



STAFF REPORT

TOWN COUNCIL MEETING OF JUNE 13, 2017

To: Honorable Mayor and Members of the Town Council
From: Joan L. Phillipe, Interim Town Manager
Subject: Approval of Employment Agreement with Sean Rabe for Position of Town Manager
Date: June 5, 2017

RECOMMENDATION ACTION:

Approve agreement with Sean Rabe.

ISSUE STATEMENT AND DISCUSSION:

With the resignation of former Town Manager Rick Angelocci in March of this year, recruitment for a new manager began under a contract with Ralph Andersen & Associates.

A total of 42 applications were received with the council interviewing six individuals who seemed to best fit the criteria suited for the town's next manager. Sean Rabe emerged from the process as the person with whom the council negotiated an employment contract. That contract is attached for approval.

Mr. Rabe is currently the city of Colma's city manager where he has served since January 2104. Prior to that, he served as city manager and assistant city manager in Sutter Creek and also as a transportation planner for the Amador County Transportation Commission. Rabe was also the general manager and editor of the Amador Ledger Dispatch.

His experience in small communities combined with his education, a master in public policy from California State University, Northridge and a bachelor of arts in government from California State University, Sacramento give the town gives an individual experienced in small communities. He is a hands-on manager accustomed to working with small staffs and doing what it takes to get the job done. He also is experienced in working on regional issues that can have impact on a small town and developing working relationships with other jurisdictions.

FINANCIAL IMPLICATIONS:

The fiscal impact of the contract is detailed in the attached employment agreement. It sets forth a salary of \$175,000 that will be included in the 2017-2018 fiscal year budget.

TOWN MANAGER EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT ("Agreement") is by and between the Town of Loomis ("Town") and Sean Rabe' ("Employee") and shall be effective as of execution by both Parties.

RECITALS

A. The Town desires to employ Employee as its Town Manager 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 accepts that employment.

2. **Duties.**

2.1 **Duties.** Employee shall perform all duties and functions of the Town Manager as specified in the laws of the State of California, Ordinances and Resolutions of the Town of Loomis and such other duties as may from time to time be established by the Town.

2.2 **Full Energy and Skill.** Employee shall remain in the exclusive employment of the Town and devote Employee's full energy, skill, ability and productive income-generating time, attention and effort to the business of the Town while so employed.

2.3 **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 his duties as Town Manager. Employee acknowledges that he is subject to the various conflict of interest requirements found in California Government Code and state and local policies and regulations.

2.3.1 The expenditure of reasonable amounts of time not in conflict with the Town's needs and interests, for educational, charitable, community, and professional activities shall not be deemed a breach of this Agreement and shall not require prior consent.

2.3.2 This Agreement shall not be interpreted to prohibit Employee from making passive personal investments or conducting private business affairs if those activities do not materially interfere with the services required under this Agreement.

2.3.3 All data, studies, reports and other documents prepared by Employee while performing his duties during the term of this Agreement shall be furnished to and become the property of the Town, without restriction or limitation on their use.

2.4 **Permission Required For Outside Employment.** Employee shall not engage in employment, activity, consulting service, or other enterprise, for compensation or otherwise, without the express written consent of the Town Council.

2.5 **Regional and Professional Activity.** The Council desires Employee to be reasonably active in national, statewide and regional professional organizations that will contribute to Employee's professional development and standing and that will contribute to the advancement of the Town's interests and standing. Toward that end, Employee may, upon advance notice to the Council, undertake such activities as are directly related to his professional development and that advance the interest and standing of the Town. These activities may include, participation in the California League of Cities, ICMA, or other similar national, statewide, regional or professional organizations, provided that such activities do not in any way interfere with or adversely affect his employment as Town Manager of the performance of his duties as provided herein. Town shall budget and pay for the dues and subscriptions of Employee necessary for his participation in such organizations. Town shall reimburse Employee's reasonable and necessary travel, business and subsistence expenses as provided in its normal policies and procedures for reimbursement of expenses for attending such activities.

3. **Compensation and Benefits.** Employee shall receive for services to the Town the following compensation and benefits:

3.1 **Base Salary.** Employee shall receive a base salary of One Hundred Seventy-Five Thousand Dollars (\$175,000) per year, payable in installments at the same time as other employees of the Town are paid. The Town Council, at its sole discretion, may grant increases and /or bonuses to Employee. Toward this end, the Town Council will conduct annual evaluations of Employee as set forth in Section 4.

3.1.1 **Cost of Living Adjustments.** Except as specifically provided herein, Employee shall be granted any across the board cost of living adjustment (COLA) afforded to other management employees.

3.1.2 **No reduction.** Town shall not, at any time during this Agreement, reduce the salary, compensation or other financial benefits of Employee, except to the degree of such across the board reductions for all management employees of Town.

3.2 **Standard Management Employee Benefits.** Except as otherwise provided in this Agreement, Employee shall receive all benefits ordinarily accorded to the Town's management personnel as presently set forth in in Town Resolution 07-15 and such other benefits as may be adopted by the Town during the term of this Agreement.

3.3 **Vacation, Sick and Administrative Leave.** In recognition of Employees prior years of public agency management, during Employee's first year of employment, Employee will earn 15 days of vacation. This accrual shall increase to 18 days per year at the beginning the start of the fifth year of employment and to 20 days per year at the beginning of the fifteenth year of employment. At the start of the twentieth year of employment and every year thereafter an additional day of vacation will be added. Employee shall receive 12 days of sick leave per year. Employee shall receive ten (10) days of administrative leave per year that must be used in the year granted and cannot be carried forward or accrued to subsequent years. The full amount of administrative leave shall be credited to Employee upon appointment. Vacation and sick leave will be prorated based on Employees hire date.

3.4 **Automobile Allowance.** Town shall provide Employee with a monthly automobile allowance in the amount of three-hundred-fifty dollars and no cents (\$350) to compensate Employee for the use of his personal vehicle on official Town business.

3.5 **Cellular Telephone Allowance.** Town shall provide Employee with a monthly cell phone allowance in the amount of seventy-five dollars and no cents (\$75) to be used in conjunction with Town business.

3.6 **Relocation Assistance.** Town will reimburse Employee for expenses incurred in relocating to the Loomis area, up to a maximum of five-thousand dollars and no cents (\$5,000). Eligible expenses shall include the cost of rental housing to a maximum of three months, storage and movement of personal effects, house-hunting trips and related travel for Employee and Employee's spouse and any other expenses approved by the Town Council as necessary and appropriate. Employee shall submit receipts for all expenses for which reimbursement is claimed under this section. All expenses to be reimbursed under this section must be incurred and claimed within a reasonable date of the execution of this Agreement.

3.7 **Retirement.** The Town contracts with the Public Employees Retirement System of California (CalPERS) for a retirement program for its miscellaneous employees. As required by the California Public Employee Retirement Law (PERL), Employee will be enrolled as a CalPERS member and will be subject to the terms and benefits of that plan. As a "Classic" member of CalPERS, the Town shall provide Employee with the CalPERS 2@55 retirement formula with the highest average 36 month calculation. The Parties recognize and agree that the Town is required to comply with all requirements of law governing the CalPERS retirement program, including, but not limited to eligibility and reporting requirements. In implementing this Agreement and related practices, the Town will comply with the requirements of law, and

those legal requirements prevail over any inconsistent prior practices or Agreement terms. The Town makes no representation regarding the specific parameters of the retirement program as administered by CalPERS. Employee shall pay the employee's 7% contribution.

3.8 **Cafeteria Medical Plan.** Employee shall receive the same medical benefit as other Town management employees.

3.9 **Deferred Compensation 457 Plan.** Employee is eligible to participate in 457 plan. Town does not make a contribution to the plan.

4. **Performance Evaluation.** The Town Council and the Employee shall meet and establish performance standards for the position of Town Manager to be used to review and evaluate the performance of Employee as Town Manager. Employee's first performance evaluation shall be completed on or about July 15, 2018 by the Town Council. Performance reviews should be conducted annually on or before the anniversary of Employee's initial hire date and salary adjustments will be considered in conjunction with the performance evaluation. Nothing in this provision shall be construed to require Town to grant Employee pay increase based upon the performance standards, if any, nor to limit the discretion of Town to evaluate the Town manager as it deems necessary in the sole discretion of the Town.

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

6. **Term and Termination of Employment.**

6.1 **Term.** The term of this Agreement will begin on the Effective Date and will expire on the first to occur: (i) the fifth anniversary of the Effective Date (the "Term"); or (ii) early termination of the Agreement in accordance with Section 6.

6.2 **Termination by Town.**

6.2.1 **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." The Town will not pay Employee any severance if the termination is "For Cause." For purposes of this Agreement, "For Cause" termination shall include the following reasons: (i) conviction of a felony or other crime involving moral turpitude; (ii) fraud, material dishonesty; willful or persistent failure to carry out Employee's duties; gross negligence or misconduct; engaging in unlawful discrimination or harassment of employees or any third Party while on Town premises or time; (iii) death or disability; (iv) civil liability for a violation of a statute or law constituting misconduct in office. In the event of a "For Cause" termination, the Town shall not be obligated to pay, and shall not pay, any amounts or continue any benefits under the provisions of paragraph 5. For purposes of this Agreement, "Disability" shall mean the

Employee's inability, because of physical or mental illness or incapacity or otherwise, to perform his essential duties under this Agreement for a period of 180 days or more in any period of 360 days. Further, Town shall not be obligated to pay, and shall not pay, any amounts under the provisions of paragraph 5, in the event Employee voluntarily resigns his employment or retires.

6.2.2 **Termination Without Cause.** If the Town terminates Employee's employment for any reason other than for cause, the Town shall provide Employee severance payment of six (6) months base salary to be paid as a lump sum payment on the effective date of the termination, and shall pay COBRA premiums for medical and dental insurance for six months or until Employee becomes re-employed, whichever occurs first. As a condition to receipt of this severance payment, Employee agrees that he will execute a Release Agreement in the form presented to him by Town at the time of his termination without Cause.

6.3 **Termination by Employee.** Without limiting the at-will status of Employee's employment, Town requests that Employee provide thirty (30) days prior written notice to Town of intent to resign. If Employee so resigns, the Town's obligations under this Agreement to provide compensation and benefits to Employee shall terminate on Employee's last day of employment. If Employee resigns his employment with the Town, he shall not be entitled to any severance pay nor continued compensation and benefits, except as otherwise required under state or federal law. Upon resignation, Employee shall continue to be bound by the provisions of Section 7 of this Agreement. Should Employee retire, Employee shall provide the Town sixty (60) days written notice.

7. **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 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.

8. **Conflict of Interest Prohibition.** Employee shall not engage in any activity which is, or may become, a conflict of interest, prohibited contract, or which may create an incompatibility of office as defined under California law. Employee shall complete annual disclosure forms required by law. It is further understood and agreed that because of the duties of the Town Manager within and on behalf of the Town and its citizenry, Employee shall not, during the term of this Agreement, individually, as a partner, joint venturer, officer, or shareholder, invest or participate in any business venture conducting business within the corporate limits of the Town, except for stock ownership in any company whose capital stock is publicly held and regularly traded without prior written consent of the Town Council. For and during the term of this Agreement, Employee further agrees, except for a personal residence used as his personal residence, not to invest in any other real estate or property improvements within the corporate limits of the Town, without the prior, written consent of the Town Council.

9. **Abuse of Office.** If the Town provides (i) paid leave salary to the Employee pending an investigation, (ii) funds for the legal criminal defense of the Employee, or (iii) severance pay to the Employee in accordance with section 6.2 hereof, then in the event the Employee is convicted of a crime involving an abuse of his office or position as defined in California Government Code Section 53243.4, all such sums paid by the Town to the Employee or for the Employee's benefit shall be fully reimbursed to the Town by the Employee.

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 first class, registered or certified mail, postage prepaid, and return receipt requested.

10.2 **Governing Law.** The State of California law shall govern this Agreement. Any legal action arising out of, or related to, this Agreement shall be venued in Placer County.

10.3 **Resolution of Disputes.** Any disputes regarding the rights or obligations of the Parties under this Agreement shall be conclusively determined by binding arbitration. The arbitration shall be conducted as follows:

10.3.1 **Binding Arbitration.** Any dispute between the Parties shall be submitted to, and conclusively determined by, binding arbitration in accordance with this paragraph. The provisions of this Section shall not preclude any Party from seeking injunctive or other provisional or equitable relief in order to preserve the status quo of the Parties pending resolution of the dispute, and the filing of an action seeking injunctive or other provisional relief shall not be construed as a waiver of that Party's arbitration rights. The arbitration of any dispute between the Parties to this Agreement shall be governed by the provisions of the California Arbitration Act (California Code of Civil Procedure section 1280, et seq.).

10.3.2 **Initiation of Arbitration.** In the case of any dispute between the Parties to this Agreement, either Party shall have the right to initiate the binding arbitration process provided for in this Section by serving upon the other Party a demand for arbitration.

10.3.3 **Selection of Arbitrators.** Within thirty (30) days of service of a demand for arbitration by either Party to this Agreement, the Parties shall endeavor in good faith to select a single arbitrator. If they fail to do so within that time period, the Parties shall have mutually request a panel of seven (7) arbitrators from the State Mediation and Conciliation Service (SMCS). Upon receipt of the SMCS arbitration panel, the Parties will alternately strike names from the list, with Employee going first, until a final arbitrator is arrived at through this process.

10.3.4 Location of Arbitration. Any arbitration hearing shall be conducted in Placer County, California.

10.3.5 Applicable Law. The law applicable to the arbitration of any dispute shall be the law of the State of California, excluding its conflicts of law rules.

10.3.6 Arbitration Procedures. Except as otherwise provided in this Section, the arbitration shall be governed by the California Arbitration Act (Code Civ. Proc., § 1280 et seq.). In addition, either Party may choose, at that Party's discretion, to request that the arbitrator resolve any dispositive motions prior to the taking of evidence on the merits of the dispute. By way of example, such dispositive motions would include, but not be limited to, those which would entitle a Party to summary judgment or summary adjudication of issues pursuant to Code of Civil Procedure section 437c or resolution of a special defense as provided for by Code of Civil Procedure section 597. In the event a Party to the arbitration requests that the arbitrator resolve a dispositive motion, the arbitrator shall receive and consider any written or oral arguments regarding the dispositive motion, and shall receive and consider any evidence specifically relating thereto, and shall render a decision thereon, before hearing any evidence on the merits of the dispute.

10.3.7 Limitation on Scope of Arbitrators' Award or Decision. Town and Employee agree that if the arbitrator finds any disputed claim to be meritorious, the arbitrator shall have the authority to order all legal and/or equitable relief appropriate to the claim.

10.3.8 Costs of Arbitration; Attorney's Fees. Town agrees to pay the arbitrator's fees associated with the arbitration of this action. Each Party shall bear its own costs and attorney's fees. However, Town and Employee agree that the arbitrator, in his or her discretion, may award to the prevailing Party the costs, including the costs of the arbitration, and attorney's fees incurred by that Party in participating in the arbitration process.

10.4 Severability. If any term of the Agreement is found by a court to be unenforceable, the remaining terms of this Agreement shall be deemed valid and enforceable to the fullest extent possible.

10.5 Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to Employee's employment and supersedes any and all prior oral or written negotiations, correspondence, understandings and agreements between the Parties.

10.6 Modifications. All modifications to this Agreement shall be in writing and signed by both Parties.

10.7 **Assignment.** This Agreement is not assignable by either Town or Employee.

10.8 **Claims Against Employee.** In the event of any claim or action against Employee arising from his actions within the course and scope of his employment with the Town, Town shall indemnify, defend and hold Employee harmless from said claim to the full extent required by Title 1, Div. 3.6 of the California Government Code or any successor legislation.

10.9 **Representation.** Employee acknowledges that although this Agreement has resulted from negotiations between the Parties, the Town has retained its legal counsel to prepare the Agreement. The Parties agree that the normal rule of construction against the drafting Party shall not apply. Employee further acknowledges that the Town has advised him to seek the advice of his own attorney and accountant in connection with the signing of this Agreement. Employee further acknowledges that if he has not consulted with his own attorney or accountant, Employee has done so at his own choosing.

IN WITNESS WHEREOF, this Agreement shall be effective as of the day and year upon execution of both Parties as indicated below.

Dated: _____

THE TOWN OF LOOMIS:

By: _____
Robert Black, Mayor

APPROVED AS TO FORM:

Jeffrey A. Mitchell
Town Attorney

Attest: _____
Crickett Strock
Town Clerk, CMC

EMPLOYEE:

Dated: _____

By: _____
Sean Rabe', Employee