



Council Agenda Report

To: Mayor Grisanti and the Honorable Members of the City Council

Prepared by: John Cotti, Interim City Attorney

Date prepared: May 5, 2021 Meeting date: May 10, 2021

Subject: Employment Agreement for Interim City Manager Services between the City of Malibu and Steven L. McClary

RECOMMENDED ACTION: Approve an employment agreement for Interim City Manager services between the City of Malibu and Steven L. McClary.

FISCAL IMPACT: This employment contract will not increase the City's costs, as the prior city manager's salary was already budgeted and was greater than the salary set forth in this agreement. Further, Mr. McClary's employment contract will not include any benefit costs beyond the City's required contribution to CalPERS.

WORK PLAN: This item was not included in the Adopted Work Plan for Fiscal Year 2020-2021.

DISCUSSION:

On April 29, 2021, the City Council unanimously voted to appoint Steven L. McClary to serve as Interim City Manager. The appointment was conditioned on approval of an agreement setting forth the terms and conditions of employment. That agreement is before the Council tonight.

The appointment of an interim city manager is necessary to fill a critical position within the City's administrative operations. The job duties of the city manager are defined by the Malibu Municipal Code and state law and include responsibility for all of the administrative affairs of the City. Thus, in order to ensure that City operations continue in an effective and efficient manner, a professional manager is needed.

ANALYSIS:

Mr. McClary formerly was the City Manager for the City of Ojai, before which he served as the Interim City Manager, Deputy City Manager and Assistant to the City Manager over a 10-year period. Before joining the City of Ojai, Mr. McClary was employed in various capacities for the City of Fillmore for more than a decade. Most recently, Mr. McClary served as the Assistant City Manager in the city of Camarillo where he generated organizational assessments related to the City's staffing structure, efficiency and use of technology.

The terms of the employment agreement are relatively basic and typical of the arrangement for an Interim City Manager. The agreement contains the following terms:

1. A monthly salary of \$14,580.00
2. A monthly Automobile and Technology Allowance of \$1,250.00
3. No additional health or insurance benefits of any type
4. Reimbursement for reasonable business and travel expenses incurred on behalf of the City
5. Termination at the City Council's discretion or upon the hiring of a permanent City Manager (Mr. McClary can terminate with 21-days' notice)

OPTIONS:

In addition to the recommended action, the City Council can provide additional direction to City staff on the terms of the agreement.

ATTACHMENTS:

- A. Agreement for Interim City Manager Services
- B. Steven L. McClary resume

CITY OF MALIBU

INTERIM CITY MANAGER EMPLOYMENT AGREEMENT

This Interim City Manager Employment Agreement (“Agreement”) is entered into on the execution date shown in the signatures block below, and effective as of the 1ST day of May 2021 (the “Effective Date”), between the City of Malibu (hereinafter referred to as the “City”) and Steven L. McClary (hereinafter referred to as “McClary”). City and McClary are sometimes referred to in this Agreement as “Party” and collectively as “Parties.”

RECITALS

WHEREAS, the City’s City Manager position is vacant and the City is in the process of formulating a formal process for recruiting for this position, which process could last six months or more (although the City is hopeful that the process can be completed in less time than that);

WHEREAS, it is the desire of the City Council of the City to retain the services of McClary as Interim City Manager (pending the City’s retention of a permanent City Manager) pursuant to the provisions of the City of Malibu Municipal Code (“MMC”), State law and the terms and conditions of this Agreement; and

WHEREAS, McClary desires to serve as the City’s Interim City Manager pursuant to the provisions of the MMC, State law and the terms and conditions of this Agreement.

NOW, THEREFORE, the Parties hereby mutually agree and promise as follows:

1. Duties, Acceptance of Appointment, Hours of Work, Regional Liaison.

1.1 Duties

McClary shall perform those duties and have those responsibilities that are commonly assigned to a city manager of a city in California, as may be further set forth in the MMC, and those legally permissible and proper duties and functions consistent with the Office of the City Manager, as the City Council shall from time to time assign. McClary shall report to the City Council, which shall also serve as appointing authority for the Interim City Manager. It is expected that McClary will abide by the ICMA Code of Ethics. McClary is encouraged to participate in community and civic affairs.

1.2 Acceptance of Appointment

McClary hereby accepts the appointment as Interim City Manager of the City of Malibu subject to all terms and conditions set forth in this Agreement.

1.3 Hours of Work

It is understood that McClary will serve in a full time capacity as Interim City Manager during the Term of this Agreement. McClary’s duties may involve expenditures of time in excess of eight hours per day, 40 hours per week, and may also include time outside normal

office hours such as attendance at City Council meetings. As a full time managerial employee of the City, McClary shall be exempt from paid overtime compensation. Provided that McClary serves in a full time capacity, McClary may work flexible hours at his discretion and judgment in order to meet the needs of his position and the City.

1.4 Devotion to City Business

The Interim City Manager is a full-time position. McClary shall not engage in any business, educational, professional, charitable, or other activities that would conflict or materially interfere with performance of his duties, except as may be specifically authorized by the City Council.

2. Term.

This Agreement shall be deemed effective beginning on May 1, 2021, and shall continue until such time as a regular City Manager is hired and begins employment or this Agreement is terminated in accordance with the provisions of Section 9 of this Agreement.

3. Compensation.

3.1 Salary

City agrees to pay McClary, and McClary agrees to accept from City, as compensation for services rendered by him pursuant to this Agreement, a monthly salary, commencing on the Effective Date, in the amount of Fourteen Thousand, Five Hundred Eighty Dollars (\$14,580.00), payable in installment payments in the same manner and at the same times as salaries of other executive managers of the City are paid.

3.2 Allowance for Automobile and Technology

The City shall provide McClary an Automobile and Technology Allowance in the amount of One Thousand, Two Hundred Fifty Dollars (\$1,250.00) per month.

3.3 City and McClary shall make all contributions necessary to maintain his enrollment in the California Public Employee Retirement System.

3.4 No Other Benefits

Apart from the monthly salary set forth in subsection 3.1 and the Automobile and Technology Allowance in Section 3.2, McClary shall not accrue and is expressly not entitled to receive, and will not receive, any other compensation or benefits from the City, including but not limited to health and medical benefits, deferred compensation, retiree medical, sick leave, vacation time or any other form of compensation or benefit.

4. Performance Evaluation.

The City Council may review McClary's job performance at its discretion.

5. Bonds.

City shall bear the full cost of any fidelity or other bonds required of McClary under MMC §2.12.060.

6. General Business Expenses.

6.1 City agrees to budget and pay for travel and subsistence expenses of Interim City Manager for professional and official travel, board and task-force meetings, conferences, and occasions to adequately continue the professional development of McClary and to pursue necessary official functions for City, all upon prior approval of the City Council.

6.2 City recognizes that McClary may incur expenses of a non-personal, job-related nature that are reasonably necessary to his service to the City. The City agrees to either pay such expenses in advance or to reimburse the expenses, so long as the expenses are incurred and submitted in accordance with the City’s normal expenditure reimbursement procedures. To be eligible for reimbursement, all expenses must be supported by documentation meeting the City’s normal requirements and must be submitted within time limits established by the City.

6.3 Notwithstanding the above, to the degree the City must make budget reductions, appropriate reductions in General Business Expenses commensurate with reductions in other citywide accounts may be made at the sole discretion of the City Council.

7. Abuse of Office or Position.

Pursuant to Government Code Sections 53243, 53243.1 and 53243.2, if McClary is convicted of a crime involving an abuse of his office or position, all of the following shall apply: (1) if McClary is provided with administrative leave pay pending an investigation, McClary shall be required to fully reimburse City such amounts paid; and (2) if City pays for the criminal legal defense of McClary (which would be in its sole discretion, as it is generally not obligated to pay for a criminal defense), McClary shall be required to fully reimburse City such amounts paid. 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.

8. Notices.

Any notice required or permitted by this Agreement shall be in writing and shall be personally served upon the other Party, or sent by United States Postal Service, postage prepaid and addressed to the appropriate Party as follow:

If to City: City of Malibu
23825 Stuart Ranch Road
Malibu, CA 90265
Attn: City Clerk

If to Interim City Manager: Steven L. McClary

Interim City Manager
8877 Denver Street
Ventura, CA 93004

Notice 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.

9. Termination.

9.1 At-Will Employee

McClary shall serve at the will and pleasure of the City Council. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Council to suspend from duty, remove from office or otherwise terminate the services of McClary at any time, at the sole discretion of the City Council. This Agreement may be terminated as follows.

9.2 Termination - Council Vote

The City Council may remove McClary with or without cause, by motion adopted by the affirmative votes of a majority of the members of the City Council.

9.3 Resignation

McClary may voluntarily resign his position as Interim City Manager, at any time and with twenty-one (21) days advance notice.

9.4 Death

If, during the Term, the Interim City Manager dies, the Interim City Manager's estate shall receive accrued salary, but shall not be entitled to any additional compensation or payment.

9.5 Compensation Upon Termination

If McClary's employment as Interim City Manager should conclude on a date that is prior to the final day of a month, McClary's monthly Salary and Automobile and Technology Allowance pursuant to this Agreement shall be pro-rated for the portion of the month prior to the conclusion of McClary's services.

9.6 Employment of Regular City Manager

While McClary may be considered for the position of regular City Manager, he shall have no right to such employment, and nothing in this Agreement nor in his performance of duties as Interim City Manager shall entitle him to special consideration for such employment.

10. Other Terms and Conditions of Employment.

The City, only upon written agreement with McClary, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of McClary, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the MMC, or any other law, ordinance or City resolution.

11. Indemnification.

11.1 City shall defend, hold harmless and indemnify McClary against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of any alleged act or omission occurring in the performance of McClary's duties or resulting from the exercise of his judgment or discretion in connection with the performance of his duties, unless the act or omission involved unlawful conduct. City shall not unreasonably refuse to provide for legal representation at City's expense. Legal representation, provided by City for McClary, shall extend until a final determination of the legal action including any and all losses, damages, judgment, interests, settlements, fines, court costs, and the reasonable costs and expenses of legal proceedings, including appeals, and including attorneys' fees, and expert witness fees and all other trial and appellate costs, and other liabilities incurred, imposed upon, or suffered by McClary in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of McClary's duties under this Agreement.

11.2 City agrees to pay all reasonable litigation expenses of McClary throughout pendency of any City-related litigation to which McClary is a party, witness or advisor to the City. Such expense payments shall continue beyond McClary's employment with the City as long as litigation is pending. Post-employment, City agrees to pay McClary for reasonable consulting fees, travel expenses and other costs, when McClary serves as a witness, advisor or consultant to City regarding pending litigation.

12. General Provisions.

12.1 This writing constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior oral or written representations or written agreements on the subject matter hereof, which may have been entered into between the Parties.

12.2 No modification or revision to this Agreement shall be of any force or effect, unless the same is in writing and executed by the Parties hereto.

12.3 Each Party agrees and acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any Party, or anyone Interim on behalf of any Party, which are not embodied herein and that any agreement, statement, or promise not contained in this Agreement shall not be valid or binding on either Party.

12.4 If any provision, or portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

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

12.6 This Agreement shall be governed by and construed in accordance with the law of the State of California. Venue shall be in Los Angeles County.

12.7 This Agreement shall be construed as a whole, according to its fair meaning, and not in favor or against any Party. By way of example and not in limitation, this Agreement shall not be construed in favor of the Party receiving a benefit or against the Party responsible for any particular language in this Agreement.

12.8 McClary acknowledges that he has had an opportunity to consult legal counsel in regard to this Agreement, that he has read and understands this Agreement, that he is fully aware of its legal effect, and that he has entered into it freely and voluntarily and based on his own judgment and not on any representations or promises other than those contained in this Agreement.

12.9 In any dispute arising out of this Agreement, the prevailing party shall recover its reasonable attorneys' fees and costs.

IN WITNESS WHEREOF, the Parties have executed this Interim City Manager Employment Agreement on the first day of May, 2021.

[Signatures follow on Next Page]

CITY OF MALIBU
INTERIM CITY MANAGER EMPLOYMENT AGREEMENT

INTERIM CITY MANAGER

Steven L. McClary, Interim City Manager

CITY OF MALIBU

Paul Grisanti, Mayor

ATTEST:

Kelsey Pettijohn, Acting City Clerk

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED
BY THE CITY ATTORNEY'S OFFICE

John C. Cotti, Interim City Attorney

STEVEN L. MCCLARY

8877 Denver Street, Ventura, CA 93004 · (805) 659-1649 stv.mcclary@yahoo.com
· Cell (805) 320-4585

I have more than 22 years of experience working in local government in Ventura County. I have a passion for public service and gaining a true understanding the communities for which I serve. My goal is to seek continued opportunities to allow me to fulfill my goal of completing my career in government service.

EXPERIENCE

MAY 2020 – CURRENT

ASSISTANT CITY MANAGER, CITY OF CAMARILLO

Responsible for generating a series of organizational assessments and recommendations on the City's staffing structure, efficiency and use of technology. Also assisted the City in its response to the COVID-19 emergency and creation of a business assistance program. This is a temporary, part-time position and is ongoing.

SEPTEMBER 2016 – MAY 2019

CITY MANAGER, CITY OF OJAI

Responsible for overseeing \$10M budget and all City departments and functions. City population approximately 8,000 persons. City functions include Community Development, Finance, Police (contract service), Public Works, and Recreation.

MARCH 2016 – SEPTEMBER 2016

INTERIM CITY MANAGER, CITY OF OJAI

Responsible for overseeing \$10M budget and all City departments and functions. City population approximately 8,000 persons. City functions include Community Development, Finance, Police (contract service), Public Works, and Recreation.

JULY 2013 – MARCH 2016

DEPUTY CITY MANAGER, CITY OF OJAI

Responsible for overseeing Personnel/HR Functions, Risk Management, Public Information, City Clerk's Office, Arts Commission, and Recreation Department. Also responsible for upgrading the City's Emergency Operations Center and initiating Disaster training for City personnel.

MARCH 2009 – JULY 2013

ASSISTANT TO THE CITY MANAGER, CITY OF OJAI

Responsible for overseeing Personnel/HR Functions, Risk Management, Public Information, and Arts Commission.

OCTOBER 2004 – MARCH 2009

ADMINISTRATIVE SERVICES MANAGER, CITY OF FILLMORE

Responsible for overseeing Personnel/HR Functions, Risk Management, Public Information, City website, community relations, film permits, City Clerk functions, liaison to Tourism Bureau and Chamber of Commerce. Also drafted reports to city council and developed draft policies and memorandums for City Manager's Office.

OCTOBER 2000 – OCTOBER 2004

MANAGEMENT ANALYST, CITY OF FILLMORE

Responsible for overseeing Public Information, City website, community relations, film permits, City Clerk functions. Also drafted reports to city council and developed draft policies and memorandums for City Manager's Office.

APRIL 1997 – OCTOBER 2000

DEPUTY CITY CLERK, CITY OF FILLMORE

Responsible for overseeing Public Information, film permits, City Clerk functions. Also drafted reports to city council and developed draft policies and memorandums for City Manager's Office. Key role in development of City's Vision 2020 plan.

JUNE 1995 – APRIL 1997

EDITOR, THE FILLMORE GAZETTE

Managed staff and editorial content for weekly community newspaper.

EDUCATION

JUNE 1991

BACHELOR OF ARTS, COMMUNICATION, PACIFIC LUTHERAN UNIVERSITY

ACCOMPLISHMENTS

MY PROFESSIONAL ACCOMPLISHMENTS INCLUDE:

- TWICE BEING NAMED EMPLOYEE OF THE YEAR FOR THE CITY OF FILLMORE, WHICH COINCIDED WITH MY WORK AS THE PRIMARY AUTHOR AND COORDINATOR FOR THE CITY'S VISION 2020 PLAN (THE PLAN ESTABLISHED A FOCUSED LIST OF COMMUNITY-GENERATED GOALS FOR THE CITY TO ACHIEVE BY THE YEAR 2020.)

DURING MY TENURE IN OJAI, MY SIGNIFICANT ACCOMPLISHMENTS INCLUDE:

- ESTABLISHMENT OF THE CITY'S EMERGENCY OPERATIONS CENTER (EOC) INCLUDING TRAINING OF PERSONNEL TO CREATE A FUNCTIONING EMERGENCY OPERATIONS TEAM
- AN OVERHAUL OF THE CITY'S RECREATION DEPARTMENT (THIS INCLUDED A REMODELING OF THE RECREATION FACILITIES, ADOPTING A NEW PARK MASTER PLAN, A DEPARTMENT PERSONNEL RESTRUCTURING, AND DEVELOPMENT OF A NEW MARKETING STRATEGY AND FEE STRUCTURE)

- DEVELOPED A LIST OF BUDGET-SAVING MEASURES IMPLEMENTED IN FY 09/10 DURING THE RECESSION WITHOUT HAVING TO CUT OR FURLOUGH STAFF
- OVERHAULED THE COMMUNITY DEVELOPMENT DEPARTMENT AND BUILDING AND SAFETY DIVISION TO IMPROVE CUSTOMER SERVICE AND DEPARTMENT PROCESSES AND REDUCE THE LEVEL OF COMPLAINTS AND ELIMINATE PROCESS ISSUES
- NAVIGATED THE CITY AND HEADED OPERATION OF ITS EMERGENCY OPERATIONS CENTER DURING THE THOMAS FIRE AND COMMUNITY RECOVER EFFORTS
- LED SUCCESSFUL EFFORT TO CURB SHORT TERM RENTALS; DEVELOPED AND IMPLEMENTED REGULATIONS FOR MEDICAL AND LATER RECREATIONAL CANNABIS DISPENSARIES AND OVERSAW THE PERMITTING AND OPENING OF THREE LOCAL FACILITIES
- CONTINUED EFFORTS TO STABILIZE THE CITY'S ASSETS BY AGGRESSIVELY PURSUING A PROGRAM TO BRING LOCAL STREETS AND ROADS CLOSER TO ACCEPTABLE STANDARDS
- IMPLEMENTED A MORE AGGRESSIVE CODE ENFORCEMENT PROGRAM
- ESTABLISHED A BUILDING PERMIT TRACKING SYSTEM TO HELP BETTER MANAGE WORKFLOW WHILE PROVIDING GREATER PUBLIC ACCESS TO INFORMATION ON ISSUED PERMITS.

SALARY REQUIREMENTS

Salary requirements are negotiable, depending on the position and terms offered. I am currently seeking compensation in the range of \$75 to \$90 per hour, exclusive of any benefits to be offered.

REFERENCES

References available upon request.