



Agenda Item No: 5.e
Meeting Date: December 20, 2021

SAN RAFAEL CITY COUNCIL AGENDA REPORT	
Department: City Manager	
Prepared by: Robert Epstein City Attorney, Lisa Goldfien, Asst. City Attorney	City Manager Approval: _____

TOPIC: REVISED CITY MANAGER EMPLOYMENT AGREEMENT

SUBJECT: RESOLUTION APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A REVISED EMPLOYMENT AGREEMENT BETWEEN THE CITY AND CITY MANAGER JAMES M. SCHUTZ

RECOMMENDATION:
Adopt the resolution as presented.

BACKGROUND:
James M. Schutz was appointed to the position of San Rafael City Manager on August 1, 2015. At the time of appointment an employment agreement (“Employment Agreement”) defining the terms of his employment as City Manager was also adopted by City Council. The Employment Agreement provides in section 8 that “This Agreement may be amended at any time by mutual written agreement of the City and the City Manager.”

The Employment Agreement was amended in December 2017 and again in January 2021 to clarify and/or revise certain provisions, but with no change in compensation.

ANALYSIS:
The City Council met with the City Manager on October 28, 2021 for the purpose of conducting his annual performance review. The City Manager did not request a salary increase but is requesting that the City Council consider some amendments to his Employment Contract, the most significant of which is an addition to the existing performance measurement and bonus language that would add a new provision granting a Council subcommittee consisting of the Mayor and Vice-Mayor the discretionary authority, annually after each performance review, to award the City Manager a performance bonus of up to and including 5% of his salary without further City Council action. Any bonus exceeding 5% would require an affirmative vote of the majority of the City Council. This provision would mirror the authority currently

_____ **FOR CITY CLERK ONLY**

File No.: _____

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Disposition: _____

SAN RAFAEL CITY COUNCIL AGENDA REPORT / Page: 2

given to the City Manager to award a performance bonus of up to 5% of salary to members of the unrepresented City's management employees.

A revised Employment Agreement with the requested changes is attached as Attachment 2 to this report. The specific substantive changes would be as follows:

1. Section 4(C)(1)(c) would be amended as follows:

To assure that the City Manager receives this information, the City Council shall conduct an evaluation of the City Manager's performance at least once each year and during the first year the City Council shall evaluate Schutz after six months. The City Council and the City Manager agree that performance evaluations, for the purpose of mid-course corrections, may occur quarterly or several times during each calendar year. In addition, the City Council may choose to establish a sub-committee to meet with the City Manager periodically over the course of each year to measure progress on stated goals and priorities. The annual evaluation shall occur between June and July as soon as feasible after the City Manager's anniversary date of each year August 1, such as during the City Council's typical fall retreat or City Council meeting in that general timeframe.

2. Section 4(C)(1)(d) would be amended to add a new subsection (ii) as follows:

- i. . . .
- ii. The City Council authorizes the Mayor and Vice-Mayor to meet with the City Manager following a successful, annual performance evaluation, and administratively execute a performance bonus of up to and including 5% of then current salary, at their discretion. Any bonus exceeding 5% would require an affirmative vote of the majority of the City Council.

3. Section 6(B)(2) would be amended to delete the provision for a Management Allowance, since that benefit is no longer offered to unrepresented Executive Management employees:

- ~~2. Management Allowance~~
 - ~~a. The City will make available and contribute amounts each pay period to a Management Allowance, consistent with the contributions made for employees in the Unrepresented Executive Management Group.~~

The City Council's evaluation of the City Manager was very positive. Staff recommends approval of the requested amendments. A resolution approving the proposed Revised Employment Agreement is attached as Attachment 1 to this report.

FISCAL IMPACT:

There is no immediate fiscal impact associated with this report. The long term fiscal impact would vary from between no impact and no more than 5% of the City Manager's current salary in any given year.

OPTIONS:

The City Council has the following options to consider on this matter:

1. Adopt the resolution as presented.
2. Adopt the resolution with modifications.
3. Direct staff to return with more information.
4. Take no action.

RECOMMENDED ACTION:

Adopt the resolution.

ATTACHMENTS:

1. Resolution Approving and Authorizing the Mayor to Execute a Revised Employment Agreement Between the City and City Manager James M. Schutz
2. Exhibit A to Resolution: Proposed revised Employment Agreement with James M. Schutz

RESOLUTION NO.

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL
APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE
A REVISED EMPLOYMENT AGREEMENT BETWEEN THE CITY
AND CITY MANAGER JAMES M. SCHUTZ**

WHEREAS, James M. Schutz has been employed by the City of San Rafael for approximately fifteen years, first as Assistant City Manager and then as City Manager during the past six years; and

WHEREAS, at its regular meeting on March 16, 2015, the City Council appointed James M. Schutz as City Manager and approved his employment agreement, effective August 1, 2015 (the "Employment Agreement"); and

WHEREAS, the City Council subsequently approved amendments to the Employment Agreement on December 18, 2017, and January 21, 2020 with no increase in compensation; and

WHEREAS, James M. Schutz has provided exemplary service to the City and continues to be qualified and willing to perform the duties and services of the position of City Manager in San Rafael; and

WHEREAS, the City Council desires to amend the employment agreement between the City and James M. Schutz as the City Manager for the City of San Rafael as set forth in Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, the revised terms in Exhibit A include a grant to a Council subcommittee consisting of the Mayor and Vice-Mayor the discretionary authority, annually after each performance review, to award the City Manager a performance bonus of up to and including 5% of his salary without further City Council action. This provision would mirror the authority currently given to the City Manager to award a performance bonus of up to and including 5% of salary to members of the City's unrepresented management employees;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of San Rafael hereby approves and directs the Mayor to execute a revised Employment Agreement between the City and James M. Schutz in the form attached hereto as Exhibit A and incorporated herein by reference, to take effect immediately upon execution.

I, LINDSAY LARA, City Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of said City held on the 20th day of December 2021, by the following vote, to wit:

AYES: Councilmembers:

NOES: Councilmembers:

ABSENT: Councilmembers:

Lindsay Lara, City Clerk

CITY MANAGER EMPLOYMENT AGREEMENT
Between the City of San Rafael and
James M. Schutz

March 16, 2015 (Effective August 1, 2015)
(Revised as of December 18, 2017)
(Revised January 21, 2020)
(Revised December 20, 2021)

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CITY MANAGER EMPLOYMENT AGREEMENT

Between the City of San Rafael and James M. Schutz

- 1) Parties, Date, and Other Recitals - This Agreement is entered into as of March 16, 2015, and will take effect beginning August 1, 2015, by and between the City of San Rafael a municipal corporation ("the City"), and James M. Schutz ("Schutz" or "City Manager"). The City and the City Manager are sometimes individually referred to as a "Party" and collectively as "Parties."
 - A) The City requires the services of a City Manager.
 - B) The City Manager has the necessary education, experience, skills, and expertise to serve as the City's City Manager.
 - C) The City Council of the City desires to employ the City Manager to serve as the City Manager of City.
 - D) The Parties desire to execute this Agreement pursuant to the authority of and subject to the provisions of Government Code Section 53260 et seq.
 - E) In consideration of these Recitals and the performance by the Parties of the promises, covenants, and conditions herein contained, the Parties agree to the terms set forth in this Agreement.
- 2) Employment - The City hereby employs Schutz as its City Manager, and Schutz hereby accepts such employment on the terms and conditions that are recited herein.
- 3) Term-

The Term of the agreement shall be for a period of three years commencing on August 1, 2017 and continuing July 31, 2020 This agreement shall be effective for a rolling three (3) year term, automatically extending for one (1) additional year effective July 31 of each year, unless either party provides notice to the other of its intent to terminate this agreement on or before May 31 of any year. If such notice is provided, the term of this Agreement shall expire at the end of the then-current three (3) year term without any additional extensions and without the need for any additional notice, unless it is subsequently terminated at an earlier date in accordance with Section 7 of this Agreement.
- 4) Commitments and Understandings
 - A) City Manager's Commitments
 - (1) Duties & Authority
 - (a) The City Manager shall be the chief executive officer of the City and be responsible to the City Council for the proper administration of all affairs of the City.
 - (b) The City Manager shall perform all of the duties of the City Manager as set forth in Section 2.08 of the San Rafael Municipal Code, applicable provisions of the California Government Code, and City policies and procedures

approved by the City Council, as may be provided from time to time. The City Council has designated and may also designate the City Manager as the chief executive of other City-related legal entities. Such other legal entities include financing authorities and joint powers authorities.

- (c) The City Manager shall administer and enforce policies established by the City Council and promulgate rules and regulations as necessary to implement such policies. To accomplish this, the City Manager shall be required to:
- (i) Attend all meetings of the City Council, unless excused by the Mayor.
 - (ii) Review all agenda documents before preparing the agenda for all regular or special meetings of the City Council.
 - (iii) Direct the work of all appointive City officers and departments.
 - (iv) Endeavor to implement changes that the City Manager believes will result in greater efficiency, economy, or improved public service in the administration of City affairs. This includes modernizing City services and employing a community-centered approach to service design.
 - (v) 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 administrative services. The City Manager shall conduct 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.
 - (vi) From time to time, and based on the City Manager's best judgment, propose to the City Council the consolidation or combination of offices, positions, departments, or units under the City Manager's jurisdiction. The City Manager may be the head of one or more City departments.
 - (vii) Provide management training and develop leadership qualities among department heads and staff as necessary to build a City management team that can plan for and meet future challenges.
 - (viii) Exercise control of City government in emergencies as authorized by the Municipal code and California law.

(2) Hours of Work

- (a) The City Manager is an exempt employee. The City Manager is expected to engage in those hours of work that are necessary to fulfill the obligations of the position. The position does not have set hours of work and the City Manager is expected to be available, as necessary, at all times.
- (b) 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 his duties; however, the City

Manager has discretion over the City Manager's work schedule and work location.

- (c) 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.

(3) Disability or Inability to Perform

- (a) In the event the City Manager becomes mentally or physically incapable of performing the City Manager's functions and duties taking into account reasonable accommodation, and it reasonably appears such incapacity will last for more than six months, the City Council may terminate the City Manager. If the City Council does elect to terminate the City Manager due to incapacity, the City Manager shall receive all severance benefits provided in Section 7.C below.

B) City Commitments

- (1) The City shall provide the City Manager with the compensation, incentives, and benefits specified in this Agreement, as from time to time may be amended with written consent of both parties.
- (2) The City shall provide the City Manager with a private office, administrative support, staff, office equipment, supplies, automobile allowance, and all other facilities and services reasonably necessary for the performance of his duties.
- (3) The City shall pay for (or provide the City Manager reimbursement for) all actual business expenses. The City shall provide the City Manager a City credit card to charge appropriate and lawful City business expenses.
- (4) 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, or 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 on behalf of the City Manager for short courses, institutes and seminars that are necessary for the professional development of the City Manager.
- (5) 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.
- (6) The City Council sets policy for the governance and administration of the City, and it implements its policies through the City Manager.

- (7) 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 maximal achievement of City goals.
- (8) Except for the purpose of inquiry, the City Council and its members shall deal with all subordinate City employees, officers, contractors, and consultants solely through the City Manager or the City Manager's designee, and neither the City Council nor any member thereof shall give orders to any subordinate of the City Manager, either publicly or privately.
- (9) The City Council agrees none of its individual members will order the appointment or removal of any person to any office or employment under the supervision and control of the City Manager. Notwithstanding, the City Council will work with the City Manager to assess, interview, and select the positions of Police Chief and Fire Chief.
- (10) The City Council agrees that any criticism of a City staff member shall be done privately through the City Manager.
- (11) Neither the City Council nor any of its members shall interfere with the execution of the powers and duties of the City Manager. The City Manager shall take orders and instructions from the City Council only when it is sitting as a body in a lawfully held meeting.

C) Mutual Commitments

(1) Performance Evaluation

- (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 job, the City Manager needs to be advised how the City Council members evaluate the City Manager's performance.
- (c) To assure that the City Manager receives this information, the City Council shall conduct an evaluation of the City Manager's performance at least once each year and during the first year the City Council shall evaluate Schutz after six months. The City Council and the City Manager agree that performance evaluations, for the purpose of mid-course corrections, may occur quarterly or several times during each calendar year. In addition, the City Council may choose to establish a sub-committee to meet with the City Manager periodically over the course of each year to measure progress on stated goals and priorities. The annual evaluation shall occur as soon as feasible after the City Manager's anniversary date of August 1, such as during the City Council's typical fall retreat or City Council meeting in that general timeframe.

(d) The annual review and evaluation shall be in accordance with specific criteria developed jointly by the City Council and the City Manager. Such criteria may be added to or deleted as the City Council may from time to time determine in consultation with the City Manager.

(i) The City Council and the 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 the City Council and the City Manager shall further establish a relative priority among those goals and performance objectives.

(ii) The City Council authorizes the Mayor and Vice-Mayor to meet with the City Manager following a successful, annual performance evaluation, and administratively execute a performance bonus of up to and including 5% of then current salary, at their discretion. Any bonus exceeding 5% would require an affirmative vote of the majority of the City Council.

5) COMPENSATION - The City agrees to provide the following compensation to the City Manager during the term of the agreement:

A) Compensation & Required Employer Costs

(1) Base Salary

(a) The annual salary for the position of City Manager shall remain unchanged from the predecessor's annual salary at the time of her separation.

(b) The City Council shall review the manager's salary and benefits annually and may consider performance bonuses or salary adjustments at the sole discretion of the City Council. Based upon the Manager's performance and availability of funds, it is the intent of the City Council to compensate the Manager in a manner consistent with the nature and scope of the assigned duties and responsibilities and in light thereof to endeavor to make the Manager the highest paid City Manager in the County of Marin.

(2) Required Employer Costs

(a) Federal Insurance Contributions Act (FICA) (if applicable).

(b) Medicare.

(c) Unemployment Compensation.

(d) The cost of any fidelity or other bonds required by law for the City Manager.

(e) The cost to defend and indemnify the City Manager as provided in Section 8.C below.

(f) Workers Compensation.

B) Benefits

- (1) Holidays - The City Manager is entitled to paid holidays in accordance with the provisions of the salary and benefit plan for the Unrepresented Executive Management Group.
- (2) Leave Allowance
 - (a) The City Manager shall receive the same vacation accrual and benefits as provided to the Unrepresented Executive Management class of City employees.
 - (b) The City Manager shall receive the same sick leave accrual and benefits as provided to the Unrepresented Executive Management class of City employees. Sick Leave accrual is based upon tenured employment with the City.
 - (c) City Manager shall be entitled to administrative leave per year in accordance with the provisions of the Salary and Benefit Plan for the Unrepresented Executive Management Group.
 - (d) All vacation, administrative and sick leave hours already accumulated by the City Manager during the time of his previous positions of employment with the City of San Rafael are carried forward and made applicable in the new position as City Manager.
- (3) Automobile - The City Manager shall be provided a monthly automobile allowance of \$400.00 in exchange for making his vehicle available for the City Manager's own use and for City-related business and/or functions during, before, and after normal work hours. Said allowance is intended to defray costs that the City Manager incurs in utilizing his personal vehicle for City business. The automobile allowance shall appear on the City Manager's payroll stub as ordinary income and part of his salary, but shall not be considered part of the City Manager's base salary for purposes of this Agreement.
- (4) Benefits that Accrue to Other Employees - The City Manager shall be entitled to all benefits, rights, and privileges accorded to non-public safety City Department Directors, including, but not limited to, group health and dental insurance, except as otherwise provided in this Agreement. If there is any conflict between this Agreement and any resolution fixing compensation and benefits for non-public safety City Department Directors or other unclassified employees, this Agreement shall control. As is past practice, this paragraph is intended to include salary and salary-related compensation. City Manager shall receive at least the same salary and salary-related adjustments as provided to the Unrepresented Executive Management class of City employees.

6) SECURITY

A) Pensions - Marin County Employee Retirement Association (MCERA)

- (1) City will pay only the City's Share for participation in the Marin County Employee Retirement Association. The City Manager shall pay the employee share.
- (2) Unless required by changes in State or Federal law, should City Manager retire from City, his future MCERA pension and retiree health insurance benefits ("retirement rights and benefits") shall be guaranteed and vested at the same

benefit level as they were at his original date of hire which was January 2, 2007. For purposes of retiree health insurance, the benefit at that time covered full retiree medical premiums including all Medicare premiums without limitations. The parties expressly agree and confirm that the retirement rights and benefits in place at the City Manager's date of hire have been and continue to be a material part of the consideration given for City Manager's acceptance of employment with the City.

- (3) Should current pension vesting rules change, such as through the California voter Initiative process, City Manager may be treated like any other City employee at the sole discretion of the City Council.

B) Deferred compensation

(1) Section 457 Plan.

(a) The City will make, in January of each year, an annual contribution equal to \$15,000 a year and as allowed by the Internal Revenue Code and its related regulations (excluding any age-related and catch-up provisions that are now or may in the future become applicable) into a qualified Section 457 Plan from one of the City approved plans as selected by the City Manager.

- (2) Internal Revenue Code Compliance - All provisions of Sections 5.A and 5.B are subject to the provisions and limitations of the Internal Revenue Code and its related regulations as amended from time to time. No requirement of any provision of Sections 5.A and 5.B shall be effective if it would violate any provision of the Internal Revenue Code or its related regulations, and the inability of the City to effectuate such requirements shall not constitute a breach of this Agreement.

C) Insurance

(1) Disability Insurance. Long Term Disability insurance is to be provided as stipulated in the Unrepresented Management Resolution.

(2) Life Insurance. Term life insurance in the amount of \$250,000, with the premium to be paid by the City, payable to a beneficiary the City Manager designates.

7) SEPARATION

A) Resignation Retirement - The City Manager may resign at any time and agrees to give the City at least 45 days advance written notice of the effective date of his resignation, unless the Parties otherwise agree in writing. If the City Manager retires from full time public service with the City, the City Manager may provide six months' advance notice. The City Manager's actual retirement date will be mutually established.

B) Termination & Removal –

(1) While this Agreement contains reference to a rolling three (3) year term in Section 3 above, it is expressly understood that the Manager is an at-will employee of the City, servicing at the pleasure of the City Council as provided in Government Code Section 36506.

(2) The City Council may remove the City Manager at any time, with or without cause, by a majority vote of its members. Notice of termination shall be provided to the City Manager in writing. Termination as used in this Section shall also include a

request that the City Manager resign, a reduction in salary or other financial benefits of the City Manager, a material reduction in the powers and authority of the City Manager, or the elimination of the City Manager's position. Given the at-will nature of the position of City Manager, an important element of the employment agreement pertains to termination. It is in both the City's interest and that of the City Manager that any separation of the City Manager is done in a businesslike manner.

C) Severance Pay

- (1) In the event that the City Manager is terminated by the City Council during such time that the City Manager is willing and able to perform his duties under this Agreement, then the City agrees to pay the City Manager a lump sum cash payment equal to six months' base salary and benefits. It is the intention of the parties that this paragraph complies with the requirements of Government Code Section 53260 et. seq. In the event of any conflict between this provision and those code sections, the terms of those code sections shall govern the contractual relationship between the employer and employee.
- (2) In addition, the City shall extend to the City Manager the right to continue health insurance as may be required by and pursuant to the terms and conditions of the Consolidated Omnibus Budget Reconciliation Act Of 1986 (COBRA).
- (3) All payments required under Section 7.C (1), and (2), are subject to and shall be interpreted to comply with the limitations set forth in Government Code Section 53260.
- (4) In no event may City Manager be terminated within ninety (90) days before or after any municipal election for the selection or recall of one or more members of the City Council.

D) Involuntary Resignation

- (1) In the event that the City Council formally or a majority of the City Council informally asks that the City Manager resign, then the City Manager shall be entitled to resign and still receive the severance benefits provided in Section 7.C above.

E) Separation for Cause

- (1) Notwithstanding the provisions of Section 7.C, the City Manager may be terminated for cause. As used in this Section, "cause" shall mean only one or more the following:
 - (a) Conviction of a felony;
 - (b) Conviction of any illegal act involving moral turpitude or personal gain;
 - (c) A plea of nolo contendere to any felony or illegal act involving moral turpitude or personal gain;
 - (d) Any act constituting a knowing and intentional violation of City's conflict of interest code;
 - (e) Continued abuse of non-prescription drugs or alcohol that materially affects the performance of the Manager's duties; or

- (f) Repeated and protracted unexcused absences from the City Manager's office and duties.
- (2) In the event that the City terminates the City Manager for cause, then the City may terminate this Agreement immediately, and the City Manager shall be entitled to only the compensation accrued up to the date of termination, payments required by Section 7.F below, and such other termination benefits and payments as may be required by law. The City Manager shall not be entitled to any severance benefits provided by Section 7.C. The City reserves the right to suspend City Manager with pay at any time during the pendency of any of the foregoing events under item (1) above.

F) Payment for Unused Leave Balance

- (1) On separation from City employment, the City Manager shall be paid for all unused accrued leave allowances provided in Section 5.B(2) above. Accumulated leave balances shall be paid at the City Manager's monthly salary rate at the effective date of separation.

8) MISCELLANEOUS PROVISIONS

A) Amendments - This Agreement may be amended at any time by mutual written agreement of the City and the City Manager.

B) Conflict of interest

- (1) The City Manager shall not engage in any business or transaction or have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper discharge of his official duties or which would tend to impair independence in the performance of his official duties.
- (2) The City Manager shall also be subject to the conflict of interest provisions of the California Government Code and any conflict of interest code applicable to the City Manager's City employment.
- (3) The City Manager is responsible for submitting to the City Clerk the appropriate Conflict of Interest Statements at the time of appointment, annually thereafter, and at the time of separation from the position.

C) Indemnification

- (1) To the full extent of the law as provided by the California Torts Claims Act (Government Code Section 810 et seq.) and the indemnity provisions of this Agreement, whichever shall provide the greatest protection to the City Manager, the City shall defend and indemnify the City Manager against and for all losses sustained by the City Manager in direct consequences of the discharge of the City Manager's duties on the City's behalf for the period of the City Manager's employment.
- (2) The City shall defend, save harmless, and indemnify the City Manager against any tort, 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 the City Manager's duties as City Manager. The City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon in the City's sole discretion.

- (3) Whenever the City Manager shall be sued for damages arising out of the performance of his duties, the City shall provide legal defense for the City Manager in such suit and indemnify the City Manager from any judgment rendered against the City Manager; provided that such indemnity shall not extend to any judgment for damages arising out of any willful wrongdoing. This indemnification shall extend beyond termination of employment and the otherwise expiration of this Agreement to provide protection for any such acts undertaken or committed in the City Manager's capacity as City Manager, regardless of whether the notice of filing of a lawsuit occurs during or following employment with the City. This indemnity provision shall survive the termination of the Agreement and is in addition to any other rights or remedies that the City Manager may have under the law.
- (4) The City and all parties claiming under or through it, hereby waives all rights of subrogation and contribution against the City Manager, for all matters while acting within the scope of the City Manager's duties, from all claims, losses and liabilities arising out of or incident to activities or operations performed by or on behalf of the City or any party affiliated with or otherwise claiming under or through it, regardless of any prior, concurrent, or subsequent active or passive negligence by the City Manager.
- (5) In the event that the City Manager shall serve as the chief executive of other City-related legal entities as provided in Section 4.A (l)(b) above, then each provision of this Section 7.C shall be equally applicable to each City-related legal entity as though set forth in an indemnity agreement between the City Manager and that legal entity. The City hereby guarantees the performance of this indemnity obligation by the City-related legal entity, and shall indemnify and hold the City Manager harmless against any failure or refusal by City related legal entity to perform its obligations under this Section 7.C.
- D) Severability - If any clause, sentence, part, section, or portion of this Agreement is found by a court of competent jurisdiction to be illegal or unenforceable, such clause, sentence, part, section, or portion so found shall be regarded as though it were not part of this Agreement and the remaining parts of this Agreement shall be fully binding and enforceable by the Parties hereto.
- E) Laws Affecting Title - In addition to those laws affecting a City Manager, the City Manager shall have the same powers, rights and responsibilities as a Chief Executive Officer, City Administrative Officer, Administrator, and/or City Administrator as those terms are used in local, state, or federal laws.
- F) Jurisdiction and Venue - This Contract shall be construed in accordance with the laws of the State of California, and the Parties agree that venue shall be in Marin County, California.
- G) Entire Agreement - This Contract represents the entire agreement of the Parties, and no representations have been made or relied upon except as set forth herein. This Contract may be amended or modified only by a written, fully executed agreement of the Parties.
- H) Notice - Any notice, amendments, or additions to this Agreement, including change of address of either party during the term of this Agreement, which the City Manager

or the City shall be required, or may desire, to make, shall be in writing and shall be sent by prepaid first class mail or hand delivered to the respective Parties as follows:

(a) If to the City:
Mayor
City of San Rafael
1400 Fifth Avenue
San Rafael, CA 94901

(b) If to the City Manager:
City of San Rafael
1400 Fifth Avenue
San Rafael, CA 94901

EXECUTION:

IN WITNESS WHEREOF, the City of San Rafael has caused this amended and restated Agreement to be duly executed by its Mayor and the City Manager, and duly attested by its City Clerk, the ___th day of December 2021.

EMPLOYER - CITY OF SAN RAFAEL

CITY MANAGER

By: _____
Kate Colin, Mayor

James M. Schutz

APPROVED AS TO FORM:

ATTEST:

Robert F. Epstein, City Attorney

Lindsay Lara, City Clerk