

RESOLUTION NO. 6106

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

WHEREAS, the Sebastopol City Council has on July 19<sup>th</sup>, September 6<sup>th</sup>, 2016, and September 20<sup>th</sup>, 2016, unanimously approved the Assistant City Manager/City Clerk's employment agreement; and

WHEREAS, the Sebastopol City Council on September 20, 2016 and October 4, 2016, approved the job title and description for the position of Assistant City Manager/City Clerk; and

WHEREAS, the Sebastopol City Council and City Manager wish to enter into agreement for said employee as Assistant City Manager/City Clerk; and

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

WHEREAS, this Agreement will ensure the retention of Assistant City Manager/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 Assistant City Manager/City Clerk as attached.

IN COUNCIL DULY PASSED this 4<sup>th</sup> day of October, 2016.

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

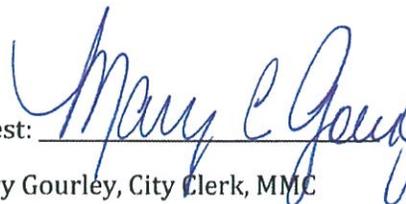
Approved:   
Mayor Sarah Glade Gurney

Ayes: Councilmembers Eder, Jacob, Slayter and Mayor Gurney

Noes: None

Absent: Vice Mayor Glass

Abstain: None

Attest:   
Mary Gourley, City Clerk, MMC

Approved as to Form:

  
Larry McLaughlin, City Attorney

**AGREEMENT FOR PROFESSIONAL SERVICES  
APPOINTED ASSISTANT CITY MANAGER/CITY CLERK**

This Agreement is made and entered into on this 4<sup>th</sup> day of October, 2016, with an effective date of September 20<sup>th</sup>, 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 Assistant City Manager/City Clerk; and

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

WHEREAS, Employee has and continues to perform functions and duties as City Clerk for the City of Sebastopol as well as the Assistant City Manager duties and responsibilities as has been 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 Assistant City Manager/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:**

The term of this Agreement shall be through January 14, 2021, and to be renewed annually thereafter unless changed by written mutual agreement. September 2006, Employer hired Employee to serve as the City Clerk for the City of Sebastopol and said Employer desires continued services of Employee. Additionally, Employee has been performing the duties of the Assistant City Manager for the last 3+ years. It is at the Employer's desires to continue the services of said employee as the Assistant City Manager/City Clerk.

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

- 1) The employee serves as Assistant City Manager/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 Assistant City Manager/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 (for City Clerk Duties) and to the City Manager (for Assistant City manager Duties) 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 Assistant City Manager/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 for the City Clerk duties and with the City Manager for the Assistant City Manager duties.
- 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 Assistant City Manager/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 (\$133,596). Such salary shall be effective on September 20, 2016. On July 1, 2017, Employee annual salary shall increase to (\$137,604). On July 1, 2018, Employee annual salary shall increase to (\$143,108) 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. Prior to June 30, 2019, the employer or employee may request a reopener for negotiations of salary. This salary is payable in promoted installments on the same payment schedule as other City employees.
- b) **Benefits:** 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. Medical After Retirement Benefit/Retiree Health Plan: Resolution Number 2357 of the City of Sebastopol (known as the Master Personnel Resolution) updates the terms and conditions of the City's "Employee Medical After Retirement" program benefit to bring it into compliance with the Anthem Blue Cross and Kaiser medical plans, has been reviewed and approved by the members of this bargaining unit. The following amendments are made with respect to existing provisions of the Memorandum of Understanding between the City and the Unrepresented, by Resolution Number 5710 per Attachment 2, and Resolution 5734, per Attachment 3.
  - iv. To fund future costs of retiree health premiums, those employees hired after July 1, 2006 may voluntarily participate in the existing benefit plan provided: The employee contributes 1% of base salary to a maximum of \$60/month to a retiree trust fund, to be matched by an equal City contribution. The City contribution will not be available to any employee hired after July 1, 2011. Employees may only elect to participate in this option within 60 days of their employment start date. This fund shall be managed separate and apart from the existing fund used for this purpose. An employee who elects to participate in this benefit, but decides at a later date that he/she no longer wishes to continue in this program, may request a reimbursement of 85% of the contributions that they have made to the fund as of that date. An employee that leaves employment with the City prior to retirement is eligible for a 90% reimbursement of their contributions.
  - v. Resolution Number 6087 or as amended of the City of Sebastopol updates the terms and conditions of the City's "Employee Medical After Retirement" program benefit to bring it into compliance with the Anthem Blue Cross and Kaiser medical plans, has been reviewed and approved by the members of Unrepresented.
- 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 exists 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. 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) **Cash in Lieu of Vacation Pay:**

- v. 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:
  - a. Employee must maintain a minimum of 100 hours of accrued vacation in order to be eligible to request a cash-in-lieu payment.
  - b. 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.
  - c. 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.
  - d. Employee shall designate the payroll date on which they wish to

receive the cash payment, at the time of the request.

- e. Employee may rescind their request, in writing, at any time prior to the closing of the payroll period for which the payment was requested.
- f. 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.

i) **Administrative Leave:**

In order to compensate overtime exempt management employees for the added hours they work, management employees shall be granted a total of 80 hours Administrative Leave with pay during each fiscal year (3.34 hours credited to the employee's accrued balance during each pay period). City Manager has authority to grant use of Administrative Leave in advance of accrual. Management employees may be paid for up to 40 hours of unused administrative leave time at the end of each fiscal year. In the event of resignation, termination, or retirement, an employee will be paid for up to 40 hours of their accrued administrative leave balance.

j) **Sick Leave Accrual Limits:**

- i. Sick leave beyond the 240 hour maximum may continue to accrue during the period of July 1<sup>st</sup> through June 30<sup>th</sup> of each year. By June 25<sup>th</sup> of each year, employee shall choose one of the following options:
  - a. 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
  - b. "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
  - c. Invest the equivalent value derived in (2) above in City deferred compensation program
  - d. 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.

- 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.

**D. SEPARATION**

**Termination by Employer:** 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. Employee agrees to remain in the exclusive employ of the City for so long as employment is mutually acceptable to both Employee and City. In the event Employee is terminated from employment while still willing and able to perform her duties under this Agreement, then City agrees to pay Employee six (6) month severance of monthly base pay plus all applicable incentives compensation. Employee shall be entitled to the compensation earned and accrued to include sick leave, vacation leave, administrative leave and such other termination benefits and payments as may be required by law. In addition, City shall extend to Employee the right to continue health insurance as may be required by and pursuant to the terms and conditions of the Consolidated Omnibus Budget Act of 1986 (COBRA)

**Termination by Employee:** Employee may, at any time and for any reason, terminate this employment as Appointed Assistant City Manager/City Clerk by providing 90 days advance written notice of termination to Employer. Employee's position as City Clerk 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 Clerk.

**Arbitration:** 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.

**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

**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.

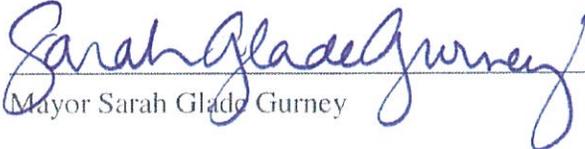
**Assignment:** This Agreement is not assignable by either Employer or Employee unless otherwise indicated above.

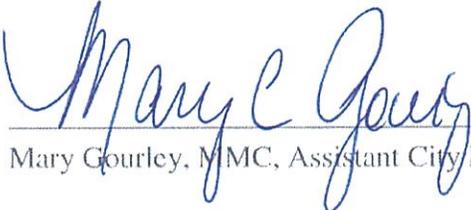
**Severability:** In the event that any provisions of this Agreement is finally held or determined to be illegal or void by a duly appointed arbitrator or by a court having jurisdiction over the parties, the remainder of this Agreement shall remain in full force and effect unless the parts found to be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

**Counterpart:** This Agreement shall be executed and shall be deemed an original unless amended in writing by mutual consent.

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, Assistant City Manager/City Clerk