the initial three months, the City Council may approve an extension of the temporary housing allowance for up to three additional months. All applicable IRS regulations will apply to this temporary benefit.

c. Housing Search Allowance. City shall reimburse Employee for a total of 2 round trip air fares for Employee and his family (8 total tickets) at any time during the first year of employment to assist with house hunting and other facets of the transition and relocation process. Employee shall be reimbursed for actual lodging and meal expenses incurred by Employee or his family members on any such trips conducted prior to relocation.

(15) Housing Assistance. In order to facilitate Employee's relocation and establishment in the South Bay, City will provide housing assistance to Employee in substantially the following form: the City will provide a low interest loan up to a maximum of \$1,700,000 for the purchase of a residence in Manhattan Beach or within a reasonable distance from the City. Once the residence is identified, City and Employee will enter into a housing assistance agreement to provide for that loan. The housing assistance agreement shall include the following:

The loan shall be fully secured by a first mortgage on the residence.

The loan shall bear interest at the annual percentage rate of .733% for the first three years. Thereafter, City and Employee will negotiate the interest rate.

The loan shall be fully amortized over 30 years.

Loan payments shall be made monthly.

The loan can only be used for the purchase of his primary residence. It cannot be used for any other purpose, such as paying off an existing mortgage on another property.

The loan shall be due and payable 12 months after any of the following: Employee retires, the effective date of the termination of employment with City or Employee ceases to use the residence as his primary residence.

The loan shall be due and payable in the event Employee, without prior written approval of the City, sells or further encumbers or finances the residence or enters into any agreement to sell or further encumber or finance the residence.

Employee shall be responsible for and pay all taxes imposed on the residence.

Employee shall provide customary homeowners insurance for the full amount of the purchase price and City shall be named as additional insured on that insurance

policy.

The loan agreement and all other required documents are subject to the review and approval of the City Council.

5. ANNUAL EVALUATIONS AND GOAL SETTING. Within the first 120 days of employment, the City Council will work with Employee to develop a plan for a citywide strategic planning process. On or before January 30, 2015, the City Council shall conduct an initial evaluation of Employee's performance, at which time the parties shall mutually prepare a written list of goals and objectives for the upcoming year. On or before each one-year anniversary of the initial evaluation, the City Council may conduct an annual evaluation of Employee's performance. During each annual evaluation, the City Council and Employee shall discuss the goals and objectives of the prior performance period and mutually establish performance goals and objectives to be met by Employee during the following year. Employee will request and schedule such reviews, as appropriate, pursuant to the City Council agenda procedures or as otherwise directed by the City Council. In addition, the City Council may, but is not required to, review Employee's salary and benefits as part of the evaluation process or at any other time. Nothing in this paragraph is intended to limit additional interim evaluations or reviews or to limit the normal communications process between the City Council and Employee.

6. INDEMNIFICATION. Except as otherwise permitted, provided, limited or required by law, including without limitation California Government Code Sections 825, 995, and 995.2 through 995.8, City will defend and pay any costs and judgments assessed against Employee arising out of an act or omission by Employee occurring in the course and scope of Employee's performance of his duties under this Agreement.

7. AT-WILL EMPLOYMENT RELATIONSHIP. Employee is employed at the pleasure of the City Council, and is thus an at-will employee. The City Council may terminate this Agreement and the employment relationship at any time without cause. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City to terminate the employment of Employee. City shall pay Employee for all services through the effective date of termination. In addition, Employee shall receive severance to the extent provided in Section 8 and shall receive no other compensation or payment (except for vested benefits).

8. SEVERANCE.

A. If City terminates this Agreement (thereby terminating Employee's employment with City) without cause during the term of this Agreement, City shall:

(1) Pay Employee an amount equal to his then-monthly base salary less interim compensation (as defined below) to which Employee becomes entitled during the period following his termination in accordance with the following schedule:

- 18 months if terminated without cause within one year of the Effective Date
- 12 months if terminated without cause thereafter.

Employee shall use his best efforts and due diligence to secure employment with, become an independent contractor for, or otherwise provide services for compensation for, any person, organization or entity, other than City; and

(2) Provide at no cost to Employee the insurance benefits provided by Section 4. B (3) herein and the deferred compensation provided by Section 4. B (11) herein for either 18 months or 12 twelve months, whichever is applicable, or until Employee secures other employment, whichever occurs first.

B. Notwithstanding any other provision or the term of this Agreement, the maximum severance and health benefits that Employee may receive under this Agreement as a result of termination, shall not exceed the limitations provided in Government Code Sections 53260–53264. In addition, in the event Employee is convicted of a crime involving an abuse of office or position, Employee shall reimburse City for any paid leave or cash settlement (including separation benefits or severance, if applicable), to the extent and as provided by Government Code Sections 53243–53243.4.

C. As used in this Agreement, the term “interim compensation” shall include, but not be limited to: compensation, in any form, to which Employee is entitled from employment other than employment with City; compensation, in any form, to which Employee is entitled as an independent contractor; and compensation, in any form, from any source, including, without limitation, unemployment and disability insurance, from any person, entity or source, to which Employee is otherwise entitled. Interim compensation shall not include retirement benefits. Upon City’s request, Employee shall promptly provide City with documentary evidence of interim compensation.

D. Medical and dental insurance benefits under Section 8. (A)(2) will be provided to Employee through reimbursement of COBRA premiums. Deferred compensation under Section 8. (A)(2) will be provided only to the extent permissible under the Internal Revenue Code, including any relevant regulations, and State law.

E. Employee shall not be entitled to severance pay:

(1) If Employee terminates this Agreement; or

(2) If City terminates this Agreement for cause for any of the following reasons:

a. Employee refuses or fails to carry out the duties of City Manager as specified in Section 2 of this Agreement;

b. Employee has engaged in corrupt or willful misconduct in office, including any illegal act involving personal gain;

c. Employee has been convicted of a felony;

- d. Employee breaches this Agreement; or
- e. Any other action or inaction by Employee that is detrimental to employee safety or public safety, violates properly established rules or procedures, or adversely affects the reputation of City, its officers or employees.

F. Except as otherwise mutually agreed, any dispute as to whether severance is excused under Section 8, Paragraph E, shall be referred to arbitration before a single neutral arbitrator selected from a list of seven arbitrators requested from the California State Mediation and Conciliation Service. City will strike the first name and the parties will alternate striking names until one person is left who shall be designated as the arbitrator. The arbitrator shall determine the rules and procedures to be used for the arbitration with due regard to the rights of the parties. Each party shall initially pay one half the cost of the arbitration. The prevailing party in the arbitration shall be entitled to reasonable attorney fees and that party's costs of arbitration.

9. INTEGRATION OF AGREEMENT. This Agreement contains the entire Agreement between the parties and supersedes all prior oral and written agreements, understandings, commitments, and practices between the parties concerning Employee's employment. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, oral or written, have been made by any party, or anyone acting on behalf of any party which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding on either party.

10. METHOD OF AMENDMENT. Amendments to this Agreement are effective only upon the City Council and Employee written approval.

11. NOTICES. All notices pertaining to this Agreement shall be sent to:

EMPLOYEE: Mr. Mark Danaj
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, California 90266

CITY: City Clerk
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, California 90266

Such notice shall be deemed made when personally delivered, transmitted by facsimile, or when mailed, 48 hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

12. **GENERAL PROVISIONS.**

A. If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect. If any provision is held invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.

B. This Agreement shall be interpreted and construed pursuant to and in accordance with the local laws of the State of California and all applicable City Codes, Ordinances and Resolutions.

C. Employee acknowledges that he has had the opportunity and has conducted an independent review of the financial, tax and legal effects of this Agreement. Employee acknowledges that he has made an independent judgment upon the financial and legal effects of this Agreement and has not relied upon any representation of City, its officers, agents or employees other than those expressly set forth in this Agreement.

Executed by the parties as of the date below:

CITY OF MANHATTAN BEACH

EMPLOYEE

By: _____
Mayor

Mark Danaj
5-14-14

Date: _____

ATTEST:

City Clerk

APPROVED AS TO FORM

2 m Bauer
City Attorney