

# **FIRST AMENDED EMPLOYMENT AGREEMENT FOR THE POSITION OF CITY MANAGER 08.15.17**

This Employment Agreement (hereafter referred to herein as "Agreement") is made and entered into this 15th day of August, 2017, by and between the City of Moreno Valley, California (hereafter referred to herein as "CITY"), a California municipal corporation and general law city, and Michelle Dawson (hereafter referred to herein as "DAWSON"), an individual, on the following terms and conditions:

## **RECITALS**

A. CITY, by and through the City Council, desires to employ the services of DAWSON as City Manager of CITY, as provided by Chapter 2.08 of Title 2 of the City of Moreno Valley Municipal Code; and

B. DAWSON desires to accept employment as City Manager in consideration of and subject to the terms and conditions set forth in this Agreement.

## **OPERATIVE PROVISIONS**

In consideration of the promises and covenants contained herein, the parties agree as follows:

### **1. Position, Term and Duties.**

1.1 **Position.** Without any impact upon employee benefit levels based upon her original date of hire with the City of Moreno Valley, DAWSON accepts employment with CITY as its City Manager and shall perform all functions, duties and services set forth in Section 1.4 [Duties] of this Agreement, Chapter 2.08 of Title 2 of the City of Moreno Valley Municipal Code, CITY ordinances, and state law. DAWSON shall provide services at the direction and under the supervision of the City Council of CITY.

### 1.2 **Term.**

A. The term of this Agreement shall commence on August 15, 2017 (Commencement Date), upon being executed by DAWSON and approved by the City Council.

B. To reflect the two year extension of the original employment contract, this Agreement will be in effect until May 15<sup>th</sup>, 2020, unless terminated earlier pursuant to the provisions of Section 4 (Termination) of this Agreement.

C. If either party desires not to extend or renew this Agreement upon expiration of its term, that party shall give written notice of intent not to extend or renew this Agreement no less than one hundred eighty (180) calendar days prior to expiration of its Term. If no such notice is given within such time period, this Agreement shall continue to be effective pursuant to its operative provisions, with the exception that the Term of the Agreement will not be for an additional three(3) years. Rather, this Agreement will continue in force on a day-to-day basis until the expiration of one hundred eighty (180) calendar days after either party does give written notice of intent not to further extend or renew this Agreement, or until it is amended or extended by the parties in writing, or until it is otherwise Terminated in accordance with the provisions of Section 4 (Termination).

D. This provision for a three (3) year Term shall not be construed to supersede, modify or limit DAWSON's status as an at-will employee of CITY, or the amount or conditions of severance compensation as provided in Section 4 (Termination).

**1.3 At-Will Employment.** DAWSON acknowledges that she is an at-will employee of CITY who shall serve at the pleasure of the City Council at all times during the period of her service under this Agreement. The terms and provisions of CITY's personnel rules, policies, procedures, ordinances and resolutions applicable to At Will employees shall also apply to DAWSON, and she shall be entitled to all benefits and rights afforded to other Executive Management (as defined in the City's Personnel Rules) of CITY, except to the extent provided by this Agreement, and, in the case of any conflict between this Agreement, and the Personnel Rules, policies, procedures, ordinances and resolution, the terms of this Agreement shall prevail. Notwithstanding the application of the City's Personnel Rules to this Agreement, and without limitation, DAWSON shall have no rights under sections 9, 10, 11 and 12 of the Personnel Rules. Nothing in this Agreement is intended to, or does, confer upon DAWSON any right to any property interest in continued employment, or any due process right to a hearing before or after a decision by the City Council to terminate her employment, except as is expressly provided in Section 4 [Termination] of this Agreement. Nothing contained in this Agreement shall in any way prevent, limit or otherwise interfere with the right of CITY to terminate the services of DAWSON as provided in Section 4 [Termination]. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of DAWSON to resign at any time from this position with CITY, subject only to the provisions set forth in Section 4 [Termination] of this Agreement. This at-will employment Agreement shall be expressly subject to the rights and obligations of CITY and DAWSON, as set forth in Section 4 [Termination] herein.

**1.4 Duties.** DAWSON shall serve as the City Manager and shall be vested with the powers, duties and responsibilities of the City Manager as set forth in the City's applicable ordinances and resolutions, and in Chapter 2.08 of Title 2 of the City of Moreno Valley Municipal Code, as may be amended from time to time, the terms of which are incorporated herein by reference. It is the intent of the City Council for the City Manager to function as the head of administration of the government of CITY under the direction and control of the City Council and be responsible for the efficient administration of all affairs of CITY which are under the control of the City Manager and to keep the City Council apprised of all significant issues affecting CITY. Toward that end, DAWSON shall report directly to the City Council and will periodically, or as may be specifically requested by the City Council, provide status reports to the City Council on her activities and those of CITY. Without additional compensation, DAWSON shall provide such other services as are customary and appropriate to the position of City Manager, including serving as Executive Director of the Moreno Valley Community Services District and the Moreno Valley Housing Authority, together with such additional services assigned from time to time by the City Council as may be consistent with California law and the City of Moreno Valley Municipal Code. DAWSON shall devote her best efforts and full-time attention to the performance of these duties.

**1.5 Hours of Work.** DAWSON shall devote the time necessary to adequately perform her duties as City Manager. The work schedule shall be the same as the schedule in place for all other Executive Managers of CITY, provided the schedule of such hours provides adequate availability to the City Council, City Staff, and members of the community during normal business hours and for the performance of her duties in conducting CITY business. It is recognized that the City Manager must devote time outside of the normal work schedule on CITY business and it is understood that DAWSON will make herself available to conduct CITY business outside of the normal work schedule as is reasonable and necessary. The position of City Manager shall be deemed an exempt position under applicable wage and hour law. DAWSON hereby acknowledges that she shall not be entitled to any

compensation for overtime.

1.6 **Professional Activity.** The City Council desires DAWSON to be reasonably active in national, statewide, regional and professional organizations that will contribute to City Manager's professional development and standing and that will contribute to the advancement of the CITY's interests and standing. Toward that end, DAWSON may, upon advance notice to the City Council, undertake such activities as are directly related to her professional development and that advance the interests and standing of the CITY. These activities may include, without limitation, participation in the California League of Cities, International City Management Association, or other similar national, statewide, regional or professional organizations, provided that such activities do not in any way interfere with or adversely affect her employment as City Manager or the performance of her duties as provided herein. CITY agrees to budget and pay for the reasonable dues and subscriptions of the City Manager necessary for her participation in such organizations. CITY agrees to reimburse DAWSON's reasonable and necessary travel, business and subsistence expenses for her activities as provided for in the City's Administrative Policies.

1.7 **Other Activity.** In accordance with Government Code Section 1126, during the period of her employment, DAWSON shall not accept, without the express prior written consent of the City Council, any other employment or engage, directly or indirectly, in any other business, commercial, or professional activity (except as permitted under Section 1.6 [Professional Activity], regardless of whether for pecuniary advantage, that is or may be competitive with the CITY, that might cause a conflict-of-interest with the CITY, or that otherwise might interfere with the business or operation of the CITY or the satisfactory performance of DAWSON's duties as City Manager.

## **2. Compensation.**

2.1 **Salary.** For all services performed by DAWSON as the City Manager under this Agreement, CITY shall pay DAWSON a salary of Two Hundred Sixty Eight Thousand Six Hundred Forty Five dollars (\$268,645.00) per year, plus all other compensation benefits afforded by CITY to other full time Executive Management employees. DAWSON shall be entitled to all cost of living and other salary and benefit adjustments implemented by the CITY as applicable to other full time Executive Management employees, to include City's employee furlough program and eligibility for Merit Increases (Section 3.3). The salary shall be paid bi-weekly according to the payroll schedule in place for CITY employees. All compensation and leave policies applicable to Executive Management employees as contained in CITY'S Personnel Rules and Regulations shall apply.

2.2 **Annual Leave.** All compensation and leave policies applicable to Executive Management as contained in the City's Personnel Rules and Regulations, Sections 7 and 14, shall apply. DAWSON shall annually accrue 376 hours of Annual Leave, allocated at a rate of 14.46 hours per pay period. Annual Leave shall be subject to CITY's Personnel Rules and Regulations as they apply to other Executive Management employees.

### **2.3 Automobile Allowance.**

A. DAWSON shall be entitled to an automobile allowance as compensation for the use of personal automobile(s) for CITY business as provided for in CITY policies. This monthly allowance shall equal the amount provided to other Executive Management employees, and is currently five hundred dollars (\$500.00) per month. In addition, DAWSON shall be entitled to excess mileage reimbursement according to adopted CITY policies for any qualifying trip in the course and scope of employment.

B. As provided in City Policy 6.25 (Section V), DAWSON is entitled to full use of a City vehicle in lieu of a monthly automobile allowance. Should DAWSON opt for a City vehicle, she will be responsible for all income tax liability associated with personal use.

### **3. Performance Evaluation.**

3.1 The City Council shall review and evaluate DAWSON's performance at least once annually. Said review and evaluation shall be in accordance with specific criteria developed jointly between DAWSON and the City Council. Said criteria may be added to or deleted from as the City Council may determine from time to time in consultation with DAWSON. Further, the Mayor shall provide DAWSON with a summary written statement of the findings of the City Council and provide an adequate opportunity for DAWSON to discuss said evaluation with the entire City Council.

3.2 Annually, the City Council shall define such goals and performance objectives which they determine necessary for the proper function of the City Manager's Office and in the attainment of City Council goals and objectives, and shall further establish a relative priority among the various goals and objectives, said goals and objectives to be reduced to writing. Any such goals or objectives shall generally be attainable within the time limitations as specified and within City Manager Department budgets.

3.3 CITY agrees to consider an increase to DAWSON's Salary [Section 2.1] during said Performance Evaluation; however, any increase to Salary [Section 2.1] shall be at the sole discretion of the City Council.

### **4. Termination.**

4.1 This Agreement may be terminated by DAWSON at any time upon 45 days written notice to the City Council. If such written notice is given, the City has the option to ask DAWSON to leave her position sooner than the expiration of 45 days, but, if it does so, the City will continue to honor its obligations under this Agreement until expiration of the 45-day period.

4.2 The City Council may terminate DAWSON'S employment, and this Agreement "without cause" at any time upon written notice upon affirmative vote by the majority of the members of the City Council. In the event DAWSON is terminated "without cause" or asked to resign during such time that DAWSON is willing and able to perform the Duties [Section 1.4] under this Agreement, then CITY agrees, upon receipt of a Comprehensive General Release and Settlement Agreement in the standard form signed by DAWSON, to pay DAWSON a lump sum cash payment equal to 12 months of Salary and benefits [Section 2.1] as severance pay.

4.3 The City Council may terminate DAWSON'S employment, and this Agreement "for cause" at any time upon written notice upon affirmative vote by no fewer than four (4) members of the City Council. "For cause" is defined as any of the following:

(i) an act in bad faith and to the detriment of the City; (ii) refusal or failure to act in accordance with any specific lawful direction or order of the City Council; (iii) unfitness or unavailability for service that exceeds thirty (30) consecutive calendar days and is not the result of any excused illness or medical condition; (iv) commission of an act involving moral turpitude or other acts which harm the reputation of or interests of the City; (v) habitual neglect of responsibilities, or incompetence; (vi) a conviction of a felony or other crime punishable by jail or imprisonment in the jurisdiction involved (or entry of a plea of guilty or *nolo contendere* with respect to any such crime); (vii) possession of, use of, or working while

under the influence of alcoholic beverages or other non-prescribed controlled substances or abuse/misuse of lawfully prescribed controlled substances during working hours; (viii) engaging in an actual conflict of interest; (ix) commission of acts of theft, embezzlement, or fraud; (x) acceptance of bribes or extortion; or (xi) material breach of this Agreement by DAWSON. If this Agreement is terminated by the City Council "for cause," DAWSON's employment shall be deemed immediately terminated and DAWSON shall surrender all CITY keys, computer passwords, and other CITY property entrusted to DAWSON for the purposes of the discharge of her duties. Upon termination for cause, DAWSON shall have no recourse under this AGREEMENT or any administrative procedure for purposes of challenging the termination action.

4.4 DAWSON shall receive a lump sum payout of any unpaid accruals of Annual Leave [Section 2.2] and Sick Leave upon termination of employment for any reason pursuant to CITY policies.

4.5 DAWSON shall not be entitled to any increases in Salary [Section 2.1], or benefits afforded by CITY to other Executive Management employees following the date of termination.

4.6 DAWSON'S employment and this Agreement shall terminate automatically upon DAWSON'S death. In this event, the City shall pay the beneficiary designated by DAWSON in writing, or in the absence of such designation, DAWSON'S estate, her accrued and unpaid compensation, and all accrued but unused benefits, if any, through the date of DAWSON'S death.

4.7 If DAWSON becomes disabled and requires accommodation to permit her to perform the essential functions of the position, the City shall provide reasonable accommodation if possible and unless doing so creates undue hardship for the City.

## **5. Proprietary Information.**

"Proprietary Information" is all information and any idea pertaining to any economic development engaged in or contemplated by the City (or any CITY affiliate), including marketing plans and development projects. Proprietary Information shall include, without limitation, trade secrets (as further defined in Uniform Trade Secrets Act, Civil Code §3426 et seq.), ideas, inventions, processes, formulae, data, know-how, software and other computer programs, copyrightable material, marketing plans, strategies, sales, financial reports, and forecasts. During her employment by CITY, DAWSON shall only use Proprietary Information for the benefit of CITY and as is or may be necessary to perform her job responsibilities under this Agreement. Following termination, DAWSON shall not use or disclose any Proprietary Information for the benefit of herself or any third party, except with the express written consent of CITY. DAWSON's obligations under this Section shall survive the termination of her employment and the termination of this Agreement.

## **6. Conflict Of Interest.**

DAWSON represents and warrants to CITY that she presently has no interest, and represents that she will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or interfere in any way with performance of her services under this Agreement.

## **7. General Provisions.**

7.1 **Vehicle Operation.** DAWSON shall operate any vehicle used in connection with the performance of her duties as City Manager in a safe manner and otherwise in observance of all established traffic safety laws and ordinances and shall maintain a valid California automobile's driver's license during the period of employment. In addition, DAWSON shall maintain in full force and effect during the Term of this Agreement, valid automobile liability insurance providing coverage for collision, personal injury and medical

reimbursement, in accordance with the City's Administrative Policy.

7.2 **Notices.** All notices, requests, demands and other communications under this Agreement shall be in writing and shall be effective upon delivery by hand or three (3) business days after deposit in the United States mail, postage prepaid, certified or registered, and addressed to CITY at the address below, and at the last known address maintained in DAWSON's personnel file. DAWSON agrees to notify CITY in writing of any change in her address during her employment with CITY. Notice of change of address shall be effective only when accomplished in accordance with this Section.

City's Notice Address: City of Moreno Valley c/o City Manager  
P.O. Box 88005 14177 Frederick Street Moreno Valley, California 92552-0805

City Manager's Address: Deliver to last updated address in personnel file

7.3 **Indemnification.** Subject to, in accordance with, and to the extent provided by the California Tort Claims Act [Government Code Section 810 *et seq.*] the CITY will indemnify, defend, and hold DAWSON harmless from and against any action, demand, suit, monetary judgment or other legal or administrative proceeding, and any liability, injury, loss or other damages, arising out of any act or omission associated with DAWSON's performance of functions, duties and services set forth in this Agreement.

7.4 **Bonding.** The CITY shall bear the full cost of any fidelity or other bonds required of the City Manager under any law or ordinance.

7.5 **Integration.** This Agreement is intended to be the final, complete, and exclusive statement of the terms of DAWSON's employment by CITY. This Agreement supersedes all other prior and contemporaneous agreements and statements, whether written or oral, express or implied, pertaining in any manner to the employment of DAWSON, and it may not be contradicted by evidence of any prior or contemporaneous statements or agreements. To the extent that the practices, policies, or procedures of CITY, now or in the future, apply to DAWSON and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control.

7.6 **Amendments.** This Agreement may not be amended, altered or modified, except in a written document signed by DAWSON, approved by the City Council and signed by the Mayor.

7.7 **Waiver.** Failure to exercise any right under this Agreement shall not constitute a waiver of such right.

7.8 **Assignment.** DAWSON shall not assign any rights or obligations under this Agreement. CITY may, upon prior written notice to DAWSON, assign its rights and obligations hereunder.

7.9 **Severability.** If a court holds any provision of this Agreement to be invalid, unenforceable, or void, the remainder of this Agreement shall remain in full force and effect.

7.10 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, with venue proper only in Riverside County, State of California.

7.11 **Interpretation.** This Agreement shall be construed as a whole, according to its fair meaning, and not in favor of or against any party. By way of example and not in limitation, this Agreement shall not be construed in favor of the party receiving a benefit or against the party responsible for any particular language in this Agreement. Captions are used for reference purposes only and should be ignored in the interpretation of the Agreement.

7.12 **Acknowledgment.** DAWSON acknowledges that she has had the opportunity to consult legal counsel in regard to this Agreement, that she has read and understands this Agreement, that she is fully aware of its legal effect, and that she has entered into it freely and voluntarily and based on her own judgment and not on any representations or promises other than those contained in this Agreement.

IN WITNESS WHEREOF, the CITY has caused this Agreement to be signed and executed on its behalf by its Mayor and duly attested to by its City Clerk, and DAWSON has signed and executed this Agreement, as of the date first indicated above.

\_\_\_\_\_  
Michelle Dawson

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Dr. Yxstian Gutierrez , Mayor

Approved as to form:

\_\_\_\_\_  
Pat Jacquez-Nares, City Clerk

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Martin D. Koczanowicz, City Attorney