

Resolution Number: 6563-2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEBASTOPOL  
APPROVING AND ADOPTING THE EMPLOYMENT AGREEMENT FOR PROFESSIONAL SERVICES  
APPOINTED CITY MANAGER (Employer Hiring Authority: City Council)

CITY MANAGER EMPLOYMENT AGREEMENT

WHEREAS, It is the desire of the City Council of the City of Sebastopol (hereinafter the "City Council") to employ an individual to serve in the position of City Manager, which position is prescribed by state law and the Sebastopol Municipal Code; and

WHEREAS, Based on Employee's level of education, experience, skills and expertise to serve as the City Manager of the City, the City Council desires to employ Employee to serve as the City Manager for the City; and

WHEREAS, Employee desires to perform and assume responsibility for the provision of City Manager services to the City; and

WHEREAS, The Parties wish by this Agreement to establish the terms and conditions of Employee's employment as shown as Attachment Exhibit A; and

WHEREAS, In doing so, the City Council desires to:

- (1) Encourage the highest standards of fidelity and public service on the part of Employee;
- (2) Secure and retain the services of Employee and to provide inducement for him to remain in such employment;
- (3) Make possible full work productivity and independence by assuring Employee's morale and peace of mind with respect to future security; and
- (4) Provide a just means for terminating Employee's employment at such time as the City may so desire.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Sebastopol, approves the Employment Agreement with Donald Shwarz for professional services as the City Manager of the City of Sebastopol.

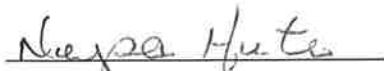
PASSED AND ADOPTED, by the CITY COUNCIL of THE CITY OF SEBASTOPOL, COUNTY OF SONOMA, of STATE OF CALIFORNIA on this 21<sup>st</sup> day of November, 2023.

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

**VOTE:**

Ayes: Councilmembers Maurer, Zollman, Vice Mayor Rich and Mayor Hinton  
Noes: None  
Absent: Councilmember McLewis  
Abstain: None

APPROVED:



Neysa Hinton, Mayor

ATTEST:



Mary Gourley, Assistant City Manager/City Clerk, MMC

APPROVED AS TO FORM:



Larry McLaughlin, City Attorney

ATTACHMENT  
EXHIBIT A  
EMPLOYMENT AGREEMENT

## EMPLOYMENT AGREEMENT

1. **Employment:** This City Manager Employment Agreement (“Agreement”) is entered into by and between the City of Sebastopol (“City”) and Don Schwartz (“Manager”). Under this Agreement, the City offers, and Manager accepts, employment as City Manager of the City.
2. **Duties:** Manager shall perform those duties and have those responsibilities that are commonly assigned to a city manager of a city in California, and as may be further set forth in the City’s Charter or Municipal Code. Manager shall perform such other legally permissible and proper duties and functions consistent with the office of City Manager, as the City Council shall from time to time assign.
3. **Devotion to City Business:** Manager’s position is full-time. Manager shall not engage in any business, educational, professional, charitable, or other activities that would conflict or materially interfere with performance of his City Manager duties, except as may be specifically authorized by the City Council.
4. **Hours of Work:** City recognizes that Manager will devote a great deal of time outside the normal office hours (7:00 a.m. – 5:30 p.m. Monday through Thursday) on business related to the operation of the City of Sebastopol, and to that end the Manager’s schedule of work shall vary in accordance with the work required to be performed.
5. **Term:** Manager’s employment will commence January 2, 2024 and shall continue until December 31, 2026, or the date of earlier termination in accordance with provisions in this Agreement. On January 1, 2027, and on each succeeding January 1 while this Agreement is in effect, this Agreement shall be automatically extended for one (1) additional year unless prior to that date the City Council notifies Manager of its intent not to extend the Agreement for one

additional year. The City's election not to extend this Agreement shall not entitle Manager to any compensation pursuant to Paragraph 7 of this Agreement.

**6. City Council Commitments:**

A. 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 Manager or the Manager's designee, and neither the City Council nor any member thereof shall give direction to any subordinate of the Manager, either publicly or privately. This paragraph shall not limit the City Council's ability to appoint and direct work of the City Clerk, City Attorney, and/or the City Treasurer pursuant to Section 2.12.100 of the Municipal Code.

B. No member of the City Council will order the appointment or removal of any person to any office or employment under the supervision and control of the Manager.

C. Neither the City Council nor any of its members shall interfere with the execution of the powers and duties of the Manager, as specified in the City Charter, the Municipal Code, this Agreement, or any other lawfully adopted and authorized document.

**7. Termination of Employment and this Agreement:**

A. If City terminates this Agreement (thereby terminating Manager's employment) without 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, and if Manager signs, delivers to the City Council, and does not revoke, the General Release Agreement ("Release Agreement") in the form attached hereto as Exhibit A, City shall pay Manager a lump sum benefit as follows:

1. If terminated without cause during his first eighteen (18) months of employment, the City shall pay the equivalent of nine (9) months of Manager's then Base Salary

2. If terminated without cause after Manager's first eighteen (18) months of employment, the City shall pay the equivalent of six (6) months of Manager's then Base Salary or the Base Salary for the balance of the term of the Agreement, whichever is less.

3. Manager's refusal to sign the Release Agreement shall not limit the City's ability to terminate this Agreement without cause and without compensation.

4. Any salary provided to the Manager pending an investigation shall be fully reimbursed to the City if the Manager is convicted of a crime involving an abuse of her office or position, as set forth in Government Code sections 53243 and 53243.4. Any funds for the legal criminal defense of the Manager provided by the City shall be fully reimbursed to the City if the Manager is convicted of a crime involving an abuse of his office or position, as set forth in Government Code sections 53243.1 and 53243.4. Regardless of the term of this Agreement, if this Agreement is terminated, any cash settlement related to the termination that the Manager receives from the City shall be fully reimbursed to the City if the Manager is convicted of a crime involving an abuse of his office or position, as set forth in Government Code sections 53243.2 and 53243.4.

B. If City terminates this Agreement (thereby terminating Manager'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, Manager shall not be entitled to any additional compensation or payment, including Severance, 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 Manager's reputation;
2. Proven failure of the Manager 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 Manager 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 City’s properly-established rules or procedures.

C. In no event may Manager be terminated within ninety (90) days before or after any municipal election for the selection or recall of one or more of the members of the City Council.

D. If, during the Term or any extended Term, Manager dies, Manager’s estate shall receive accrued salary and benefits, but shall not be entitled to any additional compensation or payment, including any payment made under Paragraph 7.

E. Manager may resign from his employment at any time, upon giving forty-five (45) days written notice to the City Council.

**8. Compensation and Annual Evaluation:**

A. Manager’s initial annual Base Salary shall be Two Hundred Forty-Five Thousand Dollars (\$245,000.00). Said amount shall be payable in monthly or bi-weekly installments at the same time and in the same manner as other employees of the City are paid. Increases in Manager’s Base Salary may be effective at any time in the sole discretion of the City Council.

B. City, by the City Council, and Manager may set mutually-agreed-upon objectives for each year under this Agreement. The City Council shall evaluate Manager’s performance at least once a year during the months of November or December (“Annual Evaluation”). Following the completion of the Annual Evaluation, the City Council may, in its sole discretion, consider an adjustment to the Manager’s Base Salary.

The City Council and Manager shall conduct an informal review of performance approximately six months following commencement of employment.

C. Manager's Base Salary increases approved by the City Council from time to time pursuant to this Agreement shall not require an amendment to this Agreement to be effective. Such may be set forth in an annual salary resolution or minute action approved by the City Council and ratified by resolution.

D. If the City reduces the Base Salary or any other benefit of the Manager in a percentage that is greater than the average reduction of all other executive managers, such action shall constitute a termination of this Agreement without cause under Paragraph 7 of this Agreement, at the Manager's discretion, and Manager shall be entitled to payment under Paragraph 7 if he so chooses.

**9. Deferred Compensation:**

As part of Manager's annual compensation, City agrees to provide \$350 monthly into Manager's ICMA Deferred Compensation Plan.

**10. Pension:**

A. City agrees to enroll Manager as a classic member of the California Public Employees Retirement System (PERS).

**11. Health and Medical Benefits Insurance:**

City shall provide Manager with the same health plans (medical, dental, and vision) which are provided to other City management employees, and shall pay that portion of the employee and dependent rate or premium as is determined by the City Council for all management employees.

**12. Life and Other Insurance:**

The City agrees to pay for a term life insurance policy as provided to other management employees of the City. Manager shall also be entitled to participate in any group life or disability



insurance programs approved by the City Council for management or all employees. Manager shall name beneficiaries of policies provided to him.

**13. Car Allowance:**

Manager's duties require him to be available and to respond to the demands of City business at all times and outside of regular business hours, including weekends. City shall pay Manager Three Hundred Fifty Dollars (\$350.00) monthly in compensation for the use and maintenance of his personal vehicle on City business.

**14. Equipment:**

A. City shall provide and pay for all expenses related to a cell phone with sufficient capacity to meet the Manager's business needs. It is expressly understood that the cell phone may be subject to incidental personal use by Manager so long as it does not interfere with the equipment's primary business use.

**15. Business and Professional Expenses:**

A. City recognizes that Manager may incur expenses of a non-personal, job-related nature that are reasonably necessary to Manager's service to City. City may approve the reimbursement of such so long as the expenses are incurred and submitted to the Mayor or Vice Mayor for approval. To be eligible for reimbursement, all expenses must be supported by documentation meeting City's normal requirements and must be submitted within time limits established by City.

B. City agrees that there is benefit to the Manager's professional development and participation in governmental groups and committees. City agrees to pay Manager's travel and subsistence expenses for official travel, meetings, and occasions reasonably necessary to continue Manager's professional development, and for Manager's reasonable participation in necessary official and other functions for the City; including, but not limited to, national, regional, state, and local conferences, and governmental groups and committees on which Manager serves as a member. Notwithstanding the above, the number of conferences or

meetings City will pay for each year, and attendance at conferences and meetings, shall be at the discretion of the City Council as set forth in the City's budget.

**16. Vacation, Sick, and Administrative Leave**

A. Manager shall accrue vacation leave at the rate of 10 paid hours per pay period. Manager shall also receive two personal leave days annually, in addition to all holidays provided to City management employees. Any vacation balance that exists in excess of three (3) times the Manager's accrual rate may be cashed out during the year but no later than December 1<sup>st</sup> of each year. The amount paid to Manager shall be based on Manager'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, Manager shall be paid for all accrued and unused vacation time.

B. Manager shall accrue sick leave at a rate of five paid hours per pay period. There is no cap on sick leave as stated in personnel rules.

C. Manager shall be granted 120 hours of Administrative Leave upon beginning his employment. Manager shall cash out any unused portion of this Administrative Leave which remains unused by December 31, 2024.

On January 1, 2025, Manager shall receive 60 hours of Administrative Leave and every six months thereafter. Manager shall cash out any portion of unused Administrative Leave no later than May 30<sup>th</sup> of each fiscal year. Unused hours of Administrative Leave shall not accumulate from year to year.

**17. Enforcement of this Agreement:** The prevailing party in any action brought to enforce this Agreement or to resolve any dispute or controversy arising under its terms and conditions, shall be entitled to payment of his/her/its reasonable attorneys' fees and costs.

**18. Communications Upon Manager's Separation:** In the event the City terminates the Manager for any reason or no reason, the City and the Manager agree that, except as required by law, no member of the City Council, the City Management staff, nor the Manager, shall 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 is mutually agreeable to the City and the Manager. The joint press release or statement shall not contain any text or information that is disparaging to either party. Either party may verbally repeat the substance of the joint press release or statement in response to any inquiry.

**19. Indemnification:** Consistent with the California Government Code, City shall defend, hold harmless, and indemnify Manager using legal counsel of City's choosing, against expense or legal liability for acts or omissions by Manager occurring within the course and scope of Manager's employment under this Agreement. Legal representation, provided by City for City Manager, shall extend until a final determination of the issues including any and all losses, damages, judgments, interest, settlements, fines, court costs, and the reasonable costs and expenses of legal proceedings, including appeals, and including attorneys' fees, and expert witness fees and all other trial and appellate costs, and other liabilities incurred, imposed upon, or suffered by Manager in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened. In the event there is a conflict of interest between City and Manager such that independent counsel is required for Manager, Manager may engage his/her own legal counsel, in which event City shall indemnify Manager, including direct payment of all such reasonable costs related thereto.

**20. Notices:** Any notices to be given hereunder by either party to the other in writing may be effected either by personal delivery, mail, or email. Mailed notices shall be addressed to the parties as set forth below, but each party may change his/her/its address by written notice given in accordance with this Section. Notices delivered personally or by email will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated and received as of three (3) calendar days following the date of mailing.

CITY: City of Sebastopol  
Attention: Mayor

7120 Bodega Avenue  
Sebastopol, CA 95472

MANAGER: Don Schwartz  
2919 Field Stone Court  
Santa Rosa, CA 95405

21. **Conflict With City Charter or Municipal Code:** The City personnel ordinances, resolutions, rules and policies shall apply to Manager in the same manner as applied to other management employees, provided, however, in the event of a conflict between the provisions of this Agreement and the City Charter, or this Agreement and the Municipal Code, the City Charter or the Municipal Code shall prevail over this Agreement.

22. **Entire Agreement:** This Agreement represents the entire agreement between the parties and supersedes any and all other agreements, either oral or in writing, between the parties with respect to the employment of Manager by City, and contains all of the covenants and agreements between the parties with respect to that employment. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by either party, or by anyone acting on behalf of either party, which are not embodied herein, and that no other employment agreement, statement, or promise not contained in this Agreement shall be valid or binding upon either party.

23. **Modifications:** Any modifications to this Agreement shall be effective only if in writing and signed by both of the parties hereto.


24. **Effect of Waiver:** The failure of either party to insist upon strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

25. **Partial Invalidity:** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

26. **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

This Agreement is entered into this 21<sup>st</sup> day of November, 2023.

CITY OF SEBASTOPOL

By:   
Mayor

DocuSigned by:  
Donald Schwartz  
748100FF005C4A5...  
Manager

Attest:  
  
Mary C. Gouley, City Clerk

Approved as to Form:

  
Larry McLaughlin, Attorney

## GENERAL RELEASE AGREEMENT

This General Release Agreement ("Release Agreement") is entered into by and between Don Schwartz ("Manager") and CITY OF SEBASTOPOL ("City"), for the purpose of resolving all matters related to Manager's employment with the City.

### RECITALS

- A. Manager's employment with City concluded on \_\_\_\_\_.
- B. Certain disputes have arisen between City and Manager.
- C. City and Manager each deny any liability whatsoever to the other.
- D. City and Manager wish to fully and finally resolve any and all disputes they may have with each other.
- E. Manager is hereby informed that he/she has twenty-one (21) days from receipt of this Agreement to consider it. City hereby advises Manager to consult with his legal counsel before signing this Agreement.
- F. Manager acknowledges that for a period of seven (7) days following the signing of this Agreement ("Revocation Period"), he may revoke the Agreement. This Agreement shall not become effective or enforceable until the day the Revocation Period has expired.
- G. Manager acknowledges that the Salary Payment referenced in paragraph 1 of this Agreement represents all compensation, including salary, accrued benefit balances and reimbursed expenses, due and payable to him/her through the date of employment termination. Manager also acknowledges that City has made this Salary Payment without regard to whether he signs this Agreement. The Salary Payment does not constitute consideration for this Agreement.

### AGREEMENT

1. Receipt of Salary Payment. Manager hereby acknowledges receipt of a check or checks for all compensation owing to him, including salary, accrued benefit balances and reimbursed expenses ("Salary Payment") from City.
2. Severance. Within five (5) business days following Manager's provision of this signed Agreement and the expiration of the Revocation Period, City shall pay Manager the gross amount provided for in Section 7 of the attached Employment Agreement, less applicable deductions. Manager acknowledges that the Severance is in excess of all amounts due and owing him as a result of his employment by City.

3. General Release. In consideration of the Severance to be paid and provided to Manager, and other good and valuable consideration, Manager hereby releases and discharges City and its past and present City Council Members, employees, representatives and agents, from all rights, claims, causes of action, and damages, both known and unknown, in law or in equity, concerning and/or arising out of his employment by City which he now has, or ever had, including but not limited to any rights, claims, causes of action or damages arising under Title VII of the Civil Rights Act of 1964, the Vocational Rehabilitation Act of 1973, the Employee Retirement Income Security Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Older Workers Benefits Protection Act, the Family and Medical Leave Act of 1993, the Domestic Partners Act of 2003, the California Labor Code, the Private Attorneys General Act of 2004, the California Moore-Brown-Roberti Family Rights Act, the California Unruh Civil Rights Act, the California Fair Employment and Housing Act, any other federal, state, or local employment practice legislation, or any federal or state common law, including wrongful discharge, breach of express or implied contract, or breach of public policy.

Manager hereby waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of California. Manager understands and acknowledges the significance and consequences of this specific waiver of Section 1542. Section 1542 of the Civil Code of California states as follows:

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of City and its past and present City Council Members, employees, representatives and agents, Manager expressly acknowledges that this General Release is intended to include in its effect, without limitation, all claims which he does not know or suspect to exist in his favor.

Manager further acknowledges that he has read this General Release and that he understands that this is a general release, and that he intends to be legally bound by the same.

4. Fees and Costs. Manager and City agree that in the event of litigation relating to this Release Agreement, the prevailing party shall be entitled to recover his/its reasonable attorneys' fees and costs.

Dated \_\_\_\_\_, 20\_\_

CITY OF \_\_\_\_\_

By: \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
MANAGER

**APPROVED AS TO FORM:**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_

City Clerk

Date: \_\_\_\_\_