

CITY MANAGER EMPLOYMENT AGREEMENT
BETWEEN DENISE A. RADDE AND CITY OF AVALON

This agreement, dated as of November 5, 2019, is between The City of Avalon (“Employer” or “City”) a municipal entity of the State of California Government Code, and Denise A. Radde (“Employee”) an individual. Employer and Employee agree to the following terms and conditions of employment.

1. Term of Employment. Employer shall employ Employee from the Effective Date of this Agreement for a term of two (2) years with one optional one (1) year renewal term. The Effective Date of this Agreement shall be September 17, 2019. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City of terminate the service of Employee at any time, subject only to the provisions set forth in Section 5 below.
2. Position and Responsibilities.
 - a. Position. Employee accepts employment with Employer as City Manager and City Clerk and shall perform all services appropriate to that position, as well as such other services consistent with the City Manager position as may be assigned by Employer. These duties include, but are not limited to, those set forth in the City of Avalon Municipal Code, the relevant portions of which are attached as Exhibit “A” to this Agreement. Employee agrees that she will be a full-time resident of the City for the term of this Agreement. Employee shall (1) have full authority over all City departments, and (2) shall have the authority to propose organizational changes to the City Council, except as otherwise provided by State law or the City Municipal Code, and shall devote her best efforts and full-time attention to the performance of her duties.
 - b. Other Activity. Employee (during her employment with Employer) shall not engage, directly or indirectly, in any other business, commercial, or professional activity (whether or not pursued for pecuniary advantage) that is or may generate financial or other conflict of interest with his position as City Manager or the appearance thereof. If Employee is not certain whether or not a particular proposed outside activity is permitted under this Agreement, she shall ask the City Council in writing for a determination thereon before engaging in the activity, and the City Council shall within thirty (30) day period shall be deemed approval.
3. Compensation and Benefits.
 - a. Compensation. Employer shall pay Employee a salary of On Hundred Ninety-Seven Thousand, Eighty Dollars (\$197,080) per year in accordance with Employer’s regularly established policies for payroll distribution. Employee will receive cost of living increases as may be provided to other City employees during the term of the Agreement. Employee is also eligible for merit increases during the term of this Agreement at the discretion of and as may be negotiated by

the City Council. In no event shall Employee's salary decrease during the terms of the Agreement unless specifically agreed to by Employee and the City.

- b. Benefits. Except as specifically set forth in this Agreement, Employee shall be entitled to receive benefits as provided to other management employees of the City as permitted by California Law and set forth in the Management MOU – adopted July 16, 2019.
 - i. Expenses. Employer shall reimburse Employee for reasonable travel and other business expenses incurred by Employee in the performance of her duties, in accordance with the Employer's policies, as they may be amended in Employer's sole discretion. Commuting to and from Avalon not directly related to City travel and meetings are not covered by the Employer's policies shall be borne solely by Employee.
 - ii. Professional Development. Employer agrees to budget and to pay Employee's travel subsistence expenses, subject to policies and procedures of Employer, for professional and official travel, meetings and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official and other functions for Employer, including but not limited to the LOCC Annual Conference and such other national, regional, state and local government groups and committees thereof which Employee serves as a member.
 - iii. Professional Membership. Employer agrees to budget and to pay for the professional dues and subscriptions necessary for Employee's continued and full participation in national, state, regional and local associations and organizations necessary and desirable for his continued professional participation, growth and advancement, and for the good of the Employer, including but not limited to membership in the ICMA and California Association for Local Economic Development.
 - iv. Electronic Equipment. Employer will purchase and provide Employee a cell phone and laptop computer sufficient to allow Employee to perform his functions and conduct City business, and will pay all costs associated with service for and reasonable maintenance of the cell phone and laptop computer. Employer specifically allows Employee to make reasonable personal use thereof. However, given that the cell phone and laptop are property of the Employer, Employee has no reasonable expectation of privacy in the contents thereof.
 - v. Audit of Paid Time Off. An audit will be conducted of the employees accrued paid time off over the course of her employment with the City. Any time not accounted for or not accrued do to hitting a maximum allocation will be transferred to as the Employees Health Retirement Fund.

4. Retirement Benefits.

- a. CalPERS. The Employer contracts with CalPERS for retirement benefits. Employee will be entitled to those benefits under the terms of the contract between the Employer and CalPERS. The applicable retirement formula will be determined by CalPERS after the Employer has enrolled Employee request for determination that she is "Classic" member and endeavor to treat him as same in terms of benefits provided in whatever way is legally possible. Employee shall complete the "Member Reciprocal Self-Certification Form" and submit the form to the Employer within 10 business days after employment has commenced.
- b. Healthcare Upon Separation or Retirement. Upon separation or retirement, the employee shall, maintain the same medical, dental, and vision retirement benefits up to the City paid maximum contribution or the premium of the health plan selected by the employee as compared to current active employees enrolled in the PERS Choice Blue Cross plan for Employees. Once a retiree becomes eligible for Medicare the City shall reimburse for the CalPERS supplemental medical premium for employee only coverage.

5. At-Will Employment.

- a. At-Will. Employer and Employee expressly agree that the employment relationship created by this Agreement is "At-will" and that Employee serves at the will and pleasure of the City Council. Nothing in this Agreement or in any statute, ordinance, or rule shall prevent, limit or otherwise interfere with the right of the City to terminate, without cause or right of appeal or grievance, the services of the Employee at any time except Employee shall not be terminated without cause without a four to one (4-1) vote of the City Council. Employee shall not be terminated without cause within a period of 120 days or ninety (90) days before a regular election in which a City Council is seated. If this Agreement is terminated by the City Council or employee, employee shall return to the position of City Clerk and Chief Administrative Officer with all salary, benefit and seniority rights intact and uninterrupted.
- b. By Employer Not for Cause. Employer may terminate Employee for any reason without cause, by providing Employee written notice and six (6) months salary. Salary shall be paid in regular pay increments. Notwithstanding the prior sentence, salary shall cease immediately upon Employee commencing new employment, which Employee will diligently seek. Employee is obligated to immediately notify the Mayor in writing upon finding new employment. Employer may discipline, demote or dismiss Employee as provided in this Section 5 notwithstanding anything to the contrary contained in or arising from any statements, policies, or practices of Employer relating to the employment, discipline, or termination of its employees.

- c. By Employee Not for Cause. At any time, Employee may terminate her employment with Employer for any reason by providing Employer ninety (90) days advance written notice. Employer shall have the option, in its complete discretion, to make Employee's termination effective at any time prior to the end of such notice period, provided Employer pays Employee all compensation due and owing through the last day actual worked, plus an amount equal to the base salary Employee would have earned through the balance of the above notice period, not to exceed ninety (90) days; thereafter, all of Employer's obligations under this Agreement shall cease.

Notwithstanding any other provision herein, in accordance with Government Code Section 53260, the cash payment that Employee may receive in the event of the termination of this agreement as set forth in shall not exceed an amount equal to the monthly base salary of Employee multiplied by the number of months left on the unexpired term of this Agreement, up to a maximum of 18 months.

- d. By Employer for Cause. Employer may immediately terminate this Agreement by providing Employee written notice of the cause for termination. Employee shall be entitled to a post-termination appeal before the City Council, or its designee, by delivering a request for appeal to the Mayor within ten (10) days of the date of the notice of termination. The sole purpose of the appeal hearing will be to determine whether there was cause for termination. All compensation shall immediately terminate upon the effective date of any for cause of termination.

For the purpose of this Agreement, termination shall be "for cause" if Employee: (i) refuses or fails to act in accordance with any specific, lawful, significant direction or order from the City Council; (ii) is convicted of a felony; (iii) willfully fails to perform the duties set forth herein; or (iv) is convicted of any criminal act involving fraud, malfeasance, or an act of misfeasance.

- e. Termination Obligations. Employee agrees that all property, including, without limitation, all equipment, tangible Proprietary Information (as defined below), documents, records, notes, contracts, and computer-generated materials furnished to or prepared by Employee incident to his employment belongs to Employer and shall be returned promptly to Employer upon termination of Employee's employment. Employee's obligations under this subsection shall survive the termination of his employment and the expiration of this Agreement. As required by Government Code Section 53243.2, any cash settlement related to the termination of Employee shall be fully reimbursed to Employer if the Employee is convicted of a crime involving an abuse of his office or position.
6. Evaluation. Employee will be evaluated on at least an annual basis by the City Council. Failure of the City Council to provide such evaluation shall not in any way limit the City Council's ability to terminate this Agreement pursuant to Section 5. At the annual evaluation, the City Council may consider adjustments to Employee's compensation including annual five (5) percent merit increase.

7. Indemnification. City shall to the fullest extent permitted by law indemnify and hold harmless Employee from and against any and all claims, actions, or causes of action of any kind for which Employee may be held liable and which arise out of or relate to Employee's performance of her job duties at City provided (1) Employee acted in good faith at all times and (2) Employee's actions, or failures to act, giving rise to the liability occurred within the course and scope of her employment at City.

In addition, City shall defend at City expense and with counsel of City's choosing any action, claim or proceeding in which Employee is named and which alleges action on the part of Employee, or failures to act, within the scope of the above-referenced indemnity obligations even if such action, claim, or proceeding is ultimately proved groundless.

8. Proprietary Information. "Proprietary Information" is all information and any idea pertaining in any manner to the business of Employer (or any Employer affiliate), its employees, clients, consultants, or business associates, which was produced by any employee of Employer in the course of his or her employment or otherwise produced or acquired by or on behalf of Employer. Proprietary Information shall include, without limitation, trade secrets, product ideas, inventions, processes, formulas, data, know-how, software and other computer programs, copyrightable material, marketing plans, strategies, sales financial reports, forecasts, and customer lists. All Proprietary Information not generally known outside of Employer's organization, and all Proprietary information so known only through improper means, shall be deemed "Confidential Information." During his employment by Employer, Employee shall use Proprietary Information, and shall disclose Confidential Information, only for the benefit of Employer and as is necessary to perform her job responsibilities under this Agreement. Following termination, Employee shall not use Proprietary Information and shall not disclose any Confidential Information, except with the express written consent of Employer. Employee's obligations under this Section shall survive the termination of her employment and the expiration of this Agreement.
9. Notices. Any notice or other communication under this Agreement must 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 Employer at the address below, or to Employee at the last known address maintained in Employee's personnel file. Employee shall be obligated to notify Employer in writing of any change in her address. Notice of change of address shall be effective only when done in accordance with this Section.

Employer's Notice Address:
Mayor, City of Avalon
PO Box 707
Avalon, CA 90704

Employee's Notice Address:
Denise A. Radde
PO Box
Avalon, CA 90704

10. Action by Employer. All actions required or permitted to be taken under this Agreement by Employer, including without limitation, exercise of discretion, consents, waivers and amendments to this Agreement, shall be made and authorized only by the City Council or by its representative specifically authorized in writing to fulfill these obligations under this Agreement.
11. Direction from City Council. Employee shall take direction as to matters of City business only from the City Council as a whole or from a duly authorized City Council member who has been granted the power by the City Council at a duly noticed and publicly held meeting to give direction to Employee.
12. Interpretation. This Agreement shall be constructed 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 not 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.
13. Employee Acknowledgement. Employee acknowledges that she has had the opportunity to consult legal counsel in regard to this Agreement, that she has read and understands this Agreement, and that she is 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.
14. General Provisions.
 - a. Entire Agreement. This Agreement constitutes the entire agreement between the parties. This Agreement may be amended in writing and signed by both Parties.
 - b. Severability. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.
 - c. Bonding. If applicable, the City shall bear the full cost of any fidelity or other bonds required of Employee in the performance of her duties as City Manager.
 - d. Modification. Any modification to this Agreement will be effective only if it is writing and signed by both Parties.

- e. Effect of Waiver. The failure of either Party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other Party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.
- f. Assignment. Neither this Agreement, nor any right, privilege nor obligation of Employee hereunder shall be assigned or transferred by her without the prior written consent of the City Council. Any attempt at assignment or transfer in violation of this provision shall, at the option of the City Council, be null and void and may be considered a material breach of this Agreement.
- g. No Presumption of Drafter. The Parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the Parties, and this Agreement reflects their mutual agreement regarding the subject matter of this Agreement. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any Party to be the drafter of this Agreement and, therefore, no presumption for or against validity or as to any interpretation hereof, based upon the identity of the drafter shall be applicable in interpreting or enforcing this Agreement.
- h. Assistance of Counsel. Each Party to this Agreement warrants to the other Party that it has either had the assistance of counsel in negotiation for, and preparation of, this Agreement or could have had such assistance and voluntarily declined to obtain such assistance.
- i. Governing Law. This Agreement shall be governed by and constructed in accordance with the laws of the State of California.
- j. Venue. The venue for any litigation to interpret or enforce this Agreement shall be in the Los Angeles Superior Court. The parties have duly executed this Agreement as of the date first written above.

Denise A. Radde

Denise A. Radde

THE CITY OF AVALON

By: Ann H. Marshall
Ann H. Marshall, Mayor
City of Avalon

APPROVED AS TO FORM

By: Scott Campbell
Scott Campbell, City Attorney
City of Avalon