

## **EMPLOYMENT CONTRACT**

THIS AMENDED EMPLOYMENT CONTRACT, hereinafter referred to as "CONTRACT" is made and entered into this 1st day of October, 2014, by and between the CITY OF DANA POINT, a municipal corporation, hereinafter referred to as "CITY", and Kathy Ward, hereinafter referred to as "WARD".

### **W ITNESSETH**

WHEREAS, CITY is a municipal corporation, the operation of which involves securing the services of a professional City Clerk; and,

WHEREAS, WARD 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 WARD as City Clerk; and,

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

NOW, THEREFORE, CITY AND WARD, 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 WARD as the City Clerk 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 City Clerk 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 WARD shall perform under this contract and the means and manner by which WARD shall perform those duties and functions.

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

The City Manager and WARD shall define goals and performance objectives for WARD 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 WARD 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 WARD at any time, subject only to the provisions set forth in this Section.

WARD holds her employment at the pleasure of the City Manager and is an At Will employee. WARD is exempt from CITY's competitive service. The City Manager of CITY may terminate WARD'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 WARD notice of termination at any time. WARD agrees that no representative of CITY has made or can make any promises, statements, or representations which state or imply that WARD is hired or retained under any terms other than those stated herein.

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

WARD shall not be terminated for a period of six months following any change in the make-up of the composition of the City Council, unless the termination is for misconduct as defined in Section 4 of this agreement.

If the City Manager of CITY terminates WARD's employment or WARD terminates her employment, WARD shall only be entitled to receive the compensation she is currently due for the work she has already performed, plus a severance payment if she 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 WARD:

a. Effective 10/01/2013. Annual compensation of One Hundred Eight Thousand One Hundred Ninety-three dollars and twenty cents (\$108,193.20) for services rendered with applicable payroll taxes withheld. Said compensation shall be paid biweekly. Compensation may be adjusted upward annually due to merit increases approved by the City Manager.

Effective 10/01/2014. Annual compensation of One Hundred Fourteen Thousand Five Hundred Seventy-six dollars and Sixty cents (\$114,576.60) for services rendered with applicable payroll taxes withheld. Said compensation shall be paid biweekly. Compensation may be adjusted upward annually due to merit increases approved by the City Manager.

b. Additional Compensation. Upon the effective date of this contract and annually thereafter, WARD shall receive a deferred compensation contribution of three percent (3%) of base salary, paid on a biweekly basis to an account in WARD's name, subject to the terms and conditions of International City Management Association (ICMA), the CITY's deferred compensation provider.

c. Effective January 1, 2015 , One Thousand Three Hundred Seventy-five dollars (\$1375.00) per month for health, disability, and life insurance offered in the City's Cafeteria Plan. WARD 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 WARD in the Public Employees' Retirement System (PERS) 2% at fifty-five plan. Effective 10/01/2013 , CITY will pay on behalf of WARD the "employer's share" of the PERS costs and three percent (3.0%) of the "employee's share" of the PERS costs. Effective 10/01/2013, WARD shall pay the remaining four percent (4.0%) of the "employee's share" of PERS retirement costs through bi-weekly pre-taxed payroll deductions .

Effective 10/01/2014, CITY will pay on behalf of WARD the "employer's share" of the PERS costs and WARD shall pay an additional three percent (3.0%) of the "employee's share" of the PERS costs, which equates to the full seven percent (7.0%) "employee's share" of PERS retirement costs. WARD's PERS contributions shall be paid 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, WARD shall be treated in the same manner as all City employees . Should the PERS plan be amended by the City Council in the future, WARD would be automatically entitled to receive such benefits.

e. Comprehensive 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. Unused CAL credits may be converted to cash pursuant to the CITY's Personnel Policy "Comprehensive Annual Leave."

f. Executive Leave: Effective at the commencement of this agreement , CITY shall provide WARD with annual leave in the amount of eighty (80) hours per calendar year as Executive Leave. Executive Leave must be used by the end of the calendar year and shall not accrue from year to year.

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

h. Annual Physical: It is in the CITY's best interest that WARD maintains good health and physical ability to fulfill her duties as City Clerk . Toward this end, CITY shall pay the full cost of one complete annual physical examination for WARD conducted by the physician of her choice. The cost to the CITY shall be offset by any payment made by WARD's health insurance carrier toward the cost of the examination.

i. WARD's duties as the City Clerk for the City of Dana Point will require that she shall have unrestricted access to an automobile at all times to attend meetings out of

the City and to respond for emergencies . WARD agrees to pay for all liability, property damage and comprehensive insurance related to all personal use of said automobile, and all non-work related driving or incidents. WARD 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 WARD the sum of Four Hundred dollars (\$400.00) per month.

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

k. WARD shall be entitled to the same benefits and level of benefits, whether new or amended, as any Department Head level employee within the City.

4. SEVERANCE PAYMENT. If the City Manager of CITY terminates WARD's employment for any reason other than WARD's misconduct as defined in this Paragraph, CITY shall pay WARD a cash severance payment equal to six (6) months of WARD's monthly compensation established in Paragraph 3a herein, with applicable payroll taxes withheld.

If the City Manager of CITY terminates WARD's employment due to WARD's misconduct as defined in this Paragraph, CITY shall not make any severance payment to WARD. If WARD terminates her employment , CITY shall not make any severance payment to WARD. Misconduct means WARD's violation of any criminal law committed at any time, (except minor traffic offenses) gross negligence or malfeasance .

5. PERFORMANCE EVALUATION. The City Manager shall review and evaluate the performance of WARD annually each May and shall provide WARD with a summary of the findings of the City Manager and provide WARD with adequate opportunity to discuss the evaluation(s) with the City Manager.

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

7. BONDING. CITY shall bear the full cost of any fidelity or other bonds required of WARD 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 WARD.

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 NVALIDITY . 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 only and shall not be considered part of the terms of this contract.

DATED: 1 October, 2014

Signature on File  
Douglas, C. Chotkevys, City Manager

Signature on File  
Kathy M. Ward

ATTEST:  
Signature on File  
Bobbi Ogan, Deputy City Clerk

APPROVED AS TO FORM:  
Signature on File  
A. Patrick Munoz, City Attorney