

CITY MANAGER EMPLOYMENT AGREEMENT
between
The City of Solana Beach
and
David Ott

This Employment Agreement is entered into this 2nd day of December 2011(hereinafter "Effective Date"), by and between the City of Solana Beach, California, a municipal corporation (hereinafter "City") and David Ott, an individual (hereinafter "Officer") with respect to the employment of Officer as the City Manager of the City.

RECITALS

WHEREAS, the City requires the services of a City Manager and Officer has the necessary education, experience, skills and expertise to serve as the City's City Manager;

WHEREAS, the City Council of the City (the "City Council") desires to employ Officer to serve as the City Manager of the City;

WHEREAS, 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;

WHEREAS, the Parties desire to execute this Agreement pursuant to the authority of and subject to the provisions of Government Code Section 53260 *et seq.*; and

WHEREAS, in consideration of these Recitals and the performance by the Parties of the promises, covenants, and conditions herein contained, the Parties desire to determine certain matters relating to the terms and conditions of the employment of Officer as the City Manager for the City as provided in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

1. Employment

The City hereby employs the Officer as its City Manager, and Officer hereby accepts such employment.

2. Term

Pursuant to the provisions of Government Code section 36506 and Solana Beach City Municipal Code sections 2.08.010 and 2.08.090, Officer shall hold the appointive office of City Manager at and during the pleasure of the City Council for a two year term beginning December 2, 2011 and ending on December 2, 2013.

After December 2, 2013, the City and Officer may extend the term of this Agreement for one (1) year, subject to all applicable laws and regulations. The parties agree to provide

each other notice of the intent to extend the Agreement for the one (1) year term at least six (6) months prior to the expiration of the Agreement.

3. Commitments and Understandings

A. The Officer's Commitments

(1) Duties & Authority

- (a) Officer shall be the Chief Executive Officer of the City and be responsible to the City Council for the proper administration of all affairs of the City.
- (b) Officer shall be the Executive Director of the Solana Beach Redevelopment Agency (the "Agency") and the Solana Beach Housing Authority (the "Authority").
- (c) Officer shall perform all of the duties of the City Manager as set forth in the City of Solana Beach Municipal Code (the "Municipal Code"), the California Government Code, and City policies and procedures approved by the City Council, as may be provided from time to time.
- (d) To accomplish this, Officer shall have the power and be required to:
 - (i) Attend all meetings of the City Council, unless excused by the Mayor, and take part in the discussion of all matters before the City Council.
 - (ii) Review all agenda documents before preparing the agenda for any regular or special meetings of the City Council.
 - (iii) Direct the work of all appointive City officers and departments that are the concern and responsibility of the City Manager, except those that are directly appointed by or report directly to the City Council. The City Manager may undertake any study or investigation that is necessary or desirable, or as directed by the City Council. The City Manager shall endeavor to implement changes that the City Manager believes will result in greater efficiency, economy or improved public service in the administration of City affairs.
 - (iv) Recommend to the City Council adoption of such measures as the City Manager may deem necessary or expedient for the health, safety, or welfare of the community or for the improvement of administrative services.

- (v) Consolidate or combine offices, positions, departments, or units under the City Manager's jurisdiction. The City Manager may be the head of one or more City departments.
- (vi) Conduct research in administrative practices in order to bring about greater efficiency and economy in City government, and develop and recommend to the City Council long-range plans to improve City operations and prepare for future City growth and development.
- (vii) Provide management training and develop leadership qualities among department directors and staff as necessary to build a City management team that can plan for and meet future challenges.
- (viii) Exercise control of City government in emergencies as authorized by the Municipal Code and California law.
- (ix) Work with the City Council to develop a timely recruitment plan to identify qualified candidates to serve as new city manager and work with the City Council to develop a transition plan to assist the new city manager as directed by the City Council in order to complete City projects currently in progress in a manner that would be least disruptive to the City organization.

(2) Hours of Work

- (a) Officer is exempt from the provisions of the Fair Labor Standards Act.
- (b) Although Officer is an exempt employee without set hours of work, he is expected to be available at all times and to engage in those hours of work that are necessary to fulfill the obligations of the City Manager's position.
- (c) Officer shall spend sufficient hours on site to perform the City Manager's duties; however, Officer has discretion over the City Manager's work schedule and work location.

B. City Commitments

- (1) The City shall provide Officer with the compensation, incentives and benefits specified elsewhere in this Agreement.

- (2) The City shall provide Officer with office space, staff, equipment, supplies, and all other facilities and services adequate for the performance of the City Manager's duties.
- (3) The City shall pay for or reimburse Officer for all actual business expenses.
- (4) The City agrees to pay the professional dues and subscriptions on behalf of Officer for participation in national, regional, state, or local associations and organizations, as necessary and desirable for the good of the City, and for Officer's continued professional participation and advancement.
- (5) The City agrees to pay the travel and subsistence expenses of the Officer for purposes such as official functions, meetings, occasions, short courses, institutes and seminars that are necessary for the good of the City or for the professional development of Officer.

C. Mutual Commitments

(1) Performance Evaluation

The City Council recognizes that for Officer to respond to its needs and to grow in the performance of the City Manager's job, Officer needs to know how the City Council members evaluate his performance. To assure that Officer gets this feedback, the City Council shall conduct an evaluation of the City Manager's performance at least once each year to coincide with the close of the fiscal year, and when it deems necessary to discuss any concerns or direction in performance.

4. COMPENSATION

The City agrees to provide the following compensation to Officer during the term of the agreement:

A. Compensation and Required Employer Costs

(1) Base Salary

- (a) The annual base salary for the position of City Manager shall be \$201,250.
- (b) Officer shall be paid at the same intervals and in the same manner as regular City employees.
- (c) Officer will not receive any salary increases during the two (2) year term and the optional one (1) year extension of this Agreement.
- (d) The City may reduce the base salary, compensation or other financial benefits of Officer during the term of this Agreement as

part of a general salary reduction in pay among management employees.

(2) Retirement

Officer is entitled to participate in the California Public Employees' Retirement System (CalPERS) in the 2% @ 60 retirement program, with the use of the average of Officer's highest three year salary. Officer will be responsible to pay the entire cost of the employees' portion of the CalPERS retirement contribution.

B. Basic Benefits

(1) Holidays

Officer is entitled to those paid holidays in accordance with the provisions of the City's Personnel Rules and Regulations for management employees.

(2) Leave Allowance

(a) Officer shall accrue vacation leave at a rate of 20 days per twelve-month period, which shall accrue on a prorata basis from the Effective Date of this Agreement. Upon execution of this Agreement, Officer shall be advanced 10 days of vacation leave credit, and the prorata accrual during the first twelve months of the Agreement shall be adjusted accordingly. Officer acknowledges and agrees that should this Agreement be terminated for any reason prior to the full accrual of the advanced vacation leave, any advanced vacation leave Officer used but has not yet earned shall be deducted from Officer's final paycheck. Upon termination of this Agreement, Officer will not receive payment for any unused advanced vacation leave not yet earned, and shall receive pay only for accrued vested vacation leave. Officer shall comply with the vacation leave provisions contained in the City's Personnel Rules and Regulations and any other City policies and procedures regarding vacation leave.

(b) Officer shall accrue sick leave at the same rate as other management employees of the City. Upon execution of this Agreement, Officer shall be advanced 15 days of sick leave credit and the prorata accrual shall be adjusted accordingly. Officer acknowledges and agrees that should this Agreement be terminated for any reason prior to the full accrual of the advanced sick leave, any unused advanced sick leave not yet earned shall be forfeited and will not be eligible to be cashed out or converted to vacation leave or CalPERS service credit. Unless Officer retires from City service, any unused accrued sick leave shall be forfeited upon termination of this Agreement. If Officer retires from City service, any unused accrued sick leave may be eligible to be converted to CalPERS service credit pursuant to the contract

between the City and CalPERS in effect at the time of Officer's retirement. Officer shall comply with the sick leave provisions contained in the City's Personnel Rules and Regulations and any other City policies and procedures regarding sick leave.

- (c) Officer shall be provided with 80 hours of administrative leave credit effective upon the execution of this Agreement. On the Effective Date of each subsequent year of this Agreement, Officer shall be provided 80 hours of administrative leave credit. Officer shall comply with the administrative leave requirements and policies applicable to other management employees. Administrative leave shall not be accrued from year to year and must be taken within the contract year for which it is granted. Any unused administrative leave shall be forfeited upon termination of this Agreement.

(3) Benefits that Accrue to Other Employees

Officer shall be entitled to all benefits, rights, and privileges accorded to management employees according to the City's management compensation plan as may be established from time to time by City Council, except as otherwise provided in this Agreement. If there is any conflict between this Agreement and any resolution fixing compensation and benefits for management employees, this Agreement shall control.

5. SEPARATION

A. Resignation/Retirement

Officer may resign and/or retire from City service at any time and agrees to give the City at least 60 days advance written notice of the effective date of Officer's resignation, unless the Parties otherwise agree in writing. Upon notice of resignation or retirement and to the extent permitted by law, Officer shall facilitate the least disruptive transition in order to timely complete City projects currently in progress and assist a new city manager in assuming office.

B. Termination & Removal

- (1) Officer is an at-will employee serving at the pleasure of the City Council as provided in Government Code Section 36506.
- (2) The City Council may remove Officer at any time, either with or without cause, by a majority vote of its members. Notice of termination shall be provided to Officer in writing.
- (3) Officer shall not be terminated during the 180-day period after the swearing-in date following a City election that changes the majority composition of the City Council members in office on the Effective Date of this Agreement.

C. Severance Pay

- (1) In the event Officer is terminated by the City Council during the initial two year term of this Agreement, and at such a time that the Officer is willing and able to perform the City Manager's duties under this Agreement, then in that event the City agrees to pay Officer a lump sum cash payment up to a maximum of 183 days of the then current base annual salary to be calculated in proportion to the time remaining in the two year term of this Agreement.
- (2) All payments required under this Section are subject to and shall be interpreted to comply with the limitations set forth in Government Code Section 53260.
- (3) The Parties agree that the severance benefits due upon termination, if any, and other benefits due upon termination as provided by this Agreement, shall be the only compensation payable to the Officer and are intended to compensate the Officer for any damages, which could include, among other losses: the loss of the opportunity to transition employment, the loss of alternate employment opportunities, the loss of income, the loss of opportunities for retraining or further education, the erosion of personal investments and savings, the loss of retirement benefits, physical displacement or the loss of a residence, the loss of insurance and medical benefits, expenses for professional counseling, the loss of standard of living including educational opportunities for children, and the resultant emotional distress to the Officer and the Officer's family.
- (4) In the event Officer resigns or retires from his position with the City, then the Officer shall not be entitled to severance pay but will receive all benefits that have already accrued as is typically paid out to other City employees upon resignation.

D. Separation for Cause

- (1) Notwithstanding the provisions of Sections 5B and 5C, Officer may be terminated for cause. As used in this section, "cause" shall mean only one or more of the following:
 - (a) Conviction of, or no contest plea to, a felony;
 - (b) Conviction of, or no contest plea to, any illegal act involving moral turpitude or personal gain;
 - (c) Continued abuse of non-prescription drugs or alcohol that materially affects the performance of the Manager's duties;
 - (d) Any act constituting a knowing and intentional violation of the City's conflict of interest code or adopted City Council Policies; or
 - (e) Repeated and protracted unexcused absences from the City Manager's office and/or duties.
- (2) In the event the City terminates Officer for cause, then the City may terminate this Agreement immediately, and Officer shall be entitled to only the compensation accrued up to the date of termination and such other termination benefits and payments as may be required by law. Officer shall not be entitled to any severance benefits provided by Section 5.C.

6. MISCELLANEOUS PROVISIONS

A. Amendments

This Agreement may be amended at any time by mutual agreement of the City and the Officer. Any amendments are to be negotiated, put in writing, and adopted by the City Council.

B. Conflict of Interest

- (1) Officer shall not engage in any business or transaction or have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties.
- (2) Officer shall also be subject to the conflict of interest provisions of the California Government Code and any conflict of interest code applicable to Officer's City employment.
- (3) Officer is responsible for submitting to the City Clerk the appropriate Conflict of Interest Statements at the time of appointment, annually thereafter, and at the time of separation from the position.

C. Indemnification

- (1) To the full extent of the law, the City shall defend and indemnify Officer, in his capacity as City Manager, and as the chief executive of other City-related legal entities as provided in Section 3.A(1)(b) above, against and for all losses sustained by Officer in direct consequences of the discharge of the City Manager's duties on the City's behalf for the period of the Officer's employment, save and except those losses sustained as a result of the willful act or omission of Officer.
- (2) The City shall defend, save harmless and indemnify the Officer 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 Officer's duties as City Manager. The City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon.
- (3) Whenever Officer shall be sued for damages arising out of the performance of the City Manager's duties, and as the chief executive of other City-related legal entities as provided in Section 3.A(1)(b) above, the City shall provide defense counsel for Officer in such suit and indemnify Officer from any judgment rendered against Officer; provided that such indemnity shall not extend to any judgment for damages arising out of any willful wrongdoing. This indemnification shall extend beyond termination of employment and the otherwise expiration of this Agreement to provide protection for any such acts undertaken or committed in Officer's capacity as City Manager, regardless of whether the notice of filing of a lawsuit occurs during or following employment with the City. This indemnity provision shall survive the termination of the Agreement and is in addition to any other rights or remedies that Officer may have under the law.
- (4) This Agreement is binding upon and inures to the benefit of the heirs and personal representatives of Officer.

D. Severability

If any clause, sentence, part, section, or portion of this Agreement is found by a court of competent jurisdiction to be illegal or unenforceable, such clause, sentence, part, section, or portion so found shall be regarded as though it were not part of this Agreement and the remaining parts of this Agreement shall be fully binding and enforceable by the Parties hereto.

E. Laws Affecting Title

In addition to those laws affecting a City Manager, Officer shall have the same powers, rights and responsibilities as a Chief Executive Officer, City Administrative Officer, Administrator, and/or City Administrator as those terms are used in local, state or federal laws.

F. Jurisdiction and Venue

This Agreement shall be construed in accordance with the laws of the State of California, and the Parties agree that venue shall be in San Diego County, California.

G. Entire Agreement

This Agreement represents the sole and complete agreement of the Parties, and no representations have been made or relied upon except as set forth herein. Although the state and local laws referenced in the Agreement are subject to change and are binding upon the Parties without any written amendment to this Agreement, any other terms of this Agreement may be amended or modified only by a written, fully executed agreement of the Parties.

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

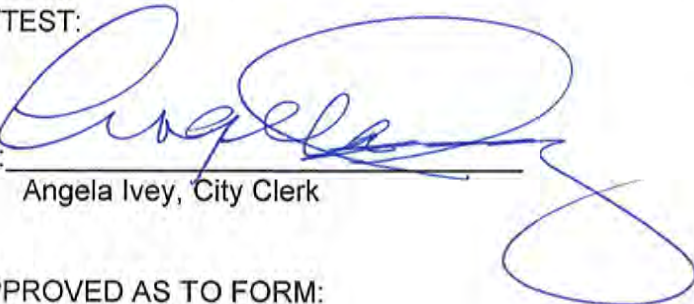
CITY OF SOLANA BEACH

OFFICER

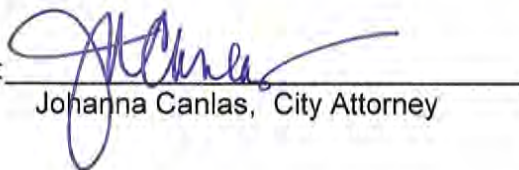
By: 
Lesa Heebner, Mayor

By: 
David Ott

ATTEST:

By: 
Angela Ivey, City Clerk

APPROVED AS TO FORM:

By: 
Johanna Canlas, City Attorney