

RESOLUTION NO. 11-XXX, SERIES 2011

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DAVIS
APPOINTING STEVEN J. PINKERTON AS CITY MANAGER, APPROVING THE
EMPLOYMENT AGREEMENT WITH CITY MANAGER, AND AUTHORIZING
MAYOR TO EXECUTE SAME**

WHEREAS, the City Council desires to appoint Steven J. Pinkerton as City Manager and Pinkerton desires to accept appointment as City Manager; and

WHEREAS, the parties have reached agreement on matters relating to the employment conditions of the City Manager, as reflected by the written contract attached hereto and made a part hereof; and

WHEREAS, this Council finds that the provisions and agreements contained in said Employment Agreement are fair and proper and in the best interest of the City.

NOW, THEREFORE, BE IT RESOLVED, THAT THE CITY COUNCIL OF THE CITY OF DAVIS DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The City Council hereby appoints Steven J. Pinkerton as City Manager, effective September 2, 2011.

Section 2. The Employment Agreement between the City and Steven J. Pinkerton attached hereto and incorporated herein, is hereby approved.

Section 3. The Mayor is hereby authorized and directed to execute said agreement on behalf of the City of Davis.

PASSED AND ADOPTED by the City Council of the City of Davis this 1st day of August, 2011, by the following vote:

AYES:

NOES:

ABSENT:

ATTEST:

Joseph F. Krovoza
Mayor

Zoe S. Mirabile, CMC
City Clerk

EMPLOYMENT AGREEMENT

THIS AGREEMENT is between the City of Davis, a municipal corporation (the “City”) and Steven J. Pinkerton (“Employee”). It is effective on the latest date next to the signatures on the last page (“the Effective Date”). .

This Agreement is entered into on the basis of the following facts, among others:

- A. The City Council of the City desires to appoint Employee as the City Manager of the City, and Employee desires to accept this appointment.

- B. The City and Employee desire to establish specific terms and conditions relating to compensation and benefits, performance evaluations, and related matters.

BASED UPON THE FOREGOING, THE CITY AND EMPLOYEE AGREE AS
FOLLOWS:

1. Employee Appointed. The City appoints and employs Employee as City Manager, and Employee accepts the appointment and employment, beginning work on September 2, 2011. The City Manager shall also serve as the Executive Director of the City of Davis Redevelopment Agency. The parties understand that Employee shall devote a portion of his professional efforts provided for herein in the capacity of Executive Director for Agency, and other agencies in the City. In accordance with current procedures, Employee shall account for his time expensed on behalf of said agencies in order for the City to be reimbursed by said agencies for the provision of Employee's services.

2. Duties of Employee. Employee shall perform the duties established for the City Manager by State law, the Davis Municipal Code, the City Manager job description, the directions of the City Council, or as otherwise provided by law, ordinance, or regulation.

(a) Full Energy and Skill. Employee shall faithfully, diligently, and to the best of Employee's abilities, perform all duties that may be required under this Agreement. Employee agrees that Employee has a duty of loyalty and a general fiduciary duty to the City. Employee shall devote the whole of Employee's working time, skill, experience, knowledge, ability, labor, energy, attention and best effort exclusively to the City's business and affairs.

(b) No Conflict. Employee shall not engage in any employment, activity, consulting service, or other enterprise, for compensation or otherwise, which is actually or potentially in conflict with, inimical to, or which interferes with the performance of Employee's duties. Further, 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 conducting business in the corporate limits of the City of Davis (except for stock ownership in any company whose capital stock is publicly held and regularly traded) without prior approval of the City Council. For and during the term of this Agreement, Employee further agrees, except for a personal residence or residential property acquired or held for future use as Employee's personal residence, not to invest in any other real estate property improvements within the corporate limits of the City Council without the prior consent of the City Council.

(c) Outside Activities. The City Manager shall not spend more than 8 hours per month in teaching, consulting, expert witness testimony, speaking, or other non-City connected business for which compensation is paid without express prior consent of the City Council. City Manager will take personal leave (i.e. vacation time) for all outside activities of this nature.

(d) Hours of Work. The City Manager is an exempt employee but is expected to engage in those hours of work that are necessary to fulfill the obligations of the City

Manager's position. The City Manager does not have set hours of work as the City Manager is expected to be available at all times. It is recognized that the City Manager must devote a great deal of time to the business of the City outside of the city's customary office hours, and to that end the City Manager's schedule of work each day and week shall vary in accordance with the work required to be performed and in accordance with any specific direction provided by the City Council.

3. Term. The term of this Agreement shall be for a period of three (3) years from the Effective Date through August 31, 2014, unless terminated earlier by either party in accordance with the provisions set forth in Paragraph 8 or by the event of the death or permanent disability of Employee.

(a) The Term of this Agreement shall automatically renew and extend for an additional three (3) year term beginning on September 1, 2014, unless written notice not to renew and extend is given by City to Employee no later than nine (9) months prior to the renewal date (i.e. not later than December 1, 2013). If notice of non-renewal is given by City, the Agreement shall remain in effect for the remaining term and Employee will be expected to continue Employee's duties for the remainder of the Agreement term, unless the Agreement is terminated earlier under Paragraph 8 below. The parties expressly agree that notice of non-renewal shall not be deemed a termination triggering any severance payment whatsoever,

4. Annual Evaluation. Each year on or about the anniversary of the Effective Date, or at a time mutually agreed upon by the City Council and Employee, the City Council shall conduct an evaluation of Employee's performance and provide guidance and direction regarding the City Council's goals and objectives which Employee shall be tasked with implementing.

5. Compensation.

(a) Salary. Employee shall receive the base annual salary of one hundred eighty-eight thousand Dollars (\$188,000), payable in this Agreement on a pro-rata basis in the same manner as all full time City employees, and subject to all applicable payroll taxes and withholdings. Any furlough days will be deducted from this salary during the pay period in which the furlough occurs, and Employee expressly agrees not to work more than forty (40) hours during any workweek with a furlough day without authorization from the mayor. If circumstances require Employee to work more than forty (40) hours during a workweek containing a furlough day, Employee expressly agrees to obtain the mayor's authorization and, prior to the subsequent payroll run, to report the hours worked in writing to Human Resources and to City's payroll staff.

(b) Annual Salary Adjustments. At the City Council's sole discretion, salary adjustments may be given to Employee at or around the time of the annual review and evaluation by the City Council.

(c) Reduction in Salary or Benefits. In the event the City implements cost-saving measures, such as work furloughs, salary reductions changes to health or welfare benefits and allowances (as defined in Section 6), or any other changes to the monetary terms of the executive management unit as provided in the applicable MOU, Employee will receive the same downward adjustment or adhere to the change in terms for the executive management unit. In the event that such cost-saving measures are subsequently eliminated (i.e. former salary or benefit levels are restored) for the executive management unit, Employee will receive the same restoration of salary or benefits as the executive management unit.

6. Regular Benefits and Allowances. As a general rule, Employee will be eligible for, and shall receive, all regular health and welfare benefits (e.g., insurance,

miscellaneous employee PERS retirement and contributions paid by the City, deferred compensation, etc.) as are provided to employees of the City's executive management employee bargaining unit pursuant to their MOU. However, Employee will pay two percent (2%) of the employee portion of CalPERS retirement cost (in lieu of the MOU provision requiring management employees to cover any additional cost of the FY2008/09 PERS employer contribution rate, up to an additional 3%, through the life of this contract). If an available benefit is not selected by Employee (i.e. health and welfare benefits), no cash-out to Employee in lieu of benefits will be allowed.

Nothing shall prevent the City Council from providing Employee benefits in addition to those provided to the executive management employees. To the extent there is any inconsistency between the benefits available under the executive management unit MOU and this Agreement, the terms of this Agreement shall control.

7. Additional Benefits and Allowances. In addition to the benefits specified in section 4, Employee shall receive the following additional benefits and allowances.

(a) Vacation; Management Leave; Sick Leave; Department Head.

(i) Vacation. Employee shall accrue twenty (20) vacation days per year on a pro rated basis each pay period. Upon date of hire, 40 hours of vacation leave will be credited to Employee in addition to the annual accrual.

(ii) Management Leave. Employee shall accrue, on a pro rata basis each pay period, ten (10) days of management leave per year to be used at Employee's discretion, subject to the fulfillment of Employee's duties

(iii) Sick Leave. Employee shall be allowed to use paid sick leave and be absent from work because of personal illness/injury or the illness/injury of immediate family members (as identified in California Labor Code section 233) for such time as

is reasonably necessary or during otherwise unpaid medical leaves provided by law. Sick leave includes attendance at doctor's appointments or related medical activities. Employee shall accrue sick leave in the same manner and in the same amount as that provided to employees in the management employee bargaining unit. Upon date of hire, 200 hours of sick leave will be credited to Employee in addition to the annual accrual. Accrued Sick Leave is not eligible for a cash-out at any time by Employee and any remaining accrued Sick Leave at time of Employee's retirement will be governed by the rules and restrictions as detailed in the then-existing PERS contract.

(b) Automobile. No vehicle or automobile allowance will be given as part of this Agreement.

(c) Moving Expense Reimbursement. No moving expense reimbursement will be given as part of this Agreement.

(d) Life Insurance. The City will provide a one million dollar life insurance policy for Employee at no cost to Employee.

8. Termination of Employment.

(a) No Property Interest. Employee understands and agrees that Employee has no constitutionally-protected property or other interest in Employee's employment as City Manager. Employee understands and agrees that Employee works at the will and pleasure of the City Council, and that Employee may be terminated, or asked to resign, at any time, with or without cause, by a majority vote of its members. Notice of termination shall be provided to the City Manager in writing. "Termination," as used in this Agreement, shall also include 1) a request that the City Manager resign; 2) a reduction in salary or other financial benefits of the City Manager in a significant amount which is inconsistent with a reduction in salary or financial benefits for employees in the executive management unit; 3) a material reduction in the powers and authority of the City Manager (excluding placement on paid

administrative leave); or 4) the elimination of the City Manager's position. Any such notice of termination or act constituting termination shall be given at or effectuated at a duly noticed regular or special meeting of the City Council.

(b) Termination Immediately Before or Following City Council Election. No action by the City Council to terminate Employee, other than for gross mismanagement or an act of moral turpitude (as described in Section 8(e)), will be made within ninety (90) days either before a City Council election or immediately following a City Council election. Nothing in this paragraph alters the "at will" status of Employee's employment with City.

(c) Notice Required Of Employee. Employee may voluntarily terminate employment at any time by giving not less than sixty (60) days notice.

(d) Severance Pay. If Employee is asked to resign or is terminated as City Manager, then Employee shall be eligible to receive a cash payment equivalent to the sum of Employee's then-current monthly salary multiplied by nine (9) (or by the remaining number of months in the Agreement, whichever is less) and the cash value, as determined by the City, of Employee's monthly non-salary COBRA-eligible benefits multiplied by nine (9) (or by the remaining number of months in the Agreement, whichever is less). This cash payment will be made on a pro rated, monthly basis over the number of months involved, subject to termination of the severance requirement set forth below. Employee shall also be paid for any accrued, but unused, annual leave and/or management leave, but not accrued sick leave. Eligibility for such severance payment is expressly conditioned upon Employee's execution of (i) a waiver and release of any and all of Employee's claims against City, and (ii) a covenant not to sue. All normal payroll taxes and withholdings as required by law shall be made with respect to any amounts paid under this section. Employee expressly agrees to provide notice to the City within

two (2) business days of accepting employment elsewhere, and the City's obligation to pay any severance benefit to Employee shall terminate upon Employee's acceptance of such alternative employment.

(e) Ineligibility for Severance Under Certain Conditions. If the termination of Employee is the result of gross mismanagement and/or an act or acts of moral turpitude, Employee shall not be paid any severance pay except as provided in the remainder of this subsection. In such an instance, Employee's sole remedy shall be a judicial action in declaratory relief to determine whether there was substantial evidence of gross mismanagement and/or an act or acts of moral turpitude. If the court determines there was not substantial evidence, Employee shall receive the severance pay provided in this subsection, but no other damages or litigation expenses.

9. Payment of Expenses of Employment. The City shall pay the following usual and customary employment expenses.

(a) The cost of any fidelity or other bonds required by law for the City Manager.

(b) The cost to defend and indemnify Employee to the full extent of the law as provided by the California Government Claims Act (Government Code §810 *et seq.*), or otherwise. City will determine, in its sole discretion, whether to compromise and settle any such claim or suit against Employee and the amount of any settlement or judgment rendered thereon.

(c) Subject to Budget Approval, reasonable dues for Employee's membership in professional organizations associated with the office of City Manager. The City will allow Employee reasonable time away from the City to participate in the annual conferences of these organizations.

(d) Subject to Budget Approval, the cost of attending conferences or other events (i.e. retirement dinners, out-of-town meetings, professional seminars, etc.) necessary for the proper discharge of Employee's duties. The City will not reimburse Employee for any expenses related to membership in service clubs.

10. Miscellaneous.

(a) Notices. Notices given under this Agreement shall be in writing and shall be:

- (i) served personally; or
- (ii) sent by facsimile (provided a hard copy is mailed within one (1) business day); or
- (iii) delivered by first-class United States mail, certified, with postage prepaid and a return receipt requested; or
- (iv) Sent by Federal Express, or some equivalent private overnight delivery service.

Notices shall be deemed received at the earlier of actual receipt or three (3) days following deposit in the United States mail, postage prepaid. Notices shall be directed to the addresses shown below, provided that a party may change such party's address for notice by giving written notice to the other party in accordance with this subsection.

CITY:

City of Davis
Attn: Mayor
23 Russell Boulevard
Davis, CA 95616
Phone: (530) 757-5602
Fax: (530) 757-5603

EMPLOYEE:

Steven J. Pinkerton
6169 Riverbank Circle

Stockton, California 95219
Cell Phone: (209) 639-3313

(b) Entire Agreement/Amendment. This Agreement constitutes the entire understanding and agreement between the parties as to those matters contained in it, and supersedes any and all prior or contemporaneous agreements, representations and understandings of the parties. This Agreement may be amended at any time by mutual agreement of the parties, but any such amendment must be in writing, dated, and signed by the parties and attached hereto.

(c) Attorney's Fees. Except as provided elsewhere in this Agreement, if any legal action or proceeding is brought to enforce or interpret this Agreement, the prevailing party, as determined by the court, shall be entitled to recover from the other party all reasonable costs and attorney's fees, including such fees and costs as may be incurred in enforcing any judgment or order entered in any such action.

Nothing in this subsection shall be read to prevent the parties from agreeing to some alternative method of dispute resolution. If such a method is agreed to, any final determination shall include an award of attorney's fees and costs by the presiding officer.

(d) Severability. In the event any portion of this Agreement is declared void, such portion shall be severed from this Agreement and the remaining provisions shall remain in effect, unless the result of such severance would be to substantially alter this Agreement or the obligations of the parties, in which case this Agreement shall be immediately terminated.

(e) Waiver. Any failure of a party to insist upon strict compliance with any term, undertaking, or condition of this Agreement shall not be deemed to be a waiver of such term, undertaking, or condition. To be effective, a waiver must be in writing, signed and dated by the parties.

(f) Representation by Counsel. The parties acknowledge and agree that they were, or had the opportunity to be, represented individually by legal counsel with respect to the matters that are the subject of this Agreement and that they are fully advised with respect to their respective rights and obligations resulting from signing this Agreement.

(g) Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Employee and City agree that venue for any dispute shall be in Yolo County, California.

(h) Section Headings. The headings on each of the sections and subsections of this Agreement are for the convenience of the parties only and do not limit or expand the contents of any such section or subsection.

(i) No Assignment. Employee may not assign this Agreement in whole or in part.

Dated: _____

CITY OF DAVIS

By _____
Mayor

Dated: _____

EMPLOYEE

Employee

Attest:

City Clerk

Approved as to Form:

City Attorney

Amended Employment Agreement, August 1, 2011

EMPLOYMENT AGREEMENT

THIS AGREEMENT is between the City of Davis, a municipal corporation (the “City”) and Steven J. Pinkerton (“Employee”). It is effective on the latest date next to the signatures on the last page (“the Effective Date”). .

This Agreement is entered into on the basis of the following facts, among others:

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2. Duties of Employee. Employee shall perform the duties established for the City Manager by State law, the Davis Municipal Code, the City Manager job description, the directions of the City Council, or as otherwise provided by law, ordinance, or regulation.

(a) Full Energy and Skill. Employee shall faithfully, diligently, and to the best of Employee's abilities, perform all duties that may be required under this Agreement. Employee agrees that Employee has a duty of loyalty and a general fiduciary duty to the City. Employee shall devote the whole of Employee's working time, skill, experience, knowledge, ability, labor, energy, attention and best effort exclusively to the City's business and affairs.

(b) No Conflict. Employee shall not engage in any employment, activity, consulting service, or other enterprise, for compensation or otherwise, which is actually or potentially in conflict with, inimical to, or which interferes with the performance of Employee's duties. Further, 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 conducting business in the corporate limits of the City of Davis (except for stock ownership in any company whose capital stock is publicly held and regularly traded) without prior approval of the City Council. For and during the term of this Agreement, Employee further agrees, except for a personal residence or residential property acquired or held for future use as Employee's personal residence, not to invest in any other real estate property improvements within the corporate limits of the City Council without the prior consent of the City Council.

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Manager's position. The City Manager does not have set hours of work as the City Manager is expected to be available at all times. It is recognized that the City Manager must devote a great deal of time to the business of the City outside of the city's customary office hours, and to that end the City Manager's schedule of work each day and week shall vary in accordance with the work required to be performed and in accordance with any specific direction provided by the City Council.

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(a) The Term of this Agreement shall automatically renew and extend for an additional three (3) year term beginning on September 1, 2014, unless written notice not to renew and extend is given by City to Employee no later than nine (9) months prior to the renewal date (i.e. not later than December 1, 2013). If notice of non-renewal is given by City, the Agreement shall remain in effect for the remaining term and Employee will be expected to continue Employee's duties for the remainder of the Agreement term, unless the Agreement is terminated earlier under Paragraph 8 below. The parties expressly agree that notice of non-renewal shall not be deemed a termination triggering any severance payment whatsoever,

4. Annual Evaluation. Each year on or about the anniversary of the Effective Date, or at a time mutually agreed upon by the City Council and Employee, the City Council shall conduct an evaluation of Employee's performance and provide guidance and direction regarding the City Council's goals and objectives which Employee shall be tasked with implementing.

5. Compensation.

(a) Salary. Employee shall receive the base annual salary of one hundred eighty-eight thousand Dollars (\$188,000), payable in this Agreement on a pro-rata basis in the same manner as all full time City employees, and subject to all applicable payroll taxes and withholdings. Any furlough days will be deducted from this salary during the pay period in which the furlough occurs, and Employee expressly agrees not to work more than forty (40) hours during any workweek with a furlough day without authorization from the mayor. If circumstances require Employee to work more than forty (40) hours during a workweek containing a furlough day, Employee expressly agrees to obtain the mayor's authorization and, prior to the subsequent payroll run, to report the hours worked in writing to Human Resources and to City's payroll staff.

(b) Annual Salary Adjustments. At the City Council's sole discretion, salary adjustments may be given to Employee at or around the time of the annual review and evaluation by the City Council.

(c) Reduction in Salary or Benefits. Notwithstanding anything to the contrary in this Agreement, (1) Employee's CalPERS contributions, as set forth in section 6, below, shall be modified, effective July 1, 2012, so that Employee shall pay eight percent (8%) of the employee portion of the CalPERS retirement cost or the combined contribution rate(s) (both employee and employer) that are established under the then applicable MOU for the executive management unit, whichever is greater; and (2) in addition to the provisions of subsection (1), in the event the City implements cost-saving measures, such as work furloughs, salary reductions changes to health or welfare benefits and allowances (as defined in Section 6), or any other changes to the monetary terms of the executive management unit as provided in the applicable MOU, Employee will receive the same downward adjustment or adhere to the change

in terms that are applicable to the executive management unit. In the event that such cost-saving measures are subsequently eliminated (i.e. former salary or benefit levels are restored) for the executive management unit, Employee will receive the same restoration of salary or benefits as the executive management unit.

6. Regular Benefits and Allowances. As a general rule, Employee will be eligible for, and shall receive, all regular health and welfare benefits (e.g., insurance, miscellaneous employee PERS retirement and contributions paid by the City, deferred compensation, etc.) as are provided to employees of the City's executive management employee bargaining unit pursuant to their MOU. However,, through and including June 30, 2012, Employee will pay two percent (2%) of the employee portion of CalPERS retirement cost (in lieu of the MOU provision requiring management employees to cover any additional cost of the FY2008/09 PERS employer contribution rate, up to an additional 3%, as set forth in the current MOU); thereafter, Employee shall pay CalPERS contributions, as set forth in section 5(c), above.). If an available benefit is not selected by Employee (i.e. health and welfare benefits), no cash-out to Employee in lieu of benefits will be allowed.

Nothing shall prevent the City Council from providing Employee benefits in addition to those provided to the executive management employees. To the extent there is any inconsistency between the benefits available under the current (effective through June 30, 2012) executive management unit MOU and this Agreement, the terms of this Agreement shall control.

7. Additional Benefits and Allowances. In addition to the benefits specified in section 4, Employee shall receive the following additional benefits and allowances.

(a) Vacation; Management Leave; Sick Leave; Department Head.

(i) Vacation. Employee shall accrue twenty (20) vacation days per year on a pro rated basis each pay period. Upon date of hire, 40 hours of vacation leave will be credited to Employee in addition to the annual accrual.

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(b) Automobile. No vehicle or automobile allowance will be given as part of this Agreement.

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(b) Termination Immediately Before or Following City Council Election. No action by the City Council to terminate Employee, other than for gross mismanagement or an act of moral turpitude (as described in Section 8(e)), will be made within ninety (90) days either before a City Council election or immediately following a City Council election. Nothing in this paragraph alters the "at will" status of Employee's employment with City.

(c) Notice Required Of Employee. Employee may voluntarily terminate employment at any time by giving not less than sixty (60) days notice.

(d) Severance Pay. If Employee is asked to resign or is terminated as City Manager, then Employee shall be eligible to receive a cash payment equivalent to the sum of Employee's then-current monthly salary multiplied by nine (9) (or by the remaining number

of months in the Agreement, whichever is less) and the cash value, as determined by the City, of Employee's monthly non-salary COBRA-eligible benefits multiplied by nine (9) (or by the remaining number of months in the Agreement, whichever is less). This cash payment will be made on a pro rated, monthly basis over the number of months involved, subject to termination of the severance requirement set forth below. Employee shall also be paid for any accrued, but unused, annual leave and/or management leave, but not accrued sick leave. Eligibility for such severance payment is expressly conditioned upon Employee's execution of (i) a waiver and release of any and all of Employee's claims against City, and (ii) a covenant not to sue. All normal payroll taxes and withholdings as required by law shall be made with respect to any amounts paid under this section. Employee expressly agrees to provide notice to the City within two (2) business days of accepting employment elsewhere, and the City's obligation to pay any severance benefit to Employee shall terminate upon Employee's acceptance of such alternative employment.

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9. Payment of Expenses of Employment. The City shall pay the following usual and customary employment expenses.

(a) The cost of any fidelity or other bonds required by law for the City Manager.

(b) The cost to defend and indemnify Employee to the full extent of the law as provided by the California Government Claims Act (Government Code §810 *et seq.*), or otherwise. City will determine, in its sole discretion, whether to compromise and settle any such claim or suit against Employee and the amount of any settlement or judgment rendered thereon.

(c) Subject to Budget Approval, reasonable dues for Employee's membership in professional organizations associated with the office of City Manager. The City will allow Employee reasonable time away from the City to participate in the annual conferences of these organizations.

(d) Subject to Budget Approval, the cost of attending conferences or other events (i.e. retirement dinners, out-of-town meetings, professional seminars, etc.) necessary for the proper discharge of Employee's duties. The City will not reimburse Employee for any expenses related to membership in service clubs.

10. Miscellaneous.

(a) Notices. Notices given under this Agreement shall be in writing and shall be:

(i) served personally; or

(ii) sent by facsimile (provided a hard copy is mailed within one (1) business day); or

(iii) delivered by first-class United States mail, certified, with postage prepaid and a return receipt requested; or

(iv) Sent by Federal Express, or some equivalent private overnight delivery service.

Notices shall be deemed received at the earlier of actual receipt or three (3) days following deposit in the United States mail, postage prepaid. Notices shall be directed to the addresses shown below, provided that a party may change such party's address for notice by giving written notice to the other party in accordance with this subsection.

CITY:

City of Davis
Attn: Mayor
23 Russell Boulevard
Davis, CA 95616
Phone: (530) 757-5602
Fax: (530) 757-5603

EMPLOYEE:

Steven J. Pinkerton
6169 Riverbank Circle
Stockton, California 95219
Cell Phone: (209) 639-3313

(b) Entire Agreement/Amendment. This Agreement constitutes the entire understanding and agreement between the parties as to those matters contained in it, and supersedes any and all prior or contemporaneous agreements, representations and understandings of the parties. This Agreement may be amended at any time by mutual agreement of the parties, but any such amendment must be in writing, dated, and signed by the parties and attached hereto.

(c) Attorney's Fees. Except as provided elsewhere in this Agreement, if any legal action or proceeding is brought to enforce or interpret this Agreement, the prevailing party, as determined by the court, shall be entitled to recover from the other party all reasonable costs and attorney's fees, including such fees and costs as may be incurred in enforcing any judgment or order entered in any such action.

Nothing in this subsection shall be read to prevent the parties from agreeing to some alternative method of dispute resolution. If such a method is agreed to, any final determination shall include an award of attorney's fees and costs by the presiding officer.

(d) Severability. In the event any portion of this Agreement is declared void, such portion shall be severed from this Agreement and the remaining provisions shall remain in effect, unless the result of such severance would be to substantially alter this Agreement or the obligations of the parties, in which case this Agreement shall be immediately terminated.

(e) Waiver. Any failure of a party to insist upon strict compliance with any term, undertaking, or condition of this Agreement shall not be deemed to be a waiver of such term, undertaking, or condition. To be effective, a waiver must be in writing, signed and dated by the parties.

(f) Representation by Counsel. The parties acknowledge and agree that they were, or had the opportunity to be, represented individually by legal counsel with respect to the matters that are the subject of this Agreement and that they are fully advised with respect to their respective rights and obligations resulting from signing this Agreement.

(g) Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Employee and City agree that venue for any dispute shall be in Yolo County, California.

(h) Section Headings. The headings on each of the sections and subsections of this Agreement are for the convenience of the parties only and do not limit or expand the contents of any such section or subsection.

(i) No Assignment. Employee may not assign this Agreement in whole or in part.

Dated: _____

CITY OF DAVIS

By _____
Mayor

Dated: _____

EMPLOYEE

Employee

Attest:

City Clerk

Approved as to Form:

City Attorney