

EMPLOYMENT CONTRACT

THIS AMENDED EMPLOYMENT CONTRACT, hereinafter referred to as "CONTRACT" is made and entered into this 1st day of October 2018, by and between the CITY OF DANA POINT, a municipal corporation, hereinafter referred to as "CITY", and Michael Killebrew, hereinafter referred to as "KILLEBREW."

WITNESSETH

WHEREAS, CITY is a municipal corporation, the operation of which involves securing the services of a qualified Assistant City Manager/Director of Administrative Services; and,

WHEREAS, KILLEBREW 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 ("City Manager") to retain the services of KILLEBREW as Assistant City Manager/Director of Administrative Services; and,

WHEREAS, it is the desire of the City Manager to provide certain benefits, establish certain conditions of employment, set certain work conditions, and provide an equitable means of terminating KILLEBREW'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 KILLEBREW, in consideration of the mutual covenants and agreements herein contained, agree as follows:

1. TERM. The Effective Date of this Agreement shall be October 1, 2018. The Anniversary Date shall be October 1 of each subsequent year this Agreement remains in effect. This Agreement shall be effective until September 30, 2020, unless earlier terminated by either of the parties.

2. POSITION AND DUTIES. The City Manager hereby agrees to appoint KILLEBREW as the Assistant City Manager/Director of Administrative Services of the City of Dana Point to perform, on a full-time basis, the duties and functions specified in CITY's Municipal Code, ordinances, resolutions, policies and Assistant City Manager/Director of Administrative Services Job Description, and as required by the Government Code of the State of California; in addition, KILLEBREW is to perform other legally permissible duties and perform such functions as the City Manager shall from time to time assign (e.g. assume management of the City's Recreation Division, among other assignments), and assume the role of Acting City Manager in the City Manager's absence. The City Manager of CITY shall have the authority to determine the specific duties and functions which KILLEBREW shall perform under this contract and the means and manner by which KILLEBREW shall perform those duties and functions.

KILLEBREW agrees to devote all of his 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.

City Manager and KILLEBREW shall define goals and performance objectives for KILLEBREW which they determine necessary. 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.

3. TERMINATION AND AT WILL STATUS. This contract shall commence on the effective date and shall remain in effect until terminated by CITY or KILLEBREW in accordance with the provisions of this contract. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of City Manager to terminate the services of KILLEBREW at any time, subject only to the provisions set forth in this Section.

KILLEBREW holds his employment at the pleasure of the City Manager and is an At-Will employee. KILLEBREW is exempt from CITY's competitive service. City Manager may terminate KILLEBREW'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 KILLEBREW notice of termination at any time. KILLEBREW agrees that in the event KILLEBREW's employment is terminated, with or without cause, under no circumstances will KILLEBREW be entitled to, nor shall he contest the existence or nature of his "at will" employment status, nor will KILLEBREW be entitled to seek or receive the remedy of reinstatement to employment with the City in any administrative or legal forum.

KILLEBREW agrees that no representative of CITY has made or can make any promises, statements, or representations which state or imply that KILLEBREW is hired or retained under any terms other than those stated herein.

KILLEBREW may voluntarily terminate his employment at any time, for any reason, except he shall give City Manager forty-five (45) days written notice prior to the effective date of the voluntary termination of his employment.

If City Manager terminates KILLEBREW's employment or KILLEBREW terminates his employment, KILLEBREW 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 5 herein, plus the cash equivalent of any unused Comprehensive Annual Leave as described in Paragraph 4.e. herein.

4. COMPENSATION. CITY agrees to provide the following compensation to KILLEBREW:

a. Effective 10/01/2018, annual compensation of Two Hundred Four Thousand Forty-eight dollars (\$204,048.00) for services rendered with applicable payroll taxes withheld. Said compensation shall be paid biweekly. Compensation may be adjusted upward annually due to merit increase approved by City Manager.

b. Additional Compensation. Upon the effective date of this contract and annually thereafter, KILLEBREW shall receive a deferred compensation contribution of three percent (3.0%) of base salary, paid on a biweekly basis to an account in KILLEBREW's name, subject to the terms and conditions of International City Management Association (ICMA), the CITY's current deferred compensation provider or to a successor provider.

c. Beginning October 1, 2018, One Thousand Four Hundred Seventy-five dollars (\$1475.00) per month for health, disability, and life insurance offered in the City's Cafeteria Plan. KILLEBREW will be entitled to the same annual increase to the Cafeteria Plan as provided to the other non-represented employees of the CITY.

d. Retirement - Public Employees Retirement System. The CITY shall enroll KILLEBREW in the Public Employees' Retirement System (PERS) 2% at fifty-five plan. CITY will pay on behalf of KILLEBREW the "employer's share" of the PERS costs and KILLEBREW shall pay the seven percent (7.0%) "employee's share" of PERS retirement costs through bi-weekly pre-taxed payroll deductions. Should City employees represented by the Dana Point Employees Association agree to contribute an additional amount beyond the employee share of PERS, which is currently 7% of base pay, KILLEBREW agrees to contribute an additional, like amount.

In the event the CITY voluntarily joins or is required by law to join the Federal Social Security System, KILLEBREW shall be treated in the same manner as all City employees. Should the PERS plan be amended by the City Council in the future, KILLEBREW would be automatically entitled to receive such benefits.

e. Comprehensive Annual Leave (CAL). City shall provide KILLEBREW 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 July 18, 2017, KILLEBREW had accrued CAL credits (Existing CAL Credits). The Existing CAL Credits are subject to the City's personnel rules as they may be amended from time to time. CAL credits earned beginning July 19, 2017, (New CAL Credits) are subject to the provisions hereof. In order to encourage KILLEBREW to use his accrued CAL, New CAL Credits are allowed to accrue up to a maximum of sixty (60) work days (480 hours). Once KILLEBREW has reached the maximum accrual for New CAL Credits, KILLEBREW 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, KILLEBREW has not been 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 KILLEBREW's employment is terminated, KILLEBREW shall receive compensation for any accrued but unused CAL Credits.

f. CITY shall reimburse KILLEBREW for approved reasonable and ordinary business expenses incurred by KILLEBREW in the performance of this contract, provided such expenses have been authorized by the City Manager.

g. Annual Physical: It is in the CITY's best interest that KILLEBREW maintain good health and physical ability to fulfill his duties as Assistant City

Manager/Director of Administrative Services. Toward this end, CITY shall pay the full cost of one complete annual physical examination for KILLEBREW conducted by the physician of his choice. The cost to the CITY shall be offset by any payment made by KILLEBREW's health insurance carrier toward the cost of the examination.

h. Vehicle: KILLEBREW's duties as Assistant City Manager/Director of Administrative Services for the City of Dana Point will require that he have unrestricted access to an automobile at all times to perform City business, attend meetings out of the city, and to respond to emergencies. KILLEBREW agrees to pay for all liability, property damage and comprehensive insurance related to said automobile, and all non-related driving or incidents. KILLEBREW agrees to incur all expenses for the purchase, operation, gas, maintenance, repair or regular replacement of said automobile. Effective October 1, 2018, in return for providing said automobile and paying all expenses associated with the operation and maintenance of said automobile, CITY shall pay KILLEBREW the sum of Five Hundred Fifty dollars (\$550.00) per month paid biweekly with applicable payroll taxes withheld.

KILLEBREW's duties as Assistant City Manager/Director of Administrative Services for the City of Dana Point require that he may serve as Acting City Manager in the City Manager's absence. Such responsibilities may include serving as the City's Director of Emergency Services, requiring that KILLEBREW is essentially on 24-hour call. As a result of KILLEBREW's duties, the City shall, at the City's expense, equip KILLEBREW's automobile with the appropriate non-emergency safety lights, any necessary emergency apparatus, and provide KILLEBREW with magnetic City logo door placards.

i. All other benefits provided to Management level employees in the CITY Personnel Policies.

5. SEVERANCE AND SEVERANCE PAY AND BENEFITS

a. Termination Without Cause. In the event that KILLEBREW is involuntarily terminated by City Manager, CITY agrees to pay KILLEBREW at the time of such termination (1) a lump sum cash payment ("Severance Pay") equal to six (6) months of KILLEBREW's monthly compensation established in Paragraph 4a herein, with applicable payroll taxes withheld, or as many months as then remain on KILLEBREW's contract term, whichever is less ("Severance Period"), less legally required or authorized deductions; and, (2) CITY shall pay KILLEBREW's Consolidated Omnibus Budget Reconciliation Act ("COBRA") premiums for COBRA insurance coverage otherwise available to KILLEBREW, for the Severance Period. The intent of this provision is to satisfy the requirements of Government Code sections 53260-53264, and this provision shall be interpreted in a manner consistent with those statutes. In exchange for and as a condition to receipt of the Severance Pay, KILLEBREW shall execute a release and waiver, in a form acceptable to the City Attorney, releasing the City from any and all claims associated with KILLEBREW's termination.

b. Termination for Cause. In the event KILLEBREW is terminated for cause as defined herein, CITY shall have no obligation to pay the Severance Pay and Severance Benefits described above in Section 5, subpart (a). In the context of this

Agreement, "for cause" shall mean that KILLEBREW has been terminated because of the 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 the violation of any rules or policies applicable to the general employees of the CITY. KILLEBREW has an affirmative duty to report to the City Manager if he is arrested or if he is under investigation for alleged criminal activity.

c. If KILLEBREW terminates his employment, CITY shall not make any severance payment to KILLEBREW.

6. PERFORMANCE EVALUATION.

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

b. In connection with each annual performance evaluation, City Manager may grant KILLEBREW 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 KILLEBREW that the performance bonuses are not reportable compensation to PERS, and are not included in the calculation of KILLEBREW's PERS retirement allowance.

7. INDEMNIFICATION. CITY shall defend, hold harmless, and indemnify KILLEBREW 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 KILLEBREW's duties in accordance with the provisions of the California Government Code Section 825.

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

9. 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 KILLEBREW.

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

11. 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.

12. 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.

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

DATED: 10/1/18, 2018.

Signature on File

Mark Denny, City Manager

Signature on File

Michael Killebrew

ATTEST:

Signature on File

Kathy M. Ward, City Clerk

APPROVED AS TO FORM:

Signature on File

A. Patrick Munoz, City Attorney