

EMPLOYMENT CONTRACT

THIS EMPLOYMENT CONTRACT, hereinafter referred to as "CONTRACT" is made and entered into this October 11, 2024, by and between the CITY OF DANA POINT, a municipal corporation, hereinafter referred to as "CITY", and JESS MCCLOSKEY, hereinafter referred to as "MCCLOSKEY".

WITNESSETH

WHEREAS, CITY is a municipal corporation, the operation of which involves securing the services of a qualified Building Official; and,

WHEREAS, MCCLOSKEY 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 MCCLOSKEY as Building Official; 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 MCCLOSKEY'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 MCCLOSKEY, 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 MCCLOSKEY as the Building Official 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 Building Official 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 MCCLOSKEY shall perform under this contract and the means and manner by which MCCLOSKEY shall perform those duties and functions.

MCCLOSKEY 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.

The City Manager and MCCLOSKEY shall define goals and performance objectives for MCCLOSKEY 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.

MCCLOSKEY shall not engage in an employment, activity, consulting service, or

enterprise, for compensation or otherwise, which is actually or potentially in conflict with or inimical to, or which materially interferes with, MCCLOSKEY's duties and responsibilities to the CITY. Subject to the foregoing prohibitions, the City Manager, upon the written request of MCCLOSKEY, may authorize MCCLOSKEY to undertake outside employment. The City Manager's consent shall be made in writing and the City Manager reserves the right to place additional conditions on such outside employment. Personal as distinguished from financial interest includes an interest arising from blood or marriage relationships or close business, personal, or political associations.

2. TERMINATION AND AT WILL STATUS. This contract shall commence on the effective date and shall remain in effect until terminated by CITY or MCCLOSKEY 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 MCCLOSKEY at any time, subject only to the provisions set forth in this Section.

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

MCCLOSKEY may voluntarily terminate his employment at any time, for any reason, except 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 MCCLOSKEY's employment or MCCLOSKEY terminates his employment, MCCLOSKEY 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 4d herein.

3. CONFIDENTIAL INFORMATION. "Confidential Information" means all information and any idea pertaining in any manner to the business of the City Council, the CITY or the CITY's various, departments, divisions, committees, and commissions, which was produced or acquired by MCCLOSKEY in the course of employment with the CITY. Confidential Information shall include, without limitation, trade secrets, product ideas, inventions, processes, formulae, data, know-how, software, and other computer programs, copyrightable material, marketing plans, strategies, sales, financial reports, forecasts, and customer lists. During employment with CITY, MCCLOSKEY shall use Confidential Information, and shall disclose Confidential Information, only for the benefit of CITY and only as is or may be necessary to

perform job responsibilities under this contract. Following termination or other separation from employment with CITY, MCCLOSKEY shall not use any Confidential Information and shall not disclose any Confidential Information, except with the express written consent of the City Manager. MCCLOSKEY's obligations under this Section shall survive the expiration of this Agreement.

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

- a. Annual Compensation. Effective October 14, 2024, annual compensation of One Hundred Fifty Five Thousand Dollars (\$155,000.00) 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 the City Manager.
- b. Cafeteria Plan. City shall pay to MCCLOSKEY's health, disability, and insurance plans as offered in the City's Cafeteria Plan the same amount as is paid for other City employees.
- c. Retirement Public Employees Retirement System. Retirement Public Employees Retirement System. MCCLOSKEY 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 MCCLOSKEY, and MCCLOSKEY shall pay the full amount of the employee's required contribution consistent with other City employees deemed PEPRAs Members by PERS. In the event that other City employees deemed PEPRAs Members by PERS are required to pay an additional amount of pay toward unfunded pension liability pension costs, then MCCLOSKEY shall pay the same amount.

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

- d. Comprehensive Annual Leave (CAL). The City shall provide MCCLOSKEY with annual leave in the amount of fifteen (15) days per year as Comprehensive Annual Leave (CAL). CAL credits shall be accrued at the rate of 4.615 hours per biweekly pay period. In order to encourage MCCLOSKEY to use his accrued CAL, CAL credits are allowed to accrue up to a maximum 240 hours. Once MCCLOSKEY has reached the maximum accrual, MCCLOSKEY will cease to accrue additional CAL credits until the accrued CAL credits fall below the 240-hour level. MCCLOSKEY's CAL accrual rate will increase per the schedule in the City's Personnel Rules and Regulations.

MCCLOSKEY may by December 15 of each calendar year, make an irrevocable election to convert CAL earned the following calendar year to cash. The maximum calendar year buy back is forty (40) CAL hours. MCCLOSKEY shall submit his irrevocable election and calendar year cash out requests in the same manner required by all other City employees eligible to cash out CAL. If MCCLOSKEY's employment is terminated, MCCLOSKEY shall receive compensation for any accrued but unused CAL credits with applicable payroll taxes withheld.

- e. CITY shall reimburse MCCLOSKEY for approved, reasonable and ordinary business expenses incurred by MCCLOSKEY in the performance of this contract, provided such expenses have been authorized by the City Manager.
- f. Annual Physical. It is in the CITY's best interest that MCCLOSKEY maintain good health and physical ability to fulfill his duties as Building Official. Toward this end, CITY shall pay the full cost of one complete annual physical examination for MCCLOSKEY conducted by the physician of his choice. The cost to the CITY shall be offset by any payment made by MCCLOSKEY's health insurance carrier toward the cost of the examination.
- g. Vehicle. MCCLOSKEY's duties as Building Official for the City of Dana Point will require that he always have unrestricted access to an automobile to attend to City business, in and out of the City, and to respond to emergencies. MCCLOSKEY agrees to pay for all liability, property damage and comprehensive insurance related to all City and personal use of said automobile, and all non-related driving or incidents. MCCLOSKEY agrees to incur all expenses for the purchase, operation, gas, maintenance, repair or regular replacement, and applicable taxes associated with said automobile. In return for providing said automobile and paying all expenses associated with the operation and maintenance of said automobile, CITY shall pay MCCLOSKEY the sum of Two Hundred Fifty Dollars (\$250.00) per month with applicable payroll taxes withheld.
- h. All other benefits provided to Management level employees in the CITY Personnel Policies.

5. SEVERANCE PAYMENT.

- a. Termination without Cause. In the event that MCCLOSKEY is involuntarily terminated by City Manager, CITY shall pay MCCLOSKEY a lump sum cash severance payment equal to three (3) months of MCCLOSKEY's monthly compensation established in Paragraph 4a herein, with applicable payroll taxes withheld. In exchange for and as a condition to receipt of the Severance Payment, MCCLOSKEY shall execute a release and waiver, in a form acceptable to the City Attorney, releasing the City from any and all claims associated with MCCLOSKEY's employment and termination.

- b. Termination for Cause. In the event MCCLOSKEY is terminated for cause as defined herein, CITY shall have no obligation to make severance payment described in Paragraph 5a above. In the context of this Agreement, "for cause" shall mean MCCLOSKEY 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. MCCLOSKEY 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 MCCLOSKEY terminates his employment, CITY shall not make any severance payment to MCCLOSKEY.
- d. Notwithstanding any other provision or the term of this Agreement, the Severance that MCCLOSKEY may receive under this Agreement as a result of termination shall not exceed the limitations provided in Government Code Section 53260-53264. In addition, in the event MCCLOSKEY is convicted of a crime involving an abuse of office or position, MCCLOSKEY shall reimburse the CITY for any paid leave or cash settlement (including separation benefits or severance, if applicable), to the extent as provided by Government Code Sections 53243-53243.4.

6. PERFORMANCE EVALUATION.

- a. The City Manager shall review and evaluate the performance of MCCLOSKEY after his initial six months of continuous employment, and then annually each September. The City Manager shall review and evaluate the performance of MCCLOSKEY annually each September and shall provide MCCLOSKEY with a summary of the findings and provide MCCLOSKEY with adequate opportunity to discuss the evaluation(s) with the City Manager.

In connection with each annual performance evaluation, the City Manager may grant MCCLOSKEY 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 at the sole discretion of the City Manager. It is the understanding and intent of the City and MCCLOSKEY that the performance bonuses for CalPERS PEPRAs are not pensionable compensation per California Code of Regulations (CCR), Title 2 §571.1.

- 7. INDEMNIFICATION. CITY shall defend, hold harmless, and indemnify MCCLOSKEY against any tort, professional liability claims 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 MCCLOSKEY'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 MCCLOSKEY 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 MCCLOSKEY.
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.


CITY OF DANA POINT

By 
Michael A. Killebrew, City Manager

JESS MCCLOSKEY

By 
Jess McCloskey

ATTEST:


Shayna Sharke, City Clerk

APPROVED AS TO FORM:


Patrick Munoz, City Attorney