

EMPLOYMENT AGREEMENT
City Attorney

THIS AGREEMENT is made this 18th day of April, 2017, between the City of Santa Rosa ("City") and Sue Gallagher ("City Attorney"), who has education, training, and experience as a public agency attorney and who is a member in good standing of the State Bar of California.

1. **Employment.** The City employs the City Attorney as an at-will employee to serve at the pleasure of the City Council subject to the terms and conditions set forth below.

2. **Term.** This Agreement shall commence on May 8, 2017 and shall be in effect until terminated in accordance with Section 6. As of the effective date of this Agreement, the City Attorney voluntarily relinquishes her position and rights as an Assistant City Attorney.

3. **Salary.** The City Attorney's annual compensation, including salary and benefits, shall be fixed from time to time by ordinance adopted by the City Council as required under the City Charter. The monthly salary at the commencement of the term shall be seventeen thousand eighty-three dollars and thirty-four cents (\$17,083.34). Subject to the limitations set forth in Government Code section 3511.2, the City Attorney's compensation shall change by the percentage of the cost of living salary adjustment, if any, paid to the City's executive management employees for the 2018-19 fiscal year and each fiscal year thereafter. The City Attorney's compensation shall also change by the benefits adjustment, if any, paid to the City's executive management employees for the 2017-18 fiscal year and each fiscal year thereafter. In addition, upon completion of an annual performance evaluation as set forth in section 5, the City Council shall consider whether to provide a merit increase in the City Attorney's salary subject to the maximum salary range established for the City Attorney classification. Whether

to provide a merit increase, and the amount of any such increase, shall be in the exclusive discretion of the City Council, and such determinations shall be final. In setting the City Attorney's annual compensation, the Council recognizes that the City Attorney's salary should be set at a reasonable differential higher than salaries of the attorneys whom she supervises, giving consideration for the comprehensive responsibilities of managing the City Attorney's Office.

4. **City Attorney's Duties.** The City Attorney shall have the powers and shall perform the duties as prescribed by the City Charter and such other duties as may be required by the City Council. The City Attorney is an FLSA exempt employee and is expected to engage in those hours of work that are necessary to fulfill the obligations of the City Attorney's position without additional compensation for work outside normal business hours. The City Attorney does not have set hours of work and is expected to be available at all times.

5. **Evaluation.** Within a reasonable time after commencement of this Agreement, the Mayor shall meet with the City Attorney to establish a work plan that will be used in evaluating the City Attorney. The City Council shall at least annually, and may at any time, evaluate and discuss the performance of the City Attorney during the term of this Agreement and revise the work plan. If the City Council evaluates the City Attorney in writing, the written evaluation shall be delivered to the City Attorney and a copy of the evaluation shall be placed in the City Attorney's personnel file. The City Council shall, when requested by the City Attorney, meet and discuss the contents of an evaluation with the City Attorney within a reasonable time after the City Attorney has heard or received the evaluation. Evaluations of the City Attorney shall be discussed by the City Council only in closed session. The City Council agrees to consider the use of a facilitator to assist with the evaluation if it believes it will be helpful to the process. Failure to evaluate shall have no effect on the rights, duties, and obligations of the parties herein.

6. **Termination of Contract.**

- a. **Mutual Consent.** This Agreement may be terminated at any time by mutual consent of the City Council and the City Attorney.
- b. **Termination by City Attorney.** The City Attorney may terminate this Agreement at any time by giving the City Council at least ninety (90) days prior written notice of the termination.
- c. **Termination by City Council.** The City Council may terminate this Agreement at any time by giving six (6) months' notice or paying six-months' salary or any combination thereof equivalent to six months. The City shall not terminate this contract, except for cause as specified in subsection (d) below, within a three-month period prior to, or three months following, a Council election that results in one or more new Council Members being elected.
- d. **Termination for Cause.** In addition to the methods of termination set forth in subsections (a) through (c) above, the City Council may terminate this Agreement immediately for cause. Cause shall be defined to include, but shall not be limited to, any of the following:
 - (1) Breach of this Agreement;
 - (2) Resume fraud;
 - (3) Absence without leave;
 - (4) Conviction of a misdemeanor involving moral turpitude or a felony under California law or any crime involving an abuse of his office or position as defined under Government Code Section 53242.4;
 - (5) Violation of the City's Anti-Harassment Policy and/or a finding that legally; prohibited personal acts of harassment against a City official or employee or legally prohibited personal acts of discrimination against a City official or employee has occurred;
 - (6) Use or possession of illegal drugs; or
 - (7) Failure to meet job performance expectations.

The City Council may, at its sole option, place the City Attorney on administrative leave with pay until resolution of charges brought against the City Attorney, or a final

judicial or administrative decision finding legally prohibited acts. The City Attorney shall be required to reimburse the City within thirty (30) days for any salary paid to the City Attorney while on paid administrative leave in the event that the City Attorney is convicted of a crime involving an abuse of her office or position.

Prior to terminating this Agreement pursuant to this subsection (d) (i.e. for cause), the City Council shall give the City Attorney at least ten (10) days prior written notice of the charges/grounds 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 the City Attorney in closed session and give the City Attorney an opportunity to address the City Council regarding the charges. The City Attorney may have a representative at the closed session with the City Council. After hearing the City Attorney's response to the charges, the City Council shall make a decision as to whether to terminate this Agreement and shall inform the City Attorney in writing of its decision. Other than as provided in this subsection, the City Attorney expressly waives any other form of administrative hearing or appeal of the City Council's decision.

Nothing in this subsection creates a property right in employment. Notwithstanding anything contained in this subsection, the City Attorney remains an at-will employee serving at the pleasure of the Council.

- e. **Terminating Cash Payment.** Except as otherwise provided in subsection (d), on the date of termination as provided in this section, the City Attorney shall be paid in full for any severance payment due as provided herein, and payment of remaining accrued but unused leave balances subject to and in accordance with the provisions for the City's executive management employees for the payment of such benefits.
- f. **Conviction of a Crime for Abuse of Office.** In accordance with the provisions of Government Code Section 53243 and/or 53243.2, the City Attorney shall be required to reimburse the City for any severance pay or salary paid while on administrative leave if the City Attorney is convicted of a crime involving an abuse of her office or position as defined in Government Code Section 53243.4.

7. **Vacation and Leave.**

The City Attorney shall have the following leaves:

- a. **Vacation.** City Attorney shall accrue vacation at the rate of 16.66 hours per month on an accrual basis, with an accrual cap of 600 hours unless otherwise waived in writing by the City Council. The City Attorney may sell back vacation annually under the same terms and conditions as provided to the City's executive management employees. Upon the commencement of this agreement, the City Attorney shall receive a bank of vacation hours such that, when combined with the unused vacation hours she previously accrued as an Assistant City Attorney, she has a total of 160 hours of vacation.
- b. **Sick Leave.** The City Attorney shall accrue sick leave at the rate of eight (8) hours per month on an accrual basis. Upon the commencement of this agreement, the City Attorney shall receive a bank of sick hours such that, when combined with the unused sick hours she previously accrued as an Assistant City Attorney, she has a total of 96 sick hours.
- c. **Administrative Leave.** The City Attorney shall receive eighty (80) hours of administrative leave on July 1, 2017, and on July 1 of each subsequent year, under the same terms and conditions provided to the City's executive management employees.
- d. **Holidays.** All holidays granted to the City's executive management employees.

- 8. **Life Insurance.** The City shall provide the City Attorney with a term life insurance policy in the amount of \$250,000 during the term of this Agreement. The City Attorney shall have the option to purchase, at the City Attorney's cost, supplemental life insurance or spousal coverage on the same terms and conditions as provided to the City's executive management employees.

9. **Benefits.** The City shall provide the City Attorney with health insurance, dental insurance, vision insurance, and disability insurance as provided to the City's executive management employees. Except where inconsistent with this Agreement, the City Attorney shall receive all other benefits provided to the City's executive management employees.
- a. **401(a).** A 401(a) deferred compensation program shall be available to the City Attorney. The City Attorney shall have 30 days to decide if she wants to participate, and, if so, to elect a contribution rate up to 20% of her base pay. This is a one-time irrevocable option. Any contribution shall be deducted from the City Attorney's salary if she elects to participate as provided under the 401(a) deferred compensation program.
- b. **Retiree Health Savings Plan (RHS).** A Retiree Health Savings Plan (RHS) shall be provided under the same terms it is provided to other executive management employees. Participation is mandatory and currently requires the employee to make the following monetary contributions: (1) an ongoing contribution equal to 0.5% of base salary, (2) an annual contribution equal to the value of 25% of sick leave that was earned but unused in the immediate past fiscal year, and (3) upon separation, a contribution equal to the value of 50% of unused accrued vacation.
10. **Pension and Pension Cost Sharing.** The City Attorney is currently in Tier 3 of the City's CalPERS retirement plan which has a retirement formula of 2% @ 62 years of age. This plan is subject to the rules governed by the Public Employees' Pension Reform Act (PEPRA). The plan calls for a mandatory employee contribution of half of the normal cost as calculated by CalPERS, which is currently 6.25% of eligible compensation. In addition to the mandatory employee contribution, The City Attorney agrees to pay an additional pretax contribution of one and one-half percent (1.5%) of eligible compensation towards the employer cost of PERS, for a current combined total employee contribution of 7.75%. Should the contribution rate for executive management employees change during the term of this Agreement, the City Attorney agrees that she shall contribute the same percentage of eligible compensation as the executive management employees upon the effective date of such change. The City Attorney is

subject to a maximum pensionable income published and adjusted annually by CalPERS. Mandatory employee contributions and cost-sharing contributions are based upon all eligible compensation below this maximum and stop when the maximum is reached in any fiscal year.

11. **Deferred Compensation - 457 Plan.** The City will contribute an amount equal to two and one-half percent (2.5%) of the City Attorney's base pay for each pay period into a 457 Deferred Compensation Program.

12. **Automobile Expenses.** To reimburse the City Attorney for using her private vehicle for City business, the City Attorney shall receive three hundred and fifty dollars (\$350) per month as transportation expenses incurred for travel within and outside the City. The City Attorney shall provide the City a Certificate of Insurance showing comprehensive automobile liability coverage naming the City of Santa Rosa as an Additional Insured. The City Attorney shall personally be responsible for the purchase of an insurance policy required herein and shall annually provide a copy of the required certificate. The insurance required herein shall be primary and may not be canceled without giving the City thirty (30) days advance written notice.

13. **Professional Meetings.** The City Attorney is expected to attend appropriate professional meetings at local, state, and national levels and to periodically report to the City Council regarding meetings attended and shall be reimbursed for the expense of attending those meetings.

14. **Expense Reimbursement.** The City shall reimburse the City Attorney for actual and necessary expenses incurred by the City Attorney within the scope of her employment in accordance with the City's reimbursement schedules and policies. The City Attorney's expense claim shall be supported by appropriate written documentation verifying the contents of the report prior to authorization of reimbursement. Reimbursable expenses include dues in professional organizations and reasonable continuing education expenses.

15. Notices. Any notices required or permitted by this Agreement shall be in writing and shall be personally served or shall be sufficiently given and deemed served

upon the other party if sent by United States Postal Service, first-class postage prepaid, and addressed as follows:

TO CITY: Mayor
City of Santa Rosa
100 Santa Rosa Avenue, Room 10
Santa Rosa, CA 95404

TO EMPLOYEE: Sue Gallagher
City Attorney
100 Santa Rosa Avenue, Room 8
Santa Rosa, CA 95404

Notices shall be deemed given as of the date of personal service or upon the date of deposit in the course of transmission with the United States Postal Service.

16. General Provisions.

- a. **Governing Law and Venue.** This Agreement, and the rights and obligations of the parties, shall be governed by and construed in accordance with the laws of the State of California. The parties also agree that, in the event of litigation, the venue shall be the state court located in Sonoma County, California.
- b. **Entire Agreement.** This Agreement contains the entire agreement and understanding between the parties. There are no oral understandings, terms, or conditions, and neither party has relied upon any representation, express or implied, not contained in this Agreement.

- c. **Amendments.** This Agreement may be amended at any time by mutual agreement of the City and the City Attorney. Any amendments negotiated shall be in writing, and adopted by the City Council in accordance with the City Charter and state law.
- d. **No Assignment.** The City Attorney may not assign or transfer any rights granted or obligations assumed under this Agreement.
- e. **Severability.** If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement shall continue in full force and effect.

CITY

By: _____
CHRIS COURSEY
Mayor

Date: _____

CITY ATTORNEY

By: _____
SUE GALLAGHER

Date: _____

APPROVED AS TO FORM:

Interim City Attorney