

EMPLOYMENT AGREEMENT

THIS AGREEMENT, is made and entered into this 13th day of December, 2016 by and between the CITY OF SANTA CRUZ, a municipal corporation ("City"), and MARTIN BERNAL ("Employee"), who agree as follows:

WITNESSETH:

WHEREAS, City has employed Employee in the position of City Manager since July 2010 without a prior employment agreement and now desires to establish certain terms and conditions of employment as hereinafter set forth; and

WHEREAS, Employee desires to accept such employment agreement as City Manager, pursuant to the terms and conditions of this Agreement,

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

1. Powers and Duties.

City hereby agrees to continue to employ Employee as City Manager of City, to perform the functions and duties of the City Manager specified in the City Charter, the Municipal Code, and as provided by state or federal law. Pursuant to City Charter Section 806, City Manager shall be the chief executive officer and the head of the administrative branch of the City government, shall be responsible to the City Council for the proper administration of all affairs of the City, and shall have the power and be required to:

- (a) Appoint and remove, subject to the Civil Service provisions of this Charter, and the ordinances, rules and regulations promulgated thereunder, all department heads of the City except as otherwise provided by this Charter, and pass upon and approve all proposed appointments and removals of subordinate employees by department heads. No person related to the City Manager by blood or by marriage shall be eligible for office or employment in the City;
- (b) Prepare the budget annually and submit it to the City Council and be responsible for its administration after adoption;
- (c) Prepare and submit to the City Council as of the end of the fiscal year, a complete report on the finances and administrative activities of the City for the preceding year;
- (d) Keep the City Council advised of the financial condition and future needs of the City and make such recommendations as may seem desirable;
- (e) See that all ordinances are enforced;
- (f) See that the provisions of all franchises, permits and privileges granted by the City are fully observed, and to report to the Council any violation thereof;
- (g) Exercise general supervision over all privately owned public utilities operating within the

City;

- (h) Prepare rules and regulations governing the contracting for, purchasing, inspection, storing, inventory, distribution or disposal of all supplies, materials and equipment required by any office, department or agency or the City government and recommend them to the Council for adoption by ordinance;
- (i) Examine, or cause to be examined, without notice, the conduct of any officer or employee of the City;
- (j) Act, personally or through a designee, as Personnel Director in the Personnel Director's absence;
- (k) From time to time, in order to facilitate the prompt, economical and efficient dispatch of City business, assign officers and employees from any department or office to perform such duties or services in connection with any other department or office or to work in more than one such department or office;
- (l) Perform such other duties as may be prescribed by this Charter or required by the City Council, not inconsistent with this Charter.

2. Hours of Work.

It is recognized that Employee must devote time outside the normal office hours to conduct business of the City. Accordingly, Employee agrees to devote his full time and attention to the performance of Employee's responsibilities as City Manager and shall not engage in any other employment or the conduct of any other business during the term of this Agreement without prior approval having been granted by the Santa Cruz City Council.

3. Term.

- (a) The term of this agreement shall commence on December 14, 2016. This agreement will be of indeterminate length subject to the termination clause in Section 9.
- (b) Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Santa Cruz City Council, acting for City, to terminate the services of Employee at any time subject only to the applicable provisions set forth in Sections 9(a) & (b) of this Agreement.
- (c) Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign at any time from his position as City Manager, subject only to Section 9(c) of this agreement.

4. Compensation and Benefits.

- (a) Base Salary: the monthly base salary will be \$18,713 payable in accordance with a pre-determined schedule applicable to all City employees and commenced on July 2016.
- (b) COLA's. City agrees to increase the base salary automatically with any Cost of Living Adjustments provided to other executive employees covered by the most currently

adopted Compensation and Benefits Plan (attached). COLA's are subject to City Council approval after agreements are completed with executive employees.

- (c) Merit Increases in Compensation. City may also increase the base salary and/or other benefits of Employee in the amount and to the extent as the City may determine that it is desirable to do so on the basis of annual performance evaluation and salary review.
- (d) Benefits: The City shall provide the City Manager with a benefit package which is consistent with the benefit package provided to the other executive employees covered by the most currently adopted Compensation and Benefits Plan (attached).

5. Performance and Salary Reviews.

- (a) Employee and City Council shall meet annually (August/September) in closed session to conduct a performance evaluation. Employee shall provide a written report to the Council prior to the session. The written report shall outline performance criteria and accomplishments, the status of the organization, organizational issues including but not limited to departmental performance, staffing, budgetary, planning and other issues the employee or the Council in consultation with the employee believe need to be addressed and/or discussed.
- (b) As part of providing policy direction and leadership to the City and the City Manager, the City Council agrees to participate in an annual goal setting and priority identification workshop with the City Manager.

6. Dues and Subscriptions.

Subject to prior budgetary approval by City, City agrees to pay for the professional dues and subscriptions of Employee necessary for full participation in national, regional, state, and local organizations necessary and desirable for continued professional participation, growth, and advancement, and for the good of the City. This includes membership in the International City and County Managers Associations.

7. Professional Development.

- (a) Subject to prior budgetary approval by City, City agrees to pay the travel and subsistence expenses of Employee for professional and official travel, meetings and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official and other functions for City.
- (b) Subject to prior budgetary approval by City, City agrees to pay for the travel and subsistence expenses of Employee for short courses, institutes and seminars that are necessary for his professional development and for the good of the City, consistent with the City's adopted policies related to travel and per diem expenses.

8. Termination and Severance Pay.

- (a) Termination Without Cause: Employee acknowledges that he is an at-will employee who serves at the pleasure of the City. As such, his employment may be terminated by

the City without cause. If the Employee is terminated by the City without cause, the City shall provide a severance payment equal to six months' salary at the current rate of pay. This severance shall be paid in a lump sum unless otherwise agreed to by the City and the Employee.

(b) Termination For Cause: No severance or termination pay shall be awarded to Employee. The Employee shall be compensated for all accrued personal leave time, all paid holidays, longevity leave and administrative leave. In this Agreement, "for cause" means"

1. Dishonesty, willful misconduct or gross neglect by Employee in the performance of his obligations under this Agreement;
2. Theft, embezzlement or other similar misappropriation of funds or property of City by Employee;
3. Intentional damage to any property of City that results in a significant liability to City;
4. The failure of Employee to follow the reasonable and lawful instructions and policy of City with respect to Employee's duties hereunder;
5. Conviction of a felony;
6. Willful violation of a Federal/State law;
7. Willful violation of any conflict of interest law;

(c) The employee may voluntarily resign his position at any time providing that he shall provide at a minimum 30 days' notice. The employee will endeavor to provide as much additional notice as he may deem appropriate. The employee shall be compensated for all accrued personal leave time, all paid holidays and administrative leave.

10. Other Terms and Conditions of Employment.

The City Council, in consultation with Employee, shall establish such other terms and conditions of employment as it may determine from time to time relating to the performance or compensation of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Santa Cruz Municipal Code, or any applicable state or federal law.

11. Indemnification

The City shall defend, hold harmless and indemnify the City Manager 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 during the course and scope of the performance of the City Manager's duties.

12. Notices.

Any notice required or permitted to be given pursuant to this Agreement shall be either personally delivered or given by deposit in the U.S. Mail, postage prepaid, addressed as follows:

EMPLOYER: City Council, City of Santa Cruz
809 Center St
Santa Cruz, Ca 95062

EMPLOYEE: Martin Bernal
Santa Cruz, CA 95062

Notice shall be deemed given as of the date of personal delivery or three (3) business days after the date of deposit of such written notice in the United States Mail.

13. General Provisions.

- (a) The text herein shall constitute the entire Agreement between the parties.
- (b) This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, personal representatives, successors and assigns of the parties.
- (c) This Agreement shall become effective on December 14, 2016.
- (d) If any provision, or any portion thereof contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

14. Amendment of Agreement

This Agreement may be amended in writing by mutual agreement of the parties.

15. Waiver

Waiver by either party of any term or condition of this Agreement, or any breach, shall not constitute a waiver of any other term or condition or breach of the Agreement.

IN WITNESS WHEREOF, the City of Santa Cruz has caused this Agreement, to be signed and executed in its behalf by its Mayor, and duly attested by its City Clerk and Employee has signed and executed this Agreement, both in duplicate, the day and year first above written.

Attachment:
City of Santa Cruz Compensation & Benefits Plan



City of Santa Cruz Compensation and Benefits Plan

Assistant City Manager, Department Directors,
Deputy City Manager, Chiefs of Police & Fire

Effective August 15, 2015
Adopted February 9, 2016
(Amended June 28, 2016)

Purpose and Intent

This Compensation and Benefits Plan (Plan) is intended to establish compensation, benefits and terms and conditions of employment for Assistant City Manager, Deputy City Manager, Department Directors and the Chiefs of Police and Fire. The City Manager has the authority to hire the Assistant City Manager, Deputy City Manager, Department Directors and the Chiefs, and to adjust their compensation consistent with this Plan. These positions are exempt from the Fair Labor Standards Act (FLSA), are at will employees, serve at the pleasure of the City Manager and can be terminated with or without notice or cause and with no rights of appeal.

1) SALARY SCHEDULE

- a) This Plan covers positions in the job classes and salary schedule set forth in Attachment A, incorporated in and made a part of this document.
- b) Longevity: Directors, Assistant City Manager & Deputy City Manager: 2.5% base pay increase following 10 full years of employment. Police Chief: 2.5% completion of 10 years, 2% completion of 15 years, 2% completion of 20 years (same as PMA implementation for 20 yr). Fire Chief: 2.5% completion of 10 years, 2% completion of 15 years, 2% completion of 20 years and 2% completion of 25 years. (same as FMA implementation for 20 and 25 yr). It is understood that the longevity pay will be considered as “additional compensation” for the purposes of PERS and tax computations.

2) MANAGEMENT VACATION

In the first full pay period in January of each year, employees will be credited with 80 hours of vacation time. The ability to cash out vacation will be limited to 20 hours and shall occur in the last full pay period of December. Employees who do not use all of their Management Vacation prior to the first full pay period in January of each year will only be credited at the start of the subsequent year with sufficient hours to maintain an 80 hour balance. Upon separation, employees shall receive the value of their unused accrued management vacation. This benefit will be pro-rated for new hires.

3) VACATION

- a) Vacation Accrual:

Years of Employment	Vacation Hours
Up to five years	80 Hours

Six to ten years	120 Hours
Eleven years or more	120 Hours plus 8 hours for each year of service after 10 yrs. To a maximum of 160 hours

- b) The City Manager has the authority to place a new employee at a specific accrual rate.
- c) Upon termination, payment will be made for all accumulated vacation to the separation date, at a rate equal to 100% of the current hourly pay rate.
- d) Vacation Cap: Accumulation of vacation time shall not exceed twice the annual rate of accrual without prior authorization.

4) SICK LEAVE

Sick leave will accrue at a rate of 8 hours per month. Assistant City Manager, Deputy City Manager and Department Directors are entitled to the same benefits as the Mid-Management MOU Section 14.00. Police Chief is entitled to the same benefits as the Police Management MOU Section 11.00. Fire Chief is entitled to the same benefits as the Fire Management MOU Section 14.00.

5) OPTIONAL MANAGEMENT BENEFIT

The City will contribute \$1,300 for employees with less than 10 years of service and \$1,500 for employees with 10 or more years of service. Payment for this benefit shall be made on the last pay date in July of each year for the previous years' service. In lieu of direct payment, employees may select one of the following options for use of this benefit: 1) payment to deferred compensation or 2) purchase of additional vacation leave, not to exceed the Vacation Accrual Limit. This benefit will be pro-rated for new hires and terminated employees.

6) VEHICLE ALLOWANCE

Employees shall receive a vehicle allowance in the amount of \$107 per month. In lieu of a vehicle allowance, the City will provide the Fire Chief and Police Chief with a vehicle.

7) SPECIAL PROJECT/ASSIGNMENT PAY

A special project/assignment is a specific and unique assignment which exceeds the normally assigned duties and responsibilities of the employee's job classification. An employee, so assigned by the City Manager, shall receive 5% of his/her base pay while actually working on the project or in the assignment. Special project pay does not affect, nor is it included in sick and vacation or other leaves of absence. These assignments will be included in PERS computations.

8) FLEXIBLE SPENDING ARRANGEMENT CONTRIBUTIONS

- a) Employees are entitled to the same benefits as the Mid-Management MOU Section 16.00 – Benefits.
- b) Medical & Dental: Employees are eligible to enroll in a CalPERS medical plan, Dental and Vision Plan. The City makes a contribution on behalf of each qualified employee based on 90% of the cost of the highest medical premium between the Blue Shield Access+HMO and PERSChoice PPO. Employees will make an additional contribution of \$50.00 per pay period

towards the cost of health care benefits. Vision & Dental: employees are entitled to the same benefits as the Mid-Management MOU Sections 16.02 & 16.03

- c) Cash Out: Employees who can verify to the City's satisfaction that: they have equivalent health coverage for medical, which will remain in effect until the next enrollment date; will receive \$200 month.

9) FLEXIBLE SPENDING ACCOUNTS

The City offers a Healthcare Spending Account with an annual election limit of \$2,400 and a Dependent Care Spending Account with annual election limit of \$5,000.

10) RETIREMENT

a) CalPERS Retirement Benefits for Classic Members:

- i) Non-Sworn Tier 1: For all eligible employees hired on or before May 11, 2012: Benefit of 2.0% @ 55 with the single highest year option. The employee's contribution amount is 12% of reportable salary (7% employee share + 5% employee paid employer share). The employee contribution from pay is on a pre-tax basis pursuant to 414(h)(2).
- ii) Non-Sworn Tier 2: For all eligible employees hired on or after May 12, 2012, Benefit of 2% @ 60 with employees highest three year average. The employee's contribution amount is 12% of reportable salary (7% employee share + 5% employee paid employer share). The employee contribution from pay is on a pre-tax basis pursuant to 414(h)(2).
- iii) Police Sworn Tier 1: For all eligible employees hired on or before September 2, 2011: Benefit of 3% @ 50 with the single highest year option. The employee's contribution amount is 14% of reportable salary (9% employee share + 5% employee paid employer share). The employee contribution from pay is on a pre-tax basis pursuant to 414(h)(2).
- iv) Police Sworn Tier 2: For all eligible employees hired on or after September 3, 2011: Benefit of 3% @ 55 with the employees highest three year average. The employee's contribution amount is 14% of reportable salary (9% employee share + 5% employee paid employer share). The employee contribution from pay is on a pre-tax basis pursuant to 414(h)(2).
- v) Fire Tier 1: For all eligible employees hired on or before September 2, 2011: Benefit of 3% @ 50 with the single highest year option. The employee's contribution amount is 11% of reportable salary, (9% employee share + 5% employee paid employer share). The employee contribution from pay is on a pre-tax basis pursuant to 414(h)(2).
- vi) Fire Tier 2: For all eligible employees hired on or after September 3, 2011: Benefit of 3% @ 55 with employees highest three year average. The employee's contribution amount is 11% of reportable salary (9% employee share + 5%) employee paid employer share). The employee contribution from pay is on a pre-tax basis pursuant to 414(h)(2).

b) CalPERS: NEW Members:

- i) Individuals that have never been a member of any public retirement system prior to January 1, 2013, or
- ii) Individuals who moved between retirement systems with more than a six month break in service; and

- iii) In compliance with the California Public Employees' Pension Reform Act of 2013, (PEPRA), new members will receive a Local Miscellaneous benefit formula of 2% @ 62, Sworn/Safety (Police & Fire) will receive a benefit of 2.7% @ 57. Employees will contribute 50% of the normal cost as determined by CalPERS (12.25% for sworn and 6.75% for Misc.). Final compensation, for purposes of calculating the retirement benefit, is calculated on the highest average pensionable compensation earned by a member during a period of 36-consecutive months. This is also referred to as the 3-year average. The employee contribution from pay is on a pre-tax basis pursuant to 414(h)(2).

In addition to the required employee contribution, Chief Police and Chief Fire Sworn members will contribute an additional 5.0%, and Miscellaneous will contribute an additional 5.0%.

11) HOLIDAYS

Ten, eight (8) hour holidays and Two, four (4) hour holidays per calendar year as defined by the City Council. The four (4) hour holidays are granted only when Christmas Day or New Year's Day is on a Tuesday-Saturday.

Accrual and Usage rules are in accordance with those in Section 12.00 of the mid-management MOU.

12) FLOATING HOLIDAYS:

The Assistant City Manager, Deputy City Manager, Department Directors and Chiefs shall accrue up to twenty-four hours of floating holidays per fiscal year in accordance with the Mid-Management MOU Section 12.02.

13) INSURANCE

The City provides long-term disability insurance as well as term life insurance in the amount of \$25,000.

ATTACHMENT A

**ASSISTANT CITY MANAGER, DEPARTMENT DIRECTORS, DEPUTY CITY
MANAGER, CHIEFS OF POLICE & FIRE**

JOB CLASSES AND SALARY SCHEDULE

EFFECTIVE AUGUST 15, 2015

Positions & Salary Schedule

POSITION	Minimum	Maximum
Assistant City Manager	12,987	16,574
Chief of Police	12,987	16,574
Chief of Fire	12,987	16,574
Director of Public Works	12,439	15,873
Director of Water	12,439	15,873
Director of Planning	11,607	14,811
Director of Finance	11,607	14,811
Director of Human Resources	11,607	14,811
Director of Information Technology	11,607	14,811
Director of Libraries	11,607	14,811
Director of Parks & Recreation	11,607	14,811
Director of Economic Development	11,607	14,811
Deputy City Manager	9,866	13,460

Salary: Cost of Living Adjustment (COLA)

1. COLA: Cost of Living Adjustment shall be as follows:

- Effective August 15 2015, employees will receive a cost of living increase of 2.85%
- Effective the pay period containing July 1, 2016 employees will receive a cost of living increase of 2.0%.
- Effective the pay period containing July 1, 2017, employees will receive a cost of living increase of 2.0%.
- Effective the pay period containing July 1, 2018, employees will receive a cost of living increase of 2.0%

2. Additional top step of 5% effective August 15, 2015 is reflected above in the Positions and Salary Schedule.