

## **EMPLOYMENT AGREEMENT**

This Agreement is entered into this 28<sup>th</sup> day of March, 2005 by and between the City of Daly City, a municipal corporation and general law city, hereinafter called "City" and Patricia E. Martel, hereinafter called "Employee".

WHEREAS, City wishes to engage "Employee" as City Manager for the City of Daly City; and

WHEREAS, Employee desires to accept employment as City Manager of City.

NOW, THEREFORE, City hereby agrees to employ Patricia E. Martel as City Manager of the City of Daly City upon the mutually agreed terms and conditions as follows:

1.     **Responsibilities and Duties:** Employee shall be responsible to perform the functions and duties specified in state statutes, the ordinances and resolutions of the City, and to perform such other legally permissible and proper duties and functions as the City Council may from time to time assign. Employee shall also exclusively perform the duties of Executive Director of the Redevelopment Agency of the City of Daly City, General Manager/Secretary of the North San Mateo County Sanitation District, Director of Emergency Services and administer the Daly City Public Facilities Corporation and Daly City Housing Finance Agency.

The City Council, by resolution, may fix any other duties and responsibilities upon the position of City Manager, not inconsistent with the provisions of this Employment Agreement.

2.     **Term:** City agrees to employ Employee, effective May 23, 2005, and until terminated by either party in accordance with the provision set forth in Paragraph 3 or by the event of the death, resignation, retirement, permanent disability of Employee,

incapacity, or for cause.

**3. Termination and Severance:**

(A) The parties recognize and affirm that Employee is an at will employee whose employment may be terminated by the City without cause and there is no expressed or implied promise made to Employee for any form of continued employment. City may at any time terminate Employee without cause upon 90 days advanced notice. The decision to terminate shall be made in Closed Session and confirmed in a public meeting. In recognition of Employee's professional status, Employee and the City Council shall prepare a joint public statement to be made by the City Council at the public meeting when termination is confirmed.

(B) Alternatively, if Employee is informed of the City's intention to terminate her employment without cause, Employee may be given the option to resign; and in that event Employee and City shall prepare a joint public statement to be made by the City Council at the public meeting when resignation is accepted. The Employee's election to accept an option to resign pursuant to this Paragraph shall be made in writing and provided to the City's Office of the Mayor within three (3) calendar days of Employee's receipt of termination without cause Notice provided for by Paragraph 3(G) below if such Notice also includes the option to resign. Paragraph 3(C), below, regarding Severance Pay, remains applicable upon a resignation accepted following presentation of the option to Employee.

(C) If Employee is terminated without cause by the City Council while still willing and able to perform the duties of City Manager, or if Employee has resigned pursuant to Paragraph 3(B), above, the City agrees to pay Employee, in addition to any other benefits that may be due Employee at the time of separation of employment, a cash payment equal to twelve (12) months aggregate salary, plus payment for accrued leave which shall consist of compensation for all accrued vacation leave, sick leave payout not

to exceed fifty percent (50%) of her accrued sick leave not exceeding a total of 1600 accrued sick leave hours.

(D) Termination for Cause: Advance notice need not be made and severance pay will not be paid if Employee is terminated by the City Council for cause. For purposes of this Agreement, "cause" shall mean termination on account of a criminal conviction for acts other than vehicle violations or the exercise of personal civil rights unrelated to City employment, acts of moral turpitude or fiscal malfeasance, or a complete or near complete failure to perform in her position of City Manager. Nothing herein shall be construed to prohibit or prevent the City Council from terminating Employee's employment for cause or without cause; rather this provision removes Employee's right to advance notice and/or severance pay in the event of termination for cause.

(E) If Employee is permanently disabled or is otherwise unable to perform her duties because of sickness, accident, injury, mental incapacity or health, Employee shall be entitled to sick leave and catastrophic leave benefits provided by the City to all full-time employees. Should the City Council deem it to be in the best interest of the City to terminate this Agreement prior to the conclusion of the catastrophic leave period, then the Employer shall provide a lump sum settlement equal to the remaining unused leave benefits available to the Employee as specified in the City practices and procedures currently in force for all full-time City employees. If the Agreement is terminated due to disability, the Employee shall be compensated for any accrued sick leave, vacation and other accrued benefits.

(F) In the event Employee voluntarily resigns her position with City other than as provided in Paragraph 3(B) above, then Employee shall give City reasonable advance notice of not less than 30 days, and there will be no severance pay due Employee. At the time of leaving employment for resignation, termination, separation for any purpose, retirement, or for any other purpose in which compensation continues, the

payment of such continuing compensation shall not imply nor grant any duties or authority to Employee following the date of such termination, separation, retirement or resignation.

(G) Any controversy or claims arising out of or pertaining to this Employment Agreement, or the breach thereof, shall be settled by binding arbitration, and shall constitute Employee's sole remedy for any claim or claims arising of her employment relationship with the City of Daly City. Notice to Employee from City involving termination for cause, or without cause, shall be made in writing and either personally delivered to Employee, or delivered to Employee's residence on file with the City. Time period for 90 days *advance notice* of Paragraph 3(A) above commence upon delivery of written notice to Employee.

4. **Salary, Benefits and Retirement:**

(A) Upon initial employment as City Manager, Employee shall receive the salary, paid bi-weekly consistent with the established practices of the City, in the initial monthly amount of \$17,500.00. Employee shall not receive supplemental pay for her duties performed as Executive Director of the Daly City Redevelopment Agency nor as General Manager of the North San Mateo County Sanitation District.

(B) Employee shall also receive annual vacation benefits in the amount 18 paid vacation days per year accrued bi-weekly throughout the year; Employee shall also receive annual sick leave benefits in the amount of 12 days per year accrued bi-weekly throughout the year; Employee shall also receive retirement benefits and health and welfare benefits consistent with other Executive Management Employees to and including her participation in the "PERS 3% at 60 Miscellaneous Employees" retirement plan and health and welfare benefits provided at the rate of \$695.00 per month through the City's "cafeteria plan" with mandatory participation in the dental, short term disability and long term disability, and adjustments to the above stated retirement, health and welfare, sick

leave and vacation benefits shall conform and be consistent to the City's adjustment for Executive Management Employees based upon her total years of employment with the City. Life insurance shall be provided at the same level as previously provided for this position. Employee shall also receive annual management leave in the amount and upon the same conditions as other Executive Management Employees.

(C) In addition, City agrees to increase annually the base salary and/or other benefits of Employee by the same average general amount provided to the Executive Management Group of the City, at the same time frame for the Executive Management Group.

(D) Upon the successful completion of ninety (90) days of employment as City Manager, Employee shall be provided a single increase in her annual vacation accrual rate of five (5) days per year.

(E) At commencement of employment as City Manager, Employee shall begin such employment with a positive vacation balance of fifteen (15) days, and with a positive sick leave balance of twelve (12) days.

5. **Automobile and Cellular Telephone:** Employee's duties require she shall have the use of an automobile and cellular telephone at all times during her employment with City. City shall provide and maintain an appropriate automobile for her full and exclusive use. City shall also provide cellular telephone service for her use during her employment.

6. **Supplemental Benefits:** Subject to the Council's discretionary annual budget appropriation, City hereby agrees to budget for and to pay the travel subsistence expenses of Employee for professional and official travel, and meetings necessary and desirable to continue the professional development of Employee and to pursue adequately

the necessary official and other functions for City, including but not limited to those of the League of California Cities, the International City-County Management Association and such other national, regional, state and local government groups and committees thereof of which Employee serves as a member.

(B) City agrees to permit Employee to participate in the City's deferred compensation (IRS Section 457 Plan) and Section 125h Medical Reimbursement Program. Employee shall also be provided with the City's established benefits for jury duty, bereavement leave, family medical leave and other federal, state or local benefits or leave provided to other management employees of the City.

**7. Performance Evaluation:**

(A) Annually, the City Council and the Employee shall define such goals and performance objectives which they determine necessary for the proper operation of the City in 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. This evaluation shall be generally obtainable within the time limits as specified in the schedule for the annual review of the operating and capital budgets and appropriations authorized therein.

(B) The City Council shall review and evaluate the performance of the Employee at least once annually. The annual review and evaluation shall be in accordance with specific criteria developed jointly by the City Council and the Employee. Such criteria may be added to or deleted as the City Council may from time to time determine, in consultation with the Employee.

(C) Employee shall be responsible for placing such annual evaluation and goal setting for the review, evaluation and discussion before the City Council.

8. **Personal Services:** The parties agree that this is a contract for unique personal services, and is not assignable under any circumstances. Employee also agrees that during her tenure as City Manager she will not engage in any activities for compensation or employment that has actual or perceived conflict with her duties and responsibilities as City Manager; nor will she engage in any incompatible office or enter into any prohibited contract as both are defined by California law. Employee agrees that during her tenure as City Manager, she will remain in the exclusive employment of the City of Daly City.

9. **Successors and Assigns:** The compensation provisions of this Agreement, including the salary, vacation, retirement, termination and severance pay provisions, shall be binding upon and shall inure to the benefit of the City and Employee and their heirs, legal representatives, successors and permitted assigns. This Agreement is personal to the Employee and the Employee may not assign any of her rights or duties under this Agreement.

10. **Entire Agreement:** This Agreement is the final expression of the complete agreement of the parties with respect to the matters specified herein and supersedes all prior oral or written understandings. Except as prescribed herein, this Agreement cannot be modified except by written mutual agreement signed by the parties.

11. **Severability:** In the event that any provision of this Agreement is finally held or determined to be illegal or void by a court having jurisdiction over the parties, the remainder of the Agreement shall remain in full force and effect unless the parts found to be void are wholly inseparable from the remaining portion of the Agreement.

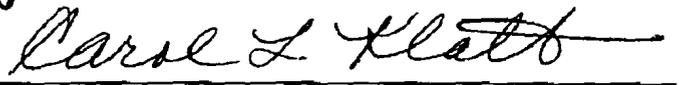
12. **Counterparts:** This Agreement shall be executed simultaneously in two counterparts which shall be deemed an original, but all of which together shall

constitute one and the same instrument.

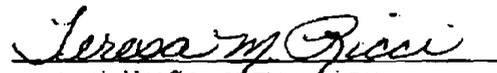
IN WITNESS WHEREOF, the City has caused this Agreement to be signed and executed in its behalf by its Mayor and duly attested by the City Clerk. Signatures of the City also constitute execution by the Daly City Redevelopment Agency, the North San Mateo County Sanitation District, Daly City Housing Finance Agency and the Daly City Public Facilities Corporation. This Agreement has also been executed by the Employee.

Dated: 3/23/2005

  
PATRICIA E. MARTEL, Employee

  
CAROL L. KLATT, Mayor  
City of Daly City

Attest:

  
ASSISTANT CITY CLERK

Draft-3 3/21/05

RESOLUTION NO. 05-58

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DALY CITY  
APPROVING EMPLOYMENT AGREEMENT AND APPOINTING  
PATRICIA E. MARTEL TO SERVE AS CITY MANAGER

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BE IT RESOLVED by the City Council of the City of Daly City, as follows:

1. California Government Code sections 34851 and 34852 permit a general law city to adopt an ordinance establishing a city manager form of government, and for the appointment for the position of City Manager; Daly City Municipal Code Chapter 2.02 reflects the City Council's adoption of that form of local government.

2. Pursuant to Municipal Code section 2.02.010, the City Council hereby appoints Patricia E. Martel as the City Manager of Daly City effective May 23, 2005, to carry out all of the duties imposed upon that office by state law and City ordinances, as well as other duties as this City Council, from time to time, may require of the City Manager during her appointment.

3. In addition to appointment as City Manager, Patricia E. Martel shall also accede to the positions of Executive Director of the Daly City Redevelopment Agency, General Manager of the North San Mateo County Sanitation District, Executive Director and Secretary to the Daly City Housing Finance Agency and Assistant Secretary/Treasurer of the Daly City Public Facilities Financing Corporation during her tenure as City Manager.

4. That in her capacity as City Manager, Patricia E. Martel is authorized and empowered to assume the full range of duties associated with the position of City Manager to and including appointing authority for the City, Agency and District, execution of contracts and other agreements, budget preparation, direction to all City, Redevelopment Agency and District department heads, management of City, Agency and District property and buildings and all associated and necessary duties of the City Manager, Agency Director and District Manager.

BE IT FURTHER RESOLVED by the City Council that the provision for compensation for the office of City Manager (§2.02.100) and process of removal from office (§2.02.120) are expressly incorporated in the attached *Employment Agreement* for her employment as City Manager of the City of Daly City, and such remaining provisions of the *Employment Agreement* are adopted by reference in this resolution as if set out in full. The Mayor is hereby authorized to execute the *Employment Agreement* for Patricia E. Martel's employment as City Manager on behalf of the Daly City City Council to be effective May 23, 2005.

BE IT FURTHER RESOLVED that prior orders and/or resolutions establishing compensation for the positions of Executive Director and Agency Counsel for the Daly City Redevelopment Agency and for General Manager and District Counsel for the North San Mateo County Sanitation District are superseded and set aside by this resolution effective May 23, 2005, and no additional compensation for these positions shall be provided for as of that date.

**FIRST AMENDMENT TO EMPLOYMENT AGREEMENT**

This *First Amendment to Employment Agreement* is entered into on this 11<sup>th</sup> day of January, 2010 by and between the City of Daly City (hereinafter "City") and Patricia E. Martel (hereinafter "Employee").

WHEREAS, by an Employment Agreement dated March 28, 2005, and approved by Daly City Resolution 05-58 (March 28, 2005), the City engaged Employee for the professional position of Daly City City Manager upon mutually agreed terms and conditions.

WHEREAS, both City and Employee agree to modification of that existing Employment Agreement as permitted by Paragraph 9 of the Employment Agreement.

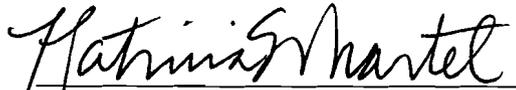
NOW, THEREFORE, the March 28, 2005 Employment Agreement ("Agreement") between City and Employee is hereby amended as follows:

1. Subparagraph "C" of Paragraph 3 of the Agreement ("Termination and Severance"), is hereby amended in its entirety to read as follows:

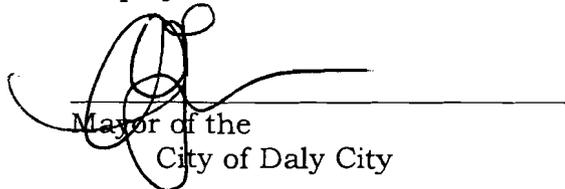
"(C) If Employee is terminated without cause by the City Council while still willing and able to perform the duties of City Manager, or if Employee has resigned pursuant to Paragraph 3(B), above, the City agrees to pay Employee, in addition to any other benefits that may be due Employee at the time of separation of employment, a cash payment equal to eighteen (18) months aggregate salary, plus payment for accrued leave which shall consist of compensation for all accrued vacation, sick leave payout not to exceed fifty percent (50%) of her accrued sick leave, not exceeding a total of 1600 accrued sick leave hours."

2. All other recitals, paragraphs, subparagraphs and clauses of the Agreement remain unchanged by this *First Amendment to Employment Agreement*.

Dated: 1/21/2010

  
\_\_\_\_\_  
PATRICIA E. MARTEL  
Employee

FOR THE CITY OF DALY CITY:

  
\_\_\_\_\_  
Mayor of the  
City of Daly City

Attest:

  
\_\_\_\_\_  
K. Annette Hipona

RESOLUTION NO. 10-10

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DALY CITY  
AUTHORIZING EXECUTION OF AMENDMENT TO THE  
EMPLOYMENT AGREEMENT OF THE CITY MANAGER

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A. It is recommended that the City Council approve an amendment to the Employment Agreement of the City Manager modifying severance and management leave.

B. The City Manager is directly appointed by the City Council; and as non-civil service professional employee, the City Manager has no continued employment rights other than the exiting employment agreement with the City.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Daly City that it does hereby approves the amendment to the Employment Agreement of the City Manager modifying severance.

I hereby certify the foregoing to be a true copy of a Resolution adopted by the City Council of Daly City, California, at a regular meeting thereof held on the 11th day of January, 2010, by the following vote of the members thereof:

AYES, and in favor thereof, Councilmembers: Gomez, Klatt, Torres  
Guingona

NOES, Councilmembers: Canepa

ABSENT, Councilmembers: None

  
CITY CLERK OF THE CITY OF DALY CITY

APPROVED:

MICHAEL P. GUINGONA  
MAYOR OF THE CITY OF DALY CITY