

**RESOLUTION NO. 2021-056**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA, APPROVING EMPLOYMENT AGREEMENT FOR INTERIM CITY MANAGER SERVICES BETWEEN CITY OF CALISTOGA AND BRAD KILGER**

**WHEREAS**, the City Council wishes to enter into an Employment Agreement for Interim City Manager Services with Brad Kilger to perform the duties of Interim City Manager;

**WHEREAS**, Brad Kilger possesses the skills and expertise necessary to perform these services;

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Calistoga, as appointing authority, hereby approves the Employment Agreement for Interim City Manager Services Between City of Calistoga and Brad Kilger in substantially the same form attached hereto as Exhibit "A" and authorizes and directs the Mayor to execute same for and on behalf of the City of Calistoga.

**PASSED, APPROVED AND ADOPTED** this 6<sup>th</sup> day of July 2021. I, **MARNI RITTBURG, CITY CLERK OF THE CITY OF CALISTOGA, HEREBY CERTIFY** the foregoing resolution was introduced and passed at a regular meeting of the Calistoga City Council by the following roll call vote:

**AYES:** Councilmembers Gift, Kraus, and Williams, Vice Mayor Lopez-Ortega and Mayor Canning

**NOES:** None

**ABSENT:** None

**ABSTAIN:** None

**ATTEST:**

  
\_\_\_\_\_  
Marni Rittburg, CMC, City Clerk

**APPROVED:**

  
\_\_\_\_\_  
Chris Canning, Mayor

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Michelle Marchetta Kenyon  
City Attorney

**EMPLOYMENT AGREEMENT  
For  
INTERIM CITY MANAGER SERVICES**

This Employment Agreement ("Agreement") is made and entered into this 6th day of July 2021, by and between the CITY OF CALISTOGA ("CITY"), a California municipal corporation, and BRAD KILGER ("KILGER"), an individual, on the following terms and conditions:

**RECITALS**

A. CITY desires to employ the services of KILGER as its Interim City Manager, temporarily, to carry out the duties and responsibilities of City Manager as provided for by the Calistoga Municipal Code, in consideration of and subject to the terms, conditions, and benefits set forth in this Agreement.

B. CITY has commenced an open recruitment to permanently fill the vacant position of CITY MANAGER. During the recruitment period, the City has an immediate need for an Interim CITY MANAGER, a position involving specialized skills and training and which is critically necessary to the on-going duties and functions of the CITY.

C. KILGER represents that he is a retired annuitant and person receiving a benefit from the California Public Employees' Retirement System ("CalPERS") within the meaning of Government Code §§ 7522.56 and 21221(h). KILGER 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 2021-2022 fiscal year, and that his compensation is statutorily limited as provided in Government Code § 21221(h). KILGER 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. KILGER further represents his CalPERS retirement date became effective prior to the 180-day 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.

D. KILGER desires to accept employment as Interim City Manager in consideration of and subject to the terms, conditions, and benefits set forth in this Agreement.

E. CITY has determined that it is necessary to hire KILGER by virtue of his significant experience as both city manager and interim city manager in other cities.

**OPERATIVE PROVISIONS**

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

**1. Position and Duties.**

**1.1 Position.** KILGER accepts employment with CITY as its Interim City Manager and shall perform all functions, duties and services set forth in Section 1.4 [Duties] of this Agreement. KILGER shall provide service at the direction and under the supervision of the City Council. It is the intent of the parties that KILGER, as the Interim City Manager, shall keep the City Council fully apprised of all significant ongoing operations of CITY. Toward that end, KILGER shall report directly to the City Council and will periodically, or as may be otherwise specifically requested by the City Council, provide status reports to the City Council on his activities and those of CITY.

**1.2 Term.** KILGER shall commence the performance of his duties as the Interim City Manager on July 19, 2021 (“Commencement Date”). This Agreement shall expire as of the first of the following to occur: (i) upon the employment commencement date of a permanent City Manager employed by CITY; (ii) upon KILGER working his 960<sup>th</sup> hour for CITY including hours worked for other CalPERS Agencies during CITY’s 2021-2022 fiscal year as a retired annuitant; or upon termination of the Agreement by either KILGER or CITY as provided in Section 4 [Termination] of this Agreement.

**1.3 At-Will.** KILGER acknowledges that he is an at-will, temporary employee of CITY who shall serve at the pleasure of the City Council at all times during the period of his service hereunder. The terms of CITY’s personnel rules, policies, regulations, procedures, ordinances, and resolutions (collectively “Personnel Policies”), as they may be amended or supplemented from time to time, shall not apply to KILGER, and nothing in this Agreement is intended to, or does, confer upon KILGER any right to any property interest in continued employment, or any due process right to a hearing before or after a decision by the City Council to terminate his employment, except as is expressly provided in Section 1.2 [Term] or Section 4 [Termination] of this Agreement. Nothing contained in this Agreement shall in any way prevent, limit or otherwise interfere with the right of CITY to terminate the services of KILGER, as provided in Section 1.2 [Term] or Section 4 [Termination]. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of KILGER to resign at any time from this position with CITY, subject only to the provisions set forth in Section 1.2 [Term] or Section 4 [Termination] of this Agreement. This at-will Employment Agreement shall be expressly subject to the rights and obligations of CITY and KILGER, as set forth in Section 1.2 [Term] or Section 4 [Termination] below.

**1.4 Duties.** KILGER shall serve as the Interim City Manager and shall be for the term of this Agreement vested with the powers, duties and responsibilities of the City Manager as set forth in ordinances and resolutions of the City, including without limitation, those set forth in the Calistoga Municipal Code and to perform other legally permissible and proper duties and functions as the City Council may from time to time assign. It is the intent of the City Council for the Interim City Manager to function as the chief executive officer of CITY’s organization. Without additional compensation, KILGER shall provide such other services as are customary and appropriate to the position of Interim City Manager. KILGER shall devote his best efforts and full-time attention to the performance of these duties.

**1.5 Hours of Work.** KILGER shall devote the time necessary to adequately perform his duties as Interim City Manager. The parties anticipate that KILGER will work approximately thirty (30) to forty (40) hours per week allocated between regular business hours and hours outside of regular business hours including, without limitation, attendance at regular and special City Council meetings, attendance at such community events and CITY functions as the Council may direct. Toward that end, KILGER shall be allowed reasonable flexibility in setting his own office hours, provided the schedule of such hours provides reasonable availability to the City Council, City staff, and members of the community during regular CITY business hours and for the performance of his duties and of CITY business. The position of Interim City Manager shall be deemed an exempt position under California wage and hour law.

**1.6 Other Activity.** In accordance with Government Code Section 1126, during the period of his employment, KILGER shall not accept, without the express prior written consent of the City Council, any other employment or engage, directly or indirectly, in any other business, commercial, or professional activity, whether or not to pecuniary advantage, that is or may be competitive with CITY, that might cause a conflict-of-interest with CITY, or that otherwise might interfere with the business or operation of CITY or the satisfactory performance of KILGER's duties as Interim City Manager.

**1.7 Reimbursement.** CITY shall reimburse KILGER for reasonable and necessary travel, subsistence and other business expenses incurred by KILGER in the performance of his duties. All reimbursements shall be subject to and in accordance with California law and applicable CITY reimbursement policies.

**1.8 Equipment and Supplies.** CITY shall provide KILGER with any office equipment, technological tools, including but not limited to laptop computer, high-speed internet access, advanced cellular phone (smart phone), and supplies, and all other facilities and services adequate and necessary for KILGER to perform his required duties,

## **2. Compensation.**

**2.1 Rate of Pay.** For all services performed by KILGER as the Interim City Manager under this Agreement, CITY shall pay KILGER compensation at the rate One Hundred Ten Dollars and 68/100 cents (\$110.68) per hour according to the payroll schedule in place for CITY employees paid bi-weekly subject to the limitations provided below. KILGER shall submit all itemized requests for payment to the City's Administrative Services Director who shall approve all requests for payment under this Agreement.

**2.2 Compliance with CalPERS Requirements.** It is the intent of the parties to compensate KILGER only to the extent permitted under Government Code §§ 21221(h) and 7522.56(d) and corresponding CalPERS regulations and policy statements. The parties acknowledge and agree that the rate of pay set forth above does not exceed the salary limitations established by CalPERS based on the salary as set forth in the CITY's publicly available salary schedule.

**2.2.1 Recording and Reporting of Hours Worked.** KILGER will comply with all applicable CalPERS regulations governing employment after retirement including recording and reporting of all hours worked for CITY to CalPERS as may be required. CITY shall assist in any such reporting obligations to CalPERS. Additionally, KILGER shall keep CITY continually apprised of any hours worked by KILGER for other CalPERS Agencies during the term of this Agreement.

**2.3 Benefits.**

**2.3.1 No Benefits.** KILGER shall not receive from CITY any benefits CITY commonly provides to its employees including, without limitation, health, dental, or vision insurance coverage, life insurance, employee assistance programs, and similar benefits.

**3. Vacation and Leave.**

**3.1 No Leave.** KILGER and CITY agree that KILGER shall not be provided or accrue any personal time off, vacation, sick leave, administrative leave, paid holidays or similar leave benefits.

**4. Termination.**

**4.1 By CITY.** This Agreement may be terminated by CITY for any reason. CITY's only obligation in the event of such termination will be payment to KILGER of all compensation then due and owing as set forth in Section 2.1 [Rate of Pay] up to and including the effective date of termination. However, this Agreement may be terminated immediately if necessitated by changes to CalPERS statutory or regulatory requirements.

**4.2 By KILGER.** This Agreement may be terminated by KILGER for any reason thirty (30) days after notice in writing to CITY of such termination. CITY shall have the option, in its complete discretion, to make KILGER's termination effective at any time prior to the end of such period, provided CITY pays KILGER all compensation as set forth in Section 2.1 [Rate of Pay] then due and owing him through the last day actually worked.

**4.3 No Notice for Expiration.** Nothing in this Section 4 [Termination] shall be construed to require either party to give advance written notice in order for the Agreement to expire as set forth in Section 1.2 [Term].

**4.4 Termination Obligations.** KILGER agrees that all property, including, without limitation, all equipment, tangible Proprietary Information (as defined below), documents, records, notes, contracts, and computer-generated materials furnished to or prepared by him incident to his employment belongs to CITY and shall be returned promptly to CITY upon termination of KILGER's employment. KILGER's obligations under this subsection shall survive the termination of his employment and the expiration of this Agreement.

**4.5 No Benefits Upon Termination.** KILGER agrees that he shall be entitled to no benefits upon termination.



**5. City Council Commitments.** Except for the purpose of inquiry, the City Council and its members shall deal with all subordinate City employees, officers, contractors, and consultants solely through the Manager or the Manager's designee, and neither the City Council nor any member thereof shall give direction to any subordinate of the Manager, either publicly or privately. No member of the City Council will order the appointment or removal of any person to any office or employment under the supervision and control of the Manager. Neither the City Council nor any of its members shall interfere with the execution of the powers and duties of the Manager, as specified in the City Municipal Code, this Agreement, or any other lawfully adopted and authorized document.

**6. Proprietary Information.** "Proprietary Information" is all information, including confidential attorney/client privileged communications, and any idea pertaining in any manner to the business of CITY (or any CITY affiliate), its employees, clients, consultants, or business associates, which was produced by any employee or consultant of CITY in the course of his/her employment or otherwise produced or acquired by or on behalf of CITY. All Proprietary Information not generally known outside of CITY's organization, and all Proprietary Information so known only through improper means, shall be deemed "Confidential Information." During his employment by CITY, KILGER shall use Proprietary Information, and shall disclose Confidential Information, only for the benefit of CITY and as is or may be necessary to perform his job responsibilities under this Agreement. Following termination, KILGER shall not use any Proprietary Information and shall not disclose any Confidential Information, except with the express written consent of CITY. KILGER's obligations under this Section shall survive the termination of his employment and the expiration of this Agreement.

**7. Conflict Of Interest.** KILGER represents and warrants to CITY that he presently has no interest, and represents that he will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or interfere in any way with performance of his services under this Agreement.

**8. General Provisions.**

**8.1 Recitals.** The recitals, inclusive of all facts and representations, are incorporated into this Agreement as if set forth in the Operative Provisions.

**8.2 Vehicle Operation.** KILGER shall operate any vehicle used in connection with the performance of his duties as Interim City Manager in a safe manner and otherwise in observance of all established traffic safety laws and ordinances and shall maintain a valid California automobile's driver's license during the period of employment.

**8.3 Notices.** All notices, requests, demands and other communications under this Agreement shall be in writing and shall be effective upon delivery by hand or email or three (3) business days after deposit in the United States mail, postage prepaid, certified or registered, and addressed to CITY at the address below, and/or at the last known address maintained in KILGER's personnel file. KILGER agrees to notify CITY in writing of any change in his address during his employment with CITY. Notice of change of address shall be effective only when accomplished in accordance with this Section.

**City's Notice Address:**  
City of Calistoga  
1232 Washington Street  
Calistoga, CA 94515  
Attn: Mayor and City Council

**Interim City Manager's Address:**  
Brad Kilger  
[Address on file]

**8.4 Indemnification.** Subject to, in accordance with, and to the extent provided by the California Tort Claims Act [Government Code Section 810 *et seq.*] CITY will indemnify, defend, and hold KILGER harmless from and against any action, demand, suit, monetary judgment or other legal or administrative proceeding, and any liability, injury, loss or other damages, arising out of any act or omission occurring during KILGER's tenure as Interim City Manager.

**8.5 Integration.** This Agreement is intended to be the final, complete, and exclusive statement of the terms of KILGER's employment by CITY. This Agreement supersedes all other prior and contemporaneous agreements and statements, whether written or oral, express or implied, pertaining in any manner to the employment of KILGER, and it may not be contradicted by evidence of any prior or contemporaneous statements or agreements. To the extent that the practices, policies, or procedures of CITY, now or in the future, apply to KILGER and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control.

**8.6 Amendments.** This Agreement may not be amended except in a written document signed by KILGER, approved by the City Council and signed by CITY's Mayor.

**8.7 Waiver.** Failure to exercise any right under this Agreement shall not constitute a waiver of such right.

**8.8 Assignment.** KILGER shall not assign any rights or obligations under this Agreement. CITY may, upon prior written notice to KILGER, assign its rights and obligations hereunder.

**8.9 Severability.** If a court or arbitrator holds any provision of this Agreement to be invalid, unenforceable, or void, the remainder of this Agreement shall remain in full force and effect.

**8.10 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, with venue proper only in Napa County, State of California.

**8.11 Interpretation.** This Agreement shall be construed as a whole, according to its fair meaning, and not in favor of or against any party. By way of example and not in

limitation, this Agreement shall not be construed in favor of the party receiving a benefit nor against the party responsible for any particular language in this Agreement. Captions are used for reference purposes only and should be ignored in the interpretation of the Agreement. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, cancelled superseded or changed by any oral agreement, course of conduct, waiver or estoppel.

**8.12 Acknowledgment.** KILGER acknowledges that he has had the opportunity to consult legal counsel in regard to this Agreement, that he has read and understands this Agreement, that he is fully aware of its legal effect, and that he has entered into it freely and voluntarily and based on his own judgment and not on any representations or promises other than those contained in this Agreement.

**IN WITNESS WHEREOF,** CITY has caused this Agreement to be signed and executed on its behalf by its Mayor and KILGER has signed and executed this Agreement, as of the date first indicated above.

**INTERIM CITY MANAGER**

**CITY OF CALISTOGA**

\_\_\_\_\_  
Brad Kilger

\_\_\_\_\_  
Chris Canning, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Michelle Marchetta Kenyon,  
City Attorney