

DRAFT

SECOND AMENDED AND RESTATED AT-WILL AGREEMENT FOR EMPLOYMENT OF CITY CLERK

BACKGROUND

The City Council originally entered into an employment agreement with Kendall ~~Rose~~Sawyer to serve as the City Clerk of the City of Petaluma on September 14, 2020. The agreement outlines the wages, benefits and conditions of employment for the City Clerk. This Second Amended and Restated At-Will Agreement for Employment of City Clerk, effective following Council adoption on November 21, 2022, supersedes and replaces the ~~initial~~First Amended and Restated At-Will Agreement for Employment of City Clerk entered November 1, 2021.

The City Council has recently concluded a performance evaluation for Ms. ~~Rose~~Sawyer and, per Section 5 of this agreement, has agreed to provide a 20.0% salary adjustment, a 2.0% cost-of-living adjustment to her salary, and an increase to her ~~annual~~administrative leave allowance per fiscal year. This Second Amended and Restated At-Will Agreement for Employment of City Clerk memorializes ~~that salary adjustment~~ these compensation changes, as well as updates various benefit provisions that are contained in the Attachment 1 to this agreement.

AGREEMENT

This Agreement ("Agreement") is was originally made and entered into this-the 14th day of September, 2020, by and between the City of Petaluma, California ("the CITY"), a California municipal corporation and charter city, and Kendall ~~Rose~~Sawyer ("CITY CLERK"))-. This Agreement shall have with an effective date of September 15, 2020 ("Effective Date"). The parties agree as follows:

1. Appointment of City Clerk:

The City Council appoints Kendall ~~Rose~~Sawyer to the position of City Clerk of the City of Petaluma, California on the Effective Date, subject to the terms of this Agreement and applicable law.

2. Term:

The term of this Agreement shall commence on the Effective Date and expire four years thereafter on September 14, 2024, or upon termination in accordance with Section 20. Notwithstanding the Expiration Date, the Term will automatically extend by an additional year without further notice or action of the parties commencing on September 15 of each year, thereby establishing a new four-year Term and new Expiration Date, unless either party gives the other notice of termination in accordance with Section 20. If either party provides notice of termination in accordance with this provision, the Term will expire at the conclusion of the four-year Term then in effect without further notice or action of the party, unless the party giving notice of termination rescinds the notice in writing before the commencement of the final year of the Term then in effect. Notwithstanding this provision, this Agreement may be

DRAFT

terminated before the expiration in accordance with Section 20. If the CITY terminates this Agreement by giving notice in accordance with this section, the City will have no obligation to pay severance pursuant to Section 21 regarding such termination.

3. At-Will Employment:

CITY CLERK is an at-will employee in accordance with California Labor Code section 2922 and shall serve at the pleasure of the City Council. The terms of CITY's Personnel Rules, Policies, Procedures, Ordinances and Resolutions shall not apply to CITY CLERK, and nothing in this Agreement is intended to, or does, confer upon CITY CLERK any right to or expectation of any right or property interest in continued employment. If a decision to terminate CITY CLERK's employment is made by the City Council, whether with or without cause, the CITY CLERK shall be entitled to only that due process as is provided by City Charter, ordinance, or this Agreement. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of CITY CLERK to resign at any time from her position with CITY, in accordance with Section 20(a) of this Agreement.

4. Duties and Responsibilities:

- a. CITY CLERK shall serve as the City Clerk of the City of Petaluma, and shall be vested with the powers, duties and responsibilities and perform the functions and duties specified under the laws of the State of California, the Petaluma City Charter and the Petaluma Municipal Code, and the ordinances and resolutions of the CITY and other applicable law, and such other duties and functions as the City Council may from time to time assign.
- b. CITY CLERK agrees to remain in the exclusive employ of CITY, and devote her full productive time and attention to CITY's business, during the term of this Agreement, except with specific permission of the City Council for endeavors which are not in conflict with the CITY CLERK's duties and responsibilities as City Clerk.

The CITY recognizes that CITY CLERK is expected to devote necessary time outside normal office hours to business of the CITY, and to that end the CITY CLERK's schedule of work each day and week shall vary in accordance with the work required to be performed. As an exempt employee, CITY CLERK will not receive overtime or extra compensation for work performed outside normal business hours. However, CITY CLERK will receive administrative leave in accordance with Section 8(c).

5. Compensation:

- a. Base Salary. [Effective the first full pay period following City Council adoption of this agreement, the CITY CLERK's annual base salary shall be increased by twenty-two](#)

DRAFT

percent (22.0%) from the prior base salary of \$135,150 to an adjusted annual base salary of \$164,883.00. CITY agrees to pay CITY CLERK an annual base salary of ~~\$132,500~~\$164,883.00, payable in installments at the same time that the other management employees of the CITY are paid.

- b. Merit Adjustment. CITY may increase CITY CLERK's compensation in such amounts and to such extent as the City Council may determine is desirable on the basis of any salary review of CITY CLERK.
- c. Cost of Living Adjustment. CITY may consider, on an annual basis, a cost of living adjustment to CITY CLERK's compensation. Such adjustment shall be separate of any adjustment granted pursuant to Section 5 (b) of this Agreement.

~~Effective November 1, 2021, the CITY CLERK's annual base salary shall be increased by two percent (2.0%) for an adjusted annual base salary of \$135,150.00.~~

- A. Effective the first full pay period following Council adoption, the CITY CLERK's annual base salary shall be increased by twenty-two percent (22.0%) for an adjusted annual base salary of \$164,883.00.

6. Benefits:

CITY CLERK will be entitled to the benefits specified in Attachment 1 which is attached to and made a part of this Agreement.

7. Disability:

If CITY CLERK is permanently disabled or otherwise unable to perform her duties because of sickness, accident, injury, mental incapacity or health for a period of ninety (90) successive days beyond any accrued sick leave, CITY shall have the option to terminate this Agreement. Upon termination pursuant to this provision, CITY shall have no obligation to pay severance benefits pursuant to Section 283.

8. Vacation / Sick / Administrative / Holiday Leave:

- a. Vacation Leave shall accrue and be credited to the CITY CLERK's personal account in accordance with Attachment 1.
- b. Sick Leave shall accrue and be credited to the CITY CLERK's personal account in accordance with Attachment 1.
- c. ~~CITY CLERK shall be credited with eighty (80) hours of administrative leave each fiscal year.~~ Effective the first full pay period following City Council adoption of this agreement, CITY CLERK's administrative leave will be increased from eighty hours (80) to ninety-six (96) hours per fiscal year. In fiscal year 22-23 and thereafter, an additional sixteen (16) hours, for a total of ninety-six (96) hours of administrative

DRAFT

leave; will be credited to the CITY CLERK's personal account. CITY CLERK shall be credited with eighty (80) hours of administrative leave each fiscal year.

1. Carry Forward of Leave. CITY CLERK may carry forward up to forty (40) hours of unused administrative leave into the next fiscal year. CITY CLERK may not maintain balances of more than one hundred and twenty (120) hours of administrative leave in any fiscal year. Carry forward administrative leave may only be taken as paid time off, has no cash value, and shall not be included in the totals subject to payment under Section 20(d).
2. Annual Payment for Unused Leave. CITY CLERK shall receive payment for up to twenty (20) hours of unused administrative leave at the end of each fiscal year. Payment shall be at the CITY CLERK's base pay rate as of June 30. Payment shall be made on the last pay period of the fiscal year.
- d. Holidays shall be credited to the CITY CLERK'S account in accordance with Attachment 1.
9. Disability, Health, and Life Insurance:
 - a. CITY agrees to purchase and to pay during the term of this Agreement, premiums on term life insurance policies equal in amount to one and one-half 1-1/2 times the amount of the annual compensation package of CITY CLERK described in Section 5, up to a maximum benefit of \$200,000.
 - b. CITY agrees to provide and to pay the CITY's share of premiums for medical, dental, and vision insurance for the CITY CLERK and her dependents in accordance with Attachment 1. CITY CLERK shall have the right to select medical, dental and vision coverage from the plan options offered by CITY.
 - c. CITY agrees to have in force and make required premium payments for CITY CLERK's participation in the CITY's current group disability plan.
10. Dues and Subscriptions:

Subject to budgetary approval by the CITY, CITY agrees to pay for professional dues and subscriptions of CITY CLERK necessary for CITY CLERK's continuation and full participation in national, regional, state and local associations and organizations necessary and desirable for CITY CLERK's continued professional participation, growth and advancement and for the good of CITY.
11. Professional Development:

DRAFT

- a. Subject to budgetary approval by CITY, CITY agrees to pay for, to the extent allowed by law, travel and subsistence expenses of CITY CLERK for official travel, meetings and events as necessary and appropriate to continue the professional development of CITY CLERK at gatherings such as the City Clerks Association of California (CCAC) Annual Conference, International Institute of Municipal Clerks Annual Conference and League of California Cities New Law and Elections seminar.
- b. Subject to budgetary approval by CITY, CITY agrees to pay for, to the extent allowed by law, travel and subsistence expenses of CITY CLERK for short courses, institutes and seminars that are necessary for CITY CLERK's professional development and for the good of CITY.

12. General Expenses:

- a. CITY recognizes that certain expenses of a non-personal nature are incurred by CITY CLERK for the benefit of the CITY in the course of performance of CITY CLERK's duties and hereby agrees to reimburse or to pay said general expenses, and CITY's Finance Director is hereby authorized to disburse such monies upon receipt of duly executed expenses of petty cash vouchers, receipts, statements or personal affidavits to the extent allowed by law and subject to budgetary approval.
- b. Given the importance of technological tools to the effective and efficient conduct of the CITY's business, the CITY shall provide computer, laptop computer, cellular phone, iPad or similar type devices to the CITY CLERK at the CITY's expense, both at the CITY CLERK's office and at the CITY CLERK's residence, as needed to carry out the duties of the position. All such equipment shall remain the property of the CITY.
- c. CITY CLERK will be provided a monthly automobile allowance of \$200.00 in exchange for making her vehicle available for her own use and for CITY-related business and/or functions during, before, and after normal working hours. The monthly automobile allowance is intended to defray costs that the CITY CLERK incurs utilizing her personal vehicle for CITY business. The automobile allowance shall appear on the CITY CLERK's payroll stub as ordinary income and part of her salary but will not be considered part of the CITY CLERK's base salary for purpose of this Agreement.

13. Bonding:

CITY shall bear the full cost of any fidelity or other bonds required of City CLERK under any law or ordinance.

14. Continuity:

DRAFT

In the event of a change of the elected representation of the City Council, there will be a ninety (90) day period commencing upon the seating of new City Council members when the City Council can take no action regarding the provisions of CITY CLERK's contract, unless both parties agree, or the action is for cause.

15. Attorney Fees:

In the event of any suit or action by either party under this Agreement, the prevailing party in such suit or action shall be entitled to reasonable attorney fees and costs to be fixed by the court.

16. Other Terms and Conditions of Employment:

The City Council, in consultation with CITY CLERK, shall fix any other terms and conditions of employment, as it may determine from time to time, relating to the performance of CITY CLERK, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Petaluma City Charter, the Petaluma Municipal Code or any other applicable state or federal law.

17. Indemnification:

- a. CITY shall defend, hold harmless and indemnify CITY CLERK against any tort, civil rights, personnel, discrimination, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of the CITY CLERK's duties in accordance with the provisions of California Government Code Section 825 and following as amended from time to time and provide a defense in accordance with California Government Code Section 995 and following. Notwithstanding anything to the contrary in this Agreement, CITY reserves the right to refuse to provide a defense of CITY CLERK for the reasons set forth in California Government Code section 995.2 or other applicable provisions of law.
- b. Following termination or expiration of this Agreement, for any reason, when CITY CLERK serves as a witness, advisor and/or consultant to CITY regarding pending litigation, CITY agrees to pay CITY CLERK consulting fees at an hourly rate equal to the base wage paid to CITY CLERK at the time of separation, CITY also agrees to pay reasonable travel expenses and miscellaneous costs related to such consulting.

18. Notices:

Notices pursuant to this Agreement shall be in writing given by deposit in the custody of the United States Postal Service, first class postage prepaid, addressed as follows:

DRAFT

a. CITY:

Mayor and City Council
11 English Street
Petaluma CA 94952

b. CITY CLERK:

Kendall ~~Rose~~Sawyer
City Clerk
11 English Street
Petaluma CA 94952

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial process. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice, postage prepaid, with the United States Postal Service.

19. Performance Evaluations:

- a. City Council may review and evaluate the performance of CITY CLERK annually in advance of the adoption of the annual operating budget or when requested by the CITY CLERK. Said review and evaluation shall be in accordance with specific criteria developed jointly by the City Council and CITY CLERK. Said criteria may be amended as the City Council may from time to time determine and in consultation with CITY CLERK. The City Council shall conduct its evaluation of CITY CLERK in closed session. The City Council shall provide CITY CLERK with the written evaluation and provide an adequate opportunity for CITY CLERK to discuss CITY CLERK's evaluation with City Council.
- b. In recognition of accomplishments and objectives, and satisfactory performance, a potential annual merit increase may be negotiated in accordance with Section 5(b).
- c. The City Council and CITY CLERK shall define such goals and performance objectives as they determine necessary for the proper operation of CITY and the attainment of the City Council's policy objectives and shall further establish a relative priority among those various goals and objectives, said goals and objectives to be reduced to writing. Said goals and objectives shall generally be attainable within the time limitations as specified in the annual operating and capital budgets and appropriations provided.
- d. CITY CLERK will timely cause to be placed on the City Council agenda a "closed

DRAFT

session" for purpose of CITY CLERK's performance evaluation.

20. Termination of Employment:

- a. CITY CLERK may terminate this Agreement, with or without cause, by giving the CITY a minimum of forty-five (45) days written notice in advance of termination, unless the parties agree otherwise. During the period following notice of termination and until the termination becomes effective, all the rights and obligations of the parties under this Agreement shall remain in full force and effect. CITY CLERK will not be entitled to receive any severance pay if her resignation is voluntary.
- b. The City Council may terminate this Agreement, with or without cause. City Council shall give CITY CLERK a minimum sixty (60) days prior written notice of termination; provided, however, that if CITY CLERK is terminated for cause, as defined in this Agreement, the sixty (60) day written notice requirement shall not apply and CITY CLERK may be terminated with notice as provided in Section 20(c).
- c. Prior to terminating this Agreement for cause pursuant to Section 22, the City Council shall give CITY CLERK at least ten (10) days prior written notice of the charges or other alleged cause for termination. Within the ten-day period, but not earlier than five days after the notice has been given, the City Council shall meet with CITY CLERK in closed session and give CITY CLERK an opportunity to address the City Council regarding the alleged cause for termination. CITY CLERK may also choose to have allegations brought against her heard in open session in accordance with California Government Code 54957 (b)(2). After hearing CITY CLERK's response to the allegations, the City Council shall make a decision as to whether to terminate the Agreement and shall inform CITY CLERK in writing of its decision.
- d. Upon separation from CITY for any reason, CITY CLERK will be paid for all earned, accrued, and unused vacation, administrative leave, and floating holidays, subject to the limitations imposed elsewhere in this Agreement.

21. Termination Without Cause:

For the purposes of this Agreement, termination without cause shall be deemed to occur when:

- a. The majority of the City Council votes to terminate the CITY CLERK at a duly authorized public meeting without cause, as defined in Section 22(a) of this Agreement.
- b. The City Council, the citizens or the Legislature acts to amend any provisions of the City Charter, codes, or other enabling legislation pertaining to the role, powers, duties, authority, or responsibilities of the CITY CLERK's position that substantially changes the form of government. CITY CLERK shall have the right to declare that such amendments constitute termination.

- c. The City Council reduces the base salary, compensation, or any other financial benefit of the CITY CLERK (unless it is applied in no greater percentage than the average reduction of all department directors). Such action will be regarded as a termination.
- d. Material breach of this Agreement is declared in writing by CITY CLERK specifying the reasons therefore, but only if CITY has not cured such declared material breach within thirty (30) days of receipt of notice of the declared material breach.

22. Termination for Cause:

- a. For purposes of this Agreement, cause for termination by CITY means:
 - 1. Willful and repeated failure to perform the duties of CITY CLERK or other material breach of this Agreement declared in writing by CITY by notice in accordance with Section 20(c) and not cured within thirty days of receipt of notice of the declared material breach;
 - 2. Conviction of CITY CLERK for an employment related criminal act;
 - 3. Conviction of CITY CLERK for a felony; or
 - 4. A finding by a court, jury, State or Federal Attorney General, the Fair Political Practices Commission, or any successor agency, that CITY CLERK engaged in intentional or negligent misconduct in relation to the performance of CITY CLERK's duties.
- b. Pursuant to Government Code Sections 53243, 53243.1, and 53243.2, if City Clerk is convicted of a crime involving an abuse of her office or position, all of the following shall apply:
 - 1. If CITY CLERK is provided with administrative leave pay pending an investigation, CITY CLERK shall be required to fully reimburse CITY such amounts paid.
 - 2. If CITY pays for the criminal legal defense of CITY CERK, CITY CLERK shall be required to fully reimburse CITY such amounts paid.
 - 3. If this Agreement is terminated, any Severance Pay and Severance Benefits related to the termination that CITY CLERK may receive from CITY shall be fully reimbursed to CITY or void if not yet paid to CITY CLERK.

For purposes of subsection 22 (b), abuses of office or position means either:

- A. an abuse of public authority, including waste, fraud, and violation of the law

DRAFT

- under color of authority; or
- B. a crime against public justice, including but not limited to, a crime described in Title 7 (commencing with Section 92) of Part 1 of the California Penal Code.

23. Severance Pay:

- a. If CITY terminates this Agreement without cause in accordance with Section 21, then CITY CLERK shall be entitled to a severance payment equal to six (6) months of base salary at the rate in effect at the time of termination, plus CITY's share of the cost of continuing health, dental, and vision insurance for CITY CLERK and all dependents as provided in Section 13 for six (6) months. At CITY CLERK's election, and pursuant to CITY CLERK's written instructions at the time of severance, severance pay shall be paid either in a lump sum cash payment within thirty (30) days of the date of termination, or in equal monthly payments. Should CITY CLERK elect to receive severance pay in equal payments, the number of such monthly payments shall not exceed six (6).
- b. All payments required under Section 28 (a) are subject to and shall be interpreted to comply with the limitations set forth in California Government Code Sections 53260 and 53261. The CITY's share of the cost of Health, Dental and Vision benefits shall continue for the same duration of time as covered in the settlement or until the CITY CLERK finds other employment, whichever occurs first.
- c. If CITY terminates CITY CLERK for cause, she will not be entitled to any severance payment. The determination of whether there is cause for termination shall be consistent with Section 22.

24. Miscellaneous:

- a. The text herein shall constitute the entire agreement between the parties. This Agreement may not be modified, except by written agreement executed by both parties.
- b. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.
- c. This Agreement shall be governed by the laws of the State of California.
- d. The parties agree that any ambiguity in this Agreement shall not be construed or interpreted against, or in favor of, either party.
- e. This agreement shall be binding upon and inure to the benefit of the heirs at law and

DRAFT

executors of CITY CLERK.

[SIGNATURES ON NEXT PAGE]

DRAFT

CITY CLERK

By _____
Kendall ~~Rose~~Sawyer, City Clerk

CITY

By _____
Teresa Barrett, Mayor

ATTEST:

By _____
~~-Samantha Paseoe~~Kami Garcia, Deputy City Clerk

APPROVED AS TO FORM:

By _____
Eric W. Danly, City Attorney