

## **EMPLOYMENT AGREEMENT BETWEEN THE CITY OF GRASS VALLEY AND COMMUNITY DEVELOPMENT DIRECTOR**

### **1. Effective Date**

This Agreement shall become effective when it has been executed by "Director", hereinafter referred to as "Community Development Director" or Employee, and the City Manager, as duly approved by Resolution of the City Council, has executed it.

### **2. Term of Employment**

Community Development Director shall serve at the pleasure of the City Manager and on an "at will" basis during the term of this Agreement, subject to the terms and provision of this Agreement as set forth below.

### **3. Duties; Hours of Work**

A. Community Development Director shall perform those functions and duties as specified in job classification and by direction of the City Manager. Community Development Director shall perform such duties in accordance with the highest professional and ethical standards of the Community Development Director position. Community Development Director shall not engage in any activity that is, or which may become, incompatible with the City of Grass Valley, as provided by federal, state, and local law. During the term of this Agreement, Community Development Director shall be exclusively employed by the City, unless prior written authorization otherwise is received from the City Manager.

B. Community Development Director shall maintain a regular work schedule consistent with that approved for other-Directors of the City. Director Title's duties may involve expenditures in time in excess of eight (8) hours per day and/or forty (40) hours per week and may also include time outside normal office hours such as attendance at City Council and Commission meetings. Community Development Director shall not be entitled to additional compensation for this time.

### **4. Compensation**

A. Community Development Director shall receive an annual base salary of \$141,668.80, payable in equal bi-weekly payments to be made at the same time as other employees are paid.

B. Community Development Director's compensation shall be reviewed with the City Manager at least annually in connection with the annual review or at any other times as may be determined by the City Manager. Compensation may be increased as determined by the City Manager within the salary range (Compensation and Benefits - Appendix A) for the Community Development Director.

C. Salary may be reduced in the event Community Development Director receives an unsatisfactory evaluation, either at the annual evaluation or at any additional evaluation completed by the City Manager. Compensation may be reduced as determined by the City

Manager within the salary range (Compensation and Benefits - Appendix A) for the Community Development Director.

D. As consideration for the annual opportunity to be considered for increased compensation pursuant to sub-paragraph B above, Employee specifically waives any right to a 4/5 vote of the City Council prior to removal from his or her position, as provided under City Charter Article IX, Section 2. Employee acknowledges that the City Manager is the appointing authority and may also remove Employee from this position without action of the City Council.

#### **5. Health Insurance**

The City shall pay the full premium for health insurance for the Community Development Director, including their dependents, for health coverage (medical, dental, and vision) benefit options as provided to other employees.

Employees waiving medical insurance coverage shall receive two hundred fifty dollars (\$250) per month less the costs of any elected dental or vision insurance per month. Employees waiving health care coverage must produce evidence of insurance through another source. Any payment due Employees for waiving medical insurance coverage shall be paid in a lump sum once per month and shall be considered taxable compensation; however, such compensation is not PERSable.

#### **6. Annual Leave**

Community Development Director shall receive vacation benefits equal to those of other Department Heads, as set forth in the "Compensation and Benefits - Appendix A". Community Development Director may cash out up to four weeks of Annual Leave and/or vacation each Calendar Year upon City Manager's prior approval and consistent with Internal Revenue Service rules governing constructive receipt. Vacation and/or Annual Leave time cashed out pursuant to this provision shall be subtracted from the accumulated Vacation and/or Annual Leave balances when paid.

#### **7. Retirement**

Employees designated as local public safety (Police) "classic" employees by the City are currently provided retirement benefits under the Public Employee's Retirement System's Local Safety (Police) 3% at age 50 formula with a 9% employee contribution. Employees are also provided retirement benefits under Social Security.

"Classic" public safety (Police) designated employees will pay a pre-tax contribution for retirement for the employee share under CalPERS retirement plan of 9%. The employee shall pay the full amount of the employee's contribution rate to Social Security.

Employees designated as local public safety (Fire) “classic” employees by the City are provided retirement benefits under the Public Employees Retirement System’s (PERS) Local Public Safety (Fire) 3% at 55 formula. Employees are also provided retirement benefits under Social Security.

“Classic” public safety (Fire) designated employees will pay a pre-tax contribution for retirement for the employee share under CalPERS retirement plan of 9%. The employee shall pay the full amount of the employee’s contribution rate to Social Security.

New public safety employees hired after January 1, 2013 or “Non Classic” public safety (Fire or Police) designated employees, upon placement in a full-time employment status shall have the PERS 2.7% @ 57 formula, as provided by the terms of the contract in effect between the City and PERS. The employee contribution rate shall be 50 percent of the “normal cost” rounded to the nearest quarter of 1 percent, as determined by PERS.

Miscellaneous employees who are considered “classic” members by PERS will be responsible for paying the full employee contribution to the California Employees Retirement System, which is currently 8%. Miscellaneous employees who are considered “new” members by PERS will be responsible for paying 50 percent of the “normal cost” pursuant to the Pension Reform Act of 2013. The employee shall pay the full amount of the employee’s contribution rate to Social Security.

#### **8. Deferred Compensation**

Subsequent to the first year of employment under this contract, City will deposit to Community Development Director’s deferred compensation account via bi-weekly payroll a performance bonus contribution of up to \$4,000 annually.

The City’s contribution amount shall be based upon job performance and be dependent upon receipt of “Director’s Title” performance evaluation. The City’s contribution amount shall be determined in the sole discretion of the City Manager and may be less than \$4,000.

In the event this agreement terminates or is not renewed, Community Development Director shall be entitled to retain the amount of deferred compensation accumulated as of the date of termination or non-renewal.

After such time as Community Development Director resigns or is terminated, City shall transfer ownership of any deferred amount on deposit in a deferred compensation plan to succeeding employers upon “Director’s Title” written request.

#### **9. Annual Performance Evaluation**

The City Manager shall evaluate Community Development Director’s performance at least once annually. The City Manager and Community Development Director shall annually develop mutually agreeable performance goals and criteria which the City Manager shall use in reviewing Community Development Director’s performance in the following year.

It shall be Community Development Director's responsibility to initiate this review each year.

#### **10. Indemnification**

City shall defend, hold harmless and indemnify Community Development Director against any claim, demand, judgment, or action of any type or kind arising within the course and scope of Community Development Director's employment to the extent required by Government Code Sections 825 and 995. Notwithstanding anything to the contrary in this section, pursuant to Government Code Section 53243.1, if the City provides funds for the legal criminal defense of Employee, any funds provided for that purpose shall be fully reimbursed by Employee to the City if Employee is convicted of a crime involving an abuse of office or position. Employee recognizes that City shall have the right to compromise and settle all actions or proceedings in which City is providing Employee a defense, even if Employee objects to such compromise or settlement.

#### **11. Other Terms and Conditions of Employment**

A. The City Council may from time to time fix other terms and conditions of employment relating to the performance of Community Development Director, provided such terms and conditions are not inconsistent with or in conflict with the provision of this Agreement, the Grass Valley Charter or Municipal Code, or other applicable law.

B. The provisions of the City's Civil Service Rules and Regulations ("Rules") shall apply to Community Development Director to the extent they explicitly apply to the position of Community Development Director, except that if the specific provisions of this Agreement conflict with the Rules, the terms of this Agreement shall prevail. Without limiting the generality of the exception noted in the previous sentence, however, no provision of the Rules or this Agreement shall confer upon Community Development Director a property right in his or her employment or a right to be discharged only upon cause. Community Development Director is not a member of the competitive/ classified service and is an "at will" employee serving at the pleasure of the City Manager and may be dismissed at any time with or without cause, subject only to the provisions of this Agreement. The provisions of Article IX, Section 2, requiring a 4/5 vote of the City Council to remove a Department Head do not apply to this Agreement and are specifically waived by Employee as provided in Section 4(D) of this Agreement. Notwithstanding any other provision of this Agreement, Community Development Director shall not violate any policy prohibiting discrimination, harassment, retaliation, workplace violence, or other similar misconduct as set forth in the Rules and in federal, state law, and local law.

C. Community Development Director shall be exempt from paid overtime compensation.

#### **12. Termination**

A. Community Development Director is not part of the competitive (classified) service and therefore is an "at will" employee. As an "at will" employee, Community Development Director may be terminated by the City Manager with or without cause, without right of appeal, and without advance notice or City Council action.

B. If Community Development Director is terminated by the City Manager without cause, Community Development Director after termination will be entitled to up to three months of severance pay at Community Development Director's base salary rate plus payment in a lump sum of the following: 1) 100% of any accrued, but unused Personal Leave and vacation leave, if any; and 2) 50% of the value of unused sick leave, if applicable, to the extent not used for PERS Service Credit, if any. Severance pay shall be paid monthly until Employee is gainfully employed or the 3-month limit has been reached, whichever is less. Employee shall provide notification of gainful employment to City immediately upon commencing such employment if such employment commences within three months of Employee's termination from City. Notwithstanding anything to the contrary in this subsection, pursuant to Government Code Section 53243.2, if the Agreement is terminated, any cash settlement related to the termination that Employee may receive from City shall be fully reimbursed to City if Employee is convicted of a crime involving an abuse of his office or position.

C. If Community Development Director is terminated by the City for cause, Community Development Director is not entitled to any severance pay whether or not advance notice of termination is provided; however, payment for accrued, unused Personal Leave, sick leave and/or vacation leave, if applicable, shall be paid as provided in subparagraph B above. If Community Development Director is terminated for cause, Community Development Director must be given notice of the cause and supporting evidence. Community Development Director is entitled to meet with the City Manager at which time Community Development Director may reply orally and/or in writing to the cause and supporting evidence. The meeting is not an evidentiary hearing. There is no right to appeal the City Manager's decision. The City Manager's decision is final, and nothing in this subsection shall be deemed to impose a "for cause" requirement to terminate Employee's employment with City. The specification of causes for termination below is solely for the purpose of determining whether Employee is entitled to severance pay. For purposes of this Agreement, the term "for cause" shall include any of the following:

- (a) use of alcohol or drugs that impedes performance of duties;
- (b) conviction of a felony or misdemeanor involving moral turpitude (a plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed a conviction for this purpose);
- (c) a proven claim of either sexual harassment or abuse of employees in violation of law or adopted City policy;
- (d) willful and repeated failure to carry out the lawful directives or policy decisions of the City Council; or
- (e) willful abandonment of the position or continued and unexcused absence from duty.

D. Community Development Director may voluntarily terminate his or her employment, by resignation or retirement or some other similar manner, upon at least one-

month notice. In this circumstance, Community Development Director is not entitled to any severance pay.

E. In the event an Employee dies while employed by the City, his/her beneficiary or those entitled to his/her estate shall be paid for any earned salary and any in lieu payments for personal leave and any banked vacation or sick leave at the rates established in this Agreement to which the Employee is entitled as of the final day on City payroll. City may request appropriate documentation to ensure such persons are beneficiaries or otherwise entitled to participate in Employee's estate.

### **13. Compliance With Law**

This Agreement is subject to all applicable provisions of federal, state, and local laws, including the Grass Valley Municipal Code, except for the application of specific provisions of the City Charter which are waived as set forth herein.

### **14. General Provisions**

- A. This Agreement constitutes the entire agreement between the parties. City and Community Development Director hereby acknowledge that they have neither made nor accepted any other promise or obligation with respect to the subject matter of this Agreement.
- B. If any provision or any portion of this Agreement is held to be unconstitutional, invalid or unenforceable, the remainder of the Agreement shall be deemed severable and shall not be affected and shall remain in full force and effect.
- C. Any notice to City pursuant to this Agreement shall be given in writing, either by personal service or by registered or certified mail, postage prepaid, addressed as follows:

City Manager  
City of Grass Valley  
125 East Main Street  
Grass Valley, CA 95945

Any notice to Community Development Director shall be given in a like manner, and, if mailed, shall be addressed to Community Development Director at the address shown in City's personnel records. For the purpose of determining compliance with any time limit stated in this Agreement, a notice shall be deemed to have duly given (a) on the date of delivery, if served personally, or (b) on the second (2<sup>nd</sup>) calendar day after mailing, if mailed.

- D. If an action at law or in equity is necessary to enforce or interpret this Agreement, the prevailing party in that action shall be entitled to reasonable and actual attorneys' fees and costs with respect to the prosecution or defense of the action.

- E. A waiver of any of the terms and conditions of this Agreement shall not be construed as a general waiver and either party shall be free to enforce any term or condition of this Agreement with or without notice to the other notwithstanding any prior waiver of that term or condition.

**15. Amendments**

This represents the entire agreement between the parties. Amendments to this agreement may be made at such times as approved by the City Manager and Community Development Director and shall be in writing.

Dated: 12/10/18


  
\_\_\_\_\_  
Tim Kiser, City Manager

Dated: 12/12/18

  
\_\_\_\_\_  
Tom Last, Community Development Director

Approved as to form:

Dated: 12/11/18

  
\_\_\_\_\_  
Michael G. Colantuono, City Attorney





# Appendix A - Compensation and Benefits

## Life Insurance and Long Term Disability, EAP, Retiree Health Plan, other Benefits, and Special Provisions

### A. EMPLOYEE CONTRIBUTIONS

Employee contributions towards health benefits are on a pre-tax basis and subject to IRS rules.

### B. LIFE INSURANCE

The City shall provide term Life insurance benefits for the Employee, without cost to the Employee, of 1.5 times their annual salary up to two hundred thousand dollars (\$200,000) for the Employee, five thousand dollars (\$5,000) for the Employee's spouse and fifteen hundred dollars (\$1,500) for eligible dependent children without cost to the employee.

### C. LONG TERM DISABILITY INSURANCE

The City shall provide without cost to the Employee an income protection insurance program that shall insure an Employee's income to a maximum of sixty-six and two thirds (66 2/3%) of monthly earnings with a ceiling of six thousand dollars (\$6,000) in calculated base. Conditions of coverage shall be controlled by the master agreement with the insurance company.

### D. EMPLOYEE ASSISTANCE PROGRAM

The City has an established Employee Assistance Program. This program provides confidential counseling help for employees and their families. The Employee Assistance program provides for up to 3 visits.

### E. RETIREE HEALTH PLAN BENEFIT

Employees who become subject to this Plan on or before July 1, 2011, who retire from the City in good standing, who have at least five years of Grass Valley service, who elect to retain CalPERS medical coverage and who are of full retirement age shall be entitled to payment of up to \$500 towards the CalPERS premium for a single party until such time as the Employee is eligible to receive Medicare or is hired and has healthcare coverage available from the new employment.

Employees who become subject to this Plan after July 1, 2011, who retire from the City in good standing, who have at least ten years of Grass Valley service, who elect to retain CalPERS medical coverage and who are of full retirement age shall be entitled to payment

# Appendix A - Compensation and Benefits

of up to \$250 towards the CalPERS premium for a single party until such time as the Employee is eligible to receive Medicare or is hired and has healthcare coverage available from the new employment.

If the Employee so desires, his/her spouse may be added at the additional cost difference of the Employee plus one and the Employee pays the difference. If the Employee retiree selects a health plan that costs less than the City's contribution, they will not be eligible to receive the cash difference. All premium contributions must be received one month in advance and it is the responsibility of the Employee retiree to ensure that the City receives payment. Failure to pay the retiree's contribution in a timely manner (i.e., within 30 days of due date) will result in the loss of the benefit.

Employees waiving health care coverage shall receive two hundred fifty dollars (\$250) per month less the cost of any elected dental or vision insurance per month until eligible for Medicare or is hired and has healthcare coverage available from the new employment. Employees waiving health care coverage must produce evidence of insurance through another source. Any payment due Employees for waiving medical insurance coverage shall be paid in a lump sum per month.

## Personal Leave

The purpose of Personal Leave is to provide Employees the ability to accrue time for vacation, sick leave and personal leave situations.

Employees shall accrue Personal Leave hours at a rate of no less than 256 hours and no more than 336 hours per year based on years of service as set forth below. One twenty-sixth (1/26) of such Personal Leave amount shall accrue each pay period.

No Employee may carry a balance of more than 520 hours of their Personal Leave. Employees who have accumulated 520 hours of Personal Leave will accrue no further Personal Leave until they have used Personal Leave in an amount sufficient to bring their accumulated Personal Leave balance below 520 hours. Employees may convert up to 160 hours of accrued Personal Leave to salary compensation once each year. Personal Leave conversion of a maximum of 160 hours to salary must be submitted by December 20th of each year. 100% of Personal Leave hours in excess of the maximum accrual amount may be converted to banked PERS service credit in accordance with CalPERS regulations.

Employees who become subject to this Plan after July 1, 2011 must convert all accumulated Vacation Leave, Sick Leave to "Personal Leave". Those hours of Sick Leave or Vacation Leave combined in excess of 520 hours will be placed in a Sick Leave and Vacation Leave bank account to be utilized by the Employee, or paid out upon separation from service as set forth herein, or converted to banked PERS service credit in accordance with CalPERS regulations. Upon separation from service, the City shall pay employee a one-time lump sum calculated on Fifty (50%) Percent of the employee's banked unused Sick Leave and one hundred (100%) percent of the employee's banked Vacation Leave. (For example, if an employee is compensated for 450

# Appendix A - Compensation and Benefits

hours of sick leave at the 50% rate, the uncompensated 225 hours would go to PERS service credit as allowed by PERS.)

Employees will accrue Personal Leave time at the following rates:

- 1 to 2 years of city service = 256 hours
- 2 plus years to 5 years = 272 hours (10.46 hours biweekly)
- 5 plus years to 10 years = 296 hours (11.38 hours biweekly)
- 10 plus years to 20 years = 320 hours (12.31 hours biweekly)
- 20 plus years = 336 hours (12.92 hours biweekly)

After 2 plus years of city service, credit for prior public service may be included for purposes of calculating annual time subject to the City Manager approval. Prior public service shall be similar in nature to the duties being performed by the Employee for City to be eligible for this benefit.

## Certifications

The City shall pay the costs associated with obtaining and maintaining special certificates that are required by the State of California, the City of Grass Valley or any governmental agency to obtain and maintain as a condition of employment.

## Holidays

Employees are entitled to 11 paid holidays as listed below. Recognized Holidays shall include:

- |                        |                            |
|------------------------|----------------------------|
| New Year's Day         | Columbus Day               |
| Presidents Day         | Veterans Day               |
| Martin Luther King Day | Thanksgiving Day           |
| Memorial Day           | The Day After Thanksgiving |
| July 4 <sup>th</sup>   | Christmas Day              |
| Labor Day              |                            |

A paid holiday is equivalent to eight hours, for a total of 88 hours per year. Holiday hours are accrued outside of Personal Leave, must be used within the calendar year accrued. Unused holiday hours may not be carried over into any subsequent calendar year or "cashed out."

## Special Provisions

### A. PUBLIC SAFETY UNIFORM ALLOWANCE

# Appendix A - Compensation and Benefits

The Police Chief and Fire Chief shall be provided a uniform and cleaning allowance. The amount of the benefit will be the same as established under Unit 6 for the Police Chief and under Unit 8 for the Fire Chief.

## B. VEHICLE ALLOWANCE

The Police Chief, Fire Chief and Public Works Director shall be provided a vehicle. Other Employees may be granted a car allowance subject to the City Manager's approval and in accordance with City adopted policies. Employees will have access to City "Pool" vehicles for conducting City business or will be eligible for mileage reimbursement for personal vehicle use when conducting City business in accordance with City adopted policies.

## C. TRAINING/MEMBERSHIPS

Employees shall be entitled to training, travel, workshops, and professional memberships, for the purpose of personal growth and enrichment subject to the annual amounts budgeted each year in the respective department for this purpose. City agrees to reimburse Employee for reasonable expenses for training, travel, workshops and professional memberships which have been authorized by the City Budget and approved in advance by the City Manager. Employee must submit expense receipts, statements or personal affidavits, and audit thereof in like manner as other demands against the City.

## D. PUBLIC EMPLOYEES RETIREMENT SYSTEM

All Employees will be members of the California Public Employees Retirement System as provided by the terms of the contracts between the City of Grass Valley and the California Public Employees Retirement System.

## Salary Schedule

<i>Position</i>	<i>Annual Salary</i>		
	<i>Min</i>	<i>Mid</i>	<i>Max</i>
Police Chief	\$ 133,984.38	\$ 153,125.00	\$ 175,000.00
Fire Chief	\$ 122,500.00	\$ 140,000.00	\$ 160,000.00
Community Development Director	\$ 114,843.75	\$ 131,250.00	\$ 150,000.00
Public Works Director of Operations	\$ 114,843.75	\$ 131,250.00	\$ 150,000.00
City Clerk	\$ 65,078.13	\$ 74,375.00	\$ 85,000.00