

EMPLOYMENT CONTRACT

THIS EMPLOYMENT CONTRACT, hereinafter referred to as "CONTRACT" is made and entered into this 19th day of July, 2017, by and between the CITY OF DANA POINT, a municipal corporation, hereinafter referred to as "CITY", and Matthew Sinacori, hereinafter referred to as "SINACORI."

WITNESSETH

WHEREAS, CITY is a municipal corporation, the operation of which involves securing the services of a qualified professional Director of Public Works and Engineering Services; and

WHEREAS, SINACORI can provide the services and possesses the professional skills required by CITY and is available to CITY; and,

WHEREAS, it is the desire of the City Manager of CITY to retain the services of SINACORI as the Director of Public Works and Engineering Services/City Engineer; and,

WHEREAS, it is the desire of the City Manager of CITY to provide certain benefits, establish certain conditions of employment, set certain work conditions, and provide an equitable means of terminating SINACORI's employment; and,

WHEREAS, the arrangement set forth in this contract represents an efficient and economical procedure to accomplish CITY's goal;

NOW, THEREFORE, CITY AND SINACORI, in consideration of the mutual covenants and agreements herein contained, agree as follows:

1. POSITION AND DUTIES. The City Manager of CITY hereby agrees to appoint SINACORI as the Director of Public Works and Engineering Services/City Engineer of the City of Dana Point to perform, on a full-time basis, the duties and functions specified in the CITY's Municipal Code, ordinances, resolutions, policies and Director of Public Works and Engineering Services/City Engineer Job Descriptions, and as required by the Government Code of the State of California, to perform other legally permissible duties and perform such functions as the City Manager shall from time to time assign. The City Manager of CITY shall have the authority to determine the specific duties and functions which SINACORI shall perform under this contract and the means and manner by which SINACORI shall perform those duties and functions.

SINACORI agrees to devote all of this business time, skill, attention, and best efforts to the discharge of the duties and functions assigned to him by the City Manager during his employment.

The City Manager shall define goals and performance objectives for SINACORI which they determine necessary. The City Manager shall further establish a relative priority among those various goals and objectives. They shall generally be attainable within the time limitations as specified.

2. TERMINATION AND AT WILL STATUS. This contract shall commence on the effective date, and shall remain in effect until terminated by CITY or SINACORI in accordance

with the provisions of this contract. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City Manager to terminate the services of SINACORI at any time, subject only to the provision set forth in this Section.

SINACORI holds his employment at the pleasure of the City Manager and is an At-Will employee. SINACORI is exempt from CITY's competitive service. The City Manager of CITY may terminate SINACORI's employment at any time, for any reason that is not in violation of the public policy of the State of California, and may give SINACORI notice of termination at any time. SINACORI agrees that no representative of CITY has made or can make any promises, statements, or representations which state or imply that SINACORI is hired or retained under any terms other than those stated herein.

SINACORI may voluntarily terminate his employment at any time, for any reason, except that he shall give the City Manager of CITY thirty (30) days written notice prior to the effective date of the voluntary termination of his employment.

If the City Manager of CITY terminates SINACORI's employment or SINACORI terminates his employment, SINACORI shall only be entitled to receive the compensation he is currently due for the work he has already performed, plus a severance payment if he is eligible as described in Paragraph 4 herein, plus the cash equivalent of any unused Comprehensive Annual Leave as described in Paragraph 3e herein.

3. COMPENSATION. CITY agrees to provide the following compensation to SINACORI:

a. Effective 07/19/2017. Annual compensation of One Hundred Seventy-Seven Thousand Five Hundred dollars (\$177,500.00) for services rendered with applicable payroll taxes withheld. Said compensation shall be paid bi-weekly. Compensation may be adjusted upward annually due to merit increases approved by the City Manager.

b. Additional Compensation. Effective 07/19/2017 and annually thereafter, SINACORI shall receive a deferred compensation contribution of three percent (3.0%) of SINACORI's base salary (prorated if adjustments occur), paid on a bi-weekly basis, to an account in SINACORI's name, subject to the terms and conditions of International City Management Retirement Corporation (ICMARC), the City's deferred compensation provider or to a successor provider, as deferred compensation.

c. Effective 08/01/2017. One Thousand Four Hundred Seventy-five dollars (\$1475.00) per month for health, disability, and life insurance offered in the City's Cafeteria Plan. SINACORI will be entitled to the same increase to the Cafeteria Plan allowance as provided to other non-represented employees of the CITY.

d. Public Employees Retirement System. The CITY shall enroll SINACORI in the Public Employees' Retirement System (PERS) 2% at fifty-five plan. CITY will pay on behalf of SINACORI the "employer's share" of the PERS costs, and SINACORI shall pay the "employee's share" of PERS retirement costs, currently 7.0%, through bi-weekly pre-taxed payroll deductions.

In the event the CITY voluntarily joins or is required by law to join the Federal Social Security System, SINACORI shall be treated in the same manner as all City employees. Should

the PERS plan be amended by the City Council in the future, SINACORI would be automatically entitled to receive such benefits.

e. Comprehensive Annual Leave (CAL). City shall provide SINACORI with annual leave in the amount of thirty (30) days per year as Comprehensive Annual Leave (CAL). CAL credits shall be accrued at the rate of 9.23 hours per biweekly pay period. As of the effective date of this Agreement, SINACORI has accrued CAL credits based on his existing position with the City (Existing CAL Credits). The Existing CAL Credits shall be subject to the City's personnel rules as they may be amended from time to time. CAL credits earned following the Effective Date of this contract (New CAL Credits) shall be subject to the provisions hereof. In order to encourage SINACORI to use his accrued CAL, New CAL Credits are allowed to accrue up to a maximum of sixty (60) work days (480 hours). Once SINACORI has reached the maximum accrual for New CAL Credits, SINACORI will cease to accrue additional New CAL Credits until the accrued New CAL Credits falls below the sixty (60) work day (480 hour) level. Effective July 1, 2018, SINACORI shall not be entitled to compensation or cash in lieu of New CAL Credits, unless Agreement is amended to allow cash in lieu payments after that date in the sole discretion of the City Manager. However, if SINACORI's employment is terminated, SINACORI shall receive compensation for any accrued but unused CAL Credits.

f. CITY shall reimburse SINACORI for approved reasonable and ordinary business expenses incurred by SINACORI in the performance of this contract, provided such expenses have been authorized by the City Council in the City's budget.

g. Annual Physical: It is in the CITY's best interest that SINACORI maintain good health and physical ability to fulfill his duties as Director of Public Works and Engineering Services/City Engineer. Toward this end, CITY shall pay the full cost of one complete annual physical examination for SINACORI conducted by the physician of his choice. The cost to the CITY shall be offset by any payment made by SINACORI's health insurance carrier toward the cost of the examination.

h. Vehicle: SINACORI'S duties as Director of Public Works and Engineering Services/City Engineer for the City of Dana Point require that he shall have the exclusive and unrestricted use of an automobile at all times as SINACORI is essentially on 24-hour call and must be available for immediate response to CITY. CITY will, therefore, provide SINACORI with an automobile for both business and personal use. The automobile will be operated by SINACORI and other authorized City personnel. CITY agrees to maintain and pay for liability, property damage and comprehensive insurance and to pay for the purchase, gas, operation, maintenance, repair or replacement of a CITY provided automobile. SINACORI agrees to keep the automobile in excellent shape and to cooperate with the City's Fleet Management Department to accomplish all required maintenance when needed. The City's Fleet Management Department is responsible to advise SINACORI of the required maintenance items/work that needs to be done, and the schedule to accomplish the maintenance. The City Manager will determine the make and model of the selected vehicle after consulting with SINACORI.

i. CITY shall bear the cost of SINACORI's annual membership fee to professional organizations and professional license fee renewals as approved by the City Manager.

j. All other benefits provided to non-represented, management level employees of the CITY.

4. SEVERANCE PAYMENT. If the City Manager of CITY terminates SINACORI's employment for any reason other than SINACORI's misconduct as defined in this Paragraph, CITY shall pay SINACORI a cash severance payment equal to three months of SINACORI's monthly compensation established in Paragraph 3a herein, with applicable payroll taxes withheld.

If the City Manager of CITY terminates SINACORI's employment due to SINACORI's misconduct as defined in this Paragraph, CITY shall not make severance payment to SINACORI. If SINACORI terminates his employment, CITY shall not make any severance payment to SINACORI. Misconduct means SINACORI's commission, attempted commission, violation or conviction of any criminal law committed at any time (except minor traffic infractions), gross negligence or malfeasance, incompetence, insubordination, and/or violation of any rules or policies applicable to the general employees of the CITY. SINACORI has an affirmative duty to report to the City Manager or his/her designee, if he is arrested or if he is under investigation for alleged criminal misconduct.

5. PERFORMANCE EVALUATION.

a. The City Manager shall review and evaluate the performance of SINACORI annually each September. The City Manager shall provide SINACORI with a summary of the findings and provide SINACORI with adequate opportunity to discuss the evaluation(s) with the City Manager.

b. In connection with each annual performance evaluation, the City Manager may grant SINACORI a performance bonus up to 5% of his base salary. Whether or not to grant a bonus and the amount of any such bonus shall be determined in the sole discretion of the City Manager. It is the understanding and intent of the City and SINACORI that the performance bonuses are not reportable compensation to PERS, and are not included in the calculation of SINACORI's PERS retirement allowance.

6. INDEMNIFICATION. CITY shall defend, hold harmless, and indemnify SINACORI against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of this contract, or any alleged act or omission occurring in the course and scope of performance of SINACORI's duties in accordance with the provisions of California Government Code Section 825.

7. BONDING. CITY shall bear the full cost of any fidelity or other bonds required of SINACORI under any law or ordinance.

8. ENTIRE AGREEMENT. This contract is the complete and final expression of the parties' agreement. This contract remains the entire agreement and understanding between the parties and contains all of the terms and conditions of the parties' agreement. This contract supersedes all prior or contemporaneous oral or written negotiations, discussions, representations, or agreements between the parties, if any.

No amendment, alteration, extension, or modification of this contract shall be binding unless in writing and signed by both the City Manager and SINACORI.

9. GOVERNING LAW. This contract will be governed by and construed in accordance with the laws of the State of California.

10. NO WAIVER. No party's failure to enforce any provision(s) of this contract will be construed in any way as a waiver of such provision(s), nor prevent that party from enforcing each and every other provision of this contract.

11. PARTIAL INVALIDITY. The invalidity or unenforceability of any provision(s) of this contract will not affect the validity or enforceability of the other provision(s) of the contract.

12. HEADINGS. Paragraph headings used in this contract are for convenience only and shall not be considered part of the terms of this contract.

DATED: 8 / 7, 2017

Signature on File

Mark Denny, City Manager

Signature on File

Matthew Sinacori

ATTEST:

Signature on File

Kathy M. Ward

City Clerk

APPROVED AS TO FORM:

Signature on File

Patrick Munoz

City Attorney
