

EMPLOYMENT CONTRACT

THIS EMPLOYMENT CONTRACT, hereinafter referred to as "CONTRACT" is made and entered into this 19th day of October, 2018, by and between the CITY OF DANA POINT, a municipal corporation, hereinafter referred to as "CITY", and Matthew SCHNEIDER, hereinafter referred to as "SCHNEIDER."

WITNESSETH

WHEREAS, CITY is a municipal corporation, the operation of which involves securing the services of a qualified professional Director of Community Development; and

WHEREAS, SCHNEIDER 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 SCHNEIDER as the Director of Community Development; 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 SCHNEIDER'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 SCHNEIDER, 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 SCHNEIDER as the Director of Community Development 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 Community Development Job Description, and as required by the Government Code of the State of California, and 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 SCHNEIDER shall perform under this contract and the means and manner by which SCHNEIDER shall perform those duties and functions.

SCHNEIDER 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 SCHNEIDER 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 SCHNEIDER 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 SCHNEIDER at any time, subject only to the provision set forth in this Section.

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

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

SCHNEIDER 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 SCHNEIDER's employment or SCHNEIDER terminates his employment, SCHNEIDER 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 SCHNEIDER:

a. Effective 10/19/2018. Annual compensation of One Hundred Sixty-three Thousand, Seven Hundred Sixty-four dollars (\$163,764.00) 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 10/19/2018 and annually thereafter, SCHNEIDER shall receive a deferred compensation contribution of three percent (3.0%) of SCHNEIDER's base salary (prorated if adjustments occur), paid on a bi-weekly basis, to an account in SCHNEIDER'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 11/01/2018. One Thousand Four Hundred Seventy-five dollars (\$1475.00) per month for health, disability, and life insurance offered in the City's

Cafeteria Plan. SCHNEIDER 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 SCHNEIDER in the California Public Employees' Retirement System (CalPERS) 2% at fifty-five plan. CITY will pay on behalf of SCHNEIDER the "employer's share" of the CalPERS costs, and SCHNEIDER shall pay the "employee's share" of CalPERS retirement costs, currently 7.0%, 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 to PERS, which is currently 7% of base pay, SCHNEIDER 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, SCHNEIDER shall be treated in the same manner as all City employees. Should the CalPERS plan be amended by the City Council in the future, SCHNEIDER would be automatically entitled to receive such benefits.

e. Comprehensive Annual Leave (CAL). Effective 10/19/2018, City shall provide SCHNEIDER 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, SCHNEIDER 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 SCHNEIDER to use his accrued CAL, New CAL Credits are allowed to accrue up to a maximum of sixty (60) work days (480 hours). Once SCHNEIDER has reached the maximum accrual for New CAL Credits, SCHNEIDER 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 11/01/2019, SCHNEIDER 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 SCHNEIDER's employment is terminated, SCHNEIDER shall receive compensation for any accrued but unused CAL Credits.

f. CITY shall reimburse SCHNEIDER for approved reasonable and ordinary business expenses incurred by SCHNEIDER 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 SCHNEIDER maintain good health and physical ability to fulfill his duties as Director of Community Development. Toward this end, CITY shall pay the full cost of one complete annual physical examination for SCHNEIDER conducted by the physician of his choice. The cost to the CITY shall be offset by any payment made by SCHNEIDER's health insurance carrier toward the cost of the examination.

h. Vehicle: SCHNEIDER's duties as Director of Community Development 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. SCHNEIDER agrees to pay for all liability, property damage and comprehensive insurance related to all personal use of said automobile, and all non-related driving or incidents. SCHNEIDER agrees to incur all expenses for the purchase, operation, gas, maintenance, repair or regular replacement of said automobile. In return for providing said automobile and paying all expenses associated with the operation and maintenance of said automobile, CITY shall pay SCHNEIDER the sum of Four Hundred dollars (\$400.00) per month paid biweekly with applicable payroll taxes withheld

i. CITY shall bear the cost of SCHNEIDER'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.

a. Termination without Cause. In the event that SCHNEIDER is involuntarily terminated by City Manager, CITY shall pay SCHNEIDER a lump sum cash severance payment equal to three (3) months of SCHNEIDER's monthly compensation established in Paragraph 3a herein, with applicable payroll taxes withheld. In exchange for and as a condition to receipt of the Severance Payment, SCHNEIDER shall execute a release and waiver, in a form acceptable to the City Attorney, releasing the City from any and all claims associated with SCHNEIDER's termination.

b. Termination for Cause. In the event SCHNEIDER is terminated for cause as defined herein, CITY shall have no obligation to make severance payment described in Paragraph 4a above. In the context of this Agreement, "for cause" shall mean SCHNEIDER 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 violation of any rules or policies applicable to the general employees of the CITY. SCHNEIDER 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 activity or criminal misconduct.

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

5. PERFORMANCE EVALUATION.

a. The City Manager shall review and evaluate the performance of SCHNEIDER annually each September. The City Manager shall provide SCHNEIDER with a summary of the findings and provide SCHNEIDER 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 SCHNEIDER 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 SCHNEIDER that the performance bonuses are not reportable compensation to PERS, and are not included in the calculation of SCHNEIDER's PERS retirement allowance.

6. INDEMNIFICATION. CITY shall defend, hold harmless, and indemnify SCHNEIDER 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 SCHNEIDER'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 SCHNEIDER 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 SCHNEIDER.

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: October 19, _____, 2018

Signature on File

Mark Denny, City Manager

Signature on File

Matthew Schneider

ATTEST:

Signature on File

Kathy M. Ward, City Clerk

APPROVED AS TO FORM:

Signature on File

A. Patrick Munoz, City Attorney
