

## CITY MANAGER EMPLOYMENT AGREEMENT

This City Manager Employment Agreement ("Agreement") is made, entered into, and to be effective February 8, 2016 ("Effective Date"), by and between the City of San Juan Capistrano, a municipal corporation, ("City") and Benjamin Siegel, ("Employee"; collectively "Parties") an individual who has education, training, and experience in local government management and who, as a member of the International City/County Management Association ("ICMA"), is subject to the ICMA Code of Ethics, both of whom agree as follows:

### RECITALS

**WHEREAS**, in order to insure that its governmental responsibilities are met at all times, the City must attract and retain management personnel who exhibit the highest degree of knowledge, experience, technical ability, professionalism, and leadership qualities; and,

**WHEREAS**, in order to attract and retain in its employment a City Manager who possesses those qualities and experience necessary to fulfill the City's immediate and long-term objectives, the City Council has determined that it is advisable to enter into this Agreement with Employee; and,

**WHEREAS**, it is the desire of City to receive the services of Employee and to provide certain benefits, establish conditions of employment, and set working conditions for Employee; and,

**WHEREAS**, City and Employee desire to enter into this Agreement in order to specify the terms and conditions of Employee's employment with City.

**NOW, THEREFORE**, in consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

### AGREEMENT

Section 1: Term. This Agreement shall remain in full force and effect for a term of three (3) years commencing February 8, 2016 and shall automatically be renewed for a new three (3) year term on each anniversary of the Effective Date of this Agreement. Notwithstanding the foregoing, this Agreement may be terminated at any time by City or Employee as provided in Sections 10 or 11 of this Agreement. If termination occurs pursuant to Section 11.A.1, 11.A.2, 11.A.3 or in the event of an uncured material breach of contract by City pursuant to Section 11.A.5, the severance provision of Section 12 shall apply. In the event of other termination, the severance provisions of Section 12 shall not apply. Employee is employed with the City in an "at-will" capacity serving at the pleasure of the City Council. Either the City Council or Employee may terminate this Agreement at any time with or without cause, and in the City's or Employee's sole discretion.

Section 2: Duties and Authority. City agrees to employ Employee as City Manager of the City to perform the functions and duties with the powers and responsibilities currently specified in Article 2 of Chapter 5 of Title 2 (commencing with Section 2-5.201) of the San Juan Capistrano Municipal Code (hereafter, "City Manager Code"), and any successor provisions thereto, and to perform other legally permissible and proper duties and functions consistent with the office of City Manager, as the City Council shall from time to time assign, including, but not limited to, the duties of the Executive Director of the San Juan Capistrano Community Redevelopment Agency.

Section 3: Compensation.

- A. City agrees to pay Employee, and Employee agrees to accept from City as compensation for services rendered as City Manager pursuant to this Agreement, an annual base salary of Two Hundred Forty Thousand Dollars (\$240,000), payable in installments at the same time that the other City Executive employees are paid, and commencing on the Effective Date of this Agreement.
- B. Employee shall receive the same percentage Cost of Living adjustments to Employee's annual base salary under this Agreement, at the same time, that other City Executive employees receive such adjustments. Employee is not entitled to any merit increases which may be provided to other Executive City employees from time to time.
- C. At the completion of the first year of service under this Agreement, based upon the results of the performance evaluation conducted under the provisions of Section 14 of this Agreement and at the exercise of discretion by the City Council, Employee shall be eligible for a merit increase in annual base salary.

Section 4: Health, Disability, Life Insurance, and Other Benefits.

- A. City agrees to provide and to pay the premiums for vision, dental, comprehensive medical insurance for Employee and Employee's dependents in an amount equal to that which is provided to other City Executive employees.
- B. City agrees to provide and make required premium payments for short term and long term disability coverage for Employee on the same terms available to all other City Executive employees.
- C. City agrees to provide and to pay the premiums for life insurance benefits for Employee in an amount equal to that which is provided to the City executive employees.
- D. City shall contribute \$10,000 annually in installments to a Deferred Compensation account for Employee.

Section 5: Vacation, Sick, Administrative, Bereavement and Holidays.

- A. Upon commencing employment, Employee shall be credited with 120 hours of vacation leave and 80 hours of sick leave. Employee shall then accrue sick leave at the same rate of other Executive employees (8 hours per month) and vacation leave on an annual basis at the rate and on the same basis as employees with 11-19 years of service (currently 164 hours per year).
- B. In the event that Employee's employment is terminated, either voluntarily or involuntarily, Employee is entitled to be compensated for remaining sick leave at 50% of Employee's hourly rate, pursuant to the payout levels established in Section 7.13 of the Personnel Rules and Regulations. Employee's remaining vacation leave will be compensated at 100% of Employee's hourly rate.
- C. Employee shall be entitled to an annual administrative leave of eighty (80 hours).
- D. Employee shall be entitled to bereavement leave and holidays on the same basis as other City Executive employees.

Section 6: Automobile and Cell Phone. Employee shall be provided with a City vehicle or an automobile allowance of \$350 per month. Employee shall be provided with a City issued cell phone and City issued laptop computer and such other technology as required to perform Employee's duties.

Section 7: Retirement. City agrees to enroll Employee into the Orange County Employees Retirement System ("OCERS"), in accordance with OCERS' contract with City, and to make all the appropriate contributions on Employee's behalf, for both City's and Employee's share, except that, in furtherance of City's desire to have all employees pay the "employee share" of retirement contributions, Employee agrees to pay Employee's "employee share" at 10.05%.

Section 8: General Business Expenses. City recognizes that certain expenses of a non-personal but job related nature will be incurred by Employee. City shall provide Employee with a credit card pursuant to Administrative Policy Number 510, and Employee shall provide receipts for all business-related expenses to City's Financial Services Department on a monthly basis and prior to reimbursement.

Section 9: Memberships and Conferences. City agrees to budget and pay for the annual base professional membership dues on behalf of Employee for any membership in the Orange County City Managers' Association, California City Management Foundation, the Government Finance Officers Association, and the International City/County Management Association. City shall, in accordance with City policies, allow Employee to attend and shall pay the cost of the conference as well as Employee's time while attending the conference, such as

those of the League of California Cities, ICMA and other similar conferences, contingent on approval of the City Council in the budget allocation process.

Section 10: Abuse of Office or Position. Pursuant to Government Code Sections 53243, 53423.1 and 53243.2, which became effective on January 1, 2012, if City Manager is convicted of a crime involving an abuse of his office or position, all of the following shall apply: (1) if Manager is provided with administrative leave pay pending an investigation, City Manager shall be required to fully reimburse City such amounts paid; (2) if City pays for the criminal legal defense of City Manager (which would be in its sole discretion, as it is generally not obligated to pay for a criminal defense), City Manager shall be required to fully reimburse City such amounts paid; and (3) if this Agreement is terminated, any Severance Pay and Severance Benefits related to the termination that City Manager may receive from City shall be fully reimbursed to City or void if not yet paid to City Manager. For purposes of this Section, abuse of office or position means either: (1) an abuse of public authority, including waste, fraud, and violation of the law under color of authority; or (2) a crime against public justice, including, but not limited to, a crime described in Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

Section 11: Termination.

- A. For the purpose of this Agreement, termination of this Agreement and Employee's employment shall occur when:
1. The majority of the City Council, in its sole discretion, votes to terminate the services of Employee pursuant to Section 2-5.212 of the San Juan Capistrano Municipal Code.
  2. The San Juan Capistrano Municipal Code pertaining to the role, powers, duties, authority, and responsibilities of the City Manager is amended in a manner that substantially changes the functions of the City Manager position, without Employee's concurrence.
  3. City reduces the annual base salary, other compensation or any other financial benefit of Employee, unless the reduction is applied in no greater percentage than the average reduction of all department heads.
  4. Employee resigns following the City Council's acceptance of the resignation, whether formal or informal and as described in Section 13 below.
  5. Material breach of contract declared by either party with a thirty (30) day cure period for either Employee or City. Written notice of a material breach of contract shall be provided in accordance with the provisions of Section 19.

- B. Notwithstanding anything to the contrary in this Agreement, pursuant to Section 2-5.215 of the San Juan Capistrano Municipal Code, Employee shall not be removed from office during or within a period of ninety (90) days next succeeding any general municipal election held in the City at which election a member of the Council is elected.

Section 12: Severance.

- A. Severance shall be paid to Employee if employment is terminated pursuant to Sections 11.A.1, 11.A.2, 11.A.3 or in the event of an uncured material breach of contract by City pursuant to Section 11.A.5. In such circumstances, City shall provide a severance payment equal to six (6) months annual base salary at the then-current rate of pay, less legally required or authorized deductions, to increase by one month for each year of service, not to exceed 12 months. This severance shall be paid in a lump sum upon termination. Severance shall also include payment for Employee's COBRA insurance premiums for a period not to exceed six (6) months. If Employee obtains employment, and becomes eligible to receive group health benefits, prior to the expiration of the six (6) month period following termination, the City shall have no obligation to continue making such payments on Employee's behalf. Employee has an obligation to notify City immediately upon obtaining employment after separation from the City. Failure to do so will extinguish the City's obligation to make any payments pursuant to this Section.
- B. Notwithstanding the provisions of Section 11.A, in the event Employee is terminated because of conviction of any felony or other criminal offense involving a violation of her official duties, misappropriation of public funds, or corruption in office, City shall have no obligation to pay the severance pay and benefits designated above.

Section 13: Resignation. In the event that Employee voluntarily resigns Employee's position with City, Employee shall provide a minimum of sixty (60) days' notice unless the Parties agree otherwise. In the event Employee voluntarily resigns from his employment with City, Employee shall not be entitled to any severance pay.

Section 14: Performance Evaluation.

- A. At least once annually, the City Council shall review and evaluate Employee's performance, in writing, and shall mutually define such goals and performance objectives which they determine necessary for the proper operation of the City and the San Juan Capistrano Community Redevelopment Agency in the attainment of the City Council's policy objectives. Further, the City Council and Employee shall establish a relative priority among those various goals and objectives to be reduced to writing with a mutual expectation of Employee's achievement of those

goals and objectives within a mutually agreed upon timeframe. The annual evaluations of Employee shall be conducted and completed in approximately May of each year under evaluation.

- B. Employee's annual review and evaluation shall be in accordance with criteria developed jointly by the City Council and Employee. Such criteria may be added to or deleted as the City Council may from time to time determine in consultation with Employee.
- C. In giving effect to the provisions of this Section 14, the City Council and Employee mutually agree to abide by all provisions of applicable law.
- D. In its sole discretion, City shall be entitled to review the performance of Employee on a more frequent basis, and without a written evaluation.

Section 15: Hours of Work. Employee is an exempt employee but shall engage in those hours of work that are necessary to fulfill the obligations of the City Manager's position. Employee does not have set hours of work as the City Manager is expected to be available at all times.

Section 16: Outside Activities.

- A. During the term of this Agreement, Employee shall be a full-time City Manager. Employee shall not engage in any other occupation, business, educational, professional or charitable activities that would conflict or materially interfere with Employee's performance of Employee's City Manager duties.
- B. This Agreement shall not be interpreted to prohibit Employee from making personal investments or conducting private business affairs, if those activities are not deemed to be a conflict of interest under state law or would otherwise not be a violation of state or federal law or the City's municipal code, or do not materially interfere with the services required under this Agreement.

Section 17: Indemnification.

- A. Except for willful wrongdoing, an act of misappropriation of public funds, an indictment, the filing of an information, a plea of guilty or a plea of nolo contendere for a crime involving moral turpitude, to the full extent of the law as provided by the California Torts Claims Act (Government Code Section 810 et seq.) and the indemnity provisions of this Agreement, whichever shall provide the greatest protection to Employee, City shall defend and indemnify Employee against and for all losses sustained by Employee resulting from the discharge of Employee's duties on City's behalf for the period of Employee's employment.

- B. Except for willful wrongdoing, an act of misappropriation of public funds, or an indictment, the filing of an information, a plea of guilty or a plea of nolo contendere for a crime involving moral turpitude, City shall defend, save harmless and indemnify Employee 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 Employee's duties as City Manager, regardless of whether the notice of filing of a lawsuit occurs during or following employment with City. City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon.
- C. Whenever Employee shall be sued for damages arising out of the performance of Employee's duties, City shall provide defense counsel for Employee in such suit and indemnify Employee from any judgment rendered against Employee; provided that such indemnity shall not extend to any judgment for damages arising out of any willful wrongdoing, an act of misappropriation of public funds, or an indictment, the filing of an information, a plea of guilty or a plea of nolo contendere for a crime involving moral turpitude.
- D. Except for willful wrongdoing, an act of misappropriation of public funds, or an indictment, the filing of an information, a plea of guilty or a plea of nolo contendere for a crime involving moral turpitude, City, on behalf of itself and all Parties claiming under or through it, hereby waives all rights of subrogation and contribution against Employee, while acting within the scope of Employee's duties, from all claims, losses and liabilities arising out of or incident to activities or operations performed by or on behalf of City or any party affiliated with or otherwise claiming under or through it, regardless of any prior, concurrent, or subsequent active or passive negligence by Employee.
- E. In the event that Employee shall serve as an Executive of other City-related legal entities, then each provision of this Section 17 shall be equally applicable to each City-related legal entity as though set forth in an indemnity agreement between Employee and that legal entity. City hereby guarantees the performance of this indemnity obligation by City-related legal entity, and shall indemnify and hold Employee harmless against any failure or refusal by City-related legal entity to perform its obligations under this Section 17.
- F. The provisions of this Section 17 shall survive the termination of the Agreement and are in addition to any other rights or remedies that Employee may have under the law.

Section 18: Bonding. City shall bear the full cost of any fidelity or other bonds required of Employee under any law or Section 2-5.101 of the San Juan Capistrano Municipal Code.

Section 19: Notices. Any notices to be given hereunder by either party to the other in writing may be effected either by personal delivery or by mail. Mailed notices shall be addressed to the Parties as set forth below, but each party may change its address by written notice given in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated and received as of five (5) calendar days following the date of mailing:

CITY: City of San Juan Capistrano  
Attention: Mayor  
32400 Paseo Adelanto  
San Juan Capistrano, CA 92675

EMPLOYEE: Benjamin Siegel  
32400 Paseo Adelanto  
San Juan Capistrano, CA 92675

Section 20: General Provisions.

- A. Integration. This Agreement sets forth and establishes the entire understanding between City and Employee relating to the employment of Employee by City. Any prior discussions or representations by or between the Parties are merged into and rendered null and void by this Agreement. The Parties by mutual written agreement may amend any provision of this Agreement during the life of the Agreement.
- B. Binding Effect. This Agreement shall be binding on City and Employee as well as on their heirs, assigns, executors, personal representatives and successors in interest.
- C. Severability. The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both Parties subsequent to the expungement or judicial modification of the invalid provision.
- D. Construction and Amendment. This Agreement shall be governed by the laws of the State of California. This Agreement may not be modified, altered, or amended except in writing and signed by the City and Employee.
- E. Enforcement. The prevailing party in any action brought to enforce this Agreement or resolve any dispute or controversy arising under the terms and conditions hereof shall be entitled to payment of reasonable attorneys' fees and costs.

Section 21: City's Policies and Procedures. The terms and conditions of Employee's employment, including additional employment benefits of Employee not specifically provided for in this Employment Agreement, shall be governed by City's

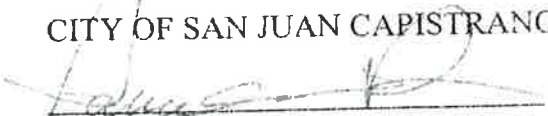


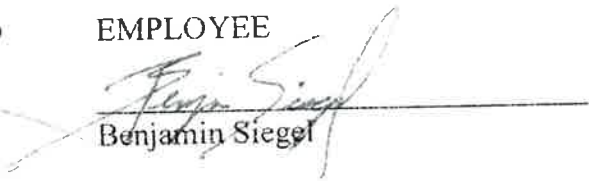
personnel policies and procedures and Municipal Code, to the extent not inconsistent with the provisions of this Agreement. In the event of any such inconsistency or conflict, the provisions of the Municipal Code, then this Agreement, shall govern. The City Council may amend the City Manager Code from time-to-time, but such amendments shall not be applicable to this Agreement without the written consent of Employee.

IN WITNESS WHEREOF, City has caused this Agreement to be signed and duly executed on its behalf by its Mayor, and duly attested by its City Clerk, and Employee has signed and executed this Agreement.

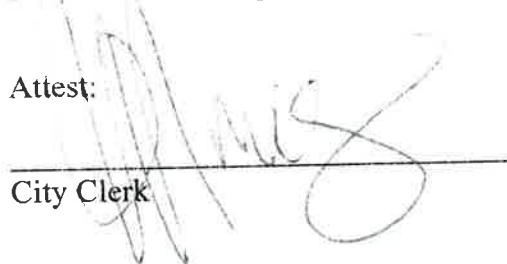
CITY OF SAN JUAN CAPISTRANO

EMPLOYEE

  
Pam Patterson, Esq., Mayor

  
Benjamin Siegel

Attest:

  
City Clerk

Approved as to form: .

  
City Attorney