

EMPLOYMENT AGREEMENT  
between  
THE CITY OF SOLANA BEACH  
and  
DAVID OTT

This Amended Employment Agreement is entered into this 30th day of November 2005 by and between the City of Solana Beach, California, a general law city (hereinafter called the "City") and David Ott, an individual (hereinafter called "Ott") with respect to the employment of Ott as the City Manager of the City.

**RECITALS**

Pursuant to Government Code section 24581 *et seq.* the City of Solana Beach has established a city manager form of government.

The general powers and duties of the City Manager are generally established by Title 2, Chapter 2.08 of the Solana Beach Municipal Code and by other provisions of the City Code, other ordinances, resolutions, policies of the City Council and state statute.

The parties desire, through this Agreement, to determine certain matters relating to the terms and conditions of the employment of Ott as the City Manager for the City.

**TERMS OF EMPLOYMENT**

In consideration of the faithful performance of the provisions and covenants set forth herein, the City and Ott agree as follows:

A. Duration of Employment.

Pursuant to the provisions of Government Code section 36506 and Solana Beach City Code sections 2.08.010, and 2.08.090, Ott shall hold the appointive office of City Manager at and during the pleasure of the City Council beginning August 1, 2006 and ending on July 31, 2008, unless extended in writing.

B. Provisions regarding compensation.

1. The City covenants to compensate Ott as follows:

- a. Ott shall receive an annual salary of \$156,870, effective August 1, 2006, payable in equal installments at the same time as other employees are paid.
- b. Ott shall receive sick leave, management leave, disability, retirement, and life insurance, health, dental, and vision benefits determined in the same manner

as for executive management employees according to the City's management compensation plan as may be established from time to time by the City Council, except as specified by provisions of paragraph B.1.c, below. Ott shall receive paid holidays in the same manner as other executive management employees. Vacation leave accrual shall be 20 days per year after five years of employment with the City.

- c. Each July 1<sup>st</sup>, the City will credit Ott with five additional days of management leave.
  - d. Ott shall receive a car allowance of \$5,400.00 annually, paid in equal installments at the same time as other salary is paid.
  - e. Ott shall receive \$50 monthly for a cell phone allowance.
  - f. The City shall pay Ott's annual membership dues in the International City/County Management Association (ICMA). The City shall bear the full cost of any fidelity or other bonds required of Ott under any City ordinance.
2. Adjustments to compensation.
- a. The annual evaluation of Ott's performance will occur in May of each year. In July, based on the annual performance evaluation, the City Council may make such adjustments to compensation as it deems appropriate. Adjustments to compensation shall be made by resolution. Adjustments shall be effective as of the date established by the resolution making the adjustment.
  - b. Notwithstanding the provisions of paragraph B.2.a., above, the City Council may at any time after an evaluation conducted according to the provisions of Government Code section 54957, or for other legitimate business reasons, adjust the compensation paid to Ott. Nothing in this paragraph is intended to authorize an adjustment of salary in closed session contrary to the provisions of state statute.
3. Covenants regarding severance.
- a. Upon termination of employment upon affirmative action of the City Council, or upon resignation in lieu of termination upon affirmative request or notice of potential termination by the City Council, or other than a termination or resignation covered by paragraph B.3.b., below, the City shall pay to Ott in a single lump payment made on the effective day of the termination or resignation, an amount equivalent to 183 days of the then current base annual salary. Prior to the City Council terminating the Employment Agreement, Ott shall receive sixty (60) days notice, which shall not run concurrent or be reduced by the 183 days lump payment.

- b. Notwithstanding paragraph B.3.a, above, the City shall not be obligated to pay, and shall not pay, any amounts or continue any benefits under the provisions of paragraph B.3.a., if Ott is terminated because of a crime of moral turpitude or a violation of statute or law constituting misconduct in office. Further, the City shall not be obligated to pay, and shall not pay, any amounts or continue any benefits under the provisions of paragraph B.3.a., in the event Ott voluntarily resigns without an affirmative City Council action to terminate, initiate termination proceedings or request resignation; for example, a resignation to pursue other employment or professional opportunities.
- c. Regardless of the manner of termination, Ott shall receive, upon termination of service, payment for accrued but unused vacation and other leave as specifically authorized, if authorized, by the compensation plan applicable to management employees of the City in effect as of the date of termination.
- d. The provisions of paragraphs B.3.a, b, and c shall prevail over any contrary provision of Solana Beach Municipal Code Title 2, Chapter 2.08.

#### C. Performance.

Ott covenants to perform the duties of the office of City Manager in a good and professional manner as his exclusive employment. Ott covenants that during his employment as City Manager he will not engage in other employment except as may be specifically permitted in writing by the City Council.

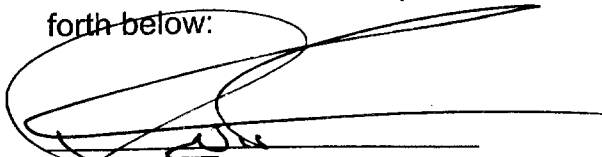
#### D. Miscellaneous provisions.

1. The relationship between the City and Ott is an employment relationship for a public office and is exempt from the provisions of the Fair Labor Standards Act.
2. Neither this Agreement, nor any provision of state statute or local ordinance, rule or resolution, create any property right in favor of Ott in his employment in the office of City Manager.
3. When used in this Agreement, the term City Council means the legislative body of the City of Solana Beach, including the mayor and the members of the City Council.
4. In the event of any mediation, arbitration or litigation to enforce any of the provisions of this Agreement, each party shall bear its own attorney's fees and costs.
5. This Agreement is the entire Agreement between the parties with respect to the subject matter. No promise, representation, warranty or covenant not included in

this Agreement has been or is relied on by any party hereto. This Agreement may be amended only by a writing executed by both parties.

6. City shall defend, save harmless, and indemnify Ott against any tort, professional liability claim, or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Ott's duties as City Manager, including Court costs and reasonable attorney's fees.
7. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
8. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of the Agreement, or portion thereof, shall be severable, shall not be affected and shall remain in full force and effect.

IN WITNESS hereof the parties have executed this Agreement by their signatures set forth below:

  
\_\_\_\_\_  
DAVID OTT

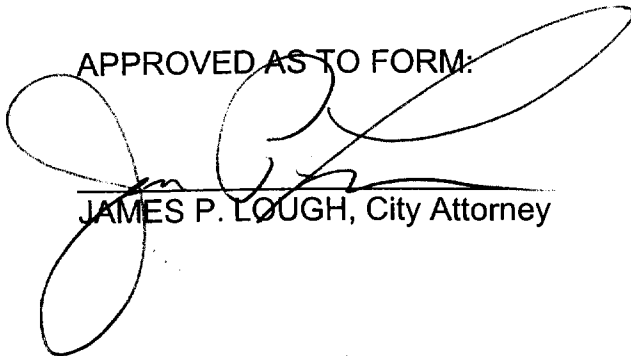
<sup>20.</sup>  
1-9-06  
\_\_\_\_\_  
Date

CITY OF SOLANA BEACH

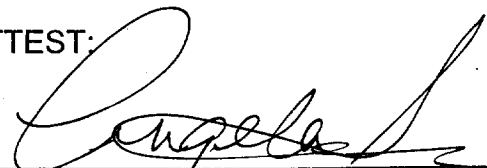
By:   
\_\_\_\_\_  
DAVID A. POWELL, MAYOR

1/6/06  
\_\_\_\_\_  
Date

APPROVED AS TO FORM:

  
\_\_\_\_\_  
JAMES P. LOUGH, City Attorney

ATTEST:

  
\_\_\_\_\_  
ANGELA IVEY, Interim City Clerk

**ATTACHMENT A**

**AMENDMENT TO EMPLOYMENT AGREEMENT  
BETWEEN  
THE CITY OF SOLANA BEACH  
AND  
DAVID OTT, CITY MANAGER**

July 10, 2006

David Ott  
City Manager  
635 South Highway 101  
Solana Beach, CA 92075

Re: CAR ALLOWANCE

Dear David:

This Side Letter will continue the understanding between the City of Solana Beach and yourself regarding the Employment Services Agreement with respect to Section B (1d), provisions regarding compensation for car allowance.

Due to the fact your job duties may require you to report and respond to emergency calls using the City's Command vehicle during the weekday (Monday through Sunday), you are authorized the continued use of the vehicle during those days for City related business. The cost of the vehicle, including insurance, will be provided by the City.

Therefore, the City of Solana Beach is withdrawing the car allowance provision (\$5,400 annually) from your Employment Agreement. Your signature belows indicates your agreement with the modifications to the Agreement.

  
\_\_\_\_\_  
David Ott, City Manager

July 10, 2006  
Date

  
\_\_\_\_\_  
Jim Lough, City Attorney

July 26, 2006  
Date

**ATTACHMENT B**

**EMPLOYMENT AGREEMENT  
BETWEEN  
THE CITY OF SOLANA BEACH  
AND  
DAVID OTT, CITY MANAGER**

November 9, 2006

David Ott  
City Manager  
635 South Highway 101  
Solana Beach, CA 92075

Re: CalPERS Retirement

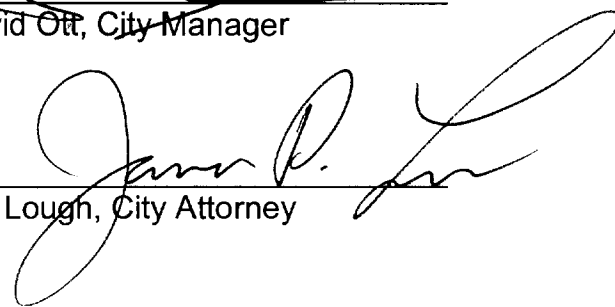
Dear David:

This Side Letter will continue the understanding between the City of Solana Beach and yourself regarding the Employment Services Agreement with respect to Section B (1b), Provisions regarding compensation.

Due to the fact that your job responsibilities may require you to report and respond to emergency calls as a First Responder, you will remain in the Fire/Safety group under CalPERS for retirement purposes. You will continue to participate in the CalPERS 3% at 50 retirement formula.

  
\_\_\_\_\_  
David Ott, City Manager

11/9/06  
Date

  
\_\_\_\_\_  
Jim Lough, City Attorney

11/9/06  
Date