

CITY OF BANNING  
EMPLOYMENT AGREEMENT WITH  
POLICE CHIEF

THIS AGREEMENT (hereinafter referred to as "Agreement") is made and entered into between LEONARD PURVIS (hereinafter referred to as "Employee") and the CITY MANAGER of the City of Banning, California, a municipal corporation (hereinafter called the "Manager"), as its official designee pursuant to Ordinance No. 1313, both of whom agree as follows:

WHEREAS, the City Manager is defined as the individual occupying the position of City Manager of the City of Banning, from time to time, whether in an appointed interim or acting capacity or under a contract with the City through its legislative body;

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

Section 1. Employment Agreement:

The Manager hereby agrees to employ Employee, and Employee agrees and does accept employment upon the terms and conditions set forth herein.

Section 2. Duties and Obligations of Employee:

A. Employee hereby agrees to perform the functions and duties of Police Chief as described in the job description attached hereto and by the reference made a part hereof, and to perform such other duties and functions as the Manager shall from time to time assign consistent with such duties. Employee further agrees to perform all such functions and duties to the best of his or her ability and in an efficient, competent and ethical manner.

B. Employee shall focus his or her professional time, ability, and attention to City business during the term of this Agreement. Employee shall not engage in any other business duties or pursuits whatsoever or, directly or indirectly, render any services of a business, commercial, or professional nature to any other person or organization, whether for compensation or otherwise, without the prior consent of Manager, except that:

(1) The expenditure of reasonable amounts of time not in conflict with the City's needs and interests, for educational, charitable, community, and professional activities, shall not be deemed a breach of this Agreement and shall not require prior consent.

(2) This Agreement shall not be interpreted to prohibit Employee from making passive personal investments or conducting private business affairs if those activities do not materially interfere with the services required under this Agreement.

C. All data, studies, reports and other documents prepared by Employee while performing his or her duties during the term of this Agreement shall be furnished to and become the property of the City, without restriction or limitation on their use.

Section 3. Term of Employment Agreement. This agreement shall initially be effective for a period commencing September 2, 2007 through June 30, 2012. Thereafter, this agreement shall renew for additional 12 month periods, unless the City provides written notice to the Employee of non-renewal. Notice of non-renewal may only be issued by the Employer during the thirty day period preceding the expiration of the initial term or the thirty day period preceding the expiration of any 12 month extension period. Any modification of this Agreement will be effective only if it is in writing and signed by both parties.

Section 4. Salary and Salary Review:

A. The Employer shall pay to the Employee an annual salary of \$134,409.00, payable in installments at the same time as other Department Heads and employees of the City are paid. The City Manager shall conduct a review and evaluate the performance of the EMPLOYEE on an annual basis, commencing one-year following the date of signing of this agreement. Prior thereto, the City Manager shall meet with the Employee to establish written criteria for performance which shall serve as the basis of the subsequent performance evaluation. The evaluation shall be predicated upon such criteria, as well as any other deemed appropriate by the City Manager, providing it is communicated in writing to the Employee. Thereafter, the City Manager shall provide the Employee with a written summary statement of the performance evaluation and shall provide an opportunity for the Employee to discuss the contents thereof with him or her for the purpose of improving the overall effectiveness of the Employee in his or her position, including an opportunity for the Employee to comment on the evaluation should Employee so elect.

B. The Manager agrees to increase Employee's salary and benefits package on an annual basis in the same increments as increases provided to other Department Heads, management classifications and/or employees of the City whether represented or not, as appropriate; however, if no general wage increases are given in any year to the bargaining units, the City Manager agrees to increase the salary under this contract by a percentage amount equal at least to the percentage rise in the Bureau of Labor Statistics Consumer Price Index for the twelve-month period immediately preceding the annual anniversary date of this contract.

Section 5. Termination and Severance Pay:

A. Upon termination for cause, the City shall deliver to the Employee a written specification of the charges or other reasons upon which "Cause" is alleged. The Employee shall then have five (5) business days to challenge such termination for cause by delivery of a written response to such specifications. Within such five (5) day period, the Employee may also demand a hearing upon the specifications. Failure to submit a written response or demand a hearing within five (5) business day period shall constitute a waiver of such right, and the City Manager's determination shall be final. If a hearing is demanded, such hearing shall be held before an independent hearing officer to be mutually agreed between the parties, or if no agreement can be reached, the hearing officer shall be selected from a list provided by the American Arbitration

Association ("AAA") or the Judicial Arbitration & Mediation ("JAMS"). If a written response is submitted but no hearing is demanded, the City Manager shall review his decision based upon the Employee's written response. However, any determination by the City Manager after reviewing such written response (where no hearing has been demanded) shall be final and without right of appeal.

The mutual selection of a hearing officer shall be accomplished within ten (10) calendar days following notice of the Employee's request for a hearing. If the parties cannot mutually agree on a hearing officer within the requisite time period, then the parties shall request a list of five (5) hearing officers from either AAA or JAMS. The parties shall then take turns eliminating names from the list until one remains. The remaining name shall then be the selected hearing officer. The fees of the hearing officer shall be advanced, in full, by the City. The decision of the hearing officer shall be binding and without right of appeal. The issues to be determined in the hearing shall be whether the specification(s) alleged constitute "Cause" pursuant to this Agreement and whether the specifications are supported by a preponderance of the evidence.

The parties acknowledge that a requested hearing for cause shall be held at the earliest possible date, and to that extent, they shall cooperate in selecting a date for the hearing which shall be no later than sixty (60) days following the City's notice of termination for cause.

In the event the hearing officer concludes in favor of the Employee that no cause exists, the Employee shall be entitled reinstatement to employment or, at the election of the Employee, to the appropriate amount of severance pay and benefits pursuant to Section 5C herein.

B. "Cause", as used in Section 5.A is defined as follows:

- (a) Any act of dishonesty, fraud or misrepresentation or other acts of moral turpitude.
- (b) Commission of any act which would constitute a crime, whether misdemeanor or felony.
- (c) Failure to follow a directive of the City Manager after written notice of said failure to Employee.
- (d) Willful breach of this Agreement as interpreted pursuant to Labor Code Section 2924.
- (e) Habitual neglect of the duties required to be performed as Director as interpreted pursuant to Labor Code Section 2924 which reads as follows:

An employment for a specified term may be terminated at any time by the employer in case of any willful breach of duty by the employee in the course of his employment, or in case of his habitual neglect of his duty or continued incapacity to perform.

- (f) Incompetence
- (g) Conduct unbecoming of a City Employee
- (h) Violation of City's Rules, Regulations, Ordinances and/or policies

C. In the event Employee is terminated by Employer during the initial period of this Agreement, or any subsequent automatic 12 month renewal, or given notice of the Employer's intention to non-renew any subsequent 12 month extension, Severance Pay shall be equal to Four (4) Months Base Salary, plus One (1) Month Base Salary for each full calendar year of service as an employee of the City in any classification with a maximum total severance payment equal to Twelve (12) Months Base Salary.

D. This Agreement, and Employee's employment, shall automatically terminate, and the Employee shall not be entitled to any severance payment, upon the happening of any of the following events:

1. Upon 30 days written notice of resignation given to Manager by the Employee.
2. Upon the death of the Employee, except that Manager shall pay to the Employee's estate all compensation which would otherwise be payable to the Employee up to the date of death as though Employee had voluntarily terminated employment.
3. When the Employee has been unable to perform all or substantially all of the essential functions of the position, with or without reasonable accommodation, due to illness or other disability, whether industrial or not, for a period of 16 consecutive weeks or a period of 26 weeks cumulatively in any consecutive 24 month period.

E. If for any year during the term of this Agreement the City Council does not adopt a budget sufficient for the Manager to fulfill his or her obligations hereunder, the Employee may either (a) agree to accept such lesser amount as may be available and continue under this Agreement; or (b) consider the Agreement terminated while the Employee is in good standing and subject to the payment by the Manager of the Severance amounts set forth in Section 5.C., above.

#### Section 6: Benefits and Other Compensation:

1. **Professional Development:** The Manager recognizes its obligation to the professional development of the Employee, and agrees that the Employee shall be given adequate opportunities to develop and maintain skills and abilities as a public administrator. Employee is expected and encouraged to and does agree to participate in professional organizations and to attend Area and Regional meetings and conferences relative to matters of interest to the Manager consistent with the

time required for such attendance in relationship to the Employee's other responsibilities as determined by the City Manager. The City Manager hereby agrees to budget an amount set in the exercise of its sole discretion to pay the cost, travel and subsistence expense of Employee for professional and/or official travel, meetings, and occasions adequate to continue professional development of Employee and to adequately pursue necessary official functions for the City. These activities shall include membership in at least one professional association and attendance at one annual community development conference. Employee shall be responsible for maintaining any professional certifications recognized as necessary or desirable in the performance of the duties hereunder. Tuition and cost of books will be reimbursed to Employee for professional and technical courses approved by the City Manager and taken in an accredited educational institution provided that: the subject matter of the course relates directly to and contributes toward the Employee's position with the City; the Employee has received at least a competent proficiency rating on the last evaluation report; the Employee has furnished evidence that the course has been completed with at least a 'C' grade.

The Manager also agrees to budget and pay for travel and subsistence expenses of the Employee for short courses, institutes, and seminars that are necessary for his or her professional development and for the good of the City. The Manager agrees to budget and pay for professional dues and subscriptions of the Employee reasonably related to the professional growth, development, education and training of the Employee.

## **2. Paid Leave.**

(a) Sick Leave: Employee shall be entitled to 12 days of sick leave annually, with the right to cash in a maximum of 96 hours annually. Sick leave shall accrue at the rate of 3.69 hours per payroll. There shall be no cap on the number of hours which the employee may accrue. Upon termination, Employee shall enjoy whatever rights to cash-in unused sick leave held under the City of Banning Association of Managers ("CBAM") MOU.

(b) Vacation Leave: Employee shall be entitled to 20 days of vacation leave annually, with the right to cash in a maximum of 40 hours annually. There shall be no cap on the number of hours which the Employee may accrue. Upon termination, for any reason, Employee shall be entitled to 100% of the unused vacation leave on the books then existing.

(c) Holiday Leave: Employee shall be entitled to 12 holidays annually. There shall be no cap on the number of unused days Employee may accrue. Upon termination, for any reason, Employee shall be entitled to 100% of the unused holiday leave on the books then existing.

(d) Executive Leave: Employee shall be entitled to 12 days of annual executive leave. There shall be no cap on the number of unused days Employee may accrue. Upon termination, for any reason, Employee shall be entitled to 100% of the unused executive leave on the books then existing.

**3. Cafeteria/Health & Welfare Benefits.** Employee shall be entitled to receive from the Employer an annual cafeteria benefit in an amount equal to the total highest amount paid for any

executive management employee, other than the City Manager, for the purchase of health and welfare benefits under any approved plan provided by the City.

**4. Retirement.** Employee shall be permitted to participate in the City's CalPERS Retirement Program for Safety Employees 3% at 50 formula. Manager agrees that the City will pay to the Public Employee Retirement System nine percent (9%) of the statutory eight percent (9%) Employee Contribution of base salary and other compensation, as required by state law, plus the normal matching Employer's share to secure the PERS retirement plan benefit for Miscellaneous Employees. Such amounts will be applied to the Employee's individual account in accordance with Government Code Section 10615.

**5. Management Incentive.** Employer agrees to pay an amount equal to four percent (4%) of Employee's annual salary toward a "PERSable" management incentive, which may be taken as taxable income or contributed to one of the City's approved deferred compensation plans, at the election of the Employee. .

**6. Automobile.** The Employee's duties require that the Employee shall have the exclusive and unrestricted use at all times during employment of an automobile. City shall provide all attendant operating and maintenance expenses and insurance.

**7. City Flexible Spending Plan.** Employee is entitled to participate in the City's Flexible Spending Plan to the same extent as enjoyed by any other employee.

**8. Life Insurance.** In addition to the annual cafeteria benefit, Manager agrees that the City will pay annual premiums as and for life insurance for Employee in the amount of \$150,000.00.

**9. Uniforms & Business Equipment:** Employee shall receive the amount of \$110.00 per month uniform allowance, which amount shall be increased as uniform allowances are increased for other public safety personnel. Manager agrees that the City will finance at no interest to Employee the purchase of any job-related personal tools or equipment, such as a computer, cell phone, etc., that serve the professional development of the Employee. Such tools shall be approved in advance by the City Manager. Repayment to the City shall be made by payroll deductions until the amount loaned is completely repaid. The maximum period for repayment shall be two (2) years.

**10. Bonding:** City shall bear the full cost of any fidelity or other bonds required of Employee under any law, state enabling legislation, or City ordinance. Employer further agrees to represent and defend the employee pursuant to Government Code Section 995, et seq. in the event Employee is named as a party to litigation arising in the course of any official function.

**11. Incentives:** Manager agrees to pay to employee the sum of \$450.00 per month as and for an education incentive for the possession of a POST Management Certificate and a Bachelor of Science Degree.

**12. Eyewear/Eyecare Reimbursement:** Employee shall be entitled to reimbursement for

expenses incurred and paid by employee and/or dependents in obtaining prescription eyewear or medical care from a licensed Optician, Optometrist or Ophthalmologist. Such amount is limited to a total for all expenses of \$250.00 every two years.

Section 6. Other Terms-Conditions of Employment:

A. Employee agrees to pay the cost of membership in the City approved long term disability insurance program. Employee agrees that such premiums will be paid with after-tax dollars in order to maintain the tax-free benefit status to both the Employer and the Employee in the event benefits are paid. It is agreed between the parties that in the event of disability of Employee, Employee shall enjoy all the rights and privileges entitled under state or federal law.

B. Manager, in consultation with the Employee, shall establish any such other terms and conditions of employment, as he or she may determine from time-to-time, relating to the performance of Employee, provided such terms and conditions are reduced to writing and not inconsistent with or in conflict with the provisions of this Agreement and signed by both parties.

Section 7 Notices:

Notices pursuant to this Agreement shall be given by deposit in the custody of the U.S. Postal Service, postage prepaid, addressed as follows:

A. City Manager

City Manager  
City of Banning  
Post Office Box 998  
Banning, CA 92220

B. Employee:

Leonard Purvis  
P. O. Box 865  
San Jacinto, CA 92581

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practices. Notice shall be deemed given as of the date of personal service or as of the date of signed receipt of such written notice by U.S. Mail.

Section 9: General Provisions:

A. This Agreement shall constitute the entire Agreement between the parties. Employee is entitled only to those benefits and compensation as expressly set forth herein. No modification of the terms of this Agreement may be made except by mutual written consent of the parties and as an addendum hereto.

B. This Agreement shall be binding upon and inure to the benefit of the heirs, et al. and executors of the Employee.

D. If any portion of this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement shall be deemed severable and shall remain in full force and effect.

#### Section 10: Effect of Waiver

The failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver, or relinquishment of any right or power at any onetime or times be deemed a waiver or relinquishment of that right or power for all or any other times.

#### Section 11: Assignment:

Neither this Agreement, nor any right, privilege, nor obligation of the Employee hereunder shall be assigned or transferred by him or her without the prior written consent of the Manager. Any attempt at assignment or transfer in violation of this provision shall, at the option of the Manager, be null and void and may be considered a material breach of this Agreement.

#### Section 12. Entire Agreement

This Agreement supersedes any and all other agreements, either oral or in writing, between the Manager and the Employee, and the Employee and the City of Banning. This Agreement contains all of the covenants and agreements between the parties with respect to the Employee's employment by the City of Banning in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding on either party.

#### Section 13. Law Governing Agreement

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

#### Section 14. Mediation

The provisions of Section 4 above are the exclusive rights of the Employee with respect to the appeal of a termination under this Agreement. This section does not supersede Section 4 with respect to matters under its control. Excepting the procedures set forth in Section 4 above, should any dispute arise with respect to the application, interpretation or enforcement of this Agreement, the parties agree that they shall submit the issues of the dispute to voluntary, non-binding mediation. Said mediation shall be scheduled within ninety (90) days after demand thereof, in writing, by either party to the dispute. Mediation shall be before any mediator mutually agreed upon by the parties, or if no agreement can be reached as to a mediator, the mediation shall be



conducted by the Judicial Arbitration and Mediation Service ("JAMS"). The costs incurred for such mediation shall be paid by the City. Should mediation be unsuccessful in resolving the issues in dispute, either party may commence any good faith applicable action at law or in equity for resolution of the issues. Nothing herein shall be construed to prevent the parties from agreeing to submit the matter to binding arbitration, or to any other alternate dispute resolution process.

#### Section 15. No Presumption of Drafter

The parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the parties, and this Agreement reflects their mutual agreement regarding the subject matter of this Agreement. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any party to be the drafter of this Agreement. Therefore, no presumption for or against validity or as to any interpretation hereof, based upon the identity of the drafter shall be applicable in interpreting or enforcing this Agreement.

#### Section 16. Attorney's Fees

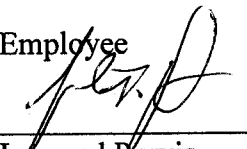
If any action at law or in equity, including an action for declaratory relief is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover such amount as the court may award as reasonable attorney's fees and costs.

#### Section 17. Assistance of Counsel

Each party to this Agreement warrants to the other party that it has either had the assistance of counsel in negotiation for, and preparation of this Agreement or could have had such assistance and voluntarily declined to obtain it.

IN WITNESS WHEREOF, the City of Banning has caused this Agreement to be signed and executed in its behalf by its City Manager, and duly attested by its City Clerk, and Employee has signed this Agreement, both in duplicate, the day and year below written.

Employee

  
Leonard Purvis

Date Signed 8-1-07

City Manager



Date Signed 8-1-07

  
Marie Calderon, City Clerk