



THIRD AMENDED AND RESTATED EMPLOYMENT AGREEMENT FOR AT-WILL EMPLOYMENT OF CITY MANAGER

Background

Peggy Flynn possesses the necessary education, experience, skills, and expertise to serve as the Petaluma City Manager, and the Petaluma City Council desires to employ her in that capacity. Peggy Flynn desires to serve as the Petaluma City Manager in accordance with the City Council's direction as the City's legislative body, and all applicable laws, regulations, and rules.

Accordingly, on January 28, 2019, by a vote of 7-0 the Petaluma City Council adopted Resolution no. 2019- 013 approving and authorizing the Mayor to execute on behalf of the City this Agreement for At-Will Employment of City Manager ("Agreement") appointing Peggy Flynn as City Manager of the City of Petaluma.

The City Council has recently concluded a performance evaluation for Ms. Flynn and, per Section 7(b) of the Agreement, has agreed to adjust her base salary and amend her vacation payout benefit similar to Unit 8, which is comprised of unrepresented employees. This Third Amended and Restated Employment Agreement for At-Will Employment of City Manager memorializes these compensation changes, as well as updates various benefit provisions that are contained in the Attachment 1 to this Agreement.

Agreement

This Agreement is made by the City of Petaluma, ("the CITY"), a California charter city, and Peggy Flynn ("CITY MANAGER"). The CITY and CITY MANAGER may be referred to individually in this Agreement as a PARTY and collectively as "the PARTIES." This Agreement will be effective February 25, 2019 (the "Effective Date"), which will be CITY MANAGER's first day of employment as the Petaluma City Manager. The PARTIES agree as follows:

Third Amended and Restated Employment Agreement for At-Will Employment
City Manager Peggy Flynn

1. Appointment of City Manager:

Commencing on the Effective Date, CITY MANAGER is hereby appointed as City Manager of the City of Petaluma in accordance with this Agreement and all applicable laws, regulations, and rules.

2. Term:

The term of this Agreement (“Term”) shall commence on the Effective Date and continue for a three-year period expiring on February 25, 2022 (the “Expiration Date”). Notwithstanding the Expiration Date, the Term will automatically extend by an additional year without further notice or action of the PARTIES commencing on February 25 of each year, thereby establishing a new three-year Term and new Expiration date, unless either PARTY gives the other written notice of termination by or before November 25. If either PARTY provides notice of termination in accordance with this provision, the Term will expire at the conclusion of the three-year Term then in effect without further notice or action of the PARTY, unless the PARTY giving notice of termination rescinds the notice in writing before the commencement of the final year of the Term then in effect. Notwithstanding this provision, this Agreement may be terminated before the expiration of the Term in accordance with Section 20. If the CITY terminates this Agreement by giving notice in accordance with this section, the City will have no obligation to pay severance pursuant to Section 21 regarding such termination.

3. At-Will Employment:

CITY MANAGER will be an at-will employee of the CITY in accordance with California Labor Code Section 2922 and will serve at the pleasure of the City Council. The CITY’s Personnel Rules, Policies, Procedures, Ordinances and Resolutions will not apply to CITY MANAGER, and nothing in this Agreement confers upon CITY MANAGER any right to or expectation of any right or property interest in continued employment by the CITY. If the CITY terminates CITY MANAGER’s employment, whether with or without cause, CITY MANAGER will be entitled to only that due process that is provided by City Charter or ordinance, or this Agreement. Nothing in this Agreement will limit the right of CITY MANAGER to resign at any time subject to the requirements in Section 20 of this Agreement. Past or future CITY enactments or other actions of the City Council may designate CITY MANAGER as the chief executive of other CITY-related legal entities, such as financing authorities and/or joint powers agencies.

4. CITY MANAGER Obligations and Understandings

a. Duties and Authority

- i.** CITY MANAGER shall be the chief executive officer of the City and be responsible to the City Council for the proper administration of all City affairs.
- ii.** CITY MANAGER shall be vested with all of the powers and perform all of the duties as set forth concerning CITY MANAGER's position in applicable laws of the State of California, the Petaluma Charter (including, without limitation, Sections 23 and 24 of Article VI), the Petaluma Municipal Code, CITY ordinances and resolutions, and City Council policies as may be established from time to time, and such other duties and functions as the City Council may from time to time assign.
- iii.** The CITY MANAGER shall administer and enforce polices established by the City Council and promulgate rules and regulations as necessary to implement such policies. Accordingly, CITY MANAGER shall be required to:
 - A.** Attend all meetings of the City Council, unless excused.
 - B.** Direct the review of all agenda documents and preparation of the agenda for all regular and special meetings of the City Council.
 - C.** Direct the work of all CITY officers, employees and departments appointed by and/or under the supervision of the CITY MANAGER.
 - D.** Implement changes that the CITY MANAGER believes will result in greater efficiency, economy, or improved public service in the administration of CITY affairs.
 - E.** From time to time, recommend to the City Council adoption of such measures as the CITY MANAGER may deem necessary or expedient for the health, safety, or welfare of the community, or for the improvement of CITY services. The CITY MANAGER shall conduct and direct research in administrative practices in order to bring about greater efficiency and economy in CITY government and develop and recommend to the City Council long-range plans to improve CITY operations and prepare for future CITY growth and development.
 - F.** From time to time, and based on the CITY MANAGER's best judgment, propose to the City Council the consolidation, or combination or reorganization of offices, positions, departments, or units under the CITY

Third Amended and Restated Employment Agreement for At-Will Employment
City Manager Peggy Flynn

MANAGER's authority and/or supervision. The CITY MANAGER may be the head of one or more CITY departments.

- G. Provide management training and develop leadership qualities among department heads as necessary to build a CITY management team that can plan for and meet future challenges.
- H. Exercise control of CITY government in emergencies as authorized by the Petaluma Municipal Code and other applicable law.

b. Hours of Work

- i. CITY MANAGER is an exempt employee. CITY MANAGER is expected to engage in those hours of work that are necessary to fulfill the obligations of the CITY MANAGER's position. The position does not have set hours of work and the CITY MANAGER is expected to be available, as necessary, at all times.
- ii. It is recognized that the CITY MANAGER must devote substantial time to the business of the CITY outside of the CITY's customary business 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. The CITY MANAGER shall spend sufficient hours on site to perform her duties. However, the CITY MANAGER has discretion over the City Manager's work schedule and work location. As an exempt employee, CITY MANAGER will not receive overtime or extra compensation for work performed outside normal business hours. However, CITY MANAGER will receive administrative leave in accordance with section 11(c).
- iii. The CITY MANAGER shall not spend more than 12 hours per month in teaching, consulting, speaking or other non-CITY connected business for which compensation is paid without the express, prior written consent of the City Council. Except as specified in this paragraph, the CITY MANAGER agrees to remain in the exclusive employ of the CITY, and to devote her full productive time and attention to the CITY's business during the term of this Agreement in accordance with its terms.

5. CITY Obligations and Understandings

- a. The CITY shall provide the CITY MANAGER with the compensation, incentives and benefits specified in this Agreement, as from time to time amended by written consent of both PARTIES.

Third Amended and Restated Employment Agreement for At-Will Employment
City Manager Peggy Flynn

- b.** The CITY shall provide the CITY MANAGER with a private office, administrative support, staff, office equipment, supplies, and automobile allowance as specified in this Agreement, and all other facilities and services reasonably necessary for the performance of her duties.
- c.** The CITY shall pay for (or provide the CITY MANAGER reimbursement for) all actual business expenses. The CITY shall provide the CITY MANAGER a credit card to charge appropriate and lawful CITY business expenses.
- d.** The CITY agrees to pay the professional dues, subscriptions, travel, and subsistence expenses on behalf of the CITY MANAGER which are necessary for the CITY MANAGER's continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for the CITY MANAGER's continued professional growth and advancement. Said reimbursement includes governmental groups and committees upon which the CITY MANAGER serves or may serve as a member. Said expenses may also be reimbursed or paid for or on behalf of the CITY MANAGER for short courses, institutes and seminars that are necessary for the professional development of the CITY MANAGER.
- e.** Given the importance of technological tools to the effective and efficient conduct of the CITY's business, the CITY shall provide computer, laptop computer, printer, high-speed internet access, cellular phone, iPad or subsequent type devices, electronic calendar, fax, copy machine and similar devices to the CITY MANAGER at the CITY's expense, both at the CITY MANAGER's office and at the CITY MANAGER's residence as needed to carry out the duties of the position. All such equipment shall remain the property of the CITY.
- f.** The City Council sets policy for the governance and administration of the CITY, and it implements its policies through the CITY MANAGER.
- g.** The City Council recognizes that to meet the challenges facing the CITY 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 setting goals and priorities for the CITY government, and to work on issues that may be inhibiting the maximum achievement of CITY goals.
- h.** In accordance with Section 24(B) of Article VI of the Petaluma Charter: neither the City Council nor any of its appointees shall dictate, or interfere with the exercise of the CITY MANAGER's judgment regarding the appointment, discipline or removal of subordinate officers or employees in the administrative service of the CITY; and except for the purpose of inquiry, the City Council will deal with the administrative

Third Amended and Restated Employment Agreement for At-Will Employment
City Manager Peggy Flynn

service solely through the CITY MANAGER, and the City Council members will not give orders to subordinates of the CITY MANAGER.

- i. The City Council members will coordinate with the CITY MANAGER such that criticism of CITY staff members shall be done privately through the CITY MANAGER.
- j. The City Council members will not interfere with the execution of the powers and duties of the CITY MANAGER. The CITY MANAGER is expected to be appropriately and promptly responsive to all City Council members, collectively and individually, but shall take orders and direction from the City Council when it is sitting as a body in a lawfully-held meeting.

6. Mutual Obligations and Understandings

- a. Annual performance evaluations are an important way for the City Council and CITY MANAGER to ensure effective communications about expectations and performance.
- b. The City Council recognizes that for the CITY MANAGER to respond to its needs and to grow in the performance of the CITY MANAGER's role, it is necessary for the City Council to provide the CITY MANAGER performance feedback.
- c. To provide the CITY MANAGER performance feedback, the City Council will conduct an evaluation of the CITY MANAGER's performance at least once a year. Performance evaluations for the purpose of mid-course corrections may occur more often than once a year. The City Council may choose to establish a subcommittee to meet with the CITY MANAGER periodically over the course of each year to measure progress on stated goals and priorities.
- d. The CITY MANAGER's annual performance evaluation shall use criteria developed jointly by the City Council and CITY MANAGER.
- e. The City Council and CITY MANAGER shall define such goals and performance objectives as they mutually determine are necessary for the proper operation of the CITY for the attainment of the City Council's policy objectives and shall establish relative priority of the CITY goals and performance objectives.

7. Compensation:

- a. Effective the first full pay period following City Council approval of this Agreement on April 8, 2024, the CITY MANAGER's annual base salary shall be increased from

Third Amended and Restated Employment Agreement for At-Will Employment
City Manager Peggy Flynn

\$244,800 to an annual base salary of \$291,000, payable in installments at the same time that the other management employees of the CITY are paid.

- b. The CITY may increase CITY MANAGER's compensation in such amounts and to such extent as the City Council may determine is desirable on the basis of any annual salary review of CITY MANAGER.

8. Benefits:

CITY MANAGER will be entitled to the benefits specified in Attachment 1 which is attached to and made a part of this Agreement.

9. Disability:

If CITY MANAGER is permanently disabled or otherwise unable to perform her duties because of sickness, accident, injury, mental incapacity or health for a period of ninety (90) successive days beyond any accrued sick leave, subject to satisfaction of the CITY's reasonable accommodation obligations, the CITY will have the option to terminate this Agreement. Upon termination pursuant to this section, the CITY will have no obligation to pay severance pursuant to Section 21.

10. Use of Vehicle:

CITY MANAGER will be provided a monthly automobile allowance of \$400 in exchange for making her vehicle available for her own use and for CITY related business and/or functions during, before, and after normal working hours. The monthly automobile allowance is intended to defray costs that the CITY MANAGER incurs in utilizing her personal vehicle for CITY business. The automobile allowance shall appear on the CITY MANAGER's payroll stub as ordinary income and part of her salary but will not be considered part of the CITY MANAGER's base salary for purposes of this Agreement.

11. Vacation, Sick, Administrative and Holiday Leave:

- a. Vacation leave shall accrue and be credited to CITY MANAGER's personal account in accordance with Attachment 1.
- b. Sick leave shall accrue and be credited to CITY MANAGER's personal account in accordance with Attachment 1.
- c. Administrative leave shall be credited to CITY MANAGER's personal account at the rate of 96 hours per year. The City Council's recognizes that it may be difficult for the CITY MANAGER to make full use of her accrued administrative leave during the

Third Amended and Restated Employment Agreement for At-Will Employment
City Manager Peggy Flynn

first two years of the Term. Accordingly, commencing on the Effective Date and expiring February 25, 2021, CITY MANAGER may elect to receive a payment equal to CITY MANAGER's unused administrative leave balance in that year of up to fifty (50) hours. Beginning on February 25, 2021 and thereafter, without further action of the PARTIES, unless this Agreement is otherwise amended, CITY MANAGER may elect to receive a payment equal to CITY MANAGER's unused administrative leave balance in that year up to twenty (20) hours. CITY MANAGER may carry forward up to forty (40) hours of unused administrative leave into the next fiscal year. CITY MANAGER may not maintain a balance of more than 136 hours of administrative leave. Carry-forward administrative leave may only be taken as paid time off, has no cash value, and shall not be included in the totals subject to payment under Section 20(a)(3).

- d. Holidays will be credited to CITY MANAGER's account in accordance with Attachment 1.

12. Disability, Health, and Life Insurance:

- a. The CITY agrees to purchase and to pay during the term of this Agreement, premiums on term life insurance policies equal in amount to one and one-half (1-1/2) times the amount of the annual base salary of CITY MANAGER as specified in Section 7, plus \$75,000, up to a maximum benefit of \$375,000
- b. The CITY agrees to provide and to pay the CITY's share of premiums for medical, dental, and vision insurance for CITY MANAGER and her dependents in accordance with Attachment 1. CITY MANAGER will have the right to select medical, dental and vision coverage from the plan options specified in Attachment 1.
- c. The CITY agrees to have in force and make required premium payments for CITY MANAGER's participation in the CITY's current group disability plan.

13. Retirement:

- a. CITY MANAGER has previously been enrolled into the California Public Employment Retirement System ("PERS") and CITY will continue CITY MANAGER's enrollment in PERS during the Term and make all required contributions on the CITY MANAGER's behalf making up the entire employer's share of CITY MANAGER's participation in PERS. CITY MANAGER will pay all required contributions on the CITY MANAGER's behalf making up the entire employee's share of CITY MANAGER's participation in PERS.
- b. CITY MANAGER has been enrolled in PERS through an agency that participates in PERS as a classic employee and has participated and shall continue to participate

Third Amended and Restated Employment Agreement for At-Will Employment
City Manager Peggy Flynn

during the Term in the 2% at 60 formula retirement plan provided to Miscellaneous PERS members, calculated at the single highest one-year rate of compensation.

- c. CITY MANAGER's participation in the PERS 2% at 60 retirement plant for Miscellaneous PERS members pursuant to the CITY's contract with PERS includes the optional benefits in the CITY's PERS contract that are specified in Attachment 1.

14. Bonding:

The CITY will bear the full cost of any fidelity or other bonds required of CITY MANAGER under any law or ordinance.

15. Continuity:

In the event of a change of the elected representation of the City Council, there will be a ninety (90) day period commencing upon the seating of new City Council members when the City Council may take no action regarding the provisions of this Agreement, unless both PARTIES agree or the action is for cause in accordance with Section 20(e).

16. Attorney Fees:

In the event of any suit or action by either PARTY under this Agreement, the prevailing party in the suit or action will be entitled to reasonable attorney fees and costs to be fixed by the court.

17. Other Terms and Conditions of Employment:

The City Council, in consultation with CITY MANAGER, may fix any other terms and conditions of employment, as it may determine from time to time, relating to the performance of CITY MANAGER's duties, provided such terms and conditions are not inconsistent with or in conflict with the terms of this Agreement, the Petaluma City Charter, the Petaluma Municipal Code or any other applicable state or federal law.

18. Indemnification:

- a. The CITY will defend, hold harmless and indemnify CITY MANAGER against any tort, civil rights, personnel, discrimination, or professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of CITY MANAGER's duties in accordance with the provisions of California Government Code Section 825 and following, as amended from time to time, and provide a defense in accordance with California Government Code Section 995 and following. Notwithstanding anything to the contrary in this Agreement, the CITY reserves the right to refuse to provide a defense

Third Amended and Restated Employment Agreement for At-Will Employment
City Manager Peggy Flynn

of CITY MANAGER for the reasons set forth in California Government Code Section 995.2 or other applicable provisions of law.

- b. Following termination of this Agreement for any reason, the CITY agrees to pay CITY MANAGER reasonable consulting fees and travel expenses when CITY MANAGER serves as a witness, advisor and/or consultant to the CITY regarding pending litigation.

19. Notices:

Notices pursuant to this Agreement must be in writing given by deposit in the custody of the United States Postal Service, first class postage prepaid, addressed as follows:

a. CITY:

Mayor and City Council
11 English Street
Petaluma CA 94952

b. CITY MANAGER:

Peggy Flynn
11 English Street
Petaluma CA 94952

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial process. Notice will be deemed given as of the date of personal service or as of the date of deposit of such written notice, postage prepaid, with the United States Postal Service.

20. Termination of Employment:

a. Termination by Either Party

- i. The PARTIES may terminate this Agreement with or without cause by giving notice in accordance with Section 2, Section 19, and this Section 20 of this Agreement, as applicable.
- ii. During the period following notice of termination by either PARTY and until the termination becomes effective, all the rights and obligations of the PARTIES under this Agreement will remain in effect.

Third Amended and Restated Employment Agreement for At-Will Employment
City Manager Peggy Flynn

- iii. Upon separation from CITY employment for any reason, CITY MANAGER will be paid for all earned, accrued, and unused vacation, administrative leave, and floating holidays, subject to the limits on payments for unused administrative leave in Section 11(c).

b. Termination by CITY MANAGER without Cause:

- i. For purposes of this Agreement, termination by CITY MANAGER without cause will be deemed to occur when CITY MANAGER gives the City Council written notice of termination of this Agreement without cause as defined in this provision.
- ii. CITY MANAGER will give the CITY a minimum of sixty (60) days written notice in advance of termination without cause, unless the PARTIES agree otherwise.
- iii. For purposes of this Agreement, termination by CITY MANAGER without cause means termination in the absence of an uncured material breach by CITY of this Agreement as defined in provision (c) of this section.

c. Termination by CITY MANAGER with Cause:

- i. For purposes of this Agreement, termination by CITY MANAGER with cause will be deemed to occur when CITY MANAGER gives the City Council written notice of termination of this Agreement with cause as defined in this provision.
- ii. CITY MANAGER must declare material breach of this Agreement in writing to the CITY specifying the basis for the declaration, and the CITY will have thirty (30) days from receipt of notice to cure the declared material breach.
- iii. For purposes of this Agreement, termination by CITY MANAGER with cause means termination for CITY's material breach of this Agreement declared by CITY MANAGER and not cured by the CITY in accordance with this provision.

d. Termination by CITY without Cause.

- i. For the purposes of this Agreement, termination by CITY without cause will be deemed to occur when:

- A. A majority of the City Council votes to terminate CITY MANAGER at a duly authorized public meeting without cause, as defined in provision (e) (1) of this Section.
- B. The City Council, the citizens of the CITY, or the California Legislature acts to amend any provisions of the City Charter, CITY codes, or other legislation pertaining to the role, powers, duties, authority, or responsibilities of the CITY MANAGER in a way that substantially changes the form of CITY government or the role, powers, duties, authority or responsibilities of the CITY MANAGER. CITY MANAGER will have the right to declare that such amendments in the absence of cause as defined in provision (e)(1) of this Section constitute termination without cause.
- C. The City Council unilaterally reduces the base salary, compensation or any other financial benefit of CITY MANAGER. CITY MANAGER will have the right to declare that such reduction in the absence of cause as defined in provision (e)(1) of this Section constitutes termination without cause.
- D. The CITY will give CITY MANAGER a minimum of sixty (60) days written notice in advance of termination without cause in accordance with this provision unless the PARTIES agree otherwise.

e. Termination by CITY for Cause:

- i. For purposes of this Agreement, cause for termination by CITY means:
 - A. Willful and repeated failure to perform the duties of CITY MANAGER or other material breach of this Agreement declared in writing by CITY by notice in accordance with Section 19 and this Section 20 and not cured within thirty days of receipt of notice of the declared material breach;
 - B. Conviction of CITY MANAGER for an employment related criminal act;
 - C. Conviction of CITY MANAGER for a felony; or
 - D. A finding by a court, jury, State or Federal Attorney General, the Fair Political Practices Commission, or any successor agency, that CITY MANAGER engaged in intentional or negligent misconduct in relation to the performance of the CITY MANAGER's duties.
- ii. Prior to terminating this Agreement for cause, the CITY will give CITY MANAGER at least ten (10) days prior written notice of the charges or other

Third Amended and Restated Employment Agreement for At-Will Employment
City Manager Peggy Flynn

alleged cause for termination. Within the ten-day notice period, but not earlier than five days after the notice has been given, the City Council will meet with CITY MANAGER in closed session and give CITY MANAGER an opportunity to address the City Council regarding the alleged cause for termination. CITY MANAGER may also choose to have complaints or charges brought against her heard in open session in accordance with California Government Code Section 54957, subdivision (b), paragraph 2. After hearing CITY MANAGER's response to the alleged cause for termination, the City Council will decide whether to terminate this Agreement and inform CITY MANAGER in writing of its decision.

- iii. CITY MANAGER will not be entitled to severance pursuant to Section 21 of this Agreement upon termination by CITY for cause in accordance with this section.

21. Severance Pay:

- a. If CITY terminates this Agreement during its term without cause as defined in Section 20(e), then CITY MANAGER will be entitled to a severance payment equal to seven (7) months of base salary specified Section 7 at the rate in effect at the time of termination, plus CITY's share of the cost of continuing health, dental, and vision insurance for CITY MANAGER and all dependents as provided in Section 12(b) and Attachment 1 for seven (7) months. At CITY MANAGER's election, and pursuant to CITY MANAGER's written instructions at the time of termination, severance pay shall be paid either in a lump sum cash payment within thirty (30) days of the date of termination, or in equal monthly payments. Should CITY MANAGER elect to receive severance pay in equal payments, the number of such monthly payments will not exceed seven (7).
- b. All payments required under this Section are subject to and shall be interpreted to comply with the limitations set forth in California Government Code Sections 53260 and 53261. The CITY's share of the cost of Health, Dental and Vision benefits shall continue for the same duration of time as covered in the settlement or until CITY MANAGER finds other employment, whichever occurs first.
- c. If CITY terminates CITY MANAGER for cause in accordance with Section 20(e), she will not be entitled to a severance payment.

22. Reimbursement Required for Conviction for Crime Involving Abuse of Office:

- a. In accordance with California Government Code Sections 53243, 53243.1, and 53243.2, if CITY MANAGER is convicted of a crime involving an abuse of her office or position, all the following will apply:

Third Amended and Restated Employment Agreement for At-Will Employment
City Manager Peggy Flynn

- i. If CITY MANAGER is provided with paid leave salary pending an investigation, CITY MANAGER must fully reimburse the CITY any salary provided for that purpose.
 - ii. If the CITY pays for the legal criminal defense of CITY MANAGER, CITY MANAGER must fully reimburse CITY any funds provided for that purpose.
 - iii. If this Agreement is terminated, any cash settlement related to the termination that CITY MANAGER may receive from the CITY must be fully reimbursed to CITY, or, if a cash settlement related to termination of this Agreement has not yet been paid, the CITY is excused from paying the cash settlement.
- b. For the purposes of this section, abuse of office or position means either:
 - i. an abuse of public authority, including, but not limited to, waste, fraud, and violation of the law under color of authority; or
 - ii. a crime against public justice, including, but not limited to, a crime described in Title 7 (commencing with Section 92) of Part 1 of the California Penal Code.


23. Miscellaneous:

- a. This Agreement reflects the entire agreement between the PARTIES. This Agreement may not be modified, except by written agreement executed by both PARTIES.
- b. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, will be deemed severable, will not be affected and will remain in effect.
- c. This Agreement will be governed by the laws of the State of California.
- d. The PARTIES agree that any ambiguity in this Agreement will not be construed or interpreted against, or in favor of, either PARTY.
- e. This Agreement will bind and inure to the benefit of the successors, heirs and assigns of the PARTIES.

[Signatures on next page]

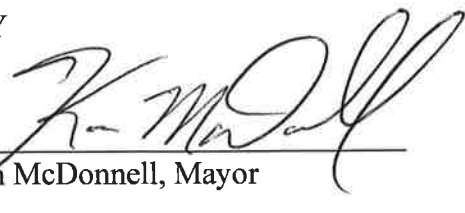
Third Amended and Restated Employment Agreement for At-Will Employment
City Manager Peggy Flynn

CITY MANAGER

By 
Peggy Flynn, City Manager

DATED: 4/8

CITY


By 
Kevin McDonnell, Mayor

DATED: 4-8-24

ATTEST:


Caitlin Corley
City Clerk

APPROVED AS TO FORM:


Eric W. Danly
City Attorney

1. Vacation

A. Vacation Leave Accrual Rate

Vacation leave hours shall accrue at the rate specified in the below table. The City Council may at their discretion set an annual vacation accrual rate above the accrual rate in the below table. Effective November 1, 2021, PEGGY FLYNN will accrue vacation at the annual vacation accrual rate of 120 hours and be subject to the 360 hours accrual limit.

Years of Service	Vacation Accrual (hrs)	Accrual Limit (hrs)
0-4	80	240
5-9	120	360
10	128	384
11	136	408
12	144	432
13	152	456
14	160	480
15	168	504
16	176	528
17	184	552
18	192	576
19 or greater	200	600

The total amount of accrued but unused vacation may not exceed three (3) times the rate of annual accrual as specified in the schedule above. Upon separation from employment PEGGY FLYNN shall be paid for all accrued unused vacation leave.

B. Vacation – Payout

During the month of December of each year, PEGGY FLYNN may make an irrevocable election to cash out vacation hours in the following calendar year if she has at least one hundred and twenty (120) hours of accrued but unused vacation. Vacation payouts under this section will be made in October of the tax year following the election. PEGGY FLYNN must have a minimum balance of forty (40) hours after the cash out of vacation. If PEGGY FLYNN’s requested amount does not leave a minimum forty (40) hours of vacation remaining at the time of cash out, her requested vacation cash out will be reduced to allow the remaining minimum balance of forty (40) hours to be maintained.

2. Sick Leave

A. Sick Leave – Eligibility

Sick leave is not a right, which may be used at discretion, but rather, sick leave shall be used only in case of personal illness, disability or the serious illness or injury of a family member, which requires the attention of PEGGY FLYNN. The term family members shall include: spouse, children, parents, spouse's parents, brothers, sisters or other individuals whose relationship to PEGGY FLYNN is that of a dependent, or as determined by law.

B. Sick Leave – Accrual

Sick leave shall accrue at the rate of eight (8) hours for each month of continuous service.

C. Sick Leave – Retirement Payout

In the event of the death or retirement and the completion of ten (10) or more years of continuous employment with the City, PEGGY FLYNN shall be paid or shall receive a benefit of fifty percent (50%) of her accumulated but unused sick leave not to exceed four-hundred-eighty (480) hours. She may elect not to receive this benefit and instead place all sick leave hours into the CalPERS sick leave conversion benefit, or PEGGY FLYNN may do a combination of both; to receive a payout of up to fifty percent (50%) of her accumulated but unused sick leave not to exceed four hundred eighty (480) hours with the balance placed into the CalPERS sick leave conversion benefit.

D. Sick Leave – Conversion

In February of each year, PEGGY FLYNN may convert a maximum of one hundred sixty (160) hours of sick leave to vacation at a ratio of four (4) sick leave hours to one (1) vacation hour. Example: PEGGY FLYNN requests conversion of 160 hours of sick leave; 40 hours of vacation leave are added to her vacation bank. PEGGY FLYNN must have at least eighty (80) hours remaining in her sick leave bank after the conversion. Such conversion does not impact the ongoing accrual of sick leave at the rate of eight (8) hours for each month of continuous service.

3. Holidays and Holiday Leave

The City observes twelve (12) fixed-date holidays. These holidays are established for the City's fiscal year as determined by City Council resolution.

The holidays for fiscal year 23/24 are as follows:

Independence Day
Labor Day
Veterans' Day
Thanksgiving Day
Day after Thanksgiving
Christmas Eve
Christmas Day
New Year's Day
Martin Luther King Day
Presidents' Day
Cesar Chavez Day
Memorial Day

Observance: The actual date of the observed holidays is determined by City Council

resolution each fiscal year. If participating in a 5/8 schedule, when a holiday falls on a Saturday, that holiday will be observed on the prior Friday. When a holiday falls on a Sunday, that holiday will be observed on the following Monday. Should this conflict with a Friday or Monday designated holiday, the Friday or Monday holiday will occur on the preceding Thursday or following Tuesday. If participating in a 4/10 schedule, when a holiday falls on a Friday or Saturday, that holiday will be observed on Thursday. When a holiday falls on a Sunday, that holiday will be observed on the following Monday. Should this conflict with a Friday or Monday designated holiday, the Friday or Monday holiday will occur on the preceding Wednesday or following Tuesday.

Observance by an employee of a designated religious event may be granted, if practical, with at least seven (7) days prior approval required for such leave, under the following methods:

- (A) Time charged to accrued vacation allowance; or
- (B) Time off without pay.

Fixed holidays will be based on the employee's regular work shift. For example, if an employee works a 4/10 schedule, s/he shall receive ten (10) hours of pay for the holiday. If an employee works a 9/80 schedule, s/he shall receive nine (9) hours of pay for the holiday, or eight (8) hours pay if the holiday falls on their regularly scheduled eight (8) hour workday as part of their 9/80 schedule. If an employee works a 5/8 schedule (five days/week, eight hours/day), s/he shall receive eight (8) hours of pay for the holiday. The same shall be true for any employee whose regular work week is fewer than forty (40) hours per week, except that no such employee shall receive more than eight (8) hours of pay for the holiday.

4. Personal Leave (formerly Floating Holiday)

Each fiscal year PEGGY FLYNN shall be provided eight (8) hours of Personal Leave, which may be taken by her at a time she selects, subject to operational requirements of the City. Personal Leave is limited to eight (8) hours and may not be carried over to the next fiscal year.

5. Health Benefits

- A. PEMHCA Contribution
The City currently provides health benefits through the California Public Employees' Retirement System (CalPERS) Health Benefits Program under the Public Employees' Medical and Hospital Care Act (PEMHCA). The City's employer contribution for each employee shall be the minimum required by PEMHCA. The City pays this contribution directly to CalPERS.
- B. Additional Benefit Amount Paid by the City
The City shall pay the additional contribution amount specified in the schedule below entitled "Total 2024 City's Contribution Rate" for PEGGY FLYNN and her covered dependents.

Coverage	2024 Health Rates (Based on 2024 Kaiser Permanente Rates)	City's Benefit Contribution	PEMHCA Contribution (Added to the City's Benefit Contribution)	Total 2024 City's Contribution Rate
Employee Only	\$1,021.41	\$821.19	\$157.00	\$978.19
Employee + 1	\$2,042.82	\$1,791.53	\$157.00	\$1,948.53
Employee + 2 or more	\$2,655.67	\$2,373.74	\$157.00	\$2,530.74

C. Contribution

PEGGY FLYNN shall contribute to her CalPERS Health Premium in the amounts less the City's PEMHCA contribution and less the additional benefit paid by the City.

6. **Health Benefits – Retired**

A. Retired – CalPERS and PEMHCA

The City currently provides health benefits through the California Public Employees' Retirement System (CalPERS) Health Benefits Program under the Public Employees' Medical and Hospital Care Act (PEMHCA). In order for a retired employee to be eligible to receive health benefits through CalPERS upon retirement, a retired employee must meet the following definition of "annuitant" under CalPERS law:

- i. Employee must be a member of CalPERS; and
- ii. Employee must retire within one-hundred-twenty (120) days of separation from employment with the City of Petaluma and receive a monthly retirement allowance from CalPERS.

B. PEMHCA Minimum

The monthly employer contribution for annuitants is the required minimum PEMHCA contribution.

The City pays this contribution directly to CalPERS. The retiree is required to contribute to the cost of the health benefit coverage. The retiree's monthly contribution shall be the cost of the monthly health benefit premium less the amount of the City's contribution.

C. CalPERS Annuitant – PEMHCA Health Benefits

In accordance with the PEMHCA provisions if an employee is a CalPERS annuitant as defined by CalPERS and receives health benefits under the PEMHCA, the employee is eligible to receive the City's PEMHCA contribution amount specified below, regardless of the number of years of service with the City of Petaluma.

D. Less Than 20 Years of Service – Not Receiving PEMHCA Health Benefits

A retired employee with less than twenty (20) years of service with the City of Petaluma who is not enrolled in the CalPERS health benefit program does not receive any retiree benefit from the City.

- E. Less Than 20 Years of Service – Receiving PEMHCA Health Benefits
A retired employee with less than twenty (20) years of service with the City of Petaluma who is a CalPERS annuitant as defined by CalPERS and enrolled in the CalPERS health benefit program is eligible to receive the minimum PEMHCA contribution as set by CalPERS.
- F. 20 Years or More of Service – Not Receiving PEMHCA Health Benefits
A retired employee with twenty (20) or more years of service with the City of Petaluma who is not enrolled in the CalPERS health benefits program shall receive direct payments in the amount of one-hundred-forty dollars (\$140.00) each month, effective the first month following the expiration of health benefit coverage.
- G. 20 Years or More of Service – Receiving PEMHCA Health Benefits
A retired employee with twenty (20) years or more of service with the City of Petaluma who is a CalPERS annuitant as defined by CalPERS and enrolled in the CalPERS health benefit program is eligible to receive the minimum PEMHCA contribution as set by CalPERS.

The City's PEMHCA contribution amount is deducted from the retiree's monthly health premium and paid to CalPERS directly by the City.

It is the responsibility of the retiree to notify the City in writing if he or she is no longer participating in the CalPERS health benefit program. Following receipt of the written notice, the City will commence direct payment of the one-hundred-forty dollars (\$140.00) at the beginning of the following month.

7. **California Public Employees' Retirement System**

Effective January 1, 2013 the City of Petaluma became subject to the Public Employees' Pension Reform Act of 2013 (PEPRA) and benefits offered to newly hired employees will be in accordance with PEPRA.

Prior to January 1, 2013, the City established a different level of benefits (two-tiered retirement) for Miscellaneous employees. The amended contract provides that Miscellaneous employees hired on or after December 28, 2012 shall receive the 2% at 60 formula retirement plan and the three-year final average compensation.

The City's contract with CalPERS includes the following optional benefits:

- Third Level - 1959 Survivor's Benefit as provided in Section 21573 (April 5, 1999).
- 1957 Survivor Allowance as provided in Section 21546.
- Military Service Credit as provided in Section 21024 (January 1, 1992).
- Credit for Unused Sick Leave as provided in Section 20965 (November 1, 1980).
- Cost of Living Allowance two percent (2%) as provided by Section 21329 (April 1, 1971).
- Retired Death Benefit of five-hundred dollars (\$500.00) as provided in Section 21620 (December 1, 1969).
- Death Benefit Continues as provided in Section 21551 (January 1, 2000).
- Prior Service Credit as provided in Section 20055 (January 1, 1950).

Effective February 26, 2018, employees shall pay an additional three percent (3%) towards PERS retirement. For Classic Miscellaneous employees, this three percent (3%)

is added to the seven percent (7%) employee contribution, for a total contribution of ten percent (10%). Employees subject to the PEPRA formula shall also pay an additional three percent (3%) on top of their required employee contribution, as established annually by PERS.

The City shall defer that portion of PEGGY FLYNN'S contribution paid to CalPERS through section 414(h)(2) of the Internal Revenue Code pursuant to City of Petaluma Resolution 90-363 N.C.S.

8. Cash In-Lieu of Health and Dental Benefits

If PEGGY FLYNN has health benefit insurance coverage from a source other than the City, or health benefit insurance coverage from a City employee, she may request cash in lieu of health benefits. To be eligible for the cash in-lieu benefit program she must waive her coverage under the City's health benefits, agree to the terms and conditions of the cash in-lieu benefit program and have written verification of health benefits insurance.

For All Employees Hired On or After June 1, 2017:

For all employees hired on or after June 1, 2017, the cash in-lieu amount for health benefits shall be \$400.00 per month. Employees shall not be eligible for cash in-lieu for dental benefits.

Upon declining medical insurance, the employee will be required to meet the terms and conditions regarding the City's medical plan. If an employee decides to stop receiving the medical cash back and wishes to re-enroll into the City's medical plan, then s/he must meet the current terms and conditions of the City medical plan. The City cannot guarantee that once the employee leaves a particular medical plan, s/he may be able to re-enroll in his/her prior plan and under the same terms and conditions of his/her prior plan.

9. Section 125 Plan

The City of Petaluma shall make available to PEGGY FLYNN an Internal Revenue Code (IRC) Section 125 plan. The Section 125 plan is subject to federal law and plan provisions.

The Section 125 Plan offered by the City provides a tax savings through the following programs:

(A) Pre-Tax Health Insurance Premiums:

This program allows employees to pay his or her share of health insurance premiums with pre-tax dollars.

(B) Flex Spending Accounts (FSAs):

1) Medical Reimbursement

This program permits employees to pay for common out-of-pocket medical expenses (not covered by insurance) such as deductibles, co-pays, and vision and dental care with pre-tax dollars.

2) Dependent Care Reimbursement

This program permits employees to pay for most child and or dependent care expenses with pre-tax dollars.

10. Dental Insurance

The City shall provide a dental plan and pay the total premium costs for PEGGY FLYNN and her eligible dependents. The maximum benefit amount is two-thousand dollars \$2,000.00 per person per calendar year. Orthodontic coverage shall be provided for dependent children under the age of twenty-six (26) years and is 50% of the dentist's allowed fee (subject to a \$2,000.00 lifetime maximum per person).

11. Vision Insurance

The City shall provide a vision plan for PEGGY FLYNN and her eligible dependents. The cost shall be paid for by the City. Employees are eligible for eye exams once a calendar year with a twenty-five (\$25.00) deductible. Frames are available once a calendar year with a maximum benefit of one-hundred-eighty dollars (\$180.00) and/or contact lenses are available once a calendar year with a maximum benefit of one-hundred-eighty dollars (\$180.00).

12. Employee Assistance Program

The City will provide an Employee Assistance Program to PEGGY FLYNN and her covered dependents This licensed counseling service will provide assistance and referrals for matters related to marriage and family problems, alcohol and drug dependency, emotional, personal, and stress-related concerns and other issues. All counseling services are confidential.

13. Long Term Disability Insurance

The City shall provide PEGGY FLYNN with the same long-term disability benefit plan as provided to City employees.

14. Deferred Compensation

The City of Petaluma shall make available to PEGGY FLYNN a Deferred Compensation Plan. Effective November 1, 2021, the City shall provide a contribution equal to six percent (6%) of PEGGY FLYNN's base salary to a Deferred Compensation Plan. Any additional City contribution shall be subject to mutual agreement between the City and PEGGY FLYNN and may be considered at the time of any annual performance review or otherwise as part of any compensation or merit increase considered by the City Council.

15. Industrial Injury Leave

Benefits shall be payable in situations where PEGGY FLYNN'S absence is due to industrial injury as provided in California State Workers' Compensation Law. During the first three (3) workdays when her absence has been occasioned by injury suffered during

her employment and she receives workers' compensation benefits, she shall receive full pay. Following this period, sick leave may be a supplement to the workers' compensation benefits provided. Compensation is at her regular rate for a period not to exceed six (6) months, or until such sick leave is exhausted, or the disability is abrogated, or that she is certified "permanent and stationary" by a competent medical authority. The City shall pay her the regular salary, based on the combination of the workers' compensation benefits plus sick leave.

Sick leave for industrial injury shall not be allowed for a disability resulting from sickness, self-inflicted injury, or willful misconduct.

The City may retire PEGGY FLYNN prior to the exhaustion of accumulated sick leave, at which time all accrued but unused sick leave shall be abrogated, subject only to the limitations provided under her Agreement.

16. Bereavement Leave

PEGGY FLYNN shall be granted up to thirty-two (32) hours of paid bereavement leave in the event of death in her immediate family. Paid bereavement leave is granted per qualifying event. For the purpose of bereavement leave, immediate family shall mean spouse, qualified domestic partner, father, father-in-law, mother, mother-in-law, brother, brother-in-law, sister, sister-in-law, child (including stepchildren), step-parents, grandparents and grandchildren or person with whom the employee has a relationship in loco parentis. Up to an additional eight (8) hours of accrued leave, including sick leave, will be granted to supplement bereavement leave.

In the event PEGGY FLYNN must travel more than three-hundred (300) miles to attend a funeral or memorial service, an additional eight (8) hours of paid bereavement leave shall be granted instead of the use of accrued leave.

17. Victims of Domestic Violence and Sexual Assault Leave

The City of Petaluma provides appropriate leave, in accordance with California Labor Code Section 230.

18. Military Leave

The City of Petaluma shall grant military leave benefits to eligible employees in accordance with California's Military Leave Laws found in Military & Veteran's Code 389 *et seq.*, the Federal Uniformed Services Employment and Re-employment Rights Act (USERRA), found at 389 U.S.C. 4301 *et seq.*, and the City of Petaluma Resolution No. 2004-200 N.C.S. Employees in the Ready Reserves of the Armed Forces who are ordered to active military duty or training under Executive Order 13223, shall have continued benefits in effect throughout his/her active duty training for a period of three-hundred sixty-five (365) calendar days or until the date of discharge from military service, whichever occurs first, unless this policy is changed by action of the City Council.

19. Election Officer and Voting Leave

If PEGGY FLYNN'S actual work schedule otherwise would prevent her from voting in any State, County, or General election, she may be granted up to two (2) hours of paid

time to vote, in accordance with Election Code 14000. She must provide the City with at least two (2) working days' notice that she will be taking time off to vote.

20. School Visitation Leave

The City of Petaluma provides up to forty (40) hours of unpaid leave in a year to participate in the child's school activities, in accordance with Labor Code section 230.8.

21. Leave of Absence without Pay

The City Council may grant PEGGY FLYNN with a leave of absence without pay pursuant to State and Federal Law. Good cause being shown by a written request, the City Council may extend such leave of absence without pay or benefits for an additional period not to exceed six (6) months. No such leave shall be granted except upon written request of PEGGY FLYNN setting forth the reason for the request, and the approval will be in writing.

22. Jury Duty Leave

Should PEGGY FLYNN be summoned for jury duty she shall be entitled to a leave of absence with full pay for such period of time as may be required to attend the court in response to such summons. She may retain payment for travel but shall make payable to the City any and all fees which she may receive in payment for service as a juror. For Grand Juries this compensation shall not extend beyond twenty (20) working days.

23. Family Care and Medical Leave (FMLA & CFRA)

FMLA and/or CFRA Leave

The City shall provide family and medical care leave for PEGGY FLYNN as required by City policy, state and federal law and as specifically provided in the Federal Family and Medical Leave Act of 1993 (FMLA) and the California Family Rights Act of 1993 (CFRA). If possible, employees must provide thirty (30) days advance notice of leave.

FMLA and/or CFRA – Second Opinion

PEGGY FLYNN shall provide the City with a health care provider certification. The City, at City expense, may require a second opinion on the validity of the certification. Should a conflict arise between health providers, a third and binding opinion, at City expense shall be sought.

24. Paid Parental Leave

On October 18, 2021, the City Council approved a Paid Parental Leave (PPL) Policy for City of Petaluma employees. The PPL Policy provides eligible City of Petaluma employees up to 320 hours of PPL. As a City of Petaluma employee, PEGGY FLYNN is an eligible employee for PPL subject to the terms of the PPL Policy. The PPL Policy may be subject to change in the future.