

EMPLOYMENT AGREEMENT

THIS AGREEMENT is between the CITY OF SONOMA ("City") and GARRETT TOY ("Employee") and is dated for convenience this 7th day of June, 2021.

RECITALS:

- A. City desires to employ GARRETT TOY as City Manager of the City of Sonoma. GARRETT TOY desires to serve as City Manager of the City of Sonoma, beginning July 20, 2021.
- B. GARRETT TOY represents that he is qualified to perform the duties and services of the position of City Manager and is agreeable to filling the position.
- C. The City Council as appointing power, and GARRETT TOY, desire to agree in writing to the terms and conditions of GARRETT TOY'S employment as City Manager.

AGREEMENT:

- 1. DUTIES AND SCOPE OF SERVICES.
 - a) City agrees to employ GARRETT TOY as City Manager of the City of Sonoma to perform the functions and duties specified in the ordinances and resolutions of City, and to perform other legally permissible and proper duties and functions as the City Council may from time to time assign. Under the terms and conditions of this Agreement, Employee shall personally provide all the services and duties ordinarily performed by the City Manager for the City under the direction and control of the City Council and as set forth in the Sonoma Municipal Code. Employee has the authority to interview, hire and fire employees, perform his duties and direct the workforce subject to the specific limitations set forth in the Sonoma Municipal Code, the City's personnel rules and regulations, Administrative Policies and applicable laws (collectively, "Applicable Laws").
 - b) Employee shall perform his duties to the best of his ability in accordance with the highest professional, competency, integrity, and ethical standards of the profession and shall comply with all general rules and regulations established by the City.
 - c) Employee shall not engage in any activity which is, or may become, a conflict of interest,

prohibited contract, or which may create an incompatibility of office as defined under California law. Prior to performing any services under this Agreement and annually thereafter, the Employee must complete disclosure forms required by law. However, Employee may engage in charitable endeavors not involving employment or activities related to the business of the City so long as such outside activities do not interfere with Employee's duties under this Agreement.

d) Employee agrees to remain in the exclusive employ of the CITY during the term of this Agreement. Employee shall dedicate his full energies and qualifications to his employment as the City Manager, and shall not engage in any other employment except as may be specifically approved in writing in advance by the City Council.

e) To ensure that Employee is able to effectively carry out his duties in a professional and forthright manner and implement the policies of the City Council impartially and equitably, the City Council and its members agree to the following:

i) to spend time each year to work with Employee and staff on setting goals and priorities for the City government, and

ii) to work collectively on issues that may arise that inhibit the maximal achievement of City goals.

f) The City Council acknowledges that Employee is a member of the International City Management Association ["ICMA"]. The parties mutually desire that Employee be subject to and comply with the ICMA Code of Ethics, as amended from time to time (current version attached as Exhibit A). Employee shall comply with the ICMA Code of Ethics in performing his duties hereunder.

2. TERM.

a) The term of this Agreement shall be for two (2) years commencing on July 20, 2021 (the "Effective Date"), unless terminated by either party in accordance with the provisions set forth in Paragraph 3 or until terminated by the event of the death or permanent disability of Employee. The term may be extended or revised by mutual, written agreement of the parties.

b) No later than twelve (12) months prior to the expiration of this Agreement, the parties agree that they shall meet to discuss the renewal of the Agreement, and the City Council within thirty (30) days of said meeting shall notify Employee in writing ("Notice re Extension") of its

decision to extend or not extend the term of the Agreement. If the City Council states that it desires to extend or renew the term of this Agreement, it shall do so conditionally, stating that any such extension or renewal shall be subject to the parties reaching agreement on the terms and conditions of any such extension or renewal, and inviting Employee to discuss any such terms and conditions with the Mayor as soon as is practicable, with the objective of reaching an agreement, if one can be reached, within sixty (60) days after the Council delivers its Notice re Extension to Employee stating the Council's desire to extend the term. If no such agreement can be timely reached, then this Agreement shall expire at the end of its term.

- i. The City Council's determination to not extend this Agreement shall not entitle Employee to severance pursuant to this Agreement.
- ii. Should the City Council terminate this Agreement pursuant to Paragraph 3(d) after the Employee is given the Notice re Extension extending the Agreement, Employee shall be entitled to severance pursuant to Paragraph 4.
- iii. Should the City Council fail to notify the Employee of its intent to not extend or extend the Agreement pursuant to the provisions of this paragraph, this Agreement shall be automatically extended for one (1) additional year beyond the termination date.

3. RESIGNATION AND TERMINATION.

- a) Resignation. Employee may resign at any time and agrees to give City Council at least ninety (90) days informal notice and sixty (60) days formal advance written notice.
- b) Retirement. If Employee retires from full time public service with City, Employee shall provide six months advance notice. The Employee's actual retirement date will be mutually established.
- c) The parties recognize and affirm that: 1) Employee is an "at will" Employee whose employment may be terminated by the City without cause, and 2) there is no express or implied promise to Employee for any form of continued employment. This Agreement is the sole and exclusive basis for an employment relationship between Employee and City.
- d) Termination Without Cause. The City Council may at any time terminate Employee upon ninety (90) days advance written notice without cause. The City Council may place

Employee on paid administrative leave for said ninety-day (90) day period, at the conclusion of which Employee's employment under this Agreement shall terminate.

e) Termination with Cause. If City terminates this Agreement (thereby terminating Employee's employment) with Cause, as determined by the affirmative votes of a majority of the members of the City Council at a Regular Meeting of the City Council, Employee shall not be entitled to any additional compensation or payment, including Severance as described in Section 4 below, but shall be entitled only to accrued Base Salary and vacation pay, and any other accrued and unused benefit allowances according to their terms ("Accrued Salary and Benefits"). As used in this Agreement, Cause shall only mean any of the following:

1. Conviction of, or plea of guilty or *nolo contendere* to, any crime or offense (other than minor traffic violations or similar offenses) which is likely to have a material adverse impact on the City or on the Employee's reputation;
2. Proven failure of the Employee to observe or perform any of his duties and obligations, if that failure continues for a period of thirty (30) business days from the date of his receipt of notice from the City Council specifying the acts or omissions deemed to amount to that failure;
3. Conviction of any crime involving an "abuse of office or position," as that term is defined in Government Code Section 53243.4;
4. Repeated failure to carry out a directive or directives of the City Council made by the City Council as a body at a Brown Act-compliant meeting; and
5. Any grossly negligent action or inaction by Employee that materially and adversely: (a) impedes or disrupts the operations of City or its organizational units; (b) is detrimental to employees or public safety; or (c) violates Applicable Laws.
6. Employee's death;
7. Employee's mental incapacity or inability to perform his duties hereunder due to physical or mental disability, for a period of sixty (60) days, as determined by a mutually agreed upon medical doctor;
8. Political activity involving the support of or opposition to candidates for the City Council;
9. Violation of State or federal discrimination laws concerning race, religious creed,

color, national origin, ancestry, physical or mental disability, marital status, sexual orientation, sex or age concerning either members of the general public or City employees(s);

10. Willful or unlawful retaliation against any other City official or employee or member of the general public who in good faith reports, discloses, divulges, or otherwise brings to the attention of any appropriate authority any facts or information relative to actual or suspected violations of any law occurring on the job or directly related thereto; or

11. Violation of the City's harassment policy or any other personnel or employment policy, rule or procedures.

f) Election Window. In no event may the Employee be terminated within ninety (90) days after any municipal election for the election or recall of one or more of the members of the City Council. The vote to terminate the Employee shall not be taken within said ninety (90) day period. During the first 90 days of this Agreement, the City Council may not take a vote to terminate this Agreement and Employee's employment.

4. SEVERANCE PAY.

If the City Council terminates Employee by giving Employee the 90-day notice of termination specified in Paragraph 3(d), and if Employee signs, delivers to the City Council, and does not revoke, the General Release Agreement ("Release Agreement") in the form attached hereto as Exhibit B, then the City agrees to pay Employee a cash payment equal to six (6) months' aggregate salary, based on Employee's base salary in effect on the date of termination. This cash payment may be paid (after required deductions and withholdings), at the option of the Employee, in 1) lump sum upon the date of termination; 2) lump sum on January 1 of the calendar year following termination, or 3) three (3) equal monthly installments. Such payment by the City will release the City from any further obligations or liabilities under this Agreement. Notwithstanding the foregoing to the contrary, the Employee shall not be entitled to be paid severance pay in the event (a) this Agreement expires and is not renewed, or (b) Employee's employment is terminated due to his death or permanent disability.

5. SALARY.

- a) City agrees to pay Employee Two Hundred Fifteen Thousand, Nine Hundred Dollars (\$215,900.00) in salary per annum for his services, payable in installments at the same time as other employees of the City are paid and subject to customary withholding.
- b) The salary compensation provided in this paragraph shall not be decreased unless the same percentage decrease is applied to all management employees. Employee agrees to the total 1% salary deduction as payment towards the Employer share of the California Public Employee Retirement System on the same terms and conditions as outlined in the Management Employees' Resolution 59-2014.
- c) Thereafter and subject to a satisfactory evaluation of performance on the anniversary date hereof, City may increase Employee's compensation by written amendment to this Agreement. Unless otherwise negotiated by the City and Employee, the Employee shall receive the same Cost-of-Living Adjustments (COLAs) and one time off-schedule payments made to each Non-Represented Executive/At-Will employee except that no COLA or one-time off-schedule payment shall apply for FY2021/22.
- d) The City Council agrees to annually consider increases in Employee's base salary and/or other benefits of Employee in such amounts and to such extent as the City Council in its sole discretion after consultation with Employee may determine is justified based upon an annual performance review of Employee.

6. AUTOMOBILE.

Employee's duties require that he shall have the use of an automobile at all times during his employment with the City. City shall reimburse Employee Five Hundred Dollars (\$500.00) per month for the expenses of owning, maintaining, and insuring a personal automobile. The amount of reimbursement shall be evaluated each fiscal year and, if appropriate, adjusted to reflect increased costs. The auto allowance shall appear on Employee's payroll stub as ordinary taxable income and as part of his salary, but it shall not be considered part of Employee's base salary for purposes of this Agreement. Employee shall be responsible for all operation expenses, maintenance expenses, replacement costs, and insurance for the automobile. Employee shall at all times maintain insurance for

the automobile in an amount and with coverages acceptable to the City, name the City as an additional insured thereon, provide the City evidence of such insurance and shall inform his insurer that the automobile is used for personal and business purposes.

7. BUSINESS AND PROFESSIONAL DEVELOPMENT EXPENSES.

a) City shall pay for or provide Employee reimbursement of all actual business expenses incurred in the performance of his duties under this Agreement. Without prior written approval from the City Council, Employee shall not incur business expenses in excess of the amount annually budgeted and approved by the City Council for this item. Employee shall provide written documentation verifying the incurring of each expense as required under the adopted administrative policies of the City. The expense documentation shall be maintained by the City in accordance with its records retention policies. Notwithstanding the foregoing, mileage shall not be reimbursed to Employee.

b) The City recognizes that certain general expenses, dues, memberships, subscriptions, travel and subsistence expenses are reasonably incurred by the Employee in the performance of job-related activities, functions, meetings, professional development and professional conferences such as the annual International City Managers' Association, California City Management Foundation, League of California Cities, League's City Manager's Department, and the League's Division meetings. The City agrees to budget and pay for or reimburse the Employee for these expenses; provided, however, that the amount paid shall be limited by the amount the City Council budgets for such expenditures.

c) The City agrees to reimburse Employee for expenses related to educational courses, short courses, executive coaching, seminars and institutes that will benefit the City and improve the Employee's professional abilities; provided, however, that the amount paid shall be limited by the amount the City Council budgets for such expenditures.

8. SUPPLEMENTAL BENEFITS.

The City shall also provide the Employee the same benefits in same as provided to management employees pursuant to City Council Resolution 59-2014 (excluding COLA and longevity increases), and as they may be amended from time to time, except that the City shall provide to Employee and his dependents One Hundred Percent (100%) of the cost of medical, vision and dental benefits. All actions taken by the City relating to benefits for such management employees shall be considered actions

granting the same benefits to Employee. Employee may opt to decline medical, vision or dental benefits for spouse and in exchange, employee shall receive, as taxable income, payment in-lieu of benefits equal to 50% of premium of the benefit(s) which Employee declines. As used herein, benefits include but are not limited to holidays, administrative leave, sick leave, retirement benefits and payments, health insurance, vision insurance, dental insurance, and life insurance.

a) Retirement. City shall provide Employee with enrollment in the California Public Employees' Retirement System ("PERS") as a classic employee in 2% @ 55 formula. Employer shall pay the Employer share of the PERS contribution with the exception that the Employee will pay 1% towards the Employer share. Employee shall pay the Employee's (Member's) portion of the PERS contribution.

b) Deferred Compensation. City shall provide Employee with a deferred compensation plan into which he may deposit funds from his salary. A City contribution of Seventy-Five Hundred and One Dollars (\$7,501.00) per year/\$288.50 per pay period, shall be deposited into the deferred compensation plan of the Employee's choice.

9. LEAVE BENEFITS.

a) Vacation Leave. Employee shall be entitled to twenty (20) vacation days. Upon the commencement date of this agreement, the Employee shall be credited with 80 hours of Vacation Leave. Employee may cash out up to 40 hours of Vacation Leave per year. The amount paid Employee shall be based on Employee's annual Base Salary at the time the Vacation Leave is paid. Upon termination or resignation from employment or the non-renewal of this Agreement, Employee shall be paid for all accrued and unused vacation time.

b) Sick Leave. Employee shall be entitled to twelve (12) days of sick leave each year with six (6) of these days being considered "alternative sick leave" which may be used for any purpose. In addition, three (3) days of "alternative" sick leave may be cashed out each year. Upon the commencement date of this Agreement, the Employee shall be credited with 12 days of sick leave (which cannot be cashed out) and shall accrue sick leave in accordance with this paragraph.

c) Administrative Leave. Employee shall be entitled to twenty (20) days/160 hours of administrative leave annually on July 1 of each year. Upon the commencement date of this Agreement, the Employee shall be credited with Administrative Leave based on a pro-rata share of the fiscal year. This leave shall not accrue nor have cash value.

d) Holidays: Employee shall be entitled to the same holidays as are provided to all the other employees of the City.

e) Bereavement Leave: Three (3) days of paid bereavement leave in the event of the death of a parent, parent-in-law, child / stepchildren, spouse / registered domestic partner or sibling.

f) Jury Leave: Paid Jury leave of two work weeks.

10. INDEMNIFICATION.

a) The City shall defend, hold harmless, and indemnify Employee 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 Employee'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. Said indemnification shall extend beyond termination or separation of employment, and the otherwise expiration of this Agreement, to provide full and complete protection to Employee, by the City, as described herein, for any acts undertaken or committed in Employee's performance of his duties as City Manager, regardless of whether the notice or filing of a lawsuit for such tort, claim, demand or other legal action occurs during or following Employee's employment with City.

b) In the event that the Employee shall serve as the chief executive of other City related legal entities, then each provision of this Section shall be equally applicable to each City related legal entity as though set forth in an indemnity Agreement between the Employee 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 Employee harmless against any failure or refusal by City related legal entity to perform its obligations under this Section.

c) Notwithstanding the foregoing, the City may, but shall not be required to, indemnify and/or defend the Employee under the circumstances described and conditions set forth in Cal. Gov't Code §§ 995.2, 995.4, 995.6, 995.8 and 995.9. Additionally, notwithstanding the foregoing, this Agreement shall not be deemed or construed to constitute a waiver of the rights the City possess under Cal. Gov't Code §§825 and 818.

11. PERFORMANCE EVALUATION.

The Council shall annually review and evaluate the performance of the Employee. Employee's first performance evaluation shall occur no later than one-hundred eighty (180) days after the Effective Date. The purpose of the Employee's first evaluation will be to focus on defining such goals and performance objectives which the City Council and Employee determine necessary for the proper operation of the City or the attainment of the City Council's policy objectives, and the City Council and Employee shall further establish a relative priority among those various goals and objectives to be reduced to writing. These objectives shall be obtainable generally within the time limits as specified and within the annual operating budgets and appropriations provided. The City Council will also outline any other goals and objectives that it has for the Employee. The achievement of these goals and performance objectives shall be considered part of Employee's performance duties. No adjustment in compensation shall be made at the first performance evaluation.

Thereafter, the City Council shall evaluate Employee's performance at least annually, at which time adjustments to compensation may be considered. The review of the performance of Employee shall be subject to a process, form, criteria, and format for the evaluation, shall be mutually agreed upon by the City Council and Employee. In addition, every year the City Council and Employee will set goals and objectives for the ensuing year.

12. OTHER TERMS AND CONDITIONS OF EMPLOYMENT.

The City Council, by resolution, shall fix any other terms and conditions of employment, as it may determine from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with provisions of this Agreement or law.

13. NOTICES.

Any notices required by this Agreement shall be in writing and either given in person or by first class mail with the postage prepaid and addressed as follows:

TO CITY: City Council
Attn: Mayor
City of Sonoma
No. 1 the Plaza
Sonoma, CA 95476

TO EMPLOYEE: GARRETT TOY
City Manager
City of Sonoma
No. 1 the Plaza
Sonoma, CA 95476

14. GOVERNMENT CODE SECTION 53243.2

If Employee is convicted of a crime involving an abuse of his office or position, all of the following shall apply: (a) if Employee was provided with administrative leave pay pending an investigation, Employee shall be required to fully reimburse City such amounts paid; (b) if City pays for the criminal legal defense of Employee (which would be in its sole discretion, as it is generally not obligated to pay for a criminal defense), Employee shall be required to fully reimburse City such amounts paid; and (c) if this Agreement is terminated, any Severance pay related to the termination that Employee may receive from City shall be fully reimbursed to City or shall be void if not yet paid to Employee. For purposes of this Paragraph, abuse of office or position means either: (x) an abuse of public authority, including waste, fraud, and violation of the law under color of authority; or (y) a crime against public justice.

15. RECITALS INCORPORATED. The recitals set forth above are incorporated into this Agreement by this reference.

16. WAIVER. The waiver of any breach of any provision hereunder by either party to this Agreement shall not be deemed to be a waiver of any other provision or subsequent breach hereunder, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party marking the waiver.

17. CONSTRUCTION OF TERMS. The language of all parts of this Agreement shall be construed according to their plain meaning and shall not be construed for or against either party. Any rule of

construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment or exhibits hereto.

18. SEVERABILITY. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be unenforceable, void or invalid, in whole or in part, for any reason, the remainder of this Agreement shall remain in full force and effect. In the event of such entire or partial invalidity, the parties hereto agree to enter into supplemental or other Agreements to effectuate the intent of the parties and the purpose of this Agreement.

19. CONTROLLING LAW. This Agreement shall be construed in accordance with and governed by the laws of the State of California, with venue proper only in the County of Sonoma, State of California.

20. ENTIRE AGREEMENT. This Agreement constitutes the entire Agreement between the parties pertaining to the employment of Employee by the CITY and supersedes all prior and contemporaneous Agreements, representations, promises and understanding of the parties, whether oral or in writing. No supplement, modification or amendment of this Agreement shall be binding, unless executed in writing by all parties and this Agreement may not be altered, amended or modified by any other means. Each party waives her/its future right to claim, contend, or assert that this Agreement was modified, canceled, superseded or changed by any oral Agreement, course of conduct, waiver, or estoppel.

This Agreement is executed on the date above stated.

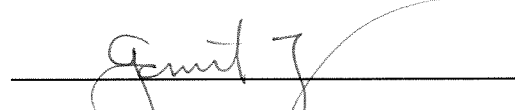
CITY OF SONOMA

GARRETT TOY



Mayor

Date: 1/6/21



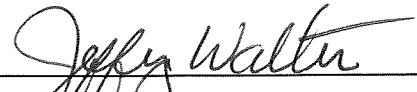
Date: 6/11/21

ATTEST:



Rebekah Barr, City Clerk/Executive Assistant

APPROVED AS TO FORM:



Jeffrey Walter, City Attorney

Exhibit A

ICMA Code of Ethics

The mission of ICMA is to create excellence in local governance by developing and fostering professional local government management worldwide. To further this mission, certain principles, as enforced by the Rules of Procedure, shall govern the conduct of every member of ICMA, who shall:

Tenet 1

We believe professional management is essential to efficient and democratic local government by elected officials.

Tenet 2

Affirm the dignity and worth of local government services and maintain a deep sense of social responsibility as a trusted public servant.

Tenet 3

Demonstrate by word and action the highest standards of ethical conduct and integrity in all public, professional, and personal relationships in order that the member may merit the trust and respect of the elected and appointed officials, employees, and the public.

Tenet 4

Serve the best interests of the people.

Tenet 5

Submit policy proposals to elected officials; provide them with facts, and technical and professional advice about policy options; and collaborate with them in setting goals for the community and organization.

Tenet 6

Recognize that elected representatives are accountable to their community for the decisions they make; members are responsible for implementing those decisions.

Tenet 7

Refrain from all political activities which undermine public confidence in professional administrators. Refrain from participation in the election of the members of the employing legislative body.

Tenet 8

Make it a duty continually to improve the member's professional ability and to develop the competence of associates in the use of management techniques.

Tenet 9

Keep the community informed on local government affairs; encourage communication between the citizens and all local government officers; emphasize friendly and courteous service to the public; and seek to improve the quality and image of public service.

Tenet 10

Resist any encroachment on professional responsibilities, believing the member should be free to carry out official policies without interference, and handle each problem without discrimination on the basis of principle and justice.

Tenet 11

Handle all matters of personnel on the basis of merit so that fairness and impartiality govern a member's decisions, pertaining to appointments, pay adjustments, promotions, and discipline.

Tenet 12

Public office is a public trust. A member shall not leverage his or her position for personal gain or benefit.

#