



# City of San Leandro

Meeting Date: February 17, 2015

## Staff Report

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**File Number:** 15-089

**Agenda Section:** ACTION ITEMS

**Agenda Number:** 10.B.

**TO:** City Council

**FROM:** Chris Zapata  
City Manager

**BY:** Rich Pio Roda  
City Attorney

**FINANCE REVIEW:** David Baum  
Finance Director

**TITLE:** Staff Report for a Resolution Approving a New Agreement with Mr. Chris Zapata for Employment of City Manager

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### BACKGROUND and ANALYSIS

At the direction of the City Council, the City Attorney proceeded to complete negotiations of a draft agreement for the continued employment of Mr. Chris Zapata as the City Manager. The parties agreed to use the current contract, which was executed on January 17, 2012, as the template for the new agreement. Therefore, provided below are only the terms that are materially different from the first agreement:

1. Effective Date and Term: January 30, 2015 to January 30, 2020
2. Provision and Use of City equipment to carry out City Manager's duties and functions:  
The City will provide City Manager, at City's cost and expense and City Manager's sole discretion to use or accept, any and all equipment, including communication devices such as a smartphone and tablet computer, and a vehicle including gasoline and insurance coverage, reasonably necessary for the City Manager to carry out his duties.
3. The City Manager must provide the City Council with 180 days written notice before terminating the agreement.
4. Effective January 30, 2012 and each year thereafter, the City Manager's annual base salary will be adjusted by the CPI, starting with his current annual base salary of \$223,000.
5. The City Council acknowledges in the agreement that since January 1, 2013, the City Manager committed to voluntarily contribute \$20,000 of his annual base salary to pay \$10,000 each to the Police Chief and the Assistant City Manager for the remainder of the terms of their employment agreements, which both terminate on December 31, 2017. This created an Effective Base Salary that is paid to the City Manager that is

different from his Annual Base Salary, which is adjusted according to the CPI. The City Council agreed that should the employment of either or both of the persons who occupy those positions terminate before December 31, 2017, then the City Manager's voluntary annual contribution would be returned to him on a pro rata basis. Furthermore, the City Manager's commitment would automatically terminate December 31, 2017, so that he would be paid his annual base salary, as defined in the agreement, for the last two years of his contract.

6. Within 15 days of the execution of the Agreement, the City will pay the City Manager a one-time lump sum payment of \$22,300.00 in recognition of the City Manager's performance for the previous three years. If the City Manager's employment is terminated prior to the end of the five year term, with or without cause, the City Manager must reimburse the City the lump sum payment on a pro-rata basis.
7. The City Manager will receive the same benefits provided to management employees, including 25 annual vacation days, and 12 days of annual sick leave. The City will contribute \$1,500.00 per month in lieu of medical, dental, and vision benefits for the term of the Agreement.

The remainder of the agreement is substantially similar as the first agreement.

**Fiscal Impact**

To provide funding for the new contract, \$45,000 will be transferred from the General Fund economic uncertainty reserve to the 2014-15 Adopted Budget salary and benefit account #'s 010-12-020-4101, 4210, and 4240.

**ATTACHMENT**

**Attachment to Resolution**

DRAFT Agreement for Employment of City Manager

**PREPARED BY:** Richard D. Pio Roda, City Attorney  
David Baum, Finance Director (for Fiscal Impact)



# City of San Leandro

Meeting Date: February 17, 2015

## Resolution - Council

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**File Number:** 15-088

**Agenda Section:** ACTION ITEMS

**Agenda Number:**

**TO:** City Council

**FROM:** Chris Zapata  
City Manager

**BY:** Rich Pio Roda  
City Attorney

**FINANCE REVIEW:** David Baum  
Finance Director

**TITLE:** RESOLUTION Approving a New Agreement for Employment with City Manager Chris Zapata for Five Years to January 30, 2020

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WHEREAS, the current Agreement for Employment between the City of San Leandro and Chris Zapata, as City Manager for the City of San Leandro, dated January 17, 2012, and subsequently extended, terminates on July 30, 2015; and

WHEREAS, a new Agreement for Employment, a copy of which is attached, has been presented to this City Council; and

WHEREAS, the City Council is familiar with the contents thereof.

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

That said new Agreement for Employment is hereby approved and execution thereof by the Mayor is hereby authorized.

CITY OF SAN LEANDRO  
AGREEMENT FOR EMPLOYMENT OF CITY MANAGER

This Employment Agreement ("Agreement") is dated for reference purposes only this \_\_\_\_ day of \_\_\_\_, 2015, by the City of San Leandro ("City"), a charter city formed under the laws of the State of California, and Chris Zapata ("Manager").

RECITALS

WHEREAS, the City desires to continue to employ, as an "at will" employee, Mr. Chris Zapata, as City Manager for the City of San Leandro in accordance with applicable provisions of the City of San Leandro Charter, the City of San Leandro Municipal Code, and the terms of this Agreement; and

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

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

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

TERMS

1. Appointment of City Manager

Pursuant to an agreement executed January 17, 2012, Mr. Zapata's appointment to the position of City Manager for the City of San Leandro went into effect January 30, 2012. On January 20, 2015, the City Council approved an extension to the term of the agreement to July 30, 2015. On [\_\_\_\_], the City Council approved a new Agreement for Employment of City Manager, to be effective January 30, 2015. By execution of this Agreement, Manager accepts such appointment under the terms and conditions provided herein.

2. Term of Agreement

This Agreement is effective January 30, 2015. This Agreement will expire on January 30, 2020, unless extended or terminated as provided herein. The parties to this Agreement may terminate this Agreement pursuant to the provisions of Section 6.

### 3. At-Will Employment

Manager is an “at-will” employee who shall serve at the pleasure of the City Council. The City Council may terminate Manager’s employment under this Agreement, at any time, with or without cause. This provision may not be altered except by a written instrument executed by Manager, and formally approved by the City Council, which specifically references this Agreement and this Section.

### 4. Duties and Responsibilities

a. Manager shall serve as the City Manager of the City in accordance with the powers, duties, and responsibilities set forth in the City of San Leandro Charter, the Municipal Code, and California law. Manager shall perform the functions and execute the duties specified by the laws of the State of California; the City’s Charter; the City’s Municipal Code; the City’s Ordinances and Resolutions; and such other functions and duties as the City Council may from time to time assign.

b. Manager agrees to devote his productive time, ability, and attention to the City’s business. For the duration of this Agreement, Manager shall not hold secondary employment, and shall be employed exclusively by the City, subject to any exceptions approved in writing by the City Council.

c. Manager shall be responsible to the City Council for the proper administration of all affairs of the City. Manager shall administer and enforce policies established by the City Council, and promulgate rules and regulations as necessary to implement City Council policies.

### 5. Hours of Work

Manager shall be an exempt employee under FLSA and shall not receive overtime or extra compensation for work performed outside of normal City business/office hours. Manager is appointed to manage the City’s business with twenty-four hour and seven days a week responsibility and is expected to devote necessary time outside normal office hours to the business of the City. Thus, Manager’s schedule of work each day and week may vary in response to the requirements of the work to be performed. However, Manager is expected to spend sufficient hours at San Leandro City Hall to perform his duties. City shall provide Manager, at City’s cost and expense and Manager’s sole discretion to use or accept, any and all equipment, communication devices including a smartphone and tablet, a vehicle including but not limited to gasoline and insurance with coverages recommended by the City’s Finance Director, and other implements reasonably necessary for Manager to carry out his duties in accordance with this Section.

### 6. Termination of Employment and Severance

a. Manager may terminate this Agreement and his employment with the City with or without cause, by giving the City one hundred eighty (180) days written notice in advance of termination. During the notice period, all of the rights and obligations of the parties to this Agreement shall remain in full force and effect.

b. The City Council may terminate this Agreement and Manager's employment with the City with or without cause at any time. For purposes of this Agreement, the phrases "for cause" or "with cause" relate only to Manager's potential entitlement to severance, and do not alter his at-will employment status. Pursuant to California Government Code section 53243.2, regardless of the term of this Agreement, if this Agreement is terminated, any cash settlement related to the termination that Manager may receive from City shall be fully reimbursed to the City if Manager is convicted of a crime involving an abuse of his or her office or position.

c. In the event City terminates Manager's employment without cause, the Manager shall be entitled to severance pay of a lump sum payment equal to six (6) months of Annual Base Salary and benefits, as described in Section 7 of this Agreement. Said payment of severance pay shall be conditioned upon Manager signing a waiver and release agreement forever releasing and waiving any and all claims in a form acceptable to the City. Manager shall receive the severance payment in a lump sum payment minus all applicable deductions fifteen (15) business days after execution of the waiver and release agreement. Manager shall not receive any severance payments if such a waiver and release agreement is not executed by the parties.

d. Manager shall receive payment for all accrued unused vacation at the time of his separation from employment.

e. If Manager is terminated "for cause," the City shall not owe any severance under this Agreement. The determination about whether Manager is terminated "for cause" shall be made in the complete discretion of the City. 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) Insubordination;
- (v) Conviction of a felony;
- (vi) Conviction of a misdemeanor relating to Manager's fitness to perform assigned duties;
- (vii) Conviction of a crime involving an abuse of office or position, as defined in California Government Code section 53243.4;
- (viii) Unauthorized absence from employment;
- (ix) Improper use of City funds;
- (x) Unauthorized use of City property;

- (xi) Willful misconduct or malfeasance;
- (xii) Any act of moral turpitude or dishonesty; and
- (xiii) Other failure of good behavior either during or outside of employment such that the Manager's conduct causes discredit to the City.

f. Removal of Manager by the City shall be effected only by a majority vote of the whole City Council as constituted and convened in a regular City Council meeting. However, pursuant to section 400 of the City Charter, Manager shall not be removed from the position of City Manager without cause during or within a period of ninety (90) days succeeding any regular or special municipal election held in the City at which election a member of the City Council is elected; the purpose of this provision is to allow any newly elected member of the City Council or a reorganized City Council to observe the actions and ability of Manager in the performance of the powers and duties as City Manager.

## 7. Compensation and Benefits

a. The City Council acknowledges that on January 30, 2012, the effective date of the City's first agreement with Manager, the City Council and Manager agreed that Manager's annual base salary ("Annual Base Salary") would be two hundred twenty-three thousand dollars and no cents (\$223,000.00). The parties agree that effective January 30, 2015, Manager's Annual Base Salary of \$223,000.00, which has remained unchanged since January 30, 2012, shall be adjusted automatically and every year thereafter during the term of this Agreement by the Consolidated Metropolitan Statistical Area (CMSA) Consumer Price Index covering San Francisco, Oakland, and San Jose (commonly known and referred to as the "CPI"). However, if the CPI for a particular year is a negative number, then Manager's Annual Base Salary shall remain equal to the then current adjusted Annual Base Salary for the immediately preceding year. The City Council shall review and evaluate Manager's performance through the term of this Agreement pursuant to the provisions of Section 13. The City Council may consider adjusting Manager's Annual Base Salary every year, but no less than the annual adjustment attributable to the CPI described herein, subject to a performance evaluation.

(i) As approved by the City Council on November 19, 2012, and effective January 1, 2013 to December 31, 2017, the City Council acknowledges that Manager voluntarily contributes twenty thousand dollars (\$20,000.00) per year (at \$10,000.00 each) of his Annual Base Salary of \$223,000.00 towards the salaries of the Police Chief and the Assistant City Manager, respectively. The Manager's voluntary contribution creates for him an effective base salary of \$203,000.00 (the Manager's "Effective Base Salary").

The City Council hereby agrees that Manager is entitled to the return – on a pro rata basis – of voluntary contribution made towards the annual base salaries of the Police Chief and the Assistant City Manager, respectively, if the employment of either or both persons as the Police Chief and Assistant City Manager terminates before the end of the terms of their respective employment agreements. In such an instance, the pro rata return of Annual Base Salary shall be paid back to Manager through his regular salary distribution.

Manager's voluntary commitment to contribute \$20,000 of his Annual Base Salary towards the salaries of the Police Chief and the Assistant City Manager shall automatically terminate on December 31, 2017, which coincides with the expiration of the terms of the Police Chief and Assistant City Manager's respective employment agreements. Effective January 1, 2018, Manager's Annual Base Salary shall be equal to the previous year's Annual Base Salary multiplied by the CPI, as provided in Section 7.a. For reference purposes only, and assuming that the Police Chief and the Assistant City Manager continue as employees of the City until the expiration of their employment agreements, the parties provide the following calculation as an example of how Manager's Effective Base Salary will phase out and into the Annual Base Salary identified in Section 7.a.:

Year 1: Annual Base Salary of \$223,000.00 (x) CPI = 2015-2016 Annual Base Salary  
 Less: (\$20,000 voluntary contribution)  
= 2015-2016 Effective Base Salary

Year 2: 2015-2016 Annual Base Salary (x) CPI = 2016-2017 Annual Base Salary  
 Less: (\$20,000 voluntary contribution)  
= 2016-2017 Effective Base Salary

Year 3: 2016-2017 Annual Base Salary (x) CPI = 2017-2018 Annual Base Salary  
 Less: (\$20,000 voluntary contribution)  
= 2017-2018 Effective Base Salary

(Commitment to make Voluntary Contribution terminates December 31, 2017)

Year 4: 2017-2018 Annual Base Salary (x) CPI = 2018-2019 Annual Base Salary

Year 5: 2018-2019 Annual Base Salary (x) CPI = 2019-2020 Annual Base Salary

(ii) Within fifteen (15) days of the execution of this Agreement, City shall pay Manager a one-time lump sum payment of twenty-two thousand three hundred dollars and zero cents (\$22,300.00) in recognition of the City Manager's performance during the term of this Agreement. If Manager's employment is terminated in accordance with Section 6 prior to the end of the five year term of this Agreement, with or without cause, Manager shall reimburse City the aforementioned lump sum payment on a pro-rata basis.

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



(i) Except as otherwise provided for in this Agreement, the City shall provide Manager the same benefits as provided to management employees and as those may be amended from time to time. Benefits for Manager include, but are not limited to, twenty-five (25) days of annual vacation leave (16.66 hours per month, accruable up to a maximum of three years), twelve (12) days of annual sick leave, management incentive pay of 120 hours per calendar year paid equally at each pay period, holidays, health insurance, dental insurance, life insurance, management development allowance, and retirement benefits (including the credit for unused sick leave option) and payments, as more particularly set forth in this Agreement. Manager shall have the option of converting all or a portion of management incentive pay to time off. Accumulated vacation leave may be sold back to the City in January and July.

(ii) Manager shall be eligible for CalPERS retirement benefits upon the same terms as those benefits are provided for City employees covered by the Local Miscellaneous Members group classification for purposes of CalPERS. Pursuant to this Agreement, Manager agrees to voluntarily reimburse or otherwise make payment to the City in the total amount currently paid by the City as the employee share of CalPERS benefits (employer paid member contributions-EPMC) for employees covered by the Local Miscellaneous group classification. Manager shall make such voluntary payments until such time as a resolution of the City Council is adopted to amend the City's CalPERS plan, as appropriate, to authorize Manager to pay the EPMC.

(iii) The City agrees to contribute one thousand five hundred dollars and zero cents (\$1,500.00) per month towards medical, dental and vision benefits for the term of this Agreement. Any remainder of the benefit after paying for medical, dental and vision benefits shall be taken by Manager as cash in lieu. The parties understand and agree that any portion of the benefit taken by Manager as cash is not considered to be "PERS-able compensation."

#### 8. Reserved

#### 9. General Business Expenses and Outside Professional Activities

a. The City agrees to budget and pay for professional dues and subscriptions reasonably necessary to ensure Manager's participation in such programs that enhance Manager's standing and the City's reputation, including national, regional, state, and local associations and organizations. These organizations will include, but are not limited to, the International City/County Management Association (ICMA) and the League of California Cities (LOCC).

b. The City agrees to budget and pay for reasonable travel and subsistence expenses of Manager for official travel and meetings, including but not limited to the ICMA Annual Conference and LOCC meetings and conferences.

c. City acknowledges the value of having Manager participate and be directly involved in local civic clubs and organizations on behalf of the City. Accordingly, the City shall budget and pay reasonable membership fees and dues to enable Manager to become an active member of local civic clubs and organizations.

d. Except as otherwise provided for in this Agreement, Manager is entitled to reimbursement for all sums necessarily and reasonably incurred and paid by him in the performance of his duties. Manager shall execute and submit an expense reimbursement form with appropriate supporting documentation to the City for any such claims, as required by the City's rules and policies.

#### 10. Indemnification

The City shall defend, hold harmless and indemnify Manager 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 Manager's duties in accordance with the provisions of California Government Code section 825. The City shall provide a defense in accordance with California Government Code section 995. The City may decline to defend and/or indemnify Manager only as permitted by the California Government Code. The City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment therefrom.

#### 11. Notices

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

a. The City:  
Mayor and City Council  
City of San Leandro  
Civic Center  
835 East 14<sup>th</sup> Street  
San Leandro, CA 94577

b. Manager:  
Mr. Chris Zapata  
2139 Laura Avenue  
San Leandro, CA 94577

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.

#### 12. Bonding

The City shall bear the full cost of any fidelity or other bond required under any law or ordinance.

### 13. Performance Evaluations

The City Council shall review and evaluate the performance of Manager 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 Manager's performance in the future. Manager will timely place on the City Council agenda each year or as otherwise directed by the City Council, a "closed session" for the purpose of the performance evaluation.

### 14. Miscellaneous

- a. The text herein shall constitute the entire agreement between the parties. This Agreement supersedes all prior oral or written agreements or amendments thereto. This Agreement may not be modified, except by written agreement executed by both parties.
- b. If any provisions, 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.

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

[Signatures on Next Page]

MANAGER

DATED: \_\_\_\_\_

\_\_\_\_\_  
Manager

CITY

DATED: \_\_\_\_\_

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_

City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_

City Attorney

2395902.1

DRAFT