



**City Council Agenda
May 4, 2016**

To: Mayor and City Council
From: Jim Jakel, Interim City Manager
Subject: Appointment of New City Manager and Approval of Employment Agreement
Date: April 26, 2016

Recommendation

Motion to approve appointment of Brad Kilger as the new City Manager, approve the City Manager employment agreement, and authorize the Mayor to execute same.

Background

The City Council conducted interviews in January and February to fill the permanent City manager vacancy. After selecting Mr. Kilger as the top candidate, negotiations for the employment contract commenced. The process is complete and the agreement is before Council this evening for approval. The agreement specifies salary and benefit provisions and other terms and conditions of employment similar to those in previous agreements for City Manager.

Fiscal Impact

The sufficient funds for the City Manager's salary are currently appropriated in the City's FY 2015-16 operating budget. There is no impact to the General Fund.

Attachment

- Employment Agreement

APPROVED BY: 
Interim City Manager

**EMPLOYMENT AGREEMENT
CITY MANAGER**

THIS AGREEMENT (Agreement”) is entered into as of _____, 2016. by and between the CITY OF MARTINEZ, a municipal corporation (hereinafter referred to as “CITY”), and BRAD KILGER, (hereinafter referred to as “EMPLOYEE”), with reference to the following facts:

RECITALS

WHEREAS, the City Council is desirous of securing and retaining services of EMPLOYEE to act and perform the duties of the City Manager.

WHEREAS, EMPLOYEE represents that he is qualified to perform the duties and services of the position of City Manager and is agreeable to filling the position.

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 EMPLOYEE to enter into an Employment Agreement concerning compensation, benefits, terms and conditions of his employment as the City Manager and to serve the following purposes:

A. To retain EMPLOYEE to perform services in a professional manner and to provide his compensation and employment benefits which will induce EMPLOYEE to remain in the employment of the CITY as City Manager as specified herein;

B. To reserve to the CITY, however, a fair and just means of (i) terminating the employment of EMPLOYEE as City Manager in the event that EMPLOYEE, for any reason, becomes unable or unwilling to discharge fully the duties of the office of City Manager, or (ii) terminating the employment of EMPLOYEE as City Manager in the exercise of the right of the City Council to fill the position of City Manager as the City Council sees fit.

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 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, the City's Civil Service Rules and Regulations, Administrative Policies and applicable laws (collectively, "Applicable Laws"). EMPLOYEE shall perform his obligations and responsibilities hereunder in accordance with said Applicable Laws. EMPLOYEE shall perform his 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 his 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 his 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 his full energies and qualifications to his employment as the City Manager, and shall not engage in any other employment except as may be specifically approved in writing in advance by the City Council.
- d. To ensure that EMPLOYEE is able to effectively carry out his duties in a professional and forthright manner and implement the policies of the City Council impartially and equitably, the City Council and its members agree to the following: i) to spend time each year to work with EMPLOYEE and staff on setting goals and priorities for the City government, and to work on issues that may be inhibiting the maximal achievement of City goals, and ii) to adopt a set of communication protocols to assist in maximizing the effectiveness of City Council member interaction with one another, with EMPLOYEE and with City staff.
- e. The City Council acknowledges that EMPLOYEE is a member of the International City Management Association ("ICMA"). The parties mutually desire that EMPLOYEE be subject to and comply with the ICMA Code of Ethics (See Attachment). In that regard the EMPLOYEE shall comply with the ICMA Code of Ethics and the City Council agrees that neither the City Council nor any of its members will give EMPLOYEE any order, direction, or request that would require EMPLOYEE to violate the ICMA Code of Ethics.

3. TERM

This Agreement shall become effective _____ (“Effective Date”). Subject to City Council’s right to terminate EMPLOYEE’s employment at any time, as provided for in this Agreement, the term of this Agreement is three (3) years from the Effective Date, and may be extended for an additional term(s) as determined by mutual agreement in writing between the parties. No later than twelve (12) months prior to the expiration of this Agreement, the parties agree that they shall meet to discuss the renewal of the Agreement and the City Council within thirty (30) days of said meeting shall notify EMPLOYEE in writing (“Notice re Extension”) of its decision to extend or not extend the term of the Agreement. The City Council’s determination to not to extend this Agreement shall not entitle EMPLOYEE to severance pursuant to this Agreement; provided, however that should the City Council terminate this Agreement pursuant to Section 5(a) after the EMPLOYEE is given the Notice re Extension, EMPLOYEE shall be entitled to Severance pursuant to Section 5(a). Should the City Council fail to notify the EMPLOYEE of its intent to deny or extend the agreement pursuant to the provisions of this paragraph, this Agreement shall be automatically extended for one (1) additional year beyond the termination date.

4. COMPENSATION AND BENEFITS

For the services to be provided pursuant to this Agreement, EMPLOYEE shall receive the following compensation and benefits:

- a. MCP Benefits. EMPLOYEE shall be provided the benefits offered to all other executive management employees and discharge the obligations and duties imposed upon all other executive management employees as provided for in the Management Compensation Plan (“MCP”) as it may be amended from time to time, 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 (CITY currently pays 4% of EMPLOYEE’s share of CalPERS cost), health insurance, dental insurance, car allowance, long-term disability insurance, and life insurance. It is recognized that the CITY is interested in restructuring its retirement programs, including the CITY’s 4% employee contribution pick-up provision and may negotiate this in the future. EMPLOYEE shall not be compensated for any hours worked overtime because EMPLOYEE is exempt from overtime under the Federal Fair Labor Standards Act.
 - i. The parties acknowledge that the MCP is being amended at the time this Agreement is entered into. That amendment is likely to make the following changes, among others, to the salaries, benefits, and compensation of employees covered by the MCP, including EMPLOYEE: (aa) grant certain salary increases, (bb) require greater contributions by the said employees to pay for PERS premiums, and (cc)

modify the years of eligibility of longevity pay. As regards the salary increases the amended MCP may provide, EMPLOYEE shall not be entitled to the 3% COLA increase effective January 1, 2016, nor shall he be entitled to a one-time cash payment of \$750. EMPLOYEE shall be entitled to all the other benefits provided under the MCP and shall be obligated to comply with all of the duties and burdens the MCP imposes on employees covered by the MCP, unless otherwise provided for or amended by this Agreement.

- b. Base Salary. EMPLOYEE shall be paid an initial annual salary of two hundred and fifteen thousand dollars (\$215,000.00), furthermore:
 - i. The EMPLOYEE's salary shall be payable in installments as provided to other Employees of the CITY are so paid and in accordance with established CITY procedures. Except as EMPLOYEE's salary, compensation and other financial benefits may be increased or reduced by and/or under the MCP, except for a reduction of the salary, compensation or other financial benefits of EMPLOYEE in a percentage equal to or less than the average percentage reduction of the same benefit(s) imposed on all executive management employees of the City and except as is otherwise provided herein, the City Council may not, at any time during the term of this Agreement, reduce the salary, compensation, or other financial benefits of EMPLOYEE without EMPLOYEE's consent.
 - ii. The City Council agrees to annually consider increases in EMPLOYEE's base salary and/or other benefits of EMPLOYEE in such amounts and to such extent as the City Council in its sole discretion after consultation with EMPLOYEE may determine is justified based upon an annual performance review of EMPLOYEE. Increases may include additional compensation paid to EMPLOYEE's deferred compensation account.
 - iii. Notwithstanding EMPLOYEE's annual base salary as set forth herein, the annual salary of EMPLOYEE shall never be less than the annual base salary (excluding overtime, other pay or and any incentive compensation) of the CITY's next highest paid employee. In the event that a promotion, an adjustment to the salary table, or a general management salary reduction would result in EMPLOYEE being paid less than the next highest paid EMPLOYEE's annual base salary, EMPLOYEE's annual base salary will be set at the annual base salary of the CITY's next highest paid EMPLOYEE after action by the City Council at a public meeting.
 - iv. Increases in EMPLOYEE's salary which are approved by the City Council from time to time pursuant to this Agreement shall not require an amendment to this Agreement to be effective. Such may be set forth in an annual salary resolution or minute action approved by the City Council and ratified by

resolution; provided that a copy of said resolution or the minutes are filed in EMPLOYEE's personnel file or otherwise memorialized and reflected in his personnel file.

- c. Health and Other Insurance. The CITY agrees to make required health insurance coverage premium payments for EMPLOYEE and dependents, including insurance policies for accident, sickness, dental, optical, hospitalization, surgical and comprehensive medical insurance and any other benefits as provided to other executive management employees of the CITY. In addition the optical benefits provided by the CITY to the EMPLOYEE will also be made available to the EMPLOYEE's spouse. The CITY agrees to work with EMPLOYEE to coordinate the various health and other insurance benefits selected by EMPLOYEE and available through the CITY to insure that no exclusion, hiatus, or break in coverage occurs for EMPLOYEE and his family.
- d. Deferred Compensation. The CITY agrees to also contribute annually on behalf of the EMPLOYEE additional compensation in an amount equal to seven percent (7%) of the EMPLOYEE's annual base salary to the ICMA Retirement Corporation 401a Deferred Compensation Program, or other deferred compensation plan in equal installments at the same time other Employees are paid, commencing on date of employment. The CITY agrees to transfer ownership to succeeding employers upon separation of employment.
- e. Leaves. EMPLOYEE shall accrue, use and be paid vacation, administrative, sick and other leaves at the same rate and under the same terms and conditions offered to all other executive management employees, except as provided herein:
 - i. Vacation: EMPLOYEE shall accrue vacation leave at the initial rate of twenty-five (25 days) annually, which may be used, cashed out or deposited into a deferred compensation plan. The first annual allocation will be credited to the EMPLOYEE upon start of employment. EMPLOYEE shall not be required to utilize forty (40) hours of vacation during the preceding twelve (12) months prior to requesting buy back of vacation hours. Unused vacation leave shall be paid to EMPLOYEE at current rate of compensation upon separation of employment
 - ii. Administrative Leave: EMPLOYEE shall accrue administrative leave at the initial rate of one-hundred and twenty (120) hours annually. The first annual allocation will be credited to the EMPLOYEE upon start of employment. The first year shall be prorated based on the date of employment. Unused administrative leave shall be paid to EMPLOYEE at current rate of compensation upon separation of employment.
 - iii. Sick leave. The EMPLOYEE will be credited with forty (40) hours of supplemental sick leave upon commencement of employment.

- f. Professional Development. The City Council recognizes that it is in the best interest of the CITY and EMPLOYEE that EMPLOYEE enrich EMPLOYEE's professional development and represent the interests of the CITY by participating in various national, state, regional and local associations and organizations relevant to EMPLOYEE's profession and the interests of the CITY. Such activities will be considered part of EMPLOYEE's normal work activities. The organizations or associations may be selected by EMPLOYEE so long as the expenses do not exceed the budgeted amounts. The CITY therefore agrees annually to budget and pay for:
 - i. Professional dues and subscriptions on behalf of the EMPLOYEE, which are necessary for the EMPLOYEE's continuation and full participation in national, regional, state, or local associations and organizations necessary and desirable for the good of the CITY, and for the EMPLOYEE's continued professional participation and advancement.
 - ii. Travel and subsistence expenses of the EMPLOYEE to pursue official and other functions for the CITY, and meetings and occasions to continue the professional development of the EMPLOYEE, including, but not limited to, national, regional, state, and local conferences, and governmental groups and committees upon which the EMPLOYEE serves as a member.
 - iii. Travel and subsistence expenses of the EMPLOYEE for short courses, institutes and seminars that are necessary for the good of the CITY or for the professional development of the EMPLOYEE.
- g. Civic Clubs and Community Organizations. The CITY recognizes the desirability of representation in and before local civic and other organizations, therefore the EMPLOYEE is authorized and encouraged to become a member of civic clubs or organizations and the CITY agrees to pay membership dues as budgeted by the City Council.
- h. Automobile. The parties hereto recognize that the duties of EMPLOYEE may require EMPLOYEE to work long and irregular hours, as well as respond as needed during off-duty time, including weekends. In recognition of the foregoing, EMPLOYEE shall receive a car allowance of five hundred dollars (\$500.00) per month which amount shall be deemed to be adequate reimbursement for all costs associated with EMPLOYEE's work related use of EMPLOYEE's personal automobile. EMPLOYEE shall obtain and maintain throughout the term of this Agreement, comprehensive automobile liability insurance coverage for EMPLOYEE's use of personal vehicle used in connection with City-related business, in at least the following amount and naming the CITY as an additional insured: \$500,000 per person, \$1,000,000 aggregate for bodily injury and \$500,000 for property damage. Employee shall be personally responsible for the purchase and maintenance of said insurance. CITY will be responsible for

- reimbursing EMPLOYEE for any additional cost of adding the CITY as an additional insured to EMPLOYEE's automobile insurance policy. Within thirty (30) days after the Effective Date and annually thereafter, the EMPLOYEE shall provide the CITY with appropriate documentation showing the insurance described above, including but not limited to any additional coverage and CITY as an additional insured party.
- i. General Business and Work Related Expenses. General business expenses incurred by EMPLOYEE on a routine basis that are non-personal and work related, will be reimbursed to EMPLOYEE to the extent that they qualify for reimbursement under the adopted policies of the CITY and do not exceed the budgeted amounts. The CITY shall provide the EMPLOYEE a City credit card to charge appropriate and lawful business expenses.
 - j. Life Insurance. The CITY agrees to purchase and pay the required premiums for a term life insurance policy on the life of EMPLOYEE in the sum of \$300,000.00. This policy shall be owned by EMPLOYEE and paid for by the CITY.
 - k. Relocation Expenses. The CITY agrees to pay EMPLOYEE up to \$2,000 for the expenses of moving EMPLOYEE's personal property to Martinez.

5. TERMINATION – SEVERANCE PAY

It is understood by and between the parties to this Agreement that EMPLOYEE, in providing City Manager's duties to the CITY, serves at the pleasure of the City Council. EMPLOYEE may be terminated only by an affirmative vote of a majority of the City Council, convened in a Regular or Special Council meeting. Except as is otherwise provided herein, the City Council shall furnish EMPLOYEE with a written notice stating the City Council's intention to terminate his employment with the CITY at least 30 days before the effective date of his termination. Such vote shall not be taken within ninety (90) days after 1) any election to which a council member has been elected or, 2) a new council member has been appointed. Notwithstanding anything to the contrary stated in this Agreement, any severance paid to EMPLOYEE pursuant to this Agreement shall be the lesser of the amount calculated pursuant to Cal. Gov't Code section 53260(a) or the amount calculated pursuant to this Agreement.

- a. Termination Without Cause
 - i. In the event EMPLOYEE is involuntarily terminated by the City Council during such time that EMPLOYEE is willing and able to perform his duties under this Agreement, then, in that event, CITY agrees to pay EMPLOYEE a lump sum cash payment. If EMPLOYEE is involuntarily terminated in the first twelve months of this Agreement, said payment will include six (6) months of the base salary and all earned but unused sick leave, vacation, holidays, and other accrued benefits to date, calculated at the rate of pay in

effect upon termination. If EMPLOYEE is involuntarily terminated in the second twelve months of this Agreement or during any period thereafter, said payment will include twelve (12) months of the base salary and all earned but unused sick leave, administrative leave, vacation, holidays, and other accrued benefits to date, calculated at the rate of pay in effect upon termination. Said lump sum payments shall be referred to as "Severance."

- ii. Also, in such event, and in addition to the lump sum payments described in section 5(a)(i) above, CITY shall provide for continuance of the EMPLOYEE's health and life insurance benefits provided for under sections 4(c) and (k) for the same number of months for which the lump sum payments provided in section 5(a)(i) are paid, from and after the date of termination or until EMPLOYEE obtains other full-time employment, whichever first occurs.
 - iii. The term "Involuntary Termination" as used in this section includes any action by CITY resulting in: 1) EMPLOYEE'S discharge or dismissal by CITY as provided for in this section; 2) a reduction of the salary, compensation or other financial benefits of EMPLOYEE in a percentage greater than the average percentage reduction of the same benefit(s) imposed on all executive management employees of the City; 3) a material and significant reduction in the powers and authority of the City Manager, or the elimination of the City Manager's position; and 4) EMPLOYEE'S resignation following a formal demand by the City Council, approved by a majority vote of the City Council that the EMPLOYEE resign.
 - iv. Furthermore, in the event CITY refuses, following written notice of noncompliance, to comply with any material provision in this Employment Agreement benefiting EMPLOYEE, or EMPLOYEE resigns following a formal action by a majority of the City Council that EMPLOYEE resign, then, in that event, EMPLOYEE may, at EMPLOYEE'S option, be deemed to be "terminated" as of the date of such refusal to comply or suggestion to resign and the provisions of this Section shall be actuated.
 - v. In the event the EMPLOYEE dies while employed by the CITY under this Agreement, the EMPLOYEE'S beneficiaries or those entitled to the EMPLOYEE'S estate, shall be entitled to the EMPLOYEE'S earned salary, and any in-lieu payments for accrued benefits, including compensation for the value of all leave balances as provided for in this Agreement accrued to the date of his death.
- b. Termination With Cause

Notwithstanding any other provision of this Agreement to the contrary, if CITY terminates this Agreement (thereby terminating EMPLOYEE'S employment) with Cause, as determined by the affirmative votes of a majority of the members

of the City Council at a Regular or Special Meeting of the City Council, EMPLOYEE shall not be entitled to any additional compensation or payment, including Severance, but shall be entitled only to accrued Base Salary, leaves, and any other accrued and unused benefit allowances (up to the date of termination) according to their terms of this Agreement. As used in this Agreement, Cause shall only mean any of the following:

- i. Conviction of, or plea of guilty or no contest plea to, any crime or offense (other than minor traffic violations or similar offenses;
- ii. Proven failure of the EMPLOYEE to observe or perform any of his duties and obligations under this Agreement and/or the Applicable Laws, if that failure continues for a period of thirty (30) business days from the date of his receipt of written notice from the City Council specifying the acts or omissions deemed to amount to that failure;
- iii. Conviction of any crime involving an “abuse of office or position,” as that term is defined in Government Code Section 53243.4;
- iv. Repeated failure to carry out a clear and legally constituted directive or directives of the City Council made by the City Council as a body at a Brown Act-compliant meeting; and
- v. Any grossly negligent action or inaction by EMPLOYEE that materially and adversely impedes or disrupts the operations of CITY or its organizational units, is detrimental to employees or public safety; or violates CITY’s properly-established rules or procedures.

Furthermore, in the event the City Council terminates the EMPLOYEE for Cause, the CITY and the EMPLOYEE agree that neither party shall make any written or oral statements to members of the public or the press concerning the EMPLOYEE’s termination except in the form of a joint press release which is mutually agreeable to both parties. The joint press release shall not contain any text or information that would be disparaging to either party. Provided, however, that either party may verbally repeat the substance of any such press release in response to inquiries by members of the press or public.

c. Disability or Inability to Perform

In the event EMPLOYEE becomes disabled within the meaning of the Americans With Disabilities Act and/or the California Fair Employment and Housing Act and thereby mentally or physically incapable of performing his/her functions and duties with reasonable accommodations and it reasonably appears such incapability will last for more than six (6) months, the City Council may separate the employment of EMPLOYEE. In the event the City separates EMPLOYEE pursuant to this Section 5(c), the City shall pay EMPLOYEE Severance subject to

and except as is stated in the following conditions: (i) the amount of the Severance shall be calculated as of the date the City notifies EMPLOYEE of the City's determination to separate him; (ii) the only Severance that EMPLOYEE shall be entitled to is that set forth in Section 5(a)(i); (iii) EMPLOYEE shall not be paid nor shall he be entitled to be paid Severance in the event that EMPLOYEE is eligible to receive workers' compensation, State disability, disability insurance, PERS disability retirement and/or any other available disability benefits; (iv) if eligible for same, EMPLOYEE shall promptly apply for and diligently pursue workers' compensation, State disability and disability insurance benefits and the City shall promptly apply for and diligently pursue PERS disability retirement or any other disability benefits which it is authorized or required by law to apply for on behalf of EMPLOYEE; and (v) the City shall not be required to pay said Severance to EMPLOYEE unless and until all said disability benefits are applied for and pursued in accordance with this Section 5(c) and are denied.

d. Deferred Compensation Option

Notwithstanding the provisions of this Section, on separation from CITY employment for any reason, EMPLOYEE may choose to apply all unused accrued leave allowances provided in this Agreement to a deferred compensation plan. Accumulated leave balances shall be paid at EMPLOYEE'S monthly salary rate at the effective date of separation.

6. RESIGNATION

If EMPLOYEE voluntarily resigns from the position of City Manager, he will provide the CITY with a minimum of forty-five (45) days advance, written notice, unless the parties otherwise agree. During the forty-five (45) day period subsequent to said written notice of resignation, EMPLOYEE shall continue to discharge his duties as City Manager to the best of his ability, unless the City Council opts, in its sole discretion, to place EMPLOYEE on paid leave during all or any portion of said forty-five (45) day period.

7. BONDING

CITY shall bear the full cost of any fidelity or other bond required of EMPLOYEE as the City Manager under any law or ordinance.

8. PERFORMANCE EVALUATIONS

The Council shall annually review and evaluate the performance of the EMPLOYEE. The annual evaluation will be initiated in January of each year with the establishment of organizational goals and performance objectives as described herein in to coincide with the initiation of the annual budget process. EMPLOYEE's first performance evaluation shall occur no later than ninety (90) days after the Effective Date. The

EMPLOYEE's first evaluation will focus on defining such goals and performance objectives which the City Council and EMPLOYEE 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. 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. During EMPLOYEE's first evaluation, the City Council and EMPLOYEE shall also address communication protocols and other inter-relationship issues to assist in maximizing the effectiveness of City Council members' interaction with one another, with EMPLOYEE and with City staff. EMPLOYEE's performance evaluation may be facilitated by an outside consultant, as mutually determined by EMPLOYEE and the City Council. Further, the City Council shall provide the EMPLOYEE with a written summary statement of the evaluation and provide the EMPLOYEE an adequate opportunity to discuss EMPLOYEE's evaluation with the City Council in closed session and provide a written response if so desired by EMPLOYEE. The completed performance evaluation shall be signed by the City Council and EMPLOYEE.

9. HOURS OF WORK

EMPLOYEE shall devote his full time to his position as City Manager and shall generally work normal office hours. It is recognized that EMPLOYEE must devote a great deal of time outside the normal office hours to business or related business activities, meetings and functions of the CITY. Therefore, while EMPLOYEE shall spend sufficient hours on site to perform the City Manager's duties, EMPLOYEE has discretion over his work schedule and work location and will not be required to maintain a strict forty (40) hour-per-week on-site presence at City Hall and other City facilities and properties, and may be occasionally absent from City Hall and other City facilities and properties during normal business hours as is reasonable and appropriate.

10. INDEMNIFICATION

- a. The CITY shall defend, hold harmless, and indemnify EMPLOYEE against any tort, professional liability claim, or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of EMPLOYEE'S duties as City Manager. The CITY may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon. Said indemnification shall extend beyond termination or separation of employment, and the otherwise expiration of this Agreement, to provide full and complete protection to EMPLOYEE, by the City of Martinez, as described herein, for any acts undertaken or committed in EMPLOYEE'S capacity as City Manager, regardless of whether the notice or filing of a lawsuit for such tort, claim, demand or other legal action occurs during

or following EMPLOYEE'S employment with CITY.

- b. In the event that the EMPLOYEE shall serve as the chief executive of other City related legal entities, then each provision of this Section shall be equally applicable to each City related legal entity as though set forth in an indemnity Agreement between the EMPLOYEE and that legal entity. The CITY hereby guarantees the performance of this indemnity obligation by the CITY related legal entity, and shall indemnify and hold the EMPLOYEE harmless against any failure or refusal by CITY related legal entity to perform its obligations under this Section.
- c. Notwithstanding the foregoing, the CITY may, but shall not be required to, indemnify and/or defend the EMPLOYEE under the circumstances described and conditions set forth in Cal. Gov't Code ' ' 995.2, 995.4, 995.6, 995.8 and 995.9. Additionally, notwithstanding the foregoing, this Agreement shall not be deemed or construed to constitute a waiver of the rights the CITY possess under Cal. Gov't Code ' ' 825 and 818.

11. 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, overnight mail or by mail, registered or certified, postage pre- paid with return receipt requested and properly addressed as follows:

To CITY: Mayor & City Council
CITY of Martinez
525 Henrietta Street
Martinez, CA 94553

To EMPLOYEE: Brad Kilger
525 Henrietta Street
Martinez, CA 94553

Any party may change his/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 his/its 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
 - i. The CITY, in consultation with EMPLOYEE, may include in this Agreement any other term and condition of employment, as it may determine from time to time, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, CITY ordinances or any other Applicable Law.
 - ii. The CITY shall provide the EMPLOYEE with a private office, administrative assistants, staff, office equipment, necessary technological tools, including but not limited to computer, laptop computer, high-speed internet access, advanced cellular phone (smart phone), supplies, and all other facilities and services adequate for the performance of the EMPLOYEE's duties.
- h. Cash Settlements. 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 his office of 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.

- i. Recitals. The recitals are incorporated by this reference.
- j. Modifications. Any modifications to this Agreement shall be effective only if in writing and signed by both of the parties hereto.
- k. Binding. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of EMPLOYEE.
- l. Effective Date. This Agreement shall become effective on the date EMPLOYEE begins his employment with the CITY, which said date shall be noted in his personnel file and inserted in Section 3, above.

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

CITY OF MARTINEZ

By:

Rob Schroder, Mayor

Brad Kilger