

## EMPLOYMENT AGREEMENT

### BETWEEN THE COUNTY OF CONTRA COSTA AND DAVID J. TWA

1. **Parties.** Effective January 1, 2013, this Agreement is made by and between the County of Contra Costa, a political subdivision of the State of California, hereafter referred to as COUNTY, and David J. Twa, hereafter referred to as EMPLOYEE, in consideration of the mutual promises, made herein. This Agreement supersedes any prior contracts or agreements between the parties.
2. **Term.** The term of this Agreement is from the effective date of this Agreement through December 31, 2017.
3. **Status of Employee: At Will Exclusive Employment.** EMPLOYEE is an "at will" EMPLOYEE of COUNTY and serves at the pleasure of COUNTY Board of Supervisors. This Agreement and the relationship created hereby may be terminated at any time by the COUNTY Board of Supervisors, in its sole discretion, with or without cause, as provided herein below. There is no express or implied promise made to EMPLOYEE for any form of continued employment beyond the expiration of the term of this Agreement.

EMPLOYEE agrees to remain in the exclusive employ of the COUNTY during the term of this Agreement. EMPLOYEE warrants that there are no agreements or arrangements, whether written or oral, in effect that would prevent EMPLOYEE from rendering exclusive services to COUNTY during the term of this Agreement and that EMPLOYEE has not made and will not make any commitment or do any act in conflict with this Agreement. This Agreement does not prohibit EMPLOYEE from making personal investments not in conflict with his duties under this Agreement.

4. **Duties.** COUNTY hereby employs EMPLOYEE as County Administrator for the term of this Agreement. Subject to the oversight of the Board of Supervisors, EMPLOYEE will provide all necessary services required to oversee and supervise the operations and administrative activities of the COUNTY. EMPLOYEE will perform his duties to the best of his ability, in accordance with the highest professional and ethical standards of his profession as well as all applicable laws and all policies, ordinances, resolutions and regulations of COUNTY. EMPLOYEE's responsibilities include all duties as set forth in Contra Costa County Ordinance Code Chapter 24-4 and as may be assigned by COUNTY Board of Supervisors, including but not limited to those duties specified in the County job description for the County Administrator as it may be amended or superceded. EMPLOYEE will devote full time to furnishing his services under this Agreement and shall fulfill all responsibilities required by this Agreement.
  - a. **County Property.** EMPLOYEE is entitled to use all COUNTY offices, facilities, and equipment for the purposes of fulfilling his responsibilities under this Agreement. Upon either termination of this Agreement, however effected, or when requested by COUNTY Board of Supervisors, EMPLOYEE will immediately turn over to COUNTY all of its property, including all items used by EMPLOYEE in rendering services hereunder or otherwise, that may be in EMPLOYEE possession or under his control.

5. **Compensation.** Commencing with the pay period beginning July 1, 2013, COUNTY will pay EMPLOYEE the following compensation:
- a. **Base Salary.** COUNTY will pay EMPLOYEE an annual base salary of \$260,000 during the term of this Agreement, at the same times that COUNTY pays its other employees. All salary payments will be subject to the withholding of EMPLOYEE's share of benefits, and such federal, state and local taxes and other deductions and withholding as may be legally required.
  - b. **Cost of Living Adjustments.** EMPLOYEE will receive the same cost-of-living adjustments to his salary as COUNTY provides for other Department Heads, and such cost-of-living adjustments will be provided to EMPLOYEE at the same times that they are provided to other Department Heads.
6. **Benefits and Leaves.** Except as otherwise provided in this Section, in recognition of EMPLOYEE's 39 years of public service, EMPLOYEE is afforded the same number of regular holidays, the same number of personal holidays per fiscal year, the same sick leave, health, dental, retiree health, life, and disability insurance benefits, and the same retirement, and other employment benefits as are provided to other Department Heads, and in accordance with Management Resolution No. 2013/52, as may be amended or superseded (hereinafter "the Management Resolution").
- a. **Vacation.** In lieu of vacation accruals as provided for in the Management Resolution, beginning January 1, 2013, EMPLOYEE will accrue 23 1/3 vacation hours per month during the term of this Agreement. EMPLOYEE is permitted to sell up to one-third of vacation hours credited to his account as provided for in the Management Resolution.
  - b. **Deferred Compensation.** In lieu of the deferred compensation benefit provided for in the Management Resolution, a deferred compensation contribution in the amount of Twenty-Three Thousand Dollars (\$23,000) will be added to the County Administrator's County deferred compensation account effective July 1<sup>st</sup> of each year, commencing July 1, 2013. If, after July 1, 2013, but prior to June 30<sup>th</sup> of the next succeeding year, and each year thereafter, EMPLOYEE's employment with the COUNTY terminates, in any of the ways described in Section 9 of this Agreement, EMPLOYEE will receive an additional deferred compensation account contribution prorated from July 1<sup>st</sup> to the date that EMPLOYEE's employment with COUNTY terminates. If, for any reason, all or part of such deferred compensation cannot be paid into his County deferred compensation account, the County Administrator will receive an equivalent lump-sum payment.
  - c. **Dues, Subscriptions, and Conferences.** COUNTY will reimburse EMPLOYEE for professional dues and subscriptions necessary for maintenance of a California Certified Public Accountant license, for EMPLOYEE membership in the California County Administrator's Association, and for reasonable expenses incurred by EMPLOYEE by

attending the annual conferences of the Government Finance Officers Association and the National Association of Counties.

7. **Evaluation.** COUNTY Board of Supervisors will evaluate EMPLOYEE performance annually, and more frequently if desired by the Board of Supervisors.
8. **Administrative Leave.** At any time at its sole discretion, COUNTY Board of Supervisors may relieve EMPLOYEE of his duties and authority hereunder by placing him on administrative leave at the salary and compensation levels specified in this Agreement. If EMPLOYEE is placed on administrative leave pending an investigation of his actions or omissions and is subsequently convicted of a crime involving "abuse of his position," as that term is defined by Government Code section 52343.4, EMPLOYEE must reimburse COUNTY for all salary and compensation provided to him during the administrative leave.
9. **Termination.** Any of the events described in this Section will terminate this Agreement and employment of EMPLOYEE by COUNTY. If this Agreement is terminated for any of the reasons described below and EMPLOYEE is subsequently convicted of a crime involving the "abuse of his position" as that term is defined by Government Code section 53243.4, EMPLOYEE must reimburse COUNTY for any cash settlement he received related to the termination of this Agreement, including severance pay.
  - a. EMPLOYEE's resignation
  - b. Expiration of the term of this Agreement.
  - c. Death or permanent disability of EMPLOYEE when such disability prevents EMPLOYEE from performing the essential functions of his job.
  - d. COUNTY's termination of EMPLOYEE's employment in accordance with Section 10, subsections (c) or (d) below.
  - e. The parties' mutual written consent to terminate this Agreement.
10. **Compensation and Benefits Following Termination.**
  - a. **EMPLOYEE Resignation; Expiration of Term.** At his sole discretion, EMPLOYEE may resign his employment at any time upon sixty (60) days advance written notice of the effective date of his resignation to the COUNTY. Such termination will be effective on the sixtieth day. If EMPLOYEE terminates this Agreement by resignation, or if the term of this Agreement expires without renewal, EMPLOYEE will not be entitled to any severance pay or provision of severance health benefits.
  - b. **Death or Permanent Disability.** This Agreement will terminate automatically upon the death or permanent disability of EMPLOYEE. In that event, COUNTY's total liability to EMPLOYEE or his survivors or beneficiaries will be limited to payment of EMPLOYEE's compensation to the date of death or permanent disability, together with such benefits that may have been accrued by and fully vested in EMPLOYEE as of the date of his death or permanent disability and that are payable to EMPLOYEE or his survivors or beneficiaries in the event of his death or permanent disability. Should this Agreement be terminated by EMPLOYEE's death or permanent disability, he will not be entitled to any severance pay or provision of severance health benefits.

- c. **Termination by COUNTY Without Cause.** At its discretion, COUNTY may terminate EMPLOYEE's employment at any time upon sixty (60) days advance written notice to EMPLOYEE. Such termination will be effective on the sixtieth day.
- (1) **Cash Settlement.** If COUNTY terminates this Agreement without cause ("cause" is defined in subsection (d) of this Section 10, below), before the completion of the term of this Agreement, COUNTY will pay EMPLOYEE a cash settlement as described in this subsection. The cash settlement will be subject to withholding of EMPLOYEE's share of benefits, and such federal, state and local taxes and other deductions and withholding as may be legally required. As required by Government Code section 53260, under no circumstances may the amount of any cash settlement exceed the lesser of the following: (i) an amount equal to the monthly base salary of the employee multiplied by the number of months left on the unexpired term of the contract; or (ii) if the unexpired term of the contract is greater than 18 months, an amount equal to the monthly base salary of the employee multiplied by 18. For purposes of this section, "salary" means compensation as described in Section 5 above.
- (a) **Severance Pay.** COUNTY will pay EMPLOYEE severance pay equal to salary payment for the number of months remaining in the term of this Agreement, not to exceed twelve (12) months salary. Severance pay will be paid in equal, consecutive monthly installments commencing on the date of termination.
- (b) **Vacation.** In addition, EMPLOYEE will be entitled to immediate payment for all vacation accruals.
- (2) **Health Benefits and Accruals.** In addition, as authorized by Government Code section 53261, COUNTY will pay its share of EMPLOYEE medical, dental and vision benefits for the same number of months for which EMPLOYEE receives severance pay, or until EMPLOYEE finds other employment, whichever occurs first.
- (3) **Release.** On behalf of himself, his heirs, and representatives, EMPLOYEE agrees to accept said cash settlement and payment for medical benefits and accruals as full and complete settlement and release of any and all claims EMPLOYEE has or may have against COUNTY, its officers and employees arising from or in any way connected with his employment by the COUNTY, this Agreement, or the termination of this Agreement.
- d. **Termination by COUNTY for Cause.** COUNTY may immediately terminate this Agreement at any time for cause, if EMPLOYEE commits any act of gross insubordination, dishonesty, fraud, misrepresentation, embezzlement, bribery or perjury; or violates conflict of interest laws; or is convicted of a felony or an abuse of his position as defined in Government Code section 53243.4. In the

event of termination for cause, as defined above, Employee will not be entitled to any severance pay or any payment for severance health benefits. In such event, COUNTY's total liability to EMPLOYEE will be limited to payment of Employee's compensation through the effective date of termination, together with cash reimbursement for vacation and personal holiday leave accrual balances.

11. **Prohibition of Assignment.** Neither party may assign or transfer any rights granted or obligations assumed under this Agreement.
12. **Amendment.** This Agreement may be amended only by a written document executed by each party hereto.
13. **Construction.** The section headings and captions of this Agreement are, and the arrangement of this instrument is, for the sole convenience of the parties to this Agreement. The section headings, captions and arrangement of this instrument do not in any way affect, limit, amplify or modify the terms and provisions of this Agreement. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. The parties to this Agreement and their counsel have read and reviewed this Agreement and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the interpretation of this Agreement.
14. **Waiver.** A waiver or breach of any covenant or provision in this Agreement shall not be deemed a waiver of any other covenant or provision in this Agreement, and no waiver shall be valid unless in writing and executed by the waiving party.
15. **Severability.** If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected.
16. **Governing Law and Venue.** This Agreement shall be governed and construed in accordance with California law. The venue of any litigation pertaining to this Agreement shall be Contra Costa County, California.
17. **Notice.** Any notice required by this Agreement to be given by one party to the other shall be sufficient if given to the party by personal delivery or if mailed to the party by 1<sup>st</sup> class mail, postage prepaid, addressed as follows:

**If to COUNTY:**

Chairperson, Board of Supervisors  
Contra Costa County  
651 Pine Street, Room 106  
Martinez, CA 94553

**With a copy to:**

County Counsel  
651 Pine Street, 9<sup>th</sup> Floor  
Martinez, CA 94553

**If to EMPLOYEE:**

David J. Twa  
651 Pine Street, 10th Floor  
Martinez, CA 94553

Notice shall be deemed to have been effective at the time of receipt if given by personal delivery or on the date of mailing if given by mail. Either party may change the address for receipt of mail notice by giving such change in the manner specified in this paragraph.

18. **Entire Agreement.** This Agreement constitutes the entire agreement between COUNTY and EMPLOYEE pertaining to the subject matter, and supersedes all prior or contemporaneous written or verbal agreements and understandings between EMPLOYEE and COUNTY. Each party to this Agreement acknowledges that no representations, inducement, promise, or agreement, oral or otherwise, has been made by any party, or anyone acting on behalf of any party, which is not embodied herein, and that no agreement, statement, or promise not contained in this Agreement shall be valid or binding on either party.

Executed at the City of Martinez this \_\_\_\_\_ day of \_\_\_\_\_, 2013

**COUNTY OF CONTRA COSTA**

**EMPLOYEE**

By: \_\_\_\_\_

Federal D. Glover

Chair, Board of Supervisors

\_\_\_\_\_

David J. Twa