

## **FIRST AMENDED CITY MANAGER EMPLOYMENT AGREEMENT**

This City Manager Employment Agreement between the City of Dana Point (“City”) and Mark Denny (“Denny”) (“Agreement”) is made so as to be effective as of June 18, 2019.

### **RECITALS**

A. City desires to employ Denny as the City Manager, as provided by Chapter 2.08 of the Dana Point Municipal Code, and upon the terms and conditions set out herein for the period June 18, 2019, up to and including August 31, 2023.

B. Denny desires to serve as City Manager of the City of Dana Point on the terms and conditions set out herein.

### **AGREEMENT**

NOW, THEREFORE, the parties agree as follows on the terms and conditions of Denny’s employment.

#### **1. TERM**

The Effective Date of this Agreement shall be June 18, 2019. The Anniversary Date shall be July 1 of each subsequent year this Agreement remains in effect. This Agreement shall be effective until August 31, 2023, unless earlier terminated by either of the parties.

#### **2. DUTIES**

As of the Effective Date City employs Denny, and Denny accepts employment, as City Manager of the City. Denny shall perform the functions and duties specified for the City Manager of the City in Chapter 2.08 of the Dana Point Municipal Code and other ordinances, resolutions and policies of the City, and shall perform such other legally permissible and proper duties and functions as the City Council of the City (the “Council”) may from time to time assign, consistent with the Dana Point Municipal Code and other applicable law. The City and

Denny hereby expressly agree that the employment relationship created by this Agreement is “at will” and that Denny serves at the will and pleasure of the City Council.

3. NOTIFICATION REQUIREMENTS REGARDING EXPIRATION OR TERMINATION OF AGREEMENT

(a) Potential Renewal of Agreement. On or before February 1, 2023, and in the event this Agreement is not earlier terminated, Denny shall notify Council of the pending expiration hereof as set forth in Section 1 above, after which a closed session shall be scheduled during which Denny and Council shall meet to discuss whether this Agreement shall be renewed or allowed to expire, and, if renewed, such terms to which the parties may mutually agree.

(b) Termination by Denny. In the event Denny terminates his employment as City Manager, then Denny shall give City at least forty five (45) days’ notice of termination in writing in advance of the date of termination, unless otherwise mutually agreed.

(c) All Terminations. Denny agrees that in the event Denny’s employment is terminated, with or without cause, under no circumstances will Denny be entitled to, nor shall he contest the existence or nature of Denny’s “at will” employment status, nor will Denny be entitled to seek or receive the remedy of reinstatement to employment with the City in any administrative or legal forum.

(d) Limitations on Termination. In no event shall Denny be terminated by the City within ninety (90) days before or ninety (90) days after any City municipal election, including but not limited to an election for the selection or recall of one or more of the members of the City Council.

4. SEVERANCE AND SEVERANCE PAY AND BENEFITS

(a) Termination Without Cause. In the event that Denny is involuntarily terminated by the Council without cause, City agrees to pay Denny at the time of such

termination: (i) a lump sum cash payment (“Severance Pay”) equal to six (6) months (“Severance Period”) of the base salary Denny is receiving on the date of the Council’s action to terminate Denny, or as many months as then remain on Denny’s contract term, whichever is less, less legally required or authorized deductions; and (ii) City shall pay Denny’s Consolidated Omnibus Budget Reconciliation Act (“COBRA”) premiums for COBRA insurance coverage otherwise available to Denny, for the Severance Period, or as many months as then remain on Denny’s contract term, or until Denny becomes ineligible for COBRA, whichever is less. 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, Denny shall execute a release and waiver, in a form acceptable to the City Attorney, releasing the City from any and all claims associated with Denny’s termination.

(b) Termination by City For Cause. In the event Denny is terminated for cause as defined herein, City shall have no obligation to pay the Severance Pay and Severance Benefits described above in Section 3, subpart (a). In the context of this Agreement, “for cause” shall mean that Denny 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. Denny has an affirmative duty to report to the Mayor if he is arrested or if he is under investigation for alleged criminal activity.

5. SALARY AND OTHER COMPENSATION

(a) Salary. Commencing on the Effective Date City shall pay Denny an annual base salary, exclusive of benefits, in the sum of Two Hundred Thirty-Six Thousand, Two

Hundred and Fifty Dollars (\$236,250.00) per year, payable in installments at the same time and by the same methods as other City employees are regularly paid. On or about Denny's Anniversary Date each year, the Council shall conduct a performance evaluation of Denny. The Council agrees to review Denny's salary and benefits at the time of Denny's annual performance evaluation each year this Agreement is in effect, and may in its sole and absolute discretion grant Denny an increase in base salary or other benefits or compensation as it deems appropriate based on merit and performance.

(b) Retirement. Denny shall be a member of the City's retirement plan adopted and existing pursuant to its contract with the State of California Public Employees Retirement System ("PERS"). City shall pay the full amount of the required employer's contribution for the benefit of Denny, and Denny shall pay the full amount of the employee's required contribution.

6. BENEFITS

(a) Cafeteria Plan. City shall pay One Thousand Seven Hundred Eighteen Dollars (\$1,718.00) per month to Denny's health, and disability as offered in the City's Cafeteria Plan. Denny shall be entitled to the same annual increases to the Cafeteria Plan as provided to the other non-represented employees of the City.

(b) Deferred Compensation. City shall make payments on behalf of Denny, in an amount equal to four percent (4%) of Denny's base salary (prorated if adjustments occur) per year, with prorated payments made on a per pay period basis, to the International City Management Association Retirement Corporation (ICMARC), the City's deferred compensation provider, as deferred compensation.

(c) Comprehensive Annual Leave. City shall provide Denny 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, Denny 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 (New CAL Credits) shall be subject to the provisions hereof. In order to encourage Denny to use his accrued CAL, New CAL Credits are allowed to accrue up to a maximum of sixty (60) work days. Once Denny has reached the maximum accrual for New CAL Credits, Denny will cease to accrue more New CAL Credits until the accrued New CAL Credits falls below the sixty (60) work day level. Denny shall not be entitled to compensation or cash in lieu of New CAL Credits. However, if Denny's employment is terminated, Denny shall receive compensation for any accrued but unused New CAL Credits.

(d) Life Insurance. City shall provide Denny with life insurance coverage at its expense through a term life insurance policy having a death benefit of in the amount of \$50,000, to be provided as part of the City's existing group term policy.

(e) Vehicle: Denny's duties as the City Manager will require that he have exclusive and unrestricted use of an automobile at all times. As a result of these duties, the City will provide Denny with an automobile. Because Denny is essentially on 24-hour call and available to respond to any emergency, the automobile will be available for both business and personal use. The automobile will be operated by Denny 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. Denny agrees to keep the automobile in excellent condition and will make sure that

all service is performed per the factory maintenance schedule, with such maintenance costs being covered by City in conformance with existing City practices.

(f) Moving Expenses. Denny's preexisting agreement with the City calls for him to be reimbursed for actual moving expenses not to exceed Five Thousand dollars (\$5,000.00) providing Denny relocates to Dana Point within thirty-six (36) months of his initial employment date with the City. That provision is incorporated herein such that reimbursement will be made upon Denny's submittal of related invoices/receipts. If Denny voluntarily terminates his employment prior to completing three (3) years of employment with City, from his initial employment date, Denny is responsible for reimbursing City for moving expenses reimbursed to him as part of this employment agreement.

(g) Supplemental Benefits. Denny shall be entitled to receive all benefits as they now exist or may hereinafter be provided to other Executive and Management employees of the City, except when such other benefits are inconsistent with or contrary to provisions of this Agreement. The ability to cash out New CAL Credits, or to receive executive leave as may be provided to other Executive and Management employees of the City are both expressly acknowledged as being contrary to the provisions of this Agreement.

7. PROFESSIONAL DEVELOPMENT, OUTSIDE PROFESSIONAL ACTIVITIES AND GENERAL EXPENSES

(a) Professional Development.

(i) Subject to the Council's discretion to adopt and amend the budget, City agrees to pay for professional dues and subscriptions on behalf of Denny which are reasonably necessary, as determined by the Council, for Denny's full participation in national, regional, state or local associations and organizations necessary and desirable for Denny's continued professional participation, growth and advancement, or for the good of the City.

Furthermore, City shall pay for any additional professional dues and subscriptions as may be approved by the Council from time to time.

(ii) Subject to the Council's discretion to adopt and amend the budget, City agrees to pay within the adopted budget the reasonable travel and subsistence expenses of Denny for official travel, meetings, and events reasonably necessary to continue the professional development of Denny and reasonably necessary to fulfill official and other functions for the City, all as determined to be reasonable and necessary by the Council. Such meetings and events may include, but are not limited to national, regional, state and local conferences of governmental groups and committees in which Denny serves as a member.

(b) Outside Professional Activities. Denny agrees to remain in the exclusive employ of the City of Dana Point while employed by the City of Dana Point. This section shall not prohibit occasional teaching, writing or speaking for compensation, provided that Denny gives advance written notification to the Council of such teaching, writing or speaking engagements. Any teaching, writing or speaking engaged in by Denny during the term of this Agreement shall not interfere with Denny's performance of Denny's duties and obligations under this Agreement.

(c) General Expenses. The City shall reimburse Denny for all reasonable City-related business expenses incurred by him in accordance with submittal, processing and payment policies of the City. City shall bear full cost of any fidelity of other bonds required of Denny under any law or ordinance.

8. PERFORMANCE EVALUATION

(a) The Council and Denny may annually define such goals and objectives for the City which they mutually determine necessary for the proper operation of the City in the attainment of the Council's policy objectives, and the Council and Denny may further establish a priority among those various goals and objectives to be reduced to writing. The process of considering the establishment and priority of goals and objectives of the City shall be conducted and completed generally in July of each year ("Goals and Objectives"), and may occur in connection with Denny's annual performance review.

(b) The Council, following informal and nonbinding consultation with Denny, shall periodically assess the Goals and Objectives and how they relate to the performance of Denny. The Council shall review and evaluate the performance of Denny at least once annually. Notwithstanding any term or provision of this Agreement to the contrary, Denny shall serve at the will and pleasure of the Council, and the Council shall be entitled to terminate the employment of Denny without cause.

(c) In connection with each annual performance evaluation, the City Council may grant Denny a performance bonus in an amount of 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 Council. It is the understanding and intent of the City and Denny that the performance bonuses are not reportable compensation to PERS, and are not to be included in the calculation of Denny's PERS retirement allowance.

9. CONFLICT OF INTEREST PROHIBITION

Denny shall not engage in any business or transaction, or have a financial or other personal interest or association, direct or indirect, that is in conflict with the proper discharge of his official duties or that would tend to impair the independence of his judgment or action in the



performance of his official duties. Denny shall also be subject to the conflict of interest provisions of the Government Code of the State of California, the City's Municipal Code, and any other conflict of interest regulations applicable to Denny's employment with the City.

10. PROVISIONS OF GOVERNMENT CODE SECTION 53243.4

(a) In the event that the City provides paid leave to Denny pending an investigation of a crime involving abuse of his office or position covered by Government Code section 53243.4, and should that investigation lead to either a criminal conviction or a civil or administrative penalty by the FPPC or any similarly authorized agency, Denny shall fully reimburse the City for any salary provided for that purpose.

(b) In the event that the City provides funds for the legal criminal defense of Denny pending an investigation of a crime involving abuse of his office or position covered by Government Code section 53243.4, and should that investigation lead to either a criminal conviction or a civil or administrative penalty by the FPPC or any similarly authorized agency, Denny shall fully reimburse the City for any funds provided for that purpose.

(c) In the event that the City provides Denny with severance, or any other type of cash settlement related to the termination of Denny, and Denny subsequently is convicted of a crime, or subjected to civil or administrative penalties, resulting from abuse of his office or position covered by Government Code section 53243.4, Denny shall fully reimburse the City for any such severance or cash settlement.

11. ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties concerning the subject matter set forth herein and no promise, representation, warranty or covenant not included in this Agreement has been or is relied upon by any party hereto concerning the offer and acceptance of employment described herein.

12. NO CONTINUING WAIVER

No waiver of any term or condition of this Agreement by either party shall be deemed a continuing waiver of such term or condition.

13. INTEGRATION AND AMENDMENT

This Agreement represents the entire understanding of the City and Denny as to those matters contained herein, and no prior oral or written understanding shall be of any force or effect with respect to those matters covered by this Agreement. Except as specifically authorized by this Agreement, this Agreement may not be modified, altered or amended, except in writing approved by the City Council and Denny, and signed by the Mayor of the City and Denny

14. PARTIAL INVALIDITY

The invalidly or unenforceability of any provision of this Agreement will not affect the validity or enforceability of the other provisions hereof.

15. GOVERNING LAW.

This Agreement will be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth hereinabove.

CITY:

Signature on File

---

Joseph L. Muller  
Mayor

DENNY:

Signature on File

---

Mark Denny

ATTEST:

Signature on File

---

Kathy M. Ward  
City Clerk

APPROVED AS TO FORM:

Signature on File

---

Patrick Munoz  
City Attorney