

**EMPLOYMENT AGREEMENT  
INTERIM CITY MANAGER**

THIS AGREEMENT (“Agreement”) is entered into and is effective as of January 23, 2014 (“Effective Date”), by and between the CITY OF MARTINEZ, a municipal corporation (hereinafter referred to as "City"), and ANNA GWYN SIMPSON (hereinafter referred to as "Simpson" or “Employee”), with reference to the following facts:

**R E C I T A L S**

WHEREAS, prior to the Effective Date, Simpson was employed by the City as the City’s Deputy Director of Strategic Planning and Community Development (“DDSPCD”). As the DDSPCD, Simpson was entitled to the benefits afforded management employees under the Management Compensation Plan, except those benefits accorded to department heads.

WHEREAS, the City Council is desirous of employing Simpson to act as and perform the duties of the Interim City Manager.

WHEREAS, Simpson is agreeable to performing the duties of Interim City Manager under the terms and conditions of this Agreement.

WHEREAS, the City has adopted an ordinance establishing the City Manager form of government in the City of Martinez and setting forth the duties and responsibilities of the City Manager.

WHEREAS, it is the desire of the City and Simpson to enter into an Employment Agreement concerning compensation, benefits, terms and conditions of her employment as the Interim City Manager and to serve the following purposes:

A. To retain Simpson to perform services in a professional manner and to provide her compensation and employment benefits which will induce Simpson to remain in the employment of the City as Interim City Manager for the period of time specified herein;

B. To assure Employee that, except as provided hereinafter, upon her termination as Interim City Manager, she shall return to the performance of her duties as the Deputy Director of Strategic Planning and Community Development earning the same salary and enjoying the same benefits she earned and enjoyed, respectively, immediately prior to the Effective Date; and

C. To reserve to the City, however, a fair and just means of (i) terminating the employment of Employee as Interim City Manager in the event that Simpson, for any reason, becomes unable or unwilling to discharge fully the duties of the office of Interim City Manager, or (ii) terminating the employment of Simpson as Interim City Manager in the exercise of the right of the City Council to fill the position of City Manager as the Council sees fit, and in all events to be able to terminate Simpson's position as Interim City Manager at the will of the City Council when the position of City Manager is filled by a permanent employee or at any other time, with or without reason.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

## AGREEMENT

1. **EMPLOYMENT.** City hereby employs the Employee, and the Employee hereby accepts employment with the City in the position of Interim City Manager, on the terms and conditions and for the compensation herein set forth.
2. **SCOPE OF DUTIES AND SERVICES.**
  - a. Under the terms and conditions of this Agreement, Employee shall personally provide all the services and duties ordinarily performed by the City Manager for the City under the direction and control of the City Council and as set forth in the Martinez Municipal Code. Employee has the authority to interview, hire and fire employees, and direct the workforce subject to the specific limitations set forth in the Martinez Municipal Code. Employee shall perform her obligations and responsibilities diligently within the time parameters indicated by the City Council, applying the highest degree of professionalism, ethics, integrity and competency to the discharge of every aspect of her obligations.
  - b. Employee shall not engage in any activity which is or may become a conflict of interest, prohibited contract, or which may create an incompatibility of office as defined under California law. Employee shall comply fully with her reporting and disclosure obligations under regulations promulgated by the Fair Political Practices Commission ("FPPC").
  - c. Employee agrees to remain in the exclusive employ of the City during the term of this Agreement. Employee shall dedicate her full energies and qualifications to her employment as the Interim City Manager, and shall not engage in any other employment except as may be specifically approved in writing in advance by the City Council.
3. **TERM.** The term of this Agreement shall begin on the Effective Date and shall terminate on midnight, June 30, 2014 ("Expiration Date"); provided, however, that this Agreement may be terminated prior to said Expiration Date in accordance with the terms and conditions of this Agreement. Under no circumstances shall this Agreement be effective after the Expiration Date unless the parties agree in writing to extend this Agreement under terms and conditions mutually satisfactory to the parties.
4. **COMPENSATION.** For the services to be provided pursuant to this Agreement, Employee shall receive the following compensation:
  - a. Employee shall be provided the compensation and benefits offered to all other department heads as provided for in the Management Compensation Plan ("MCP"), except as modified and provided for herein. As used herein, benefits include but are not necessarily limited to, vacation, sick leave, holidays, administrative leave, retirement, health insurance, dental insurance, car allowance, long-term disability insurance, and life insurance. Employee shall not be compensated for any hours worked overtime because Employee is exempt from overtime under the Federal Fair Labor Standards Act.
  - b. Employee shall be paid a monthly salary of ten thousand eight hundred fifty dollars (\$10,850.00). Employee's salary shall be adjusted automatically in an amount equal to

any percentage adjustment provided to all other management employees of the City, as set forth in the MCP, during the term of this Agreement. Employee's salary may be additionally adjusted in accordance with and as part of Employee's performance evaluation by the City Council. Whether or not and the extent to which Employee's salary is adjusted by reason of said evaluation shall be left to the sole and unfettered discretion of the City Council. Employee's salary shall be payable at the same time as other management employees of the City and in accordance with established City procedures.

5. TERMINATION AND RESIGNATION. Notwithstanding anything to the contrary stated herein, the City Council has the right to terminate Employee at any time during the term of this Agreement with or without cause, and nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Council to terminate the services of Employee at any time without cause, subject only to the provisions set forth in this Section 5 and in Chapter 2.04 of the Martinez Municipal Code. The parties agree that Employee serves at the will of the City Council and that this Agreement and Chapter 2.04 (to the extent not inconsistent with this Agreement) contain all of the terms and conditions of Employee's employment. Employee waives any and all rights that she may have (i) to challenge or appeal any such termination or (ii) to invoke any due process (procedural or substantive) rights or protections as conditions to the City's right to terminate her employment hereunder.

a. Notwithstanding anything to the contrary stated herein, during the term of this Agreement, Employee may, upon giving the City 30 days' advance written notice, resign her position as Interim City Manager and return to the position of and be reinstated as the DDSPCD. Upon her reinstatement as the DDSPCD, she shall enjoy those benefits set forth in and be subject to the terms and conditions of the MCP as applicable to non-department heads.

1) In the event that Employee returns to the position of and is reinstated as the DDSPCD for any reason hereunder, Employee's salary and benefits shall be adjusted to match that which would have been in effect at the time she is so reinstated had she not entered into this Agreement and had, during the term of this Agreement, retained and performed the duties of her position as DDSPCD. Any benefits or rights that she enjoyed as the Interim City Manager under the MCP as a department head shall terminate upon her resumption of her DDSPCD position. Thus, for example, she will not be entitled to an auto allowance nor be entitled to any severance pay upon her reinstatement as the DDSPCD. Under such circumstances, it shall be presumed that during the term of this Agreement Employee did not and would have not received any salary increases as the DDSPCD as a result of any performance evaluations.

2) During the term of this Agreement, the DDSPCD position shall be considered a temporary position, and, in the event that Employee determines that said position should be filled in her absence, it shall be advertised as such. It shall have a term lasting no longer than June 30, 2014, and shall be terminable at will. The person ("hiree"), if any, hired to fill said temporary position, shall be informed that Simpson has the right to "bump" said hiree out of the DDSPCD position should Simpson's employment as Interim City Manager terminate and Simpson therefore be entitled to be reinstated to said DDSPCD position.

b. The City Council may terminate Employee's employment as the Interim City Manager upon 24 hours' advance written notice. Employee's employment as the Interim City Manager shall terminate on the Expiration Date unless, prior thereto, the parties renew or extend this Agreement in writing. Except as is provided hereinafter, upon the City Council's termination

of Employee's employment as Interim City Manager or immediately following the Expiration Date without this Agreement having been renewed or extended as aforesaid, Employee shall have the right to be reinstated to the position of DDSPCD under the same terms and conditions set forth in Section 5(a)(1) and (2), above.

c. If this Agreement is not extended or renewed beyond the Expiration Date or Employee is terminated by the City Council while she is still willing and able to perform the duties of Interim City Manager and Employee declines, in writing delivered to the City Council no later than the Expiration Date or ten (10) days after receiving the City Council's notice of termination pursuant to Section 5(b), respectively, to exercise her right to be reinstated to the position of DDSPCD and states in that writing that she intends to resign her employment as DDSPCD, she shall be paid severance in an amount calculated pursuant to the applicable provisions of the MCP (not counting time she was employed as the DDSPCD) or as provided in Cal. Gov't Code §53260(a), whichever is less. Said severance shall be paid pursuant to the MCP and payment thereof shall release the City from any further obligations under this Agreement, the MCP and any other employment Simpson enjoyed with the City. As a condition precedent to receiving payment of said severance pay, however, Employee shall sign an acknowledgement and release of claims against the City in a form that is substantially similar to Attachment A, which said form shall ultimately be subject to the approval of the City Attorney.

d. Notwithstanding the foregoing Section 5(c) to the contrary, if Employee is terminated as the Interim City Manager for any or all of the reasons set forth below, then: (i) she shall not be entitled to be reinstated as the DDSPCD, and (ii) she shall not be entitled to any severance pay.

- 1) conviction of any criminal offense involving moral turpitude, provided that Employee may be placed on administrative leave without pay should she be charged with such a crime or crimes;
- 2) willful destruction, theft, misappropriation, or misuse of City property;
- 3) intoxicification on duty, whether by alcohol or non-prescriptive drugs;
- 4) inexcusable absence;
- 5) dishonesty, fraud or misconduct in office;
- 6) fraud or dishonesty in securing this appointment;
- 7) violation of State or federal discrimination laws concerning race, religious creed, color, national origin, ancestry, physical or mental disability, marital status, sex or age concerning either members of the general public or City employees;
- 8) willful or unlawful retaliation against any other City official or employee or member of the general public who in good faith reports, discloses, divulges or otherwise brings to the attention of any appropriate authority any facts or information relative to actual or suspected violations of any law occurring on the job or directly related thereto; or
- 9) insubordination.

e. If, upon the termination of this Agreement, Employee receives any cash settlement from the City related to that termination, the Employee shall fully reimburse the City the amount of said cash settlement if the Employee is convicted of a crime involving an abuse of the office of Interim City Manager. Said reimbursement shall be paid to the City within thirty (30) days after said conviction becomes final and is no longer subject to any appeal.

6. BONDING. City shall bear the full cost of any fidelity or other bond required of Employee as the Interim City Manager under any law or ordinance.

7. PERFORMANCE EVALUATIONS. The City Council and Employee shall define such goals and performance objectives which they determine necessary for the proper operation of the City or the attainment of the City Council's policy objectives, and the City Council and Employee shall further establish a relative priority among those various goals and objectives to be reduced to writing. Said goals and objectives shall be consistent with and be included in the Council's Strategic Plan. These objectives shall be obtainable generally within the time limits as specified and within the annual operating budgets and appropriations provided. The achievement of these goals and performance objectives shall be considered part of Employee's performance duties. Within two months of the Effective Date of this Agreement, and periodically thereafter, the City Council shall evaluate the performance of the Employee.

8. GENERAL PROVISIONS.

a. Notices. Any notice to be given by either party to the other shall be in writing and shall be considered delivered when transmitted either by personal delivery or by mail, registered or certified, postage pre paid with return receipt requested and properly addressed as follows or by email and fax (if by email and fax, the notice shall be deemed received on the date sent provided that there is evidence that the notice was received on that date):

To City: Mayor & City Council City of Martinez  
525 Henrietta Street  
Martinez, CA 94553  
Email address: rob@schroderinsurance.com  
FAX: (925) 229 5012

To Employee: Anna Gwyn Simpson

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Any party may change her/its address for purposes of this section by giving the other party written notice of the new address in the manner set forth above.

b. Waiver. The waiver of any breach of any provision hereunder by either party to this Agreement shall not be deemed to be a waiver of any other provision or subsequent breach hereunder, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party marking the waiver.

c. Construction of Terms. The language of all parts of this Agreement shall be construed according to their plain meaning and shall not be construed for or against either party. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment or exhibits hereto.

d. Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be unenforceable, void or invalid, in whole or in part, for any reason, the remainder of this Agreement shall remain in full force and effect. In the event of such entire or partial invalidity, the parties hereto agree to enter into supplemental or other agreements to effectuate the intent of the parties and the purpose of this Agreement.

e. Controlling Law. This Agreement shall be construed in accordance with and governed by the laws of the State of California, with venue proper only in the County of Contra Costa, State of California.

f. Entire Agreement. This Agreement constitutes the entire Agreement between the parties pertaining to the employment of Employee by the City and supersedes all prior and contemporaneous agreements, representations, promises and understanding of the parties, whether oral or in writing. No supplement, modification or amendment of this Agreement shall be binding, unless executed in writing by all parties and this Agreement may not be altered, amended or modified by any other means. Each party waives their future right to claim, contend, or assert that this Agreement was modified, canceled, superseded or changed by any oral agreement, course of conduct, waiver, or estoppel.

g. Other Terms and Conditions of Employment. The Council, in consultation with the Employee, may fix any such other terms and conditions of employment relating to the performance of the Employee, provided the terms or conditions do not conflict with the provisions of this Agreement.

h. Exhibits. Attachment A is incorporated by reference.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first written above.

CITY OF MARTINEZ

By: \_\_\_\_\_  
Rob Schroder, Mayor

\_\_\_\_\_  
Anna Gwyn Simpson

## ATTACHMENT "A"

### ACKNOWLEDGMENT AND RELEASE

This is to confirm that on this date I have received severance pay in the amount of \$\_\_\_\_\_ pursuant to my employment with the City of Martinez, California.

1. I acknowledge that, in accepting such severance pay, I fully and forever release, discharge and covenant not to sue or otherwise institute or in any way actively participate in, or voluntarily assist in the prosecution of, any legal or administrative proceedings or inquiries against the City of Martinez, including without limitation, the City of Martinez's departments, commissions, agencies, boards, subsidiaries, related entities, and current or former officers, directors, elected and appointed officials, agents, employees, or assigns (hereinafter collectively referred to as "City"), with respect to any matter arising out of, connected with, or related in any way to my employment with the City.

2. This is a complete general release that will forever bar me and my heirs, executors, administrators, assignees, and successors from pursuing any claims against the City relating to my employment or the termination thereof. I understand and agree that I am waiving my rights I may have had, now have, or in the future may have, to pursue any and all remedies available to me, under any cause of action arising directly or indirectly from my employment with the City, including without limitation, claims of wrongful discharge, constructive termination, emotional distress, defamation, retaliation, breach of contract, breach of covenant of good faith and fair dealing, violation of the provisions of the California Labor Code, claims to unemployment benefits and compensation, claims to workers compensation, violation of the City's ordinances, regulations, resolutions, personnel rules and other City enactments; the Meyers-Milias Brown Act; violations of any memoranda of understanding covering me, and claims under Title VII of the 1964 Civil Rights Act; the Civil Rights Act of 1991; the California Fair Employment and Housing Act; the Americans with Disabilities Act and comparative state statutes and regulations; the Family Medical Leave Act and comparable state statutes and regulations; any and all state and federal whistle-blower statutes and/or freedom of speech causes of action; the California and United States Constitution; the Equal Pay Act of 1963; the Age Discrimination in Employment Act of 1967; the Older Workers Benefit Protection Act; the Civil Rights Act of 1866; and any other laws and regulations relating to employment and/or discrimination.

3. I understand and expressly agree that this release extends to all claims of every nature and kind, known or unknown, suspected or unsuspected, past, present, or future, arising from or attributed to my employment with the City, and that any and all rights under Section 1542 of the California Civil Code or any analogous state law or federal law or regulation are hereby expressly waived. Section 1542 of the Civil Code of the State of California reads as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release which if known to him must have materially affected his settlement with the debtor.”

4. The City and I agree and acknowledge that this Agreement constitutes the entire understanding and agreement of the parties and is the sole and entire agreement on this matter. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and no promises, inducements or agreements, other than those expressed herein, have been made in connection with this Agreement. The City and I further agree and acknowledge that this Agreement may not be modified except through a writing executed by the parties.

I have had the opportunity to consult with legal counsel relative to this Acknowledgment and Release. I have signed this letter voluntarily and willingly.

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Anna Gwyn Simpson