



Council Agenda Report

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

Prepared by: John Cotti, Interim City Attorney

Date prepared: June 2, 2022 Meeting date: June 13, 2022

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

RECOMMENDED ACTION: Approve the employment agreement dated June 13, 2022 for City Manager Services between the City of Malibu and Steven L. McClary and authorize the Mayor to execute the agreement on behalf of the City Council.

FISCAL IMPACT: The costs associated with the Employment Agreement are within the Council-approved budget for the City Manager position.

WORK PLAN: This item was not included in the Adopted Work Plan for Fiscal Year 2021-2022.

DISCUSSION:

On April 27, 2022, the Council voted to appoint Steve L. McClary as Malibu's next City Manager, subject to the approval of an employment agreement. Mr. McClary has been serving in the role as Interim City Manager since May 1, 2021. In addition, the Council directed the Interim City Attorney to meet and confer with Mr. McClary to formulate an employment agreement for the City Council's consideration.

This item was originally scheduled on May 9, 2022, but the Council removed the item from the agenda to explore ways to incentivize Mr. McClary to relocate his primary residence to Malibu. Ultimately, as noted in paragraph 5.F., the Council and Mr. McClary agreed to the reimbursement of relocation costs if McClary relocates to within a 12 mile radius or 30 minute drive of City Hall. Currently, Mr. McClary resides in Ventura.

ANALYSIS:

The Proposed City Manager Agreement

If the employment agreement is approved, Mr. McClary will begin serving as the City Manager on May 15, 2022. The agreement is for a four-year term ending on May 14, 2026. The terms and conditions of the proposed agreement are comparable to other city manager positions within the Los Angeles County region. In addition to the standard terms and conditions, the Agreement provides for the following salary and benefits:

- Starting annual base salary will be \$235,000
- The base salary will be reviewed annually by the City Council which can increase the base salary in its sole discretion
- A \$400 auto allowance
- Health benefits, leave accruals, and retirement benefits consistent with those provided to other City management employees
- A 6% contribution will be made into Mr. McClary's deferred compensation account
- Reimbursement of up to \$25,000 in relocation costs should Mr. McClary move to within a 12-mile radius or 30-minute drive of City Hall
- Termination at the City Council's discretion upon the payment of 6-month's salary (Mr. McClary can terminate with 45-days' notice).

The Proposed City Manager

During his tenure, Mr. McClary has proven to be a competent manager who is uniquely qualified to solve issues facing Malibu. He has also developed an increasing familiarity with the community, the issues facing the City, and the organization of the City, including the staff and other individuals who support and advance the City's mission.

Prior to his tenure in Malibu, 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. Before that, Mr. McClary 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.

OPTIONS:

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

ATTACHMENTS:

City Manager Employment Agreement

CITY MANAGER EMPLOYMENT AGREEMENT

This CITY MANAGER EMPLOYMENT AGREEMENT (“Agreement”) is made and entered into as of this 13th day of June, 2022, by and between the CITY OF MALIBU, a California general law city and municipal corporation (hereinafter “City”), and STEVEN L. McCLARY, an individual (hereinafter “Employee”).

RECITALS

A. It is the desire of the City Council of the City of Malibu (hereinafter the “City Council”) to employ an individual to serve in the position of City Manager, which position is prescribed by state law and the Malibu Municipal Code;

B. Based on Employee’s level of education, experience, skills and expertise to serve as the City Manager of the City, the City Council desires to employ Employee to serve as the City Manager for the City;

C. Employee desires to perform and assume responsibility for the provision of City Manager services to the City;

D. The Parties wish by this Agreement to establish the terms and conditions of Employee’s employment;

E. In doing so, the City Council desires to:

(1) Encourage the highest standards of fidelity and public service on the part of Employee;

(2) Secure and retain the services of Employee and to provide inducement for him to remain in such employment;

(3) Make possible full work productivity and independence by assuring Employee’s morale and peace of mind with respect to future security; and

(4) Provide a just means for terminating Employee’s employment at such time as the City may so desire.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants hereinafter contained the parties agree as follows:

1. Appointment/Duties. Effective May 15, 2022, City appoints and employs Employee as City Manager for the City of Malibu. Employee accepts employment as City Manager to perform the functions and duties specified in the Malibu Municipal Code and the Government Code of the State of California, and to perform such other legally permissible and proper duties and functions as the City Council may assign during the term of this Agreement. The City reserves the right to amend Malibu Municipal Code Chapter 2.12, including §2.12.070 which defines City Manager functions and duties, as it deems necessary and appropriate without requiring Employee’s acquiescence or requiring an amendment of this Agreement. Employee

agrees to perform all such functions and duties to the best of his ability and in an efficient, competent, and ethical manner. Employee shall not consult or engage in other non-City connected business or employment without the prior knowledge and express written approval of the City Council.

2. Term. This Agreement is effective upon execution. The term of the contract shall be defined as commencing May 15, 2022 and shall continue to May 14, 2026, unless terminated by either party as provided in Section 3 herein.

3. Termination and Resignation.

A. Employee serves at the pleasure of the City Council and is an at-will employee. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Council to terminate, by a majority vote of the City Council, the services of Employee without cause, at any time, subject only to the City providing written notice to Employee and complying with paragraph 3.D, below. City's obligation to make contributions to Employee's retirement plan and pay any other benefit the City provides to Employee shall cease upon termination of the employer-employee relationship. Employee expressly waives any rights provided under the City's personnel rules, the Malibu Municipal Code, or under other local, state or federal law to any other form of pre- or post-termination hearing, appeal, or other administrative process pertaining to termination.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign at any time from his position with City, subject only to Employee providing 45 days prior written notice to the City. Employee's resignation shall be deemed accepted upon delivery of a written resignation to the Mayor, or if the Mayor is unavailable, the Mayor Pro Tem.

C. Notwithstanding the provisions of Paragraph A of this Section 3, in the event Employee is terminated by City for "cause," then City may terminate this Agreement immediately and Employee shall be entitled to only the compensation accrued up to the date of termination. As used in this section, "cause" includes any of the following:

- (1) Conviction of, or plea of guilty or nolo contendere to, any crime or offense (other than minor traffic violations or similar offenses) which is likely to have a material adverse impact on the City or on the Employee's reputation;
- (2) Proven failure of the Employee to observe or perform any of his duties and obligations, if that failure continues for a period of thirty (30) business days from the date of his receipt of notice from the City Council specifying the acts or omissions deemed to amount to that failure;
- (3) Conviction of any crime involving an "abuse of office or position," as that term is defined in Government Code Section 53243.4;
- (4) Repeated failure to carry out a directive or directives of the City Council made by the City Council as a body at a Brown Act-compliant meeting; and

(5) Any grossly negligent action or inaction by Employee that materially and adversely: (a) impedes or disrupts the operations of City or its organizational units; (b) is detrimental to employees or public safety; or (c) violates City's properly-established rules or procedures.

D. In the event Employee is terminated by the City Council at any time that Employee is still willing and able to perform the duties of City Manager, and the termination is without cause as "cause" is defined in Paragraph C above, then, subject to the limitations set forth in Government Code Section 53260, and within 10 days of delivery to the City of an executed Separation Agreement and release of all claims in a form acceptable to the City, the City shall pay Employee a lump sum cash payment equal to six month's salary.

(1) The word "termination" in this paragraph shall include a reduction in salary (other than an across-the-board reduction applicable to all senior level employees) or other financial benefits of Employee or Employee's resignation, if preceded by a formal request by a majority of the City Council that he resign. The word "termination" does not include the City's election not to extend the term of this Agreement.

E. Employee shall not be removed from office during or within a period of ninety days following any general municipal election at which a member of the City Council is elected.

4. Revolving Door. Employee shall comply with Government Code §87406.3 for a period of one year after separating from service with City. This section will survive termination of this Agreement.

5. Compensation.

A. Salary. City agrees to pay Employee for the services required by this Agreement a monthly base annual salary of Two Hundred Thirty Five Thousand Dollars (\$235,000.00) payable in installments at the same time as other employees of the City are paid.

B. Annual Performance and Discretionary Salary Review. Employee's base salary will be reviewed annually by the City Council following his performance evaluation. In recognition of excellent performance and based on merit, the City Council may increase Employee's base salary in its sole discretion. Salary increases during the term of this Agreement shall not take effect until memorialized in a written amendment to this Agreement. Employee shall not be entitled to any other salary adjustments, including, but not limited to, general cost of living adjustments that may be given to other city employees.

C. Deferred Compensation. During the term of this Agreement, City shall contribute to a Qualified 401A Deferred Compensation Plan 6% of the Employee's base salary, deposited in equal installments and only during the term of this Agreement and Employee's employment as City Manager. This is separate from and not part of the Employee's salary. Employee will be eligible to contribute to a Qualified 457 Plan offered by the City to other employees; however, the City will not contribute a matching amount.

D. Technology. City will provide for Employee's use during the term of this Agreement a cellular phone to be used primarily for City-related business. City will also provide for Employee's use a "laptop" or "tablet" computer.

E. Car Allowance. City agrees to pay Employee a monthly car allowance of Four Hundred Dollars (\$400.00) per month. The car allowance is intended to reimburse Employee for the use of his private vehicle for City business. Employee must provide his own automobile for his use in performing his duties and is responsible for all maintenance, repair, fuel and insurance expenses for said vehicle.

F. Relocation Costs. The City shall reimburse Employee up to Twenty Five Thousand Dollars (\$25,000.00) for moving and other relocation expenses, including necessary travel for relocation purposes and temporary housing assistance, if Employee relocates to within a twelve mile radius or a thirty (30) minute drive of Malibu City Hall, located at 23825 Stuart Ranch Road.

G. Hours of Work. Employee shall generally work at City Hall when City Hall is open for business as determined by the City Council. At this time, the City of Malibu offers a 9/80 alternative work schedule; however, the City Council reserves the right in its discretion to modify the 9/80 work schedule. Nothing in this Agreement entitles Employee to a different work schedule such as a four-day work week. In addition, Employee's duties may involve expenditures of time in excess of 40 hours per week and will also include time outside normal office hours such as attendance at City Council and other meetings. Employee shall be exempt from paid overtime compensation and from Fair Labor Standard Act work hours restrictions and may modify his schedule within reason to adjust for attendance at meetings at night and during other times outside of ordinary business hours.

6. Retirement and Insurance Benefits.

A. Retirement. Employee is entitled to membership in the Public Employees Retirement System in accordance with the terms of the City's contract with PERS and, subject to PERS confirmation, Employee's PERS plan formula is 2% at 62. Employee must contribute and bear the full cost of the Employee's portion of PERS membership, which is currently at least 7.25%.

B. Medical Insurance. City shall pay the monthly premiums for full medical (up to the PERS Platinum health plan level), as well as full dental and vision insurance for Employee and his dependents.

C. Life Insurance. City shall pay the premium for a term life insurance policy with coverage not more than \$400,000.

D. Disability Insurance. City shall provide short and long term disability insurance for Employee's benefit.

E. All other insurance at Employee's expense. At his sole expense, Employee may elect to participate in other insurance benefits offered by the City. Employee expressly agrees that the City shall not be responsible for the cost of any such insurance or benefits with the exception of

insurance mandated by State law. Employee understands that the City does not offer and, in any event, by this Agreement, he is not entitled to cash in lieu of insurance benefits.

7. Sick Leave, Vacation, Administrative Leave, and Holidays.

A. Sick Leave. Employee shall earn ninety-six (96) hours of sick leave per fiscal year, with forty (40) hours available upon execution of this Agreement. Employee may accumulate a maximum of four hundred eighty (480) hours of sick leave. Sick leave shall be used only in case of sickness or disability of Employee or a member of his immediate family. In the event of termination or resignation from employment, Employee shall be entitled to compensation for 50% of accumulated and unused sick leave, up to the maximum set forth above.

B. Vacation. Employee shall be entitled to earn vacation leave at the rate of 6.15385 hours per pay period (consistent with the accrued rate for an employee with ten (10) years of service) with eighty (80) hours available upon execution of this Agreement. Employee may accumulate vacation days up to a maximum of four hundred eighty (480) hours. In the event of termination or resignation, Employee shall be entitled to compensation for 100% of accumulated and unused vacation days up to the maximum set forth above.

C. Administrative Leave. Employee shall be provided fifty four (54) hours of Administrative leave each fiscal year. Employee may accumulate administrative leave hours up to a maximum of ninety (90) hours. In the event of termination or resignation, Employee shall be entitled to compensation for 100% of accumulated and unused administrative leave hours up to the maximum set forth above.

D. Holidays. Employee shall be entitled to the same paid holidays as provided to other City employees and authorized by the Municipal Code.

8. Professional Memberships. City agrees to pay Employee's membership dues in the International City/County Manager's Association and the California City Management Association. Employee shall have a reasonable right to attend meetings of such organizations.

9. General Expenses. City recognizes that certain expenses of a nonpersonal and job affiliated nature may be incurred by Employee. City agrees to reimburse Employee for reasonable expenses that are submitted within 30 days for approval and that are supported by expense receipts, statements or personal affidavits, and an audit thereof in like manner as other demands against the City.

10. Evaluation of Performance. On or about the one year anniversary of the commencement of this Agreement, and annually thereafter, the City Council will review and provide Employee with an evaluation of his performance. Notwithstanding the foregoing, the City Council may evaluate Employee and provide him with a written evaluation at any time.

11. Other Terms and Conditions of Employment. The City Council may from time to time fix other terms and conditions of employment relating to the performance of Employee provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Municipal Code, or other applicable law.

12. Assembly Bill 1344 Compliance. To the extent City provides: (i) paid leave to Employee pending an investigation; (ii) funds for the legal criminal defense of the Employee; or (iii) a cash settlement to Employee related to the termination of the Employee pursuant to Paragraph 3 of this Agreement and Government Code Section 53243 et seq., Employee shall fully reimburse the City for any and all amounts paid by the City which fall within subsections (i) through (iii) of this section in the event that the Employee is convicted of a crime involving the abuse of his office or position.

13. General Provisions.

A. The text herein shall constitute the entire agreement between the parties.

B. If Employee dies or becomes incapacitated during the term of this Agreement, any accrued and unpaid wages provided by the terms of this Agreement shall be paid by City to Employee's spouse.

C. If any provision or portion hereof contained in this Agreement is held to be unconstitutional, invalid or unenforceable the remainder of this Agreement or portion thereof shall be deemed severable and shall not be affected and shall remain in full force and effect provided that the principal purposes of the Agreement are not thereby frustrated.

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

E. This Agreement may be changed or amended by the mutual written consent of City and Employee.

F. Employee is expected to conform to the ICMA Code of Ethics and must comply with all applicable provisions of the City's conflict of interest code.

G. In the event of a dispute in the interpretation or application of the provisions of this Agreement, the parties agree to consider utilization of alternative dispute resolution prior to initiating litigation.

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

CITY OF MALIBU,
a general law city.

STEVEN L. MCCLARY,
an individual.

Paul Grisanti, Mayor

Steven L. McClary

ATTEST:

Kelsey Pettijohn

APPROVED AS TO FORM:

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

John C. Cotti, Interim City Attorney