



DATE: June 21, 2006

TO: Honorable Mayor and City Councilmembers

FROM: City Attorney's Office

SUBJECT: **ADOPTION OF RESOLUTION APPROVING AN EMPLOYMENT AGREEMENT BETWEEN THE CITY AND BARRY E. MARTIN**

BACKGROUND

The City Council has reached an employment agreement with Barry E. Martin to define certain terms and conditions of his employment as its Interim City Manager. Pursuant to the agreement, the City Council met in Closed Session on June 7, 2006, and voted to appoint Mr. Martin as the Interim City Manager at the current equivalent compensation of the previous City Manager of \$180,200 per year. The matter is now being brought before the City Council for formal approval of a contract respecting specific terms of appointment.

ANALYSIS

The proposed employment agreement is intended to further define and clarify the terms and conditions of the Interim City Manager's employment with the City. The principal features of the agreement are as follows:

1. Consistent with the provisions of Government Code section 36506 and City Code section 2.4, the term of the employment is at will and "during the pleasure of the City Council." The agreement clearly states that Mr. Martin has no property right in the job and no expectancy of any particular duration of employment.
2. The agreement establishes the equivalent annual base salary for the Interim City Manager at the current rate of \$180,200. In addition, the agreement clarifies that the salary includes compensation for the City Manager's services as Executive Director of the Community Development Commission and the Administrative Officer of the Small Craft Harbor District. The agreement also specifies the negotiated fringe benefits.
3. The law requires that the compensation of an (interim) city manager be done by resolution adopted at a public meeting.

4. The agreement affords Mr. Martin the ability to be reinstated as the "Water Utilities Director" at such time as the City Manager position is filled by the City Council with someone other than Mr. Martin.

The agreement has been approved and executed by Mr. Martin.

CITY ATTORNEY'S ANALYSIS

The agreement conforms with the statutory requirements for agreements between a city and a city manager. The agreement was reviewed by the City Attorney's Office.

RECOMMENDATION

Review and consider the agreement and if it is acceptable, adopt the proposed resolution approving the agreement and authorizing the Mayor to execute the agreement on behalf of the City.

PREPARED AND SUBMITTED BY:



John P. Mullen
City Attorney

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE APPROVING AN EMPLOYMENT AGREEMENT BETWEEN THE CITY AND BARRY E. MARTIN

NOW, THEREFORE, the City Council of the City of Oceanside does resolve as follows:

SECTION 1. The employment agreement between the City of Oceanside and Barry E. Martin, a copy of which is attached hereto as Exhibit "A", is approved and relevant terms are made retroactive to June 12, 2006.

SECTION 2. The City Manager's salary is set at \$180,200, effective June 12, 2006.

SECTION 3. The Mayor is authorized to execute the agreement on behalf of the City.

PASSED AND ADOPTED by the City Council of the City of Oceanside, California, this 21st day of June, 2006, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

MAYOR OF THE CITY OF OCEANSIDE

ATTEST:

APPROVED AS TO FORM:

City Clerk



City Attorney

EMPLOYMENT AGREEMENT BETWEEN THE CITY OF OCEANSIDE AND BARRY E. MARTIN

This employment agreement is entered into this _____ day of June, 2006, by and between the City of Oceanside, California, a general law city (hereinafter called "the City") and Barry E. Martin, an individual (hereinafter called "Martin") with respect to the employment of Martin as the Interim City Manager of the City.

RECITALS

Pursuant to Government Code section 34851 et seq., the City of Oceanside has established a city manager form of government.

The general powers and duties of the City Manager are generally established by Article II of Chapter 2 of the Oceanside City Code (commencing with Section 2.4) and by other provisions of the City Code, other ordinances, resolutions, policies of the City Council and state statute.

The parties desire, through this Agreement, to determine certain matters relating to the terms and conditions of the employment of Martin as the Interim City Manager for the City.

The City Manager of the City also serves as the Executive Director of the Oceanside Community Development Commission and as the Executive Director of the Oceanside Small Craft Harbor District. The City Council has authorized the City Manager to provide those management services and the City is compensated for such services by those entities.

TERMS OF EMPLOYMENT

In consideration of the faithful performance of the provisions and covenants set forth herein, the City and Martin agree as follows:

A. **Duration of Employment.**

The intent of this Agreement is to provide for the interim appointment of Martin to the City Manager position pending selection or appointment of a permanent City Manager at a later date. Martin's appointment as the Interim City Manager is effective June __, 2006.

Pursuant to the provisions of Government Code section 36506, Martin shall hold the appointive office of Interim City Manager at and during the pleasure of the City Council.

B. Provisions Regarding Compensation.

1. The City covenants to compensate Martin as follows:

- a. Martin shall receive an annual salary in an amount established by City Council resolution. The amount of the annual salary pre-existing the date of this Agreement is \$180,200 and is not being changed by this Agreement. Martin shall perform the duties of Executive Director of the Community Development Commission and the Executive Director of the Small Craft Harbor District as a part of the regular duties of his office and shall receive no additional or supplemental compensation from the City or from either entity for the provision of such services.
- b. Martin shall receive vacation, sick leave, executive leave, short term disability, long term disability, retirement and health and dental benefits determined in the same manner as for executive/department head management employees according to the City's executive management compensation plan as may be established from time-to-time by the City Council. Martin shall receive paid holidays in the same manner as other executive/department head management employees.
- c. Martin shall be provided with an additional leave bank for the accumulation of vacation leave. Such leave time shall be added to the leave bank whenever the accrued amount equals or exceeds 350 hours. Additionally, up to 80 hours of vacation and/or unused leave time may be annually converted to compensation at the discretion of the Interim City Manager.
- d. The City will provide an additional twelve and one half percent (12.5%), or the maximum amount allowable by law of the Interim City Manager's annual salary to deferred compensation through the International City Managers' Association (ICMA) Retirement Corporation.
- e. Deduction in compensation and/or benefits will not occur, except to the extent that such reductions are across the board for all executive management employees.
- f. The City shall provide Martin with a vehicle in lieu of a vehicle allowance. If not assigned a City vehicle, the City shall pay Martin a monthly vehicle allowance equivalent to \$400 per

month. All costs of operation of the vehicle for the employee, including but not limited to, fuel, maintenance, and insurance, shall be borne by Martin.

2. Covenants regarding reinstatement to prior position.

- a. Martin will be granted the right to be reinstated to his former position as Water Utilities Director upon selection and appointment of a permanent City Manager, or termination from the position of Interim City Manager, unless the termination is for cause. Reinstatement would be effective on the date of appointment of a new City Manager.
- b. The position of Water Utilities Director will keep its relative parity position for compensation with respect to other department directors during the term of this Agreement.

C. Performance.

Martin covenants to perform the duties of the office of City Manager in a good and professional manner as his full-time employment. Martin covenants that during his employment as Interim City Manager he will not engage in any other employment in conflict with his employment with the City of Oceanside.

D. Performance Evaluation.

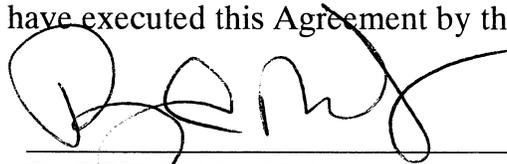
1. The annual establishment of objectives and relative priorities for work programs, in conjunction with the City Council, necessary for the proper operation of the City. The evaluation should be obtainable within the time limits and budget appropriations approved by Council.
2. Annual evaluation based on meeting mutual objectives and performance criteria established jointly by the Interim City Manager and City Council.
3. The performance review shall be completed in October of each year beginning in the year 2006. The performance will be deemed satisfactory if no annual review takes place.

E. Miscellaneous Provisions.

1. The relationship between the City and Martin is an employment relationship for a public office and is exempt from the provisions of the Fair Labor Standards Act.
2. Neither this Agreement, nor any provision of state statute or local ordinance, rule or resolution create any property right in favor of Martin in his employment in the office of the City Manager.
3. When used in this Agreement, the term City Council means the legislative body of the City of Oceanside, including the Mayor and the members of the City Council.
4. In the event of any mediation, arbitration or litigation to enforce any of the provisions of this Agreement, each party shall bear its own attorneys' fees and costs.
5. This Agreement is the entire agreement between the parties with respect to the subject matter. No promise, representation, warranty or covenant not included in this Agreement has been or is relied on by any party hereto. This Agreement may be amended only by a writing executed by both parties.

IN WITNESS hereof, the parties have executed this Agreement by their signatures set forth below:

DATED: 6-12-2006



BARRY E. MARTIN

DATED: _____

MAYOR OF THE CITY OF OCEANSIDE

ATTEST: _____

APPROVED AS TO FORM:

CITY CLERK



CITY ATTORNEY