

**SIXTH AMENDMENT TO THE CITY MANAGER  
EMPLOYMENT AGREEMENT  
between the City of Solana Beach, a municipal  
corporation, and Gregory Wade**

This Sixth Amendment to Employment Agreement is entered into this 9th day of September \_\_, 2021 and is effective as of July 1, 2021, by and between the City of Solana Beach, California, a municipal corporation (hereinafter "City") and Gregory Wade, an individual (hereinafter "Officer") (City and Officer referred to collectively as "Parties") with respect to the employment of Officer as the City Manager of the City.

**RECITALS**

WHEREAS, on May 22, 2015, the City and Officer entered into the Employment Agreement. On September 14, 2016, the City and Officer entered into the First Amendment to Employment Agreement. The City and Officer entered into the Second Amendment to Employment Agreement on October 11, 2017. On September 26, 2018, the City and Officer entered into the Third Amendment to Employment Agreement. The Fourth Amendment between City and Officer was approved on September 25, 2019. On September 9, 2020, the Fifth Amendment was approved.

WHEREAS, the Sixth Amendment amends and incorporates the Agreement and subsequent amendments (First through Fifth) (Amended Agreement). The City and Officer intend that all terms of the Amended Agreement referenced above shall remain effective to the extent they are not amended by the Sixth Amendment to the Employment Agreement.

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

**Section 1.** Section 5(A)(1)(a) of the Employment Agreement is hereby amended to read as follows:

**5. COMPENSATION**

A. Compensation and Required Employer Costs

(1) Base Salary

(a) The annual base salary for the position of City Manager shall be \$230,592 effective July 1, 2021.

(i) An additional 3% increase in base salary for a total of \$237,510 will take effect on July 1, 2022.

**Section 2.** The vehicle allowance under Section 5 is set at five hundred dollars (\$500) a month.

**Section 3.** The changes outlined above shall be effective as of July 1, 2021 unless otherwise stated.

**Section 4.** The base salary increases outlined above are based on the Officer's annual performance evaluation conducted in the summer of 2021 and does not forego subsequent changes as may be warranted after the annual performance evaluation to be conducted in the spring/summer of 2022.


**Section 5.** Except as modified herein, all other terms and conditions of the Employment Agreement, First, Second, Third, Fourth, and Fifth Amendments to Employment Agreement shall remain the same.

IN WITNESS WHEREOF the Parties have executed this Third Amendment to Employment Agreement as of the day and year first above written.

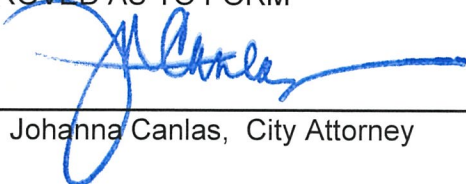
CITY OF SOLANA BEACH

OFFICER

By:   
Lesa Heebner, Mayor

By:   
Gregory Wade

APPROVED AS TO FORM

By:   
Johanna Canlas, City Attorney

**FIFTH AMENDMENT TO THE CITY MANAGER  
EMPLOYMENT AGREEMENT  
between the City of Solana Beach, a municipal  
corporation, and Gregory Wade**

This Fifth Amendment to Employment Agreement is entered into this 9<sup>th</sup> day of September, 2020 and is effective as of July 1, 2020, by and between the City of Solana Beach, California, a municipal corporation (hereinafter "City") and Gregory Wade, an individual (hereinafter "Officer") (City and Officer referred to collectively as "Parties") with respect to the employment of Officer as the City Manager of the City.

**RECITALS**

1. WHEREAS, on May 22, 2015, the City and Officer entered into the Employment Agreement (Agreement). On September 14, 2016, the City and Officer entered into the First Amendment to Employment Agreement. The City and Officer entered into the Second Amendment to Employment Agreement on October 11, 2017. On September 26, 2018, the City and Officer entered into the Third Amendment to Employment Agreement. The Fourth Amendment between the City and Officer was approved on September 25, 2019.
2. WHEREAS, this Fifth Amendment amends and incorporates the Agreement and subsequent amendments (First through Fourth) (Amended Agreement). The City and Officer intend that all terms of the Amended Agreement referenced above shall remain effective to the extent they are not amended by this Fifth Amendment to the Employment Agreement.
3. WHEREAS, the terms of the Amended Agreement provide, among other things, benefits and compensation payable to the Officer.
4. WHEREAS, the effective date of the changes contained in this Fifth Amendment is effective as of July 1, 2020.

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

**Section 1.** Section 5(B)(6) is hereby amended to read as follows:

The annual contribution is hereby increased to \$26,000. Thereafter, this deferred compensation contribution would increase annually based upon the Internal Revenue Code Section 415 annual adjustments for cost-of-living increases to both the Normal Limit and the Age 50 Catch-Up Limit.

**Section 2.** Section 5(B)(4)(e) is hereby added to read as follows:

As a one-time benefit in December 2020, Officer may "cash-out", at the hourly rate of \$106.90, up to a maximum of 80 hours of vacation leave that would have been accrued in FY 2019-2020 and FY 2020-2021 but for the Officer having reached the vacation leave accrual limit or cap.


**Section 3.** The changes as outlined above shall be effective as of July 1, 2020.

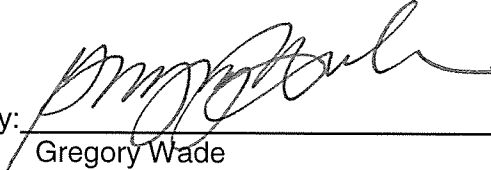
**Section 4.** Except as modified herein, all other terms and conditions of the Employment Agreement, First, Second, Third, and Fourth Amendments to Employment Agreement shall remain effective.

IN WITNESS WHEREOF the Parties have executed this Fifth Amendment to Employment Agreement as of the day and year first above written.

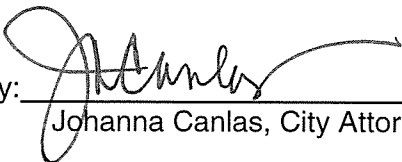
CITY OF SOLANA BEACH

OFFICER

By:   
Jewel Edson, Mayor

By:   
Gregory Wade

APPROVED AS TO FORM

By:   
Johanna Canlas, City Attorney

**FOURTH AMENDMENT TO THE CITY MANAGER  
EMPLOYMENT AGREEMENT  
between the City of Solana Beach, a municipal  
corporation, and Gregory Wade**

This Fourth Amendment to Employment Agreement is entered into this 28<sup>th</sup> day of August 28, 2019 and is effective as of July 1, 2019, by and between the City of Solana Beach, California, a municipal corporation (hereinafter "City") and Gregory Wade, an individual (hereinafter "Officer") (City and Officer referred to collectively as "Parties") with respect to the employment of Officer as the City Manager of the City.

**RECITALS**

WHEREAS, on May 22, 2015, the City and Officer entered into the Employment Agreement; and

WHEREAS, on September 14, 2016, the City and Officer entered into the First Amendment to Employment Agreement; and

WHEREAS, on October 11, 2017, the City and Officer entered into the Second Amendment to Employment Agreement; and

WHEREAS, on September 26, 2018, the City and Officer entered into the Third Amendment to Employment Agreement.

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

**Section 1.** Section 5(A)(1)(a) of the Employment Agreement is hereby amended to read as follows:

**5. COMPENSATION**

**A. Compensation and Required Employer Costs**

**(1) Base Salary**

- (a)** The annual base salary for the position of City Manager shall be \$220,662.00

**Section 2.** Section 5(B)(5)(a) is hereby added to read as follows:

Officer is authorized to use City provided power to charge his vehicle.

**Section 3.** The annual contribution under Section 5(B)(6) is hereby increased to \$24,500.00.

**Section 4.** The changes as outlined in Sections 1 - 3 above shall be effective as of July 1, 2019.

**Section 5.** Except as modified herein, all other terms and conditions of the Employment Agreement, First, Second and Third Amendments to Employment Agreement shall remain the same.

IN WITNESS WHEREOF the Parties have executed this Third Amendment to Employment Agreement as of the day and year first above written.

CITY OF SOLANA BEACH

OFFICER

By: David A Zito  
David A. Zito, Mayor

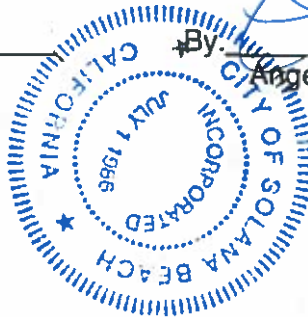
By: Gregory Wade  
Gregory Wade

APPROVED AS TO FORM

ATTEST:

By: Johanna Carlas  
Johanna Carlas, City Attorney

By: Angela Ivey  
Angela Ivey, City Clerk



**THIRD AMENDMENT TO THE CITY MANAGER  
EMPLOYMENT AGREEMENT  
between the City of Solana Beach, a municipal  
corporation, and Gregory Wade**

This Third Amendment to Employment Agreement is entered into this 24<sup>th</sup> day of October, 2018 and is effective as of July 1, 2018, by and between the City of Solana Beach, California, a municipal corporation (hereinafter "City") and Gregory Wade, an individual (hereinafter "Officer") (City and Officer referred to collectively as "Parties") with respect to the employment of Officer as the City Manager of the City.

**RECITALS**

**WHEREAS**, on May 22, 2015, the City and Officer entered into the Employment Agreement; and

**WHEREAS**, on September 14, 2016, the City and Officer entered into the First Amendment to Employment Agreement; and

**WHEREAS**, on October 11, 2017, the City and Officer entered into the Second Amendment to Employment Agreement; and

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

**Section 1.** Section 5(A)(1)(a) of the Employment Agreement is hereby amended to read as follows:

**5. COMPENSATION**

**A. Compensation and Required Employer Costs**

**(1) Base Salary**

- (a) The annual base salary for the position of City Manager shall be \$215,280.00.

**Section 2.** Section 5(B)(6) of the Employment Agreement is hereby amended to read as follows:

The City will make, in equal proportionate amounts each pay period, an annual contribution of Twenty-Two thousand dollars (\$22,000.00) into a qualified Section 457 Plan that will be from one of the City approved plans as selected by Officer. Amounts contributed under this Section shall be to the benefit of Officer in accordance with the Deferred Compensation Plan participation agreement. All aspects of this contribution are subject to the provisions and limitations of the Internal Revenue Code and its related regulations as amended from time to time. No requirement of this Section shall be effective if it would violate any provisions of the Internal Revenue Code or its related regulations.

**Section 3.** Except as modified herein, all other terms and conditions of the Employment Agreement, First, and Second Amendments to Employment Agreement shall remain the same.

**IN WITNESS WHEREOF** the Parties have executed this Third Amendment to Employment Agreement as of the day and year first above written.

CITY OF SOLANA BEACH

OFFICER

By:



David A. Zito, Mayor

By:



Gregory Wade

APPROVED AS TO FORM

By:



Johanna Canlas, City Attorney

ATTEST:



Angela Eley, City Clerk



**SECOND AMENDMENT TO THE CITY MANAGER  
EMPLOYMENT AGREEMENT  
between the City of Solana Beach, a municipal  
corporation, and Gregory Wade**

This Second Amendment to Employment Agreement is entered into this 11th day of October 2017 and is effective as of July 1, 2017, by and between the City of Solana Beach, California, a municipal corporation (hereinafter "City") and Gregory Wade, an individual (hereinafter "Officer") (City and Officer referred to collectively as "Parties") with respect to the employment of Officer as the City Manager of the City.

**RECITALS**

WHEREAS, on May 22, 2015, the City and Officer entered into the Employment Agreement; and

WHEREAS, on September 14, 2016, the City and Officer entered into the First Amendment to Employment Agreement; and

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

**Section 1.** Section 3 of the Employment Agreement is hereby deleted.

**Section 2.** Section 5(A)(1)(a) of the Employment Agreement is hereby amended to read as follows:

**5. COMPENSATION**

A. Compensation and Required Employer Costs

(1) Base Salary

- (a) The annual base salary for the position of City Manager shall be \$207,000.00.

**Section 3.** Section 5(B)(6) of the Employment Agreement is hereby amended to read as follows:

The City will make, in equal proportionate amounts each pay period, an annual contribution of Twelve thousand dollars (\$12,000.00) into a qualified Section 457 Plan that will be from one of the City approved plans as selected by Officer. Amounts contributed under this Section shall be to the benefit of Officer in accordance with the Deferred Compensation Plan participation agreement. All aspects of this contribution are subject to the provisions and limitations of the Internal Revenue Code and its related regulations as amended from time to time. No requirement of this Section shall be effective if it would violate any provisions of the Internal Revenue Code or its related regulations.

**Section 4.** Section 6(C)(5) of the Employment Agreement is hereby amended to read as follows:

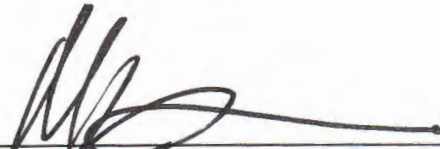
The Parties agree that all payments required under this Section are conditioned upon Officer delivering to the City a fully executed separation agreement and release of all claims in a form acceptable to the City (acting through its City Attorney) within 30 days of his termination,

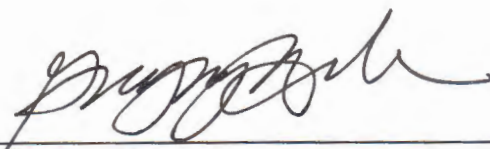
**Section 5.** Except as modified herein, all other terms and conditions of the Employment Agreement and First Amendment to Employment Agreement shall remain the same.

IN WITNESS WHEREOF the Parties have executed this First Amendment to Employment Agreement as of the day and year first above written.

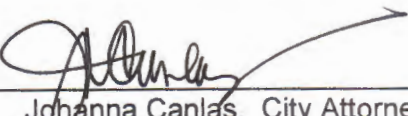
CITY OF SOLANA BEACH

OFFICER

By:   
Mike Nichols, Mayor

By:   
Gregory Wade

APPROVED AS TO FORM

By:   
Johanna Canlas, City Attorney

**FIRST AMENDMENT TO THE CITY MANAGER  
EMPLOYMENT AGREEMENT**  
between the City of Solana Beach, a municipal  
corporation, and Gregory Wade

This First Amendment to Employment Agreement is entered into this 14th day of September 2016 and is effective as of July 1, 2016 (hereinafter "Effective Date"), by and between the City of Solana Beach, California, a municipal corporation (hereinafter "City") and Gregory Wade, an individual (hereinafter "Officer") (City and Officer referred to collectively as "Parties") with respect to the employment of Officer as the City Manager of the City.

**RECITALS**

WHEREAS, on May 22, 2015, the City and Officer entered into the Employment Agreement, which was effective on June 22, 2015; and

WHEREAS such Employment Agreement requires the City Council to conduct a formal evaluation of Officer's performance at least once each year; and

WHEREAS, the City Council conducted performance evaluations of Officer on June 22, July 11, and August 24, 2016; and

WHEREAS, the City Council now desires to make the following amendment to the Employment Agreement.

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

Section 1. Section 5(A)(1)(a) of the Employment Agreement is hereby amended to read as follows:

**5. COMPENSATION**

The City agrees to provide the following compensation to the City Manager during the term of the agreement:

A. Compensation and Required Employer Costs

(1) Base Salary

- (a) The annual base salary for the position of City Manager shall be \$200,970.

Section 2. The amendment under Section 1 above shall be effective as of July 1, 2016.

Section 3. Except as modified herein, all other terms and conditions of the Employment Agreement shall remain the same.

IN WITNESS WHEREOF the Parties have executed this First Amendment to Employment Agreement as of the day and year first above written.

CITY OF SOLANA BEACH

OFFICER

By: David A. Zito  
David A. Zito, Mayor

By: Gregory Wade  
Gregory Wade

APPROVED AS TO FORM

By: Johanna Canlas  
Johanna Canlas, City Attorney

**CITY MANAGER EMPLOYMENT AGREEMENT**  
**between the City of Solana Beach, a municipal**  
**corporation, and Gregory Wade**

**1. Parties and Date**

This Agreement is dated May 14, 2015, and is effective as of June 22, 2015, by and between the City of Solana Beach, California, a municipal corporation (the "City"), and Gregory Wade, an individual (the "Officer").

- A. The City requires the services of a City Manager;
- B. The Officer has the necessary education, experience, skills and expertise to serve as the City's City Manager;
- C. The City Council of the City (the "City Council") desires to employ Officer to serve as the City Manager of the City;
- D. The Parties desire to execute this Agreement pursuant to the authority of and subject to the provisions of Government Code Section 53260 *et seq.*; and
- E. In consideration of these Recitals and the performance by the Parties of the promises, covenants, and conditions herein contained, the Parties agree as provided in this Agreement.

**2. Employment**

The City hereby employs the Officer as its City Manager, and Officer hereby accepts such employment.

**3. Term**

Pursuant to the provisions of Government Code section 36506 and Solana Beach City Municipal Code sections 2.08.010 and 2.08.090, Officer shall hold the appointive office of City Manager at and during the pleasure of the City Council for a three (3) year term beginning June 22, 2015, and ending on June 21, 2018, unless extended in writing by mutual agreement.

**4. Commitments and Understandings**

A. The Officer's Commitments

(1) Duties & Authority

- (a) Officer shall be the Chief Executive Officer of the City and be responsible to the City Council for the proper administration of all affairs of the City.
- (b) Officer shall be the Executive Director of the Successor Agency to the Solana Beach Redevelopment Agency (the "Agency") and



Executive Director of the Solana Beach Public Finance Authority (the "Authority").

- (c) Officer shall perform all of the duties of the City Manager as set forth in Title 2, Chapter 2.08 of the Solana Beach Municipal Code (the "Municipal Code"), the California Government Code, and City policies and procedures approved by the City Council, as may be provided from time to time.
- (d) To accomplish this, Officer shall have the power and be required to:
  - (i) Attend all meetings of the City Council, unless excused by the Mayor, and take part in the discussion of all matters before the City Council.
  - (ii) Review all agenda documents before preparing the agenda for any regular or special meetings of the City Council.
  - (iii) Direct the work of all appointive City officers and departments that are the concern and responsibility of the City Council, except those that are directly appointed by or report directly to the City Council. The City Manager may undertake any study or investigation that is necessary or desirable, or as directed by the City Council. The City Manager shall endeavor to implement changes that the City Manager believes will result in greater efficiency, economy or improved public service in the administration of City affairs.
  - (iv) Recommend to the City Council adoption of such measures as the City Manager may deem necessary or expedient for the health, safety, or welfare of the community or for the improvement of administrative services.
  - (v) Consolidate or combine offices, positions, departments, or units under the City Manager's jurisdiction. The City Manager may be the head of one or more City departments.
  - (vi) Conduct research in administrative practices in order to bring about greater efficiency and economy in City government, and develop and recommend to the City Council long-range plans to improve City operations and prepare for future City growth and development.
  - (vii) Provide management training and develop leadership qualities among department directors and staff as

necessary to build a City management team that can plan for and meet future challenges.

- (viii) Exercise control of City government in emergencies as authorized by the Municipal Code and California law.

(2) Hours of Work

- (a) Officer is an exempt employee without set hours of work, but is expected to be available at all times and to engage in those hours of work that are necessary to fulfill the obligations of the City Manager's position.
- (b) Officer shall spend sufficient hours on site to perform the City Manager's duties; however, the City Manager has discretion over the City Manager's work schedule and work location.

B. City Commitments

- (1) The City shall provide Officer with the compensation, incentives and benefits specified elsewhere in this Agreement.
- (2) The City shall provide Officer with office space, staff, equipment, supplies, and all other facilities and services adequate for the performance of the City Manager's duties.
- (3) The City shall pay for or provide the City Manager reimbursement for all actual business expenses subject to the City's reimbursement policy.
- (4) The City agrees to pay the professional dues and subscriptions on behalf of the City Manager for participation in national, regional, state, or local associations and organizations, as necessary and desirable for the good of the City, and for the City Manager's continued professional participation and advancement.
- (5) The City agrees to pay the travel and subsistence expenses of the City Manager for purposes such as official functions, meetings, occasions, short courses, institutes and seminars that are necessary for the good of the City or for the professional development of the City Manager subject to the City's travel and reimbursement policies.

C. Mutual Commitments

(1) Performance Evaluation

- (a) The City Council recognizes that for Officer to respond to its needs and to grow in the performance of the City Manager's job, Officer needs to know how the City Councilmembers evaluate his performance. To assure that Officer gets this feedback, the City Council shall conduct an evaluation of the City Manager's performance at least once each year to be scheduled during the

month of May to coincide with the close of the fiscal year, and when it deems necessary to discuss any concerns or direction in performance.

(2) Goals

The City Council and Officer shall jointly define goals and performance objectives they deem necessary for the proper operation of the City in the attainment of the City Council's policy objectives and shall establish relative priority among the various goals and objectives.

(3) ICMA Code of Ethics

The Parties acknowledge that Officer is committed to the ideals of the International City Management Association ("ICMA"). The Parties mutually desire that Officer be subject to and comply with the most current ICMA Code of Ethics. The Officer commits to comply with the ICMA Code of Ethics.

**5. COMPENSATION**

The City agrees to provide the following compensation to the City Manager during the term of the agreement:

A. Compensation and Required Employer Costs

(1) Base Salary

- (a) The annual base salary for the position of City Manager shall be \$198,000.
- (b) Officer shall be paid at the same intervals and in the same manner as regular City employees.
- (c) Any increase in base salary shall be effective only when approved by the City Council upon completion of the annual performance evaluation required by this Agreement.
- (d) The City may reduce the base salary, compensation or other financial benefits of the City Manager during the term of this Agreement as part of a general reduction in pay among management employees.

B. Basic Benefits

(1) Retirement

Officer is entitled to participate in the California Public Employees' Retirement System (CalPERS) in the 2% @ 60 retirement program, with the use of the average of Officer's highest three year salary. Officer will



be responsible to pay the entire cost of the employees' portion of the CalPERS retirement contribution.

- (2) Upon any effective date in accordance with CalPERS requirements, Officer agrees to pay the same and/or equivalent contribution as other management employees of the City considered classic members as defined by CalPERS.

- (3) Holidays

Officer is entitled to those paid holidays in accordance with the provisions of the City's Personnel Rules and Regulations for management employees.

- (4) Leave Allowance

- (a) Officer shall receive the same annual leave accrual and benefits as provided to the management employees at the highest range.
- (b) Officer shall accrue administrative leave at the same rate as management employees following the effective date of this Agreement.
- (c) Upon Officer's first date of employment with the City, Officer shall be credited 80 hours of vacation leave. Thereafter, Officer shall accrue vacation leave at the maximum accrual rate of 160 hours per year or the same as other management employees of the City whichever is higher. Officer may accrue up to a maximum of three times his annual vacation accrual, or no more than 480 hours. Once Officer has accrued the maximum allowable vacation leave, Officer will earn no additional vacation leave until Officer uses vacation leave sufficient to bring Officer below the maximum accrual. Officer shall comply with the vacation leave provisions contained in the City's Personnel Rules and Regulations and any other City policies and procedures regarding vacation leave not in conflict with the provisions stated herein.
- (d) Upon Officer's first date of employment with the City, Officer shall be credited 120 hours of sick leave. Thereafter, Officer shall accrue sick leave at the same rate as other management employees of the City. Officer shall comply with the sick leave provisions contained in the City's Personnel Rules and Regulations and any other City policies and procedures regarding sick leave.

- (5) Automobile

Officer shall be provided a monthly automobile allowance of \$450.00 in exchange for making a vehicle available for the City Manager's own use and for City-related business and/or functions during, before and after normal work hours. Officer is responsible for all liability for personal injury

and property damages, and for operation, maintenance, and repair of the automobile arising out of Officer's use of the automobile. Officer is also responsible for paying all income tax liability, whether federal or state, arising out of Officer's receipt of the automobile allowance. Officer shall submit proof to City of a valid driver's license and insurance for his automobile. By Officer making his personal vehicle available for use, Officer is not precluded from using City vehicles for City business during, before and after the normal workday on occasion, when appropriate.

(6) Deferred Compensation

The City will make, in equal proportionate amounts each pay period, an annual contribution of Ten thousand dollars (\$10,000) into a qualified Section 457 Plan that will be from one of the City approved plans as selected by Officer. Amounts contributed under this Section shall be to the benefit of Officer in accordance with the Deferred Compensation Plan participation agreement. All aspects of this contribution are subject to the provisions and limitations of the Internal Revenue Code and its related regulations as amended from time to time. No requirement of this Section shall be effective if it would violate any provisions of the Internal Revenue Code or its related regulations.

(7) Benefits that Accrue to Other Employees

Officer shall be entitled to all benefits, rights, and privileges accorded to non-public safety City Management Employees except as otherwise provided in this Agreement. If there is any conflict between this Agreement and any resolution fixing compensation and benefits for non-public safety City Management Employees or other non-classified employees, this Agreement shall control.

6. **SEPARATION**

A. Resignation/Retirement

Officer may resign at any time and agrees to give the City at least 60 days advance written notice of the effective date of the Officer's resignation, unless the Parties otherwise agree in writing. If Officer retires from full time public service with the City, Officer shall provide six months' advance notice. Officer's actual retirement date will be mutually established between City and Officer.

B. Termination & Removal

- (1) Officer is an at-will employee serving at the pleasure of the City Council as provided in Government Code Section 36506.
- (2) The City Council may remove Officer at any time, either with or without cause, by a majority vote of its members. Notice of termination shall be provided to Officer in writing.

(a) Notwithstanding the above, the City agrees to provide Officer 60 days advanced notice prior to termination or non-extension of the term as contemplated in Paragraph 3 of the Agreement.

(3) Officer shall not be terminated during the 90-day period before or after any City election or appointment for membership on the City Council.

C. Severance Pay

(1) In the event Officer is terminated by the City Council during such time that the Officer is willing and able to perform the City Manager's duties under this Agreement, then in that event the City agrees to pay Officer a lump sum cash payment equal to six (6) months' base salary.

(2) All payments required under this Section are subject to and shall be interpreted to comply with the limitations set forth in Government Code Section 53260 and 53261.

(3) The Parties agree that the severance benefits due upon termination, if any, and other benefits due upon termination as provided by this Agreement, shall be the only compensation payable to the Officer and are intended to compensate the Officer for any damages, which could include, among other losses: the loss of the opportunity to transition employment, the loss of alternate employment opportunities, the loss of income, the loss of opportunities for retraining or further education, the erosion of personal investments and savings, the loss of retirement benefits, physical displacement or the loss of a residence, the loss of insurance and medical benefits, expenses for professional counseling, the loss of standard of living including educational opportunities for children, and the resultant emotional distress to the Officer and the Officer's family.

(4) In the event Officer voluntarily resigns his position with the City, then the Officer shall not be entitled to severance pay but will receive all benefits that have already accrued as is typically paid out to other City employees upon resignation.

(5) In the event the City Council decides not to extend the initial term of this Agreement or decides not to enter into a subsequent employment agreement with Officer, Officer shall be entitled to the severance pay stated herein.

D. Separation for Cause

(1) Notwithstanding the provisions of Sections 5B and 5C, Officer may be terminated for cause. As used in this section, "cause" shall mean only one or more of the following:

(a) Conviction of, or no contest plea to, a felony;

- (b) Conviction of, or no contest plea to, any illegal act involving moral turpitude or personal gain;
  - (c) Continued abuse of non-prescription drugs or alcohol that materially affects the performance of the Manager's duties;
  - (d) Any act constituting a knowing and intentional violation of the City's conflict of interest code; or
  - (e) Repeated and protracted unexcused absences from the City Manager's office and duties.
- (2) In the event the City terminates Officer for cause, then the City may terminate this Agreement immediately, and Officer shall be entitled to only the compensation accrued up to the date of termination and such other termination benefits and payments as may be required by law. The City Manager shall not be entitled to any severance benefits provided by Section 6.C.

## **7. MISCELLANEOUS PROVISIONS**

### **A. Amendments**

This Agreement may be amended at any time by mutual agreement of the City and the Officer. Any amendments are to be negotiated, put in writing, and adopted by the City Council.

### **B. Conflict of Interest**

- (1) Officer shall not engage in any business or transaction or have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties.
- (2) Officer shall also be subject to the conflict of interest provisions of the California Government Code and any conflict of interest code applicable to Officer's City employment.
- (3) Officer is responsible for submitting to the City Clerk the appropriate Conflict of Interest Statements at the time of appointment, annually thereafter, and at the time of separation from the position.

### **C. Abuse of Office.** Any payment Officer may receive as paid leave pending an administrative investigation, as funds for the legal criminal defense of Officer, or as any cash settlement related to the termination of Officer shall be fully reimbursed to the City if Officer is convicted of a crime involving an abuse of his office or position. "Abuse of office or position" means either of the following:

- (1) An abuse of public authority, including, but not limited to, waste, fraud, and violation of the law under color of authority.

- (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.

Nothing in this Section entitles Officer to any of the above listed payments described in this Section. This Section shall be interpreted to comply with the requirements set forth in Government Code Sections 52343-52343.4.

D. Indemnification

- (1) To the full extent of the law, the City shall defend and indemnify Officer, in his capacity as City Manager, and as the chief executive of other City-related legal entities as provided in Section 4.A(1)(b) above, against and for all losses sustained by Officer in direct consequences of the discharge of the City Manager's duties on the City's behalf for the period of the Officer's employment, save and except those losses sustained as a result of the willful act or omission of Officer.
- (2) The City shall defend, save harmless and indemnify the Officer 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 Officer's duties as City Manager. The City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon.
- (3) Whenever Officer shall be sued for damages arising out of the performance of the City Manager's duties, the City shall provide defense counsel for Officer in such suit and indemnify Officer from any judgment rendered against Officer; provided that such indemnity shall not extend to any judgment for damages arising out of any willful wrongdoing. This indemnification shall extend beyond termination of employment and the otherwise expiration of this Agreement to provide protection for any such acts undertaken or committed in Officer's capacity as City Manager, regardless of whether the notice of filing of a lawsuit occurs during or following employment with the City. This indemnity provision shall survive the termination of the Agreement and is in addition to any other rights or remedies that Officer may have under the law.
- (4) This Agreement is binding upon and inures to the benefit of the heirs and personal representatives of Officer.

E. Severability

If any clause, sentence, part, section, or portion of this Agreement is found by a court of competent jurisdiction to be illegal or unenforceable, such clause, sentence, part, section, or portion so found shall be regarded as though it were not part of this Agreement and the remaining parts of this Agreement shall be fully binding and enforceable by the Parties hereto.

F. Laws Affecting Title

In addition to those laws affecting a City Manager, Officer shall have the same powers, rights and responsibilities as a Chief Executive Officer, City Administrative Officer, Administrator, and/or City Administrator as those terms are used in local, state or federal laws.

G. Jurisdiction and Venue

This Agreement shall be construed in accordance with the laws of the State of California, and the Parties agree that venue shall be in San Diego County, California.


H. Entire Agreement


This Agreement represents the sole and complete agreement of the Parties, and no representations have been made or relied upon except as set forth herein. Although the state and local laws referenced in the Agreement are subject to change and are binding upon the Parties without any written amendment to this Agreement, any other terms of this Agreement may be amended or modified only by a written, fully executed agreement of the Parties.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

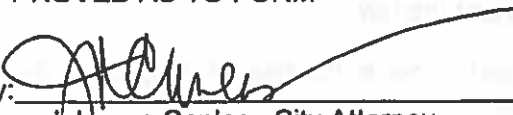
CITY OF SOLANA BEACH

OFFICER

By:   
Lesa Heebner, Mayor

By:   
Gregory Wade

APPROVED AS TO FORM

By:   
Johanna Canlas, City Attorney