

CITY OF PORT HUENEME

EMPLOYMENT AGREEMENT FOR CITY MANAGER

THIS AGREEMENT is made and entered into on the 18th day of February, 2020, by and between the CITY OF PORT HUENEME, a municipal corporation and charter city (“CITY”) and Brad “Brick” Conners, an individual (“EMPLOYEE”). CITY and EMPLOYEE agree as follows:

1. **RECITALS.** This AGREEMENT is entered into with the following understandings and objectives:

- A. CITY desires to retain EMPLOYEE as City Manager as provided by California law and CITY’s past practice.
- B. It is CITY’s desire to provide certain benefits, establish certain conditions of employment and set working conditions of EMPLOYEE.
- C. It is CITY’s desire to secure and retain EMPLOYEE and to provide inducement to remain in such employment; deter against malfeasance or dishonesty for personal gain on EMPLOYEE’s part; and permit a reasonable means of terminating EMPLOYEE’s services.
- D. EMPLOYEE desires to accept employment as City Manager, pursuant to the terms and conditions herein set forth.

2. **DUTIES.**

- A. CITY will retain EMPLOYEE as CITY’s City Manager. CITY agrees to employ EMPLOYEE to perform all the functions and duties specified by statute and relevant CITY ordinances and resolutions for a City Manager, and to perform such other legally permissible and proper duties and functions as CITY may from time to time assign.
- B. As City Manager, EMPLOYEE shall function as the Chief Executive Officer of the CITY and shall be responsible to the CITY and its COUNCIL for the proper, lawful, and ethical administration of all affairs of the CITY. In the role of City Manager, EMPLOYEE shall also serve at the pleasure of the COUNCIL as the Executive Director of the Port Hueneme Housing Authority, Port Hueneme Water Agency, and the Port Hueneme Successor Agency to the Redevelopment Agency.

3. **TERM.**

- A. This AGREEMENT will become effective February 18, 2020 and will terminate three years afterward (“Initial Term”). Unless notice of non-renewal is provided to EMPLOYEE at least 30 calendar days before the expiration of this AGREEMENT, the term will automatically renew on the anniversary date for successive six month terms.

- B. Nothing in this AGREEMENT prevents, limits, or otherwise interferes with the right of the City Council (“COUNCIL”) to terminate the services of EMPLOYEE at any time.
- C. Nothing in this AGREEMENT prevents, limits, or otherwise interferes with the right of EMPLOYEE to resign at any time from his position with CITY.
- D. Except as otherwise provided, EMPLOYEE agrees to remain in the exclusive employ of CITY and not become employed by any other employer until this AGREEMENT lapses or is terminated.

4. **SEVERANCE BENEFITS.** Subject to the limitations in Section 5, should EMPLOYEE’s service as City Manager be terminated without cause, CITY will pay EMPLOYEE severance in a lump sum amount equal to the LESSER of (a) the amount of base pay that EMPLOYEE would have earned until the end of the Initial Term; or (b) Six (6) months of EMPLOYEE’s base salary based on the EMPLOYEE’s salary at the time of termination.

5. **SEVERANCE; RELEASE.** As a condition for CITY’s full payment of severance benefits to EMPLOYEE, EMPLOYEE will:

- A. Release and discharge CITY and its elected officials, appointed officers, employees, sub-contractors, agents, accounts, attorneys, successors and all other persons acting for, under, or in concert with CITY both past and present from any and all personal claims, demands, actions, causes of action, obligations, damages, liabilities, losses, costs and expenses, including attorney’s fees of any kind or nature whatsoever, past, present and future, arising from, relating to or in connection with any rights of EMPLOYEE to (i) receive severance benefits under this AGREEMENT, (ii) any right of employee to continued employment with CITY, and (iii) any claim, demand, or cause of action or damages for wrongful termination (collectively, the “Released Matters”); and
- B. Agree to waive all claims, demands, actions, causes of action, obligations, liabilities, claims of credits or offsets, costs, and expenses, including attorney’s fees, of any kind or nature whatsoever as to the Released Matters. As to the Released Matters only, EMPLOYEE will acknowledge that he has read and understands California Civil Code § 1542 which currently states:

“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”
- C. The parties agree that full payment of the severance benefits in this AGREEMENT will act as a complete and total release of all future claims which may arise out of the Released Matters whether such claims are currently known or unknown, foreseen or unforeseen, contingent or absolute; and as to the Released Matters the parties intentionally and specifically waive any rights they may have under the provisions of Civil Code § 1542, as well as under any other statutes or

common law principles of similar effect, and each party assumes full responsibility for such injuries, damages, losses or liabilities that any of them may hereafter incur with respect to the Released Matters.

6. **TERMINATION.**

- A. EMPLOYEE serves at the COUNCIL's pleasure and may be terminated at any time, with or without cause. EMPLOYEE understands and agrees that EMPLOYEE has no constitutionally-protected property or other interest in EMPLOYEE's continued employment as City Manager.
- B. EMPLOYEE may be terminated for cause including, without limitation, the following: (1) the breach of the duties that EMPLOYEE is required to perform under the terms of this AGREEMENT; (2) engaging, after notice to desist, in a prohibited conflict-of-interest; (3) dishonesty; (4) unauthorized absences; (5) engaging in prohibited discrimination, harassment, or retaliation; (6) conduct unbecoming or disreputable; (7) conviction of any felony; (8) conviction of any crime involving moral turpitude; or (9) removal from office by the Grand Jury. Under such circumstances, EMPLOYEE will be separated from service and acquire only such benefits which otherwise are vested in EMPLOYEE and will NOT receive a severance as otherwise contemplated by this AGREEMENT.
 - i. "Termination for cause" shall be based on demonstrable, or otherwise reasonably proven or admitted conduct.
 - ii. "Conviction" includes entry of a plea of *nolo contendere* or a plea bargain.
- C. Should EMPLOYEE voluntarily resign his position with CITY before expiration of the aforesaid term of employment, the EMPLOYEE must give CITY a minimum of 30 calendar days prior written notice. In that event, EMPLOYEE will NOT receive a severance as otherwise contemplated by this AGREEMENT. The CITY will have the option in its complete discretion, to make EMPLOYEE's separation effective at time prior to the end of such notice period, provided CITY pays EMPLOYEE all compensation due and owing through the last day actually worked, plus an amount equal to the base salary and group insurance benefits EMPLOYEE would have earned through the balance of the notice period.
- D. The CITY has sole discretion to determine whether to renew this AGREEMENT upon its expiration. At least thirty calendar days prior to the expiration of the term then in effect, the CITY will provide written notice to EMPLOYEE regarding the intended renewal or non-renewal of this AGREEMENT. If the CITY declines to renew this AGREEMENT, EMPLOYEE acknowledges that his employment will terminate upon expiration of the AGREEMENT, unless the CITY or EMPLOYEE terminates the AGREEMENT earlier under another provision of this Section. EMPLOYEE further agrees that he is not entitled to receive any payment of severance payments from the CITY due to non-renewal.

- E. If, as the result of long-term or permanent disability, sickness, accident, injury, mental incapacity or other personal health-related reason, EMPLOYEE is unable to perform his essential duties after exhausting all accrued sick leave, vacation or other available paid/unpaid leave under CITY policies or state or federal law, CITY will have the option to terminate EMPLOYEE's employment and this AGREEMENT, subject to the severance payment requirements of this AGREEMENT. In exercising this option, the CITY will comply with its obligations under applicable state and federal disability and public retirement laws.
- F. This AGREEMENT will immediately terminate upon the death of EMPLOYEE and all accrued salary and benefits will be paid to EMPLOYEE's estate or designated beneficiaries as required by law. No severance payment will be made in the event of EMPLOYEE's death.
- G. EMPLOYEE agrees that all personal property including, without limitation, equipment, documents, and computer-generated materials furnished to or prepared by EMPLOYEE incident to EMPLOYEE'S employment are the property of CITY and must be immediately returned to CITY upon termination of EMPLOYEE's employment. EMPLOYEE's obligations under this subsection survive the termination of EMPLOYEE'S employment and the expiration or early termination of this AGREEMENT.
- H. All benefits received by EMPLOYEE under this AGREEMENT will immediately cease upon EMPLOYEE's termination, unless expressly continued under this AGREEMENT or unless otherwise required by law.

7. **HOURS OF WORK.** EMPLOYEE is expected to work as many hours as necessary to satisfactorily fulfill the obligations of the position, including devoting necessary time outside normal office hours to the business of CITY. EMPLOYEE understands and agrees that the City Manager position is an exempt position under state and federal wage and hour laws and EMPLOYEE's compensation (whether salary or benefits or other allowances) is not based on hours worked and that EMPLOYEE is not entitled to any compensation for overtime.

8. **BENEFITS.**

- A. Except as modified in Sections 8(B) and 8(C), EMPLOYEE will be compensated with benefits at the same rate and the same manner as a member of CITY's Executive Management Team, as defined in the Benefit Resolution for the group and class including of date of hire, attached hereto and incorporated herein as Exhibit A.
- B. EMPLOYEE will receive a monthly Auto Allowance of \$300. EMPLOYEE will not be assigned a CITY vehicle.
- C. CITY shall provide EMPLOYEE with a cell phone for official use in connection with CITY business.

9. **VACATION.** EMPLOYEE will accrue annual leave at the same rate and the same manner as a member of CITY's Executive Management Team.

10. **SALARY.**

- A. CITY agrees to compensate EMPLOYEE for services rendered pursuant to this AGREEMENT with an annual salary, in an amount within the salary range as determined by the COUNCIL, which is payable in equal installments at the same time as other employees of CITY are paid.
- B. The salary range established by the COUNCIL for purposes of EMPLOYEE's employment in the position of City Manager is as follows:
 - i. \$152,464.00 to \$198,016.00
- C. CITY agrees to pay EMPLOYEE a base salary of \$187,200 for the first year of this AGREEMENT.
- D. Annually, as determined by the effective date of this AGREEMENT, the COUNCIL may, but is not required to, adjust EMPLOYEE's base salary within the salary range established in Section 10(B) of this AGREEMENT based upon EMPLOYEE's performance.
- E. CITY shall reimburse EMPLOYEE for reasonable and necessary travel, subsistence and other business expenses incurred by EMPLOYEE in the performance of EMPLOYEE's official duties. All reimbursements shall be subject to and in accordance with any limitations or restrictions set forth under the laws of the State of California or any CITY-adopted reimbursement policies.

11. **NON-CITY ACTIVITIES/ADDITIONAL EMPLOYMENT.**

- A. EMPLOYEE cannot accept any other employment or engage, directly or indirectly, in any other business, commercial, or professional activity, whether or not to pecuniary advantage, that is or may be competitive with his duties as City Manager or that may be competitive with CITY, that might cause a conflict-of-interest with CITY, or that otherwise might interfere with the business or operation of CITY or the satisfactory performance of EMPLOYEE's duties as City Manager.
- B. EMPLOYEE must comply with all CITY Administrative Policies and Personnel Regulations, unless such policies and regulations conflict with this AGREEMENT, in which case the AGREEMENT will control. EMPLOYEE must file and maintain an updated "ADDITIONAL EMPLOYMENT" with the Human Resources office.
- C. EMPLOYEE understands and agrees that this Section constitutes a material inducement for CITY to enter into this AGREEMENT and that any breach of this Section would constitute a material breach of this AGREEMENT. Consequently,

breach of this Section would constitute a “for cause” termination pursuant to Section 6(B) and, accordingly, would not result in any severance as contemplated by this AGREEMENT.

12. **CHANGES.** This AGREEMENT may be changed or amended by the mutual written consent of CITY and EMPLOYEE.

13. **BONDING.** CITY will pay for the cost of fiduciary bonds required of EMPLOYEE because of the exercise of his duties under this AGREEMENT.

14. **STATUTORY OBLIGATIONS; ABUSE OF OFFICE OR POSITION.**

Notwithstanding anything to this AGREEMENT in the contrary, pursuant to Government Code §§ 53243, 53243.1 and 53243.2, if EMPLOYEE is convicted of a crime involving an abuse of EMPLOYEE’s office or position, all of the following apply: (1) if EMPLOYEE is provided with an administrative leave pay pending an investigation, EMPLOYEE is required to fully reimburse such amounts paid by CITY; (2) if CITY pays for the criminal legal defense of EMPLOYEE (which would be in its sole discretion, as CITY is generally not obligated to pay for a criminal defense), EMPLOYEE is required to fully reimburse such amounts paid by CITY; and (3) if this AGREEMENT is terminated, any cash settlement related to the termination of EMPLOYEE by CITY, said amount must be fully reimbursed to CITY or is void if not yet paid to EMPLOYEE. For this Section, abuse of office or position means either: (1) an abuse of public authority, including waste, fraud, and violation of the law under the color of authority; or (2) a crime against public justice, including a crime described in Penal Code § 92, *et seq.*

15. **NONDISCRIMINATION.** EMPLOYEE may not discriminate, in any way, against any person, on the basis of race, color, national origin, religious creed, ancestry, physical or mental disability, medical condition, pregnancy, childbirth or related medical condition, age (40 and over), sexual orientation, sex, gender, gender identity, gender expression, genetic information, military or veteran status, marital status and/or any other basis protected by applicable state and/or federal law, including association with individuals with these protected characteristics or perception that an individual has one or more of these protected characteristics or any other basis protected under applicable CITY ordinance, resolution or policy, in connection with or related to the performance of his duties and obligations under this AGREEMENT.

16. **COMPLIANCE WITH ALL LAWS.** EMPLOYEE agrees to observe and comply with all applicable federal, state and local laws, ordinances, codes and regulations, in the performance of his duties and obligations under the AGREEMENT. EMPLOYEE must perform all duties under this AGREEMENT in accordance with these laws, ordinances, codes and regulations.

17. **INDEMNIFICATION.**

A. CITY must indemnify and defend EMPLOYEE from all claims, demands, actions, losses, or charges arising out of, related to, or because of EMPLOYEE performing his duties as City Manager. Further, CITY must pay all expenses, costs and attorney’s fees arising out of or related to the same.

B. The Parties agree that this Section will survive the termination of this AGREEMENT and EMPLOYEE’s employment CITY’s obligations under this

Section apply whether EMPLOYEE is or is not employed by the CITY at the time any such claim, demand, action, loss, or charge is made or occurs, so long as the action giving rise to the claim occurred during the time EMPLOYEE was employed by CITY.

18. **PERFORMANCE EVALUATION.** Immediately following the commencement of EMPLOYEE's employment with CITY, COUNCIL and EMPLOYEE shall discuss the COUNCIL's goals and objectives for the year. At the completion of the first six months of EMPLOYEE's service, COUNCIL will conduct an evaluation in relation to the stated COUNCIL goals and objectives. Thereafter, on the annual anniversary of the commencement of EMPLOYEE's employment with CITY, COUNCIL and EMPLOYEE shall define the goals and objectives that they determine are appropriate for the proper operation of the CITY. Concurrently with the annual establishment of the goals and objectives for the CITY, the COUNCIL and EMPLOYEE shall establish the performance goals for EMPLOYEE and any specific criteria that shall be used to evaluate EMPLOYEE's performance. The COUNCIL may in its discretion amend said criteria from time to time, after consultation with EMPLOYEE. The evaluation shall be used in determining what salary increases as noted in Section 10 might be applied to EMPLOYEE's salary. The failure of CITY to undertake performance evaluation shall not limit CITY's ability to terminate EMPLOYEE and this AGREEMENT pursuant to Section 6.

19. **WAIVER OF BREACH.** No waiver of the breach of any of the covenants, AGREEMENTs, provisions, or conditions of this AGREEMENT by either party will be construed to be a waiver of any succeeding breach of the same or other covenants, AGREEMENTs, provisions or conditions of this AGREEMENT. No delay or omission of CITY or EMPLOYEE in exercising any right, power, or remedy herein provided in the event of default will be construed as a waiver thereof, or acquiescence therein.

20. **ENTIRE CONTRACT.** This AGREEMENT contains the entire AGREEMENT between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this instrument will be of no force or effect excepting a subsequent modification in writing signed by CITY and EMPLOYEE.

21. **PARTIAL INVALIDITY.** Partial invalidity of this AGREEMENT will not affect the remainder of this AGREEMENT.

22. **VENUE.** This AGREEMENT will be interpreted in accordance with California law and venue is in Ventura County.

23. **BINDING EFFECT.** This AGREEMENT is binding upon and inures to the benefit of the parties and their successors, heirs, agents, and personal representatives.

24. **SEVERABILITY.** Each portion of this AGREEMENT is separate and if any portion is found to be invalid by a court of competent jurisdiction, the remaining portions must each remain in full force and effect.

25. **COUNTERPARTS.** This AGREEMENT may be executed in counterparts, all of which constitute an original.

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be signed and executed this 18th to day of February, 2020.


City of Port Hueneme,
A municipal corporation,

Brad "Brick" Conners
An individual,



~~Laura D. Hernandez, Mayor~~
Sylvia Muñoz-Schnopp, Mayor Pro Tem

ATTEST:


Kristy Buxkemper, City Clerk

APPROVED AS TO FORM
~~Charles R. Green, City Attorney~~
Kevin Spawicki

By: 