



CITY OF MARTINEZ

**CITY COUNCIL AGENDA
October 17, 2007**

TO: Mayor and City Council
FROM: Don Blubaugh, City Manager
SUBJECT: Approve an Employment Agreement for Chief of Police
DATE: October 5, 2007

RECOMMENDATION:

Approve the attached employment agreement with Tom Simonetti to serve as the City's Chief of Police, effective January 1, 2008.

DISCUSSION:

On October 3, 2007, the City Council announced its selection of Commander Tom Simonetti as Police Chief for Martinez effective January 1, 2008. During the later phases of the selection process you directed that Mayor Schroder and I negotiate an employment agreement. This process has been completed and the attached agreement is now ready for Council approval.

The agreement sets forth a three year term, specifies salary and benefit provisions and other terms and conditions of employment similar to those in previous contracts Council had with retiring Chief Dave Cutaia. The agreement has been reviewed by the City Attorney.

FISCAL IMPACT:

The funds for the position are appropriated in the Police Department section of the City budget.

ACTION:

Motion to approve employment agreement for Tom Simonetti to serve as Chief of Police effective January 1, 2008.

Attachment

**EMPLOYMENT AGREEMENT
FOR THE
CHIEF OF POLICE**

THIS AGREEMENT made and entered into as of the ____ day of October, 2007, by and between the City of Martinez ("Employer" or "City") and Tom Simonetti ("Employee"), pursuant to these terms and conditions:

SECTION 1. DUTIES

- A. Employer hereby agrees to employ Employee as Chief of Police of said City to perform the functions and duties of a Chief of Police as specified under the law, the City's Municipal Code and other City policies and rules, and to perform other legally permissible and proper duties and functions as the City Manager and/or City Council shall from time to time assign. Employee agrees to accept said employment and shall perform said functions and duties in a professional and competent manner entirely satisfactory to the City Council.
- B. The Employer agrees that the said Employee, working under the administrative direction of the City Manager, shall be the chief administrative officer of the Police Department and that, in keeping with sound administrative and governmental practice, no other employee of the City of Martinez or elected official shall direct, give orders to, or in any way interfere with the subordinates of the Chief of Police, except that in an emergency the City Manager, or his/her designee may direct members of the police Department. The Employer further agrees that the Chief of Police shall have all powers, authority and duties enumerated to him by any charter, law, ordinance, resolution or rule.

SECTION 2. TERM

- A. Employee shall serve as Chief of Police commencing on January 1, 2008, and continuing up through December 31, 2010, at which time Employee's employment with the City shall terminate. During the term of this Agreement, Employee shall serve at the will of the Employer. Should both Employer and Employee desire a continuation of employment, beyond December 31, 2010, a new and separate agreement must be negotiated. The parties, however, are under no obligation to negotiate such an Agreement.
- B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City to terminate the services of the Employee at any time, with or without advance notice, subject only to the provisions set forth in Section 6 of this agreement.
- C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the

right of the Employee to resign at any time from this position with the City, subject only to the provisions set forth in Section 6 of this Agreement. Employee agrees to give Employer ninety (90) days advance written notice of the date Employee's resignation will become effective.

SECTION 3. COMPENSATION

For the services to be provided pursuant to this Agreement, Employee shall receive the following compensation:

- A. **Salary.** Employee shall be paid an annual salary of \$148,000.00 commencing on 01/01/2008. In addition, Employer agrees to increase said annual salary, subject to satisfactory job performance as determined in the sole discretion of the City Council, and further agrees to the following annual salary amounts:
- 01/01/2009 thru 12/31/2009 - \$156,500.00
 - 01/01/2010 thru 12/31/2010 - \$165,000.00

Notwithstanding the above to the contrary, Employee's salary shall at all times be at least 10% above the base salary of the highest paid sworn employee within the Martinez Police Department (excluding Employee.)

In addition, beginning January 1, 2009, Employer agrees to increase the salaries listed above in accordance with the same cost of living adjustments as other employees covered under the Management Compensation Plan – Division A – Non-Sworn Employees.

- B. **Benefits.** Employee's benefits and leave accruals shall be governed by the Management Compensation Plan - Division B - Sworn Employees, subject to the exceptions described in the following subsections and any other provision in this Agreement that may be inconsistent with the terms of the Management Compensation Plan - Division B - Sworn Employees.
1. Employee shall not be entitled to Longevity Pay.
 2. Employee shall not be entitled to Educational Pay.
 3. Employee shall be entitled to Holiday Pay.

In addition, City shall pay, subject to budget appropriations, for the professional dues and subscriptions as necessary for Employee to participate and continue in national, state, regional and local associations and organizations necessary and desirable for the Employee's professional growth and advancement, and for the good of the City, including but not limited to the International Association of Chiefs of Police, the California Police Chief's Association and the Contra Costa County Chief's Association.

SECTION 4. AUTOMOBILE

Employee shall be provided an automobile by the City to be used by Employee in the performance of his duties. Employee may use the vehicle to commute to and from his home. City shall be responsible for the purchase, operation, maintenance, repair, replacement and all necessary insurance for said automobile. Employee is responsible for any tax obligations that may accrue from the provision of a vehicle.

SECTION 5. PEACE OFFICER STATUS AND BENEFITS

- A. Employee shall retain his peace officer status under the laws of the State of California during the term of this Agreement. Except to the extent inconsistent herewith and as provided in subsections B through D below, Employee shall receive the benefit of all laws, statutes, regulations, and entitlements accorded to peace officers of like rank by the State.
- B. In the event that Employee invokes any rights which he may have to appeal any punitive action imposed by the City under the California Public Safety Procedural Bill of Rights Act, said appeal shall be heard by a neutral party. Said neutral party shall be selected as follows: five (5) names will be solicited from the Federal Mediation Service of persons who provide arbitration and labor mediation services in the Northern California area. Starting with the City, the City shall have the right to strike one name from the list of five (5), then the Employee shall be entitled to strike a name, and they shall alternate their rights to strike a name until there is only one person's name left. That person shall act as the neutral party to hear the appeal, if any, invoked by Employee hereunder.

At the appeal, the only issue that the neutral party shall be entitled to address is whether or not the action of the City in punishing the Employee was a gross abuse of discretion and had no basis in fact. Even if the neutral party determines that the Manager's or Council's action in punishing Employee was a gross abuse of discretion and had no basis in fact, the neutral party's determination shall be advisory only and shall in no way be binding upon the City or the City Council. The City Council shall in its sole and unfettered discretion make the final determination of the issues raised by Employee's appeal. The City Council's final decision shall be binding upon both parties.

- C. Notwithstanding anything to the contrary stated herein, under no circumstances shall City's termination of Employee be considered "punitive" and if City so terminates Employee, Employee waives any and all procedural or substantive rights he may have to challenge, contest, set aside, or annul (1) said termination, (2) the procedures or lack of procedures followed in terminating Employee, and/or (3) the reasons or lack of reasons, including but not limited to those rights granted under the State and Federal Constitutions, the Martinez Municipal code, other City regulations and the California Public Safety Officers' Procedural Bill of Rights Act.

- D. The appellate rights provided for in this section and the termination provisions of this section supersede any and all regulations, rules, agreements, or any other employee rights or privileges provided by the City and which may or may not be applicable to the termination or appellate rights of Employee.

SECTION 6. TERMINATION OF AGREEMENT

The City and Employee understand and mutually agree the Employee's employment is "at will" and that this Agreement and Employee's employment may be terminated with or without cause.

- A. In the event that the City terminates this agreement without cause prior to its expiration, then the Employee shall be entitled to severance pay of a lump sum payment equal to six (6) month's base salary, payable within thirty (30) days of the date of termination, subject to restrictions set forth in Government Code Section 53260. The Employee hereby agrees that he shall accept such payment as full compensation due from the City as severance pay in exchange for a full and complete release of the City, its agents, employees, attorneys, City Council members, or representatives of any kind or nature, from any and all liability or claims of any type or nature relating to the Employee's employment and/or termination of same. Said payment of severance pay shall be in addition to any accrued and unused vacation leave, administrative leave or sick leave, if any, due to the Employee upon his severance or retirement from City service, subject to the City's personnel rules and regulations regarding such leave. Employee shall be allowed to sell back all of his above, unused leave as provided for in the Management Compensation Plan - Division B - Sworn Employees.
- B. This Agreement shall terminate and City shall not be obligated to make any severance payment upon any of the following events:
1. Employee's willful or intentional failure to perform in accordance with his obligations under this Agreement and/or the City's Municipal code or with lawful directives approved by a majority of the City Council regarding Employee's job performance;
 2. Employee's death;
 3. Employee's mental incapacity or inability to perform his duties hereunder due to physical or mental disability, for a period of sixty (60) days, as determined by a mutually agreed upon medical doctor;
 4. Willful destruction, theft, misappropriation or misuse of City property;
 5. Intoxication on duty, whether by alcohol or non-prescriptive drugs;
 6. Inexcusable absence;
 7. Conviction of a felony or conviction of a misdemeanor; provided that Employee may be placed on administrative leave without pay should he be charged with such a crime or crimes;
 8. Dishonesty, fraud or misconduct in office;
 9. Violation of any conflict of interest laws or regulations;

10. Fraud or dishonesty in securing this appointment;
11. Political activity involving the support of or opposition to candidates for the City Council of the City of Martinez;
12. 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 employee(s); or
13. 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.

Nothing in this section shall preclude the termination of this Agreement by mutual consent of both parties hereto. Nothing in this Agreement shall preclude the City Council from placing Employee on paid, administrative leave.

SECTION 7. OTHER TERMS AND CONDITIONS

- A. Employee shall be subject to all City's laws, rules, regulations and policies that are not inconsistent with the terms of this Agreement applicable to all other employees of the City.
- B. Employee shall not engage in any employment, activity or enterprise which is inconsistent, incompatible or in conflict with or inimical to the Employee's duties as Police Chief. The Employee shall not engage in any outside employment without the express approval of the City Council.
- C. City agrees that it will defend, hold harmless and indemnify Employee from any and all demands, claims, suits, actions and legal proceedings brought against Employee in his official capacity as agent and employee of City, or for any acts, errors or omissions in his personal capacity arising out of the scope and duration of his employment with City, subject to Government Code Section 825 and as otherwise permitted by law
- D. The City Council, in consultation with the City Manager, shall fix any such other terms and conditions of Employee's employment, as it may determine from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, City ordinance or law.
- E. City shall not at any time during the term of this Agreement reduce the salary, compensation or other financial benefits of Employee, except to the degree of such a reduction across-the-board for all management employees of the City.

F. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

G. Employee's duties and obligations under this Agreement are personal and not assignable.

SECTION 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 whether by personal delivery or by mail, registered or certified, postage pre-paid with return receipt requested and properly addressed as follows:

Employer: Rob Schroder
Mayor
City of Martinez
525 Henrietta Street
Martinez, CA 94553-2394

With a copy to:

City Manager
City of Martinez
525 Henrietta Street
Martinez, CA 94554-2394

Employee: Tom J. Simonetti
Chief of Police
City of Martinez
525 Henrietta Street
Martinez, CA 94553-2394

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial process. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the United States Postal Service as specified above, provided that the return receipt is acknowledged by the recipient.

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 making 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 or 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 estoppels.

IN WITNESS WHEREOF, the City of Martinez has caused this Agreement to be signed and executed in its behalf by its Mayor, and the Employee has signed and executed this Agreement, on the day and year first written above.

EMPLOYER
CITY OF MARTINEZ

EMPLOYEE

By: _____
Rob Schroder, Mayor


Tom J. Simonetti

APPROVED AS TO FORM:

City Attorney