

RESOLUTION NO. 2017-056

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

WHEREAS, on April 30, 2014, City entered into an Employment Agreement with Don Schwartz ("Employment Agreement") to retain his services as the Assistant City Manager;

WHEREAS, on October 14, 2014, the City entered into a First Amendment to Employment Agreement with Don Schwartz to modify the compensation and benefits provisions of the Employment Agreement;

WHEREAS, on March 28, 2017, the City entered into a Second Amendment to Employment Agreement with Don Schwartz to modify the term of the Employment Agreement

WHEREAS, the City and Don Schwartz desire to further amend the Employment Agreement to modify the terms and conditions of Don Schwartz's employment as Assistant City Manager;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Rohnert Park hereby approves the Third Amendment to Employment Agreement between the City of Rohnert Park and Don Schwartz for Assistant City Manager Services in substantially the same form attached hereto as Exhibit "A," which is incorporated herein by this reference.

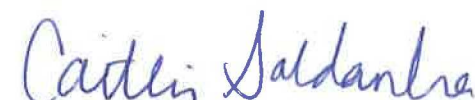
BE IT FURTHER RESOLVED, that the City Manager is authorized and directed to execute same for and on behalf of the City of Rohnert Park.

DULY AND REGULARLY ADOPTED by the City Council of the City of Rohnert Park this 9th day of May, 2017.

CITY OF ROHNERT PARK


Jake Mackenzie, Mayor

ATTEST:


Caitlin Saldanha, Deputy City Clerk

Attachment: Exhibit A

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

EXHIBIT "A"

THIRD AMENDMENT TO EMPLOYMENT AGREEMENT

Between

CITY OF ROHNERT PARK AND DON SCHWARTZ

1. PARTIES AND EFFECTIVE DATE

The parties to this Third Amendment to Employment Agreement ("Third Amendment") are the City of Rohnert Park ("City") and Don Schwartz ("Employee"). The effective date of this Third Amendment shall be April 30, 2017.

2. PURPOSE

The parties have previously entered into an Employee Agreement between City of Rohnert Park and Don Schwartz ("Employment Agreement") effective as of April 30, 2014. On October 14, 2014, the City entered into a First Amendment to Employment Agreement with Don Schwartz to modify the compensation and benefits provisions of the Employment Agreement, and on March 28, 2017, the City entered into a Second Amendment to Employment Agreement with Don Schwartz to modify the term of the Employment Agreement. The Employment Agreement as amended by the First Amendment to the Employment Agreement and Second Amendment to Employment Agreement shall be referred to as the "Amended Employment Agreement." The City and Employee hereby desire to amend the Amended Employment Agreement as set forth below.

3. AMENDMENT TO SECTION 3

(a) Section 3(d)(1) of the Amended Employment Agreement is hereby modified in its entirety to read as follows:

3. RESIGNATION AND TERMINATION.

(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, then City agrees to pay Employee a lump sum cash payment equal to two (2) months of his base monthly compensation. All payments required under this Section 3(d)(1) are subject to and shall be interpreted to comply with the limitations set forth in Government Code Section 53260. 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).

(b) The following shall be added as Section 3(e) to the Amended Employment Agreement:

3. RESIGNATION AND TERMINATION.

(e) Reimbursement to the City

- (1) If this Agreement is terminated, any cash settlement related to the termination that Employee may receive from the City shall be fully reimbursed to the City if Employee is convicted of a crime involving an abuse of his office or position as defined by Government Code section 53243.4.
- (2) If any express or implied provision of this Agreement, the Municipal Code of the City, or any policy or practice of the City provide paid leave salary to Employee pending an investigation, said paid leave salary shall be fully reimbursed by the Employee to the City if Employee is convicted of a crime involving an abuse of his office or position as defined by Government Code section 53243.4.
- (3) If any express or implied provision of this Agreement, the Municipal Code of the City, or any policy or practice of the City provide for payment of funds for the legal criminal defense of Employee, said funds paid for his legal defense shall be fully reimbursed by Employee to the City if Employee is convicted of a crime involving an abuse of his office or position as defined by Government Code section 53243.4.

4. AMENDMENT TO SECTION 4

Section 4(c) of the Amended Employment Agreement is hereby modified in its entirety to read as follows:

4. COMPENSATION AND BENEFITS.

- (c) Employee shall be entitled to the following salary adjustments: \$168,917.57 base salary (which represents a 5.5% increase from the previous year) effective April 30, 2017; \$173,140.51 base salary (which represents a 2.5% increase from the previous year) effective the first day of the first pay period which includes July 1, 2018; \$177,469.02 base salary (which represents a 2.5% increase from the previous year) effective the first day of the first pay period which includes July 1, 2019; \$182,793.09 base salary (which represents a 3.0% increase from the previous year) effective the first day of the first pay period which includes July 1, 2020.

4. GENERAL PROVISIONS

A. This Third Amendment consists of pages 1 through 3 inclusive and constitutes the entire understanding and agreement of the parties and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the terms discussed in this Third Amendment.

B. Except as specifically modified herein, all remaining terms and obligations set forth in the Amended Employment Agreement between the City of Rohnert Park and Employee shall remain in full force and effect.

CITY OF ROHNERT PARK

By: _____
Darrin Jenkins,
City Manager

Dated: _____
Per Reso. No. 2017-__ adopted ____.

EMPLOYEE

By: _____
Don Schwartz

Dated: _____

APPROVED AS TO FORM:

By: _____
Michelle Marchetta Kenyon
City Attorney

Attest:

By: _____
City Clerk