

CITY OF SEBASTOPOL CITY COUNCIL
AGENDA ITEM REPORT FOR MEETING OF: November 5, 2024
As Amended: Nov 5, 2024 11:00 am Edits in Red

=====

To: Honorable Mayor and City Councilmembers
From: Kerrie McNalley, Labor Counsel
Deborah Muchmore, Human Resources Advisor, MTC
Subject: Amend City Clerk – Assistant City Manager Agreement

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RECOMMENDATION: Approve A Resolution of the City Council of the City Of Sebastopol Approving and Adopting an Amendment to Employment Agreement for Professional Services - Assistant City Manager/City Clerk and authorizing an increase in appropriation of \$46,700 for FY 25

EXECUTIVE SUMMARY: The City of Sebastopol (“City”) and Mary Gourley (“Employee”) have had an Employee Agreement (“Agreement”) since October 4, 2016. The Agreement is at the end of its term and the Parties have met and desire to continue and restate the employment terms of the agreement. Approval of this Resolution extends the term of the agreement until June 30, 2027. The Agreement contains provisions and procedures for an earlier termination. Employee must request a reopener to negotiate and establish salary and/or other compensation and benefits prior to May 31, 2027.

BACKGROUND: The City and Employee entered into an Employment Agreement for the joint positions of City Clerk and Assistant City Manager on October 4, 2016. The Agreement was amended by Amendment 1 on July 16, 2019 and again by Amendment 2 on July 5, 2022 and Amendment 3 on November 7, 2023. Collectively the agreement and prior amendments are attached as Resolution Attachment 1, Exhibit B.

ANALYSIS: Mary Gourley has served the City and community well as both an appointed City Clerk, reporting directly to the City Council and as Assistant City Manager, reporting to the City Manager for the last eight years. The joint positions role of City Clerk and Assistant City Manager carries the Clerk’s duties of ensuring that the City is in compliance with legislative actions, elections, records management, subpoenas, claims administration, campaign reporting, conflicts of interests to name a few of the Core Functions; while the duties of the Assistant City Manager (ACM) support the City Manager in running the city and is the critical link between the City Manager and department heads. The ACM role focuses primarily on organizational issues such as human resources, personnel, contributes to the budget process, and manages risk management through our Joint Powers Agency (CIRA) to name some of the Core functions. **This joint position, which is the functional equivalent of two (2) full time positions, is the second highest ranking position in the City.**

Community members have shared with staff and Council members that Mary is reachable, inclusive, responsive, and treats them with respect, transparency, and acceptance. Her professionalism and integrity has made her a welcome ambassador for the City. Amendment 4 of the Agreement between City and Employee provides for an extension of the term and an increase in salary, among other things, as described below:

The following paragraph must be read out loud before taking action on any motion.
~~Approval of this item and Adoption of Amendment 4 allows execution of Amendment 4 to the Agreement between the City and Employee, Mary Gourley as City Clerk—Assistant City Manager and amends the terms of the agreement to:~~

- ~~Extend the term of the current agreement until June 30, 2027, and require Employee to request a reopener to negotiate and establish salary and/or other compensation and benefits prior to May 31, 2027~~
 - ~~A base salary of Two Hundred Twelve Thousand, Five Hundred and Ninety Two Dollars (\$212,592.00)~~
 - ~~Employee's base salary shall be adjusted during the term of this Third Amendment to ensure that Employee's base salary is and remains five percent (5%) higher than the base salary provided by the City to the highest paid Department Head employed by the City~~
 - ~~Require both Parties to agree in writing before Employee's base salary may be reduced~~
- Approval of this item and Adoption of Amendment 4 allows execution of Amendment 4 to the Agreement between the City and Employee, Mary Gourley as City Clerk – Assistant City Manager and amends the terms of the agreement to:
 - Extend the term of the current agreement until June 30, 2027, and require Employee to request a reopener to negotiate and establish salary and/or other compensation and benefits prior to May 31, 2027
 - A base salary of Two Hundred Twelve Thousand, Five Hundred and Ninety-Two Dollars (\$212,592.00). This increase is necessary to ensure retention of Employee given the results of a market survey that demonstrate the current salary of Employee is 16.9% below market rate.
 - Employee's base salary shall be adjusted during the term of this Third Amendment to ensure that Employee's base salary is and remains five percent (5%) higher than the base salary provided by the City to the highest paid Department Head employed by the City
 - Require both Parties to agree in writing before Employee's base salary may be reduced

Additionally, Amendment 4 provides that the City Council and the City Manager, shall provide Employee an annual evaluation no later than June 1.

STAFF ANALYSIS: Staff recommend Approval and Adoption of Amendment 4 of the Agreement between Mary Gourley and the City of Sebastopol and the authority to increase appropriations by \$46,700 for FY 25

PUBLIC COMMENT: As of the writing of this staff report, the City has not received any public comment on this item. However, if staff receives public comment from interested parties following the publication and distribution of this staff report, such comments will be provided to the City Council as supplemental materials before or at the meeting.

COMMUNITY OUTREACH: This item has been noticed in accordance with the Ralph M. Brown Act and was available for public viewing and review at least 72 hours prior to the scheduled meeting date.

FISCAL IMPACT: The fiscal impact of amending the agreement between the City of Sebastopol and Mary Gourley will be a total of \$46,700. This is an increase for base salary and City provided benefits. This amount is not included in the approved FY24/25 budget. Staff is asking for \$46,700 in additional appropriations to cover the cost of the agreement adjustment through the end of this fiscal year.

The proposed increase to Employee's base salary remedies lingering pay discrepancies that exist in the City's salary structure. As a result of employee turnover, the City has been required to increase the salaries of Department Heads to recruit quality personnel. Employee's current base salary (\$180,974) is less than several subordinate City employees in the City, the highest of which is \$202,464. To ensure the City offered competitive salaries in the recruitment process, the City conducted a market rate analysis that revealed several employees are compensated below market rate. The study specifically showed that Employee's current base salary is 16.9% below the market rate. The proposed increase in base salary brings Employee's salary to a competitive market rate to help ensure the

retention of a valuable City employee. Finally, it should be noted that during this last contract period, Employee voluntarily reduced her salary and compensation by \$25,400.

RESTATED RECOMMENDATION: That the City Council Approve a resolution of the City Council of the City of Sebastopol amending the agreement between the City of Sebastopol and Mary Gourley, City Clerk – Assistant City Manager and authorizing an increase in appropriation of \$46,700 for FY 25

OPTIONS: None as this contract has been negotiated and agreed upon by both Parties

ATTACHMENTS:
Resolution

APPROVALS:

Department Head Approval: Approval Date: 10/24/24

CEQA Determination (Planning): Approval Date: _____

The proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA)

Administrative Services/Financial Approval: Approval Date: 10/24/24

Costs authorized in City Approved Budget: Yes No N/A

Account Code (f applicable) _____

City Attorney Approval: Approval Date: _____

City Manager Approval: Approval Date: 10-28-2024

Resolution Number: XXXX-2024

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEBASTOPOL
APPROVING AND ADOPTING AN AMENDMENT TO EMPLOYMENT AGREEMENT FOR
PROFESSIONAL SERVICES - ASSISTANT CITY MANAGER/CITY CLERK AND AUTHORIZING
AN INCREASE IN APPROPRIATIONS OF \$46,700 FOR FY 2025
(Employer Hiring Authority: City Council)

WHEREAS, Mary Gourley (“Employee”) currently serves as the City of Sebastopol Assistant City Manager/City Clerk;

WHEREAS, it is the desire of the City Council of the City of Sebastopol (“City”) to continue and extend the employment of Employee as the Assistant City Manager/City Clerk;

WHEREAS, the City and Employee have negotiated and agree to certain revisions to the Employment Agreement, dated October 4, 2016 (“Agreement”), as amended by Amendment 1 on July 16, 2019, Amendment 2 on July 5, 2022, and Amendment 3 on November 7, 2023 collectively attached hereto as Exhibit “B;” and

WHEREAS, revisions to the Agreement as shown in Exhibit A will require additional appropriations of \$46,700 for FY 2025; and

WHEREAS, any changes to the Agreement shall be approved by the City Council.

NOW THEREFORE, BE IT RESOLVED, for and in consideration of the covenants and mutual promises therein, the Parties agree to Amendment 4 of the Agreement as listed in Exhibit A and the City Council of the City of Sebastopol authorizes and increase in appropriations of \$46,700 for FY 2025.

PASSED AND ADOPTED, by the CITY COUNCIL of THE CITY OF SEBASTOPOL, COUNTY OF SONOMA, of the STATE OF CALIFORNIA on this 5th day of November, 2024.

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:
- NOES:
- ABSTAIN:
- ABSENT:

APPROVED: _____
Mayor Diana Gardner Rich

ATTEST: _____
Mary Gourley, Assistant City Manager/City Clerk, MMC

APPROVED AS TO FORM: _____
Alex Mog, City Attorney

EXHIBIT A

AMENDMENT NUMBER 4 TO AGREEMENT FOR PROFESSIONAL SERVICES

WHEREAS, Mary Gourley (“Employee”) and the City of Sebastopol (“City”) entered into an Agreement for Professional Services, dated October 4, 2016 (“Agreement”) for the purpose of employing Employee as the Assistant City Manager / City Clerk;

WHEREAS, the Agreement was amended on July 16, 2019, July 5, 2022, and November 7, 2023; and

WHEREAS, Employee and the City (collectively “the Parties”) desire to restate the employment terms of the Agreement as amended on July 16, 2019, July 5, 2022, and November 7, 2023; and

WHEREAS, except as expressly stated herein, the terms of the Agreement, as amended on July 16, 2019, July 5, 2022, and November 7, 2023 shall remain in full force and effect for the duration of this Fourth Amendment to Agreement (“Fourth Amendment”);

NOW THEREFORE, THE PARTIES AGREE:

1. **Term:** The term of the Agreement shall be extended by this Fourth Amendment until June 30, 2027, or the date of earlier termination in accordance with the provisions of the Agreement. Prior to May 31, 2027, Employee shall request a reopener to negotiate and establish salary and/or other compensation benefits and an extension of the term of the Agreement.
2. **Compensation:** Effective July 1, 2024, Employee’s annual base salary shall be Two Hundred Twelve Thousand, Five Hundred and Ninety-Two Dollars (\$212,592.00). Employee’s base salary shall be adjusted during the term of this Fourth Amendment to ensure that Employee’s base salary is and remains five percent (5%) higher than the base salary provided by the City to the highest paid Department Head employed by the City. Notwithstanding, Employee’s base salary shall not be reduced unless both parties agree to a reduction in writing.
3. **Annual Evaluation:** During the term of this Fourth Amendment, the City, by the City Council and the City Manager, shall provide Employee an annual evaluation no later than June 1.

Except as provided herein, all remaining terms of the Agreement, as amended on July 16, 2019; July 5, 2022, and November 7, 2023 shall remain in full force and effect.

This Amendment Number 4 is agreed to this 5th day of November, 2024

CITY OF SEBASTOPOL

By: _____
Mayor

Assistant City Manager/City Clerk

EXHIBIT B

[ORIGINAL AGREEMENT AND 3 PRIOR AMENDMENTS]

Resolution Number: 6560-2023

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

WHEREAS, Employee serves as the City of Sebastopol City Clerk (Employer Hiring Authority: City Council) and Assistant City Manger (Employer Hiring Authority: City Manager); and

WHEREAS, any changes to said contract shall be approved by the City Council; and

WHEREAS, City Council, City Manager and Employee have met and conferred and City Council has unanimously approved the amendments to said employment; and

WHEREAS, the City and Employee agreed to revisions to current employment agreement.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Sebastopol, approval of the Amendment Number 3, attached hereto as Exhibit A, to the Agreement for Professional Services for City of Sebastopol City Clerk (Employer Hiring Authority: City Council) and Assistant City Manager (Employer Hiring Authority: City Manager).

PASSED AND ADOPTED, by the CITY COUNCIL of THE CITY OF SEBASTOPOL, COUNTY OF SONOMA, of STATE OF CALIFORNIA on this 7TH 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:

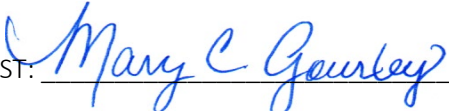
Ayes: Councilmembers McLewis, Maurer, Zollman, Vice Mayor Rich and Mayor Hinton

Noes: None

Absent: None

Abstain: None

APPROVED: 
Mayor Neysa Hinton

ATTEST: 
Mary Gourley, Assistant City Manager/City Clerk, MMC

APPROVED AS TO FORM: 
Larry McLaughlin, City Attorney

AGREEMENT

This Amended and Restated Employment Agreement ("Agreement - Exhibit A") is made and entered into on this 7th day November, 2023, 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, Employee was Appointed by the City Council in September 2006 for the City of Sebastopol as City Clerk; and

WHEREAS, Employee was promoted to the Position of Assistant City Manager/City Clerk effective October 2016; and has been continuously employed;

WHEREAS, Employee has and continues to perform functions and duties as the City of Sebastopol City Clerk for the City of Sebastopol as assigned by the City Council as well performing the Assistant City Manager duties and responsibilities as has been assigned by the City Manager; and

WHEREAS, City and Employee desire to restate the employment terms in this Employment Agreement and Amendment Number 3 and confirm specific terms and conditions relating to compensation and benefits and related matters; and

WHEREAS, the City and Employee now desire to make certain minor revisions to their current employment agreement (Exhibit A); and

WHEREAS, City and Employee have met and conferred on October 23, 2023 and October 30, 2023, and City Council has unanimously approved the amendments to said employment and Employer and Employee hereby mutually covenant and agree to the following provisions listed herein; and

WHEREAS, All remaining terms and conditions of said Agreement of October 4, 2016, and Amendment Number 1 of July 2019, and Amendment Number 2 of July 5, 2022, are incorporated herein and remain in full force and effect unless otherwise amended below; and

WHEREAS, Employee shall continue to receive such applicable benefits, bonuses, incentives, holidays, etc., in the same manner and under the same limitations provided to and imposed upon the Management employees and Master Personnel Rules and Regulations unless otherwise amended in writing; and

WHEREAS, City shall not at any time during the term of this Agreement reduce the salary, compensation, or other benefits of Employee unless otherwise amended in writing; and

WHEREAS, This amendment 3 and restated agreement and Amendment 1 and Amendment 2 shall continue to be governed by and construed in accordance with the laws of the State of California, which are in full force and effect as of the date of execution of said agreement. Except as amended by this Amendment No. 3, all other provisions of the Employment Agreement, as amended, shall remain unchanged and in full force and effect.

NOW, THEREFORE BE IT RESOVLED, for and in consideration of the covenants and mutual promises herein set forth, the parties agree to amendments as listed in Exhibit A.

APPROVED: Neysa Hinton
Mayor Neysa Hinton

APPROVED AS TO FORM: [Signature]
Larry McLaughlin, City Attorney

AMENDMENT NUMBER 3
ADDENDUM
EXHIBIT A

COMPENSATION

Salary: Effective the first payroll in December 2023, City employee voluntarily requests, and Council approves employee's request for a voluntary reduction of salary in the amount of 3% through the last payroll of June 2024.

Retention: City employee voluntarily requests, and Council approves employee's request for removal of a one-time, non-pensionable, lump sum retention payment of two thousand five hundred dollars \$2,500 gross paid City-wide.

Deferred Compensation: City employee voluntarily requests, and Council approves employee's request for temporary suspension of the \$350 City contribution to the ICMA Deferred Compensation Plan: Effective December 2023, Said benefit will be suspended until June 30 2024.

Electronic Allowance: City employee voluntarily requests, and Council approves employee' request for removal of Electronic Allowance: Stipend of \$150.00 per month.

Performance Evaluation Dates: Next performance evaluation will be due December 31, 2024 and per the current contract; prior to June 30, 2024, the employer or employee shall request a reopener for negotiations of salary and/or other compensation benefits.

RESOLUTION NO. 6450-2022

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

WHEREAS, Employee serves as the City of Sebastopol Assistant City Manager and City Clerk; and

WHEREAS, any changes to said contract shall be approved by the City Council; and

WHEREAS, City Council, City Manager and Employee have met and conferred on June 28, 2022 and City Council has unanimously approved the amendments to said employment; and

WHEREAS, the City and Employee agreed to revisions to current employment agreement.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Sebastopol, approval of the Amendment Number 2 to the Agreement for Professional Services for the Assistant City Manager and City Clerk.

PASSED AND ADOPTED, by the CITY COUNCIL of THE CITY OF SEBASTOPOL, COUNTY OF SONOMA, of STATE OF CALIFORNIA on this 5th day of July, 2022.

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 Glass, Gurney, Rich, Vice Mayor Hinton and Mayor Slayter
Noes: None
Absent: None
Abstain: None

APPROVED: 
Mayor Patrick Slayter

ATTEST: 
Mary Gourley, Assistant City Manager/City Clerk, MMC

APPROVED AS TO FORM: 
Larry McLaughlin, City Attorney

AMENDMENT TO AGREEMENT FOR PROFESSIONAL SERVICES
APPOINTED CITY CLERK (Employer Hiring Authority: City Council)
ASSISTANT CITY MANAGER (Employer Hiring Authority: City Manager)
(Amendment Number 2)

This Amended and Restated Employment Agreement ("Agreement - Exhibit B") is made and entered into on this 5th day of July, with an effective date of July 1, 2022, 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, Employee was Appointed by the City Council in September 2006 for the City of Sebastopol as City Clerk; and

WHEREAS, Employee was promoted to the Position of Assistant City Manager/City Clerk effective October 2016; and has been continuously employed;

WHEREAS, Employee has and continues to perform functions and duties as the City of Sebastopol City Clerk for the City of Sebastopol as assigned by the City Council as well performing the Assistant City Manager duties and responsibilities as has been assigned by the City Manager; and

WHEREAS, City and Employee desire to restate the employment terms in this Employment Agreement and Amendment Number 2 and confirm specific terms and conditions relating to compensation and benefits and related matters; and

WHEREAS, the City and Employee now desire to make certain minor revisions to their current employment agreement (Exhibit A); and

WHEREAS, City and Employee have met and conferred on June 28, 2022 and City Council and City Manager have unanimously approved the amendments to said employment and Employer and Employee hereby mutually covenant and agree to the following provisions listed herein; and

WHEREAS, All remaining terms and conditions of said Agreement of October 4, 2016, and Amendment Number 1 of July 2019, are incorporated herein and remain in full force and effect unless otherwise amended below; and

WHEREAS, Employee shall continue to receive such applicable benefits, bonuses, incentives, holidays, etc., in the same manner and under the same limitations provided to and imposed upon the Management employees and Master Personnel Rules and Regulations unless otherwise amended in writing; and

WHEREAS, City shall not at any time during the term of this Agreement reduce the salary, compensation, or other benefits of Employee; and

WHEREAS, This amendment 2 and restated agreement and Amendment 1 shall continue to be governed by and construed in accordance with the laws of the State of California, which are in full force and effect as of the date of execution of said agreement. Except as amended by this Amendment No. 2, all other provisions of the Employment Agreement, as amended, shall remain unchanged and in full force and effect.

NOW, THEREFORE BE IT RESOVLED, for and in consideration of the covenants and mutual promises herein set forth, the parties agree to amendments as listed in Exhibit A.

The above and foregoing amendment was duly passed, approved and adopted at a publicly noticed meeting by the City Council on this 5th day of July 2022 by the following vote:

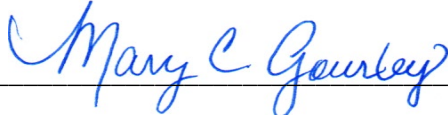
VOTE:

Ayes: Councilmembers Glass, Gurney, Rich, Vice Mayor Hinton and Mayor Slayter
Noes: None
Absent: None
Abstain: None

APPROVED:


Mayor Patrick Slayter

ATTEST:



Mary Gourley, Assistant City Manager/City Clerk, MMC

APPROVED AS TO FORM:



Larry McLaughlin, City Attorney

AMENDMENT NUMBER 2

EXHIBIT A

COMPENSATION:

Salary: Employee shall be paid an annual base salary 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; a copy of which is available on the City of Sebastopol city Web site at www.cityofsebastopol.org.

COLA:

Effective July 1, 2022, Said Employee shall receive a Four Percent (4%) pay raise payable on a pro-rata basis in the same manner as all full time City employees, and subject to all applicable payroll taxes and withholdings.

Effective July 1, 2023, Said Employee shall receive a Four Percent (4%) pay raise payable on a pro-rata basis in the same manner as all full time City employees, and subject to all applicable payroll taxes and withholdings.

Prior to June 30, 2024, the employer or employee shall request a reopener for negotiations of salary and/or other compensation benefits.

Employee shall receive a one-time, non-pensionable, lump sum retention payment of five thousand (\$5,000) gross one-time distribution upon City Council ratification approval of Amendment Number 2.

On June 30th, 2024, said employee shall receive a one-time, non-pensionable, lump sum retention payment of two thousand five hundred dollars \$2,500 gross.

Longevity Pay: Employee is authorized an additional 2% of yearly salary effective the beginning of the anniversary date of 30 years of service with the City.

Deferred Compensation: Effective July 1, 2022, Employee shall receive a set stipend of \$350 per month to be paid by the employer into employee's IMCA Deferred Compensation Plan.

Electronic Allowance: The City shall provide Employee with an electronic allowance for mobile telephone, Cellular Service / Wi Fi for Laptop as a set stipend of \$150.00 per month) to offset the costs of personal devices for official business. Said allowance shall be payable upon the first pay cycle of the month.

Telework/Telecommute: It is recognized that the employee has an approved telework/telecommuting agreement and Employee shall be allowed to continue Telework/Telecommuting as approved by the City Council (City Clerk) and as Approved by the City Manager (Assistant City Manager)

Hours of Work. It is recognized that Employee devotes a great deal of time outside the normal office hours (7:00 am – 5:30 pm Monday through Thursday) on business related to the operations of the City of Sebastopol, and to that end, Employee shall be allowed to establish an appropriate work schedule, subject to the periodic review and approval of the City Council

Declared Emergency Situations: When working as disaster service worker, employee shall be eligible for hazard pay for hours worked beyond forty (40) hours in a work week due to a City Council declared emergency. Such pay is non-pensionable compensation. Hazard pay in emergency situations shall be equivalent to 1.5 of the employee's straight time pay at the time of accrual, and shall not be accrued as compensatory time. Under no circumstances shall an exempt employee be paid hazard except under the circumstances set forth in this provision, or as may be set forth by the City Council.

RESOLUTION NO. 6255-2019

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

WHEREAS, Employee serves as the City of Sebastopol Assistant City Manager and City Clerk; and

WHEREAS, any changes to said contract shall be approved by the City Council and City Manager; and

WHEREAS, City Council and Employee have met and conferred on June 4th, June 18th and June 25th, 2019 and City Council has unanimously approved the amendments to said employment; and

WHEREAS, the City and Employee agreed to revisions to current employment agreement.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Sebastopol, approval of the Amendments to the Agreement for Professional Services for the Assistant City Manager and City Clerk.

IN CITY COUNCIL, DULY PASSED, APPROVED AND ADOPTED this 16th day of July 2019 by the following vote:

VOTE:

AYES: Councilmembers Carnacchi, Glass, Gurney, Vice Mayor Slayter and Mayor Hinton
NOES: None
ABSENT: None
ABSTAIN: None

APPROVED: 
Neysa Hinton, Mayor

ATTEST: 
Mary Gourley, MMC, Assistant City Manager / City Clerk

APPROVED AS TO FORM: 
City Attorney Larry McLaughlin

AMENDMENT TO AGREEMENT FOR PROFESSIONAL SERVICES
APPOINTED CITY CLERK (Employer Hiring Authority: City Council)
ASSISTANT CITY MANAGER (Employer Hiring Authority: City Manager)
(Amendment Number 1)

This Amended and Restated Employment Agreement ("Agreement – Exhibit B") is made and entered into on this 16th day of July, with an effective date of July 1, 2019, 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, Employee was Appointed by the City Council in September 2006 for the City of Sebastopol as City Clerk; and

WHEREAS, Employee was promoted to the Position of Assistant City Manager/City Clerk effective October 2016; and

WHEREAS, Employee has and continues to perform functions and duties as the City of Sebastopol City Clerk for the City of Sebastopol as assigned by the City Council as well performing the Assistant City Manager duties and responsibilities as has been assigned by the City Manager; and

WHEREAS, the City and Employee now desire to make certain minor revisions to their current employment agreement (Exhibit A); and

WHEREAS, City Council and Employee have met and conferred on June 4th, June 18th and June 25th, 2019 and City Council has unanimously approved the amendments to said employment and Employer and Employee hereby mutually covenant and agree to the following provisions listed herein; and

WHEREAS, All remaining terms and conditions of said Agreement of October 4, 2016, are incorporated herein and remain in full force and effect; and

WHEREAS, Employee shall continue to receive such applicable benefits, bonuses, incentives, holidays, etc., in the same manner and under the same limitations provided to and imposed upon the management employees unless otherwise amended in writing; and

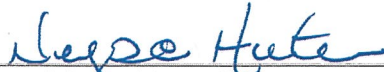
WHEREAS, This amendment and restated agreement shall continue to be governed by and construed in accordance with the laws of the State of California, which are in full force and effect as of the date of execution of said agreement.


NOW, THEREFORE BE IT RESOVLED, for and in consideration of the covenants and mutual promises herein set forth, the parties agree to amendments as listed in Exhibit A.


The above and foregoing amendment was duly passed, approved and adopted at a publicly noticed meeting by the City Council on this 16th day of July, 2019 by the following vote:

VOTE:

Ayes: Councilmembers Carnacchi, Glass, Gurney, Vice Mayor Slayter and Mayor Hinton
Noes: None
Abstain: None
Absent: None

APPROVED: 
Mayor Neysa Hinton

EMPLOYEE: 
Mary Gourley, Assistant City Manager/City Clerk

APPROVED AS TO FORM: 
Larry McLaughlin, City Attorney

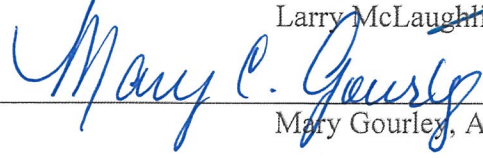
ATTEST: 
Mary Gourley, Assistant City Manager/City Clerk, MMC

EXHIBIT A

COMPENSATION:

Salary: Employee shall be paid an annual base salary 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; a copy of which is available on the City of Sebastopol city Web site at www.cityofsebastopol.org. Prior to June 30, 2022, the employer and/or employee shall request a reopener for negotiations of salary and/or other compensation benefits.

Administrative: In order to compensate overtime exempt management employee for the added hours worked, employee shall be granted a total of 120 hours Administrative Leave with pay during each fiscal year. 60 Hours to be credited on July 1st of each year and 60 hours to be credited to January 1st of each year. Unused hours to be cashed out no later than May 30th of each fiscal year to being balance to zero on June 30th of each fiscal year. In the event of resignation, termination, or retirement, an employee will be paid for unused hours of their accrued administrative leave balance.

Vacation Leave Accrual Limits: Vacation to be accrued at 10 hours per payroll. Any vacation balance that exists in excess of three times the Employee's accrual rate may be cashed out during the year but no later than December 1st of each year.

Sick Leave Accrual Limits: Sick leave to be accrued at 5 hours per payroll. No cap on sick leave as stated in personnel rules.

Personal Days: Employee is granted two personal days per fiscal year, hours to be consistent with work shift.

Benefits: Effective July 1, 2019, Employee shall receive a set stipend of \$300 per month to be paid by the employer into employee's IMCA Deferred Compensation Plan.

Longevity Pay: Employee is authorized an additional 1% of yearly salary effective July 1, 2019 and an additional 3% yearly salary beginning of the anniversary date of 25 years of service with the City.

Vehicle allowance. Employee shall receive a set stipend of Three Hundred Fifty Dollar (\$350.00) per month car allowance to reimburse employee for use of a personal vehicle in pursuit of recognized official duties within and around the County of Sonoma. Said allowance shall be payable upon the first pay cycle of the month. Employee shall be reimbursed for use of such vehicle for official travel to and from destinations outside County of Sonoma at the same rate that is paid to other City employees for similar travel.

Electronic Allowance: The City shall provide Employee with an electronic allowance for mobile telephone, Cellular Service / Wi Fi for Laptop as a set stipend of \$125 per month to offset the costs of personal devices for official business. Said allowance shall be payable upon the first pay cycle of the month.

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

This Agreement is made and entered into on this 4th day of October, 2016, with an effective date of September 20th, 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 1st through June 30th of each year. By June 25th 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.

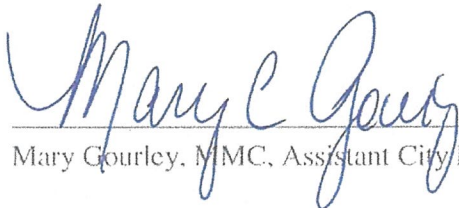
Counterpart: This Agreement shall be executed and shall be deemed an original unless amended in writing by mutual consent.

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

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 19th, September 6th, 2016, and September 20th, 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 4th 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:

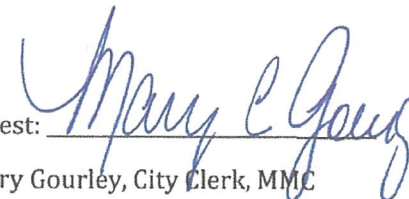
Approved: 
Mayor Sarah Glade Gurney

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