

SECOND AMENDED AND RESTATED EMPLOYMENT AGREEMENT

Agreement No. 24,713

The City of Santa Barbara, a municipal corporation, hereinafter referred to as "Employer" and Ariel Pierre Calonne, an individual, hereinafter referred to as "Employee" enter into this Second Amended and Restated Employment Agreement ("Agreement") on the 22nd day of September, 2015 for Employee's services as City Attorney for the City of Santa Barbara.

WHEREAS, the City Council of the City of Santa Barbara, hereinafter "City Council", determined that Employee has the necessary qualifications and experience for the office of City Attorney as required by the City Charter; and

WHEREAS, on February 11, 2014, the City Council appointed Employee to the office of City Attorney, with an effective date not later than March 17, 2014; and

WHEREAS, on February 11th, 2014 City and Employee entered into an initial employment agreement No 24,713, which provides the terms and conditions of employment; and

WHEREAS, on February 3, 2015, in order to avoid the appearance of a conflict of interest, the City Council authorized a first amendment to the Agreement to remove sections of the Agreement attaching health and welfare benefit changes to those provided to other management employees; and

WHEREAS, on September 22, 2015 the City Council authorized a second amendment to the Agreement to increase the base salary by 4.5% effective June 27, 2015 and to provide for an annual cost of living salary adjustment beginning in Fiscal Year 2017; and

WHEREAS, the parties agree that is appropriate to amend certain sections of the Agreement effective June 27, 2015;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

SECTION 1: TERM AND STATUS.

- A. In accordance with Section 701 of the City Charter, Employee shall serve at the pleasure of the City Council.
- B. Employee's employment status is at-will. Employee understands and agrees that Employer may terminate his City employment at any time, subject only to the notice, removal, and severance provisions of Section 5 of this Agreement and the City Charter. Employee understands and agrees that Employer has made no implied or express oral or written assurances of continued employment with the City. Employee further understands and agrees that he has no property right in City employment and that Employer requires no cause to suspend or terminate his City employment.
- C. Employee will commence employment as City Attorney on a date not later than March 17, 2014.

SECTION 2: POWERS AND DUTIES.

- A. Employee shall perform the duties of City Attorney as set forth in Section 703 of the City Charter and as determined and controlled by the City Council. Employee shall report directly and solely to the City Council.
- B. In the performance of the duties of City Attorney, Employee agrees to comply with all federal, state and local laws, ordinances, rules, regulations and City Charter, which are applicable to the office of the City Attorney. Employee acknowledges that he is subject to the common law and statutory conflict-of-interest provisions, including but not limited to the Political Reform Act set forth at California Government Code section 87100 and following, The Fair Political Practices Commission Regulations set forth at California Code of Regulations, Title 2, section 18700 and following, and California Government Code section 1090 and following, as they may be amended. Employee agrees that he will be acquainted with the above-referenced provisions, comply fully with them and not take any action, which results or could appear to result in a violation of such provisions.

SECTION 3: COMPENSATION

A. Base Salary.

As compensation for Employee's services, Employer agrees to pay Employee, on a bi-weekly basis, an annual base salary of \$238,466.91, effective June 27, 2015.

B. Changes to Compensation

1. Discretionary Adjustment: Employee's compensation as provided herein shall be reviewed annually and may, from time to time, be increased based on Employee's satisfactory performance, as solely determined by the City Council. Such increases will be established by ordinance. Any increases so approved shall inure to Employee without amendment of this Agreement.
2. Annual Cost of Living Adjustments. Commencing on the first day of the pay period which includes July 1, 2016 and on the first day of the pay period which includes July 1 of each year thereafter, Employee's base annual salary shall be automatically adjusted without further Council action by a percentage amount equal to one-half (1/2) of any increase or decrease in the Consumer Price Index (CPI) during the preceding June through May twelve month period. The CPI used shall be the California Consumer Price Index for Urban Wage Earners and Clerical Workers as calculated by the California Department of Industrial Relations. Such annual increase or decrease to salary shall be capped at a maximum of 4.5% per year.
3. Triennial Cost of Living True Up. Beginning on July 1, 2018, and at the end of each three years thereafter, Employee's base salary shall be automatically adjusted without further Council action to include an additional adjustment that, when added to the annual cost of living adjustment for that year and the immediately preceding two years, equals the full compounded change to the CPI at the end of the three year period, not to exceed a total compounded increase or decrease of 14.12% over the three year period.

C. Health and Welfare Benefits.

Employee shall receive the same health and welfare benefits provided to the City's Group 1 Managers ("Executives"), including but not limited to long term disability and life insurance, as set forth in the Management Performance and Compensation Plan on the date of this Agreement. Any future changes in the value of such benefits, excluding normal insurance premium increases for the existing levels of benefits, will be subject to Section 3(B)1 of this Agreement and will not be based on future adjustments to the City's Group 1 Managers.

D. Retirement.

Employee shall receive retirement benefits through the Public Employees Retirement System (hereinafter "PERS") Miscellaneous Plan. Employee shall pay a variable contribution toward retirement under the same formula applicable to the City's Group 1 Managers ("Executives") on the date of this Agreement. Any future changes to this formula will be subject to Section 3(B)1 of this Agreement and will not be based on future adjustments to the City's Group 1 Managers.

E. Automobile Allowance.

Employee shall receive an automobile allowance of \$621 per month which shall be indexed on a percentage basis with changes in the Internal Revenue Service mileage reimbursement rate for business travel, as provided under Resolution 90-012, and increased or decreased as appropriate without amendment to this Agreement.

F. Leave.

1. Employee shall receive the same leave benefits provided to the City's Group 1 Managers ("Executives"), including but not limited to holiday leave and catastrophic leave, as set forth in the Management Performance and Compensation Plan on the date of this Agreement. Any future changes in such benefits will be subject to Section 3(B)1 of this Agreement and will not be based on future adjustments to the City's Group 1 Managers.
2. Employee shall be entitled to a beginning balance of 96 hours of sick leave and 80 hours of vacation leave on the effective date of employment.
3. Employee will accrue 224 hours of vacation time.

SECTION 4: PERFORMANCE EVALUATION.

- A. Employer shall evaluate the performance of Employee as City Attorney on an annual basis. Employee shall be responsible for providing written notice to the City Council of the need to complete the performance evaluation.
- B. Employee understands and agrees that the failure to evaluate Employee annually shall not affect the rights of the parties in this Agreement, including termination of Employee's employment.

SECTION 5: TERMINATION

A. Termination by Employee.

Employee may voluntarily resign as City Attorney by delivering a letter of resignation to the City Council not less than 30 days prior to the effective date of termination.

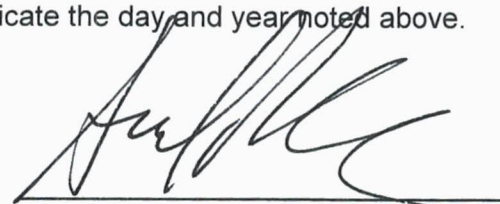
B. Termination by Employer.

1. Employer may unilaterally terminate Employee's employment, with or without cause in accordance with Section 701 of the City Charter. No cause for termination need exist because Employee recognizes that he serves at the pleasure of the Employer as an at-will employee. Except as otherwise provided by this Agreement or by law, including Section 701 of the City Charter, Employee is exempt from any pre- or post-termination due process rights (such as *Skelly* rights).
2. Employer shall provide Employee at least 30 days notice prior to the effective date of termination. Employer shall provide Employee the reasons for termination upon his request.
3. Employee shall receive twelve (12) months severance pay consisting of Employee's base salary, the cash value of twelve (12) months of cafeteria plan and automobile allowance at the effective date of termination and a cash payment of accrued vacation leave. The PERS Retirement contribution shall not be included in the severance pay. Nothing in this section shall extend the amount of time served for purposes of receiving any benefit provided in this Agreement.


SECTION 6: MISCELLANEOUS

- A. Use and administration of benefits shall conform to the requirements of the Management Performance and Compensation Plan and any other City policy or regulation, unless otherwise specified in this Agreement.
- B. This Agreement may be modified only upon the written consent of the parties.
- C. This Agreement is a personal services agreement, and as such, may not be assigned by either party.
- D. This Agreement constitutes the entire agreement between the parties and shall be interpreted in accordance with the laws of the State of California.


The parties hereto have executed this Agreement in duplicate the day and year noted above.


Ariel Calonne, an individual

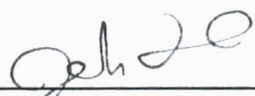
CITY OF SANTA BARBARA

BY: 
Mayor

Attest:


City Clerk

APPROVED AS TO FORM:


John Deimas, Assistant City Attorney

