

# City of Calistoga

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## Staff Report

**TO:** Honorable Mayor and City Council  
**FROM:** James C. McCann, City Manager *JCM*  
**DATE:** June 1, 2010  
**SUBJECT:** Authorization of Employment Agreement with William Norton for Interim City Manager Services

1  
2 **ISSUE:** Consideration of a Resolution authorizing the execution of an  
3 Employment Agreement with William Norton for Interim City Manager services.  
4

5 **RECOMMENDATION:** Adopt Resolution.  
6

7 **BACKGROUND/DISCUSSION:** I advised the City Council in late April that I  
8 would be leaving the City to assume a new position. The City Council discussed  
9 transition needs and developed a strategy to retain a qualified Interim City  
10 Manager and to commence a recruitment effort for a new City Manager. Both of  
11 these steps are well underway and a smooth transition is occurring.  
12

13 The City Council met in Closed Session in May to interview two selected  
14 candidates for the Interim City Manager position. The Council concluded that Mr.  
15 William "Bill" Norton would be a very good selection to assist the Council over the  
16 next few months as Interim City Manager. In addition to Mr. Norton's  
17 considerable and impressive professional experience in municipal government,  
18 he also has the unique experience of being the Interim City Manager in Calistoga  
19 for a six month period in 1998/99. Mr. Norton is very excited about the  
20 opportunity to assist Calistoga again and is prepared to begin his work upon  
21 execution of the agreement. In fact, Mr. Norton will commence work in a  
22 transitional capacity with me beginning June 2<sup>nd</sup> to allow conversations and  
23 discussion of pending projects and issues. My last day as City Manager will be  
24 June 6<sup>th</sup> and Mr. Norton will begin in his interim capacity on June 7<sup>th</sup>.  
25

26 The attached Employment Agreement is a standard form agreement. It has been  
27 reviewed and approved by our City Attorney and is acceptable to Mr. Norton.  
28 The agreement outlines duties, anticipated work schedule and compensation  
29 issues.

30 **FISCAL IMPACT:** The employment agreement provides for direct  
31 compensation to Mr. Norton of \$15, 793.56 per month. This is the value of the  
32 total compensation (salary and benefit value) less direct deductions and  
33 contributions i.e.: social security, workers compensation insurance costs, etc.  
34 which is provided for with the current City Manager position. These funds are  
35 available in the adopted budget and in the proposed budget for the coming fiscal  
36 year.

37

38 **ATTACHMENTS:**

39

- 40 1. Draft Resolution
- 41 2. Draft Employment Agreement

RESOLUTION 2010 -

1 RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA,  
2 STATE OF CALIFORNIA, AUTHORIZING THE EXECUTION OF AN EMPLOYMENT  
3 AGREEMENT WITH MR. WILLIAM NORTON FOR THE INTERIM CITY MANAGER SERVICES  
4

5  
6 WHEREAS, the City Manager resigned effective June 6, 2010, resulting in a position  
7 vacancy; and  
8

9 WHEREAS, the City of Calistoga desires to hire an Interim City Manager while the  
10 recruitment for a new permanent City Manager is being conducted; and  
11

12 WHEREAS, the City Council has selected Mr. William (Bill) Norton to be the Interim City  
13 Manager;  
14

15 NOW, THEREFORE BE IT RESOLVED that the Mayor is hereby authorized to execute an  
16 employment agreement (attached as Exhibit A) subject to approval of the City Attorney.  
17

18 PASSED, APPROVED, AND ADOPTED by the City Council of the City at a regular meeting  
19 held this 1<sup>st</sup> day of June 2010 by the following vote:  
20  
21  
22  
23  
24  
25  
26

27  
28 JACK GINGLES , Mayor

29 ATTEST:  
30

31  
32 SUSAN SNEDDON, City Clerk

**AGREEMENT WITH WILLIAM NORTON FOR INTERIM  
CITY MANAGER SERVICES**

1  
2 This Agreement for City Manager Services (the "Agreement") is made and  
3 entered into this 1st day of June 2010 ("Effective Date") by and between the City of  
4 Calistoga, a California municipal corporation ("City") and William Norton, an individual  
5 ("Norton"). The City and City Manager shall be referred to collectively as the "Parties"  
6 or separately as a "Party."

7  
8 RECITALS

9  
10 WHEREAS, the City requires the services of a person with proven executive and  
11 administrative qualifications to fill the position of City Manager on an interim basis until  
12 a permanent appointment can be made; and

13  
14 WHEREAS, the City, acting by and through its City Council, desires to employ  
15 the services of William Norton as Interim City Manager on an interim basis, and to  
16 appropriately compensate him for such services;

17  
18 NOW, THEREFORE, in consideration of this Agreement, and the mutual  
19 promises, covenants and stipulations contained herein, the parties hereto agree as  
20 follows:

21  
22 TERMS

- 23  
24 1. Appointment. The City agrees to employ and appoint William Norton to the  
25 position of Interim City Manager for the City of Calistoga, California, on an  
26 interim basis beginning as of the 7<sup>th</sup> of June. Norton shall be employed by City  
27 commencing on the Effective Date set forth above for the purpose of effectuating  
28 a smooth transition of city management and shall receive briefings, updates and  
29 introductions by the City Manager and City staff in preparation of assuming the  
30 duties of Interim City Manager. City shall confer upon and delegate to William  
31 Norton all of the duties, powers, and responsibilities of City Manager as the  
32 same are set forth in the City of Calistoga Municipal Code, and the ordinances,  
33 resolutions, policies, rules and regulations as from time to time are existing  
34 thereunder ("the Services"). William Norton accepts employment as Interim City  
35 Manager and agrees to serve, as such.  
36
- 37 2. Compensation.  
38  
39 A. The City agrees to compensate Norton the sum of \$15,793.56 per month  
40 ("Compensation"). Such payment, which shall be compensation for his  
41 services as Interim City Manager, shall be in effect for the period this  
42 Employment Agreement remains in effect unless modified by mutual  
43 agreement of the parties set forth in writing. Said compensation shall be

- 44 payable to Norton at the same time and in the same manner as provided  
45 for other exempt employees of the City.  
46  
47 B. The Compensation set forth above is the maximum compensation to  
48 which Norton will be entitled under this Agreement, unless this Agreement  
49 is modified in accordance with its terms. This Compensation excludes,  
50 among other things, health insurance, holiday pay, vacation pay, and sick  
51 leave.  
52  
53 C. The City shall provide a maximum reimbursement to Norton of \$ 1350 per  
54 month for temporary lodging expenses.

55  
56 3. Term; Services

- 57  
58 A. This Agreement shall start on the Effective Date set forth above and  
59 continue until terminated by either Party as specified herein. Norton will  
60 work approximately 40 hours per week, and is not expected to work more  
61 than 5 days per week, unless the needs of the job require his to work  
62 more or fewer hours each week. In no event shall Norton work more than  
63 nine hundred sixty (960) hours in a fiscal year, unless otherwise  
64 consistent with Government Code Section 21221.  
65  
66 B. Because positive and confidential relations are necessary between the  
67 City Manager and the City Council, Norton understands and agrees that  
68 he serves at the pleasure of the City Council and may be terminated at  
69 the will of the City Council. In a like manner, nothing in this Agreement  
70 shall prevent, limit, or otherwise interfere with Norton's right to resign at  
71 any time from the position of Interim City Manager, subject only to the  
72 notice provisions set forth herein.  
73  
74 C. In the event Norton voluntarily resigns his position as Interim City  
75 Manager, he shall give the City thirty (30) days written notice in advance,  
76 unless the Parties agree otherwise.

77  
78 4. Employment Benefits and Working Conditions.

- 79  
80 A. Taxes and other legally required deductions, including but not limited to  
81 federal Social Security contributions, will be deducted from Norton's  
82 compensation under this Agreement. Actual payments to Norton for  
83 performance of the Services will be made at the same time as for regular  
84 City employees, and will be the net of compensation less legally-required  
85 deductions.  
86  
87 B. The Parties agree that the position of City Manager is an exempt position  
88 under the terms of the federal Fair Labor Standards Act, and that  
89 therefore no overtime will be paid under this Agreement.  
90

- 91 C. Norton agrees to remain an exclusive employee of the City during the  
92 term of this Agreement. Norton shall dedicate his full energies and  
93 qualifications to his employment as Interim City Manager, and shall not  
94 engage in any non-City connected business or employment without the  
95 prior approval of the City Council expressed in a resolution adopted by the  
96 City Council. Norton represents that these additional activities will not  
97 interfere with his duties as Interim City Manager of Calistoga.  
98
- 99 D. Norton shall not engage in any activity, which is or may become a conflict  
100 of interest, prohibited contract, or which may create an incompatibility of  
101 office as defined under California law. Norton shall complete all disclosure  
102 forms required by law.  
103
- 104 E. It is further understood and agreed that because of the duties of City  
105 Manager on behalf of the City and its citizenry, Norton shall not, during the  
106 term of this Agreement, individually, as a partner, joint venture, officer or  
107 shareholder, invest or participate in any business venture conducting  
108 business in the corporate limits of the City of Calistoga, except for stock  
109 ownership in any company whose capital stock is publicly held and  
110 regularly traded, without prior written consent of the City Council. For and  
111 during the term of this Agreement, Norton further agrees, except for any  
112 personal residence used as his personal residence, not to invest in any  
113 other real estate or property improvements within the corporate limits of  
114 the City of Calistoga, without the prior written consent of the City Council.  
115
- 116 F. City shall provide workers compensation benefits as required by State  
117 law.  
118

119 5. Mileage Reimbursement; Travel Expenses.  
120

121 Norton may undertake necessary travel as directed and approved by the City  
122 Council to carry out his duties under this Agreement. The City shall pay all  
123 reasonable costs which are associated with such approved travel, including but  
124 not limited to, transportation (at coach rates), lodging, meals, mileage and other  
125 necessary and reasonable expenses. Attendance at City, North Bay, or League  
126 of Cities sponsored meetings, which may require meal, or registration expenses  
127 shall be considered reimbursable expenses and will not require separate Council  
128 approval provided the funds have been authorized as part of the City budget  
129 process. Reimbursement shall not be provided for Norton's commute between  
130 his home and his job as City Manager.  
131

132 6. Termination.  
133

- 134 A. The City Council may terminate Norton's employment as Interim City  
135 Manager at any time, with or without cause, and with or without notice. In  
136 the event Norton is terminated from his position as Interim City Manager,  
137 the City shall pay for Norton's time already expended as Interim City  
138 Manager. The City shall have no other obligations to Norton.

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B. The Parties agree that Norton's employment pursuant to this Agreement is "at-will" in accordance with California Labor Code Section 2922, and may be terminated by either party without cause in accordance with this paragraph. This Agreement contains no express or implied promise to Norton concerning any form of continued employment as Interim City Manager, or as permanent City Manager. Norton agrees that the City has made no representation, promise or statement that may be construed to mean that Norton has been employed on any basis other than an at-will basis in accordance with this Agreement. Norton's temporary, at-will employment status may only be changed or superseded by a subsequent written agreement signed by authorized representatives of both Parties. This Agreement is the sole and exclusive basis for an employment relationship between Norton and the City.

C. The Parties agree that Norton holds no property right in his employment by the City of Calistoga.

7. Defense and Indemnification. The City shall defend and indemnify Norton against any claim or action against him for injury arising out of an act or omission occurring within the scope of his employment as set forth in Section 1 of this Employment Agreement pursuant to the provisions of the California Tort Claims Act (Govt. Code Sec, 810 *et seq.*), as amended from time to time. Norton's conviction for any felony or a misdemeanor involving moral turpitude shall be a basis for City's exemption of this indemnification.

8. Waiver and Release Concerning Additional Compensation.

A. The Parties understand and agree that the consideration specified in Paragraph 2 above, is the sole compensation to which Norton will be entitled for performance of the Services pursuant to this Agreement. By signing this Agreement, to the maximum extent allowed by law, Norton, on behalf of himself and his heirs, estate, executors, managers, successors and assigns waives, releases and discharges the City and its elected officials, officers, employees, agents, volunteers, attorneys, affiliated entities, successors, assigns and insurers from any and all compensation or consideration in addition ("Additional Compensation") to that specified in Paragraph 2, above, concerning Norton's performance of the Services.

B. Except as may otherwise be required by law, the "Additional Compensation" waived, released and discharged pursuant to this provision includes, but is not limited to, compensation in the form of benefits pursuant to the Public Employees Retirement System ("PERS") concerning performance of the Services.

9. Waiver and Release of Rights Concerning Termination or Expiration of this Agreement. By signing this Agreement, to the maximum extent allowed by law, Norton, on behalf of himself and his heirs, estate, executors, successors and

187 assigns waives, releases and discharges the City and its elected officials,  
188 officers, employees, agents, volunteers, attorneys, affiliated entities, successors,  
189 assigns and insurers from any and all rights Norton may otherwise have  
190 concerning notice, hearing or other procedural rights ("Procedural Rights") under  
191 the City of Calistoga Personnel Rules, or other applicable law, regulation or rule,  
192 concerning termination or expiration of this Agreement, so long as such  
193 termination or expiration is in accordance with the terms of this Agreement.

194  
195 10. Waiver and Release of Unknown Claims. By signing this Agreement, Norton  
196 understands and agrees that the waivers and releases specified in Paragraphs 8  
197 and 9, above, waive, to the maximum extent allowable by law, any and all  
198 existing rights and claims against the City arising from the performance of the  
199 Services concerning Additional Compensation and Procedural Rights, including  
200 those which Norton does not know or suspect to exist in Norton's favor at the  
201 time of executing this Agreement which, if known by Norton would have  
202 materially affected this Agreement. Norton specifically waives his rights under  
203 Section 1542 of the California Civil Code, which provides that, "A general release  
204 does not extend to claims which the creditor does not know or suspect to exist in  
205 his favor at the time of executing the release, which if known by him must have  
206 materially affected his settlement with the debtor."

207  
208 11. Indemnification for PERS Benefits and Liability. In the event a court of  
209 competent jurisdiction or an authorized PERS representative determines Norton  
210 to be eligible for enrollment in PERS as an employee of the City, or determines  
211 Norton and/or the City to be liable for costs, expenses, penalties or other PERS-  
212 related liability arising from or related to Norton's performance of the Services  
213 pursuant to this Agreement, Norton shall indemnify, defend and hold the City  
214 harmless for payment of any employee and/or employer contributions for PERS  
215 benefits on behalf of Norton, as well as for the payment of any penalties or  
216 interest or other liability concerning such contributions or other PERS-related  
217 liability that would otherwise be the responsibility of the City.

218  
219 12. Notices: Any notice required or authorized to be given under the terms of this  
220 Agreement must be duly and properly given to the City or Norton in writing and  
221 personally delivered, or if mailed first class United States mail, postage thereon  
222 fully prepaid, addressed as follows:

223  
224 The CITY: Mayor and City Council  
225 City of Calistoga  
226 1232 Washington Street  
227 Calistoga, CA 94515

228  
229 TO: William Norton  
230 38 Stone Harbor  
231 Alameda, CA 94502  
232



233 Or such other address as either party may from time to time designate in writing  
234 to the other party.

235  
236 13. Entire Agreement. This Agreement embodies the whole agreement between the  
237 parties hereto, and there are no inducements, promises, terms, conditions or  
238 obligations made or entered into by the City or Norton than those contained  
239 herein. The foregoing provisions are understood and agreed to by Norton.

240  
241 14. Miscellaneous.

242  
243 A. If any provision, or any portion thereof, contained in this Agreement is  
244 held unconstitutional, invalid or unenforceable, the remainder of this  
245 Agreement, or portion thereof, shall be deemed severable, shall not be  
246 affected and shall remain in full force and effect.

247  
248 B. This Agreement shall be governed by the laws of the State of California.

249  
250 C. The parties agree that any ambiguity in this Agreement shall not be  
251 construed or interpreted against, or in favor of, either party.

252  
253 D. In the event of litigation over the terms of this Agreement the prevailing  
54 party shall be entitled to attorney's fees and costs.

255  
256 E. This Agreement may be executed in counterparts containing original  
257 signatures.

258  
259  
260 WILLIAM NORTON

CITY OF CALISTOGA

261  
262  
263 \_\_\_\_\_  
264 By: William Norton

265 \_\_\_\_\_  
266 By: Jack Gingles  
267 Its: Mayor

268  
269 ATTEST:

APPROVED AS TO FORM:

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271  
272 \_\_\_\_\_  
273 By: Susan Sneddon  
274 Its: City Clerk

275 \_\_\_\_\_  
276 By: Michelle Marchetta Kenyon  
277 Its: City Attorney

