



SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: City Attorney

Prepared by: Rob Epstein, City Attorney

City Manager Approval: _____

A handwritten signature in blue ink, appearing to be 'JS', written over a horizontal line.

TOPIC: APPOINTMENT OF CRISTINE R. ALILOVICH TO CITY MANAGER

SUBJECT: RESOLUTION APPOINTING CRISTINE R. ALILOVICH CITY MANAGER, EFFECTIVE JUNE 1, 2023 AND APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN EMPLOYMENT AGREEMENT

RECOMMENDATION: Adopt Resolution Appointing Cristine R. Alilovich City Manager, Effective June 1, 2023, and Approving and Authorizing the Mayor to Execute an Employment Agreement.

BACKGROUND: On October 4, 2022, City Manager Jim Schutz announced his retirement. The City Council hired Gary Phillips with Bob Murray and Associates to conduct a nationwide search, and then met in closed session on March 13, March 28, March 29, and April 3, 2023 to consider and interview candidates to be appointed as City Manager to succeed Mr. Schutz. In the April 3rd closed session, the Council unanimously agreed that the City's current Assistant City Manager, Cristine Alilovich was their desired candidate for the position.

Cristine brings a wide range of experience to the City Manager position. She has worked in local government for 25 years and has been the City of San Rafael's Assistant City Manager since September 2015. Her dedication to public service stems from an early career in providing direct mental health services to the community and desiring to being a part of larger scale positive change. Prior to coming to San Rafael, she served as the Assistant Director of Finance for the County of Marin, and prior to that worked at the County of Sonoma for nine years in the areas of human resources, risk management, and budget. She has a master's degree in public administration from the University of Southern California and a bachelor's degree from Rutgers University.

In her role as the Assistant City Manager for more than seven years, Cristine has served as a principal advisor to the City Manager. She has had direct management oversight of the Finance Department, Human Resources Department (including overseeing all employee relations issues), Digital Service & Open Government Department, Parking Services, the Office of Emergency Services, and the Sustainability program. She also leads the City's community engagement, and diversity, equity, inclusion, and belonging initiatives.

FOR CITY CLERK ONLY

Council Meeting:

Disposition:

Cristine has also overseen a number of important projects. She led the design and construction phase of several Essential Facilities projects including the Public Safety Center and Fire Stations 52 and 57; she led the Emergency Operations Center response to COVID-19; and she facilitated the Terra Linda Social Justice Public Art project and creation of the city's public art program.

Cristine and her family have lived in Novato for the last six years.

ANALYSIS:

The Council met in closed session on April 3, 2023 to give direction to its designated negotiators, Mayor Kate and Vice-Mayor Llorens-Gulati, concerning desired terms for Cristine Alilovich's employment. Mayor Kate and Vice-Mayor Llorens-Gulati thereafter separately negotiated with Ms. Alilovich concerning the terms of employment, including the terms of compensation. This report provides for the approval of an Employment Agreement that resulted from those negotiations, attached as Exhibit A to the Resolution in this report.

As proposed in the Employment Agreement, Cristine Alilovich would become City Manager on June 1, 2023. The terms of employment are largely unchanged from the terms of the current City Manager's employment agreement, except where noted below. Following is a summary of key terms:

- Base salary: The starting base salary will be \$283,992, subject to adjustments equal to a minimum of the percentage increases received by the Unrepresented Executive Management Group. This is the same base salary with adjustments received by the current City Manager.
- Other compensation:
 - Health insurance: The City will pay the full cost of the employee's family medical insurance premium, which is the same benefit received by the current City Manager.
 - Deferred compensation Section 457 Plan contribution: At the annual maximum amount allowed by the Internal Revenue Service. The current City Manager's benefit is a contribution of \$15,000 per year.
 - Monthly automobile allowance: \$500 per month, increased from \$400 per month in the current City Manager's contract.
 - Monthly wellness benefit: \$400 per month. This is a new benefit not received by the current City Manager.
 - Term life insurance policy: \$250,000, equal to that of the current City Manager.
- Severance pay: Equal to 12-months' pay, including base salary and benefits. This is an increase from 6-months' pay in the current City Manager contract.

Other employee benefits for the City Manager are substantially the same as those received by the non-public safety Unrepresented Executive Management Group.

COMMUNITY OUTREACH: Not applicable.

FISCAL IMPACT: The 2023-2024 budget will account for the cost of total compensation reflected in the Employment Agreement. There is some increase in total compensation from the current City Manager's agreement due to the increases noted above for other compensation.

OPTIONS:

1. Adopt the Resolution.
2. Adopt the Resolution with modifications.
3. Do not adopt the Resolution and provide direction to the designated negotiators.

RECOMMENDED ACTION: Adopt the Resolution.

ATTACHMENTS:

1. Resolution, with Exhibit A – Employment Agreement

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF SAN RAFAEL APPOINTING CRISTINE R. ALILOVICH CITY MANAGER, EFFECTIVE JUNE 1, 2023 AND APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE AN EMPLOYMENT AGREEMENT

WHEREAS, the City Council met in closed session on March 13, March 28, March 29, and April 3, 2023 to consider and interview candidates for a City Manager to replace retiring City Manager Jim Schutz; and

WHEREAS, at the April 3, 2023 closed session, the Council unanimously agreed that the City's current Assistant City Manager, Cristine R. Alilovich was their desired candidate for the position; and

WHEREAS, at the April 3, 2023 closed session, the City Council designated Mayor Kate and Vice-Mayor Llorens-Gulati, to provide them with direction as to acceptable terms for an employment agreement with Ms. Alilovich, including the terms of compensation; and

WHEREAS, the Council's designated negotiators negotiated with Ms. Alilovich concerning the terms of an agreement for her employment as City Manager, including the terms of compensation; and

WHEREAS, at its regular meeting on April 17, 2023, the City Council considered, as an item of new business, the appointment of Cristine R. Alilovich as City Manager pursuant to the draft employment agreement attached hereto as Exhibit "A" and incorporated herein by reference (the "Employment Agreement"); and

WHEREAS, the City Council desires to appoint Cristine R. Alilovich as the City Manager for the City of San Rafael and, accordingly, to enter into the Employment Agreement with Ms. Alilovich; and

WHEREAS, Cristine R. Alilovich is qualified and willing to perform the duties and services of the position of City Manager in San Rafael.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL HEREBY RESOLVES:

1. The City Council hereby appoints Cristine R. Alilovich to serve as the City Manager for the City of San Rafael, effective June 1, 2023.
2. The City Council hereby approves the Employment Agreement between the City and Cristine R. Alilovich in the form attached hereto as Exhibit "A", and authorizes the Mayor to execute the Employment Agreement.

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 held on the 17th day of April 2023 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
Cristine R. Alilovich

April 18, 2023 (Effective June 1, 2023)

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CITY MANAGER EMPLOYMENT AGREEMENT

Between the City of San Rafael and Cristine R. Alilovich

- 1) Parties, Date, and Other Recitals - This Agreement is entered into as of April 18, 2023, and will take effect beginning June 1, 2023, by and between the City of San Rafael a municipal corporation ("the City"), and Cristine R. Alilovich ("Alilovich" 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 Alilovich as its City Manager, and Alilovich hereby accepts such employment on the terms and conditions that are recited herein.
- 3) Term- The City Manager's employment will commence June 1, 2023, and shall continue until May 31, 2025 ("Initial Term"), or will conclude on the date of earlier termination in accordance with provisions in this Agreement. On June 1, 2025, and on each succeeding June 1st while this Agreement is in effect, the Initial Term, and any subsequent Term, of this Agreement shall be automatically extended for successive periods of two (2) years, or will conclude on the date of earlier termination in accordance with provisions in 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.
- (d) The provisions of California Government Code sections 53243 to 53243.4, as those sections now or hereafter exist are hereby incorporated by reference into this Agreement. Thus, if City Manager is convicted of a crime involving an abuse of the City Manager's office or position, whether before or after release from employment, City Manager shall fully reimburse the City for any severance pay, paid leave salary disbursed pending an investigation related to the crime, or legal criminal defense funds relevant to the crime.

(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 their 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. Nothing in this agreement shall prohibit the City Manager from engaging in any charitable activities, so long as the time spent does not interfere with the City Manager's regular duties.

(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 their 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 Alilovich after six months. The City Council and the City Manager agree that performance evaluations, for the purpose of 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 June 1, such as during the City Council's 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 Manager is authorized to have a facilitated performance evaluation, paid for by the City, if the City Manager chooses to do so. The City Council authorizes the Mayor and Vice-Mayor to meet with the City Manager following any 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.

(2) In the event the City terminates the Manager for any reason or no reason, the City and the Manager agree that the City Council and the Manager shall endeavor not to make any written, oral or electronic statement to any member of the public, the press, or any city employee concerning the Manager's termination except in the form of a joint press release or statement, the content of which the parties hope will be mutually agreeable to the City and the Manager.

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 their separation.

(b) Whenever the Unrepresented Executive Management Group receives a Cost of Living Adjustment (COLA), or an across the board salary increase, the City Manager will automatically also receive the same percentage increase in salary, by an amendment of this Agreement to be presented for adoption by the City at a regular public meeting of the City Council, however, the City Manager will not receive the salary increase scheduled to be received by the Unrepresented Executive Management Group in July 2023.

(c) Every year, the City will endeavor to conduct and pay for a compensation survey of the City Manager position, benchmarked against regional

comparable jurisdictions. This data will be reviewed and considered during the annual performance evaluation process.

- (d) 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.

(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 their 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 \$500.00 in exchange for making their 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 their personal vehicle for City business. The

automobile allowance shall appear on the City Manager's payroll stub as ordinary income and part of their salary, but shall not be considered part of the City Manager's base salary for purposes of this Agreement.

- (4) Wellness benefit – The City shall pay \$400 per month to promote health and wellness for the City Manager.
- (5) Health Insurance – The City shall pay the full cost of the employee's family medical insurance premium.
- (6) 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 section 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.

B) Deferred compensation

- (1) Section 457 Plan.

(a) The City shall contribute into an Internal Revenue Services (IRS) Section 457 Plan selected by the City Manager from the list of City approved plans; the annual contribution which shall be the annual maximum allowable contribution determined by the IRS.

- (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 their 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) It is expressly understood that the Manager is an at-will employee of the City, serving 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 to perform their duties under this Agreement, then the City agrees to pay the City Manager a lump sum cash payment equal to twelve months' base salary and benefits. It is the intention of the parties that this section 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 this agreement 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 the City Manager be terminated within ninety (90) days before any municipal election or ninety (90) days after the first day of the new term following 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 that adversely affects the reputation of the City Manager or the city;
 - (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 their official duties or which would tend to impair independence in the performance of their 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 their 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

[Signatures are on the following page.]

EXECUTION:

IN WITNESS WHEREOF, the City of San Rafael has caused this Agreement to be duly executed by its Mayor and the City Manager, and duly attested by its City Clerk, the ___th day of April 2023.

EMPLOYER - CITY OF SAN RAFAEL

CITY MANAGER

By: _____
Kate Colin, Mayor

Cristine R. Alilovich

APPROVED AS TO FORM:

ATTEST:

Robert F. Epstein, City Attorney

Lindsay Lara, City Clerk