

**RESOLUTION NO. 2014-140**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK  
AUTHORIZING AND APPROVING AN EMPLOYMENT AGREEMENT BETWEEN  
THE CITY OF ROHNERT PARK AND DON SCHWARTZ FOR ASSISTANT CITY  
MANAGER SERVICES**

**WHEREAS**, the City Council wishes to enter into an Employment Agreement with Don Schwartz to perform the duties of Assistant City Manager in consideration of and subject to the terms, conditions, and benefits set forth in the Employment Agreement;

**WHEREAS**, the City Manager, as the appointing authority, has determined that Don Schwartz possesses the skills and expertise necessary to perform these services;

**WHEREAS**, Don Schwartz desires to serve as Assistant City Manager of the City of Rohnert Park in consideration of and subject to the terms, conditions, and benefits set forth in the Employment Agreement;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Rohnert Park that the City Council authorizes and approves the Employment Agreement between the City of Rohnert Park and Don Schwartz for Assistant City Manager services attached hereto as Exhibit "A."

**BE IT FURTHER RESOLVED** that the City Manager is authorized and directed to execute same for and on behalf of the City of Rohnert Park.


**DULY AND REGULARLY ADOPTED** by the City Council of the City of Rohnert Park this 8th day of April, 2014.



**CITY OF ROHNERT PARK**

  
Joseph T. Callinan, Mayor

**ATTEST:**

  
JoAnne, Buerger City Clerk

BELFORTE: AYE MACKENZIE: AYE STAFFORD: AYE AHANOTU: AYE CALLINAN: AYE  
AYES: (5) NOES: (0) ABSENT: (0) ABSTAIN: (0)

**EMPLOYMENT AGREEMENT**  
**Between**  
**CITY OF ROHNERT PARK AND DON SCHWARTZ**

THIS AGREEMENT between the CITY OF ROHNERT PARK (“City”) and Don Schwartz (“Employee”) is dated for reference purposes this 30th day of April, 2014 and is deemed effective as of that date.

**RECITALS**

WHEREAS, City desires to retain the services of Employee to serve as the Assistant City Manager in consideration of and subject to the terms, conditions, and benefits set forth in this Agreement;

WHEREAS, Employee desires to serve as Assistant City Manager of the City of Rohnert Park in consideration of and subject to the terms, conditions, and benefits set forth in this Agreement;

WHEREAS, Employee has the necessary education, experience, skills and expertise to serve as the Assistant City Manager;

WHEREAS, the City Manager, as appointing power, and Employee desire to agree in writing to the terms and conditions of Employee’s employment;

**AGREEMENT**

**NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:**

**1. DUTIES.**

(a) City agrees to employ Employee as Assistant City Manager of the City of Rohnert Park to perform the functions and duties specified in the City of Rohnert Park Job Description for the Assistant City Manager position attached hereto as Exhibit A, and to perform other legally permissible and proper duties and functions as City Manager may from time to time assign.

(b) Employee shall perform his duties to the best of his ability in accordance with the highest professional and ethical standards of the profession and shall comply with all general rules and regulations established by City.

(c) Employee shall not engage in any activity, which is or may become a conflict of interest, prohibited contract, or which may create an incompatibility of office as defined under California law. Prior to performing any services under this Agreement and annually thereafter, Employee must complete disclosure forms required by law.

**2. TERM.**

The term of this Agreement shall be from the 30th day of April 2014 through the 29th day of April, 2017, or until terminated earlier by either party in accordance with the provisions set forth in Paragraph 3 or by the event of the death or permanent disability of Employee.

### **3. RESIGNATION AND TERMINATION.**

(a) Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign at any time from the position as City's Assistant City Manager. Employee may terminate this Agreement by submitting written notice of his resignation to City. Employee shall give the City thirty (30) days written notice of his intention to resign.

(b) Employee is an "at will" employee who serves at the pleasure of the City Manager and nothing herein shall be taken to prevent, limit or otherwise interfere with the right of the City Manager to terminate the services of Employee as Assistant City Manager with or without cause at any time. There is no express or implied promise made to Employee for any form of continued employment. Further, nothing in this Agreement is intended to, or does, confer upon Employee any due process right to a hearing or other administrative process pertaining to termination, before or after a decision by the City to terminate his employment, unless Employee is entitled to a name clearing hearing under California or federal law. No terms of this Agreement may be altered without an express written document signed by the Employee and City Manager and approved by the City Council.

(c) Employee may be terminated for cause at any time by providing Employee written notice of his termination for cause. Termination for cause means termination based upon a breach of any of the terms of this Agreement, malfeasance of any nature occurring during the course and scope of the Employee's duties as Assistant City Manager; or a conviction, plea bargain, or personal adverse State or federal determination against Employee individually involving any felony, intentional tort, crime of moral turpitude, violation of statute or law constituting forfeiture of office, misconduct in office for personal gain, misuse of public funds for personal benefit, conflict of interest resulting in conviction, or any other incompatible activity or conflict of interest listed in Section 7 of City Personnel Rules and Regulations.

(d) Severance Benefits

- (1) In the event Employee is terminated from employment without cause while still willing and able to perform his duties under this Agreement during Employee's initial 12 months of employment, Employee shall not be entitled to any severance benefits. In the event Employee is terminated from employment without cause while still willing and able to perform his duties under this Agreement during the 13th through 24th months of Employee's employment, then City agrees to pay Employee a lump sum cash payment equal to one (1) month of his base monthly compensation. In the event Employee is terminated from employment without cause while still willing and able to perform his duties under this Agreement during the 25th through 36th months of Employee's employment, then City agrees to pay Employee a lump sum cash payment equal to two (2) months of his base monthly compensation. In addition, City shall extend to Employee the right to continue health insurance as may be required by and pursuant to the terms and conditions of the Consolidated Omnibus Budget Act of 1986 (COBRA).

- (2) In the event Employee is terminated for cause, Employee shall be entitled to only the compensation earned and accrued and such other termination benefits and payments as may be required by law. Employee shall not be entitled to any severance benefits.

#### **4. COMPENSATION AND BENEFITS.**

(a) City agrees to pay Employee for his services rendered pursuant hereto as Assistant City Manager a gross monthly salary of eleven thousand one hundred and ninety dollars (\$11,190.00) payable in installments at the same time as other employees of the City are paid and subject to all applicable payroll taxes and withholdings. This is the second step of the M103 salary range and movement to the next step in the salary range is performance based at the City Manager's discretion. The position of Assistant City Manager is exempt under the Fair Labor Standards Act and, therefore, no overtime pay will be paid to Employee based on hours worked.

(b) In accordance with City policy, City Manager will review and evaluate performance of Employee as Assistant City Manager once each year.

(c) Employee shall be entitled to all benefits, rights, and privileges afforded to the non-public safety Management Unit except as otherwise provided in this Agreement. If there is any conflict between this Agreement and any resolution fixing compensation and benefits for non-public safety City Department Directors or other unclassified employees, this Agreement shall control.

(d) Employee shall be included in the City's Miscellaneous Plan with the California Public Employees' Retirement System ("CalPERS"); and enrolled in the two percent (2.0 %) at age fifty five (55) program to miscellaneous member employees hired on or after July 1, 2011. Employee shall contribute the total "employee contribution" required by law. City has determined and warrants that Employee is a "current" or "classic" employee and not a "new" employee as those terms are used and defined in the California Pension Reform Act (Gov. Code §§ 7522 et seq.), effective January 1, 2013, and subsequent CalPERS implementing regulations.

(e) Employee is subject to City Personnel Rules and Regulations as an Executive Management Employee and is exempt from specific rules and regulations as set forth in Section 1, subsection (C) of the Personnel Rules, as amended or supplemented from time to time. Employee is exempt from the City's Grievance Policy and Procedure as set forth in Resolution No. 79-22 and incorporated by reference into the Management Unit Outline and City Personnel Rules and Regulations.

(f) If available and budgeted, City will provide up to three thousand dollars (\$3,000) per fiscal year for Employee's professional development expenses. Use of these dollars shall be subject to the prior approval of the City Manager.

## **5. INDEMNIFICATION.**

In accordance with the terms, conditions, and limitations of the Government Claims Act (Gov't Code §§ 810 et seq.), City shall defend, save harmless, and indemnify Employee against any tort, 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 Employee's duties as Assistant City Manager. Based on its sole discretion, the City will determine whether to compromise and settle any such claim or suit and the amount of any settlement or judgment rendered thereon. Said indemnification shall extend beyond termination of employment, and the otherwise expiration of this Agreement for any acts undertaken in his capacity as Assistant City Manager, regardless of whether the notice of filing of a lawsuit for such tort, claim, demand, or other legal action occurs during or following Employee's employment with City as Assistant City Manager.

## **6. CONFLICT OF INTEREST PROHIBITION.**

Employee represents and warrants to City that, to the best of his knowledge, 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 the performance of his duties under this Agreement.

## **7. CONFIDENTIAL INFORMATION.**

"Confidential Information" is all non-public information pertaining 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. Confidential Information shall include, without limitation, proprietary information such as trade secrets, confidential financial data and formulae, attorney client-privileged information, confidential licensing information, software and other computer programs, copyrightable material, and other information exempt from production under the California Public Records Act and/or the Freedom of Information Act. During his employment by City, Employee shall disclose Confidential Information only for the benefit of City and as may be necessary to perform his job responsibilities under this Agreement. Following termination, Employee shall not disclose any Confidential Information, except with the express written consent of City. Employee's obligations under this Section shall survive the termination of his employment and the expiration of this Agreement.

## **8. OTHER TERMS AND CONDITION OF EMPLOYMENT.**

The City Manager may fix any other terms and conditions of employment, as he or she may determine from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with provisions of this Agreement or law. Any changes to the terms and conditions of employment will not be effective without a writing signed by the City Manager and Employee, and approved by the City Council.

## **9. GENERAL EXPENSES.**

City recognizes and agrees to pay and/or reimburse Employee for reasonable and necessary travel, subsistence and other business expenses incurred by Employee in the performance of his duties with prior approval by the City Manager.

## **10. NOTICES.**

Any notices required by this Agreement shall be in writing and either given in person or by first class mail with postage prepaid and addressed as follows:

TO CITY:                      City Manager  
                                    City of Rohnert Park  
                                    130 Avram Avenue  
                                    Rohnert Park, CA94928

TO EMPLOYEE:            Don Schwartz  
                                    Home Address on File with Human Resources

## **11. ATTORNEY'S FEES.**

In the event of any mediation, arbitration or litigation to enforce any of the provisions of this Agreement, each party shall bear its own attorney's fees and costs.

## **12. ENTIRE AGREEMENT.**

This Agreement is the final expression of the complete agreement of the parties with respect to the matters specified herein and supersedes all prior oral or written understandings, and it may not be contradicted by evidence of any prior or contemporaneous statements or agreements. Except as prescribed herein, this Agreement cannot be modified except by written mutual agreement signed by both parties and approved by the City Council. To the extent that the practices, policies, or procedures of City, now or in the future, apply to Employee, and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control.

## **13. ASSIGNMENT.**

This Agreement is not assignable by either City or Employee.

## **14. SEVERABILITY.**

In the event that any provision of this Agreement is finally held or determined to be illegal or void by a court having jurisdiction over the parties, the remainder of the Agreement shall remain in full force and effect unless the parts found to be void are wholly inseparable from the remaining portion of the Agreement.

**15. PROVISIONS THAT SURVIVE TERMINATION.**

Some sections of this Agreement are intended by their terms to survive the Assistant City Manager's termination of employment with the City, including but not limited to Sections 5. These sections, and the others so intended, shall survive termination of employment and termination of this Agreement.

**16. JURISDICTION AND VENUE.**

This Agreement shall be construed in accordance with the laws of the State of California, and the Parties agree that venue shall be in Sonoma County, California.

**17. NO WAIVER OF DEFAULT.**

The failure of any party to enforce against another party any provision of this Agreement shall not constitute a waiver of that party's right to enforce such a provision at a later time, and shall not serve to vary the terms of this Agreement.

**18. EFFECTIVE DATE.**

This Agreement shall be deemed effective on the 30th day of April, 2014.

**19. ACKNOWLEDGMENT.**

Employee acknowledges that he has had the opportunity to consult legal counsel in regard to this Agreement, that he 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 judgment and not on any representations or promises other than those contained in this Agreement.

IN WITNESS WHEREOF, the City has caused the Agreement to be signed and executed on its behalf by its City Manager. It has also been executed by Employee on the date first above written.

CITY OF ROHNERT PARK

By: \_\_\_\_\_  
Darrin Jenkins  
City Manager

Per Resolution No. 2014-\_\_ adopted by the  
Rohnert Park City Council on April 8,  
2014.

By: \_\_\_\_\_  
JoAnne Buergler  
City Clerk

EMPLOYEE

By: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Michelle Marchetta Kenyon  
City Attorney