

**AT-WILL EMPLOYMENT AGREEMENT
OF
JEFFREY KAY**

This agreement is between the CITY OF HEALDSBURG ("City"), a municipal corporation organized in the State of California, and JEFFREY KAY ("Employee") ("Agreement"). The parties agree as follows:

1. Effective Date

The effective date of this Agreement is January 1, 2021.

2. Appointment as City Manager and Start Date

The City hereby agrees to employ Employee as City Manager for the City, subject to the terms, conditions and provisions of this Agreement. Employee hereby accepts such employment. Employee shall be "at will" and serve at the pleasure of the City Council.

Employee's employment with the City shall be subject to all requirements of the City's Personnel Rules unless contradicted by some provision of this Agreement.

3. Term of Agreement

The term of this Agreement shall be from January 1, 2021 until terminated by either party in accordance with the provisions of paragraph 5. Employee is an at will employee who may be terminated at any time, with or without cause, and shall serve at the pleasure of the City Council.

4. Duties and Responsibilities

a. As City Manager, Employee will perform the functions and duties specified in the laws of the United States and the State of California, as well as the rules, regulations, ordinances and resolutions of City, and to perform other legally permissible and proper duties and functions of the City Council may, from time to time, assign.

b. Employee shall perform his duties to the best of his ability in accordance with the highest professional and ethical standards of the profession, comply with all general rules and regulations established by the City, and obey all State and Federal laws.

c. Employee agrees to devote his productive time, ability and attention to the City's business during the term of this Agreement. Employee shall not hold secondary employment, and shall be employed exclusively by the City. The City and Employee recognize that Employee is expected to devote necessary time outside normal office hours to perform business of the City. Since Employee's position is "exempt" under the Fair Labor Standards Act, Employee shall not receive overtime or extra compensation for work performed outside normal business hours.

c. Employee 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, the Employee must complete disclosure forms as required by law.

5. Resignation and Termination

a. Employee may resign at any time with or without cause and agrees to give City at least sixty (60) days advance written notice of the effective date of his resignation unless parties mutually agree otherwise.

b. City may terminate Employee, with or without cause, at any time, consistent with the requirements of Healdsburg Municipal Code Sections 2.12.060 and 2.12.070.

c. The parties recognize and affirm that: 1) Employee is an "at-will" employee whose employment may be terminated by the City Council at any time; and 2) there is no express or implied promise made to Employee for any form of continued employment as City Manager or any other position of employment with City. This Agreement is the sole and exclusive basis for an employment relationship between Employee and the City.

6. Salary

a. Effective January 1, 2021, City agrees to pay Employee \$20,959 in base salary per month (\$251,504 per year) thereafter for his services. All salary payments to Employee shall be payable in installments at the same time as other employees of the City are paid and subject to the customary withholding.

b. Employee shall be placed in Step E of the step range for the City Manager classification.

c. Employee shall have his performance and compensation reviewed by the City Council in November of each year starting in the November following the initial January 2022 review or at other times as deemed appropriate by the City Council. The first review shall occur in January 2022.

7. Supplemental Benefits

a. Except as otherwise provided in this Agreement, Employee shall receive the same economic benefits as Department Heads and those specified in the Mid-Management and Professional Employees Association Benefit Package, as approved by the City Council.

b. The Employee shall pay the full 7% employee contribution rate to the California Public Employees Retirement System ("PERS"). Currently, the Miscellaneous Employees retirement formula is 2% at 60 with three year final average compensation.

c. The City shall pay all or a portion of the selected medical premiums as outlined in the Executive Management Benefit Package, as may be amended from time to time. Dental and vision plans and a \$100,000 life insurance policy are fully paid by the City. While Employee is employed by City as City Manager, Employee is entitled to these benefits; however, the benefits described in this paragraph may be modified by the City Council without the need for negotiations with or formal agreement of Employee.

d. Employee's vacation accrual rate shall be one hundred sixty-eight(168) hours per year. After the completion of one full year, Employee shall accrue vacation consistent with the Executive Management Benefit Package, which at present provide for an accrual rate of one hundred sixty-eight (168) hours per year. Employee shall accrue sick leave at 3.69 hours per pay period. Maximum accrual balances, "cash out" options and payment upon separation shall be in accordance with the Personnel Rules, as may be amended from time to time.

e. Employee shall be entitled to one hundred (100) hours of management leave per fiscal year. Employee shall receive forty (40) hours of management leave on his first day of work. Employee shall receive an additional sixty (60) hours of management leave on July 1, 2021. Thereafter, Employee shall receive one hundred (100) hours of management leave on July 1 of each year. Unused management leave shall be forfeited at the end of each fiscal year and shall have no cash value upon Employee's departure from the City.

f. Employee shall receive monthly management incentive pay of \$550.00. This amount shall be considered wages under the City's contract with PERS for purposes of final compensation.

g. Employee shall be entitled to annual cost of living compensation adjustments consistent with those provided to Department Heads, in accordance with the Executive Management Benefit Package.

h. Upon satisfactory completion of five continual years of service, Employee shall be entitled to longevity pay in accordance with the Executive Management Benefit Package.

i. On Employee's behalf, City shall contribute one hundred percent (100%) of the maximum contribution allowed by Internal Revenue Code Section 415(b)(1)(A) to Employee's deferred compensation account. City shall make this contribution in January of each year.

j. City agrees to reimburse Employee for any relocation expenses associated with Employee's relocation in the 2020-2021 period, including but not limited to expenses related to moving, terminating any current leases, and/ or procuring temporary housing, in an amount not to exceed \$8,000. Receipts for such expenses shall be submitted to the Mayor and reimbursed upon approval by the Mayor.

k. The City shall budget under the City Manager's Department the cost of reasonable fees and memberships in professional organizations as well as the registration fees and travel and subsistence costs for professional and official meetings, conferences, and functions.

8. Severance

a. As stated herein, Employee's employment with City is for no definite term or period of time. Employee shall serve at the will and pleasure of the City Council, and his employment may be terminated by the City Council at any time. Termination of Employee's employment shall not require any showing of cause or justification, nor shall Employee be entitled to any internal administrative appeal of the decision of the City Council, beyond any process required by law.

b. In the event of Employee's involuntary termination for reasons other than his resignation, death, disability, breach of this Agreement or conviction of any felony or any

criminal offense involving moral turpitude or "an abuse of his office or position" as that term is defined in Government Code Section 53243.4, Employee shall be paid severance pay as provided in paragraph 8e.

c. In accordance with State law, Employee shall be entitled to receive all compensation earned, but unpaid, for actual work performed and accrued vacation time as of the date of termination.

d. If Employee is paid severance pay as provided in paragraph 8e, below, payment of such severance shall be conditioned upon Employee's written waiver of any claims, grievances or causes of action against City, its employees, agents, officers, and City Council arising out of or concerning this Agreement, Employee's employment with City, or the termination of his employment with the City. If Employee does not agree to waive such claims, grievances or causes of action, the City shall not pay Employee severance pay.

e. If Employee's employment is terminated within twelve (12) months of January 1, 2021, and severance pay is applicable pursuant to the terms stated above, City agrees to pay Employee a lump sum payment of twelve months base salary. If Employee's employment is terminated at any time thereafter, and severance pay is applicable pursuant to the terms stated above, City agrees to pay Employee a lump sum payment of six months base salary. Any lump sum payment shall exclude standard withholdings. Such payment shall release City from any further obligations under this Agreement.

9. Indemnification

The City shall defend, hold harmless and indemnify Manager against any tort, civil rights, personnel, discrimination, 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 Manager's duties in accordance with the provisions of California Government Code section 825. The City shall provide a defense in accordance with California Government Code section 995. The City may decline to defend and/or indemnify Manager only as permitted by the California Government Code. The City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment therefrom.

10. 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.

11. 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 continues to be at-will and that either party may terminate the employment at any time for any reason, with or without cause.

12. 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: Mayor
City of Healdsburg
401 Grove Street
Healdsburg, CA 95448

TO EMPLOYEE: Jeffrey Kay, City Manager
City of Healdsburg
401 Grove Street
Healdsburg, CA 95448

13. Abuse of Office

California Government Code Sections 53243, 52431.1, 53243.2 and 52431.3 are incorporated by reference as if fully set forth herein.

If this contract is terminated, any cash settlement related to the termination that Employee may receive from City shall be fully reimbursed to the City if Employee is convicted of a crime involving an abuse of his or his office or position.

14. 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.

15. No Assignment, No Third-Party Beneficiaries

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

16. 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.

17. 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 the City Council, on behalf of City, and JEFFREY KAY 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.

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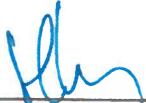
18. Counterparts.

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

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

EMPLOYEE

CITY OF HEALDSBURG



Jeffrey Kay, Employee



Evelyn Mitchell, Mayor

ATTEST:



Raina Allan, City Clerk

APPROVED AS TO FORM:



Samantha W. Zutler, City Attorney