

**CITY OF EUREKA
DIRECTOR OF DEVELOPMENT SERVICES
AT-WILL EMPLOYMENT AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT is made and entered into on May 2nd, 2023 by and between the City of Eureka, California (hereinafter “CITY”) and Cristin Kenyon (hereinafter “EMPLOYEE”).

WHEREAS, the Charter of the City of Eureka, Section 600 and following provide that the City Manager shall appoint department heads subject to approval of the City Council; and

WHEREAS, the City Manager desires to appoint EMPLOYEE to perform the duties of Director of Development Services on behalf of CITY; and

WHEREAS, it is the desire of the parties to establish certain conditions of employment and to set working conditions of EMPLOYEE within the framework of an at-will employment relationship; and

WHEREAS, it is the intention of the parties to fully comply with the provisions of the Charter of the City of Eureka and its Municipal Code; and

WHEREAS, subject to the City Charter and Municipal Code, it is the desire of the City Council to: (1) retain the services of EMPLOYEE and to provide inducement for them to remain in such employment; (2) to make possible full work productivity by assuring EMPLOYEE’S morale and peace of mind with respect to future security; and (3) to provide termination and severance pay upon the terms and conditions fully set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. DUTIES.

A. Under administrative direction of the City Manager and as specified in Eureka Municipal Code section 32.041, the Director of Development Services is responsible for, among other things, the effective administration of the Department of Development Services and all activities assigned thereto by the provisions of Eureka Municipal Code and by the laws of the city and applicable state laws, and for such other activities not in conflict therewith as may be required by the City Manager.

B. The Director of Development Services is responsible for directing, managing, supervising and coordinating the work of professional and support staff involved in the programs and activities of the Development Services Department.

C. The Director of Development Services shall perform such other legal and reasonable duties as the City Manager may direct.

D. Neither the City Council nor its members shall interfere with the execution by EMPLOYEE of their powers and duties, or order directly or indirectly, the appointment of any person to any office or employment, or their removal therefrom. Except for the purpose of inquiry, the City Council and its members shall deal with City departmental administration solely through the City Manager, and neither the City Council nor any member thereof shall give orders to EMPLOYEE or any subordinate thereof, either publicly or privately.

E. It is recognized that the position of Director of Development Services may call for unusual work hours. It is therefore agreed the EMPLOYEE will set their own work hours while devoting the necessary amount of time and energy needed to faithfully perform the duties of Director of Development Services under this Agreement.

SECTION 2. TERM.

A. This Agreement shall commence on May 3rd, 2023.

B. Pursuant to the Charter of the City of Eureka and its Municipal Code, the parties acknowledge and agree that the Director of Development Services serves at the pleasure of the City Manager; that there exists no contract for or right to employment either expressed or implied, with the sole exception of the provisions contained herein; that the City Manager may terminate the employment of the EMPLOYEE with or without cause; and that upon such termination, with or without cause, EMPLOYEE'S sole remedy under the laws of the State of California, the laws of these United States, the Charter of the City of Eureka, its Municipal Code, and this Agreement consists of the provisions contained in Section 3 hereof.

C. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of EMPLOYEE to resign at any time from their position with CITY, subject only to the provisions set forth in Section 3 of this Agreement.

D. EMPLOYEE agrees to remain in the exclusive employ of CITY during the employment term, and neither to accept, nor to become employed by another employer until said termination date, unless said termination date is effected as hereinafter provided. Notwithstanding, with the consent of, and at the sole discretion of CITY, EMPLOYEE may accept compensation for occasional outside consulting, writing, or speaking engagements; or while teaching or training; or while serving on the Board of Directors of one or more corporations; provided however, that such outside activities or work are not inconsistent or incompatible with CITY employment.

SECTION 3. TERMINATION AND SEVERANCE PAY.

- A. This Agreement shall terminate upon the occurrence of any of the following events:
1. Upon thirty (30) days notice given to CITY by EMPLOYEE; or
 2. Upon the death of EMPLOYEE; or
 3. Upon the permanent disability and inability of the EMPLOYEE to perform the essential duties of their position; or
 4. Upon the effective date of EMPLOYEE retirement from CITY service pursuant to Public Employees' Retirement System (PERS); or
 5. Upon decision of the City Manager of CITY to terminate EMPLOYEE, with cause.
- B. In the event EMPLOYEE is terminated without cause, at any time during the term of this Agreement, CITY agrees to pay to EMPLOYEE a lump sum cash severance payment equal to the total of EMPLOYEE'S vacation and such other accruals, including sick leave, as they may be entitled to, and the then current salary (including benefits) that they would have been entitled to receive for six (6) months under the terms of this Agreement.
- C. CITY reserves the right to terminate this Agreement without liability for any severance pay whatsoever, when such termination is made for cause. "Termination for Cause" shall include:
1. Willful breach of this Agreement pursuant to Labor Code Section 2924 as that code section has been interpreted.
 2. Habitual neglect of the duties required to be performed as Director of Development Services pursuant to Labor Code Section 2924 as that code section has been interpreted.
 3. Any act of dishonesty, fraud, or other acts of moral turpitude.
 4. Conviction of any act which would constitute a crime, whether misdemeanor or felony, and which would bring disrespect to the Office of Director of Development Services or CITY.
 5. Willful violations of CITY policies of a serious nature, including for example, CITY'S Harassment or Drug-Free Workplace policies.

D. Pursuant to Eureka Municipal Code, should EMPLOYEE be terminated or suspended for cause, EMPLOYEE shall have a written notice of the cause of their removal or suspension from duty, and they shall have the opportunity to be heard on the cause of their removal or suspension before a public hearing of the City Council.

E. In the event CITY at any time during the employment term reduces the salary or other financial benefits of EMPLOYEE in a greater percentage than an applicable across the board reduction for management, mid-management, professional and confidential employees, or in the event the City refuses, following written notice, to comply with any other provision benefiting EMPLOYEE therein, then EMPLOYEE may at their option be deemed to be “terminated without cause” at the date of such reduction or such refusal to comply with the meaning or the context of the herein severance pay provision.

SECTION 4. COMPENSATION.

A. CITY agrees to pay EMPLOYEE for their services rendered pursuant hereto an initial annual, base salary of \$108,549 (Step 1) within the current compensation range for the Director of Development Services classification payable in installments at the same time as other employees of CITY are paid. Pursuant to CITY personnel policies and procedures, EMPLOYEE will be evaluated and reviewed annually following the effective date of this Agreement, and annually thereafter. The employee will be eligible for performance-based merit increases as part of the annual review process. Merit increases up to 5% per annum may be granted until step 5 maximum is achieved.

B. CITY agrees to review for increases said salary compensation range and/or other benefits of EMPLOYEE in such amounts and to such an extent as the City Council may determine that it is desirable on the basis of an annual compensation review of said EMPLOYEE. The compensation review shall take place at the same time all other employees are reviewed.

C. Except as herein provided, EMPLOYEE shall receive such other and further benefits as are accorded other management employees of CITY, including, but not limited to, cost of living adjustments, holidays, sick and bereavement leaves, and executive leave days.

SECTION 5. AUTOMOBILE.

A. EMPLOYEE'S duties require that they shall have the exclusive and unrestricted use at all times during their employment with the CITY of an automobile. Should the CITY not provide said automobile, EMPLOYEE will furnish their own personal automobile for which the CITY shall provide a monthly allowance in the amount paid to other management employees (currently \$350.00 per month).

SECTION 6. EQUIPEMENT.

- A. CITY shall provide all business computing and communications equipment, and service costs, furniture and fixtures necessary and convenient to carry out the terms of this Agreement.
- B. All such computing and communications equipment, furniture, and fixtures provided by CITY shall be deemed the property of CITY.

SECTION 7. DUES, SUBSCRIPTIONS, PROFESSIONAL DEVELOPMENT.

- A. To the extent possible, as provided and agreed upon by the City Council in the CITY'S annual budget, CITY agrees to pay the dues and subscriptions of EMPLOYEE necessary for their contribution and full participation in national, regional, state and local associations necessary and desirable for their continued professional participation, growth, and advancement, and to maintain active communication with and through local organizations, and for the good of CITY.
- B. To the extent as provided and agreed upon by the City Council in the CITY'S annual budget, CITY hereby agrees to pay the travel and subsistence expenses of EMPLOYEE for professional and official travel, meetings, and occasions adequate to continue the professional development of EMPLOYEE and to adequately pursue necessary official and other functions for CITY.
- C. To the extent as provided and agreed upon by the City Council in the CITY'S annual budget, CITY agrees to pay for the travel and subsistence expenses of EMPLOYEE for short courses, institutes, and seminars that are necessary for their professional development and for the good of CITY.

SECTION 8. INDEMNIFICATION.

- A. In addition to that required under state and local law, CITY shall defend, save harmless, and indemnify EMPLOYEE against any tort, 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 EMPLOYEE'S duties as Director of Development Services. CITY, however, expressly does not waive, and does fully retain all discretion reserved to it by law under Government Code Sections 995 through 996.6, and successor provisions, if any. CITY may compromise and settle any such claims or disputes and pay the amount of any settlement or judgment rendered thereon.

SECTION 9. OTHER TERMS AND CONDITONS OF EMPLOYMENT

- A. Upon recommendation of the City Manager, the City Council may fix any such other terms and conditions of employment, as it may determine from time to time, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Charter of the City of Eureka and its Municipal Code, or any other law.
- B. All provisions of the Charter of the City of Eureka and its Municipal Code, and regulations and rules of CITY relating to usage of vacation, administrative, and sick leave, retirement and pension system contributions, holidays, and other fringe benefits and working conditions as they now exist or hereafter may be amended, also shall apply to EMPLOYEE as they would to other management, mid-management, professional and confidential employees of CITY, in addition to said benefits enumerated specifically for benefit of EMPLOYEE, except as herein provided.
- C. EMPLOYEE shall receive 72 hours of management leave per year in recognition of the time EMPLOYEE must work outside normal office hours
- D. Leave will be accrued at the same rate as other management, mid-management, professional and confidential employees of CITY.

SECTION 10. GENERAL PROVISIONS.

- A. The text herein shall constitute the entire Agreement between the parties.
- B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of EMPLOYEE.
- C. This Agreement shall become effective on the third day of May, 2023.
- D. If any provisions, or any portion thereof, contained in this Agreement is held to be unconstitutional, invalid, or unenforceable, the remainder of this Agreement or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.
- E. If any provisions of the CITY'S Personnel Rules, Regulations, and Policies conflict with the at-will employment status described in this Agreement, such conflicts will be resolved in favor of the at-will status contained in this Agreement.
- F. CITY and EMPLOYEE agree that they will, at all times, assist each other in defending any litigation involving CITY, or EMPLOYEE'S duties with CITY, and CITY agrees to defend EMPLOYEE against any claim or action against them arising out of an act or omission occurring within the scope of their employment. The parties shall each comply with the requirements of Section 825 of the Government Code or its successor, in implementing this paragraph.

IN WITNESS WHEREOF, the City of Eureka, State of California, has caused this Agreement to be signed and executed in its behalf by its City Manager, and duly attested by its City Clerk, and the EMPLOYEE has signed and executed this Agreement, both in duplicate, the day and year first above written.

FOR THE CITY OF EUREKA:

ATTEST:

Dated: _____

Dated: _____

By: _____
Miles Slattery, City Manager

Pamela Powell, City Clerk

APPROVED AS TO FORM:

Dated: _____

By: _____
Autumn Luna, City Attorney

EMPLOYEE:

Dated: _____

By: _____
Cristin Kenyon, EMPLOYEE