

CITY MANAGER EMPLOYMENT AGREEMENT

This Employment Agreement ("Agreement") is made and entered into this ____ day of _____, 2021, by and between the City of Sausalito ("City"), a California municipal corporation and general law city, and Chris Zapata ("Zapata"), an individual, on the following terms and conditions:

RECITALS

A. The City is in need of an individual to hold the position of City Manager and the City Council is empowered pursuant to the Sausalito Municipal Code to appoint a City Manager; and

B. After a formal recruitment and selection process, the Sausalito City Council ("City Council") desires to appoint Zapata as City Manager; and

C. Zapata desires to accept employment as City Manager for the City of Sausalito in consideration of and subject to the terms, conditions, and benefits set forth in this Employment Agreement and represents that he has the requisite specialized skills, training, certifications, licenses, and authorizations and is otherwise qualified to serve as City Manager; and

D. The City and Zapata wish to enter into an Employment Agreement that sets forth the rights and obligations of the parties and that will supersede all prior negotiations, discussions, or agreements.

EMPLOYMENT AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and of the mutual promises, terms and conditions of this Agreement, the City and Zapata agree as follows:

Section I. Duties and Authority

A. The City hereby agrees to employ Chris Zapata as City Manager of Sausalito effective June 7, 2021. Zapata will be the chief executive officer of the City and be responsible to the City for the proper administration of all affairs of the City and agrees to diligently and faithfully perform the duties of the Sausalito City Manager. Specific duties include, but are not limited to, the functions and duties specified in Chapter 2.08 of the Sausalito Municipal Code as well as other legally permissible and proper duties and functions as the City Council may, from time to time, assign. Zapata will devote his best efforts and full-time attention to the performance of these duties.

B. In accordance with Government Code Section 1126, during the period of his employment with the City, Zapata will not accept, without the express prior written consent of the City Council, any other employment or engage, directly or indirectly, in any other

business, commercial, or professional activity for any other person or organization, whether for compensation or otherwise.

Section II. Term

A. Zapata's appointment as City Manager commences on June 7, 2021 ("Commencement Date") and will be for an initial term of two (2) years and twenty-three (23) days ending on June 30, 2023 (the "Termination Date"). Zapata acknowledges that he is employed in an "at-will" position and serves at the pleasure of the City Council subject only to the restrictions imposed by local ordinance and the terms and conditions of this Agreement.

B. This Agreement will automatically renew for an additional two (2) year term and a new Termination Date will be automatically established unless the City gives Zapata timely notice of non-renewal. The City must give Zapata written notice of non-renewal at least six (6) calendar months prior to the initial Termination Date or any succeeding Termination Date.

C. Nothing in this Agreement will prevent, limit, or otherwise interfere with the right of the City to terminate the services of Zapata at any time, subject only to the provisions set forth in Section VI of this Agreement.

D. Nothing in this Employment Agreement will prevent, limit, or otherwise interfere with Zapata's right to resign at any time from his position with the City, subject only to provisions set forth in Section VI of this Agreement.

E. Nothing in this Agreement is intended to, or does, confer upon Zapata any right to any property interest in continued employment as the City Manager, or any due process right to a hearing before or after a decision by the City Council to terminate his employment as City Manager, except as is expressly provided by operation of local ordinance, State or federal law. Zapata hereby expressly waives the right to bring claims or causes of action seeking contract-based damages relating to his employment with the City.

Section III. Hours of Work

It is recognized that the position of City Manager is an executive management position which often requires more than a conventional forty-hour week to provide the desired level of professional service. It is further recognized that to properly fulfill his duties and responsibilities, Zapata will devote a considerable amount of time outside normal office hours to the business of the City. The position of City Manager will be deemed an exempt position under state and federal wage and hour laws. Zapata's compensation (whether salary or benefits or other allowances) is not based on hours worked and Zapata will not be entitled to any compensation at an overtime rate.

Section IV. Compensation

A. As of the Commencement Date, the City will pay Zapata an annual salary of two hundred twenty-six thousand dollars (\$226,000.00) subject to legally permissible or required deductions and withholding. Thereafter, Zapata's salary will be increased by the same percentage and at the same time as any across-the-board increase is granted to the City's department managers covered by Resolution No. 5847, a "Resolution of the City Council of the City of Sausalito Amending Resolution 4639 and Establishing Compensation and Employee Benefits for Members of the Unrepresented Employee Groups (Management and Confidential) for July 1, 2019 through June 30, 2022" or any successor resolution applicable to department managers (the "Resolution"). Zapata's salary will be payable in installments at the same time as other department managers of the City and in accordance with established City procedures. Zapata will automatically receive all general cost of living increases provided to other department managers of the City, without the need for further City Council action or amendment of this Agreement.

B. Zapata will receive a one-time, lump-sum payment of fifteen thousand dollars (\$15,000.00) intended to cover Zapata's relocation and moving expenses. This payment is considered compensation for purposes of taxation and is, therefore, subject to income taxes but is not considered compensation for the calculation of final annual retirement income under CalPERS.

SECTION V. Performance Evaluation and Incentive

A. Within approximately ninety (90) days of the Commencement Date Zapata and the City Council will create an initial set of evaluation criteria, tasks, outcomes, organizational goals and objectives that will provide the basis for determining Zapata's performance.

B. The City Council will conduct an initial, informal performance review approximately six (6) months after the Commencement Date, and thereafter will conduct an annual review each June, unless additional performance reviews are deemed necessary as provided in Section V.E below.

C. The review and evaluation will be in accordance with specific evaluation criteria developed jointly by City and Zapata. Such criteria will serve as a written memorandum of the City Council's expectations for Zapata's performance. The criteria will generally include, but not be limited to, such performance categories as initiative, customer service, job knowledge, problem solving, communications, integrity and honesty among others. The criteria will also include defined tasks, and outcomes and measures.

D. In addition, as part of the performance evaluation process, the City Council and Zapata will jointly define the organizational goals and objectives that are determined necessary for the proper operation of the organization, and in the attainment of the City Council's policy objectives. A relative priority among those various goals and objectives will also be established. They will generally be challenging but attainable within the time

limitation as specified, and the annual operation budget and capital budget and appropriations provided. Said goals and objectives will be reduced to writing.

E. The City and Zapata agree that additional performance reviews, for the purpose of mid-course corrections, may occur during the year; and the parties may meet from time to time in closed session for the purpose of conducting an informal review of the progress that the City Council and Zapata have made in achieving the established performance criteria, and organizational goals and objectives.

F. To provide an incentive for Zapata to produce exceptional results above and beyond the expected fulfillment of the City Manager's job obligations the City agrees after one year of employment to provide a financial incentive of 5% of the sum of Zapata's base salary, payable at the sole discretion of the City Council, upon the satisfactory completion by Zapata of the specific goals and objectives mutually established by Zapata and the City Council pursuant to this Section VB. Following the first year of employment the amount of any performance incentive will be mutually agreed upon by the City Council and Zapata through the annual performance review.

Section VI. Termination and Severance

A. In lieu of the procedures and time limits provided under Sausalito Municipal Code Sections 2.08.250 through 2.08.280, the City Council may remove Zapata at any time, with or without cause, by a majority vote of its members. Notice of termination will be provided to Zapata in writing. Termination as used in this Section will also include: (1) a request by the City Council that Zapata resign, (2) a reduction in salary below that required by this Agreement or, except as generally applicable to the City's management employees, other reduction of financial benefits of Zapata to which Zapata objects, (3) a material reduction in the powers and authority of Zapata or the City Manager position, or (4) the elimination of the City Manager position. Notwithstanding the foregoing, in accordance with Sausalito Municipal Code Section 2.08.290 Zapata will not be removed from office during or within a period of 90 days after any general municipal election held in the City at which election a member of the City Council is elected.

B. In the event Zapata is involuntarily terminated by the City Council without cause during such time that Zapata is willing and able to perform his duties under this Agreement the City agrees to pay Zapata a lump sum cash payment of three (3) months base salary, calculated at the base salary in effect at the effective date of termination. The City will also provide Zapata all compensation earned, but unpaid, for actual work performed, calculated at base pay in effect at the effective date of termination. Also, in such event, and in addition to the lump sum payment, the City will provide for continuance of Zapata's health and other related insurance benefits provided for in this Agreement for six (6) months.

C. In the event Zapata voluntarily resigns his position with the City, then Zapata will give the City sixty (60) days written notice, in advance, unless the parties otherwise

agree. In such event, the City will only pay Zapata for all compensation earned, but unpaid, for actual work performed, calculated at base pay in effect at the effective date of termination.

D. Zapata agrees that all property, including, without limitation, all equipment, tangible Proprietary Information (as defined below), documents, records, notes, contracts, and computer-generated materials furnished to or prepared by him incident to his employment belongs to City and will be returned promptly to City upon termination of Zapata's employment. Zapata's obligations under this subsection will survive the termination of his employment, and the expiration of this Agreement.

E. All benefits to which Zapata is entitled under this Agreement will cease upon Zapata's termination in accordance with this Section VI, unless expressly continued under other provisions in this Agreement, under any specific written policy or benefit plan applicable to Zapata, or unless otherwise required by law.

Section VII. DISABILITY OR INABILITY TO PERFORM

In the event Zapata becomes mentally or physically incapable of performing his functions and duties with reasonable recommendations and it reasonably appears such incapability will last for more than three (3) months, the City Council may terminate employment of Zapata in which case Zapata will be entitled to the severance payment and benefits in accordance with Sections VI B and C above.

Section VIII. RETIREMENT

Zapata will be provided retirement benefits through the California Public Employees' Retirement System (CalPERS) at the rate of 2% at 62, with benefits as provided under the City's contract with PERS. The City will pay contributions per the Resolution.

Section IX. FRINGE BENEFITS AND OTHER TERMS AND CONDITIONS OF EMPLOYMENT

In addition to base salary and except as expressly provided in this Agreement, Zapata will receive the same fringe benefits provided to other department managers of the City, subject to the terms and conditions of the applicable plan, policy, or other controlling documents. Any changes in benefits will apply to Zapata at the same time and in the same manner as they apply to other department managers.

A. Zapata will receive a City Cafeteria Plan contribution and be able to purchase health, dental, and long term disability and other benefit coverages in the same manner as prescribed for the City's department managers, including City contributions toward the cost of coverage, per the Resolution.

B. Zapata will be eligible to participate in the City's deferred compensation program, including Employer contributions, per the Resolution.

C. Zapata will receive vacation, administrative and sick leave, and holidays at the same rate as other department managers, per the Resolution, provided, however, that Zapata will be entitled to forty five (45) hours of sick leave as of the Commencement Date.

D. The City recognizes that Zapata may incur certain expenses of a non-personal and job related nature. The City agrees to reimburse or to pay such business expenses, which are incurred and submitted according to the City's normal expense reimbursement procedures. In addition, the City recognizes the responsibility of Zapata to participate in civic/community functions, meetings, professional development, and professional conferences such as the annual International City/County Management Association, the League of California Cities, the California City Management Foundation, the League's City Managers' Department, the Marin Managers' Association, and other governmental groups, civic organizations, and committees. The City agrees to budget for and pay for the reasonable and necessary costs and dues for participation in these groups and organizations. The City also agrees to budget for and pay for the reasonable costs for the necessary and desirable continued professional growth and advancement of Zapata's skills, knowledge, and abilities. Expenses may also be reimbursed or directly paid on behalf of Zapata for courses and seminars that are necessary for the professional development of Zapata. To be eligible for reimbursement, all expenses must be supported by documentation meeting the City's normal requirements and must be submitted within time limits established by the City.

E. Zapata's duties require that he have a vehicle available for his exclusive use. In consideration of this, and notwithstanding anything to the contrary regarding the amount paid to the City Manager in the Resolution, City agrees to pay to Zapata, during the term of this Agreement and in addition to other salary and benefits, an automobile allowance in the amount of \$400 per month.

F. The City will bear the full costs of any fidelity or other bonds required of Zapata (if any) under any law or ordinance by virtue of his employment as the City Manager.

G. The City will provide Zapata with a private office, staff, office equipment, computers, cellular phones, supplies, and other facilities and services adequate for the performance of the duties of the position, consistent with those provided to other department managers of the City.

Section X. Proprietary Information.

"Proprietary Information" is all information and any idea pertaining in any manner to the business of City (or any City affiliate), its employees, clients, consultants, or business associates, which was produced by any employee of City in the course of his employment or otherwise produced or acquired by or on behalf of City. Proprietary Information will include, without limitation, trade secrets, product ideas, inventions, processes, formulae, data, know-how, software and other computer programs, copyrightable material, marketing plans, strategies, sales, financial reports, forecasts, and customer lists. All Proprietary Information not generally known outside of City's organization, and all Proprietary Information so known only through improper means, will be deemed "Confidential Information." During his employment by City, Zapata will use Proprietary Information, and will disclose Confidential Information, only for the benefit of City and as

is or may be necessary to perform his job responsibilities under this Agreement. Following termination of his employment, Zapata will not use any Proprietary Information and will not disclose any Confidential Information, except with the express written consent of City. Zapata's obligations under this Section will survive the termination of his employment and the expiration of this Agreement.

Section XI. Conflict Of Interest.

Zapata represents and warrants to City that he presently has no interest, and represents that he will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or interfere in any way with performance of his services under this Agreement.

Section XII. City Property.

Zapata agrees that all materials, regardless of their form, that he receives, creates or produces in connection with this Agreement and/or his employment as City Manager are and will remain the exclusive property of the City. Zapata will immediately deliver all originals and all copies of such materials that are in his possession or control to the City upon termination of this Agreement.

Section XIII Abuse of Office.

A. Pursuant to Government Code sections 53243 and 53243.3, in the event City provides paid leave salary to Zapata pending an investigation into Zapata, Zapata will fully reimburse City for any paid leave salary if Zapata is convicted of a crime involving an abuse of his office or position.

B. Pursuant to Government Code sections 53243.1 and 53243.3, in the event City provides funds for Zapata's legal criminal defense, Zapata will fully reimburse City for any such funds if Zapata is convicted of a crime involving an abuse of his office or position.

C. Pursuant to Government Code sections 53243.2 and 53243.3, in the event City provides Zapata with a cash settlement related to Zapata's termination, Zapata will fully reimburse City for any such cash settlement if he is convicted of a crime involving an abuse of his office or position.

D. Pursuant to Government Code section 53243.4, an "abuse of office or position" means (a) an abuse of public authority, including, but not limited to, waste, fraud, and violation of the law under color of authority, or (b) a crime against public justice, including, but not limited to, a crime described in Title 5 (commencing with Section 67), Title 6 (commencing with Section 85), or Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

Section XIV. General Provisions.

A. Notices

All notices, requests, demands and other communications under this Agreement will be in writing and will be effective immediately upon delivery by hand to either the City or Zapata, or three (3) business days after deposit in the United States mail, postage prepaid, certified or registered, and addressed to City at the address below, and or at the last known address maintained in Zapata's personnel file. Zapata agrees to notify City in writing of any change in his address during his employment with City. Notice of change of address will be effective only when accomplished in accordance with this Section.

City: City Council
City of Sausalito
420 Litho Street
Sausalito, CA
94960
Cc: City
Attorney

Zapata: Chris Zapata

B. Indemnification.

Subject to, in accordance with, and to the extent provided by the California Government Claims Act [Government Code Section 810 *et seq.*] City will indemnify, defend, and hold Zapata harmless from and against any action, demand, suit, monetary judgment or other legal or administrative proceeding, and any liability, injury, loss or other damages, arising out of any act or omission occurring during Zapata's appointment as City Manager.

C. Integration.

This Agreement supersedes all other prior and contemporaneous agreements and statements, whether written or oral, express or implied, pertaining in any manner to the employment of Zapata and it may not be contradicted by evidence of any prior or contemporaneous statements or agreements. The foregoing notwithstanding, Zapata acknowledges that, except as expressly provided in this Agreement, his employment is subject to the City's generally applicable rules and policies pertaining to employment matters, and all related state, federal, and local mandates applicable to local government and municipalities including, but not limited to those addressing workplace safety, equal employment opportunity, sexual illegal harassment, discrimination, retaliation, bullying, and violence in the workplace.

D. Amendments.

This Agreement may not be amended except in a written document signed by Zapata and the Mayor on behalf of the City Council.

E. Waiver.

Failure to exercise any right under this Agreement will not constitute a waiver of such right.

F. Assignment.

Zapata will not assign any rights or obligations under this Agreement. City may, upon prior written notice to Zapata, assign its rights and obligations hereunder.

G. Severability.

If a court or arbitrator holds any provision of this Agreement to be invalid, unenforceable, or void, the remainder of this Agreement will remain in full force and effect.

H. Attorneys' Fees.

In any legal action, arbitration, or other proceeding brought to enforce or interpret the terms of this Agreement, the prevailing party will be entitled to recover reasonable attorneys' fees and costs.

I. Governing Law.

This Agreement will be governed by and construed in accordance with the laws of the State of California.

J. Interpretation.

This Agreement will be construed as a whole, according to its fair meaning, and not in favor of or against any party. By way of example and not as a limitation, this Agreement will not be construed in favor of the party receiving a benefit nor against the party responsible for any particular language in this Agreement. Captions are used for reference purposes only and should be ignored in the interpretation of the Agreement. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, cancelled superseded or changed by any oral agreement, course of conduct, waiver or estoppel.

K. Acknowledgment

Zapata acknowledges that he has had the opportunity to consult legal counsel in regard to this Agreement, that he has read and understands this Agreement, that he is fully aware of its legal effect, and that he has entered into it freely and voluntarily and based on his own judgment and not on any representations or promises other than those contained in this Agreement.

L. This Agreement will become effective immediately upon the adoption of a resolution authorizing the Mayor to execute this Employment Agreement.

IN WITNESS WHEREOF, City has caused this Agreement to be signed and executed on its behalf by its Mayor and duly attested to by its City Clerk, and Zapata has signed and executed this Employment Agreement, as of the date first indicated above.

CITY OF SAUSALITO

Jill James Hoffman, Mayor

ATTEST

APPROVED AS TO FORM

Heidi Scoble, City Clerk

Mary Anne Wagner, City Attorney

ZAPATA

Chris Zapata