

**CITY OF SEBASTOPOL
CITY COUNCIL
STAFF REPORT**

Meeting Date: June 21, 2016
To: Honorable Mayor and City Councilmembers
From: Ana Kwong – Finance Director
Subject: Contracts for City Manager and City Clerk
Recommendation Adopt and Approve Resolution Authorizing and Approving the City of Sebastopol City Manager and City Clerk’s employment contract
Funding: Currently Budgeted: XX Yes _____ No _____ N/A
Net General Fund Cost: \$ _____
Amount: _____

INTRODUCTION: This item is to request City Council Approve and Adopt the Resolution Authorizing and Approving the City of Sebastopol City Manager and City Clerk.

BACKGROUND: The employment contracts for City Manager and City Clerk previously referenced languages pertained to benefits associated with the Unrepresented Bargaining Group. According to CalPERS, employment contract needs to be specific and incorporates such terms as pay and benefits directly into the contract.

DISCUSSION: As a result of such requirement, staff is bringing to the City Council, City Manager and City Clerk’s employment contract for the City Council’s consideration and adoption. No added new terms to any provisions.

RECOMMENDATION: That the City Council Adopt and Approve the Resolution for updated the contracts for City Manager and City Clerk.

Attachment(s):
Contracts
Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEBASTOPOL
AUTHORIZING THE EMPLOYMENT CONTRACT FOR CITY MANAGER

WHEREAS, the Sebastopol City Council has unanimously approved the City Manager's employment agreement; and

WHEREAS, the Sebastopol City Council and the City Manager have entered into this agreement in recognition of the benefits accruing each party; an

WHEREAS, this Agreement will ensure the retention of City Manager services and the performance of the duties of the said office in a manner which serves the best interests of the City, subject to the direction of the City Council.

NOW, THEREFORE, BE IT RESOLVED by the City of Sebastopol City Council approves the Contract for the City Manager as attached

IN COUNCIL DULY PASSED this 21st day of June, 2016

I, the undersigned, hereby certify that the foregoing Resolution was duly adopted by the City of Sebastopol City Council by the following vote:

VOTE:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED: _____
Mayor Sarah Glade Gurney

Larry McLaughlin, City Manager

ATTEST: _____
Mary Gourley, MMC, City Clerk

AGREEMENT FOR PROFESSIONAL SERVICES APPOINTED CITY MANAGER

This Agreement is made and entered into on this 21st day of June 2016, by and between the City of Sebastopol, California (herein "City" or "Employer") and Lawrence McLaughlin, (hereinafter referred to as "Employee"), with reference to the following facts:

WHEREAS, City desires to retain Employee as the City Manager; and

WHEREAS, on January 8, 2013, the Employer approved appointment of Employee to the position of City Manager of the City of Sebastopol; and

WHEREAS, on March 5, 2013, Employer and Employee entered into a contract of employment of City of Sebastopol City Manager; and

WHEREAS, on March 15, 2016, Employer and Employee approved an extension of the contract to January 14, 2021; and

WHEREAS, Employee has and continues to perform functions and duties as City Manager for the City of Sebastopol as well as other duties and responsibilities as may be assigned; and

WHEREAS, Employer desires to continue conditions of employment for Employee on the terms and conditions set forth herein as City Manager of City under the terms and conditions recited herein; and

WHEREAS, Employer and Employee hereby mutually covenant and agree to the following:

A. **EMPLOYMENT**: The Employer hereby hires Employee and Employee hereby accepts employment with Employer through January 14, 2021. This agreement may be terminated earlier as hereinafter provided. Employee is, and shall remain, the City Attorney, a permanent position. Upon termination of Employee's services as City Manager, Employee shall continue as City Attorney on the same terms and conditions as existed on May 25, 2012.

B. **TITLE AND DESCRIPTION OF DUTIES**:

- 1) The employee serves as City Manager of the City of Sebastopol. In that capacity, the Employee shall do and perform all duties, services, acts, and all that is necessary or advisable to fulfill the duties of City Manager as specified by law, and in City Ordinance Nos. 379, 473, and 493, as amended from time to time. Employee shall at all times be subject to the direction of the City Council and to the policies established by the City Council.
- 2) Employee agrees to accomplish specific tasks as specified and described by the City Council from time to time in a timely and professional manner. Employee understands that the determination of timeliness and professionalism lies solely in

the discretion of the City Council. Specific tasks and work plans will be discussed and agreed upon at least annually between the Employer and Employee to ensure that a mutual understanding of priorities is established and that both parties strive to achieve common goals and objectives.

- 3) Employee agrees that to the best of her ability and experience, he will at all times loyally and conscientiously perform all of the duties and obligations of him as City Manager either expressly or implicitly by the terms of this Agreement.

C. **COMPENSATION:** For the services to be provided pursuant to this agreement, Employee shall receive the following compensation. The City Council shall evaluate the Employee's performance on a regular basis as such times that the Council may request.

- a) **Evaluation:** The City Council shall evaluate the Employee's performance on a regular basis as such times that the Council may request.

- b) **Salary:** Employee shall be paid an annual base salary of (\$153,654). Such salary shall be effective on July 1, 2016. On July 1, 2017, Employee annual salary shall increase to (\$158,264). On July 1, 2018, Employee annual salary shall increase to (\$164,594) as listed and approved in the Pay Rate and Ranges, and any future updates to Ordinance No. 563 that are amended, approved and adopted by the City Council. This salary is payable in promoted installments on the same payment schedule as other City employees.

c) **Benefits:**

- i) Disability, Life, Health Insurance, Deferred Compensation Plan; Employer agrees to provide to Employee medical, dental, vision, life and long term disability insurance under the same terms and conditions said insurance is offered to the management employees, and any future update, amended, approved and adopted by the City Council. In the event the Employee does not choose to participate in the City plans, he may choose to receive the City paid premium benefits for medical coverage applied to his deferred compensation plan.

d) **Retirement:**

- i) The City implements the provisions of section 414(h)(2) Internal Revenue Code by making employee contributions pursuant to California Government Code Section 20691 to the California Public Employees' System. "Employee contributions" shall mean those contributions to the California Public Employees' Retirement System which are deducted from the salary of employees and are credited to individual employee's accounts pursuant to California Government Code Section 2069 1.
- ii) The amount of the contributions designated as employee contributions and paid by the City to the California Public Employee's Retirement System on behalf of Employee shall be the entire contribution required of the employee by the California Public Employees' Retirement Law (California Government

Code Sections 20000, et. seq.). These contributions for "Classic members" are defined as 7% for non-public safety employees. Should the employee contribution change as a result of amendments to the aforementioned Government Code section, employee contributions will be limited to the percentages stated, assuming such amendments allow the City to adjust the designated employee contribution level.

iii) The contribution designated as employees' contributions made by the City to the California Public Employee's Retirement System shall be treated for all purposes, other than taxation, in the same way that member contributions are treated by the California Public Employees' Retirement System.

e) **Medical after Retirement:** The Employee shall receive medical premium benefits after retiring from the City under the PERS retirement plan in accordance with City policy.

f) **Longevity Pay:** Employee is entitled to an additional 2% of monthly pay following 8 years of full-time service with the City, and an additional 2% is authorized following 15 years of full-time service with the City.

g) **Vacation, Administrative and Sick Leave:** Upon the Commencement Date, the Employee shall receive such benefit and other applicable benefits in the same manner and under the same limitations provided to and imposed upon the management employees unless otherwise amended in writing.

h) **Vacation Leave Accrual Limits:**

i) Any vacation balance that existing in excess of three times the Employee's accrual rate shall be transferred into a separate account.

ii) Annually, Employee may cash out up to 20 hours and transfer up to 40 hours to the deferred compensation form accrued bank.

iii) Employee may also set aside up to 10 hours per year of service toward retiree share of payment for medical premium after retirement.

iv) Any outstanding balance in this account shall be paid to the employee upon retirement.

i) **Cash in Lieu of Vacation Pay:**

i) Beginning July 1, 2004, the City will set aside the sum of \$25,000, annually, for payment in lieu of accrued vacation to all eligible City employees, subject to the following limitations:

1. Employee must maintain a minimum of 100 hours of accrued vacation in order to be eligible to request a cash-in-lieu payment.

2. For accrued balances in excess of 100 hours, employees may request a cash in lieu payment for up to 40 hours of vacation in any fiscal year.

3. City will set aside a total of \$25,000 per fiscal year (\$15,000 in October,

and \$10,000 in April) for payment of cash in lieu of vacation. City will accept written requests for cash in lieu of vacation between October 1 and October 15. If all requests total an amount greater than \$15,000, approved requests will be pro-rated accordingly. If total requests are less than \$15,000, the unused amount will be rolled toward to the period of April 1 through April 15 for disbursement according to the same procedure. In no event shall the total amount of in-lieu payments exceed \$25,000 in any fiscal year.

4. Employee shall designate the payroll date on which they wish to receive the cash payment, at the time of the request.
5. Employee may rescind their request, in writing, at any time prior to the closing of the payroll period for which the payment was requested.

j) **Sick Leave Accrual Limits:**

i) Sick leave beyond the 240 hour maximum may continue to accrue during the period of July 1st through June 30th of each year. By June 25th of each year, employee shall choose one of the following options:

1. Set aside the accrued sick leave above 240 hours for conversion to PERS service credit upon retirement; hour set aside under this option shall be available for employee to use for sick leave, if necessary, subject to the provisions of this section in accord with Council Policy#75
2. "Sell back" accrued sick leave in excess of 240 hours to City for a cash payment, said payment to be calculated as 50% of the dollar value of the then current base salary multiplied by the number of hours of sick leave in excess of 240
3. Invest the equivalent value derived in (2) above in City deferred compensation program

k) **Floating Holidays:** Effective July 1, 2004, Floating Holidays must be used within the Fiscal Year during which they are accrued and may not be carried forward to the following fiscal year or paid in cash. The Floating Holiday benefit shall be extended to a total of 20 hours.

l) **Holidays:** For holidays that occur on weekend day, those holidays shall be moved to the next appropriate workday as described in City policy. Those holidays that occur on weekday, normal time off (Friday's), holiday shall be moved to the closest prior workday.

4) **SEPARATION**

a) **Termination by Employer:**

i) Employee is an "at will" employee, and pursuant to the provisions of Ordinance No. 379, the Employer may at any time terminate Employee upon a

three member vote of the whole City Council in a regular City Council meeting. The power of the City Council to remove the City Manager pursuant to this paragraph shall be limited as set forth in Ordinance No. 473.

- ii) In the event of such termination while the Employee is willing to perform the duties of City Manager, Employee shall be provided 30 days advance notice of the intent to terminate. Such notice shall not be required if termination is due to voluntary termination under Paragraph 4b, Employee's death, incapacity due to injury or illness (physical or mental) for a period in excess of 60 days, and act of willful misconduct or malfeasance, a breach of a term of this agreement, or if by conviction of a felony, or conviction of a misdemeanor involving moral turpitude or dishonesty for personal gain.
- iii) Employee agrees to remain in the exclusive employ of the City for so long as employment is mutually acceptable to both Employee and City.

b) **Termination by Employee:**

- i) Employee may, at any time and for any reason, terminate this employment with the Employer by providing 30 days advance written notice of termination to Employer by certified or registered mail, return receipt requested.
- ii) As set forth in Paragraph A above, Employee's position as City Attorney shall not be affected by the provisions of this section; however; the City Council shall meet and confer with employee regarding his tenure, pay, benefits as City Attorney.

c) **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 c/o Mayor City of Sebastopol 7120 Bodega Avenue, Post Office Box 1776 Sebastopol, CA 95473-1176
TO EMPLOYEE:	Lawrence McLaughlin c/o City of Sebastopol 7120 Bodega Avenue Sebastopol, CA 95472

d) **Entire Agreement:** This agreement is the final expression of the complete agreement of both parties with respect to the matters specified herein and supersedes all prior oral and written understandings. Except as prescribed herein, this Agreement cannot be modified except by written mutual agreement signed by the parties.

- e) **Assignment**: This Agreement is not assignable by either Employer or Employee unless otherwise indicated above.

- f) **Severability**: In the event that any provisions of this Agreement is finally held or determined to be illegal or void by a duly appointed arbitrator or by a court having jurisdiction over the parties, the remainder of this Agreement shall remain in full force and effect unless the parts found to be void are wholly inseparable from the remaining portion of the Agreement.

- g) **Counterparts**: This Agreement shall be executed in two counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Government Code Section 53243.2: Pursuant to Government Code Section 53243.2, Employee agrees that if this Agreement is terminated, Employee shall reimburse City the full amount of any cash settlement Employee received from the City relating to that termination if the Employee is convicted of a crime involving an abuse of her office or position.

IN WITNESS WHEREOF, the Employer has caused this Agreement to be signed and executed in its behalf by its Mayor and said employee.

Mayor Sarah Glade Gurney

Larry McLaughlin, City Manager

ATTEST:

Mary Gourley, MMC, City Clerk

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEBASTOPOL
AUTHORIZING THE EMPLOYMENT CONTRACT FOR CITY CLERK

WHEREAS, the Sebastopol City Council has unanimously approved the City Clerk's employment agreement; and

WHEREAS, the Sebastopol City Council and the City Clerk have entered into this agreement in recognition of the benefits accruing each party; an

WHEREAS, this Agreement will ensure the retention of City Clerk services and the performance of the duties of the said office in a manner which serves the best interests of the City, subject to the direction of the City Council.

NOW, THEREFORE, BE IT RESOLVED by the City of Sebastopol City Council approves the Contract for the City Clerk as attached

IN COUNCIL DULY PASSED this 21st day of June, 2016

I, the undersigned, hereby certify that the foregoing Resolution was duly adopted by the City of Sebastopol City Council by the following vote:

VOTE:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED: _____
Mayor Sarah Glade Gurney

ATTEST: _____
Mary Gourley, MMC, City Clerk

Approved as to Form:

Larry McLaughlin, City Attorney

AGREEMENT FOR PROFESSIONAL SERVICES APPOINTED CITY CLERK

This Agreement is made and entered into on this 21st day of June 2016, by and between the City of Sebastopol, California (herein "City" or "Employer") and Mary Gourley, (hereinafter referred to as "Employee"), with reference to the following facts:

WHEREAS, City desires to retain Employee as the City Clerk; and

WHEREAS, Employee was hired September 2006 for the City of Sebastopol; and

WHEREAS, Employee has and continues to perform functions and duties as City Clerk for the City of Sebastopol as well as other duties and responsibilities as may be assigned; and

WHEREAS, Municipal Code 2.12.100 states that "It shall be the duty of the City Manager to, and he shall appoint, remove, promote and demote any and all officers and employees of the City of Sebastopol, except the City Clerk, City attorney and City Treasurer, subject to Personnel rules and regulations as adopted by the City Council" and

WHEREAS, Employer desires to continue conditions of employment for Employee on the terms and conditions set forth herein as City Clerk of City under the terms and conditions recited herein; and

WHEREAS, Employer and Employee hereby mutually covenant and agree to the following:

A. **EMPLOYMENT**: Effective September 2006, Employer hired Employee to serve as the City Clerk for the City of Sebastopol and said Employer desires continued services of Employee.

B. **TITLE AND DESCRIPTION OF DUTIES**:

- 1) The employee serves as City Clerk of the City of Sebastopol. In that capacity, the Employee shall do and perform all duties, services, acts, and all that is necessary or advisable to fulfill the duties of City Clerk as specified in approved job description or by law. Employee shall at all times be subject to the direction of the City Council and to the policies established by the City Council; however, City Council hereby authorizes City Manager, acting on the City Council's behalf, to amend said contract as may be needed from time to time to set working conditions and agreements for this position.
- 2) Employee agrees to accomplish specific tasks as specified and described in the City Clerk job description in a timely and professional manner. Employee understands that the determination of timeliness and professionalism lies solely in the discretion of the City Council.
- 3) Employee agrees that to the best of her ability and experience, she will at all times loyally and conscientiously perform all of the duties and obligations of her as City Clerk either expressly or implicitly by the terms of this Agreement.

C. **COMPENSATION:** For the services to be provided pursuant to this agreement, Employee shall receive the following compensation. The City Council shall evaluate the Employee's performance on a regular basis as such times that the Council may request.

a) **Salary:** Employee shall be paid an annual base salary of (\$129,904). Such salary shall be effective on July 1, 2016. On July 1, 2017, Employee annual salary shall increase to (\$133,801). On July 1, 2018, Employee annual salary shall increase to (\$139,153) as listed and approved in the Pay Rate and Ranges, and any future updates to Ordinance No. 563 that are amended, approved and adopted by the City Council. This salary is payable in promoted installments on the same payment schedule as other City employees.

b) **Benefits:**

i) Disability, Life, Health Insurance, Deferred Compensation Plan; Employer agrees to provide to Employee medical, dental, vision, life and long term disability insurance under the same terms and conditions said insurance is offered to the management employees, and any future update, amended, approved and adopted by the City Council. In the event the Employee does not choose to participate in the City plans, she may choose to receive the City paid premium benefits for medical coverage applied to her deferred compensation plan.

c) **Retirement:**

i) The City implements the provisions of section 414(h)(2) Internal Revenue Code by making employee contributions pursuant to California Government Code Section 20691 to the California Public Employees' System. "Employee contributions" shall mean those contributions to the California Public Employees' Retirement System which are deducted from the salary of employees and are credited to individual employee's accounts pursuant to California Government Code Section 20691.

ii) The amount of the contributions designated as employee contributions and paid by the City to the California Public Employee's Retirement System on behalf of Employee shall be the entire contribution required of the employee by the California Public Employees' Retirement Law (California Government Code Sections 20000, et. seq.). These contributions for "Classic members" are defined as 7% for non-public safety employees. Should the employee contribution change as a result of amendments to the aforementioned Government Code section, employee contributions will be limited to the percentages stated, assuming such amendments allow the City to adjust the designated employee contribution level.

iii) The contributions designated as employees' contributions made by the City to the California Public Employee's Retirement System shall be treated for all purposes, other than taxation, in the same way that member contributions are treated by the California Public Employees' Retirement System.

- d) **Longevity Pay:** Employee is entitled to an additional 2% of monthly pay following 8 years of full-time service with the City, and an additional 2% is authorized following 15 years of full-time service with the City.

- e) **Educational Incentive Pay:** Employee is entitled to 11% of monthly pay earned by completion off the job training programs.

- f) **Vacation, Administrative and Sick Leave:** Upon the Commencement Date, the Employee shall receive such benefit and other applicable benefits in the same manner and under the same limitations provided to and imposed upon the management employees unless otherwise amended in writing.

- g) **Vacation Leave Accrual Limits:**
 - i) Any vacation balance that existing in excess of three times the Employee's accrual rate shall be transferred into a separate account.
 - ii) Annually, Employee may cash out up to 20 hours and transfer up to 40 hours to the deferred compensation form accrued bank.
 - iii) Employee may also set aside up to 10 hours per year of service toward retiree share of payment for medical premium after retirement.
 - iv) Any outstanding balance in this account shall be paid to the employee upon retirement.

- h) **Cash in Lieu of Vacation Pay:**
 - i) Beginning July 1, 2004, the City will set aside the sum of \$25,000, annually, for payment in lieu of accrued vacation to all eligible City employees, subject to the following limitations:
 1. Employee must maintain a minimum of 100 hours of accrued vacation in order to be eligible to request a cash-in-lieu payment.
 2. For accrued balances in excess of 100 hours, employees may request a cash in lieu payment for up to 40 hours of vacation in any fiscal year.
 3. City will set aside a total of \$25,000 per fiscal year (\$15,000 in October, and \$10,000 in April) for payment of cash in lieu of vacation. City will accept written requests for cash in lieu of vacation between October 1 and October 15. If all requests total an amount greater than \$15,000, approved requests will be pro-rated accordingly. If total requests are less than \$15,000, the unused amount will be rolled toward to the period of April 1 through April 15 for disbursement according to the same procedure. In no event shall the total amount of in-lieu payments exceed \$25,000 in any fiscal year.
 4. Employee shall designate the payroll date on which they wish to receive the cash payment, at the time of the request.
 5. Employee may rescind their request, in writing, at any time prior to the

closing of the payroll period for which the payment was requested.

i) **Sick Leave Accrual Limits:**

i) Sick leave beyond the 240 hour maximum may continue to accrue during the period of July 1st through June 30th of each year. By June 25th of each year, employee shall choose one of the following options:

1. Set aside the accrued sick leave above 240 hours for conversion to PERS service credit upon retirement; hour set aside under this option shall be available for employee to use for sick leave, if necessary, subject to the provisions of this section in accord with Council Policy#75
2. "Sell back" accrued sick leave in excess of 240 hours to City for a cash payment, said payment to be calculated as 50% of the dollar value of the then current base salary multiplied by the number of hours of sick leave in excess of 240
3. Invest the equivalent value derived in (2) above in City deferred compensation program

j) **Floating Holidays:** Effective July 1, 2004, Floating Holidays must be used within the Fiscal Year during which they are accrued and may not be carried forward to the following fiscal year or paid in cash. The Floating Holiday benefit shall be extended to a total of 20 hours.

k) **Holidays:** For holidays that occur on weekend day, those holidays shall be moved to the next appropriate workday as described in City policy. Those holidays that occur on weekday, normal time off (Friday's), holiday shall be moved to the closest prior workday.

4) **SEPARATION**

a) **Termination by Employer:**

- i) Employer may at any time terminate Employee upon a three member vote of the whole City Council in a regular City Council meeting. Employee shall be provided 30 days advance notice of such termination, unless other parties agree otherwise.
- ii) Employee agrees to remain in the exclusive employ of the City for so long as employment is mutually acceptable to both Employee and City.

b) **Termination by Employee:**

- i) Employee may, at any time and for any reason, terminate this employment as Appointed City Clerk with City by providing 30 days advance written notice of termination to Employer.

c) **Arbitration:**

i) Any controversy or claim arising out of or pertaining to this Agreement, or the breach thereof, shall be settled by binding arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be enforced as provided by California Law. City shall pay the fees and costs of the American Arbitration Association, the arbitrator's fee shall be shared equally, and otherwise the parties shall bear their own costs.

d) **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 c/o Mayor
 City of Sebastopol
 7120 Bodega Avenue, Post Office Box 1776
 Sebastopol, CA 95473-1176

TO EMPLOYEE: Mary Gourley
 c/o City of Sebastopol
 7120 Bodega Avenue
 Sebastopol, CA 95472

e) **Entire Agreement**: This agreement is the final expression of the complete agreement of both parties with respect to the matters specified herein and supersedes all prior oral and written understandings. Except as prescribed herein, this Agreement cannot be modified except by written mutual agreement signed by the parties.

f) **Assignment**: This Agreement is not assignable by either Employer or Employee unless otherwise indicated above.

g) **Severability**: In the event that any provisions of this Agreement is finally held or determined to be illegal or void by a duly appointed arbitrator or by a court having jurisdiction over the parties, the remainder of this Agreement shall remain in full force and effect unless the parts found to be void are wholly inseparable from the remaining portion of the Agreement.

h) **Counterparts**: This Agreement shall be executed in two counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Government Code Section 53243.2: Pursuant to Government Code Section 53243.2, Employee agrees that if this Agreement is terminated, Employee shall reimburse City the full amount of any cash settlement Employee received from the City relating to that termination if the Employee is

convicted of a crime involving an abuse of her office or position.

IN WITNESS WHEREOF, the Employer has caused this Agreement to be signed and executed in its behalf by its Mayor and said employee.

Mayor Sarah Glade Gurney

Mary Gourley, MMC, City Clerk