

Exhibit "A"

Resolution No. 2023-28
City Manager Employment Agreement
Between the City of Needles and Patrick Martinez
April 25, 2023

RESOLUTION NO. 2023-28
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEEDLES
APPROVING AN EMPLOYMENT AGREEMENT BETWEEN THE CITY OF NEEDLES AND
PATRICK J. MARTINEZ AS CITY MANAGER EFFECTIVE OCTOBER 2, 2023 – OCTOBER 1, 2026

WHEREAS, at the City Council meeting on March 14, 2023, City Manager Rick Daniels provided notice to the City Council that he intends to retire and leave City employment in early October 2023.

WHEREAS, on March 28, 2023, City Council interviewed Patrick Martinez, Assistant City Manager/Development Services Director and directed the City Manager to negotiate a possible 3-year Employment Agreement with Mr. Martinez.

WHEREAS, on April 11, 2023, in Executive Session, City Council reviewed the draft Employment Agreement and set formal consideration of the Agreement for its Regular Meeting on April 25, 2023.

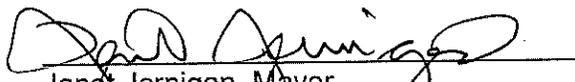
WHEREAS, the City Council and Mr. Martinez have agreed to the terms and conditions of employment which are outlined in the Employment Agreement attached hereto.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Needles, California, hereby approves the Employment Agreement between the City of Needles and Patrick Martinez and authorizes the Mayor to sign same for and on behalf of the City of Needles.

PASSED, APPROVED and ADOPTED at a regular meeting of the City Council of the City of Needles, California, held on the April 25, 2023.

AYES: Council Members Campbell, McCorkle, Merritt, Pogue, Belt, and Longbrake
NAYS: None
ABSENT: None
ABSTAIN: None

APPROVED:


Janet Jernigan, Mayor

ATTEST:


Dale Jones, City Clerk

APPROVED AS TO FORM:


John O. Pinkney, City Attorney

CITY MANAGER EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (this "Agreement") is entered into as of the ___ day of April 25, 2023, between the City Council of and on behalf of the City of Needles (the "City" or the "City Council") and Patrick J Martinez,(the "City Manager" or the "Employee"). The above-named parties hereby mutually agree and promise as follows:

I. TERM.

The City hereby employs Employee as City Manager for a term of three (3) years commencing on October 2, 2023 (the "Commencement Date"), and continuing through October 1, 2026 (the "Term"), unless the Agreement is renewed in a writing executed by the parties. Either Employee or City may terminate this agreement without liability or further obligation prior to the Commencement Date.

II. SALARY.

City Manager's salary shall be \$197,000 per year, which sum shall be paid pursuant to the procedures regularly established, and as they may be amended by the City in its sole discretion. On each anniversary of this Agreement, the salary may be adjusted in an amount to be determined in the discretion of the City Council.

The position of City Manager is an exempt position under state and federal wage and hour laws. Employee's compensation (whether salary of benefits or other allowances) is not based on hours worked and Employee shall not be entitled to any compensation for overtime. Employee is expected to engage in those hours of work that are necessary to fulfill the obligations of the City Manager position. The City Manager does not have set hours of work as the City Manager is expected to dedicate himself on a full-time basis to serving as City Manager and to be available at all reasonable and relevant times.

III. DUTIES

Employee shall perform the duties of the City Manager as prescribed by the City Charter and the Needles Municipal Code. In addition to the powers and duties set forth in the Municipal Code, the City Manager shall have such powers and duties which are delegated to him by the

City Council. The City Manager shall execute all powers and duties in accordance with the policies adopted by the City Council and the State of California Government Code.

IV. CITY MANAGER AND COUNCIL RESPONSIBILITIES.

The City Manager shall be the chief executive officer of the City. As such, the City Manager shall have the responsibility for implementing City Council policy, whereas the City Council shall retain the responsibility for formulating and adopting said policy.

V. OTHER DUTIES.

The City Manager (or designee) shall: (1) review all policies proposed to the City Council and make appropriate recommendations to the Council; (2) periodically evaluate employees as provided for by California law and City policy; (3) advise the Council of possible sources of funds that might be available to implement present or contemplated City programs or services; (4) maintain and improve his professional competence by available means, including subscription to and reading of appropriate periodicals, and joining and participating in appropriate professional associations and their activities; (5) establish and maintain an appropriate community relations program; and (6) serve as liaison between the Council and as its designated representative with respect to all employer-employee matters, and make recommendations to the Council concerning those matters. Notwithstanding that a designee of the City Manager may perform said duties, the City Manager shall be the person ultimately responsible to the Council for the proper implementation of the duties and responsibilities described in this Agreement. At the discretion of the City Council, the City Manager shall also serve as the City's Director of Public Utilities and the executive director of the Needles Public Utilities Authority, Needles Public Finance Authority, Needles Housing Authority and the Successor Agency of the Needles Redevelopment Agency.

VI. OUTSIDE PROFESSIONAL ACTIVITIES.

City Manager, with prior approval of the City Council, may undertake outside professional activities for compensation, including consulting, teaching, training, speaking and writing provided they do not interfere with City Manager's normal duties and are done only during non-business hours, personal leave or holiday time of City Manager and are not done with

any existing vendors or contractors of the City. Under no circumstances shall such outside activities create a conflict of interest with the duties of the City Manager and the interests of the City.

VII. EVALUATION.

City Manager shall meet with the City Council in closed session annually, on or around each anniversary date of the Agreement, to review the City Manager's performance and to discuss the City Council's evaluation of said performance. Notwithstanding, the failure to conduct this annual evaluation shall not inhibit any party's ability to terminate this Agreement pursuant to Section VIII below. Additional closed sessions may be scheduled at the direction of the City Council to discuss the Employee's performance as deemed necessary by the City Council.

VIII. TERMINATION.

A. City Manager shall serve at the will and pleasure of the City Council and may be removed from office (terminated) at any time for any reason or no reason upon a majority vote of the City Council. The City Council may also terminate Employee for cause as set forth herein. Nothing in this Agreement shall prevent the City Council from terminating this Agreement and the services of City Manager at its sole discretion. Employee agrees that all property, including without limitation, all equipment, tangible property, proprietary information, documents, records, notes, contracts, and computer-generated materials furnished to or prepared by Employee incident to Employee's employment are the property of City and shall be returned immediately to City upon termination or resignation of Employee's employment. Employee's obligations under this subsection shall survive the termination of Employee's employment and the expiration or early termination of this Agreement.

B. Termination Without Cause

In the event City Manager is terminated by the City during the term of this Agreement, during which time Employee is willing and able to perform his duties under this Agreement, the City Council may, without notice or hearing, immediately release the employee from his/her employment with the City by providing City Manager with: (1) Nine (9) months' salary, less any and all applicable or legally required deductions; and (2) continuation of all existing health

benefits currently offered the Employee, for the lesser of nine (9) months or until City Manager finds other comparable employment. (The salary and benefits shall be referred to collectively as "Severance Pay"). Employee will not receive said Severance Pay until he executes a full and final release of any and all actual and potential claims (including a Civil Code Section 1542 release/waiver) that Employee has or could have against the City, its officials, employees and agents, in a form prepared by and acceptable to the City. Notwithstanding the above, should there be less than nine (9) months remaining on the unexpired term of this Agreement, the Severance Pay shall instead be equal to the number of months left on the unexpired term of the Agreement. In exchange for the Severance Pay, the City Manager hereby expressly waives any right or claims he may have related in any way to his employment and/or termination under any applicable law, City policy, or otherwise to contest, challenge, litigate, appeal or grieve his termination and/or the terms of this Agreement.

The above severance provisions are intended to comply with the provisions of Government Code section 53260, et seq.

C. Termination for Cause

In the event that it is determined that City Manager has been terminated for cause, the City Manager shall not be entitled to any Severance Pay. Termination shall be for "cause" if City Manager: (i) acts in bad faith and to the detriment of the City; (ii) refuses or fails to act in accordance with any specific direction or order of the City Council; (iii) continues in the poor performance of his duties despite Council efforts to correct any deficiencies; (iv) exhibits misconduct or dishonesty in regard to his employment; or (v) is convicted of a misdemeanor or felony crime. In case of his intended removal, the City Manager shall be furnished with a written notice stating the City Council's intention to remove him and the reasons therefore, at least thirty (30) calendar days before the effective date of removal. Within fifteen (15) calendar days after the furnishing of City Manager of such notice, he may, by writing, addressed to the City Council and delivered to the City Clerk, request a hearing before the City Council, where the sole issue shall be whether there is sufficient "cause" for the termination and the sole remedy whether City Manager is entitled to Severance Pay. Thereupon, the Mayor shall fix a time for such hearing. Such hearing shall be held before the expiration of the aforesaid thirty (30) calendar day period and the City Manager may attend and be heard. After furnishing the City Manager with written notice of his intended removal from office, the City Council may suspend

him from further duty, but his compensation shall continue until his removal by motion of the City Council.

D. Resignation

In the event that the City Manager resigns from his employment with the City, City Manager shall not be entitled to any Severance Pay.

E. Expiration of Agreement

Unless renewed in a writing signed by the Employee and the City, this Agreement shall expire upon expiration of the Term.

F. Statutory Obligations; Abuse of Office or Position.

Pursuant to Government Code section 53243, et seq. which became effective on January 1, 2012, if City Manager is convicted of a crime involving an abuse of his/her office or position, all of the following shall apply: (1) if City Manager is provided with administrative leave pay pending an investigation, City Manager shall be required to fully reimburse such amounts paid; (2) if the City pays for the criminal legal defense of City Manager (which would be in its sole discretion, as it is generally not obligated to pay for a criminal defense), City Manager shall be required to fully reimburse such amounts paid; and (3) if this Agreement is terminated, any cash settlement or Severance Pay related to the termination that City Manager may receive from the City shall be fully reimbursed to the City. For this Section, abuse of office or position means either: (1) an abuse of public authority, including waste, fraud, and violation of the law under color of authority; or (2) a crime against public justice, including a crime described in Title 7 commencing with section 92 of the Penal Code.

IX. FRINGE BENEFITS.

A. **Time Off.** City Manager shall be provided with paid time off, including vacation, sick leave and paid holidays equivalent to that of a fifteen-year management employee. Additionally, city manager shall be provided 60 hours per calendar year administrative leave, pro-rated for portions of a calendar year, on a non-accrual and non-cumulative basis.

B. **Health Benefits:** City manager shall receive same health benefits as other management employees.

C. **CalPERS.** City manager shall receive the same CalPERS benefit as other management employees.

D. **Professional Membership.** The City shall pay the City Manager's dues for his membership in the such organizations as are agreed upon with the City Council.

E. **Automobile Allowance** . City manager shall be provided with a city vehicle for City-related business and/or functions during, before and after normal work hours or a mileage reimbursement for business miles traveled in accord with IRS rules.

F. **Technology.** City will provide a laptop computer with remote access capability to city computer system and cell phone or \$50/month cell phone allowance

G. **Exclusive Consideration.** All compensation, benefits and comparable payments to be provided to the City Manager under this Agreement shall be less withholdings required by law and shall be provided subject to any rules, regulations, agreements, or policies established by the City Council, as amended from time to time at its discretion. The City Manager shall be entitled to no benefits and compensation other than as set forth above.

H. **Conflicts:** Employee shall not, during the term of this Agreement, individually, as a partner, joint venture, officer or shareholder, invest or participate in any business venture located within or conducting business in the corporate limits of City, except for stock ownership in any company whose capital stock is publicly held and regularly traded, without prior written approval of the City Council. Employee shall also be subject to the conflict of interest provisions of the Government Code of the State of California, City's Municipal Code, Charter and any other

conflict of interest regulations applicable to Employee's employment with City. For and during the Term of this Agreement and any extension term, Employee further agrees that except for a personal residence or residential property acquired or held for future use as Employee's personal residence, Employee shall not invest in any other real estate or property improvements within the corporate limits of City without the prior consent of the City Council.

I. Expenses: City shall reimburse Employee for reasonable and necessary travel, subsistence and other business expenses incurred by Employee in the performance of Employee's official duties. All reimbursements shall be subject to and in accordance with any limitations or restrictions set forth under the laws of the State of California or any City adopted reimbursement policies.

J. Indemnification: Subject to, in accordance with, and to the extent provided by the California Tort Claims Act (Government Code Section 810 et seq. including, but not limited to, Sections 825, 995 and 995.2) City will indemnify, defend, and hold Employee harmless from and against any action, demand, suit, monetary judgment or other legal or administrative proceeding, and any liability, injury, loss or other damages, arising out of any negligent act or omission occurring within the scope of Employee's employment during the Term of this Agreement or any extension term. City shall have the discretion to compromise or settle any such claim, demand or action and pay the amount of any settlement or judgment rendered thereon. Notwithstanding the foregoing, City shall have no duty to indemnify, defend, or hold Employee harmless from any criminal proceeding, or with regard to any civil, criminal or administrative proceeding initiated by Employee.

X. GENERAL PROVISIONS.

A. This Agreement supersedes any and all other agreements, either oral or written, between the parties hereto with respect to the employment of the City Manager by the City and contains all of the covenants and agreements between the parties with respect to the employment of City Manager by the City. This Agreement is intended to be the final, complete, and exclusive statement of the terms of Employee's employment by City and may only be modified.

B. Each party agrees and acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein and that any agreement, statement, or promise not contained in this Agreement shall not be valid or binding on either party.

C. Any modifications of this Agreement will be effective only if made in writing and signed by both the City Manager and the City.

D. If any provision, section or sentence of this Agreement is held by a Court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

E. This Agreement shall be construed as a whole, according to its fair meaning, and not in favor of or against any party. By way of example and not in limitation, this Agreement shall not be construed in favor of the party receiving a benefit or against the party responsible for any particular language in this Agreement. Captions are used for reference purposes only and should be ignored in the interpretation of the Agreement. This Agreement may be altered, amended or modified only by an instrument in writing; executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest, or assert that this Agreement was modified, cancelled superseded or changed by any oral Agreement, course of conduct, waiver or estoppel.

F. The Parties repeat and incorporate the recitals set forth above as if fully set forth herein.

G. This Agreement is entered into and to be performed in the City of Needles, California within the County of San Bernardino and shall be interpreted and enforced pursuant to California law. The parties agree that in the event of any litigation, venue shall be in San Bernardino County California.

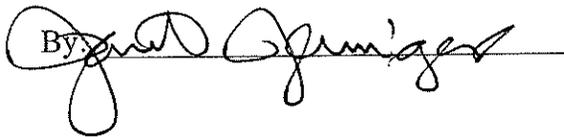
IN WITNESS WHEREOF, the parties have executed this AGREEMENT on the ___ day of April 2023.

“CITY”

“EMPLOYEE”

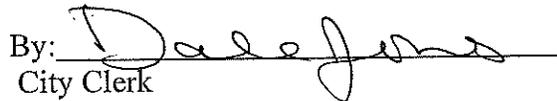
CITY OF NEEDLES

Patrick J. Martinez

By: 

By: 

ATTEST:

By: 
City Clerk

APPROVED AS TO FORM:

By: 
City Attorney

CITY OF NEEDLES

817 Third Street • Needles, California 92363
(760) 326-2113 • FAX (760) 326-6765

*Mayor Jan Jernigan
Vice Mayor Kirsten Merritt
Councilmember Tona Belt
Councilmember Ellen Campbell
Councilmember Jamie McCorkle
Councilmember JoAnne Pogue
Councilmember Henry Longbrake
City Manager Rick Daniels*

CERTIFICATION

I, Candace Martinez, Assistant City Clerk of the City of Needles, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 2023- 28.



Candace Martinez
Assistant City Clerk

(SEAL)

Date: April 27, 2023