



City of San Leandro

Meeting Date: November 19, 2012

Staff Report

File Number: 12-554

Agenda Section: ACTION ITEMS

Agenda Number: 10.C.

TO: City Council

FROM: Chris Zapata
City Manager

BY: Chris Zapata
City Manager

FINANCE REVIEW: Not Applicable

TITLE: Staff Report for Resolution Authorizing the City Manager to Execute Five-Year Agreements for the Police Chief and Assistant City Manager

SUMMARY AND RECOMMENDATIONS

This staff report provides information and a recommendation to authorize the City Manager to execute five-year employment agreements with Police Chief Sandra Spagnoli and Assistant City Manager Lianne Marshall.

BACKGROUND

The City of San Leandro has undergone significant transition since 2009 at a City Council level, as well as organizational and management level. This memo specifically addresses management transition and provides information on current efforts to fill executive vacancies. It also provides rationale to keep high performing executives such as Chief Spagnoli and Assistant City Manager Marshall. The terms provide for each to continue public service in San Leandro through 2017. Both employees have approximately 2 years of tenure in the organization.

Organizational stability is a key factor in meeting Council goals and delivering public services. Since 2009 San Leandro has been led by 4 City Managers. In that same period there has been leadership changes at the Police Chief and Assistant City Manager positions. Retirements and departures have created vacancies in the Library Department, Finance Department and Human Resources Department. These positions have been filled with acting appointments until recently. A permanent Finance Director was hired 6 months ago and a Human Resources Manager was hired approximately 3 months ago. The Library Director position is currently filled by an acting assignment. Last month the longtime Community Development Director and Deputy City Manager separated from San Leandro. In addition, the contract Fire Chief retired three months ago and the position is currently being filled in an acting capacity.

Constant turnover has created an internal challenge and workload issue that we are continually addressing as an organization today. Institutional knowledge is lost when longtime or high level executives depart. The recruitment and replacement time to fill positions is a resource drain. Further, this situation is compounded by the demise of the redevelopment authority and related resources as well as the loss of 20% of the employee workforce. With all that there are some positives that arise from departures.

Executive vacancies provide an opportunity to promote from within or recruit new talent to the organization. That is a positive; however, with the current executive changes, stability has become an operational challenge. A City Manager's key responsibility is to retain and recruit a quality executive team and to deal with the uncertainty created by a changing job market. Retention of the Police Chief and Assistant City Manager for an extended period is a positive for the organization, but more importantly it is critical to the community.

The City Attorney and City Manager have worked with the San Leandro Management Organization as well as the Human Resources Manager to reach an agreement that the Police Chief and Assistant City Manager negotiate individual contracts. The City Charter provides that these positions are at-will to the City Manager. These reporting relationships and recommendations are consistent in that regard.

DISCUSSION

The Police Chief is important to the community, the organization and certainly the City Manager. The Assistant City Manager is equally important to the organization and the City Manager. Stability and keeping talented executives is important to the City Council, community and organization. The proposed language provides for commitments by both individuals to work through 2017 in San Leandro.

Council goals of keeping the community safe and fiscal sustainability were key points in the development of the proposal. As such the agreements call for each to pay the full employee share of retirement costs by the end of the agreements. In the case of the Police Chief, that would be a 9% payment and in the case of the Assistant City Manager an 8% contribution. This is consistent with the City Council paying their full retirement costs and the City Manager paying his full employee retirement costs.

In return for the full retirement contribution and 5 year commitment by Chief Spagnoli and Assistant City Manager Marshall, a net salary increase is realized in the 3rd, 4th and 5th years of the contract. The total net increase is 3.5% for both positions. To deal with market realities a \$10,000 base salary increase is recommended for both effective January 1, 2013 which will not increase budgeted costs. This is offset by the City Manager agreeing to a \$20,000 pay reduction effective January 1, 2013 and annually through the remainder of his contract which expires in two years.

There are also important provisions to note that provide non Public Employee Retirement System increases such as uniform pay for Chief Spagnoli, and capped monthly medical and dental benefit pay. The average monthly payment for employee medical and dental benefits is approximately \$1200 per month, this proposal requests an amount of \$1400 per month then capped at \$1500 per month in the final years of the proposed agreement. With rising health care costs it is important for the City Council to begin developing employee programs that are

not subject to unplanned annual increases that have no end in sight or increases that San Leandro does not directly control. This formula provides the ability for long range planning by the organization and employee. In the case of these agreements, there is an allowance for a cash in-lieu payment to the employee which is also not subject to Public Employment Retirement System calculations.

Attached are summaries of accomplishments achieved during their past year. With the constant turnover of executive positions in the region and state, both Chief Spagnoli and Assistant City Manager Marshall would be extremely viable candidates for other organizations given their respective talents and experience. Currently a Police Chief vacancy exists in San Jose as well as an upcoming vacancy in the City of Fremont. Another factor is the time, expense and uncertainty of potential recruitments. Executive level recruitments typically span a six month period and in some cases longer.

RECOMMENDATION

Authorize the City Manager to executive 5 year employment agreements with Police Chief Sandra Spagnoli and Assistant City Manager Lianne Marshall within the attached terms and conditions.

ATTACHMENTS

- Assistant City Manager Accomplishments FY 2011-2012
- Police Chief Priorities - Established 2010

PREPARED BY: Chris Zapata, City Manager

Police Chief Priorities- Established 2010

1. Focus on contemporary public safety strategies to reduce crime and the fear of crime
2. Continue to provide excellent service levels that this city prides itself on with integrity and excellence
3. Collaborate with Employees, City Departments and Community Members
4. Support prevention and intervention programs

Summary of transition plan 2010-11

1. Professional outreach- Internal/ Externally
2. Community outreach
3. Conduct a policy and regulation review
4. Complete/ implement settlement provisions
5. Review technology
6. Review police operations

Accomplishments 2011-2012

COMMUNITY OUTREACH

New Programs:

- Monthly Coffee with the Cops community meetings
- Open House (Sept 2012)
- Expanded website to include all calls for service, arrests, crime mapping
- On line police reporting
- Implemented a Community Chaplaincy Program

YOUTH PROGRAMS

- Implemented a summer teen academy
- Implemented a Juvenile Diversion program through Youth Services
- Partnered with the school district to implement a School Safety Task Force
- Partnered with school district to increase effectiveness of truancy enforcement

COMMUNITY/ PROFESSIONAL INVOLVEMENT

- Speak regularly to service organizations and community groups
- Participated in SL Visioning process
- Guest speaker at community colleges
- Award from Chabot College recognizing achievements and service to community
- Past President- California Peace Officers Association

- Chair- Mid- Size City committee- International Association of Chiefs of Police
- California Police Chief's Association- Technology Committee member
- Instructor- LAPD Leadership Academy

TECHNOLOGY

New/ expanded Programs:

- Nixle- community information program
- Facebook
- Upgraded hand held radios to be compatible with EBRCSA

STAFFING/ OPERATIONS

- Updated Municipal codes related Youth Day Time/ night time curfew
- Established monthly meetings with Community Development/ CAO
- Brought jail into compliance with STC which we have been out of compliance for last 3 years
- Completed an independent audit of Vice operations, Evidence Room, Civilian Supervision/ oversight and implemented recommendations
- Quarterly Supervisor training/ Meetings: Focusing on legal updates, leadership training and strategic discussions on department operations
- Implemented a Critical Incident Stress Management Team
- Completed a 24 hour POST teambuilding workshop for strategic planning
 - Developed department slogan/ Brand- Proud to serve
 - Core Values_ Teamwork, Integrity, Professionalism, service
 - Developed an action plan for the next year to:
 - Improve internal communications
 - Set department wide expectations
 - Standardize training
 - Develop a succession plan
 - Develop a mentoring program
 - Review policing model
 - Enhance training , technology, community outreach
- Reorganization with no additional funding:
 - Added a crime analyst
 - Shifted Lt's to provide close to 24 hour watch commander coverage
 - Shifted staff to a new Community Relations position
 - Jail reorganization under review

PERSONNEL/ TESTING/TRAINING

- Department wide crisis intervention training/ Dealing with the mental ill
- Implemented and completed all requirements of Negotiated Settlement Agreement
- Developed a Department-wide training plan for every position
- Contracted out testing for Sergeant, LT and Captain updating process consistent with NSA
- Made numerous key appointments at all ranks.
- Formalized internal training for Sergeant and Lieutenant
- Assigned Executive Leadership Training for Sergeants and above

Risk Management

- Transitioning outdated policy manual to the Statewide Standard – Lexipol
- Implemented a review and accountability process for Use of Force and Pursuits
- Created a tracking system for use of force- Working towards an early warning program

ASSISTANT CITY MANAGER

ACCOMPLISHMENTS

FY 2011-2012

City Manager's Office

- Served as Interim City Manager from July, 2011 through January 2012 following the retirement of the former city manager.
- Worked with the Rules Committee, the City Council and the community to develop new district maps following the release of the 2010 federal census data, which were adopted by Council in December 2011.
- Assisted with preparation and presentation for City Council Annual Planning Session.
- Assisted with development of proposals and materials for federal lobbying effort.
- Reviewed and approved all agenda items for City Council meetings.
- Coordinated presentation for the Council Candidate Orientation.

Capital Improvements/Community Development

- Worked with the Mayor/Council, Engineering and Caltrans to obtain funding for the repair of the downtown section of E 14th Street.
- Worked with San Leandro Dark Fiber to develop a license agreement which was presented to and approved by the City Council October 2011, to allow installation of a ten mile fiber optic loop in the City's conduit, known as Lit San Leandro. This is the first component of the City's plan for a comprehensive strategy for expanding broadband access for businesses.
- In January 2012, presented for Council approval the establishment of a Successor Agency to replace the City's Redevelopment Agency (RDA), and presented a plan for Council consideration to address the impact of the loss of the City's Redevelopment Agency. Implemented the final plan adopted by Council, including a retirement incentive program and reassignment of staff. Provided orientations to Oversight Agency Board members.

- Worked with the developer and the City Council to move forward with the Village Marketplace project, in a highly volatile environment, ensuring a high-quality retail center in downtown San Leandro.
- Worked with Cal Coast Development to move forward with the conceptual plans for the Shoreline Development Project for a mixed use development that will include a hotel, conference center, restaurants, office, retail and housing. Worked with staff to develop conceptual plans the harbor basin for discussions with the community, the City Council and BCDC.
- Worked with Engineering and Finance to enhance the development and presentation of the City's Capital Improvement Program.

Communications/Community Relations

- Initiated a new City Manager's Weekly Update to improve communications with the City Council of events, follow-up reports, and correspondence. Also initiated a monthly newsletter for Employees with news, reports and employee information, and a monthly electronic newsletter for the community with activities, projects updates and other news. The Weekly Updates and City News are posted on the City's website.
- Developed the first Year in Review for 2011, an electronic publication highlighting the City's achievements and activities for the year.
- Worked with the community to upgrade the City's website to make it easier to navigate and added extensive information to it.
- Met with community groups on various topics including development projects, budget, revenue measure, and government issues.

Finance/Budget

- Developed a balanced budget for FY 2011-12 for the first time in four years, as a result of new revenue from the passage of Measure Z and significant expenditure reductions. Careful control of expenditures and one time revenues significantly improved the City's financial position. Worked with the Finance Committee and departments to develop strategies to address various non-general fund issues.
- Hired a financing team, conducted a validation process and issued bonds to refinance the unfunded liability related to the PERS Safety Plan Side Fund obligation. Further savings

were achieved through structuring a loan from the Water Pollution Control Plant. Total savings as a result of the refinancing and loan is over \$3 million.

Human Resources

- Provided direct oversight of human resources staff after the elimination of the human resources director position.
- Conducted a hiring process to fill the interim Library Services Manager position as a result of the retirements of the Library Director and Library Manager. Recruited an Interim Finance Director and Interim HR Managers.
- Worked with new City Manager to reorganize responsibilities within the City Manager's Office and reporting relationships. Effective July 2012, assumed responsibility for oversight of the Police Department, Library Services Department, Recreation and Human Services Department, and the Fire Services contract, and oversee the City Clerk, agenda preparation, and the Information Technology Division of the City Manager's Office.

Information Technology

- Worked with Rules Committee to develop policies for the use of social media and updated the electronic media policies.
- Implemented Granicus software, to allow the City to audio-stream City Council meetings, and in October 2011 implemented Legistar, an automated agenda management system to facilitate the preparation and production of Council and Committee agendas and to enable one-stop public access via the web to council and committee recordings and documents.
- Initiated update of the Information Technology Plan to identify and prioritize information systems needs throughout the City.

Policy Development

- Worked with the Rules Committee and City Council to develop an ordinance restricting the use of polystyrene foam food service products that was adopted by the City Council in October 2011, and presented an ordinance proposed by Stop Waste to ban the use of plastic bags, which Council approved in November 2011.

- Issued new Personnel Manual and worked with HR and department heads to complete updates to numerous personnel policies.

Represent the City with Outside Agencies

- Represent San Leandro on the Green Corridor Steering Committee to collaborate with other cities and agencies on regional “green” economic development initiatives.
- Represented the City on the Alameda County Fire Department Executive Management Oversight Committee.
- Represented the City on the Alameda County Associated Community Action Program (ACAP) Governing Board.
- Worked with the Alameda County City Managers Association to develop a Leadership Academy for staff in local agencies, and served as a Sponsor for a leadership team evaluating shared services.



City of San Leandro

Meeting Date: November 19, 2012

Resolution - Council

File Number: 12-555

Agenda Section: ACTION ITEMS

Agenda Number:

TO: City Council

FROM: Chris Zapata
City Manager

BY: Chris Zapata
City Manager

FINANCE REVIEW: Not Applicable

TITLE: ADOPT: Resolution Authorizing the City Manager to Execute Five-Year Agreements for the Police Chief and Assistant City Manager (provides employment agreements with Police Chief Sandra Spagnoli for an annual salary of \$187,000 and with Assistant City Manager Lianne Marshall for an annual salary of \$187,000)

WHEREAS, agreements between the City of San Leandro and the Police Chief Sandra Spagnoli and Assistant City Manager Lianne Marshall have been presented to this City Council; and

WHEREAS, the City Council is familiar with the contents thereof; and

WHEREAS, the City Manager has recommended approval of said agreements.

NOW, THEREFORE, the City Council of the City of San Leandro does RESOLVE as follows:

1. That said agreements substantially in the form presented are hereby approved and execution by the City Manager are hereby authorized; and
2. That the City Manager is authorized to make non-substantial revisions to said agreements, subject to the approval of the City Attorney; and
3. That original executed agreements shall be attached to and made a part of this resolution.

CITY OF SAN LEANDRO

AGREEMENT FOR EMPLOYMENT OF CHIEF OF POLICE

This Employment Agreement (“Agreement”) is made and entered into this ____ day of _____, 2012, by and between the City of San Leandro (the “CITY”), a charter city, and Sandra Spagnoli (“CHIEF”). CITY and CHIEF are together the “Parties.”

RECITALS

WHEREAS, the CITY desires to employ, as an “at-will” employee, the services of CHIEF as Chief of Police for the CITY in accordance with applicable provisions of the San Leandro City Charter, Municipal Code and the terms of this Agreement; and

WHEREAS, CHIEF desires to be employed as the at-will Chief of Police for the CITY in accordance with applicable provisions of the City Charter, Municipal Code and the terms of this Agreement; and

WHEREAS, the classification of Chief of Police was previously included in the bargaining unit represented by the San Leandro Management Organization (“SLMO”), but the unit was recently modified to remove the Chief of Police classification; and consequently the Chief of Police classification is no longer represented by SLMO; and

WHEREAS, it is the desire of the CITY to provide certain compensation and benefits; and establish certain conditions of employment for the position of Chief of Police through this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties agree as follows:

TERMS

1. Appointment

The City Manager hereby appoints CHIEF to the position of Chief of Police in and for the City of San Leandro California. CHIEF hereby accepts such appointment under the terms and conditions of this Agreement.

2. Term of Agreement

This Agreement will become effective on January 1, 2013. The Agreement will expire on December 31, 2017, unless extended or terminated as provided herein. The Parties may terminate this Agreement pursuant to the provisions of Section 5.

3. At-Will Employment

Police Chief is an “at-will” employee who shall serve at the pleasure of the City Manager. Accordingly the City Manager may terminate CHIEF’s employment under this Agreement at any time with or without cause.

4. Duties and Responsibilities

a. CHIEF shall serve the CITY and perform the functions and duties of the position of Chief of Police as specified under the laws of the State of California (including but not limited to the Government Code and the Penal Code); the CITY’s Charter, Administrative Code and Municipal Code; the Ordinances and Resolutions of the CITY; and any other legally permissible and proper duties and functions as the City Manager may from time to time assign.

b. CHIEF shall be responsible to the City Manager for the proper performance of all duties and functions assigned to CHIEF.

5. Termination of Employment and Severance

a. This agreement may be terminated with or without cause by the City Manager. In the event CHIEF is terminated for cause, or voluntarily resigns, she shall not be entitled to severance. For purposes of this Agreement, the phrases “for cause,” “with cause” and “without cause” relate only to CHIEF’s potential entitlement to severance, and do not alter her at-will status.

b. Without Cause. In the event CHIEF is terminated without cause, she is eligible for severance. If the CITY terminates this Agreement without “cause” before December 31, 2017, CHIEF will be compensated for all sick and vacation leave and will be paid in a lump sum in an amount equal to CHIEF’s full salary, health benefits and cash benefits for a period of five (5) months from receipt of written termination notice.

c. For Cause. If CHIEF is terminated “for cause,” the CITY shall not owe any severance under this Agreement. A termination “for cause” may include, but shall not be limited to, the following:

- (i) Violation of administrative policies and procedures;
- (ii) Failure to properly perform assigned duties;
- (iii) Theft of CITY property;
- (iv) Conviction of a felony;
- (v) Conviction of a crime involving an abuse of office or position, as defined in Government Code Section 53243.4;
- (vi) Improper use of CITY funds or property;
- (vii) Willful misconduct;
- (viii) Any act of dishonesty.

d. Vacation Leave at Termination. CHIEF shall receive payment for all accrued unused vacation at the time of her separation from employment.

e. Sick Leave at Termination. Upon separation, sick leave above one year accrual may be converted to cash out or contributed to deferred compensation at a conversion rate of

75% up to a maximum of two years accrual, AND CHIEF may convert all or part of the sick leave balance to PERS service credit as provided for under the City's CalPERS contract.

f. Resignation. CHIEF shall provide forty-five (45) days notice in the event of a voluntary resignation unless the CITY agrees otherwise.

6. Compensation and Benefits

a. Salary. CHIEF shall be paid an annual base salary of one hundred eighty-seven thousand dollars (\$187,000.00; \$15,583 per month), payable on the City-established payroll cycle. Cost of Living Adjustments (COLA) during the term of this agreement shall be made to CHIEF's base salary as follows:

January 2013:	0.0%
January 2014:	2.0%
January 2015:	2.5%
January 2016:	4.0%
January 2017:	4.0%

b. Benefits. In addition to the compensation provided above, the CITY agrees to provide the following to CHIEF in consideration for the services provided pursuant to this Agreement:

- (i) *Annual Vacation.* CHIEF shall accrue vacation leave at the rate of twenty-five days each year (16.66 hours per month). Accumulated vacation leave may be sold back to the CITY in January and July.
- (ii) *Other Benefits.* CHIEF shall be provided sick leave, disability benefits, health benefits, holidays, management allowances and incentive pay, retirement benefits, payments provided to management employees and all other benefits currently provided to management employees as they may be amended from time to time, under the same conditions provided to other Department Heads except as otherwise specified in this Agreement.
- (iii) *Retirement Benefits.* CHIEF shall be eligible for CalPERS retirement benefits plan of 3% @ 50. Pursuant to this Agreement, CHIEF agrees to contribute on a pre-tax basis towards the "Employee Contribution" based on the following schedule:

January 2013 – December 2013:	1.0%
January 2014 – December 2014:	1.0%
January 2015 – December 2015:	2.0%
January 2016 – December 2016:	2.5%
January 2017 – December 2017:	<u>2.5%</u>
Full Employee Contribution:	9.0%

- (i) *Health Benefits.* The CITY agrees to contribute \$1400 per month toward medical, dental and vision benefits for the calendar years of 2013 and 2014; \$1450 per month in 2015; and \$1500 per month for the remainder of the term of the contract. Any remainder of the benefit after paying for medical, dental and vision benefits shall be taken by CHIEF as cash in

lieu. The parties understand and agree that any portion of the benefit taken by CHIEF as cash is not considered to be “PERS-able” compensation.

(ii) *Uniform Pay.* The CITY will provide a uniform allowance of \$1,500 annually, paid in a lump sum in January, beginning in January 2013.

c. Compaction. Throughout the life of this Agreement, CHIEF’s “PERS-able” compensation shall remain a minimum of 15% above that of a top step CITY Police Captain

7. Indemnification & Professional Liability

The City agrees that it shall defend, hold harmless, and indemnify the CHIEF from all demands, claims, suits, actions, errors, or other omissions in legal proceedings, whether groundless or otherwise, brought against the CHIEF in her individual capacity or in her official capacity, provided the incident arose while the CHIEF was acting within the scope of her employment, in accordance with the provisions of California Government Code Section 825 and the City will provide a defense in accordance with Government Code Sections 995 – 999.6. The City may decline to defend and/or indemnify Employee only as permitted by the California Government Code.

8. Performance Evaluations

The City Manager shall review and evaluate the performance of CHIEF at least once every year. At the time of each evaluation, performance goals shall be discussed that will be used to assist in the evaluation of CHIEF’s performance in the future.

9. 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 may be executed in counterparts containing original signatures.

f. This Agreement shall be effective only when and if approved by the City Council.

10. Notices

Notices pursuant to this Agreement shall be in writing and served by mailing via the United States Postal Service, first class postage prepaid, addressed as follows:

a. The CITY:
City Manager
City of San Leandro

Civic Center
835 East 14th Street
San Leandro, California 94577

b. CHIEF:
Sandra Spagnoli
HAND DELIVERED

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 mailing of such written notice, postage prepaid, with the United States Postal Service.

IN WITNESS WHEREOF, the CITY has caused this Agreement to be signed and executed in its behalf by its City Manager and duly attested by its City Clerk, and CHIEF has signed and executed this Agreement, on the day and year written below.

CHIEF OF POLICE

DATED: _____

SANDRA SPAGNOLI

CITY

DATED: _____

CHRIS ZAPATA
CITY MANAGER

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

2003845.1

CITY OF SAN LEANDRO

AGREEMENT FOR EMPLOYMENT OF ASSISTANT CITY MANAGER

This Employment Agreement (“Agreement”) is made and entered into this ____ day of _____, 2012, by and between the City of San Leandro (the “CITY”), a charter city, and Lianne Marshall (“ASSISTANT”). CITY and ASSISTANT are together the “Parties.”

RECITALS

WHEREAS, the CITY desires to employ, as an “at-will” employee, the services of ASSISTANT as Assistant City Manager for the CITY in accordance with applicable provisions of the San Leandro City Charter, Municipal Code and the terms of this Agreement; and

WHEREAS, ASSISTANT desires to be employed as the at-will Assistant City Manager for the CITY in accordance with applicable provisions of the City Charter, Municipal Code and the terms of this Agreement; and

WHEREAS, the classification of Assistant City Manager was previously included in the bargaining unit represented by the San Leandro Management Organization (“SLMO”), but the unit was recently modified to remove the Assistant City Manager classification; and consequently the Assistant City Manager classification is no longer represented by SLMO; and

WHEREAS, it is the desire of the CITY to provide certain compensation and benefits; and establish certain conditions of employment for the position of Assistant City Manager through this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties agree as follows:

TERMS

1. Appointment

The City Manager hereby appoints ASSISTANT to the position of Assistant City Manager in and for the City of San Leandro California. ASSISTANT hereby accepts such appointment under the terms and conditions of this Agreement.

2. Term of Agreement

This Agreement will become effective on January 1, 2013. The Agreement will expire on December 31, 2017, unless extended or terminated as provided herein. The Parties may terminate this Agreement pursuant to the provisions of Section 6.

3. At-Will Employment

The ASSISTANT is an “at-will” employee who shall serve at the pleasure of the City Manager. Accordingly the City Manager may terminate ASSISTANT’s employment under this Agreement at any time with or without cause.

4. Duties and Responsibilities

a. ASSISTANT shall serve the CITY and perform the functions and duties of the position of Assistant City Manager as specified under the laws of the State of California (including but not limited to the Government Code and the Penal Code); the CITY’s Charter, Administrative Code and Municipal Code; the Ordinances and Resolutions of the CITY; and any other legally permissible and proper duties and functions as the City Manager may from time to time assign.

b. ASSISTANT shall be responsible to the City Manager for the proper performance of all duties and functions assigned to ASSISTANT.

5. Termination of Employment and Severance

a. This agreement may be terminated with or without cause by the City Manager. In the event ASSISTANT is terminated for cause, or voluntarily resigns, she shall not be entitled to severance. For purposes of this Agreement, the phrases “for cause,” “with cause” and “without cause” relate only to ASSISTANT’s potential entitlement to severance, and does not alter her at-will status.

b. Without Cause. In the event ASSISTANT is terminated without cause, she is eligible for severance. If the CITY terminates this Agreement without “cause” before December 31, 2017, ASSISTANT will be compensated for all sick and vacation leave and will be paid in a lump sum in an amount equal to ASSISTANT’s full salary, health benefits and cash benefits for a period of five (5) months from receipt of written termination notice.

c. For Cause. If ASSISTANT is terminated “for cause,” the CITY shall not owe any severance under this Agreement. A termination “for cause” may include, but shall not be limited to, the following:

- (i) Violation of administrative policies and procedures;
- (ii) Failure to properly perform assigned duties;
- (iii) Theft of CITY property;
- (iv) Conviction of a felony;
- (v) Conviction of a crime involving an abuse of office or position, as defined in Government Code Section 53243.4;
- (vi) Improper use of CITY funds or property;
- (vii) Willful misconduct;
- (viii) Any act of dishonesty.

d. Vacation Leave at Termination. ASSISTANT shall receive payment for all accrued unused vacation at the time of her separation from employment.

e. Sick Leave at Termination. Upon separation, sick leave above one year accrual may be converted to cash out or contributed to deferred compensation at a conversion rate of 75% up to a maximum of two years accrual, AND ASSISTANT may convert all or part of the sick leave balance to PERS service credit as provided for under the City's CalPERS contract.

f. Resignation. ASSISTANT shall provide forty-five (45) days notice in the event of a voluntary resignation unless the CITY agrees otherwise.

6. Compensation and Benefits

a. Salary. ASSISTANT shall be paid an annual base salary of one hundred eighty-seven thousand dollars (\$187,000.00; \$15,583 per month), payable on the City-established payroll cycle. Cost of Living Adjustments (COLA) during the term of this agreement shall be made to ASSISTANT's base salary as follows:

January 2013:	0.0%
January 2014:	2.0%
January 2015:	2.5%
January 2016:	3.5%
January 2017:	3.5%

b. Benefits. In addition to the compensation provided above, the CITY agrees to provide the following to ASSISTANT in consideration for the services provided pursuant to this Agreement:

- (i) *Annual Vacation.* ASSISTANT shall accrue vacation leave at the rate of twenty-five days each year (16.66 hours per month). Accumulated vacation leave may be sold back to the CITY in January and July.
- (ii) *Other Benefits.* ASSISTANT shall be provided sick leave, disability benefits, health benefits, holidays, management allowances and incentive pay, retirement benefits, payments provided to management employees and all other benefits currently provided to management employees as they may be amended from time to time, under the same conditions provided to other Department Heads except as otherwise specified in this Agreement.
- (iii) *Retirement Benefits.* ASSISTANT shall be eligible for CalPERS retirement benefits plan of 2.5% @ 55. Pursuant to this Agreement, ASSISTANT agrees to contribute on a pre-tax basis towards the "Employee Contribution" based on the following schedule:

January 2013 – December 2013:	1.0%
January 2014 – December 2014:	1.0%
January 2015 – December 2015:	2.0%
January 2016 – December 2016:	2.0%
January 2017 – December 2017:	<u>2.0%</u>
Full Employee Contribution:	8.0%

(iv) *Health Benefits.* The CITY agrees to contribute \$1400 per month toward medical, dental and vision benefits for the calendar years of 2013 and 2014; \$1450 per month in 2015; and \$1500 per month for the remainder of the term of the contract. Any remainder of the benefit after paying for medical, dental and vision benefits shall be taken by ASSISTANT as cash in lieu. The parties understand and agree that any portion of the benefit taken by ASSISTANT as cash is not considered to be “PERS-able” compensation.

c. Compaction. Throughout the life of this Agreement, ASSISTANT’s “PERS-able” compensation shall remain a minimum of 15% above that of a top step CITY Police Captain.

7. Indemnification & Professional Liability

The City agrees that it shall defend, hold harmless, and indemnify the ASSISTANT from all demands, claims, suits, actions, errors, or other omissions in legal proceedings, whether groundless or otherwise, brought against the ASSISTANT in her individual capacity or in her official capacity, provided the incident arose while the ASSISTANT was acting within the scope of her employment, in accordance with the provisions of California Government Code Section 825 and the City will provide a defense in accordance with Government Code Sections 995 – 999.6. The City may decline to defend and/or indemnify Employee only as permitted by the California Government Code.

8. Performance Evaluations

The City Manager shall review and evaluate the performance of ASSISTANT at least once every year. At the time of each evaluation, performance goals shall be discussed that will be used to assist in the evaluation of ASSISTANT’s performance in the future.

9. 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 may be executed in counterparts containing original signatures.

f. This Agreement shall be effective only when and if approved by the City Council.

10. Notices

Notices pursuant to this Agreement shall be in writing and served by mailing via the United States Postal Service, first class postage prepaid, addressed as follows:

- a. The CITY:
City Manager
City of San Leandro
Civic Center
835 East 14th Street
San Leandro, California 94577
- b. ASSISTANT:
Lianne Marshall
Hand-delivered

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 mailing of such written notice, postage prepaid, with the United States Postal Service.

IN WITNESS WHEREOF, the CITY has caused this Agreement to be signed and executed in its behalf by its City Manager and duly attested by its City Clerk, and ASSISTANT has signed and executed this Agreement, on the day and year written below.

ASSISTANT CITY MANAGER

DATED: _____

LIANNE MARSHALL

CITY

DATED: _____

CHRIS ZAPATA
CITY MANAGER

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

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