

RESOLUTION NO. 2016-11

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA AMENDING THE CITY MANAGER EMPLOYMENT AGREEMENT TO INCREASE SALARY AND BENEFITS, AUTHORIZE SIGNATURE BY THE MAYOR, APPROVE AMENDMENTS OR ADDITIONS TO THE SALARY PLAN AND MAKE THE NECESSARY BUDGETARY ADJUSTMENTS.

WHEREAS, the City Council met in closed sessions in November 2015 and as part of the City Manager's performance evaluation it evaluated whether any adjustments in salary and benefits were warranted; and

WHEREAS, the City Council met on January 12, 2015, as part of closed session Labor Negotiations with the City Manager; and

WHEREAS, The City Council now seeks to amend City Manager's employment contract in open session and enter into an Amendment to the City Manager's Employment Agreement to increase the salary and benefits, as set forth above; and

WHEREAS, The City completed a review of all city job classifications within our competitive market. The City's competitive labor market includes but is not necessarily limited to the following cities: Seaside, Salinas, Monterey, Pacific Grove, Hollister, Gilroy, Morgan Hill, Paso Robles, San Luis Obispo, Watsonville and Santa Cruz. Additionally the City has reviewed the internal alignment with these job classifications. At the regular meeting of January 5, 2016 and a special meeting on January 12, 2016, council took action to align salaries for multiple positions, including the Police Chief and Recreational and Cultural Services Director; and

WHEREAS, the proposed salary change is to bring the City Manager's salary to the middle of our competitive market; maintain a reasonable differential above the next highest paid City official; and take into consideration job performance. This action is consistent with Paragraph 3a of the 2013 Employment Agreement for City Manager; and

WHEREAS, the 2015-2016 Budget included unallocated, ongoing revenues of \$244,000. In setting the budget council acknowledged the need for staffing adjustment and labor negotiations

NOW, THERE FOR IT BE RESOLVED that the City Council does hereby:

1. Amend the March 29, 2013 Employment Agreement with the City Manager, attached as "Exhibit "A" to:
  - a. Increase the salary of the City Manager to seventeen thousand five hundred eighty-five and 33 cents (\$17,585.33) per month;
  - b. Increase the accrual and credit for personal leave and administrative as if the Employee had been employed for sixteen years;
  - c. Give the City Manager a vehicle allowance of \$400 per month for the use and maintenance of a private vehicle, in lieu of providing a city owned and maintained vehicle;

2. Authorize the Mayor to execute Amendment No. 1 to the Employment Agreement, in the form attached as “Exhibit “B”;
3. Authorize an Amendment to the Salary Plan for the City Manager;
4. Authorize Staff to make the necessary budgetary adjustments.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on this 20<sup>th</sup> day of January 2016 by the following vote:

AYES, COUNCIL MEMBERS: Amadeo, Brown, Morton, Delgado

NOE, COUNCIL MEMBERS: O’Connell

ABSTAIN, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: None

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Bruce C. Delgado, Mayor

ATTEST:

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Anita Sharp, Deputy City Clerk

COPY

**EMPLOYMENT AGREEMENT  
FOR  
CITY MANAGER**

THIS AGREEMENT is made and entered into on March 29, 2013, by and between the City of Marina, a California charter city, hereinafter referred to as "City," and Layne P. Long, hereinafter referred to as "Employee," as follows:

**Recitals**

The City requires the services of a City Manager and Employee is trained, experienced and competent to properly perform the services of City Manager specified herein.

**Terms and Conditions**

In consideration of the mutual provisions contained herein, City and Employee agree to the following terms and conditions:

1. **Scope of Services.** Employee is hereby hired and retained by the City to serve as the City Manager, with the following duties and authority:
  - a) The City Manager shall be the chief executive officer of the City and shall be responsible to the City Council for the proper administration of the affairs of the City.
  - b) The City Manager shall perform all of the duties of the City Manager as set forth in Title 2, Chapter 2, Section 2.08.070 of the Marina Municipal Code, in the City of Marina Personnel Manual and as otherwise legally required. The City Manager shall also perform other legally permissible and proper duties and functions as the City Council may assign from time to time.
  - c) The City Council also designates the City Manager as the chief executive of any other City-related legal entities, which could include financing authorities and joint power authorities.
  - d) The City Manager shall administer and enforce policies established by the City Council and promulgate rules and regulations as necessary to implement City Council policies.
  - e) The City Manager is required to attend all meetings of the City Council, unless excused by the Mayor, and take part in the discussion of all matters before the City Council.

f) The City Manager shall review all agenda documents before preparing the agenda for any regular or special meeting of the City Council.

g) The City Manager shall direct the work of all City employees.

h) The City Manager shall exercise control of City government in emergencies as authorized by the Municipal Code and California law.

2. Term. Employee will commence work on the services to be provided hereunder on April 1, 2013, and shall serve until this Agreement is terminated as herein set forth.

3. Compensation.

a) For the services to be performed under this Agreement, City shall pay Employee a salary of fifteen thousand dollars (\$15,000.00) per month.

Employee's salary shall have what the City Council determines is a reasonable differential above the next highest paid City official. Compensation shall be evaluated by the City Council on an annual basis and will include consideration of both merit and cost-of-living increases provided to Department Directors and non-represented management employees, as well as consideration of the competitive market compensation for city managers in comparable cities at the time of performance evaluations.

b) Employee shall be classified as exempt under the Fair Labor Standards Act and shall be a confidential employee for all purposes. Employee shall not be a member of the Department Directors informal employees organization, but shall have the same employee benefits as specified in the Department Directors' informal employee organization Memorandum of Understanding ("Directors MOU"), and any subsequent modifications thereto as approved by the City Council, except as otherwise specifically described in this Agreement or unless negotiated otherwise.

c) Accrual and credit for personal leave and administrative leave shall be as provided for in the Directors MOU, and any subsequent modifications thereto approved by the City Council, as if the Employee had been employed for six years. Employee shall be credited with fifteen days of vacation upon reporting to work. Employee shall be entitled to take off such municipal holidays as are recognized by the City.

d) City shall pay the full cost of Employee's medical, dental and vision insurance coverage for Employee and his dependents consistent with the terms and conditions of the Directors MOU, and any subsequent modifications thereto approved by the City Council. Provided, however, in the event that Employee negotiates on behalf of the City any employee benefits as described in this subparagraph 3d, or in subparagraphs 3b and 3c above with the Department Directors, Employee shall then not automatically be entitled to the same employee benefits as the Department Directors, but shall negotiate

separately with the City Council for Employee's similar benefits.

e) City will provide Employee with a group term life insurance policy in a face amount of one hundred thousand dollars (\$100,000.00) during the duration of his employment with the City.

f) City shall provide to Employee a cellular telephone for Employee to use in the course of his employment.

g) City shall provide Employee with the use of an existing city-maintained vehicle, bearing identification as a city vehicle, for use in the course of his employment and not for commuting or other personal use.

h) City acknowledges that participation in local, state, regional and national municipal city manager organizations by the Employee benefits the City and provides professional development. The City agrees to pay Employee's professional dues, subscriptions and memberships in such organizations necessary for Employee to maintain professional relationships, including ICMA, California City Manager's Association and other related professional associations. The City also agrees to provide Employee with an annual allocation to cover reasonable travel, conference registration, lodging, meals and meeting expenses of these organizations, subject to reasonable budgetary limitations, as approved by the City during the budget process. The Employee shall make an effort to minimize cost to the City. The Employee may attend up to ten days of City-approved professional development.

i) Employee will be enrolled in the City's CalPERS plan, which has a benefit formula for a new employee of two percent (2%) at age sixty two (62), with Employee as a new member to pay the required percentage cost of the employer+employee contribution per the California Public Employees' Pension Reform Act.

j) City will pay the sum of \$5,000.00 directly to the Employee for reasonable expenses of moving Employee, his family and personal property from Utah to Marina, California. This sum may be increased upon the written request of the Employee by payment by the City to Employee of an additional amount equal to one months' rent, or at a maximum two months' rent, of the family housing unit to be provided to Employee per subparagraph 3k below, with a commensurate reduction (i.e., one or two months) in the period of free housing therein provided by the City.

k) City will allow the Employee, during an interim period of six (6) months, to have exclusive possession and use of a family dwelling residence in City-owned property located within the residential community known as Abrams Park, for occupancy by the Employee and his family, with the monthly rent for same paid by the City to the Employee, beginning as soon as available and at a reasonable time close to the first day of employment and terminating upon notice of the Employee, or six (6) months from the

first day of occupancy, which six month period will include an initial temporary residence in a hotel or motel in Marina for the approximately 8 days until the Abrams Park residence is available to be moved into by Employee. Provided that if the Employee elects to take one or two months' rent to add to his payment for moving expenses, as described in subparagraph 3k above, then the six months' period mentioned hereinabove of rent paid by the City to Employee shall be reduced accordingly, i.e., to five or four months. Provided further that if the Employee gives written notice to the City thirty days prior to the termination of the initial six (or five or four) months' period, that he requires an extension of his term of occupancy, an extension can be granted for up to an additional four (4) months, however during such extended period the City shall pay to Employee only one-half of the rent charged for the unit by the City's property management firm for Abrams Park. In the event of termination of this Agreement, Employee shall vacate the premises within sixty (60) days of the last date of employment, and no further notice will be required from the City for termination of the tenancy.

l) City agrees to reimburse Employee for reasonable job-related expenses incurred in carrying out his duties as City Manager, subject to reasonable budgetary restrictions and in accordance with applicable laws and City policies.

m) No reduction of salary, compensation or other benefits of the Employee shall occur, unless the City Council at any time during the course of this Agreement reduces the salary or other employment or financial benefits of all Department Directors of the City. In such event, the salary and benefits of the Employee, as set forth herein, may be reduced in the same amount, at the sole discretion of the City Council.

n) Recognizing the fact that Employee at the time of execution of this Agreement cannot obtain PERS Choice medical coverage for his family members residing out-of-state, City will pay to Employee, until such time as (i) Employee's family dependents are residing in California and are eligible for PERS Choice coverage, or (ii) August 31, 2013, whichever occurs first, a monthly in-lieu sum equal to a City employee's cafeteria plan benefit (\$575.00) plus the City's portion of the employee-only PERS Choice cost (\$263.25), paid one-half per pay period, toward Employee's present cost of family health care coverage.

4. Termination, Resignation and Severance Pay.

a) The City Council may, without cause, terminate Employee's employment as the City Manager by an affirmative vote of three fifths (3/5ths) of all members of the City Council, upon thirty (30) days advance written notice to the Employee; provided, however, that consideration of termination by the City Council may not occur within one hundred and eighty (180) days after a General Municipal Election or Special Election wherein a new member or members are elected to the City Council.

b) In the event this agreement is terminated by the City without cause, City

shall pay Employee a lump sum cash payment severance as follows: nine months' of salary and benefits (in a lump sum of then-current health, dental and vision benefits) if Employee is terminated without cause during the first year of employment (i.e., on or before April 1, 2014); six months' of salary and such benefits if the Employee is terminated without cause during the second through fifth year of employment (i.e., from April 1, 2015 to April 1, 2018); and, four months' of salary and such benefits if the Employee is terminated without cause after the fifth year of employment (i.e., after April 1, 2018).

c) If Employee's employment is terminated for cause by the City Council, or for any of the reasons set forth below, Employee shall not be entitled to severance pay:

1. Intentional or willful failure to perform his lawful duties as set forth herein
2. his death;
3. his incapacity or inability to perform his essential duties due to physical or mental disabilities;
4. willful destruction, theft, misappropriation or misuse of City property;
5. intoxication on duty, whether by alcohol, marijuana or non-prescriptive drugs;
6. inexcusable absence;
7. conviction of a felony or misdemeanor involving breach of the public trust;
8. dishonest, fraud or misconduct in office;
9. violation of Government Code Section 1090, or violation of any conflict of interest laws or regulations which a court or administrative agency finds resulted in Employee or his immediate family receiving actual economic gain; and
10. fraud or dishonesty in having secured his employment.

d) Employee agrees that in the event Employee's employment is terminated, under no circumstances will Employee be able to contest the nature of Employee's at-will employment status, nor will Employee be entitled to seek or obtain the remedy of reinstatement in any administrative or legal forum. Employee agrees that the sole issue for resolution upon termination of Employee's employment agreement will be the extent

of severance pay and/or other payments due Employee as the result of services rendered through the day of termination. Employee shall have no other right of action against the City as it relates to termination and severance.

e) Pending the outcome of any dispute over the amount of severance pay, City may withhold any severance sums due Employee.

f) In the event Employee voluntarily and without the official request of the City resigns his position, Employee shall give written notice to the City at least thirty days in advance of the final date of employment, unless the parties otherwise agree. In the event Employee resigns, the severance pay provisions of paragraph 4.b. shall not apply.

g) The parties hereto acknowledge and agree that California Government Code Sections 53243-53243.4, inclusive, could under certain circumstances require the Employee fully to reimburse City for funds provided, pursuant to this Agreement or otherwise, by the City to Employee. The parties hereto agree that by attaching said Sections hereto, marked Exhibit A, and by their incorporation herein by this reference, said reimbursement obligations are fully applicable hereunder should any of the conditions described in said Sections requiring reimbursement transpire.

5. Outside Employment. Employee agrees to remain in the exclusive employ of the City, accepting no other employment during the term of this Agreement, unless permitted by Resolution of the City Council.

6. Performance Evaluations. City Council shall evaluate the performance of Employee on the sixth month of employment and one year from the date of this contract, which shall be the annual date of review. The evaluations shall be performed annually, thereafter. The evaluations shall be written and shall be performed by the City Council, as the City Council elects. A copy of the written evaluation shall be delivered to the Employee and he shall have the right to respond orally or in writing to the evaluation. Employee shall be responsible for providing annual written notice to the City Council of the need to complete the evaluation process and shall agendize the closed session(s) for discussion and preparation of the evaluation. Upon initial hire and annually thereafter, the City Council and Employee shall define such goals and performance objectives that they determine necessary for the proper operation of the City and in attainment of the City Council's policy objectives.

7. Indemnification. The City shall defend, hold harmless and indemnify the Employee against any claim or demand or legal action, whether groundless or otherwise, and any settlement or judgment and cost of defense, arising out of any alleged act or omission occurring in the performance of his duties to the City. In its sole discretion, the City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered therefrom.

8. Personnel Rules. Except as modified by this Agreement, Employee shall be subject to and comply with the City Personnel Manual, receipt of which is hereby acknowledged, including future changes as approved by the City Council.

9. Modification. This Agreement is not subject to amendment or modification except by a writing signed by the parties hereto.

10. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the matters covered by this Agreement, and no other agreement, statement or promise made by or to any party or by or to any employee, officer or agent of any party, which is not contained in this Agreement, shall be binding or valid.

11. Attorney's Fees. In the event of any controversy, claim or dispute relating to this Agreement, or the breach thereof, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorney's fees and costs.

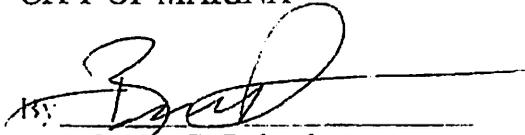
12. Employee's Examination of Agreement. Employee acknowledges that Employee has had the right to examine this Agreement, has been advised that Employee may wish to consult with an attorney prior to entering into this Agreement and has read and understands all of the provision of this Agreement.

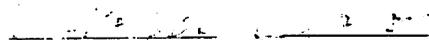
13. Severability. If any provision or any portion thereof contained in this Agreement is held to be unconstitutional, invalid, or unenforceable, the remainder of this Agreement or portion thereof, shall be deemed to be severable and shall remain in full force and effect.

IN WITNESS WHEREOF, Employee and the City of Marina, by its duly authorized representative, have executed this Agreement on the date first hereinabove set forth at Marina, California.

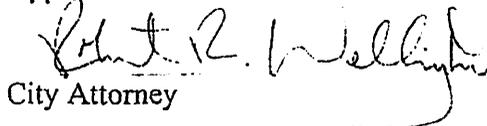
CITY OF MARINA

EMPLOYEE

  
\_\_\_\_\_  
Bruce C. Delgado  
Mayor

  
\_\_\_\_\_  
Layne P. Long

Approved as to form:

  
\_\_\_\_\_  
City Attorney

# GOVERNMENT CODE

## SECTION 53243-53243.4

53243. On or after January 1, 2012, any contract executed or renewed between a local agency and an officer or employee of a local agency that provides paid leave salary offered by the local agency to the officer or employee pending an investigation shall require that any salary provided for that purpose be fully reimbursed if the officer or employee is convicted of a crime involving an abuse of his or her office or position.

53243.1. On or after January 1, 2012, any contract executed or renewed between a local agency and an officer or employee of a local agency that provides funds for the legal criminal defense of an officer or employee shall require that any funds provided for that purpose be fully reimbursed to the local agency if the officer or employee is convicted of a crime involving an abuse of his or her office or position.

53243.2. On or after January 1, 2012, any contract of employment between an employee and a local agency employer shall include a provision which provides that, regardless of the term of the contract, if the contract is terminated, any cash settlement related to the termination that an employee may receive from the local agency shall be fully reimbursed to the local agency if the employee is convicted of a crime involving an abuse of his or her office or position.

53243.3. On or after January 1, 2012, if a local agency provides, in the absence of a contractual obligation, for any of the payments described in this article, then the employee or officer receiving any payments provided for those purposes shall fully reimburse the local agency that provided those payments in the event that the employee or officer is convicted of a crime involving the abuse of his or her office or position.

53243.4. For purposes of this article, "abuse of office or position" means either of the following:

(a) An abuse of public authority, including, but not limited to, waste, fraud, and violation of the law under color of authority.

(b) A crime against public justice, including, but not limited to, a crime described in Title 5 (commencing with Section 67) or Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

EXHIBIT

A

**AMENDMENT No. 1  
TO  
EMPLOYMENT AGREEMENT  
FOR  
CITY MANAGER**

In consideration of the mutual promises contained herein, City and Employee agree that the Terms and Conditions set forth herein are incorporated into the Agreement for Employment made and entered into on March 29, 2013, by and between the City of Marina, a California charter city and Layne P. Long. Only the numbered sections and subsections of said Agreement which are being revised are set forth below in this Amendment No. 1; all other terms and conditions of the Agreement of Employment shall remain in full force and effect.

3. Compensation

a) For the services to be performed under this Agreement, City shall pay Employee a salary of seventeen thousand five hundred eighty-five and 33 cents (\$17,585.33) per month.

On the first day of each calendar year for years: 2017, 2018, and 2019, Employee's salary shall increase by no less than three percent (3%) for each applicable calendar year. This is a minimum percentage increase and does not preclude a higher percentage to maintain what the Council determines to be a reasonable differential above the next highest paid City official. Compensation shall be evaluated by the City Council on an annual basis and will include consideration of both merit and cost-of-living increases provided to Department Directors and non-represented management employees, as well as consideration of the competitive market compensation for city managers in comparable cities at the time of performance evaluations.

c) Accrual and credit for personal leave and administrative leave shall be as provided for in the Directors MOU, and any subsequent modifications thereto approved by the City Council, as if the Employee had been employed for sixteen years. Employee shall be entitled to take off such municipal holidays as are recognized by the City.

g) In lieu of providing a city owned and maintained vehicle for Employee's use, City shall pay to Employee a vehicle allowance of \$400 per month and Employee shall use and maintain a private vehicle. Employee shall be responsible for providing all necessary liability insurance for the use of his personal vehicle for City business and shall provide proof of such insurance to the City upon request. Employee shall also be responsible for all maintenance, repair, and replacement costs associated with the use of his personal vehicle. Finally, Employee shall comply with all vehicle laws and City policies related to safe operation of a motor vehicle when operating his vehicle for a business-related purpose.

IN WITNESS WHEREOF, Employee and the City of Marina, by its duly authorized representative, have executed this Agreement on the date first hereinabove set forth at Marina, California.

CITY OF MARINA

EMPLOYEE

By \_\_\_\_\_  
Bruce C. Delgado  
Mayor

\_\_\_\_\_  
Layne P. Long

Approved as to form:

\_\_\_\_\_  
City Attorney

January 13, 2016

Item No. **11a**

Honorable Mayor and Members  
of the Marina City Council

City Council Meeting  
of January 20, 2016

**CITY COUNCIL TO ADOPT RESOLUTION NO 2016- TO AMEND THE  
CITY MANAGER EMPLOYMENT AGREEMENT TO INCREASE  
SALARY AND BENEFITS, AUTHORIZE SIGNATURE BY THE MAYOR,  
APPROVE AMENDMENTS OR ADDITIONS TO THE SALARY PLAN  
AND MAKE THE NECESSARY BUDGETARY ADJUSTMENTS.**

**REQUEST:**

It is requested that the City Council:

1. Amend the March 29, 2013 Employment Agreement with the City Manager, attached as “**EXHIBIT “A”**” to:
  - a. Increase  
the salary of the City Manager to seventeen thousand five hundred eighty-five and 33 cents (\$17,585.33) per month;
  - b. Increase  
the accrual and credit for personal leave and administrative as if the Employee had been employed for sixteen years;
  - a. Give  
the City Manager a vehicle allowance of \$400 per month for the use and maintenance of a private vehicle, in lieu of providing a city owned and maintained vehicle;
2. Authorize the Mayor to execute Amendment No. 1 to the Employment Agreement, in the form attached as “**EXHIBIT “B”**”;
3. Authorize an Amendment to the Salary Plan for the City Manager;
4. Authorize Staff to make the necessary budgetary adjustments.

**BACKGROUND:**

The City Council met in closed sessions in November 2015 and as part of the City Manager’s performance evaluation it evaluated whether any adjustments in salary and benefits were warranted. The City Council met on January 12, 2015, as part of closed session Labor Negotiations with the City Manager. The City Council now seeks to amend City Manager’s employment contract in open session and enter into an Amendment to the City Manager’s Employment Agreement to increase the salary and benefits, as set forth above.

**ANALYSIS:**

The City completed a review of all city job classifications within our competitive market. The City's competitive labor market includes but is not necessarily limited to the following cities: Seaside, Salinas, Monterey, Pacific Grove, Hollister, Gilroy, Morgan Hill, Paso Robles, San Luis Obispo, Watsonville and Santa Cruz. Additionally the City has reviewed the internal alignment with these job classifications. At the regular meeting of January 5, 2016 and a special meeting on January 12, 2016, council took action to align salaries for multiple positions, including the Police Chief and Recreational and Cultural Services Director.

The proposed salary change is to bring the City Manager's salary to the middle of our competitive market; maintain a reasonable differential above the next highest paid City official; and take into consideration job performance. This action is consistent with Paragraph 3a of the 2013 Employment Agreement for City Manager.

**FISCAL IMPACT:**

The 2015-2016 Budget included unallocated, ongoing revenues of \$244,000. In setting the budget council acknowledged the need for staffing adjustment and labor negotiations.

Respectfully submitted,

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City Attorney's Office