



FAIRFAX TOWN COUNCIL MEETING STAFF REPORT

MEETING DATE September 6, 2023
PREPARED FOR Mayor and Town Council
PREPARED BY Janet Coleson, Town Attorney
SUBJECT Notice of amendments to employment agreement with the Town Manager

RECOMMENDATIONS

Receive notice of amendments to the employment agreement with Heather Abrams, Town Manager, effective July 1, 2023.

BACKGROUND

In 2015, the Town Council, in response to the Grand Jury report on labor negotiations, stated that the Town would place final tentative employee agreements on two successive Town Council agendas - the first for notice of amendments to the agreement, the second for Council vote. While employment agreements with the Police Chief and Town Manager aren't agreements with bargaining groups (i.e., MOU's), in the spirit of labor agreement transparency, we are following the process to place the agreements on the agenda for two consecutive Council meetings. This represents the first notice of amendments to the Town Manager's agreement.

DISCUSSION

The Town Manager has had an employment agreement with the Town since March 1, 2022. The job performance of the Town Manager has been evaluated in 2022 and 2023, and in 2023 this included a review of her salary and benefits.

Based on negotiations with the Town Manager, the Council Subcommittee, consisting of the Mayor and Vice Mayor, are recommending the following amendments effective July 1, 2023:

- Cost of Living Adjustment (COLA) of 3.5% in 2023, which matches the Management employees, and language that provides the Management COLA to the Town Manager in future years.
- Freeze of the annual 2.5% Educational Incentive at 2023 level
- Addition of compaction language to prevent reporting employees overtaking the top employee's salary.
- One-time reimbursement of attorney's fees to review these amendments up to \$1,000.

FISCAL IMPACT

The Town Manager's salary is paid 70% from Budget item 01-211-401 and 30% from item 01-231-401. COLAs were budgeted, smaller adjustments for one employee are not specifically budgeted in advance of negotiation, however, negotiations were expected. The budget does not need to be adjusted at this time.

ATTACHMENT

Restated and Amended Employment Agreement in red line form

AMENDED AND RESTATED EMPLOYMENT AGREEMENT

This AMENDED AND RESTATED EMPLOYMENT AGREEMENT (“Agreement”), effective as of July 1, 2023~~March 1, 2022~~, by and between the Town of Fairfax (the “Town”) and Heather Abrams (“Employee”).

RECITALS

- A. The Town desires to employ Employee as its Town Manager in order to benefit from Employee’s experience, skills, abilities, background, and knowledge, and is willing to engage Employee on the terms set forth below.
- B. Employee desires to work in the employ of the Town as its Town Manager and is willing to do so on the terms set forth below.

NOW, THEREFORE, IN CONSIDERATION OF THE ABOVE RECITALS AND OF THE MUTUAL PROMISES AND CONDITIONS OF THIS AGREEMENT, IT IS AGREED AS FOLLOWS:

1. **Employment.** On the terms and conditions contained in this Agreement, the Town employs Employee as its Town Manager, and Employee originally accepted~~eds~~ that employment effective on March 1, 2022,~~, or earlier by mutual agreement with such agreement to be memorialized with an amendment to this Agreement. March 1 of each successive year shall be the Anniversary Date of this Agreement.~~
2. **Term.** This Agreement shall remain in full force and effect from March 1 2022, at 12:01 a.m., until terminated by the Employer or Employee, as provided for in Section 7 of this Agreement.
3. **Duties.** Employee shall perform all duties of the Town Manager described in Chapter 2.08 of the Town’s Municipal Code and such other duties as may, from time to time, be established by the Town. Employee agrees to conscientiously perform all the duties and obligations required by the terms of this Agreement. Employee will devote full time to the duties of the Town and agrees that employment with the Town will be the sole employment of Employee, unless otherwise agreed to in advance by the Town and Employee. However, Employee may engage in charitable endeavors not involving employment or activities related to the business of the Town, so long as such outside activities do not interfere with Employee’s duties under this Agreement.
 - 3.1. **Work Hours / On-Site Presence.** Employee will devote hours as needed to provide and address the full range of responsibilities for this position. This will include on-site work presence at Town Hall during standard work hours during the week (Monday-Friday) and beyond as deemed appropriate.
4. **Compensation and Benefits.** Employee shall receive for Employee’s services to the Town the following compensation and benefits:
 - 4.1 **Base Salary.** Effective March 1, 2022, Employee shall receive a Base Salary of Two Hundred Eighteen Thousand Dollars (\$218,000) per year payable at the same time and in the same manner as other employees of the Town.
 - 4.2 **Additional Compensation.** The Town may, at its sole discretion, decide to award Employee increased compensation and/or benefits in the future on such terms as it deems appropriate.
 - 4.3 **Standard Management Employee Benefits.** Employee shall receive all benefits and, beginning on July 1, 2023, Cost of Living Adjustments (“COLA”) provided to the Town’s management personnel. Employee shall be credited for an additional forty (40) hours of vacation and forty (40) hours of sick leave upon date of hire in the first year of employment . Accrual rate for vacation will be at fifteen (15) days annually (accrued pro rata as hours are

worked), and sick time, holidays and personal days will be consistent with the Town's existing policies.

4.4 Administrative Leave. In recognition of the additional hours required to fulfill the duties of Town Manager, including attendance at numerous meetings outside normal working hours, Employee shall receive twenty (20) days of administrative leave per fiscal year. If, at the conclusion of the fiscal year, Employee has 15 or more days of unused administrative leave, Employee is required to cash-out ten (10) days of such leave. The remaining balance of administrative leave may be carried over to subsequent fiscal years, but may not be cashed out upon separation from the Town.

4.5 Automobile Allowance. Employee shall receive four hundred (\$400) dollars each month for use of Employee's private automobile on official Town business. This is treated as taxable compensation added to Employee's wages.

4.6 Life Insurance. Employee shall be insured with a life insurance policy selected and paid for by the Town with a face value of One Hundred Fifty Thousand Dollars (\$150,000). Employee shall for all purposes be deemed the owner of the policy.

4.7 Professional Development. The Town shall pay on Employee's behalf all annual International City County Management Association ("ICMA") dues and expenses related to attendance at the ICMA annual conference. The Town shall also pay on employee's behalf all expenses associated with attendance by Employee at one League of California Cities conference per year and costs associated for membership and participation in Women Leading Government.

4.8 Retirement. The Town shall fund the Employer's contribution to the Public Employees Retirement System ("PERS") consistent with the Town's existing agreement. The Employee shall fund 100% of the Employee's contribution to PERS (2%@62 Plan) as a "New Member", adjusted annually by PERS and consistent with the Town's existing agreement. The Rate for Employee Share as of the effective date of this Agreement is 7.25% of salary.

4.9 Deferred Compensation. Deferred Compensation. In addition to Base Salary, the Town shall contribute an amount equal to 3.5% of the Employee's Base Salary, annually, to a deferred compensation account.

4.10 Educational Incentive. In recognition of Employee's higher education, during the first two years of this Agreement, 2022 and 2023, the Employee shall receive a 2.5% increase, annually, in Base Salary on the Anniversary Date, for a Master's degree. Any portion of the educational incentive may be directed to a deferred compensation account at the Employee's election.

4.11 Compaction. The Town, upon notice by Employee, shall evaluate and shall address any compaction issue between Employee's Base Salary and that of any other Town employee's base salary when the difference between the two salaries is 10% (ten percent) or less.

4.12 Attorney Review of Agreement. In order to facilitate Employee's review of proposed modifications to this Agreement during the 2023 review period, the Town agrees to pay, upon submittal of invoice(s), up to \$1000 (one thousand dollars) for attorney review of this Agreement. This provision is effective only for the 2023 calendar year review period.

5. Performance Reviews. Employee's first employee performance review shall be completed on or about six months after the first day of employment, at which time the Employee's salary will also be reviewed. Subsequent performance reviews shall occur on an annual basis, commencing on or around Employee's anniversary of date of hire. The review of the performance of the Employee shall be subject to a process, form, criteria, and format established by the Employer. The results of the evaluation shall be summarized and discussed in closed session, to the extent permitted by law. The Employee's salary and benefit package shall also be reviewed on an

annual basis concurrent with the performance review. In reviewing the total compensation offered to Employee, the Town Council may take annual or periodic COLA adjustments provided to City employees into consideration. In addition to these established reviews, Employer also has the discretion to conduct other reviews on an informal basis at times selected by the Employer.

6. **At-Will Employment.** Employee's employment is employment at-will. Employment at-will may be terminated with or without cause as provided in Section 7.1, and with notice as provided in Section 10.1 of this Agreement at any time by the Town or Employee. Nothing in this Agreement shall limit the right of the Town or Employee to terminate employment at-will.

7. **Termination of Employment.**

7.1 **Termination by Town.**

- (a) **Termination for Cause.** Without limiting the at-will status of Employee's employment, the Town may at any time terminate Employee's employment for cause.

"Cause" shall only mean any of the following:

- (i) Conviction of a felony;
- (ii) Conviction of a misdemeanor arising out of Employee's duties under this Agreement and involving a willful or intentional violation of law;
- (iii) Willful abandonment of duties;
- (iv) A pattern of repeated, willful and intentional failure to carry out materially significant and legally constituted policy decisions of the Town Council, made by the Town Council as a body, or persistent and willful violation of properly established rules and procedures; or
- (v) Employee takes an action or knowingly fails to act on a matter, which materially and substantially impedes or disrupts the performance of the Town, or is substantially detrimental to employee safety or public safety.

If the Town terminates Employee's employment for cause, the Town's obligations under this Agreement to provide compensation and benefits to Employee shall terminate on the Employee's last day of employment.

- (b) **Termination without Cause.** If the Town terminates Employee's employment for any reason other than for Cause per Section 7.1(a), the Town's obligations under this Agreement to provide compensation equal to Base Salary to Employee shall continue for a period of six (6) months following the Employee's last day of employment. Employee shall continue to be bound by the provisions of Section 9 of this Agreement.
- (c) **Termination Following Election.** In no event may the Town Manager be terminated within ninety (90) days after any municipal election for the selection or recall of one or more members of the Town Council.
- (d) **Government Code Compliance.** Any other term of this Agreement notwithstanding, the maximum compensation and benefits that Employee may receive under this Agreement as a result of termination shall not exceed the limitations provided in Government Code §§53260- 53264. Further, in the event Employee is convicted of a crime involving an abuse of office or position, Employee shall reimburse the Town

for any paid leave or cash settlement (including severance), as provided by Government Code §§53243 - 53243.4

- 7.2 **Termination by Employee.** Without limiting the at-will status of Employee's employment, Employee may resign from employment upon thirty (30) days prior written notice to the Town Council. If Employee so resigns, the Town's obligations under this Agreement to provide compensation and benefits to Employee shall terminate on the Employee's last day of employment. If Employee provides notice of resignation, the Town has the ability to place Employee on paid administrative leave for the duration of the notice period.
8. **Business Equipment.** The Town will provide the Employee a newly purchased cell phone and pay for full coverage to allow for 24/7 access and availability for Town business. Additionally, the Town will provide a portable computer for home and/or travel use in addition to providing appropriate technology equipment at the office location in Town Hall.
9. **Confidentiality.** During the course of employment or at any other time, Employee agrees not to disclose, communicate, use to the detriment of the Town or for the benefit of any other person (including Employee), or misuse in any way, any confidential information or data concerning the Town. Employee acknowledges and agrees that all such confidential information received by Employee will be received in confidence and as a fiduciary of the Town.
10. **Miscellaneous.**
- 10.1 **Notices.** Any notice required or permitted under this Agreement shall be in writing and shall be deemed to have been given on the date of delivery if delivered personally or by overnight courier, or three (3) days after mailing if mailed by registered or certified mail, postage prepaid, and return receipt requested, to the mailing address last on file with the Town.
- 10.2 **Modifications.** All modifications to this Agreement shall be in writing and signed by both parties.
- 10.3 **Survival of Obligations.** The provisions of Paragraphs 7.1(b) and 9 shall survive the expiration or termination of this Agreement or any part hereof.

Notwithstanding the provisions of this Paragraph, the provisions of Paragraph 4.6 shall survive only should Employee assume payment of all premiums for the aforementioned life insurance policy upon expiration or termination of this Agreement subject to the provisions of paragraph 7.1(b).