

**CITY OF BANNING
EMPLOYMENT AGREEMENT
For the Position of
CITY MANAGER**

COPY

This EMPLOYMENT AGREEMENT ("Agreement") is entered into this 12th day of January, 2010, by and between the CITY OF BANNING ("City"), a California general law city and municipal corporation, and ANDREW J. TAKATA ("Employee"), an individual.

RECITALS

WHEREAS, it is the desire of the City Council of the City of Banning (hereinafter the "City Council") to employ an individual to serve in the position of City Manager for the City of Banning, California, which position is prescribed by state law and the City's Municipal Code; and

WHEREAS, it is the desire of the City Council to (i) secure and retain the services of Employee after having conducted a competitive selection process, (ii) have Employee perform all of the regular functions of the City Manager pursuant to the codes and regulations of City, (iii) to provide inducement to Employee to maintain such employment, and (iv) to establish the terms and conditions of Employee's services to the City through this Agreement; and

WHEREAS, Employee has the skills and expertise to fulfill such position and desires to accept employment from the City.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, including the Recitals which are made a part hereof, City and Employee hereby agree as follows:

AGREEMENT

1.0 EMPLOYMENT & DUTIES

1.1 Duties. City hereby employs Employee as City Manager for the City to perform the functions and duties of that position, as described in the Banning Municipal Code Section 2.08.080, and to perform such other duties and functions as the City Council shall from time to time assign. Employee further agrees to perform all such functions and duties to the best of his ability and in an efficient, competent, and ethical manner.

1.2 Work Schedule. Employee is expected to engage in the hours of work that are necessary to fulfill the obligations of the position. Employee acknowledges that proper performance of the duties of the City Manager will often require the performance of necessary services outside of normal business hours. However, the City intends that reasonable time off be permitted to Employee, such as is customary for exempt employees, so long as the time off does not interfere with normal business. Employee's compensation (whether salary or benefits or other allowances) is not based on hours worked and Employee shall not be entitled to any compensation for overtime.

1.3 Other Activities.

(a) Employee shall focus his or her professional time, ability, and attention to City business during the term of this Agreement. Employee shall not spend more than ten (10) hours per week in teaching, counseling, or other non-employer connected business activities without prior approval of the City Council. City is aware of the participation of Employee as an evaluator and administrator at various national and international water polo functions and approves such participation provided that Employee: (i) participates only during Employee's vacation, holiday or other administrative leave time; (ii) that such participation does not interfere with Employee's job duties; and (iii) gives the City Council reasonable notice of his expected absences.

(b) Employee shall not engage, without the express prior written consent of the City Council, 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, that is or may be competitive with the City, that might cause a conflict-of-interest with the City, or that otherwise might interfere with the business or operation of the City or the satisfactory performance of Employee's duties as City Manager.

1.4 Employment Status. Employee shall serve at the will and pleasure of the City Council under this Agreement and understands he is an "at-will" employee serving at the pleasure of City Council and subject to termination by the City at any time, as set forth in Section 3.3 below.

1.5 City Documents. All data, studies, reports, and other documents prepared by Employee while performing his 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. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other materials either created by or provided to Employee in connection with the performance of this Agreement shall be held confidential by Employee to the extent permitted by applicable law. Such materials shall not, without the prior written consent of the City Council, be used by Employee for any purposes other than the performance of his duties. Nor shall such materials be disclosed to any person or entity not connected with the performance of services under this Agreement, except as required by law.

1.6 FLSA Exempt Status. Employee agrees that his position is that of an exempt employee for the purposes of the Fair Labor Standards Act.

2.0 COMPENSATION AND REIMBURSEMENT

2.1 Compensation. For the services rendered pursuant to this Agreement, Employee shall be compensated Two Hundred and Seventeen Thousand and 00/100 Dollars (\$217,000.00) annually ("Salary"), which shall be paid on a pro-rated basis bi-weekly at the same time as other employees of City are paid. Such Salary shall be adjusted for payroll taxes, workers' compensation, and other payroll-related liability costs.

2.2 Deferred Compensation. City agrees to pay Employee, in equal installments at the same time other employees of City are paid, additional compensation to be placed into a deferred compensation account directed by Employee in an amount equal to the maximum permitted by law ("Initial Adjustment Amount"); provided, however, that future increases shall not exceed One Thousand Dollars (\$1,000.00) over the Initial Adjustment Amount. Employee has the option to elect to have some or all of the Deferred Compensation paid as salary in lieu of being placed in a Deferred Compensation Account.

2.3 Cost of Living Increase. City agrees to provide a cost of living adjustment in Employee's base salary equal to and at the same time as other Department Heads of the City. In the event other Department Heads do not receive a uniform increase, the increase provided shall be equal to the average amount of the increase received by Department Heads (on a percentage basis). This increase will not include merit increases received by Department Heads, but only cost of living increases.

2.4 Annual Salary Review. The City Council and Employee agree to conduct an annual salary review concurrently with the annual performance evaluation set forth in Section 5.2. Following the annual performance review, the City may increase the Employee's salary. The City may increase Employee's base salary two and one half percent (2 ½%) of his base salary, provided Employee's performance evaluation is determined to be "satisfactory" ("meets expectations"). The City may increase Employee's base salary to five percent (5%) of his base salary, provided Employee's performance is determined to be "above satisfactory" ("exceeds expectation"). Any action to approve an increase must be approved by a majority vote of the Council at a public meeting. The City Council and/or the Employee reserve the right to defer or refuse any or all part of any base salary adjustment if either party determines that the fiscal state of the City warrants such action.

2.5 Reimbursement. Notwithstanding Section 2.6, City shall reimburse Employee for reasonable and necessary travel, subsistence, and other business expenses incurred by Employee in the performance of his duties. All reimbursements shall be subject to and in accordance with California law and the City's adopted Employee Reimbursement Policy.

2.6 Automobile Allowance. Employee's duties require the extensive use of an automobile in the normal course of business. At the option of Employee, (i) City shall purchase and provide Employee with the exclusive and unrestricted use of a suitable automobile during the time of Employee's employment with City responsible for the full cost of maintenance, operation, repair, and appropriate replacement, and with providing comprehensive general liability and property damage insurance for said vehicle, or (ii) Employee will receive an automobile allowance of Six Hundred Dollars (\$600) monthly to be paid when the other Department Heads receive their automobile allowances.

3.0 TERM

3.1 Commencement & Effective Date. Employee shall commence his services hereunder on February 15, 2010.

3.2 Term. The term of this Agreement will be for six (6) years following the effective date specified at Section 3.1 and, thereafter, this Agreement may be extended for such additional term as the City Council and Employee deem appropriate, as evidenced by a writing signed by both parties. City agrees that in the last year of the Agreement, the annual evaluation will be performed at least six (6) months prior to the expiration of the term, and the Agreement may be extended for one or more years at that time.

3.3 Termination by City Council or Employee. The City Council may terminate this Agreement at any time with or without cause and without prior notice or hearing. Employee may terminate this Agreement at any time after three (3) years following commencement of services, with or without cause, upon at least ninety (90) days' written notice before the effective date of termination of the Agreement, unless a shorter period is acceptable to the City.

3.4 Definition of Cause. For the purposes of this Agreement, "cause" for termination shall include, but not be limited to, the following: theft or attempted theft, financial mismanagement, material dishonesty, willful or persistent material breach of duties, engaging in unlawful discrimination or harassment of employees or any third party while on City premises or time, conviction of a felony, engaging in conduct tending to bring embarrassment or disrepute to the City, unauthorized or excessive absences, or similar matters.

3.5 Waiver of Certain Termination Rights. Employee expressly waives any rights provided under the City's Personnel System or Policies, and any rights provided to the City Manager under the Banning Municipal Code or under State or Federal law to any form of pre- or post-termination hearing, appeal, or other administrative process pertaining to termination, except those rights Employee may have under the California or Federal Constitutions to a name-clearing hearing. Pursuant to this Section 3.5, the provisions of Article 3.0 shall supersede Banning Municipal Code Section 2.08.100.

4.0 SEVERANCE

4.1 Severance. Employee shall have the severance rights provided herein. The severance rights provided in this Article 4.0 shall constitute the sole and only entitlement of Employee in the event of termination, and Employee expressly waives any and all other rights except as provided herein.

(a) Termination With Cause. If the City Council terminates the Employee with cause, as defined in Section 3.4, the City shall not be required to make the severance payment provided herein.

(b) Termination Without Cause. If the City Council terminates the Employee without cause, before the expiration of the aforesaid term of employment, the City shall give Employee a lump sum cash payment equal to fourteen (14) months base salary except as provided in Subsection (d).

(c) Termination Without Cause in the Six Months Following an Election. If the City Council gives notice to terminate the Employee without cause during the six (6) months following an election the City shall give Employee a lump sum cash payment equal to eighteen (18) months base salary, except as provided in subsection (d).

(d) Application of Government Code Section 53260. Government Code Section provides that all contracts of employment with a city must include a provision limiting the maximum cash settlement for the termination of the contract to the monthly salary (excluding benefits) multiplied by the number of months left on the unexpired term, but not more than 18 months if the unexpired term exceeds 18 months. The severance payments provided for in this Article 4.0 are limited by this provision [(eg if termination occurred with six (6) months left in the term, severance would be equal to the monthly base salary multiplied by six (6) rather than fourteen (14)].

(e) No Severance Pay if Termination Initiated by Employee. Employee expressly agrees that he shall not be entitled to any severance payment as the result of the termination of this Agreement if such termination is initiated by Employee.

4.2 Vacation and Sick Leave Pay. Employee shall also be entitled to the final pay rate for all vacation and sick leave accrued as of his final date of termination. There is no accrual of benefits during the period of the severance payment.

4.3 Payment. Half of the severance payment shall be paid within ten (10) days of termination. The remainder shall be paid monthly following ninety (90) days following the date of separation.

5.0 PERFORMANCE EVALUATIONS.

5.1 Purpose. The performance review and evaluation process set forth herein is intended to provide review and feedback to Employee so as to facilitate a more effective management of the City. Nothing herein shall be deemed to alter or change the employment status of Employee (as set forth in Section 1.4 above), nor shall this Section 5.0 be construed as requiring "cause" to terminate this Agreement, or the services of Employee hereunder.

5.2 Annual Evaluation. The City Council shall conduct a review and evaluate the performance of Employee on an annual basis, commencing one year following the effective day of this Agreement. The review and evaluation shall be in accordance with specific criteria developed jointly by the City Council and Employee. The evaluation shall be predicated on such criteria, as well as any other deemed appropriate by the City Council, provided it is communicated in writing to Employee. Thereafter, the City Council shall provide Employee with a written summary statement of the performance evaluation and shall provide an opportunity for Employee to discuss the contents thereof with him for the purpose of improving the overall effectiveness of Employee in his position, including an opportunity for Employee to comment on the evaluation should Employee so elect. Such review and evaluation shall be conducted concurrently with the annual salary review provided for in section 2.2 above.

5.3 Goals and Objectives. Annually, the City Council and the Employee shall define goals and performance objectives that they determine are necessary for the proper operation of the City and, in the attainment of the City Council's policy objectives, shall further establish a relative priority among those various goals and objectives. The goals and objectives shall be reduced to writing. The goals and objectives shall be generally obtainable within the time limitations as specified and the annual operating and capital budgets and appropriations as provided.

6.0 BENEFITS AND OTHER COMPENSATION.

6.1 Vacation and Sick Leave. Commencing with the effective date of this Agreement, Employee shall accrue on a monthly basis the maximum level of vacation plus five (5) additional vacation days, sick leave, holiday and other benefits as given in an equal number to other Department Heads of the City. Employee shall be credited upon the effective date of this Agreement with twenty (20) days vacation time and ten (10) days sick leave.

(a) Vacation may only be accrued to a maximum of 40 days. In recognition of having a maximum accrual of vacation, the Employee will be allowed to cash out an additional 40 hours of vacation over those allowed to other Department Heads. The City Council may approve going above the maximum amount, if it is deemed to be in the best interest of the City of Banning.

(b) Sick leave may only be accrued to a maximum of 40 days. The City Council may approve going above the maximum amount, if it is deemed to be in the best interest of the City of Banning.

6.2 Health and Life Insurance. City agrees to put into force and to make such premium payments for Employee for insurance policies for life, accident, sickness, dental, vision, short and long-term disability income benefits, major medical and dependents' coverage group insurance covering Employee and his dependents to the same level as the other Management Employees receive or the entire premium, which ever is greater. The City agrees to pay for such premiums.

6.3 Medical Insurance. City agrees to provide hospitalization, surgical and comprehensive medical insurance for Employee and his dependents to the same level as other Management Employees receive or the entire premium, which ever is greater. The City agrees to pay for such premiums.

6.4 Physical Exam. Employee agrees to submit once per calendar year to a complete physical examination by a qualified physician of his choice, the cost of which will be paid by the City. City shall receive a copy of all medical reports related to said examination. Employee shall execute a written authorization to the physician for release of such information to City.

6.5 Other Benefits. City agrees to give the Employee all other benefits that are given to other Department Heads generally.

7.0 OTHER TERMS – CONDITIONS OF EMPLOYMENT

7.1 Civic Club Membership. City recognizes the desirability of representation in and before local civic and other organizations. Employee is therefore authorized to become a member of such civic clubs or organizations for which City shall pay dues and such expenses as may be approved by the City Council.

7.2 Dues, Subscriptions and License Fees. City agrees to pay for the professional dues and subscriptions necessary for Employee's continued and full participation in national, state, regional and local associations and organizations necessary and desirable for his continued professional participation, growth and advancement, and for the good of the City. City also agrees to pay for or reimburse Employee for fees necessary to maintain professional licenses in possession of Employee.

7.3 Professional Development.

(a) City agrees to pay travel and subsistence expenses of Employee, subject to the City's travel policy, 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 including, but not limited to, the annual conferences of the International City Management Association, the League of California Cities City Managers' Department Meeting and other such national, regional, state and local government groups and committees on which Employee serves as a member, provided such travel and membership is approved by the City Council.

(b) City also agrees to pay travel and subsistence expenses of Employee for short courses, institutes and seminars necessary for Employee's professional development and the good of the City, provided such activities are approved by the City Council.

7.4 Housing, Relocation and Moving Expenses. Employee shall be paid Twenty-Five Thousand Dollars (\$25,000.00) one week after the approval of this Agreement by the City and Employee. The sum shall be used for expenses incurred in moving and relocating the Employee, his family and personal property from his current home in Yucca Valley to a location closer to the City of Banning. Employee shall provide City with a written accounting of the expenditure of such monies as such expenses are incurred. Pursuant to Banning Municipal Code Section 2.08.030, the City Manager is not required to live in the City of Banning. However, should he choose to purchase a home in the City within six (6) months, the sum may also be used for a down payment on a home in the City. Whether within or outside of the City, the purchase shall be completed during the term of this Agreement or the funds shall be returned. Additionally, the City Council may require pro-rata repayment of all reimbursed moving costs associated with Employee's move if the Employee voluntarily terminates employment during the term of the Agreement. The repayment shall be calculated as follows:

Up to 12 months	100 percent
Up to 24 months	75 percent
Up to 36 months	50 percent
Up to 48 months	25 percent
48 months plus one day	0 percent

If the Employee is terminated without cause during the term of the Agreement, he shall not be responsible for any of the repayment.

7.5 Other Terms. The City Council, in consultation with Employee, shall establish any such other terms and conditions of employment as it may determine from time to time, provided such terms and conditions are reduced to writing and signed by Employee and the City Council.

7.6 No Singular Reduction of Benefits. City shall not during the term of this Agreement reduce the base salary or other financial benefits of Employee, except to the degree that such reduction is applied across-the-board to all Department Heads, or as agreed to by the Employee, and/or except to the extent that they are inconsistent with the provisions hereof, in which case the provisions hereof shall govern.

8.0 GENERAL PROVISIONS

8.1 Entire Agreement. This Agreement represents the entire agreement between the parties and supersedes any and all other agreement, either oral or in writing, between the parties with respect to Employee's employment by City, including the Prior Contract, and contains all of the covenants and agreements between the parties with respect to such employment. No ordinances or resolutions of City governing employment, including the City's Personnel System, shall apply unless specified herein. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by either party, or anyone acting on behalf of either party, that are not embodied herein, and that no other agreement, statement or promises not contained in this Agreement shall be valid or binding upon either party.

8.2 Notices. Any notice required or permitted by this Agreement shall be in writing and shall be personally served or shall be sufficiently given when served upon the other party as sent by United States Postal Service, postage prepaid and addressed as follows:

To City:

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

To Employee:

Andrew J. Takata

Notices shall be deemed given as of the date of personal service or upon the date of deposit in the course of transmission with the United States Postal Service.

8.3 Conflicts Prohibited. During the term of this Agreement, Employee shall not engage in any business or transaction or maintain a financial interest which conflicts, or reasonably might be expected to conflict in any manner, with the proper discharge of Employee's duties under this Agreement. Employee shall comply with all requirements of law, including but not limited to, Sections 87100 *et seq.*, Section 1090 and Section 1125 of the Government Code, and all other similar statutory and administrative rules. Whenever any potential conflict arises or may appear to arise, the obligation shall be on the Employee to seek legal advice concerning whether such conflict exists and Employee's obligations arising therefrom.

8.4 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 one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

8.5 Partial Invalidity. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

8.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, which are in full force and effect as of the date of execution.

8.7 Indemnification. City shall defend, indemnify and hold harmless Employee against any tort, professional liability claim or demand or other legal action arising out of an alleged act or omission occurring in the performance of Employee's services under this Agreement. The City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon. This section shall not apply to any intentional tort or crime committed by Employee, to any action resulting from fraud, corruption or malice of Employee, to any action outside the course and scope of the services provided by Employee under this Agreement, or any other intentional or malicious conduct or gross negligence of Employee.


8.8 Independent Legal Advice. City and Employee represent and warrant to each other that each has received legal advice from independent and separate legal counsel with respect to the legal effect of this Agreement. City and Employee further represent and warrant that each has carefully reviewed this entire Agreement, and that each and every term thereof is understood, and that the terms of this Agreement are contractual and not a mere recital. This Agreement shall not be construed against the party or its representatives who drafted it or who drafted any portion thereof.

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

8.10 Bonding. City shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

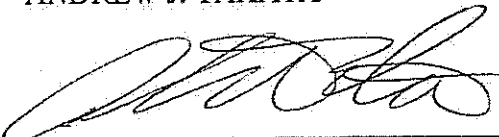
IN WITNESS WHEREOF, the City of Banning has caused this Agreement to be signed and executed on its behalf by its Mayor, and duly attested by its City Clerk, and Employee has signed and executed this Agreement, the day and year below written.

CITY OF BANNING




Mayor Bob Botts

ANDREW J. TAKATA



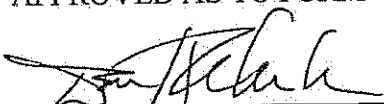
Andrew J. Takata

ATTEST:



Marie Calderon
City Clerk

APPROVED AS TO FORM



David J. Aleshire, City Attorney