

RESOLUTION NO. 2023 – 181

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY, CALIFORNIA, APPOINTING BENJAMIN A. MARTINEZ AS CITY MANAGER AND AUTHORIZING THE MAYOR TO EXECUTE AN EMPLOYMENT AGREEMENT BETWEEN THE CITY OF NATIONAL CITY AND BENJAMIN A. MARTINEZ WITH THE EFFECTIVE DATE OF DECEMBER 5, 2023.

WHEREAS, Benjamin A. Martinez was working in the capacity of Interim City Manager and was selected as City Manager for the City of National City.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of National City as follows:

SECTION 1. Benjamin A Martinez is hereby appointed to the position of City Manager for the City of National City effective December 5, 2023.

SECTION 2. In consideration of Mr. Martinez's acceptance of the appointment made hereinabove, the City Council hereby approves the following employment terms and conditions:

- A. Commencement of Employment
December 5, 2023, is hereby designated as the date of commencement of Benjamin A. Martinez's duties to serve as City Manager.
- B. Salary / Compensation
The initial base salary to be paid to Benjamin A. Martinez for his services as City Manager shall be \$255,719 annually, then \$272,238 annually effective February 1, 2024. In addition, Benjamin A. Martinez will receive either an Employer employer-provided vehicle or \$9,000 per year for a Vehicle Allowance payable in accordance with the City's customary payroll practices. Further, he will receive Employer-provided housing equivalent to a monthly housing allowance of \$1,200 a month.
- C. Benefits
In addition to base salary, Benjamin A. Martinez shall receive such other benefits as are provided to the Executive Group of the City, including holidays, vacation leave, executive leave, sick leave, and insurance and retirement benefits.

SECTION 3. The Mayor is hereby authorized to execute an Employment Agreement between the City of National City and Benjamin A. Martinez, attached to the Agenda Report as Exhibit A, as City Manager from December 5, 2023, through June 30, 2026, or unless sooner terminated by the Employer or Employee as provided in Section 9, 10 or 11 of the Agreement. Said Agreement is on file in the Office of the City Clerk.

PASSED and ADOPTED this 5th day of December, 2023



Ron Morrison, Mayor

ATTEST:



Shelley Chapel, MMC, City Clerk

APPROVED AS TO FORM:



Barry J. Schultz, City Attorney

Passed and adopted by the City Council of the City of National City, California, on December 5, 2023 by the following roll-call vote, to-wit:

Ayes: Bush, Rodriguez, Yamane, Molina, Morrison

Nays: None.

Absent: None.

Abstain: None.

AUTHENTICATED BY: Ron Morrison
Mayor of the City of National City, California



Shelley Chapel
City Clerk of the City of National City, California

BY: Shelley Chapel
Shelley Chapel, MMC, City Clerk

**EMPLOYMENT AGREEMENT
CITY MANAGER
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EMPLOYMENT AGREEMENT

THIS AGREEMENT made and entered into this 5th day of December, 2023, by and between the City of National City, a municipal corporation, (hereinafter called "Employer") and Benjamin A. Martinez (hereinafter called "Employee") an individual who has the education, training and experience in local government management to perform satisfactory the duties of the City Manager, both of whom agree as follows:

Section 1 Term.

This Agreement shall remain in full force and effect commencing December 5, 2023 through June 30, 2026 unless sooner terminated by the Employer or Employee as provided in Section 9, 10 or 11 of this Agreement.

Section 2 Duties and Authority.

Employer agrees to employ Benjamin A. Martinez as City Manager, on an at-will basis, to perform the functions and duties specified in the National City Municipal Code and the California Government Code, and to perform other legally permissible and proper duties and functions, commencing on December 5, 2023.

Section 3 Compensation.

A. Base Salary: Employer agrees to pay Employee an annual base salary of Two Hundred Fifty-Five Thousand Seven Hundred and Nineteen Dollars (\$255,719.00) payable in installments at the same time that the other Executive employees of the Employer are paid. Effective February 1, 2024 Employer agrees to pay Employee an annual base salary of Two Hundred Seventy –Two Thousand Two Hundred and Thirty-Eight Dollars (\$272,238.00) reflecting the last installment of the equity increase for the City Manager position.

Section 4 Health, Disability and Life Insurance Benefits.

A. The Employer agrees to provide Employee a cafeteria health benefit of \$1,200.00 per month.

B. The Employer agrees to put into force and to make required premium payments for long-term disability coverage for the Employee.

C. The Employer shall pay the amount of premium due for term life insurance in the amount of \$150,000. The Employee shall name the beneficiary of the life insurance policy.

Section 5 Vacation, Sick and Military Leave.

A. The Employee shall accrue sick, vacation leave, and other paid leave on an annual basis at the rate provided to Executive employees.

B. The Employee is entitled to receive vacation leave, executive leave, sick leave, insurance and retirement benefits in accordance with those benefits provided to the Executive Group of the City.

C. The Employee shall be entitled to military reserve leave time pursuant to state law and City policy.

Section 6 Monthly Vehicle Allowance; Employer Furnished Vehicle.

The Employer agrees to pay to the Employee, during term of this Agreement and in addition to other salary and benefits herein provided the sum of \$9,000.00 per year, payable at \$750.00 per month, as a vehicle allowance to be used to purchase, lease, or own, operate and maintain a vehicle. The Employee shall be responsible for paying for liability, property damage, and comprehensive insurance coverage upon such vehicle and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of said vehicle. The Employer shall reimburse the Employee at the IRS standard mileage rate for any business use of the vehicle beyond the greater National City area. For purposes of this Section, use of the car within the greater National City area is defined as travel to locations within a 50-mile radius of the National City Civic Center.

In lieu of receiving a vehicle allowance, the Employee may elect to have the use of an Employer furnished vehicle for the performance of official duties and commuting to and from work. Employer will provide vehicle maintenance, fuel, and insurance for such vehicle.

Section 7 Retirement.

The Employer agrees to enroll the Employee into the Public Employees' Retirement System and to make all the appropriate contributions on the Employee's behalf, for the required Employer share. Employee shall pay the entire employee share, which is 8% at this time and any changed rate during the term of this Agreement. Employee shall pay an additional 1% of the required Employer's normal cost share, in line with the retirement costs paid by other CalPERS classic plan member Executive employees.

Section 8 General Business Expenses.

1. Employer agrees to budget for and to pay for professional dues and subscriptions of the Employee necessary for continuation and full participation in national, regional, state and local associations, and organizations necessary and desirable for the Employee's continued professional participation, growth, and advancement, and for the good of the Employer.

2. Employer agrees to budget for and to pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions to adequately continue the professional development of Employee and to pursue necessary official functions for Employer, including but not limited to the ICMA Annual Conference, the League of California Cities, and such other national, regional, state and local governmental groups and committees in which Employee services as a member.

3. Employer also agrees to budget for and to pay for travel and subsistence expenses of Employee for short courses, institutes and seminars that are necessary for the Employee's professional development and for the good of the Employer.

4. Employer recognizes that certain expenses of a non-personal but job-related nature are incurred by Employee, and agrees to reimburse or to pay said general expenses. The Administrative Services Director is authorized to disburse such moneys upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits.

5. The Employer acknowledges the value of having Employee participate and be directly involved in local civic clubs or organizations. Accordingly, Employer shall pay for the

reasonable membership fees and/or dues to enable the Employee to become an active member in local civic clubs or organizations.

6. The Employer shall provide Employee with a computer, software, fax/modem, and cell phone required for the Employee to perform the job and to maintain communication.

Section 9 Termination.

For the purpose of this Agreement, termination shall occur when:

1. The majority of the Employer's City Council votes to terminate the Employee at a duly authorized public meeting.

2. If the Employer, citizens or legislature acts to amend any provisions of the state or local law pertaining to the role, powers, duties, authority, and responsibilities of the Employee's position that substantially changes the form of government, the Employee shall have the right to declare that such amendments constitute termination.

3. If the Employer reduces the base salary, compensation or any other financial benefits of the Employee, unless it is applied in no greater percentage than the average reduction of all department heads, such action shall constitute a breach of this Agreement and will be regarded as a termination.

4. If the Employee resigns following an offer to accept resignation, whether formal or informal, by the Employer as representative of the majority of the governing body that the Employee resign, then the Employee may declare a termination as of the date of suggestion.

5. ~~Breach of contract declared by either party with a 30-day cure period for either Employee or Employer. Written notice of a breach of contract shall be provided in accordance with the provisions of Section 18.~~

Section 10 Severance.

The Employee is an at-will employee, serving at the pleasure of the Employer's City Council. This Agreement, and the Employee's employment with the Employer, may be terminated with or without cause by the Employer's City Council. In the event the Employee is terminated for cause, or voluntarily resigns his position with the Employer, then the Employee shall not be entitled to the payment of Severance by the Employer.

In the event the Employee is terminated by the Employer other than for cause, and during such time that Employee is willing and able to perform his duties under this Agreement, then Employer agrees to pay Severance equal to one-half year's base salary at the current rate of pay. This Severance shall be paid in one lump sum unless otherwise agreed to by the Employer and the Employee.

In the event of Severance, the Employee shall also be compensated for all accrued sick and vacation leave. If the Employee is terminated because of a conviction of a felony, then the Employer is not obligated to pay Severance under this section.

If the Employee is convicted of a crime involving an abuse of office or position, then regardless of the term of the contract, if the Employee is terminated, any cash settlement, including severance, related to the termination received by Employee from Employer shall be fully reimbursed to the Employer.

Section 11 Resignation.

In the event that the Employee voluntarily resigns his position with the Employer, the Employee shall provide a minimum of thirty (30) days' notice unless the parties agree otherwise.

Section 12 Performance Evaluation.

Employer may annually review the performance of the Employee in the Employee's anniversary month subject to a process, form, criteria, and format for the evaluation which shall be mutually agreed upon by the Employer and Employee. The process at a minimum may include the opportunity for both parties to: (1) prepare a written evaluation, (2) meet and discuss the evaluation, and (3) present a written summary of the evaluation results. The final written evaluation should be completed and delivered to the Employee within thirty (30) days of the evaluation meeting.

Section 13 Hours of Work.

It is recognized that the Employee must devote a great deal of time outside the normal office hours on business for the Employer, and to that end Employee shall be allowed to establish an appropriate work schedule, compatible with the normal business hours of the City of National City.

Section 14 Outside Activities.

A. **Notice and Consent:** Employee shall give written notice to Council for Council's approval of any new outside activities of Employee.

Section 15 Indemnification.

In accordance with federal, state or local law, Employer shall defend, save 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 course and scope of the performance of Employee's duties as City Manager, or resulting from the exercise of judgment or discretion in connection with the course and scope of performance of program duties or responsibilities, unless the act or omission involved willful or wanton conduct. In such cases, the Employee may request and the Employer shall not unreasonably refuse to provide independent legal representation at the Employer's expense and the Employer may not unreasonably withhold approval. Legal representation provided by Employer for Employee shall extend until a final determination of the legal action, including any appeals brought by either party. The Employer shall indemnify Employee against any and all losses, damages, judgments, interest, settlements, fines, court costs, and other reasonable costs and expenses of legal proceedings, including attorney's fees and any other liabilities incurred by, imposed upon, or suffered by such Employee in connection with or resulting from any claim, action, suit or proceeding, actual or threatened, arising out of or in connection with the performance of the Employee in the course and scope of her duties. Any settlement of any claim must be made with prior approval of the Employer in order for indemnification, as provided in this Section, to be available.

Employee recognizes the Employer shall have the right to compromise and settle any claim or suit. Further, Employer agrees to pay all reasonable litigation expenses of Employee throughout the pendency of any litigation to which the Employee is a party, witness or advisor to the Employer. Such expense payments shall continue beyond Employee's service to the

Employer as long as litigation is pending. Further, Employer agrees to pay Employee reasonable consulting fees and travel expenses when Employee serves as a witness, advisor or consultant to Employer regarding pending litigation.

If Employee is convicted of a crime involving an abuse of his office or position, as defined in Government Code section 53243.4, then Employee shall fully reimburse Employer for any funds provided for Employee's criminal defense, if any such funds were provided pursuant to or consistent with this Section. This paragraph shall not be construed as creating or implying an obligation by Employer to provide a criminal defense to Employee.

Section 16 Housing.

During such time as Employee is City Manager and agrees to maintain his principal residence in National City, Employer agrees to provide housing to Employee equivalent to a monthly housing allowance of \$1,200 a month. Employee shall be responsible to pay the monthly cost of all utilities.

Section 17 Other Terms and Conditions of Employment.

A. The Employer shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the National City Municipal Code, or any other law.

B. Except as otherwise provide in this Agreement, the Employee shall be entitled to the highest level of benefits that are enjoyed by other appointed employees of the Employer as provided in the Municipal Code or by practice.

Section 18 Notices.

Notice pursuant to this Agreement shall be given by depositing in the custody of the United States Postal Service, postage prepaid, addressed as follows:

EMPLOYER: Mayor
City of National City
1243 National City Boulevard
National City, CA 91950-4301

EMPLOYEE: Benjamin A. Martinez
[At the address of the
Employee's principal
residence]

Alternatively, notice required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice in the course of transmission in the United States Postal Service.

Section 19 General Provisions.

A. **Integration.** This Agreement sets forth and establishes the entire understanding between the Employer and the Employee relating to the employment of the Employee by the Employer. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The parties by mutual written agreement may amend any provision of this Agreement during the life of the Agreement. Such amendments shall be incorporated and made a part of this Agreement.

B. Binding Effect. This Agreement shall be binding on the Employer and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.

C. Effective Date. This Agreement shall become effective on December 5, 2023.

D. Severability. The invalidity or partial invalidity of any portion of this Agreement will not effect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

E. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

F. Construction. The parties acknowledge and agree that (1) each party is of equal bargaining strength, (2) each party has actively participated in the drafting, preparation and negotiation of this Agreement, (3) each such party has consulted with or has had the opportunity to consult with its own, independent counsel and such other professional advisors as such party has deemed appropriate, relative to any and all matters contemplated under this Agreement, (4) each party and such party's counsel and advisors have reviewed this Agreement, (5) each party has agreed to enter into this Agreement following such review and the rendering of such advice, and (6) any rule or 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 portions hereof, or any amendments hereto.

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

CITY OF NATIONAL CITY

By: _____

Ron Morrison, Mayor

EMPLOYEE

Benjamin A. Martinez

APPROVED AS TO FORM:

Barry J. Schultz
City Attorney