

**RESOLUTION NO. 2015-07
OF THE CITY COUNCIL OF THE TOWN OF COLMA**

**RESOLUTION APPROVING FIRST AMENDMENT TO
EMPLOYMENT CONTRACT WITH SEAN RABÉ**

The City Council of the Town of Colma does hereby resolve as follows:

1. Background

(a) On December 11, 2013, the City Council entered into an employment contract with Sean Rabé to serve as the Town’s City Manager.

(b) The City Council now seeks to amend the City Manager’s contract to increase his base salary and to prohibit termination for a six month period after a General Municipal Election or Special Election if there is a majority change on the City Council, subject to approval of an amendment to the employment contract.

2. Order

(a) The First Amendment to the employment contract between the Town of Colma and Sean Rabé, a copy of which is on file with the City Clerk, shall be and hereby is approved by the City Council of the Town of Colma.

(b) The Mayor shall be, and hereby is, authorized to execute this First Amendment on behalf of the Town of Colma, with such technical amendments as may be deemed appropriate by the Mayor and the City Attorney.

Certification of Adoption

I certify that the foregoing Resolution No. 2015-07 was duly adopted at a regular meeting of said City Council held on February 11, 2015 by the following vote:

| Name | Counted toward Quorum | | | Not Counted toward Quorum | |
|---------------------------|-----------------------|----|---------|---------------------------|--------|
| | Aye | No | Abstain | Present, Recused | Absent |
| Joanne del Rosario, Mayor | x | | | | |
| Diana Colvin | x | | | | |
| Helen Fisicaro | x | | | | |
| Raquel Gonzalez | x | | | | |
| Joseph Silva | x | | | | |
| Voting Tally | 5 | 0 | | | |

Dated 7/17/15

Joanne del Rosario
Joanne del Rosario, Mayor

Attest: Sean Rabé
Sean Rabé, City Clerk

**FIRST AMENDMENT TO
EMPLOYMENT CONTRACT WITH SEAN RABÉ**

This First Amendment is made and entered into by and between the Town of Colma, a municipal corporation and general law city ("Employer"), and Sean Rabé ("Employee"), who are sometimes individually referred to as a "Party" and collectively as "Parties" in this First Amendment. For reference purposes, this First Amendment is dated February 11, 2015.

1. Recitals. This First Amendment is made with reference to the following facts:

(a) On December 11, 2013, Employer and Employee entered into an Employment Contract ("Contract") for Employee to serve as City Manager.

(b) The Employer and Employee now seek to amend the Contract to increase the Employee's base salary and to prohibit the City Council from considering termination for a six month period after a General Municipal Election or Special Election if there is a majority change on the City Council, conditioned on the approval of an amendment to the Contract.

(c) Employer and Employee now desire to enter into this First Amendment to increase Employee's base salary and to prohibit termination as provided herein.

NOW, THEREFORE, BASED ON THE MUTUAL PROMISES AND CONSIDERATION CONTAINED IN THIS FIRST AMENDMENT AND THE CONTRACT, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. Subsection (a) of Section 4, "Salary and Benefits," of the Contract is hereby modified as follows:

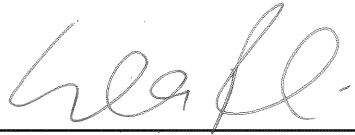
(a) *Salary.* Employer shall pay Employee a salary of \$190,000.00 per year, or such greater amount as may hereafter be approved by the City Council, which shall be paid at the same time and in the same manner as salaries are usually paid to Miscellaneous Employees of the Town.

2. Subsection (a) of Section 8, "At-will Employment; Termination by Employer; Severance Pay," of the Contract is hereby modified as follows:

(a) *At-will.* Notwithstanding any Town ordinance or resolution, this employment is "at-will," which may be terminated by either party, with or without notice, and with or without cause, except as expressly provided in this Contract. Consideration of Employee's termination by the City Council may not occur within six months after a General Municipal Election or Special Election wherein a majority of new members are elected to the City Council. Both Parties recognize and acknowledge that any termination of the City Manager's employment should be done in a business-like manner.

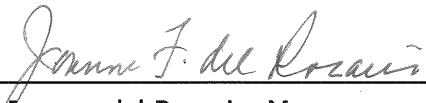
Execution. In Witness thereof, the parties hereto have signed this First Amendment on the respective dates shown below and this First Amendment and the Contract constitutes the entire Agreement between the Parties.

Dated 2/17/15


Sean Rabé, Employee

Dated: 2/17/15

TOWN OF COLMA (Employer)

By 
Joanne del Rosario, Mayor

**RESOLUTION NO. 2013-39
OF THE CITY COUNCIL OF THE TOWN OF COLMA**

**RESOLUTION APPOINTING SEAN RABÉ AS CITY MANAGER
AND APPROVING EMPLOYMENT CONTRACT**

The City Council of the Town of Colma does hereby resolve as follows:

1. Background.

(a) Upon the resignation of Laura Allen as City Manager, the City Council retained the firm of Ralph Andersen to recruit candidates for the position of City Manager. Ralph Andersen conducted a nationwide search and presented over three dozen applications to the City Council for its consideration. The Council interviewed a short list of candidates and after evaluating his application, writing sample and two interviews, the Council selected Sean Rabe' to serve as City Manager for the Town of Colma, subject to confirmation and approval of an employment contract at an open and public meeting.

(b) For the past three years, Sean Rabé has served as City Manager for the City of Sutter and as General Manager for the Amador Regional Sanitation Authority. While serving as City Manager for the City of Sutter Creek, he also served as that city's Human Resources Director and its Interim Public Works Director. Previously, he had served as Assistant City Manager for Sutter Creek, as Transportation Planner for Amador County Transportation Commission, and as General Manager and Editor of the *Amador Ledger Dispatch* newspaper. Mr. Rabé was awarded a Master's degree in Public Policy by California State University, Sacramento, and is a member of several professional organizations, including the *International City Managers' Association*.

(c) Mr. Rabé is ready, able and willing to serve as City Manager of the Town of Colma. At a closed session held on November 26, 2013, the City Council offered to appoint Mr. Rabé as City Manager, subject to confirmation and approval of his salary at an open and public meeting.

(d) The City Council has tentatively negotiated an Employment Contract with Mr. Rabé. The contract is not subject to the Town's Purchasing Ordinance.

2. Order.

(a) Effective upon taking the Oath of Office, Sean Rabé (Employee) shall be and hereby is appointed City Manager of the Town of Colma and City Clerk of the Town of Colma. Employee shall be authorized to, and shall perform the functions and duties specified in the Municipal and Administrative Codes of the Town of Colma for the City Manager and the City Clerk and such other legally permissible and proper duties and functions as the City Council shall, from time to time, assign.

(b) The employment contract between the Town of Colma and Sean Rabé, a copy of which is on file with the City Clerk, shall be and hereby is approved by the City Council of the Town of Colma.

(c) The Mayor shall be, and hereby is, authorized to execute said contract on behalf of the Town of Colma, with such technical amendments as may be deemed appropriate by the Mayor and the City Attorney.

* * * * *

Certification of Adoption

I certify that the foregoing Resolution No. 2013-39 was duly adopted at a regular meeting of the City Council of the Town of Colma held on December 11, 2013, by the following vote:

| Name | Voting | | Present, Not Voting | | Absent |
|-----------------------|--------|----|---------------------|-------------------|--------|
| | Aye | No | Abstain | Not Participating | |
| Helen Fisicaro, Mayor | X | | | | |
| Raquel Gonzalez | X | | | | |
| Joanne del Rosario | X | | | | |
| Joseph Silva | X | | | | |
| Diana Colvin | X | | | | |
| <i>Totals:</i> | 5 | 0 | | | |

Dated Jan 6, 2014

Helen Fisicaro
Helen Fisicaro, Mayor

Attest: William C. Norton
William C. Norton, City Clerk

EMPLOYMENT CONTRACT WITH SEAN RABE'

This Contract is made and entered into by and between the Town of Colma, a municipal corporation and general law city ("Employer"), and Sean Rabe' ("Employee"), who are sometimes individually referred to as a "Party" and collectively as "Parties" in this Contract. For reference purposes, this contract is dated December 11, 2013.

1. Recitals. This Contract is made with reference to the following facts:

- (a) Employer desires to employ the services of Employee as City Manager, as provided by the Municipal Code of the Town of Colma and by the laws of the State of California; and
- (b) It is the desire of the City Council to:
 - (i) secure and retain the services of Employee and to provide inducement for Employee to remain in such employment;
 - (ii) make possible full work productivity by assuring Employee's morale and peace of mind with respect to future security; and
 - (iii) provide a just means for terminating Employee's services; and
- (c) Employee desires to serve as City Manager of the Town of Colma on the terms and conditions set forth herein.

2. Employment and Duties

- (a) Beginning January 27, 2014, Employer shall employ Employee as City Manager on the terms and conditions set forth herein, and Employee shall serve in said employment on these terms and conditions.
- (b) Employee shall perform the functions and duties of a city manager, as specified in the laws of the State of California and the ordinances and resolutions of the Town of Colma. Employee shall also perform such other legally permissible and proper duties and functions as the City Council shall, from time to time, assign.
- (c) Employee is expected to devote necessary time, within and outside normal business hours, to the business of the Town, and Employee shall be allowed flexibility in setting his own office hours to accommodate such activities.
- (d) Employee shall remain in the exclusive employ of Employer until termination of employment as hereinafter provided
- (e) On reasonable notice to the City Council, Employee may, and is encouraged, to attend conferences, professional development meetings and conventions as a part of his

duties, provided that the subject matter is related to Employee's duties and that attendance does not unduly interfere with performance of his regular duties.

(f) The City Manager shall be subject to and shall comply with the standards of conduct and ethical principles set forth in the Town's ordinances and resolutions, and with the ICMA Code of Ethics, a copy of which is attached as Exhibit A.

3. City Council Commitments

(a) *Annual Strategic Plan Workshops.* The City Council recognizes that to meet the challenges facing the Town, it must exercise decisive policy leadership. As one step in carrying out this leadership responsibility, the City Council commits to spending time each year outside of regular City Council meetings to work with the City Manager and staff on creating and revisiting the City's strategic plan, setting goals and priorities for the City government, and working on issues that may be inhibiting the maximum achievement of the Town's goals. Each year, between January 1 and March 31, the City Council and the City Manager shall meet at an Annual Strategic Plan Workshop to review the City's existing Strategic Plan, review and establish goals and priorities for the City Manager to implement prior to the City Manager's annual performance evaluation or such other dates as determined in the course of the meeting, and to establish a relative priority among those goals and objectives within the Strategic Plan.

(b) *Performance Evaluations.* Beginning in 2015, the City Council shall meet with the Employee between January 1 and March 31 of each year to evaluate his performance, discuss performance expectations and other objectives, and consider an increase in his base salary. Any increase in Employee's base salary will be retroactive to January 1 preceding the review. The annual performance review and evaluation shall be in accordance with specific criteria developed jointly by the City Council and the City Manager during the strategic planning and goal setting workshops. Such criteria may from time to time be added to or deleted as the City Council determines in consultation with the City Manager.

(c) *Standards of Conduct and Ethics.* Neither the City Council nor any of its members will give the City Manager any order, direction, or request that would require the City Manager to violate the ICMA Code of Ethics or the City Council Protocols set forth in the Colma Administrative Code, subchapter 1.02, as amended from time to time.

4. Salary and Benefits

(a) *Salary.* Employer shall pay Employee a salary of \$182,500.00 per year, or such greater amount as may hereafter be approved by the City Council, which shall be paid at the same time and in the same manner as salaries are usually paid to Miscellaneous Employees of the Town.



(b) *Deductions.* PERS Contribution and Employment Taxes. Employee shall be responsible for, and shall pay by deduction from Employee's pay check, Employee's contributions to the California Public Employees' Retirement System (Cal PERS) and all employment taxes to be paid by law by Employee including, but not limited to, the Federal Insurance Contributions Act (FICA), the Federal Unemployment Act (FUTA), and the State Unemployment Insurance Act (SUI).

(c) *No Reduction.* Employer shall not, at any time during this Contract, reduce the salary, compensation or other financial benefits of Employee except to the degree of such reduction across the board for all employees of Employer who are classified as "Local Miscellaneous Members" of the California Public Employees Retirement System.

(d) *Catch-all.* Except as specifically provided herein, Employee shall be entitled to receive all benefits of employment generally available to Employer's other executive and managerial employees when and as he becomes eligible for them.

(e) *Management leave.* Notwithstanding the provisions of the Town's Personnel Policies and Procedures Manual, which requires that management leave shall be prorated on the date of hire, Employer shall grant Employee ten days management on the date of hire.

(f) *Bonds.* Employer shall pay the cost of any employment bonds required for Employee by Employer.

(g) *Reservation of Rights.* Employer reserves the right to modify, suspend or discontinue any and all benefit plans, policies, and practices at any time without notice to or recourse by Employee, so long as such action is taken generally across the board for all employees of Employer.

5. Expenses and Allowances

(a) *Expense Policies.* Town shall pay for or provide the City Manager reimbursement for all actual business expenses consistent with Government Code section 53234 et seq., also known as "AB 1234" and subchapter 3.07 of the Colma Administrative Code.

(b) *Professional Development.* Employer shall pay for subscriptions, dues and membership fees and similar expenses to local, state and national professional associations and the International City Manager's Association (ICMA). Payment or reimbursement of reasonable travel, lodging and meals incurred in connection with attendance at professional meetings is subject to an annual limit of \$3,000.00, or such higher amount as may be approval by the City Council either through approval of the expense as a budget item or specific approval of a particular event.

(c) *Technology.* Employer shall, at Employer's expense, provide Employee with a Town-paid cell phone and tablet and associated phone and data plans.



6. Personnel Policies and Procedures Manual

(a) Except as explicitly provided to the contrary in this Contract, all provisions of the Town of Colma Personnel Policies and Procedures Manual in effect from time to time will be applicable to the City Manager.

(b) Employer may take disciplinary action relating to Employee without following the procedures set forth in the Colma Personnel Policies and Procedures Manual for imposing discipline. Nothing herein is intended to authorize any disciplinary action that would change Employee's status as an exempt employee under federal or state employment laws or as an at-will employee.

7. City Clerk

(a) Employer may also appoint Employee as City Clerk of the Town to perform the functions and duties specified in the Municipal Code of the Town of Colma and to perform other legally permissible and proper duties and functions as the City Council shall, from time to time, assign. There shall be no additional compensation for services as City Clerk.

(b) Notwithstanding any other provision in this Contract, Employer may terminate Employee as City Clerk at any time, and Employee shall not be entitled to any severance pay upon such termination.

8. At-will Employment; Termination by Employer; Severance Pay

(a) *At-will.* Notwithstanding any Town ordinance or resolution, this employment is "at-will," which may be terminated by either party, with or without notice, and with or without cause, except as expressly provided in this Contract. Both Parties recognize and acknowledge that any termination of the City Manager's employment should be done in a business-like manner.

(b) *Termination for Cause.* Employer may terminate this Contract at any time for cause. No severance shall be paid in the event of termination for cause.

(i) For purposes of this Contract, "cause" shall mean willful commission of a material act of dishonesty; willful disclosure of confidential information without prior authorization by the City Council; commission of an act punishable as a felony under California law; commission of a material act of moral turpitude; becoming unable to fully perform the essential duties of this contract due to drug or alcohol abuse; repeated and extended unexcused absences from the City Manager's office and duties; or a willful and serious violation of the Town's Standards of Conduct, as set forth in subchapter 3.03 of the Colma Administrative Code.



(ii) Employer must give written notice of its intent to terminate for cause. Within three calendar (3) days after delivery to Employee of such notice, Employee may, by written notification to the City Council, request a meeting before the City Council. Thereafter, the City Council shall fix a time for the meeting, which shall be held at the usual meeting place, and should be held within thirty (30) days of receipt of the written request from Employee, at which Employee shall appear and be heard, with or without counsel. The meeting shall be informal, and shall not involve the taking of testimony. The action of the council shall be final and binding.

(c) *Severance Pay.* If the City Council terminates Employee's employment without cause, the Town shall pay Employee, on the effective date of termination, a lump sum cash payment equal to the Employee's base salary for six months, and shall pay COBRA premiums for medical and dental insurance for six months or until Employee becomes re-employed, whichever occurs first. The base salary shall be determined without regard to the value of any benefits provided to Employee.

(d) *Deemed Terminated.* In the event that (i) the City Council refuses, following the giving of written notice of noncompliance and a reasonable opportunity to cure, to comply with any provision set forth in sections 3, 4 or 5 of this Employment Contract, (ii) the City Council imposes, following the giving of written notice of noncompliance and a reasonable opportunity to cure, a material reduction in the powers and authority of the City Manager, or (iii) the City Manager resigns following a suggestion, whether formal or informal, by a majority of the City Council that the City Manager resign, then, in that event, the City Manager may, at the City Manager's option, be deemed to be "terminated without cause" as of the date of such refusal to comply or suggestion to resign and the severance pay provision shall be actuated.

9. Termination by Employee

(a) *Notice.* Subject to the limitation hereinafter set forth in this section, the Employee may resign at any time from the Employee's position with Employer upon giving the City Council at least thirty (30) days' notice in writing of Employee's intention to resign, stating the reasons for his resignation. No severance shall be paid in the event of Employee's voluntary resignation or retirement.

(b) *Not in May.* Notwithstanding the foregoing, Employee agrees that voluntary resignation shall not take effect during the month of May, unless the City Council expressly agrees thereto. The purpose of this restriction is to minimize disruption to year-end budget planning.

(c) *No Personal Leave.* During the 30-day period after giving notice of termination, Employee agrees not to take any vacation leave or management leave without the express consent of the City Council. Employee further agrees, during said period, to



assist in transition of duties to the new City Manager as may be directed by the City Council.

(d) *No Other Restrictions.* Nothing in this Contract shall prevent, limit, or otherwise interfere with the right of the Employee to resign at any time from such position with Employer, subject only to the provisions set forth in this Contract.

10. Notice

Any notice required or permitted to be given under this Contract shall be sufficient if in writing and if sent by first class mail, postage prepaid, to Employee's residence in the case of the Employee, or to the City Attorney or to the Mayor in the case of the Employer.

11. Waiver of Terms

A waiver of any of the terms and conditions hereof shall not be construed as a general waiver by Employer, and the Employer shall be free to reinstate such part or clause.

12. Applicable Law

This Contract shall be governed by and shall be construed in accordance with the laws of the State of California.

13. Disputes

Any dispute that arises under or relates to this Contract (whether contract, tort, or both) shall be resolved in a court of competent jurisdiction located in San Mateo County. If an action is commenced by either party in connection with this Contract the prevailing party shall be entitled to an award of reasonable attorneys' fees

14. Investigation and Advice

Employee acknowledges that he has fully and independently apprized himself of the facts prior to entering into this contract and that he has been given a reasonable opportunity to consult with an attorney of his own choosing. Employee acknowledges that he has not received legal advice from the City Attorney and is not relying on any statements or representations of the City Attorney.

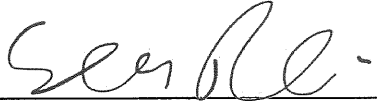
15. Entire Contract

This instrument supersedes all prior contracts between the parties and contains the entire contract of the parties. It may not be changed orally but only by an contract in writing signed by the party (and, with respect to Employer, approved by the City Council) against whom enforcement of any waiver, change, modification, extension or discharge is sought.




Execution. In Witness thereof, the parties hereto have signed this Contract on the respective dates shown below.

Dated 12/5/2013


Sean Rabe', Employee

Dated: 12/11/13

TOWN OF COLMA (Employer)

By 
Helen Fisicaro, Mayor

