

City of Calistoga

Staff Report

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TO: Honorable Mayor and City Council
FROM: Michelle Marchetta Kenyon, City Attorney
DATE: January 5, 2016
SUBJECT: Consideration of a Resolution Approving Employment Agreement Between City of Calistoga and Michael Kirn for Interim City Manager Services

APPROVAL FOR FORWARDING:


Michelle Marchetta Kenyon, City Attorney

1 **ISSUE:** Consideration of a Resolution Approving Employment Agreement Between City
2 of Calistoga and Michael Kirn for Interim City Manager Services.

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4 **RECOMMENDATION:** Adopt the Resolution.

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6 **BACKGROUND:** City Manager Richard Spitler has retired effective December 31, 2016.
7 Michael Kirn has served as the Acting City Manager since October 29, 2015. The
8 Council is now being asked to appoint Michael Kirn as Interim City Manager until a
9 permanent City Manager is hired by the Council. The annual salary for Michael Kirn will
10 be \$165,000 with an automobile allowance of \$400 per month. In addition, the
11 Agreement guarantees that Mr. Kirn will be allowed to revert back to his position as
12 Public Works Director once a permanent City Manager is in place or the Council decides
13 to hire a different person to serve as Interim City Manager. In order to effectuate the
14 appointment as Interim City Manager, the Council is being asked to adopt the attached
15 Resolution Approving the Employment Agreement Between the City of Calistoga and
16 Michael Kirn for Interim City Manager Services.

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18 **FISCAL IMPACT:** The recommended increase in Mr. Kirn's salary for the remaining
19 Fiscal Year 2015/16 would cost a maximum of \$23,336, if Mr. Kirn were to serve through
20 June 30, 2016. The additional cost would be distributed to the General Fund as follows:
21 01-4114-4301 \$19,259; 01-4114-4303 \$1,473; 01-4114-4309 \$1,500; and 01-4114-4412
22 \$1,104 for an amount not to exceed \$23,336. Due to the vacancy of the City Manager
23 position, the fiscal impact of the \$23,336 will come from the savings of the vacant
24 position.

25
26 **ATTACHMENTS:**

- 27
28 1. Draft Resolution
29

RESOLUTION NO. 2016-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA AUTHORIZING AND APPROVING EMPLOYMENT AGREEMENT BETWEEN CITY OF CALISTOGA AND MICHAEL KIRN FOR INTERIM CITY MANAGER SERVICES

WHEREAS, the City Council wishes to enter into An Employment Agreement with Michael Kirn to perform the duties of Interim City Manager;

WHEREAS, Michael Kirn possesses the skills and expertise necessary to perform these services;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Calistoga that the City Council authorizes and approves the Employment Agreement Between the City of Calistoga and Michael Kirn for Interim City Manager Services (“Interim City Manager Agreement”) attached hereto as Exhibit “A”.

BE IT FURTHER RESOLVED that the Mayor is authorized and directed to execute the Interim City Manager Agreement for and on behalf of the City of Calistoga.

DULY AND REGULARLY ADOPTED by the City Council of the City of Calistoga this 5th day of January 2016.

CITY OF CALISTOGA

CHRIS CANNING, Mayor

ATTEST:

KATHY FLAMSON, City Clerk

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1 **EMPLOYMENT AGREEMENT BETWEEN CITY OF CALISTOGA AND**
2 **MICHAEL KIRN FOR INTERIM CITY MANAGER SERVICES**

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4 THIS AGREEMENT between the CITY OF CALISTOGA ("City") and MICHAEL
5 KIRN ("Employee") is dated for reference purposes this 5th day of January, 2016 and is
6 deemed effective January 1, 2016 ("Effective Date").
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8 **RECITALS**
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10 WHEREAS, City desires to retain the services of Employee to serve as the
11 Interim City Manager.
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13 WHEREAS, Employee desires to serve as Interim City Manager of the City of
14 Calistoga.
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16 WHEREAS, the City Council, as appointing power, and Employee desire to
17 agree in writing to the terms and conditions of Employee's employment as Interim City
18 Manager.
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20 **AGREEMENT**
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22 NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:
23

24 **1. DUTIES.**
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26 (a) City agrees to employ Employee as Interim City Manager of the
27 City of Calistoga to perform the functions and duties specified in the ordinances and
28 resolutions of City and to perform other legally permissible and proper duties and
29 functions as the City Council may from time to time assign.
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31 (b) Employee shall perform his duties to the best of his ability in
32 accordance with the highest professional and ethical standards of the profession and
33 shall comply with all general rules and regulations established by City.
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35 (c) Employee shall not engage in any activity which is or may become
36 a conflict of interest, prohibited contract, or which may create an incompatibility of office
37 as defined under California law. Prior to performing any services under this Agreement
38 and annually thereafter, Employee must complete disclosure forms required by law.
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40 **2. TERM.**
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42 (a) The term of this Agreement shall be from the Effective Date until
43 the position of City Manager is permanently filled by the City Council unless terminated
44 earlier by either party in accordance with the provisions set forth in Paragraph 3 or by
45 the event of the death or permanent disability of Employee.
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47 (b) Employee agrees to remain in the exclusive employ of City during
48 the term of this Agreement and not to be otherwise employed during the term of this
49 Agreement.
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51 **3. RESIGNATION AND TERMINATION.**
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53 (a) Nothing in this Agreement shall prevent, limit or otherwise interfere
54 with the right of Employee to resign at any time from his position as Interim City
55 Manager of City. Employee may terminate this Agreement by submitting written notice
56 of his resignation to City. Employee shall give the City thirty (30) days written notice of
57 his intention to resign.
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59 (b) Employee serves at the pleasure of the City and nothing herein
60 shall be taken to prevent, limit or otherwise interfere with the right of the City to
61 terminate the services of Employee as Interim City Manager with or without cause.
62 There is no express or implied promise made to Employee for any form of continued
63 employment as the Interim City Manager.
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65 (c) In the event the City requests Employee to resign from his position
66 as Interim City Manager, or the Employee chooses to do so, the Employee shall have
67 the option of returning to his position as Public Works Director at the same terms and
68 conditions of employment that Employee received prior to the effective date of this
69 Agreement, including any cost of living adjustments normally received for Employee's
70 position as Public Works Director during Employee's tenure as Interim City Manager.
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72 **4. COMPENSATION AND BENEFITS.**
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74 (a) City agrees to pay Employee for his services rendered pursuant
75 hereto as Interim City Manager an annual salary of one hundred sixty five thousand
76 dollars (\$165,000) payable in installments at the same time as other employees of the
77 City are paid.
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79 (b) City will provide Employee with the same holidays, sick leave and
80 long term disability benefits, retirement benefits, insurance benefits including but not
81 limited to life, health and dental coverage, and vacation in the same manner provided to
82 him as Public Works Director. City will provide Employee with fifty (50) hours of
83 administrative leave through June 30, 2016 and beginning July 1, 2016 Employee shall
84 receive forty (40) hours of administrative leave through December 31, 2016.
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86 **5. SUPPLEMENTAL BENEFITS.**
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88 City shall pay to Employee a four hundred dollar (\$400) monthly car
89 allowance.
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6. INDEMNIFICATION.

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 Interim City Manager. City will 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, to provide full and complete protection to Employee as described herein, for any acts undertaken or committed in his capacity as Interim 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 Interim City Manager. Further, following employment with City, City agrees to pay Employee reasonable consulting fees and travel expenses in the event Employee serves as a witness, advisor and or consultant to City regarding any pending litigation involving City.

7. CONFLICT OF INTEREST PROHIBITION.

It is further understood and agreed that because of the duties of the Interim City Manager within and on behalf of the City of Calistoga, and its citizenry, the Employee shall not, during the term of this Agreement, individually, as a partner, joint venturer, officer or shareholder, invest or participate in any business venture conduction business in the corporate limits of the City of Calistoga except for stock ownership in any company whose capital stock is publicly held and regularly traded, without prior approval of the City. For and during the term of this Agreement, Employee further agrees, except for a personal residence or residential property acquired or held for future use as his personal residence, not to invest in any other real estate property improvements within the corporate limits of the City of Calistoga, without the prior consent of the City Council.

8. OTHER TERMS AND CONDITION OF EMPLOYMENT.

The City Council, by resolution, shall fix any other terms and conditions of employment, as it 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.

9. GENERAL EXPENSES.

City recognizes and agrees to pay the job-related expenses incurred by Employee in the course of his duties as approved by the City Council.

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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: Mayor
City of Calistoga
1232 Washington Street
Calistoga, CA 94515
- TO EMPLOYEE: Michael Kirn
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. Except as prescribed herein, this Agreement cannot be modified except by written mutual agreement signed by the parties.

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. EFFECTIVE DATE.

This Agreement shall be deemed effective on the Effective Date.

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

CITY OF CALISTOGA

By: _____
Chris Canning, Mayor

EMPLOYEE

By: _____
Michael Kirn

APPROVED AS TO FORM:

By: _____
Michelle Marchetta Kenyon
City Attorney