



**CITY OF MARTINEZ**

**CITY COUNCIL AGENDA  
July 11, 2012**

**TO:** Honorable Rob Schroder, Mayor and City Council  
**FROM:** Jeffrey A. Walter, City Attorney  
**SUBJECT:** Extending the City Manager’s Contract for Two (2) Years  
**DATE:** July 5, 2012

**RECOMMENDATION:**

Pursuant to this Council’s action on June 27, 2012, to extend the City Manager’s contract for two (2) years, it is recommended that the Council formally approve the memorialization of that action which is attached hereto as an “Extension Agreement for Professional Services/City Manager”.

**BACKGROUND**

On June 27, 2012, the Council, in open session, moved to extend the City Manager’s contract for two (2) years subject to certain conditions. The City Council directed the City Attorney’s Office to draft an agreement memorializing said terms and conditions. Attached as **Exhibit A** is a proposed “Extension Agreement for Professional Services/City Manager” setting forth the terms and conditions under which said extension is being agreed to.

In addition to the terms and conditions specified by the City Council on June 27, 2012, the attached extension agreement includes a paragraph 4. That paragraph reads:

“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.”

This provision is mandated by new legislation, which became effective January 1, 2012, reflecting the State Legislature’s reaction to the City of Bell scandals.

Attached as **Exhibit B** is a true and correct copy of the original City Manager’s contract.

**ACTION:**

Motion approving the attached extension agreement for the City Manager and authorizing the Mayor to execute same.

Attachments:

- Exhibit A: Extension Agreement for Professional Services/City Manager dated June 27, 2012
- Exhibit B: Agreement for Professional Services - City Manager dated May 27, 2008

## Exhibit A

### **EXTENSION AGREEMENT FOR PROFESSIONAL SERVICES/CITY MANAGER**

**THIS AGREEMENT** is entered into on this 27th day of June, 2012, by and between the City of Martinez (hereinafter “City”) and Phillip A. Vince (hereinafter “Employee”) at Martinez, California, with reference to the following facts:

A. Pursuant to an Agreement for Professional Services – City Manager dated May 27, 2008 (hereinafter “the Original Agreement”), Employee was retained as the City’s City Manager for a 4-year term commencing July 7, 2008; and

B. The parties have agreed to extend the Original Agreement for an additional two (2) years on the terms and conditions specified herein below.

**NOW, THEREFORE**, in consideration of the above recitals and of the mutual promises and conditions of this Agreement, it is agreed as follows:

1. Section 4 of the Original Agreement is amended to read as follows:

The term of the Employee’s employment as the City Manager shall be extended to midnight, July 7, 2014 (“Expiration Date”). Under no circumstances shall this Agreement and Employee’s employment with the City as its City Manager be effective beyond the Expiration Date unless the City Council, in its sole discretion, exercises an option to extend same for up to two (2) additional years. Any such extension agreement must be in writing and subject to terms and conditions mutually satisfactory to the parties. Should the City Council wish to extend the term of this Agreement beyond the Expiration Date, it must exercise its option to do so, in writing, by no later than May 7, 2014.

2. Section 5(a) of the Original Agreement is amended to read as follows:

a. Employee shall be provided the compensation and benefits offered to all other management employees and discharge the obligations and duties imposed upon all other management employees as provided for in the Management Compensation Plan (“MCP”), except as modified and provided for herein.

3. Section 12(h) is added to the Original Agreement to read as follows:

h. 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.

4. This Agreement shall become effective on July 7, 2012.

5. Except as expressly amended above, the Original Agreement shall remain in full force and effect.

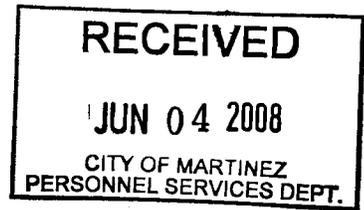
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first written above.

CITY OF MARTINEZ

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

EMPLOYEE

\_\_\_\_\_  
Phillip A. Vince



AGREEMENT FOR PROFESSIONAL SERVICES  
CITY MANAGER

**THIS AGREEMENT** is entered into this 27 day of May 2008, by and between the CITY OF MARTINEZ (herein "City") and Philip A. Vince (herein "Employee") at Martinez, California, with reference to the following facts:

- A. City desires to retain a person to fill the position of City Manager; and
- B. Employee represents that he/she is qualified to perform the duties and services of the position of the City Manager and is desirous of filling said position.

**NOW, THEREFORE**, in consideration of the above recitals and of the mutual promises and conditions of this Agreement, **IT IS AGREED** as follows:

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
2. compensation herein set forth.
3. **SCOPE OF DUTIES AND SERVICES**. 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 his/her obligations and responsibilities diligently within the time parameters indicated by the City Council, applying the highest degree of professionalism, ethics, integrity and good workmanship to every aspect of his/her obligations.
4. **TERM**. The term of this Agreement shall begin as of July 7, 2008, ("commencement date"), and shall terminate four years thereafter ("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 for more than four years after the commencement date unless the parties agree in writing to extend this Agreement under terms and conditions mutually satisfactory to the parties.
5. **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 management employees as provided for in the Management Compensation Plan (MCP), except as modified and provided for herein.
- b. Salary. Employee shall be paid an annual salary of one hundred ninety four thousand dollars (\$194,000). 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. 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 annual 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
- c. Benefits. During the term of this Agreement, City shall provide Employee the following benefits.
  - (1) Term Life Insurance benefits in the amount of two times Employees annual base salary up to a maximum of Three Hundred Thousand Dollars (\$300,000.00).
- d. Leaves (vacation, sick, personal). Employee shall accrue, use and be paid vacation, sick and other leaves at the same rate and under the same terms and conditions offered to all other management employees; provided however, that Employee shall annually earn twenty (20) days vacation until he/she reaches a number of years of service which would entitle Employee to earn in excess of twenty (20) days of vacation. In addition, employee will annually earn fifteen (15) days of executive leave. The employee will commence employment with a balance of five (5) days sick leave.
- e. Professional Development. Subject to available funding, the City agrees to budget and to pay the professional dues and subscriptions on behalf of the Employee which are reasonably necessary for the Employee's continuation and participation in the International City Manager's Association, the City Manager's Department of the League of California Cities, and other professional associations as the Council deems necessary and desirable for the Employee's continued professional participation, growth and advancement, or for the good of the City. Subject to available funding, City shall budget and pay for the professional dues and subscriptions to such additional organizations as approved by the City Council. Subject to

available funding, the City agrees to budget and to pay the travel and subsistence expenses of the Employee for official travel, meetings, and occasions reasonably adequate to continue the professional development of the Employee and reasonably pursue necessary official and other function for the City.

5. **GENERAL EXPENSES.** City recognizes that certain expenses of a non-personal and job-affiliated nature will be incurred by Employee. City hereby agrees to reimburse Employee or pay for all budgeted or approved general expenses upon receipt of duly executed expense or petty cash vouchers, receipts, statement, or personal affidavits pursuant to City policy. General expenses shall be budgeted annually and are at the discretion of the City Council.
  
6. **AUTOMOBILE.** The parties hereto recognize that the duties of City Manager may require Employee to work long and irregular hours, as well as respond as needed during off-duty time. 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 coverage for Employee's personal vehicle used in connection with City-related business in at least the following amount and naming the City as an additional insured: \$1million combined single limit per accident for bodily injury, death and property damage. Employee shall be personally responsible for the purchase and maintenance of said insurance and shall annually provide the City a certificate and endorsements showing that the above-described insurance is in effect, the City is a named additional insured, the insurance is primary and the insurance cannot be cancelled without giving the City thirty (30) days' advance written notice.
  
7. **TERMINATION.** 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 8 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 contains all of the terms and conditions of Employee's employment. Employees waives any and all rights that she/he 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 his/her employment hereunder.

- a. **Termination Without Cause = Severance Pay.** In the event that the City Council terminates Employee's employment for any reason other than for cause, then, the City shall continue, for nine (9) months after Employee's termination is effective, at the time and under those conditions applicable to other management employees, to pay Employee his/her base salary and provide his/her benefits which the City is offering to Employee as of the date termination notice is delivered to him/her . During said nine (9) month period, Employee shall not be entitled to any increase in salary or benefits. Notwithstanding the foregoing to the contrary, during said nine (9) month period, (i) the City shall not continue providing life insurance benefits to Employee pursuant to section 4(c); (ii) Employee shall not accrue any additional leaves under section 4(d); and (iii) the City shall make no payments nor budget any sums under sections 4 (e), 5 and 6.
- b. **Other Employment Within Said Nine (9) Months.** In the event that Employee obtains any other full time employment similar to that describe herein within said nine (9) months period, then the City's obligations set forth in subsection 8 (a) shall thereupon cease, and Employee shall reimburse City any amount which City pays to Employee [ or the value of any benefits which City provides or pays for ] beyond the commencement date of any such new employment obtained during said nine (9) month period.
- c. **Termination for Cause.** If Employee is terminated by the City Council for any or all of the reasons stated below, then Employee shall not be entitled to any severance pay [or benefits] as described in subsection 8 (a), above. The City Council shall have the right to terminate Employee's employment as City Manager for cause. For purposes of this Agreement, cause for termination shall include the following:
- 1) Employee's willful or intentional failure to perform in accordance with his/her obligations under this Agreement and/or the City's Municipal Code or with lawful directives approved by a majority of the City Council;
  - 2) Employee's death;
  - 3) Employee's mental incapacity or inability to perform her 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/she 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 employees(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.

8. **RESIGNATION**. If Employee voluntarily resigns from the position of City Manager, she/he will provide the City with a minimum of sixty (60) days advance, written notice. During the sixty (60) day period subsequent to said written notice of resignation, Employee shall continue to discharge his/her duties as City Manager to the best of his/her ability, unless City opts, in its sole discretion, to place Employee on paid leave during all or any portion of said sixty (60) day period.

9. **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.

10. **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. 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 six months of the commencement date of this Agreement, and annually thereafter, the City Council shall evaluate the performance of the Employee.

11. **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, and to that end, Employee will need to exercise a flexible work schedule.

Employee shall not spend any time in teaching, consulting or other non-City connected business without the prior approval of the Council. Such outside activities shall not interfere with the performance of Employee's duties under this Agreement.

12. **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:

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

To Employee: Philip A. Vince  
63 Amberwood Court  
Moraga, CA 94556

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

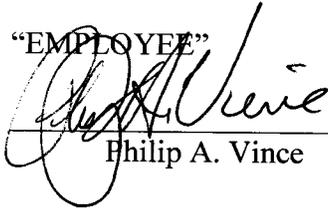
- b. **Waiver.** The waiver of any breach of any provision hereunder by either party to this Agreement shall not be deemed to be a waiver of any other provision or subsequent breach hereunder, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by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

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

“CITY”

CITY OF MARTINEZ  
By:   
Rob Schroder, Mayor

“EMPLOYEE”

  
Philip A. Vince