EMPLOYMENT AGREEMENT

This Agreement is made by and between JANET KERN (hereinafter, "Kern"), an individual, and the CITY OF ALAMEDA, CALIFORNIA (hereinafter, the "City"), a California charter city and municipal corporation.

RECITALS

WHEREAS, the City currently employs Kern as City Attorney of Alameda; and

WHEREAS, the City desires to continue to employ Kern as City Attorney of Alameda according to the terms set forth in this Employment Agreement; and

WHEREAS, Kern agrees to serve as the City Attorney of Alameda in accordance with the City Charter of Alameda and the terms of this Employment Agreement; and

WHEREAS, both the City and Kern wish to set forth in writing the terms and conditions of Kern's employment as City Attorney for Alameda; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the City and Kern agree as follows:

INTRODUCTION AND TERM

1. EMPLOYMENT

The City hereby agrees to employ Kern in accordance with the terms and conditions set forth below, and Kern accepts the offer of such employment. During the term of the Agreement, the City will pay Kern the compensation provided for in this Agreement.

2. TERM

This Agreement shall commence on January 10, 2015 and expire on January 9, 2019, subject to earlier termination as set forth in Sections 14-16 below.

DUTIES AND PROFESSIONAL RESPONSIBILITIES

3. DUTIES

Kern shall serve as the City Attorney for the City of Alameda and shall be vested with the authority granted to the City Attorney in the Alameda City Charter. Kern shall perform such duties as are necessary for her to exercise the authority vested in the City Attorney under the Alameda City Charter. Also, Kern shall perform such duties and undertake such activities as may be assigned from time to time by the City Council, and which are consistent with the position of City Attorney.

4. HOURS OF WORK

Kern shall be an exempt employee under the Fair Labor Standards Act. Kern is expected to devote necessary time outside normal office hours to the business of the City. Kern's schedule of work each day and week may vary in response to the requirements of the work to be performed. Kern is expected to spend sufficient hours at Alameda City Hall to perform her duties.

5. OUTSIDE AND OTHER PROFESSIONAL ACTIVITIES

Kern agrees to devote all of her professional time and attention to the City's business during the term of this Agreement. Kern may engage in teaching, consulting, speaking, or other non-City business for which compensation is paid only with the advance written approval of the City Council.

The City acknowledges a mutual interest with Kern in having Kern, on occasion, undertake limited outside activities, including serving as an officer or a board member of municipal government organizations, or other related activities, provided that such activities do not distract Kern from the performance of her duties as City Attorney for Alameda, or otherwise create negative impacts for the City. Any outside activities in excess of the limited outside activities described in the prior sentence shall require approval of the Mayor.

The City shall pay for reasonable travel expenses incurred by Kern for official travel associated with the pursuit of Alameda's interests including, but not limited to, such other national, regional, state and local government groups or committees upon which Kern may serve as a member.

COMPENSATION TO KERN

6. SALARY

Effective January 10, 2015, Kern shall receive an annual salary of $209,600 per year. Salary is to be paid at the same intervals and in the same manner as other City Department Heads. Effective the first full pay period in January 2016, Kern shall receive an increase in base salary of 2.5%. Effective the first full pay period in January 2017, Kern shall receive an additional increase in base salary of 2.5%. Effective the first full pay period in January 2018, Kern shall receive an additional increase in base salary of 2.5%.

In each year of this Agreement, Kern and the Council shall jointly establish performance measures for Kern to achieve in the applicable year and provide Kern with an annual performance evaluation. Kern shall not have any right to a further compensation increase in addition to the salary adjustments described in the prior paragraph due to a particular rating on a performance evaluation; rather, any decision to increase salary, provide a lump sum payment based on performance or enhance any other element of compensation during the term of this

Agreement, or the timing of any such increase or enhancement, shall be in the discretion of the City Council.

The Council shall not decrease Kern's compensation unless and except in the case of an across the board salary or other compensation decrease (including furloughs) applicable to all employees covered by the Executive Management Compensation Plan.

7. DEFERRED COMPENSATION

Kern shall be eligible to participate in the deferred compensation plan (Section 40 I money purchase pension plan), and receive the benefit of any City contributions to the money purchase pension plan or any other deferred compensation plan, to the same extent as City Department Heads.

RETIREMENT, HEALTH & OTHER BENEFITS

8. RETIREMENT

Kern will be covered by the City's "miscellaneous" 2% at 55 PERS plan during her employment. Kern will pay both the 7.0% employee contribution for this benefit and an additional 1.868% of the employee's PERSable earnings toward the employer retirement contribution. This 8.868% contribution by Kern shall be in accordance with Section 414(h)(2) of the Internal Revenue Code under which employee contributions shall be tax deferred and not subject to taxation until the time of constructive receipt.

9. VACATION

Kern shall accrue, and may use, up to 25 days (200 hours) of paid vacation annually. Vacation shall be accrued bi-weekly. Kern may carry over accrued but unused vacation time from one year to the next; provided, however, she may not accrue a vacation balance higher than 40 days (320 hours). Upon separation from the City, Kern or, in the case of her death, Kern's heirs, shall be paid for all unused and accrued vacation time. Accumulated vacation balances shall be paid at Kern's salary rate at the effective date of her separation from employment with the City.

10. OTHER LEAVES

Except as provided in Section 9 above, Kern shall receive the same paid holidays and leave time benefits as other City Department Heads.

11. OTHER FRINGE BENEFITS

Kern shall be provided medical coverage, disability benefits, and dental coverage or any other additional benefits offered to all Department Heads in the Executive Management Compensation Plan, excluding benefits specific to safety department heads, at the same levels and under the same conditions that are provided to other City Department Heads.

The City shall pay such other mandatory employer costs associated with Kern's employment including unemployment compensation, workers' compensation and Medicare contributions.

12. AUTO ALLOWANCE

Kern shall be entitled to the same automobile allowance offered to the Department Heads in the Executive Management Compensation Plan but not less than $250 each month. The allowance is in exchange for Kern making her personal automobile available for her use for City related business at all times. Kern will also be entitled to mileage reimbursement at standard rates for trips requiring total driving of over 100 miles taken on City business.

13. MEMBERSHIP DUES / CONFERENCES

The City will pay Kern's California State Bar dues as well as other professional dues (up to a total maximum of $2,500), necessary to ensure Kern's participation in such programs that enhance both Kern' standing and the City's reputation.

The City also will pay the cost of continuing legal education classes and related necessary costs required for Kern to maintain California State Bar membership. Kern understands that the City will pay the cost and related expenses (if any) of local classes or internet classes and that continuing legal education costs that require travel from the local area require approval of the Mayor.

The City also will pay for the cost of appropriate professional conferences related to municipal and legal affairs as approved through the annual budget process.

SEPARATION FROM EMPLOYMENT

14. RESIGNATION/RETIREMENT

Kern agrees to give the City at least ninety (90) days written notice of the effective date of Kern's resignation or retirement.

15. TERMINATION

The City, through its City Council, may terminate this Agreement prior to the expiration of the term of this Agreement as set forth in Section 2, above, at its sole and absolute discretion, with or without cause. The term "cause" is defined, for the purposes of this Agreement, as set forth in Section 16 below.

If the City terminates this Agreement without "cause" effective prior to January 9, 2019, Kern will be paid a lump sum severance amount equal to four (4) months' salary if Kern signs and delivers to the City Council a general and full release of all claims against the City, including without limitation its current and former elected officials, officers,

agents and employees, in a form satisfactory to the City Council. In exchange for the payment of severance, Kern also agrees to cooperate with the City in the transition of her duties to a new or interim City Attorney. The City shall also reimburse Kern for her COBRA coverage for up to four (4) months following her termination.

16. CAUSE

In the event Kern is terminated for (I) continued abuse of drugs or alcohol which materially affects the performance of her duties; (2) repeated and protracted unexcused absences from the City Attorney's office; (3) conviction of a felony; (4) conviction of a misdemeanor involving moral turpitude; (5) acceptance of employment from another source which is inconsistent with full time employment as Alameda's City Attorney and in violation of Section 5 of this Agreement; (6) failure to maintain a license to practice law in California; (7) inability due to a health condition to perform the essential functions of the City Attorney position or (8) any material breach of this Agreement, the City shall have no obligation to continue the employment of Kern or to pay any severance under Section 15 of this Agreement. Any one or more of the above enumerated items constitutes "cause" for purposes of this Agreement.

17. EXPIRATION OF AGREEMENT

Per Section 2 of this Agreement, the expiration date of this Agreement shall be January 9, 2019, unless the City and Kern enter into a written agreement to extend the term of this Agreement.

If the City Council does not wish to extend the term of this Agreement beyond the four year term described in Section 2, the City Council through the Mayor should provide written Notice at least ninety (90) days prior to the expiration of this Agreement. Kern shall provide the City Council with a reminder, in writing, of the deadline date for said Notice at least 30 calendar days in advance of the deadline date for said Notice. Such Notice by the Council shall be for the benefit of Kern and shall be deemed a procedural obligation only, and the act of giving Notice regarding expiration of the Agreement shall not be deemed a removal from office under Charter Section 2-2(b), and Kern's last day of employment in the event of such Notice would remain as set forth in Section 2 of this Agreement. No severance shall be due Kern as a result of the City providing Notice consistent with this paragraph.

If the City Council does not timely provide the Notice described in this Section, Kern shall be entitled to payment of a lump sum severance amount equal to one month salary (if the City provides the Notice from 60-89 calendar days before the Agreement expires), two months' salary (if the City provides the Notice from 30-59 calendar days before the Agreement expires) or three months' salary (if the City provides the Notice from 1-29 days before the Agreement expires or does not provide the Notice) if Kern signs and delivers to the City Council a general and full release of all claims against the City, including without limitation its current and former elected officials, officers, agents and employees, in a form satisfactory to the City Council. Kern shall not be entitled to any severance if she does not sign and deliver an

appropriate release, and untimely Notice or failure by the City to provide Notice under this Section shall not change the expiration date of this Agreement.

MISCELLANEOUS PROVISIONS

18. REIMBURSEMENT

Kern is entitled to reimbursement for all sums necessarily and reasonably incurred and paid by her in the performance of her duties. Kern shall submit a claim form to the City for any such claims in the same form and manner as is required by the City's law or by custom and practice among other City Department Heads.

19. BONDS/LEGAL FEES

The City shall pay the full cost of any bonds, fidelity or otherwise, required of Kern under any applicable state or local law or ordinance relative to her performance of her duties as City Attorney. In the event of any legal action between Kern and the City to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs; provided however, that the total amount of recoverable fees and costs shall not exceed $75,000. A legal action by Kern that does not concern enforcement of the terms of this Agreement, including but not limited to an action alleging discrimination or harassment or retaliation or wrongful termination, shall not be subject to this cap on recoverable fees and costs.

20. INDEMNIFICATION

The City agrees to defend, hold harmless, and indemnity Kern against any claims, demands, or legal actions, whether specious, frivolous, or otherwise, arising out of an alleged action or omission, direct or indirect, occurring within the scope and during the course of Kern's employment with the City. Kern will cooperate in good faith with the City with respect to the defense of such claims, demands or legal actions.

21. SEVERABILITY

In the event that any term of this Agreement is finally held or determined to be illegal or void by a court having jurisdiction over the City and Kern, the remainder of this Agreement shall remain in full force and effect unless the term or terms held to be illegal or void are wholly inseparable from the remaining portions of the Agreement.

22. PARITY IN CONSTRUING AGREEMENT

Both the City and Kern have had the opportunity to participate in the drafting of this Agreement. Consequently, terms, conditions, or provisions of this Agreement shall not be construed against one party and in favor of the other based upon who actually drafted the Agreement.

23. INTEGRATION CLAUSE

The City and Kern acknowledge that this Agreement constitutes the sole and entire agreement of the parties in this matter and that any modifications may be made only in a writing signed by both the City and Kern. The City and Kern agree that there are no representations, agreements, arrangements or understandings, whether written or oral, between the parties relating to the subject matter of this Agreement which are not fully set forth in this Agreement.

24. NOTICES

Notice pursuant to this Agreement shall be in writing, and deemed effective on the date mailed, and provided by depositing in the custody of the United States Postal Service, postage prepaid, and addressed as follows:

TO CITY:
Mayor and Council
City of Alameda
City Hall
2263 Santa Clara Avenue
Alameda, CA 94501

TO KERN:
Janet Kern
City of Alameda
City Hall
2263 Santa Clara Avenue, Room 280
Alameda, CA 94501

A party may change such party's address for notice by giving written notice to the other party consistent with this Section 24.

Marie L. Gilmore
Marie Gilmore, Mayor
City of Alameda
Date: 10/23/14

Janet Kern
Janet Kern
Date: 9-25-14

Approved As To Form:
Edward L. Kreisberg
Edward L. Kreisberg, Meyers Nave
Special Counsel
Date: 9/25/14