

EMPLOYMENT AGREEMENT

CITY MANAGER

Second Amendment 04.16.19

This Second Amended Employment Agreement (hereafter referred to herein as "Agreement") supersedes First Amended Employment Agreement dated April 16, 2018, and is made and entered into this 16th day of April, 2019, by and between the City of Moreno Valley, California (hereafter referred to herein as "CITY"), a California municipal corporation and general law city, and Thomas DeSANTIS (hereafter referred to herein as "DeSANTIS"), an individual, on the following terms and conditions:

RECITALS

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

B. DeSANTIS 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 in place at the time of this appointment unless otherwise affected by this Agreement, DeSANTIS accepts employment with the 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. DeSANTIS shall provide services at the direction and under the supervision of the City Council of CITY.

1.2 **Term.** The term of this Agreement shall commence on April 16, 2019 (Commencement Date) and upon being executed by DeSANTIS and approved by the City Council and executed by the Mayor. Unless terminated pursuant to Section 4 below, this Agreement shall remain in effect until April 15th, 2021, with a one-year additional option subject to mutual consent of the parties to be agreed upon no later than 30 days before the expiration of the two-year term. The City Council shall hold the City Manager Evaluation/Unrepresented Employee Salary Negotiation closed session after January 1st, 2021 and prior to March 15th, 2021, at which time the parties shall discuss and decide whether or not to exercise the one-year extension option, or any other contractual arrangement for continued employment of the City Manager. Unless such option is exercised, this contract will terminate by its own terms on April 15th, 2021 and DeSANTIS' employment with the City will terminate without severance payment provided for in Section 4.2 below.

1.3 **At-Will Employment.** DeSANTIS acknowledges that he is an at-will employee of the CITY who shall serve at the pleasure of the City Council at all times during the period of his 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 DeSANTIS, and he 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, DeSANTIS 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 DeSANTIS 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 his 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 the CITY to terminate the services of DeSANTIS as provided in Section 4 [Termination]. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of DeSANTIS to resign at any time from this position with the 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 the CITY and DeSANTIS, as set forth in Section 4 [Termination] herein.

1.4 **Duties.** DeSANTIS 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 the CITY under the direction and control of the City Council and be responsible for the efficient administration of all affairs of the CITY which are under the control of the City Manager and to keep the City Council apprised of all significant issues affecting the CITY. Toward that end, DeSANTIS 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 his activities and those of the CITY. Without additional compensation, DeSANTIS 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. DeSANTIS shall devote his best efforts and full-time attention to the performance of these duties.

1.5 **Hours of Work.** DeSANTIS shall devote the time necessary to adequately perform his 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 his 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 DeSANTIS will make himself 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. DeSANTIS hereby acknowledges that he shall not be entitled to any compensation for overtime.

1.6 **Professional Activity.** The City Council desires DeSANTIS to be reasonably active in national, statewide, regional and professional organizations that will contribute to the City Manager's professional development and standing and that will contribute to the advancement of the CITY's interests and standing. Toward that end, DeSANTIS may, upon advance notice to the City Council, undertake such activities as are directly related to his 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 his employment as City Manager or the performance of his duties as provided herein. The CITY agrees to budget and pay for the reasonable dues and subscriptions of the City Manager necessary for his participation in such organizations. The CITY agrees to reimburse DeSANTIS' reasonable and necessary travel, business and subsistence expenses for his 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 his employment, DeSANTIS 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 DeSANTIS' duties as City Manager.

2. **Compensation.**

2.1 **Salary.** For all services performed by DeSANTIS as the City Manager under this Agreement, effective January 1st 2019, the CITY shall pay DeSANTIS a salary of Two Hundred Eighty Seven Thousand Seven Hundred Eighteen dollars and ninety cents (\$287,718.90) per year. 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 the CITY'S Personnel Rules and Regulations shall apply. DeSANTIS shall receive the 6% cost of living adjustment and the 3% VEBA benefit negotiated for the 2019-2021 MOU, and will not be entitled to other salary adjustments during the two-year term of the Agreement.

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. DeSANTIS shall accrue 376 hours of Annual Leave, allocated at a rate of 14.46 hours per pay period. Annual Leave shall be subject to the CITY's Personnel Rules and Regulations as they apply to other Executive Management employees, except that DeSANTIS may annually "sell back" to the CITY any part of his accrued Annual Leave, so long as such transaction does not deplete DeSANTIS' total accrued Annual Leave below 1000 hours.

2.3 **Automobile Allowance.**

A. DeSANTIS shall be entitled to an automobile allowance as compensation for the use of personal automobile(s) for CITY business as provided for in the 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, DeSANTIS 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), DeSANTIS is entitled to full use of a City vehicle in lieu of a monthly automobile allowance. Should DeSANTIS opt for a City vehicle, he will be responsible for all income tax liability associated with personal use.

3. Performance Evaluation.

3.1 The City Council shall review and evaluate DeSANTIS' performance at least once annually. Said review and evaluation shall be in accordance with specific criteria developed jointly between DeSANTIS 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 DeSANTIS. Further, the Mayor shall provide DeSANTIS with a summary written statement of the findings of the City Council and provide an adequate opportunity for DeSANTIS 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 the 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 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 DeSANTIS 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 DeSANTIS to leave his 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 DeSANTIS' 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 DeSANTIS is terminated "without cause" or asked to resign during such time that DeSANTIS is willing and able to perform the Duties [Section 1.4] under this Agreement, then the CITY agrees, upon receipt of a Comprehensive General Release and Settlement Agreement in the standard form signed by DeSANTIS, to pay DeSANTIS 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 DeSANTIS' employment, and this Agreement "for cause" at any time upon written notice upon affirmative vote by majority of the 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 DeSANTIS. If this Agreement is terminated by the City Council "for cause," DeSANTIS employment shall be deemed immediately terminated and DeSANTIS shall surrender all CITY keys, computer passwords, and other CITY property entrusted to DeSANTIS for the purposes of the discharge of his duties. Upon termination for cause, DeSANTIS shall have no recourse under this AGREEMENT or any administrative procedure for purposes of challenging the termination action.

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

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

4.7 If DeSANTIS becomes disabled and requires accommodation to permit him 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.

4.8 Council may not terminate this Agreement, other than for cause, within 90 days of any council member being seated on the Council.

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 the 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 his employment by the CITY, DeSANTIS shall only use Proprietary Information for the benefit of the CITY and as is or may be necessary to perform his job responsibilities under this Agreement. Following termination, DeSANTIS shall not use or disclose any Proprietary Information for the benefit of himself or any third party, except with the express written consent of the CITY. DeSANTIS' obligations under this Section shall survive the termination of his employment and the termination of this Agreement.

6. **Conflict Of Interest.**

DeSANTIS represents and warrants to the CITY that he presently has no interest, and represents that he 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 his services under this Agreement.

7. **General Provisions.**

7.1 **Vehicle Operation.** DeSANTIS shall operate any vehicle used in connection with the performance of his 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, DeSANTIS 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 the CITY at the address below, and at the last known address maintained in DeSANTIS' personnel file. DeSANTIS agrees to notify the CITY in writing of any change in his address during his employment with the 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 Attorney
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 81O et seq.] the CITY will indemnify, defend, and hold DeSANTIS 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 DeSANTIS' 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 DeSANTIS' employment by the 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 DeSANTIS, 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 the CITY, now or in the future, apply to DeSANTIS 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 DeSANTIS, 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.** DeSANTIS shall not assign any rights or obligations under this Agreement. The CITY may, upon prior written notice to DeSANTIS, 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.** DeSANTIS acknowledges that he has had the opportunity to consult legal counsel in regard to this Agreement, that he has read and understands this Agreement, that he is fully aware of its legal effect, and that he has entered into it freely and voluntarily and based on his 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 DeSANTIS has signed and executed this Agreement, on the date set forth below.

Date:

Thomas M. DeSANTIS

Dr. Yxstian A. Gutierrez, Mayor
City of Moreno Valley

Approved as to Form:

ATTEST:

Martin D. Koczanowicz, City Attorney

Pat Jacquez-Nares, City Clerk