

AT-WILL EMPLOYMENT AGREEMENT

BETWEEN THE CITY OF HEALDSBURG AND DAVID KIFF

THIS AGREEMENT is between the CITY OF HEALDSBURG ("City"), a municipal corporation organized in the State of California, and DAVID KIFF ("Kiff"). The parties agree as follows:

RECITALS

- A. City has commenced an open recruitment to permanently fill the vacant position of City Manager;
- B. City is presently in need of an individual with the knowledge, skills and abilities to temporarily hold the position of Interim City Manager during the City's recruitment to permanently fill the position of City Manager;
- C. Kiff is uniquely qualified and has the requisite specialized skills, training and experience to serve as Interim City Manager for the City;
- D. City desires to employ the specialized services of Kiff as Interim City Manager in consideration of and subject to the terms, conditions, and benefits set forth in this Agreement;
- E. Kiff desires to accept temporary employment as Interim City Manager in consideration of and subject to the terms, conditions, and benefits set forth in this Agreement;
- F. Kiff represents that he is a retired annuitant of the California Public Employees' Retirement System ("CalPERS") within the meaning of Government Code § 21221(h) as of the effective date of this Agreement. Kiff represents that he retired from the CalPERS system at least 180 days prior to the effective date of this agreement. Kiff acknowledges that he is restricted to working no more than a combined 960 hours for City, a state agency, or other CalPERS contracting agencies (collectively "CalPERS Agencies") during City's 2019-2020 fiscal year, or for any additional or subsequent fiscal year, and that his compensation is statutorily limited as provided in Government Code § 21221(h). Kiff represents that he has not received any unemployment compensation from any CalPERS Agencies during the 12-month period preceding the effective date of this Agreement, that he has not received a retirement incentive upon retirement within the meaning of Government Code § 7522.56(g), and that he has attained normal retirement age within the meaning of Government Code § 21220.5;
- G. This Agreement was approved by the City Council as a regular agenda item at a regular meeting held on June 15th, 2020.

OPERATIVE PROVISIONS

In consideration of the promises and conditions contained herein, the parties agree as follows:

1. **Appointment as Interim City Manager**

The City hereby agrees to temporarily employ Kiff as Interim City Manager for the City subject to the terms, conditions and provisions of this Agreement. Kiff hereby accepts such employment.

2. Status and Term of Agreement

(a) This Agreement commences and is effective on July 3, 2020 ("Commencement Date"). This Agreement shall expire at the earlier of: (i) 5:00 p.m. on February 3, 2021; (ii) upon Kiff working his 960th hour for City in any fiscal year, including hours worked for other CalPERS Agencies during such fiscal year; (iii) upon appointment of a permanent City Manager; or (iv) upon termination of the Agreement by either Kiff or City as provided in Section 4 of this Agreement.

(b) Kiff acknowledges that he is an at-will employee of City who shall serve at the pleasure of the City Council at all times during the period of his service. The terms of the City's personnel rules, policies, procedures, ordinances, resolutions, or Municipal Code (collectively "Personnel Policies") shall not apply to Kiff to the extent such Personnel Policies conflict with this Agreement.

(c) Kiff shall serve for a definite term at the pleasure of the City Council and shall be considered an at-will employee of the City in the capacity of retired annuitant, commencing upon execution of this Agreement.

(d) Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Council to terminate the employment of Kiff at any time for any lawful reason.

(e) Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Kiff to resign at any time from his position with the City.

3. Duties and Responsibilities

(a) City agrees to employ Kiff as an Interim City Manager of the City to perform the functions and duties of that office including, under City Council direction, providing management oversight in directing the activities and operations of the City as set forth in the Municipal Code of the City of Healdsburg, and to perform other legally permissible duties and functions as City Manager as the City Council shall from time to time assign.

(b) Kiff agrees to devote his productive time, ability and attention to the City's business during the term of this Agreement. Kiff shall not hold secondary employment, and shall be employed exclusively by the City, but shall be able to engage in occasional writing or consulting services performed on Kiff's time off, and with the advance approval of the City Council.

(c) Kiff shall not engage in any activity which is or may become a conflict of interest, prohibited by 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, Kiff must complete disclosure forms as required by law.

4. Resignation and Termination

(a) Kiff may resign at any time with or without cause and agrees to give City at least thirty (30) days advance written notice of the effective date of his resignation unless parties mutually agree otherwise.

(b) City may at any time terminate Kiff, with or without cause.

5. Salary and Benefits

(a) City agrees to pay Kiff for his services rendered pursuant to this Agreement at the rate of \$110.00 per hour, which is within the range of the City Manager position, as listed in the City's salary schedule for that position. All salary payments to Kiff shall be payable in installments at the same time as other employees of the City are paid and subject to the customary withholding.

(b) Kiff will record and report to City all hours worked for City as may be required for purposes of payroll and CalPERS compliance. Additionally, Kiff shall keep City continually informed of any hours worked by him for other CalPERS Agencies during the term of this Agreement. Kiff's employment as Interim City Manager shall be deemed a nonexempt position under applicable wage and hour laws. Kiff shall be provided with overtime compensation for hours worked in excess of 40 hours per week in accordance with applicable law.

(c) Pursuant to Government Code §21221(h) and related CalPERS regulations and policy statements, Kiff shall not receive from City any benefits City commonly provides to its employees, including without limitation health, dental, or vision insurance coverage, life insurance, gym programs, employee assistance programs, and similar benefits.

(d) City shall reimburse Kiff for any reasonable expenses incurred in the course of his employment.

6. Indemnification.

City shall defend and indemnify Kiff against any action, including but not limited to any tort, professional liability claim or demand, or other noncriminal legal, equitable or administrative action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Kiff's duties as an employee or officer of City, other than an action brought by City against Kiff, or an action filed against City by Kiff. City shall be responsible for and have authority to compromise and settle any action, with prior consultation with Kiff, and pay the amount of any settlement or judgment rendered on that action. Kiff shall cooperate fully with City in the settlement, compromise, preparation of the defense, or trial of any such action.

7. Arbitration

Any controversy or claim arising out of or relating to this Agreement or the breach thereof, or arising out of or relating to Employee's employment or termination thereof, including but not limited to claims of employment discrimination based on federal and state law, which cannot be resolved among the parties themselves, shall, on the written request of either party served on the other within the applicable statute of limitations, be submitted and resolved by final and binding arbitration in a manner consistent with the Federal Arbitration Act, if applicable, or the California Code of Civil Procedure (including CCP Section 1283.05). Service of the written request shall be made only by certified mail, with a return receipt requested. Time is of the essence; if the request is not served within a one-year period for claims arising out of this Agreement, or within the applicable statute of limitations for the alleged federal or state law claims, the complaining party's claim(s) shall be forever waived and barred before any and all forums, including, without limitation, arbitration or judicial forums.

The arbitrator shall have no authority to alter, amend, modify or change any of the terms of this Agreement unless a provision expressly conflicts with applicable federal or state laws. Any arbitrator selected under this provision shall have the express authority to consider statutory violations of federal and state law in addition to disputes involving this Agreement. The decision of the arbitrator shall be final and binding and judgment therein may be entered in any court having jurisdiction over the dispute.

The arbitration shall be conducted under the National Rules ("Rules") for the Resolution of Employment Disputes of the American Arbitration Association ("AAA") current at the time of the dispute. In the event that any of the above Rules are determined to be in conflict with federal or state law, then the arbitrator shall have the authority to amend the Rules accordingly. The City shall be responsible for paying all the AAA's administrative and arbitrator's fees. In all other respects, the parties shall bear their own attorney's fees and costs except as otherwise required by law. The parties shall have the right to conduct discovery which provides them with access to documents and witnesses that are essential to the dispute, as determined by the arbitrator. The arbitrator's written award shall include the essential findings and conclusions upon which the award is based.

The parties intend that this arbitration procedure is mandatory and shall be the exclusive means of resolving all disputes whether founded in fact or law between Employee and the City and/or its employees, agents, City Council members arising out of or relating to this Agreement, the parties' employment relationship and/or the termination of that relationship including, but not limited to any controversies or claims pertaining to wrongful or constructive discharge, violations of the covenant of good faith and fair dealing, implied contracts, public policies or antidiscrimination statutes. **THE PARTIES EXPRESSLY WAIVE ANY CONSTITUTIONAL OR STATUTORY RIGHT TO HAVE ANY SUCH DISPUTE DECIDED IN A COURT OF LAW AND/OR BY A JURY IN A COURT PROCEEDING.**

8. No Contract Term or Damages

Nothing in this Agreement shall be construed to create a contract of employment, either expressed or implied-in-fact, for any fixed term or requiring cause for termination. Employee hereby expressly waives the right to bring claims or causes of action seeking contract-based damages relating to his employment with the City. Employee acknowledges that his employment with the City is at-will and that either party may terminate the employment at any time for any reason, with or without cause.

9. Notices

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

TO CITY: Samantha W. Zutler, City Attorney
City of Healdsburg
401 Grove Street
Healdsburg, CA 95448

TO EMPLOYEE:
David Kiff, Interim City Manager
City of Healdsburg

401 Grove Street
Healdsburg, CA 95448

10. 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 and written understandings and agreements, and, except as prescribed herein, this Agreement cannot be modified except by written mutual agreement signed by the parties.

11. No Assignment, No Third-Party Beneficiaries

This Agreement is not assignable by either City or Kiff. Nothing in this Agreement shall be construed to create and parties do not intend to create any rights in third parties.

12. Severability, Applicable, Law, and Interpretation

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 this Agreement shall remain in full force and effect unless the parts found to be void are wholly inseparable from the remaining portion of this Agreement. Any dispute concerning this Agreement shall be governed by the laws of the State of California. This Agreement shall be construed under the laws of the State of California in effect at the time of signing of this Agreement. The parties consent to the jurisdiction of the California courts with venue in Sonoma County.

13. Construction.

To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulations, or law. This Agreement has been negotiated between City Council and David Kiff as Employee. City and Employee acknowledge that they have each contributed to the making of this Agreement and that in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. City and Employee acknowledge that they have each had an adequate opportunity to consult with their own legal counsel in the negotiation and preparation of this Agreement.

14. Counterparts.

This Agreement shall be executed simultaneously in two counterparts, which shall be identified by number and each of which shall be deemed an original, but all of which together shall constitute one and the same.

15. Government Code Provisions.

a. Pursuant to Government Code section 53260, in the event City provides Interim City Manager with a cash settlement related to termination of this Agreement, the cash settlement shall not exceed the lesser of (1) an amount equal to the City's monthly payment to Employee multiplied by 18 or (2) an amount equal to the City's monthly payment to Interim City Manager multiplied by the number of months left on the unexpired term of the Employment Agreement.

b. Pursuant to Government Code sections 53243 and 53243.3, in the event City provides paid leave salary to Interim City Manager pending an investigation into Interim City Manager, the Interim City Manager shall fully reimburse City for any paid leave salary if Interim City Manager is convicted of a crime involving an abuse of his office or position.

c. Pursuant to Government Code sections 53243.1 and 53243.3, in the event the City provides funds for Interim City Manager's legal criminal defense, the Interim City Manager shall fully reimburse City for any such funds if Interim City Manager is convicted of a crime involving an abuse of his office or position.

d. Pursuant to Government Code sections 53243.2 and 53243.3, in the event City provides Interim City Manager with a cash settlement related to Interim City Manager's termination, Interim City Manager shall fully reimburse City for any such cash settlement if Interim City Manager is convicted of a crime involving an abuse of his office or position.

e. Pursuant to Government Code section 53243.4, an "abuse of office or position" means (a) an abuse of public authority, including, but not limited to, waste, fraud, and violation of the law under color of authority, or (b) a crime against public justice, including, but not limited to, a crime described in Title 5 (commencing with Section 67), Title 6 (commencing with Section 85), or Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

IN WITNESS WHEREOF, the City has caused this Agreement to be signed and executed in its behalf by its Mayor and duly attested by the City Clerk. It has also been executed by the Employee.

DAVID KIFF

CITY OF HEALDSBURG

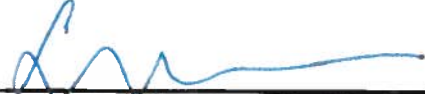


David A. Kiff



Evelyn Mitchell, Mayor

APPROVED AS TO FORM:



Samantha W. Zutler, City Attorney