

**CITY OF ALBANY  
CITY COUNCIL AGENDA  
STAFF REPORT**

Agenda Date: December 7, 2020

**SUBJECT:** Amendment No. 2 to the Employment Agreement for City Manager Services

**REPORT BY:** Mala Subramanian, City Attorney

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**SUMMARY**

This report details the proposed Amendment No. 2 to the Employment Agreement for City Manager Services.

**STAFF RECOMMENDATION**

That the Council adopt Resolution No. 2020-119 approving Amendment No. 2 to the Employment Agreement for City Manager Services.

**BACKGROUND/DISCUSSION**

On January 22, 2018 the City Council adopted Resolution No. 2018-20 approving an employment agreement with Nicole Almaguer for City Manager Services (“Agreement”). On October 21, 2019 the City Council adopted Resolution No. 2019-88 approving Amendment No. 1 to the Agreement to increase the compensation.

In accordance with the terms of the Agreement, the City Council conducted an annual performance review of the City Manager on November 2, 2020 and November 16, 2020 and desire to further amend the Agreement to provide for additional administrative leave.

As detailed in the attached Amendment No. 2 to the Employment Agreement for City Manager Services and below, Section 4A has been amended in full to provide for an additional 80 hours of administrative leave.

“SECTION 4: BENEFITS

A. Except as otherwise provided in this Agreement, Employee is to be provided the same retirement, medical, dental, vacation, sick leave, holiday, long-term disability and other benefits which are offered to other management employees as more fully described in the Management and Confidential Employees Benefits Booklet (“Benefits Booklet”), which may be amended from time to time by the Employer. In addition to the amount of administrative leave for which Employee is eligible pursuant to the Benefits Booklet, Employee shall also receive 80 additional hours of administrative leave at the beginning of

each calendar year, subject to all other conditions provided regarding administrative leave as set forth in the Benefits Booklet.”

**Attachments**

1. Resolution No. 2020-119
2. Amendment No. 2 to the Employment Agreement for City Manager Services
3. Resolution No. 2019-88 with Amendment No. 1 to the Employment Agreement for City Manager Services
4. Resolution No. 2018-20 with the Employment Agreement

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**RESOLUTION NO. 2020-119**

**A RESOLUTION OF THE ALBANY CITY COUNCIL APPROVING  
AMENDMENT NO. 2 TO THE EMPLOYMENT AGREEMENT  
FOR CITY MANAGER SERVICES**

**WHEREAS**, on January 22, 2018 the City Council adopted Resolution No. 2018-20 approving an employment agreement with Nicole Almaguer for City Manager Services (“Agreement”); and

**WHEREAS**, on October 21, 2019 the City Council adopted Resolution No. 2019-88 approving Amendment No. 1 to the Agreement.

**WHEREAS**, in accordance with the terms of the Agreement, the City Council conducted an annual performance review of the City Manager on November 2, 2020 and November 16, 2020; and

**WHEREAS**, the City Council desires to further amend the Agreement to provide for additional administrative leave.

**NOW, THEREFORE, BE IT RESOLVED**, that the Albany City Council hereby approves Amendment No. 2 to the Employment Agreement for City Manager Services provided as Exhibit A to this Resolution.

\_\_\_\_\_  
NICK PILCH, MAYOR

EXHIBIT A: Amendment No. 2 to the Employment Agreement for City Manager Services

1 **AMENDMENT NO. 2 TO EMPLOYMENT AGREEMENT**  
2 **FOR CITY MANAGER SERVICES**  
3

4 **THIS AMENDMENT NO. 2** (“Amendment No. 2”) to the Employment Agreement  
5 for City Manager Services (“Agreement”) is entered into effective December 7, 2020 by and  
6 between the City Council of the City of Albany, a California municipal corporation  
7 organized as a charter city (“Employer”) and Nicole Almaguer (“Employee”).  
8

9 **WHEREAS**, on January 22, 2018 the City Council adopted Resolution No. 2018-20  
10 approving an employment agreement with Nicole Almaguer for City Manager Services;  
11 and  
12

13 **WHEREAS**, on October 21, 2019 the City Council adopted Resolution No. 2019-88  
14 approving Amendment No. 1 to the Agreement; and  
15

16 **WHEREAS**, in accordance with the terms of the Agreement, the City Council  
17 conducted an annual performance review of the City Manager on November 2, 2020 and  
18 November 16, 2020; and  
19

20 **WHEREAS**, the City Council desires to further amend the Agreement to provide for  
21 additional administrative leave.  
22

23 **NOW, THEREFORE**, in consideration of the mutual covenants and conditions set  
24 forth in this Amendment No. 2, the parties agree as follows:

25  
26 **A. Amendment No. 2 to Agreement.** This Amendment No. 2 makes certain specific  
27 changes to the Agreement. Except for the provisions expressly modified in this  
28 Amendment No. 2, the remaining terms and conditions of the Agreement as  
29 otherwise amended remain in full force and effect. Section 4: BENEFITS,  
subsection A is amended in full to read as follows:

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**“SECTION 4: BENEFITS**

A. Except as otherwise provided in this Agreement, Employee is to be provided the same retirement, medical, dental, vacation, sick leave, holiday, long-term disability and other benefits which are offered to other management employees as more fully described in the Management and Confidential Employees Benefits Booklet (“Benefits Booklet”), which may be amended from time to time by the Employer. In addition to the amount of administrative leave for which Employee is eligible pursuant to the Benefits Booklet, Employee shall also receive 80 additional hours of administrative leave at the beginning of each calendar year, subject to all other conditions provided regarding administrative leave as set forth in the Benefits Booklet.”

**IN WITNESS WHEREOF**, the parties have executed this Amendment No. 2 as of the day and year written above.

**CITY OF ALBANY**

**EMPLOYEE**

By: \_\_\_\_\_  
NICK PILCH, MAYOR

By: \_\_\_\_\_  
NICOLE ALMAGUER, CITY MANAGER

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
MALA SUBRAMANIAN, CITY ATTORNEY

**ATTEST:**

By: \_\_\_\_\_  
ANNE HSU, CITY CLERK

Date: \_\_\_\_\_

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**RESOLUTION NO. 2019-88**

**A RESOLUTION OF THE ALBANY CITY COUNCIL APPROVING  
AMENDMENT NO. 1 TO THE EMPLOYMENT AGREEMENT  
FOR CITY MANAGER SERVICES**

**WHEREAS**, on January 22, 2018 the City Council adopted Resolution No. 2018-20 approving an employment agreement with Nicole Almaguer for City Manager Services; and

**WHEREAS**, in accordance with the terms of the Agreement, the City Council conducted an annual performance review of the City Manager on September 16, 2019 and October 7, 2019; and

**WHEREAS**, per the employment agreement, Section 3: COMPENSATION, the annual base salary may be further increased by the Employer from time to time by written amendment.

**NOW, THEREFORE, BE IT RESOLVED**, that the Albany City Council hereby approves Amendment No. 1 to the Employment Agreement for City Manager Services provided as Exhibit A to this Resolution.


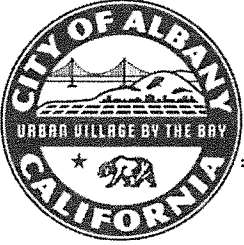
  
\_\_\_\_\_  
ROCHELLE NASON, MAYOR

EXHIBIT A: Amendment No. 1 to the Employment Agreement for City Manager Services



# City of Albany

1000 San Pablo Avenue • Albany, California 94706  
(510) 528-5710 • [www.albanyca.org](http://www.albanyca.org)

## RESOLUTION NO. 2019-88

PASSED AND APPROVED BY THE COUNCIL OF THE CITY OF ALBANY,

The 21st day of October, 2019, by the following votes:

AYES: Council Members Maass, McQuaid, Pilch and Mayor Nason

NOES: None

ABSENT: Council Member Barnes

ABSTAINED: none

RECUSED: none

WITNESS MY HAND AND THE SEAL OF THE CITY OF ALBANY, this

22nd day of October, 2019.

Eileen Harrington  
DEPUTY CITY CLERK

AMENDMENT NO. 1 TO EMPLOYMENT AGREEMENT  
FOR CITY MANAGER SERVICES

THIS AMENDMENT NO. 1 (“Amendment No. 1”) to the Employment Agreement for City Manager Services (“Agreement”) is entered into effective October 21, 2019 by and between the City Council of the City of Albany, a California municipal corporation organized as a charter city (“Employer”) and Nicole Almaguer (“Employee”).

WHEREAS, on January 22, 2018 the City Council adopted Resolution No. 2018-20 approving an employment agreement with Nicole Almaguer for City Manager Services; and

WHEREAS, in accordance with the terms of the Agreement, the City Council conducted an annual performance review of the City Manager on September 16, 2019 and October 7, 2019; and

WHEREAS, per the Employment Agreement, Section 3: COMPENSATION, the annual base salary may be further increased by the Employer from time to time by written amendment.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth in this Amendment No. 1, the parties agree as follows:

A. **Amendment No. 1 to Agreement.** This Amendment No. 1 makes certain specific changes to the Agreement. Except for the provisions expressly modified in this Amendment No. 1, the remaining terms and conditions of the Agreement remain in full force and effect. The following provision of the Agreement is hereby amended, as follows:



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2 Employer agrees to pay Employee for her services rendered pursuant hereto  
3 an annual base salary of two hundred one thousand three hundred eighty-  
4 seven dollars (\$201,387), payable in installments at the same time as other  
5 employees of the Employer are paid. Employee shall receive an additional  
6 five percent (5%) of the base salary as longevity pay, as provided to other  
7 management employees who have served ten (10) or more years with the  
8 City, bringing her total annual salary to two hundred eleven thousand four  
9 hundred fifty-seven dollars (\$211,457).

10 Employee shall automatically receive any cost of living increases the  
11 management employees may be granted by the Employer during the term  
12 of this Agreement. The annual base salary may be further increased by the  
13 Employer from time to time by written amendment of this Agreement. The  
14 current salary shall be accurately reflected in the Employer's Salary  
15 Schedule.

16 **IN WITNESS WHEREOF**, the parties have executed this Amendment No. 1 as of  
17 the day and year written above.

18 **CITY OF ALBANY**

**EMPLOYEE**

19 By:   
20 ROCHELLE NASON, MAYOR

By:   
NICOLE ALMAGUER, CITY MANAGER

21 **APPROVED AS TO FORM:**

22 By:   
23 CRAIG ABADIE, CITY ATTORNEY

24 **ATTEST:**

25 By:   
26 ANNE HSU, CITY CLERK

27 Date: 10/21/19  
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**RESOLUTION NO. 2018-20**

**A RESOLUTION OF THE ALBANY CITY COUNCIL APPROVING AN  
EMPLOYMENT AGREEMENT WITH NICOLE ALMAGUER FOR CITY  
MANAGER SERVICES**

**WHEREAS**, the City Council previously appointed Nicole Almaguer as the Interim City Manager and entered into an Employment Agreement with her effective on November 20, 2017; and

**WHEREAS**, the Interim City Manager Employment Agreement is scheduled to expire on March 15, 2018; and

**WHEREAS**, the City Council wishes to contract with Ms. Almaguer as the new City Manager for the City of Albany, pursuant to the terms and conditions of the attached Employment Agreement for City Manager.

**NOW THEREFORE, BE IT RESOLVED**, that the Albany City Council hereby approves the attached Employment Agreement with Nicole Almaguer to serve as the City Manager and authorizes the Mayor to execute the Agreement on behalf of the City. The Agreement will supersede and replace the previous Employment Agreement for Interim City Manager.

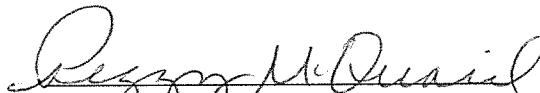
  
PEGGY MCQUAID, MAYOR

EXHIBIT A: CITY MANAGER EMPLOYMENT AGREEMENT

**CITY OF ALBANY**  
**EMPLOYMENT AGREEMENT**  
**FOR CITY MANAGER**

THIS AGREEMENT, made, entered into and effective on the 22nd day of January, 2018, by and between the City Council of the City of Albany, a California municipal corporation organized as a charter city ("Employer") and Nicole Almaguer ("Employee"), both of whom understand and agree as follows:

**RECITALS**

WHEREAS, Employer desires to employ the services of Ms. Nicole Almaguer as City Manager of the City of Albany, as provided by the Albany City Charter and the Albany Municipal Code; and

WHEREAS, it is the desire of the Employer to provide certain benefits, to establish certain conditions of employment, and to set out working conditions of said Employee; and

WHEREAS, it is the desire of the Employer: (1) to secure and retain the services of Employee and to provide inducement for her to remain in such employment, (2) to make possible full work productivity by setting forth the parameters of an employment agreement, (3) to provide for the conditions under which the employment relationship may be amended or terminated.

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

**SECTION 1: EMPLOYMENT**

Employer hereby agrees to employ Employee as City Manager of the City of Albany to perform the function and duties specified in the Albany City Charter and the Albany Municipal Code, as well as other legally permissible and proper duties and functions as the Employer shall from time to time assign.

**SECTION 2: TERM**

A. The term of this Agreement shall commence on January 22, 2018 and continue in effect for a period of two years, subject to the termination provisions set forth in Section 5. The parties may mutually agree to an extension of the term by written amendment of this Agreement. If this Agreement is not extended by mutual agreement prior to the end of its term, it shall continue in

effect under the same terms and conditions unless terminated by either party pursuant to Section 5.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employer to terminate the services of Employee at any time, with or without cause, subject only to the provisions set forth in Section 5, paragraphs A and B.

C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from her position with Employer, subject only to the provisions set forth in Section 5, paragraph C.

### **SECTION 3: COMPENSATION**

Employer agrees to pay Employee for her services rendered pursuant hereto an annual base salary of one hundred seventy-eight thousand two hundred thirty-six dollars (\$178,236), payable in installments at the same time as other employees of the Employer are paid. Employee shall receive an additional five percent (5%) of the base salary as longevity pay, as provided to other management employees who have served ten (10) or more years with the City, bringing her total annual salary to one hundred eighty-seven thousand one hundred fifty-two dollars (\$187,152). Employee shall automatically receive any cost of living increases the management employees may be granted by the Employer during the term of this Agreement. The annual base salary may be further increased by the Employer from time to time by written amendment of this Agreement. The current salary shall be accurately reflected in the Employer's Salary Schedule.

### **SECTION 4: BENEFITS**

A. Except as otherwise provided in this Agreement, Employee is to be provided the same retirement, medical, dental, vacation, administrative leave, sick leave, holiday, long-term disability and other benefits which are offered to other management employees as more fully described in the Management and Confidential Employees Benefits Booklet, which may be amended from time to time by the Employer.

B. Employee is entitled to carry over existing leave balances earned in her current position of Assistant City Manager/City Clerk/Public Information Officer to the new Employee status as City Manager.

C. Employee shall receive a transportation allowance of two hundred (\$200) dollars per month.

D. Employee may, at her option, receive cash payment for any accrued vacation hours in excess of the three hundred (300) hour cap, payable at the end of the calendar year. Additionally, Employee may receive cash payment of administrative leave balances up to one hundred percent (100%) annually.

## **SECTION 5: TERMINATION**

- A. Employee is an at-will employee appointed by and serving at the pleasure of Employer, acting through its City Council; and this Agreement may be terminated by Employer at any time, with or without cause. Pursuant to Albany Municipal Code Section 2-3.1, if Employer terminates this Agreement for any reason, Employee shall be entitled to receive a severance payment equal to ninety (90) days salary following receipt of a written notice of termination, in addition to payment for accrued vacation as required by law.
- B. Pursuant to Albany Municipal Code Section 2-3.1, Employee shall not be removed from office within ninety (90) days after a general municipal election at which a new member of the City Council is elected, except by a unanimous vote of all members of the City Council. The purpose of this provision is to permit any newly elected member of the City Council to observe the actions and assess the ability of the City Manager in the performance of her duties.
- C. If Employee wishes to terminate her employment as the City Manager, she agrees to give Employer at least sixty (60) days prior written notice.

## **SECTION 6: GOAL-SETTING AND PERFORMANCE EVALUATIONS**

A. As soon as practicable after the effective date of this Agreement, Employee and Employer shall meet and confer in a closed session meeting of the City Council for the purpose of formulating mutually agreed goals, objectives and performance criteria for the first six (6) months of Employee's tenure as the City Manager. Approximately six (6) months after establishment of these initial goals and objectives, Employer shall review and evaluate the performance of Employee in meeting the agreed goals and objectives.

B. Thereafter, Employer shall review and evaluate the performance of Employee at least once annually, with the timing to be determined by Employer in consultation with Employee. Said review and evaluation shall be in accordance with specific goals, objectives and performance criteria developed jointly by Employer and Employee, to the extent feasible. Employer, at its sole discretion, may add, delete or modify the goals, objectives and/or performance criteria. Further, Employer shall provide Employee with an oral or written statement of the findings of the entire City Council and provide an adequate opportunity for Employee to discuss her performance evaluation with the City Council. Employer and Employee agree to review Employee's salary in conjunction with the annual performance evaluation, or at such other time as the Parties may mutually agree.

## **SECTION 7: MEMBERSHIP DUES, CONFERENCES AND PROFESSIONAL DEVELOPMENT**

A. Employer agrees to pay the cost for Employee to attend the League of California Cities Managers meeting, one other conference (ICMA), the annual ICMA membership, and other short courses or training seminars as are agreed upon by the Parties from time to time.

B. Employer agrees to pay travel and subsistence expenses of Employee for conferences in a manner consistent with the treatment of other management employees.

C. Employer agrees to reimburse Employee for reasonable business expenses to conduct non-conference related City business including meals, travel and lodging.

#### **SECTION 8: INDEMNIFICATION**

Employer shall defend, save harmless and indemnify Employee against any tort or professional liability claim, demand, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the course and scope of Employee's duties as City Manager.

#### **SECTION 9: BONDS**

Employer shall bear the full costs of any fidelity or other bonds required of Employee under law or ordinance.

#### **SECTION 10: OTHER TERMS AND CONDITIONS OF EMPLOYMENT**

- A. Employer, in consultation with Employee, shall fix in writing any such other terms and conditions of employment, as it may determine from time to time, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this agreement, the Albany City Charter or any other law.
- B. Employer shall not at any time during the term of this Agreement reduce the salary, compensation or other financial benefits of the Employee, except to the degree of such a reduction is applicable across the board for all management employees of Employer.

#### **SECTION 11: NOTICES**

Notice pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

(1) EMPLOYER: City Clerk, City of Albany, 1000 San Pablo Avenue, Albany, CA 94706

(2) EMPLOYEE: Ms. Nicole Almaguer, c/o City Hall, 1000 San Pablo Avenue, Albany, CA 94706

Alternatively, notices required pursuant to this agreement may be personally or electronically served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal or electronic service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

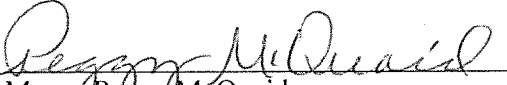
**SECTION 12: GENERAL PROVISIONS**

A. The text herein shall constitute the entire agreement between the Parties.

B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee.

C. 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.

IN WITNESS WHEREOF, the City of Albany has caused this Agreement to be signed on its behalf by its Mayor, and the Employee has signed this Agreement, in one or more duplicate originals.

  
\_\_\_\_\_  
Mayor Peggy McQuaid

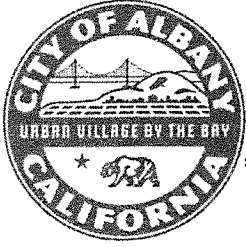
  
\_\_\_\_\_  
Nicole Almaguer ("Employee")

Attest:

  
\_\_\_\_\_  
Anne Hsu, Interim City Clerk

Approved as to Form:

  
\_\_\_\_\_  
Craig Labadie, City Attorney



# City of Albany

1000 San Pablo Avenue • Albany, California 94706  
(510) 528-5710 • [www.albanyca.org](http://www.albanyca.org)

## RESOLUTION NO. 2018-20

PASSED AND APPROVED BY THE COUNCIL OF THE CITY OF ALBANY,

The 22nd day of January, 2018, by the following votes:

AYES: Council Members Barnes, Maass, Nason, Pilch and Mayor McQuaid

NOES: none

ABSENT: none

ABSTAINED: none

RECUSED: none

WITNESS MY HAND AND THE SEAL OF THE CITY OF ALBANY, this

23rd day of January, 2018.

*Eileen Harrington*

Eileen Harrington  
DEPUTY CITY CLERK