

**Supplemental Information for Agenda Item H.6,**

**April 16, 2019**

**City of Calistoga, City Council Meeting.**

## **SEPARATION AND RELEASE AGREEMENT**

This Separation and Release Agreement ("Agreement") is between the City of Calistoga ("CITY") and Dylan Feik ("FEIK") (collectively "the Parties"). This Agreement is made in consideration of the following facts, among others.

### **BACKGROUND FACTS**

A. FEIK has been employed by CITY as the City Manager since February 2016 under an employment agreement dated February 2, 2016, as amended effective June 19, 2018 (the "Employment Agreement"); and

B. The Parties have agreed that it is in the best interests of the City and FEIK to enter into this Separation and Release Agreement whereby FEIK has indicated a desire to resign his employment with the City; and

C. Subject only to the excluded items specifically expressed in this Agreement, the Parties wish to resolve all issues related to FEIK's employment with the CITY.

NOW, THEREFORE, CITY and FEIK, in consideration of the mutual covenants and agreements herein contained, agree as follows:

### **AGREEMENT**

#### **1. Incorporation of Recitals**

The factual recitals set forth above are hereby expressly incorporated into this Agreement as if set forth in full in this provision.

#### **2. Resignation From Employment**

A. FEIK hereby resigns from his position as City Manager, effective April 17, 2019 (the "Resignation Date").

B. FEIK agrees to assist the City to ensure a smooth transition to an Acting City Manager who will succeed him. FEIK will make himself available to the Acting City Manager, upon reasonable notice, to answer questions and otherwise assist in the transition to new management.

**3. Compensation and Benefits.**

A. On April 17, 2019, CITY shall deliver payment to FEIK in the amount of One Hundred Sixteen Thousand Six Hundred and Eighty-Four Dollars and Forty-One Cents (\$116,684.41) ("the Severance Payment"). This Severance Payment is derived from the following:

1. Accrued vacation as of April 17, 2019 in the amount of 20.91 hours (with a value of \$1,903.65);
2. Accrued sick leave as of April 17, 2019 in the amount of 124.73 hours (with a value of \$11,355.42);
3. Accrued executive leave as of April 17, 2019 in the amount of 96 hours (with a value of \$8,739.84); and
4. A separation payment in the amount of ninety-four thousand six hundred and eighty-five dollars and fifty cents (\$94,685.50), which is equivalent to an amount equal to six (6) months' salary, pursuant to the Employment Agreement.

B. All payments made pursuant to Section 3(A) of this Agreement shall be subject to all customary withholdings, and shall be issued in a separate check than FEIK's final paycheck.

C. To the extent provided by law and by CalPERS, FEIK shall be eligible to continue his medical and dental coverage through the Consolidated Omnibus Budget Reconciliation Act ("COBRA") as follows:

1. Medical: The City will pay 90% of FEIK's monthly medical COBRA premiums necessary to continue his medical coverage through the period starting on the Resignation Date and ending on the earliest to occur of: (i) October 17, 2019; or (ii) the date FEIK obtains new employment and becomes eligible for medical coverage. In the event that FEIK obtains new employment, FEIK must immediately notify the City of such event. The City shall send the premium payments directly to FEIK by regular United States mail at least five (5) days before the beginning of the month.

2. Dental: The City will contribute 90% of FEIK's monthly dental COBRA premiums necessary to continue his dental coverage through the period

starting on the Resignation Date and ending on the earliest to occur of: (i) October 17, 2019; or (ii) the date FEIK obtains new employment and becomes eligible for dental coverage. FEIK shall immediately notify the City in the event that he obtains new employment. At least five (5) days before the beginning of the month, FEIK shall deliver, by regular United States mail, a payment in an amount equal to 10% of his monthly dental COBRA premiums, plus a 2% required administration fee, to the City c/o Gloria Leon, Administrative Services Director, 1232 Washington Street, Calistoga, CA 94515.

D. CITY expressly states, and FEIK expressly acknowledges and agrees, that any tax consequences arising from FEIK's decision regarding the payment option are FEIK's to investigate and address based on independent legal advice. FEIK further agrees that he will hold harmless and indemnify CITY from and against any claims, costs, and expenses, limited to payroll taxes, tax deficiencies, penalties, and interest incurred in connection with any investigation, challenge, levy, or assessment by the Internal Revenue Service, the State Franchise Tax Board, or any other taxing authority of any state, locality, or country with respect to the non-payment of taxes by reason of the payment described this Section 3. FEIK also agrees to notify the CITY in the manner provided herein of any action or notice served upon him by any taxing authority so as to afford the CITY the opportunity to address the matter.

**4. Consideration.** FEIK acknowledges and agrees that the amounts and processes promised in this Agreement exceed what he is entitled to receive under his Employment Agreement or under CITY's standard policies and procedures, and, therefore, constitute valid legal consideration for the Agreement.

**5. Unemployment Insurance.** CITY will not contest FEIK's application, if any, for unemployment insurance benefits. The CITY does not admit or deny, by doing so, that FEIK has a right to receive unemployment insurance benefits.

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**6. Property and Equipment.**

A. On or before the Resignation Date, FEIK shall remove from his CITY office all of his personal property, including but not limited to, pictures, plaques, certificates, and books.

B. On or before the Resignation Date, FEIK shall return to CITY all CITY property he has in his possession or control, including but not limited to credit cards, entry cards, keys, identification badges, tablets/IPAD and computer data.

**7. Release of Claims.**

A. FEIK represents that he has not filed any complaint, grievance, claim, or action against CITY or any of its City Council members, officers, agents, directors, employees or assigns (collectively, "RELEASEES") with any state, federal, or local agency, board, arbitrator, or court, and will not do so at any time hereafter, based on any matters arising out of or relating to his employment with CITY and/or his separation from CITY employment occurring or existing at the time up to and including the Resignation Date.

B. FEIK hereby releases and forever discharges CITY and RELEASEES from any and all claims, liabilities, demands, causes of action, costs, expenses, damages, indemnities, and obligations of every kind, in law, equity or otherwise, known or unknown, arising out of or in any way related to FEIK's CITY employment or his separation from CITY employment occurring or existing at the time up to and including the Resignation Date.

C. Nothing provided in the Agreement is intended to abrogate the duties owed by CITY to FEIK pursuant to the Government Tort Claims Act.

D. CITY hereby waives the notice requirement of Section 7.a of the Employment Agreement.

E. Except as otherwise set forth in this Agreement, CITY further releases and forever discharges FEIK from any and all claims, liabilities, demands, causes of action, costs, expenses, damages, indemnities, and obligations of every kind, in law, equity or otherwise, known or unknown, arising out of or in any way related to FEIK's CITY

employment or his separation from CITY employment occurring or existing at the time up to and including the Resignation Date.

F. Nothing in this Agreement shall be construed as a release by any Party of any obligation or claim arising out of a breach of this Agreement.

**8. Waiver and Release of Discrimination Claims.** FEIK understands and acknowledges that Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Americans with Disabilities Act of 1990, the Federal Family and Medical Leave Act of 1993, the California Family Rights Act of 1991, the California Fair Employment and Housing Act, and other statutes may provide FEIK with the right to bring an action against CITY if FEIK believes he has been discriminated against based on, among other things, race, ancestry, creed, color, religion, sex, sexual orientation, marital or domestic partner status, national origin, age, status as an individual who has filed a claim for workers' compensation benefits or who has sustained an industrial injury, physical or mental handicap and/or disability. FEIK understands the rights afforded to him under these Acts and agrees that he will not bring any action against CITY based on any alleged violation(s) of these Acts. FEIK hereby waives any right to assert a claim for any relief under these Acts, including but not limited to back pay, attorneys' fees, damages, reinstatement, and/or injunctive relief. In addition, FEIK also waives any right to recover any relief as a result of any such proceeding, or any other proceeding, initiated on his behalf.

**9. Waiver of Civil Code Section 1542.**

The release contained herein is intended to be complete and final and to cover not only claims, demands, liabilities, damages, actions and causes of action which are known, but also claims, demands, liabilities, damages, actions and causes of action which are unknown or which FEIK does not suspect to exist in his favor which, if known at the time of executing this Agreement might have affected his actions, and therefore he expressly waives the benefit of the provisions of section 1542 of the California Civil Code, which provides:

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

FEIK hereby expressly waives and relinquishes all rights and benefits which he has or may have had under section 1542 of the California Civil Code or the law of any other state, country, or jurisdiction to the same or similar effect to the full extent that he may lawfully waive such rights. As a part of this waiver, FEIK waives any right to notice and an opportunity for a hearing regarding his separation from CITY employment.

**10. No Admission of Liability.**

This Agreement and compliance with it shall not operate or be construed as an admission by CITY of any liability, misconduct, or wrongdoing whatsoever against FEIK or any other person; nor as an admission by CITY of any violation of the rights of FEIK or any other person; nor as a violation of any order, law, statute, duty, or contract whatsoever against FEIK or any other person. Rather, CITY expressly denies any liability to FEIK.

**11. Limitation on Disclosure of Agreement; Communications With Prospective Employers.**

A. The Parties agree not to issue any press release regarding the terms or conditions of this Agreement and not to disclose this Agreement to third parties except as required by law. In response to inquiries by FEIK's prospective employers, and in the absence of a written release from FEIK, CITY will provide only the dates of his employment, position held, and final salary.

B. Individual City Council members may, in their capacities as private citizens only, and without the use of CITY letterhead or representation that they speak on behalf of the CITY, provide personal letters of reference and/or recommendations at their discretion to assist in obtaining comparable employment and salary/benefits package to

the which he was provided under the Employment Agreement. FEIK expressly waives any and all claims against CITY arising out of or related to such individual letters.

**12. Confidentiality.** CITY shall maintain FEIK's personnel, employment and health records as confidential and private as required by applicable law. Such records shall not be released without FEIK's written authorization except as required by law.

**13. Mutual Drafting; Governing Law.**

This Agreement shall be deemed to have been jointly drafted by the Parties and shall be governed by and construed in accordance with the laws of the State of California.

**14. Entire Agreement:**

This Agreement constitutes the entire agreement between FEIK and CITY. No other promise or inducement has been offered for this Agreement. Any amendments to this Agreement must be in writing, signed by duly authorized representatives of both CITY and FEIK, and must state that the parties intend to amend the Agreement. Any purported amendment failing to comply with this provision shall be null and void.

**15. Severability.**

The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision of this Agreement.

**16. Venue of Actions; Costs and Fees.**

Venue of any legal action shall be in Napa County. If any legal action is instituted to enforce any provision of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of its provisions, the court shall award the prevailing party reasonable attorneys' fees and other litigation costs incurred in that action, in addition to any other relief to which the prevailing party may be entitled.



Nothing in this Section 16 shall prevent the Parties from mutually agreeing to binding arbitration of any dispute, in which case the arbitrator may award attorney's fees and litigation costs to the prevailing party as described above.

**17. Voluntary Execution of Agreement; Opportunity to Consult with Attorney.**

FEIK represents that he has carefully read this entire Agreement and that he knows and understands its contents. FEIK and the CITY have each had the opportunity to receive independent legal advice from attorneys of their own choice with respect to the preparation, review, and advisability of executing this Agreement. FEIK also represents that the CITY has not provided legal advice to him. FEIK further represents and acknowledges that he has freely and voluntarily executed this Agreement after independent investigation and without fraud, duress, or undue influence, with a full understanding of the legal and binding effect of this Agreement and with the approval of his legal counsel, if any.

**18. Indemnification.**

In accordance with the California Government Torts Claims Act, CITY shall pay, defend, save harmless, and indemnify against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of any alleged act or omission occurring in the performance of FEIK'S duties as City Manger through and including April 17, 2019. This Section is not intended to modify, expand, or diminish the obligations of CITY under Government Tort Claims Act.

**19. Conflict with City Personnel Rules; Termination of Employment Agreement.**

A. The Employment Agreement shall be of no further force and effect and shall be considered terminated on the Resignation Date.

B. Notwithstanding any other provision herein to the contrary, if the provisions of this Agreement differ or are in conflict with CITY's personnel rules and regulations, the CITY Code or other rules, then the provisions of this Agreement shall prevail.

**20. Notice.**

Excepting the notice of revocation described in Section 21, any and all notices given to any Party under this Agreement shall be given as provided in this Section. All notices given to either Party shall be made by certified or registered United States mail and regular United States mail, or by personal delivery, at the noticing Party's discretion, and addressed to the Parties as set forth below. Notices shall be deemed, for all purposes, to have been given on the date of personal service or three consecutive calendar days following deposit of the same in the United States mail.

**As to FEIK:**

Dylan Feik  


**As to CITY:**

CITY COUNCIL  
City of Calistoga  
1232 Washington Street  
Calistoga, CA 94515

**With a copy to:**

CALISTOGA CITY ATTORNEY  
Michelle Marchetta Kenyon  
Burke, Williams & Sorensen, LLP  
1901 Harrison Street, 9th Floor  
Oakland, CA 94612

**21. Right of Revocation; Effective Date.**

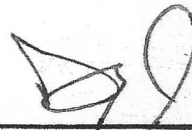
FEIK has the right to revoke this Agreement for any reason within seven (7) days after he signs it. To be effective, FEIK's notice of revocation must be in writing and must be hand-delivered to CITY's City Attorney at 1901 Harrison Street, 9th Floor, Oakland, California 94612 or emailed to City Attorney at mkenyon@bwslaw.com. If emailed, the revocation must be sent within the seven-day period. If hand-delivered, it must be given to the City Attorney within the seven-day period. This Agreement shall not become effective until the seven-day revocation period has expired. Therefore, this Agreement shall take effect either upon approval by the City Council or the eighth day following FEIK's signature, with the signature date being day one, whichever date is later ("the Effective Date").

**22. Execution of Agreement.** This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**IN WITNESS WHEREOF,** FEIK has signed and CITY, following a duly passed resolution approving the above terms, has directed its authorized representative to sign this Agreement.

**Dated:** April 10, 2019

**DYLAN FEIK**



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DYLAN FEIK

**Dated:** April \_\_, 2019

**CITY OF CALISTOGA**

**By:** \_\_\_\_\_  
Chris Canning, Mayor

**Approved as to Form:**

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Michelle Marchetta Kenyon  
City Attorney, City of Calistoga