

**EMPLOYMENT AGREEMENT BETWEEN
CITY OF THOUSAND OAKS
AND
CITY MANAGER**

THIS EMPLOYMENT AGREEMENT is made this 13th day of December, 2005, between Scott Mitnick and City of Thousand Oaks, hereinafter, referred to as "CITY."

RECITALS

- A. City desires to employ services of Scott Mitnick as the City Manager of City.
- B. City desires to establish certain conditions of employment, provide certain compensation and benefits, and set working conditions for such employment, which was authorized by Thousand Oaks City Council.
- C. Scott Mitnick desires to accept such employment on terms as set forth herein.

AGREEMENT

The parties agree as follows:

Section 1: Duties; Exclusive Employment

City agrees to employ Scott Mitnick (hereinafter "City Manager") to perform the duties and functions specified in: 1) Thousand Oaks Municipal Code (including authority to interview, hire, and dismiss employees, and to direct City workforce); 2) Certain City resolutions; 3) Current City job specification; and, 4) Such other legally permissible duties and functions as City Council may from time to time hereafter assign.

City Manager agrees that he will at all times be employed exclusively by City to perform all duties and obligations required either expressly or implicitly by this Agreement, and may not be employed in any other capacity while employed by City. City Manager shall focus his professional time, ability, and attention to City business during time in which this Agreement is in force.

City Manager 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

compensation or otherwise, without prior consent of City Council. Notwithstanding the foregoing, the expenditure of reasonable amounts of time not in conflict with 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.

Section 2: At-Will Employee Status

This Agreement shall become effective on the date first written above. Inasmuch as City Manager serves at the will of City Council, there is no term to this Agreement. The Agreement shall remain in force and effect unless or until terminated, as provided in Section 3.

City Manager serves as an "at will" employee (as defined in California Labor Code Section 2922), serving at the pleasure of City Council, and nothing in this Agreement shall require cause for removal, or prevent, limit, or otherwise interfere with the right of City Council to terminate the services of City Manager at any time, subject only to the provisions set forth in Section 3 (A) and 3 (B) of this Agreement. In addition, nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of City Manager to resign at any time from his position with City, subject only to the provision set forth in Section 3 (C) of this Agreement.

Section 3: Termination and Severance Pay

A. City Council may terminate services of City Manager at any time with a written notice to City Manager, and date of such termination shall be the date set forth in that notice. If City Manager is terminated for any of the following reasons, City shall have no obligation to pay any severance pay as provided for in this Agreement: i.) insubordination, dishonesty, misappropriation of public funds, or falsifying City records; ii.) conviction of any misdemeanor concerning an act amounting to improper conduct as City Manager or involving moral turpitude, or iii.) conviction of a felony. In the event City Manager is terminated by City Council during such time that he is willing and able to perform the duties under this Agreement, City agrees at Council's discretion to provide City Manager the following:

1. Three hundred sixty-five (365) days' advanced written notice of said termination; or,

2. A cash payment equal to twelve (12) months' aggregate salary pursuant to Government Code Sections 53260-53264. Said cash payment may be paid, at the option of City Manager, in:

- (a) A lump sum upon date of termination;
- (b) A lump sum on January 1 of the year following termination;
- (c) Continued pay under the City's normal payroll cycle over a twelve month period; or,
- (d) Any combination of the above three options as directed by City Manager.

B. In the event that City, at any time during the period in which this Agreement is in force, reduces the salary or other financial benefits of City Manager in a greater percentage than applicable to an across-the-board reduction for executive management employees of City, or in the event City refuses to cure, following a fifteen (15) day written notice to cure from City Manager, its wrongful non-compliance with any provision benefiting City Manager herein, or City Manager resigns following a suggestion, whether informal or formal, by City Council that he resign, then City Manager may, at his option, be deemed "terminated" at the date of such reduction, request to resign, or City Council's refusal to comply within the fifteen (15) day notice period. Being deemed "terminated" as described in this paragraph triggers the right to severance pay set forth at Section 3 (A) (2) above.

C. In the event City Manager voluntarily resigns his position with City, he shall provide City at least thirty (30) days' written notice in advance, unless the parties otherwise agree, and such an event shall not be deemed a termination triggering the rights to and payments described in Section 3 (A) and (B) above.

Section 4: Salary

City agrees to pay City Manager for his services rendered pursuant hereto an initial base annual salary of One hundred ninety-five thousand, one hundred thirty-five dollars (\$195,135.00) effective December 3, 2005, payable in the normal payroll installments at the same time as other executive management employees of City are paid. City Council shall review City Manager's salary annually as part of his performance evaluation, as explained in Section 5.

City Council shall annually review City Manager's salary range and benefits, with any increase(s) to be made to such extent as City Council may determine desirable. Increase(s) provided to other executive management employees shall be taken into consideration by City Council during this review period.

Section 5: Performance Evaluation

City Council shall annually review and evaluate the performance and compensation of City Manager. Said review and evaluation shall be in

accordance with specific criteria provided by Council after consultation with City Manager. Further, City will provide City Manager with a summary of the performance findings of City Council and provide an adequate opportunity for City Manager to discuss that evaluation with City Council in closed session. An initial performance evaluation under this Agreement shall be conducted in July 2006 and annually thereafter.

Section 6: Hours of Work

It is recognized that City Manager must devote a great deal of time outside the normal office hours to the business of City, and to that end City Manager may take leave as he deems appropriate during normal office hours. During any such leave, City Manager may designate an "Acting City Manager" to oversee operations of City in his absence, in compliance with Section 2-1.205 of Thousand Oaks Municipal Code.

Section 7: Benefits

Benefits provided to City Manager via this Agreement are addressed in Exhibit A.

Section 8: Professional Development

A. City hereby agrees to budget for and pay the professional dues and subscriptions on behalf of City Manager which are adequately necessary for City Manager's continuation and full participation in national, state, regional, or local associations and organizations necessary and desirable for City Manager's continued professional participation, growth, and advancement, and/or for the good of City. Furthermore, City shall budget and pay for the professional dues and subscriptions to such additional organizations or publications as approved by City Council.

B. City also hereby agrees to budget and pay for travel and City's normal per diem or subsistence expenses of City Manager for professional and official travel, meetings, and occasions necessary to continue the professional development of City Manager and to adequately pursue official and other functions of City, including but not limited to the International City/County Management Association, National League of Cities, League of California Cities, and such other national, state, regional and local governmental and professional groups and committees which City and/or City Manager serves as a member.

C. City also agrees to budget and to pay for the travel and City's normal per diem or subsistence expenses of City Manager for multi-day courses, institutes, training, and seminars that are necessary for professional development and for the good of City, as determined by City Manager.

Section 9: Non-Interference with Administrative Service

City Council and City Manager acknowledge City's long-standing support of the Council-Manager Form of Government. As a result and as provided for in TOMC Section 2-1.208, City Council shall respect City Manager's administrative authority to faithfully implement City Council's direction. Toward this end, neither City Council nor any Councilmember(s) shall interfere with the execution by City Manager of his powers and duties, or order, directly or indirectly, or in the appointment by City Manager, or by any of the Department Heads in the administrative service of City of any person to any office or employment, or his/her removal therefrom. Except for the City Attorney and for the purpose of inquiry, City Council and individual Councilmember(s) shall deal with City employees solely through City Manager, and neither City Council nor any individual Councilmember(s) shall give orders to any subordinate of City Manager, either publicly or privately. City Manager shall take his orders and instructions from City Council only when it is sitting in a lawfully held meeting.

Section 10: Bonding

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

Section 11: Other Terms and Conditions of Employment

All provisions of City's rules and regulations relating to retirement and pension system contributions, holidays, and other fringe benefits as they now exist or hereafter may be amended, also shall apply to City Manager as they would to other executive management employees of City in addition to said benefits enumerated specifically for the benefit of City Manager except as herein provided.

Section 12: Notices

Notices pursuant to this Agreement shall be given by deposit of such in the custody of the United States Postal Service, postage prepaid and addressed to City Manager at his home address, or to:

Thousand Oaks City Council
c/o City Attorney
2100 E. Thousand Oaks Boulevard
Thousand Oaks, CA 91362

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date

of deposit of such written notice in the course of transmission in the United States Postal Service.

Section 13: Relinquishment of Claims

By entering into this Agreement, City Manager relinquishes, waives, and releases his rights to any and all claims to his former position as Interim City Manager or Assistant City Manager, and to any further salary, merit pay, or salary increase as Interim City Manager or Assistant City Manager. Notwithstanding Exhibit A, Section 6, he retains use of Annual Leave (vacation/misc.) accrual on City books from former position(s).

Section 14: General Provisions

A. All of City Manager's writings, reports, and other documentation generated as part of his day-to-day duties during his employment with City is the property of City.

B. This Agreement is for professional services that are personal to City, and the Agreement is not assignable by City Manager.

C. The provisions of this Agreement shall be construed as a whole according to its common meaning or purpose of providing a public benefit and not strictly for or against any party. It shall be construed consistent with the provisions hereof, in order to achieve the objectives and purposes of the parties. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neutral genders or vice versa.

D. This Agreement and the rights and obligations of the parties shall be governed and interpreted in accordance with the laws of the State of California.

E. The text herein shall constitute the entire Agreement between the parties and supersedes any other agreements, either oral or in writing, between the parties hereto with respect to rendering these services, compensation matters, or benefits. Any modifications of this Agreement shall be effective only if it is in writing and signed by both parties.

F. This Agreement shall inure to the benefit of the heirs at law and executor(s) of City Manager.

G. The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provision or section of this Agreement.

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

I. Each party of 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.

J. 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 with respect to 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.


IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

CITY COUNCIL:

CITY MANAGER:




Claudia Bill-de la Peña, Mayor




Scott Mitnick

ATTEST:

APPROVED AS TO FORM:



Nancy A. Dillon, City Clerk



Amy Albano, City Attorney

EXHIBIT A

CITY OF THOUSAND OAKS CITY MANAGER BENEFITS (As of November 15, 2005)

Benefits will be provided as follows:

1. **Dental/Vision/Medical Insurance:** City will make required premium payments for City Manager and his eligible dependents for insurance policies for dental, vision, and medical benefits. City Manager may choose any of the health plans offered by City.
2. **Retirement:** City agrees to pay seven percent (7%) of City Manager's employee PERS retirement contribution, in addition to the normal employer contribution. City will report as compensation to PERS the seven percent (7%) City-paid-member contribution. This benefit is known as the Employer Paid Member Contribution (EPMC). If, at any time, other executive management employees of City receive a larger percentage of City-paid employee retirement contribution, then this amount paid by City on behalf of City Manager shall be increased accordingly. Final compensation for PERS purposes is based on the employee's average monthly pay rate for the highest twelve (12) months of employment. City contracts for the fourth level of 1959 Survivor Benefits. City provides a PERS retirement benefit using the 2% at 55 formula. If City Manager concurrently terminates his employment with City at same time as retiring from PERS, he shall be entitled to City-paid post-retirement medical insurance benefits.
3. **Deferred Compensation:** Effective December 3, 2005, each pay period City agrees to pay an amount equal to fifteen (15) percent of City Manager's current salary into applicable City Internal Revenue Code Section 401A and/or Section 457 deferred compensation plan(s). City Manager is also eligible to voluntarily participate in City's 457 deferred compensation plan and ~~Retiree~~ Health Savings plan.
4. **Life Insurance:** During the duration of his employment as City Manager, City shall provide City Manager with a term life insurance policy equal to an amount twice his annual salary, with a minimum amount of Three hundred, fifty thousand dollars (\$350,000.00), with a separate Two Hundred Fifty Thousand Dollars (\$250,000.00) travel life provision.
5. **Long-Term Disability:** City shall provide long-term disability income insurance plan that provides sixty-six and two-thirds percent (66 2/3%) of monthly salary once the eligibility requirement is met (thirty [30] day waiting period). Terms of the policy shall be pursuant to provisions of City's insurance plan.

6. **Annual Leave, Holidays, and Bereavement Leave:** City Manager shall retain Annual Leave hours accrued through the effective date of this Agreement in his former position(s) with City. City Manager shall be entitled to accrue, and have credited to his personal account on January 1st of each year, Annual Leave at the rate of forty (40) days (at an eight (8) hour per day rate) per year with the option of cashing out any unused leave up to eighty (80) days per year. City Manager shall use at least twenty (20) days of said leave per year. The maximum amount he is able to accumulate at any time is eighty (80) days. Any balance, up to a maximum of eighty (80) days, is due and payable upon retirement or separation from City. City Manager shall be entitled to Holidays, Bereavement Leave, and other leave pay at the same frequency/rate as other executive management employees of City.

7. **Automobile or Allowance:** City Manager's duties require that he shall have the unrestricted use, at all times during his employment with City, of a City automobile provided to him by City. Toward this purpose, City shall pay up to Thirty Thousand Dollars (\$30,000.00) to applicable lending institution to pay off City Manager's existing car loan and, upon payment, City Manager shall sign title of said car over to City. Thereafter, City shall be responsible for the operation, maintenance, repair, gasoline, and provision of liability and other essential insurance for said automobile. Regular replacement of said automobile will be consistent with City's adopted vehicle replacement policy (as it applies to City Manager and City Attorney vehicles). City Manager may use said automobile for personal use without restriction.

In lieu of using a City provided automobile, City Manager may elect to receive a City-provided monthly automobile allowance in an amount similar to that paid by other comparable California cities for their city managers, as agreed to by the parties.

8. **Section 125 Plan:** City Manager shall be eligible to enroll in City's Section 125 Plan. City shall pay any administrative fee(s).

9. **Employee Assistance Program:** City shall pay for the full cost of Employee Assistance Program for City Manager and dependents.

10. **Tuition Reimbursement and Computer Loan Program:** City Manager is eligible to participate in City's Tuition Reimbursement and Computer Loan Programs, as provided to Senior Management Association employees.

11. **Annual Physical Examination:** City Manager is eligible for an annual physical examination and City will reimburse City Manager any out-of-pocket expenses not covered by City's Health Insurance Plan.

12. **Professional Association Membership Dues:** City shall pay for City Manager's professional association dues (such as International City/County

Management Association and American Society for Public Administration memberships).

13. Employee Discretionary Contribution: City agrees to provide Four hundred dollars (\$400) per year at the employee's discretion for such purposes, but not limited to, medical expenses through Section 125 Plan, directly incurred medical costs, medical insurance premiums, health club memberships for physical and mental wellness, or direct cash disbursement.