

CHIEF OF POLICE EMPLOYMENT AGREEMENT

THIS AGREEMENT made and entered into this 16th day of November 2022, by and between the City of Martinez ("Employer" or "City") and Andrew White ("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 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 Manager.

B. The Employer agrees that the said Employee shall be the Chief Administrative Officer of the Police Department and shall report directly to the City Manager, unless otherwise directed. The Employer further agrees that the Chief of Police shall have all powers, authority and duties enumerated to the Employee by any law, ordinance, resolution, or rule.

SECTION 2. TERM

A. Employee shall serve as Chief of Police commencing on January 3rd, 2023 and continuing until such time as this agreement is terminated pursuant to Section 6 here in 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.

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, 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 sixty (60) 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 \$238,771.46 commencing on January 3rd, 2023 (\$19,897.62 per month).

The City agrees to adjust the employee's annual base salary by the same percentage cost-of-living adjustment and at the same time or reasonably thereafter as such adjustments are made for the salaries of the City's management group pursuant to the Management Compensation Plan.

B. Benefits

Except where the contract provisions specify or supersede the language of the Management Compensation Plan (MCP)- Division B- Sworn Employees, or would violate prevailing laws, the employee is eligible to receive those benefits and all other aspects of the Management Compensation Plan (MCP)

1. Vacation -Employee will accrue 25 days of vacation per year, with the opening balance of 80 hours.
2. Sick Leave- Employee will accrue sick leave at standard rate with an opening balance of 40 hours.
3. Employee shall not be entitled to Longevity Pay.
4. Employee shall not be entitled to Educational Pay.
3. Employee shall be entitled to Holiday Pay which shall be disbursed in the same manner as other sworn employees of the City of Martinez.

C. Retirement – California Public Employees' Retirement System Benefit

The City will provide, through the California Public Employees' Retirement System (CalPERS) Classic – Tier 2 retirement benefit of 3%@55 with final compensation determined by the average of the highest thirty-six (36) consecutive months compensation.

1. Cost Sharing – California Public Employees' Retirement System Benefit

Employee agrees to contribute toward the CalPERS Employer contribution rate and any other employee contribution amounts that may be implemented during the term of this agreement in the same manner and percentage as the other management sworn personnel.

2. Uniform Allowance.

The City will provide Employee with the following initial uniform items at City's expense: (2) Class A Long Sleeve Shirts, (2) Class B Short Sleeve Shirts, (3) pairs of Class A trousers, (1) Department Polo Shirt, (1) Class A Dress Jacket w pins, (1) Class A Dress Hat, (1) Pair of Uniform Dress Shoes and (1) Uniform Trouser Belt, (1) full set of rain gear, and (1) bullet-resistant protective vest. The City will additionally provide all standard issue safety equipment. Employee will receive uniform allowance per MCP contract section 6.1.

3. Professional Development

1. Employee will be given adequate opportunities to develop and maintain skills and abilities as an executive. Employee is expected and encouraged to participate in professional organizations and attend state, area and regional meetings and conferences, related to matters of interest to the City. Employee shall reasonably balance participation and the time required for such attendance in relationship to Employee's other responsibilities. Such activities will be considered part of Employee's normal work activities.
 - i. Pay for professional memberships in IACP, CA Police Chiefs Association, CA Police Officers Association, and Contra Costa County Police Chiefs' Association. Other professional memberships upon approval of the City Manager.
 - ii. Travel and subsistence expenses to attend meetings and events of the professional organizations including annual attendance at CA Police Chiefs Association Annual Training Symposium, Contra Costa County Police Chiefs' Association annual training, and every two years to IACP Conference.
 - iii. Employee permitted to continue service on the California 911 Advisory Board and California Law Enforcement Telecommunications System Advisory Committee, and City to pay expenses incurred in this service, including attending meetings.

SECTION 4. AUTOMOBILE

The City shall provide employee an automobile, equipped as an authorized emergency vehicle. City shall be responsible for the purchase, replacement and all necessary insurance and attendant operating and maintenance expenses for said automobile. Said automobile may be used by the Employee in connection with the performance of Employee's duties as Chief of Police and for Employee's professional growth and development. The Chief may also use it for personal reasons since the Employee is "on-call" in the event of an emergency.

SECTION 5. PEACE OFFICER STATUS AND BENEFITS

A. Employee shall retain Employee's peace officer status under the laws of the State of California during the term of this Agreement except to the extent inconsistent herewith; Employee shall receive the benefit of all laws, statutes, regulations, and entitlements accorded to peace officers of like rank by the State.

B. Employee is an "at will" employee with no property interest in his position. Employee will have no recourse or right to appeal City's decision to terminate Employee except as provided by Government Code Section 3304(c).

SECTION 6. TERMINATION OF AGREEMENT

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

A. Termination Without Cause. In the event the City terminates this Agreement without cause, the Employee shall be entitled to severance pay of a lump sum equal to twelve (12) months base salary if terminated in the 1st year of service, nine (9) months of base salary if terminated in the 2nd year of service, six (6) months of base salary if terminated in the 3rd year and thereafter, payable within thirty (30) days of the date of termination, subject to restrictions set forth in Government Code Section 53260. Said payment of severance pay shall be in addition to any vacation leave, administrative leave, if any, due to the Employee upon Employee's separation 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 Employee's unused leave as provided for in the Management Compensation Plan - Division B- Sworn Employees. Employee hereby agrees Employee shall accept such payment as full compensation due from the City as severance pay in exchange for Employee giving a full and complete release of the City, its agents, employees, attorneys, City Council members, or representatives of any kind or nature, from all liability or claims of any type or nature relating to the Employee's employment and/or termination of same except those claims arising as a result of an injury-on-duty as covered by Workers Compensation. Pursuant to Government Code Section 53243.2, Employee agrees to reimburse the City the full amount of any severance pay the Employee receives from the City if the Employee is convicted of a crime involving an abuse of his/her position as Chief of Police.

B. Termination for Cause. In the event of termination for cause, Employee is not entitled to any other compensation or severance except regular compensation and any accrued leave benefits, excluding sick leave, up to the date of termination.

C. Definition of Cause. For purposes of this agreement, "cause" shall mean any of the following with respect to the employee:

1. Conviction of a felony
2. Conviction of a misdemeanor arising out of Employee's duties under this Agreement

3. Conviction of any crime involving an "Abuse of office or position" as that term is defined in Government Code section 53243.4
 4. Willful abandonment of duties
 5. Repeated failure to carry out a lawful directive or directives of the City Council or City Manager
 6. Any grossly negligent action or inaction by Employee that materially and adversely:
 - a. impedes or disrupts the operations of the City or its organizational units; or
 - b. is detrimental to employees or public safety; or
 - c. violates rules or procedures of City.
- D. 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 Manager from placing Employee on paid, administrative leave.
- E. The termination provisions of this section supersede 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
- F. Given the at-will nature of Employee's position, an important element of this employment agreement pertains to termination. It is in both the City's interest and that of Employee that any separation of Employee is done in a businesslike manner. Except as otherwise required by law, in the event the City terminates Employee with or without cause, the City and Employee agree to work together to prepare an official joint statement regarding employee's separation.

SECTION 7. OTHER TERMS AND CONDITIONS

- A. Employee is an exempt employee pursuant to the Fair Labor Standards Act (FLSA) but is expected to engage in those hours of work that are necessary to fulfill the obligations of the position.
- B. 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; however, this shall not modify or expand the definition of cause as specified in Section 6.
- C. 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 agrees to focus Employee's full professional time, ability, and attention to City business during the term of this Agreement. Consequently, the Employee hereby agrees not to engage in any other business pursuits whatsoever or, directly or indirectly, render any services of a business or commercial nature to any other person or organization, for

compensation, without the prior written consent of the City Manager. This shall not preclude Employee from teaching at an institution of higher learning from time to time, so long as such activity is not in conflict with the services to be provided by the Employee under this Agreement. Employee must still obtain advanced written approval by the City Manager to engage in such teaching activities.

- D. City agrees it will defend, hold harmless and indemnify Employee from all demands, claims, suits, actions, and legal proceedings brought against Employee in Employee's official capacity as agent and employee of City, or for any acts, errors or omissions in Employee's personal capacity arising out of the scope and duration of Employee's employment with City, subject to Government Code Section 825 and as otherwise permitted by law. Said indemnification shall extend beyond termination of this Agreement to provide full and complete protection to Employee by City as described herein for any lawful acts undertaken or committed in Employee's capacity as Chief of Police, regardless of whether the notice or filing of a lawsuit for such tort/civil claim, demand or other legal action occurs during or subsequent to the Employee's employment with City.
- E. City shall not at any time during the term of this Agreement reduce 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: Michael Chandler
City Manager
City of Martinez
525 Henrietta Street
Martinez, CA 94553-2394

Employee: Andrew White
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.

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 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 Acting City Manager, and the Employee has signed and executed this Agreement, on the day and year first written above.

EMPLOYER:

EMPLOYEE:

CITY OF MARTINEZ

By: _____
Michael Chandler, Acting City Manager

APPROVED AS TO FORM:

By: _____
Teresa L. Highsmith, City Attorney