

## EMPLOYMENT CONTRACT

THIS EMPLOYMENT CONTRACT, hereinafter referred to as "CONTRACT" is made and entered into this 19<sup>th</sup> day of February, 2019, by and between the CITY OF DANA POINT, a municipal corporation, hereinafter referred to as "CITY", and Robert SEDITA, hereinafter referred to as "SEDITA."

### WITNESSETH

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

WHEREAS, SEDITA 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 SEDITA as the Director of General Services; 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 SEDITA'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 SEDITA, 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 SEDITA as the Director of General Services 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 General Services 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 SEDITA shall perform under this contract and the means and manner by which SEDITA shall perform those duties and functions.

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

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

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

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

a. Effective 02/19/2019. Annual compensation of One Hundred Twenty-seven Thousand, Eight Hundred dollars (\$127,800.00) 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 02/19/2019 and annually thereafter, SEDITA shall receive a deferred compensation contribution of three percent (3.0%) of SEDITA's base salary (prorated if adjustments occur), paid on a bi-weekly basis, to an account in SEDITA'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 March 1, 2019, One Thousand Four Hundred Seventy-five dollars (\$1475.00) per month for health, disability, and life insurance offered in the City's

Cafeteria Plan. SEDITA will be entitled to the same increase to the Cafeteria Plan allowance as provided to other Department Heads of the CITY.

d. Public Employees Retirement System. The CITY shall enroll SEDITA in the California Public Employees' Retirement System (CalPERS) 2% at fifty-five plan. CITY will pay on behalf of SEDITA the "employer's share" of the CalPERS costs, and SEDITA shall pay the "employee's share" of CalPERS retirement costs, currently 7.0%, through bi-weekly pre-taxed payroll deductions. Effective July 1, 2019, the employee's share of CalPERS retirement costs will increase to 7.5%; effective July 1, 2020, the employee's share of CalPERS retirement costs will increase to 8.25%; and effective July 1, 2021, the employee's share of CalPERS retirement costs will increase to 9.0%.

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

e. Comprehensive Annual Leave (CAL). Effective 02/19/2019, City shall provide SEDITA 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. CAL usage, CAL credits and CAL buy backs shall be subject to the City's personnel rules as they may be amended from time to time. If SEDITA's employment is terminated, SEDITA shall receive compensation for any accrued but unused CAL Credits.

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

h. Vehicle: SEDITA's duties as Director of General 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. SEDITA 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. SEDITA 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 SEDITA the sum of Five Hundred dollars (\$500.00) per month paid biweekly with applicable payroll taxes withheld. CITY understands that there may be occasions when SEDITA requires use of a City truck for work purposes, in which case SEDITA is authorized to use a City truck as such needs arise.

i. CITY shall bear the cost of SEDITA'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 SEDITA is involuntarily terminated by City Manager, CITY shall pay SEDITA a lump sum cash severance payment equal to three (3) months of SEDITA'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, SEDITA shall execute a release and waiver, in a form acceptable to the City Attorney, releasing the City from any and all claims associated with SEDITA's termination.

b. Termination for Cause. In the event SEDITA 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 SEDITA 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. SEDITA 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 SEDITA terminates his employment, CITY shall not make any severance payment to SEDITA.

#### 5. PERFORMANCE EVALUATION.

a. The City Manager shall review and evaluate the performance of SEDITA after his initial six months of continuous employment, and then annually each September, beginning September 2020. The City Manager shall provide SEDITA with a summary of the findings and provide SEDITA 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 SEDITA 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 SEDITA that the performance bonuses are not reportable compensation to PERS, and are not included in the calculation of SEDITA's PERS retirement allowance.

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

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: February 4th, 2019

Signature on File

Mark Denny, City Manager

Signature on File

Robert Sedita

ATTEST:

Signature on File

Kathy M. Ward, City Clerk