

EMPLOYMENT AGREEMENT

THIS AGREEMENT is made and entered into this 2 day of November, 2010, by and between the CITY OF BENICIA, hereinafter called "EMPLOYER" and Brad L. Kilger, City Manager, hereinafter called "EMPLOYEE," both of whom understand as follows:

RECITALS

Whereas, it is the desire of the EMPLOYER to provide certain benefits, establish certain conditions of employment and to set working conditions of said EMPLOYEE, which conditions will help to:

1. Secure and retain services of EMPLOYEE and provide inducement for EMPLOYEE to remain in EMPLOYER's employment; and
2. Make possible full productivity by assuring EMPLOYEE'S morale and peace of mind with respect to future security; and
3. Provide a just means for terminating EMPLOYEE'S services at such time as EMPLOYER may desire to terminate EMPLOYEE.

Whereas, EMPLOYEE has the necessary education, experience, skills and expertise to serve as EMPLOYER's City Manager; and

Whereas, EMPLOYER desires to offer employment to EMPLOYEE as City Manager of the City of Benicia; and

Whereas, EMPLOYEE desires to accept employment as City Manager of the City of Benicia.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, EMPLOYER and EMPLOYEE agree as follows:

SECTION I DUTIES AND AUTHORITY

1. EMPLOYER hereby agrees to employ Brad L. Kilger as City Manager of said EMPLOYER effective December 13, 2010, on a reduced hour basis until December 20, 2010 when full time service will begin. EMPLOYEE shall be the chief executive officer of the City and be responsible to the EMPLOYER for the proper administration of all affairs of the City and agrees to diligently and faithfully perform the duties of the Benicia City Manager. Specific duties include, but are not limited to, the functions and duties specified in Chapter 2.08 of the Benicia Municipal Code as well as other legally permissible and proper duties and functions as the City Council may, from time to time, assign.

2. EMPLOYEE will focus his professional time, ability, and attention to City business during the term of this Agreement. EMPLOYEE shall not engage in any other business duties or pursuits whatsoever or, directly or indirectly, render any services of a business, commercial, or professional nature to any other person or organization, whether for compensation or otherwise without the prior consent of the City Council, except for occasional teaching, writing or consulting for compensation, performed on EMPLOYEE'S time off, provided such activities are not in conflict with his duties and this Employment Agreement and not detrimental to the interests of the City.
3. To ensure that EMPLOYEE is able to effectively carry out his duties in a professional and forthright manner and implement the policies of the City Council impartially and equitably, the City Council and its members agree a) to spend time each year outside of regular meetings to work with EMPLOYEE and staff on setting goals and priorities for the City government, and to work on issues that may be inhibiting the maximal achievement of City goals, b) to adopt a set of communication protocols to assist in maximizing the effectiveness of City Council member interaction with one another, with EMPLOYEE and with City staff, c) to deal with all subordinate City employees, officers, contractors, and consultants solely through EMPLOYEE or his designee, except for the purpose of inquiry and to not give orders to any subordinate of EMPLOYEE, either publicly or privately, d) to not order the appointment or removal of any person to any office or employment under the supervision and control of EMPLOYEE, e) that any criticism of a City staff member will be done privately through EMPLOYEE, f) to not interfere with the execution of the powers and duties of EMPLOYEE and g) that EMPLOYEE shall take orders and instructions from the City Council only when it is sitting as a body in a lawfully held meeting.
4. EMPLOYER acknowledges that EMPLOYEE is a member of the International City Management Association ("ICMA"). The Parties mutually desire that EMPLOYEE be subject to and comply with the ICMA Code of Ethics (See Attachment). In that regard EMPLOYEE commits to comply with the ICMA Code of Ethics and EMPLOYER agrees that neither the City Council nor any of its members will give EMPLOYEE any order, direction, or request that would require EMPLOYEE to violate the ICMA Code of Ethics.

SECTION II - TERM

1. The term of this Employment Agreement shall be for an indeterminate period of time and is subject to termination by EMPLOYER as provided herein. EMPLOYEE acknowledges that he is employed to an "at will" position and serves at the pleasure of the City Council subject only to the restrictions imposed by local ordinance and the terms and conditions of this Employment Agreement.
2. Nothing in this agreement shall prevent, limit, or otherwise interfere with the right of EMPLOYER to terminate the services of EMPLOYEE at any time, subject only to the provisions set forth in Section VI of this agreement.

3. Nothing in this agreement shall prevent, limit, or otherwise interfere with the right of EMPLOYEE to resign at any time from his position with EMPLOYER, subject only to the provisions set forth in Section VI of this agreement.

SECTION III - HOURS OF WORK

1. It is recognized that the position of City Manager is an executive management position which often requires more than a conventional forty-hour week to provide the desired level of professional service. It is further recognized that to properly fulfill his duties and responsibilities, EMPLOYEE will devote a considerable amount of time outside normal office hours to the business of the City. Therefore, while EMPLOYEE shall spend sufficient hours on site to perform the City Manager's duties, EMPLOYEE has discretion over his work schedule and work location and will not be required to maintain a strict forty (40) hour-per-week on-site presence at City Hall, and may be occasionally absent from City Hall during normal business hours as is reasonable and appropriate.

SECTION IV - COMPENSATION

1. Base Salary
 - a. EMPLOYER agrees to pay EMPLOYEE for his services rendered, pursuant hereto, an annual base salary of one hundred and eighty-seven thousand and five hundred dollars (\$187,500.00) payable pro rata at the same time as other City employees are paid. The compensation shall be payable in installments as provided to other employees of EMPLOYER are so paid. EMPLOYER may not, at any time during the term of this Agreement, reduce the salary, compensation, or other financial benefits of EMPLOYEE without his consent.
 - b. EMPLOYER agrees to annually consider increases in EMPLOYEE'S base salary and/or other benefits of EMPLOYEE in such amounts and to such extent as the City Council in its sole discretion after consultation with EMPLOYEE may determine is justified based upon an annual performance review of EMPLOYEE as provided for in Section V of this Agreement. Increases may include additional compensation paid to EMPLOYEE'S deferred compensation account.
 - c. Notwithstanding EMPLOYEE'S annual base salary as set forth herein, the annual salary of EMPLOYEE shall never be less than the annual base salary (excluding overtime, other pay or and any incentive compensation) of the City's next highest paid employee. In the event that a promotion, an adjustment to the salary table, or a general management salary reduction would result in EMPLOYEE being paid less than the next highest paid employee's annual base salary, EMPLOYEE'S annual base salary will be set at the annual base salary of the City's next highest paid employee after action by the City Council at a public meeting.
2. Deferred Compensation

EMPLOYER agrees to also contribute annually on behalf of the EMPLOYEE additional compensation in an amount equal to nine and one-half percent (9.5 %) of the EMPLOYEE'S annual base salary to the ICMA Retirement Corporation 401a Deferred Compensation Program, or other deferred compensation plan in equal installments at the same time other employees are paid, commencing on date of employment. In no event shall the EMPLOYER or EMPLOYEE contributions exceed the allowed IRS rates for deferred compensation programs. EMPLOYER agrees to transfer ownership to succeeding employers upon separation of employment.

SECTION V - PERFORMANCE EVALUATION

1. The Council shall annually review and evaluate the performance of the EMPLOYEE. The annual evaluation will be scheduled to occur during December of each year with the establishment of organizational goals and objectives as described herein in January of each year to coincide with the initiation of the annual budget process.
2. Within sixty (60) days from commencement of employment with the City, EMPLOYEE and the City Council will create the initial set of evaluation criteria, employee tasks and outcomes, organizational goals and objectives described herein, which will provide the basis for determining the EMPLOYEE'S performance. .
3. The review and evaluation shall be in accordance with specific evaluation criteria developed jointly by EMPLOYER and EMPLOYEE. Such criteria shall serve as a written memorandum of the City Council's expectations for the EMPLOYEE'S performance. The criteria shall generally include, but not be limited to such performance categories as initiative, customer service, job knowledge, problem solving, communication, integrity and honesty, among others. The criteria shall also include defined employee tasks and outcomes and measure whether EMPLOYEE in his words and actions, adequately and properly reflected, demonstrated, and promoted the organizational values as established by the City Council.
4. In addition, as part of the performance evaluation process the City Council and EMPLOYEE shall jointly define such organizational goals and objectives that are determined necessary for the proper operation of the organization, and in the attainment of the City Council's policy objectives. A relative priority among those various goals and objectives shall also be established. They shall generally be challenging but attainable within the time limitations as specified, and the annual operation budget and capital budget and appropriations provided. Said goals and objectives shall be reduced to writing.
5. EMPLOYER and EMPLOYEE agree that a performance evaluation, for the purpose of mid-course corrections, may occur several times during the year; however the parties will endeavor to meet on a quarterly basis in closed session for the purpose of conducting an informal review of the progress that the City Council and EMPLOYEE

have made in achieving the established performance criteria, and organizational goals and objectives.

6. In the event such performance criteria cannot be established by mutual consent, then the Council will have the final authority to determine the standards by which EMPLOYEE'S performance will be evaluated. Said performance criteria may also be added to or deleted from by the City Council in consultation with EMPLOYEE as part of the annual evaluation process.
7. When discussing the performance of EMPLOYEE, the Council shall meet in closed session with or without EMPLOYEE. EMPLOYEE'S performance evaluation may be facilitated by an outside consultant, as mutually determined by EMPLOYEE and the Council. Further, the Council shall provide the EMPLOYEE with a written summary statement of the evaluation and provide the EMPLOYEE an adequate opportunity to discuss his evaluation with the Council in closed session and provide a written response if so desired by EMPLOYEE. The completed performance evaluation shall be signed by the City Council and EMPLOYEE and placed in the EMPLOYEE'S personnel file.
8. As a component of the EMPLOYEE'S annual evaluation the City Council may require that EMPLOYEE undergo a 360-degree evaluation by selected members of the City's staff.
9. The City Council agrees to consider a performance incentive program for all senior management employees. Such a program will only be implemented when the economy improves and if it makes economic sense to implement such a program.

SECTION VI - TERMINATION AND SEVERANCE PAY

1. It is understood by and between the parties to this Agreement that EMPLOYEE, in providing City Manager's duties to the City of Benicia, serves at the pleasure of the City Council. EMPLOYEE may be terminated only by an affirmative vote of three (3) members of the City Council, convened in a council meeting. The City Council shall furnish EMPLOYEE with a written notice stating the City Council's intention to terminate his employment with the City at least 30 days before the effective date of his termination. Such action shall not be taken within ninety (90) days after 1) any election to which a council member has been elected or, 2) a new council member has been appointed.
2. In the event EMPLOYEE is involuntarily terminated by the City Council during such time that EMPLOYEE is willing and able to perform his duties under this Agreement, then, in that event, EMPLOYER agrees to pay EMPLOYEE a lump sum cash payment. If EMPLOYEE is involuntarily terminated in the first year of this Agreement, said payment will include 6 months of the base salary and all earned sick leave, vacation, holidays, and other accrued benefits to date, calculated at the rate of pay in effect upon termination, and not include the monthly housing allowance. If

EMPLOYEE is involuntarily terminated in the second or later year of this Agreement, the annual base salary said payment will include 12 months of the base salary and all earned sick leave, vacation, holidays, and other accrued benefits to date, calculated at the rate of pay in effect upon termination, and not include the monthly housing allowance.

3. Also, in such event, and in addition to the lump sum payment, EMPLOYER shall provide for continuance of the EMPLOYEE health and other related insurance benefits provided for in this Agreement for the same number of months as provide for base salary in accordance with paragraph 2 above, from and after the date of termination or until EMPLOYEE obtains other employment, whichever first occurs. EMPLOYEE shall also be entitled to full compensation at the final rate of pay of all unused sick leave and vacation accrued.
4. In the event EMPLOYEE voluntarily resigns his position with EMPLOYER, then EMPLOYEE shall give EMPLOYER 45 days written notice, in advance, unless the parties otherwise agree. In such event EMPLOYER shall only pay EMPLOYEE for accrued vacation, sick leave and administrative leave and any other accrued benefits in accordance with the terms of this Agreement.
5. The term "Involuntary Termination" as used in this section includes any action by EMPLOYER resulting in: 1) EMPLOYEE'S discharge or dismissal by EMPLOYER as provided for in this Section; 2) EMPLOYEE'S resignation following a salary, compensation and/or benefit reduction without his consent; 3) a reduction in the powers and authority of the City Manager, or the elimination of the City Manager's position and 4) EMPLOYEE'S resignation following a formal demand by the City Council, approved by a majority vote of three council members that the EMPLOYEE resign.
6. Furthermore, in the event EMPLOYER refuses, following written notice of noncompliance, to comply with any provision in this Employment Agreement benefiting EMPLOYEE, or EMPLOYEE resigns following a formal action by a majority of the City Council that EMPLOYEE resign, then, in that event, EMPLOYEE may, at EMPLOYEE'S option, be deemed to be "terminated" as of the date of such refusal to comply or suggestion to resign and the provisions of this Section shall be actuated.
7. Notwithstanding the provisions of this Section, on separation from City employment, EMPLOYEE may choose to apply all unused accrued leave allowances provided in this Agreement to a deferred compensation plan. Accumulated leave balances shall be paid at EMPLOYEE'S monthly salary rate at the effective date of separation.
8. In the event the EMPLOYEE dies while employed by the City under this Agreement, the EMPLOYEE'S beneficiaries or those entitled to the EMPLOYEE'S estate, shall be entitled to the EMPLOYEE'S earned salary, and any in-lieu payments for accrued

benefits, including compensation for the value of all accrued leave balances as provided for in this Agreement.

SECTION VII – DISABILITY OR INABILITY TO PERFORM

In the event EMPLOYEE becomes mentally or physically incapable of performing his/her functions and duties with reasonable accommodations and it reasonably appears such incapability will last for more than six (6) months, the City Council may terminate employment of EMPLOYEE; however in such instance, EMPLOYEE shall be entitled to severance pay as provided herein. If EMPLOYEE is terminated because of permanent disability, he shall be compensated in a lump sum for any accrued benefits, to the extent that such benefits are compensable under this Agreement. (See Section V of this Agreement.) However, Employer shall have no responsibility to make severance payments pursuant to SECTION V.2 and Section V.3 of this Agreement if, and only if, as a result of said disability, EMPLOYEE is eligible for PERS disability retirement. If notwithstanding said disability, EMPLOYEE is determined not to be eligible for PERS disability retirement, then EMPLOYER shall pay EMPLOYEE severance pay from the effective date of his termination in accordance with SECTION V.2 and Section V.3 of this Agreement.

SECTION VIII - RETIREMENT

1. EMPLOYEE shall be covered by the retirement program (i.e., Public Employees Retirement System – PERS) by which the City Attorney is covered.
2. EMPLOYER agrees to pay for participation in and pay all EMPLOYER and EMPLOYEE contributions to the EMPLOYER’S PERS retirement plan, including paying all fees and premiums. EMPLOYEE recognizes that the City is interested in restructuring its retirement programs including the “employee contribution pick up” provision currently provided to City miscellaneous employees and may negotiate this in the future.

SECTION IX - FRINGE BENEFITS AND OTHER TERMS AND CONDITIONS OF EMPLOYMENT

1. Sick Leave
EMPLOYEE will accrue sick leave at the rate of 8 hours per month. There is unlimited sick leave accrual and it may be applied as a credit to PERS retirement. Unused sick leave may be annually cashed out or contributed to the 457 deferred compensation plan at the rate of 50%. The sick leave balance of EMPLOYEE will be reduced accordingly. EMPLOYEE shall be credited forty (40) hours of supplemental sick leave by EMPLOYER upon commencement of employment.
2. Holiday and Personal Leave
Included as part of the EMPLOYEE’s base pay, EMPLOYER agrees to provide EMPLOYEE twelve (12) holidays and two (2) personnel leave days in accordance

with the City's standard holiday schedule.

3. Vacation

Upon the Commencement Date, the EMPLOYEE shall be credited with (i.e., provided a "bank" of) 80 hours of vacation leave. If EMPLOYEE is terminated prior to the time he would have normally accrued these 80 hours, he shall not be entitled to convert the remaining 80 hours or to cash it out. Upon the Commencement Date, EMPLOYEE shall accrue additional vacation leave at the rate of 13.3 hours per month. In the interest of EMPLOYEE health and for budgetary reasons, EMPLOYEE shall do everything possible to use his allotted vacation time and shall not accrue vacation hours in excess of 200 hours. Any hours in excess of 200 hours shall be converted to cash or to the 457 deferred compensation plan.

4. Bereavement Leave

Bereavement leave shall be provided to employee in the same manner and under the same terms as offered to the Senior Management employees.

5. Administrative Leave

EMPLOYEE shall receive sixteen (16) days of annual Administrative Leave each fiscal year in the manner given to Senior Management employees. Up to ½ of the unused Administrative leave may be cashed out on June 30 of each year or deposited into the 457 deferred compensation plan. The first annual allocation will be credited to the EMPLOYEE on a prorated basis upon commencement of employment.

6. Automobile

EMPLOYEE shall be reimbursed by EMPLOYER for use of his personal automobile when used in the normal course of City business. Reimbursement shall be on a mileage basis in accordance with City policies. To promote the City's Greenhouse Gas Reduction Goals, EMPLOYEE is encouraged to use one of EMPLOYER's hybrid vehicles in the normal course of business. EMPLOYEE shall be responsible for paying liability insurance as required by state law and for maintenance and repair of his automobile.

7. Health and Other Insurance

EMPLOYER agrees to make required health insurance coverage premium payments for EMPLOYEE and dependents, including insurance policies for accident, sickness, dental, vision, hospitalization, surgical and comprehensive medical insurance and any other benefits as provided to other Senior Management employees of EMPLOYER. EMPLOYER agrees to work with EMPLOYEE to coordinate the various health and other insurance benefits selected by EMPLOYEE and available through EMPLOYER to insure that no exclusion, hiatus, or break in coverage occurs for EMPLOYEE and his family. EMPLOYEE may participate in the City's Supplemental Sick Leave Program established in accordance with City of Benicia Policy & Procedure #5.

8. Life Insurance

EMPLOYER agrees to purchase and pay the required premiums for a term life

insurance policy on the life of EMPLOYEE in the sum of \$300,000.00. This policy shall be owned by EMPLOYEE and paid for by EMPLOYER.

9. Professional Development and Dues, Subscriptions, Training and License Fees

EMPLOYER recognizes that it is in the best interest of the City and EMPLOYEE that EMPLOYEE enrich his professional development and represent the interests of the City by participating in various national, state, regional and local associations and organizations relevant to his profession and the interests of the City. Such activities will be considered part of EMPLOYEE'S normal work activities. The organizations or associations may be selected by EMPLOYEE so long as the expenses do not exceed the budgeted amounts. EMPLOYER therefore agrees annually to budget and pay for:

- a. Professional dues and subscriptions on behalf of the City Manager which are necessary for the City Manager's continuation and full participation in national, regional, state, or local associations and organizations necessary and desirable for the good of the City, and for the City Manager's continued professional participation and advancement.
- b. Travel and subsistence expenses of the City Manager to pursue official and other functions for the City, and meetings and occasions to continue the professional development of the City Manager, including, but not limited to, national, regional, state, and local conferences, and governmental groups and committees upon which the City Manager serves as a member.
- c. Travel and subsistence expenses of the City Manager for short courses, institutes and seminars that are necessary for the good of the City or for the professional development of the City Manager.

10. Civic Clubs and Community Organizations

EMPLOYER recognizes the desirability of representation in and before local civic and other organizations, therefore the EMPLOYEE is authorized and encouraged to become a member of civic clubs or organizations and EMPLOYER agrees to pay membership dues as budgeted by EMPLOYER.

11. General Business and Work Related Expenses

General business expenses incurred by EMPLOYEE on a routine basis that are non-personal and work related, will be reimbursed to EMPLOYEE to the extent that they qualify for reimbursement under the adopted policies of EMPLOYER and do not exceed the budgeted amounts. EMPLOYER shall provide the EMPLOYEE a City credit card to charge appropriate and lawful business expenses.

12. Housing Expenses

EMPLOYER recognizes that due to the current recession's impact on housing values, EMPLOYEE might be unable to sell his current residence for a significant period of time. EMPLOYER further recognizes that the cost of housing in Benicia and the surrounding region is substantially higher than the average cost of housing in other communities within the State. It is the desire of both the EMPLOYER and the EMPLOYEE that the EMPLOYEE resides in the City of Benicia. Therefore

EMPLOYER agrees to pay EMPLOYEE an annual housing allowance for up to five years or until EMPLOYEE sells his residence in the Central Valley or unless EMPLOYEE is terminated pursuant to Section VI, whichever event (5 years, sale or termination) comes first. The housing allowance shall be as follows:

1. \$2000 per month for the first year;
2. \$1750 per month for the second year;
3. \$1500 per month for the third year;
4. \$1000 per month for the fourth year; and
5. \$1000 per month for the fifth year.

Said payments shall begin on his first day of work. EMPLOYER further agrees to provide the EMPLOYEE a loan for the down payment on the purchase of a home within the city limits of Benicia in an amount not to exceed \$100,000. The loan shall be secured by a deed of trust in the property no lower than second position, and interest shall be at the rate earned on the City's investment portfolio earnings and adjusted annually. EMPLOYEE shall repay EMPLOYER in an amount and in a manner agreed to by both parties.

13. Relocation Expenses

EMPLOYER agrees to pay EMPLOYEE for the expenses of moving EMPLOYEE, his family and personal property from Modesto to Benicia. The payment will be based on the lowest of three bids from professional movers submitted by EMPLOYEE.

14. Annual Physical

EMPLOYEE agrees to submit a complete physical examination by a qualified physician of his choosing covered by his selected health plan once a calendar year, the costs of which shall be paid by EMPLOYER pursuant to the health coverage.

15. Other Terms and Conditions Of Employment

a. EMPLOYER shall provide the EMPLOYEE with a private office, administrative assistants, staff, office equipment, necessary technological tools, including but not limited to computer, laptop computer, high-speed internet access, advanced cellular phone (smart phone), supplies, and all other facilities and services adequate for the performance of the City Manager's duties.

b. EMPLOYER, in consultation with EMPLOYEE, shall address any 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, City ordinances or any other law.

SECTION X – INDEMNIFICATION

1. EMPLOYER shall defend, hold 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 City Manager. EMPLOYER may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon. Said indemnification shall extend beyond termination or separation of employment, and the otherwise expiration of this Agreement, to provide full and complete protection to EMPLOYEE, by the City of Benicia, as described herein, for any acts undertaken or committed in EMPLOYEE'S capacity as City Manager, regardless of whether the notice or filing of a lawsuit for such tort, claim, demand or other legal action occurs during or following EMPLOYEE'S employment with EMPLOYER.

2. In the event that the EMPLOYEE shall serve as the chief executive of other City related legal entities, then each provision of this Section shall be equally applicable to each City related legal entity as though set forth in an indemnity agreement between the EMPLOYEE and that legal entity. The EMPLOYER hereby guarantees the performance of this indemnity obligation by the City related legal entity, and shall indemnify and hold the EMPLOYEE harmless against any failure or refusal by City related legal entity to perform its obligations under this Section.

SECTION XI – BONDING

EMPLOYER shall bear the full cost of any fidelity or other bonds required of the EMPLOYEE under any law or ordinance.

SECTION XII - NOTICES

Notices pursuant to this Agreement shall be given by deposit in the United States Postal Service, postage prepaid, addressed as follows or to such other address as may be subsequently furnished by either party in writing:

- (1) Mayor
City of Benicia
250 East L Street
Benicia, CA 94510
- (2) Brad L. Kilger
City of Benicia
250 East L Street
Benicia, CA 94510

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as applicable to civil judicial process. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the United States Postal Service.

SECTION XIII - GENERAL PROVISIONS

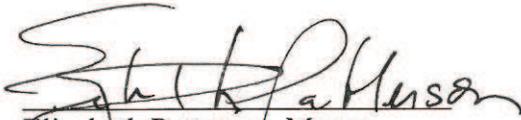
October 27, 2010

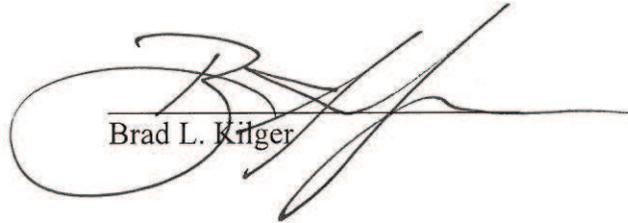
1. The text herein and referenced attachment shall constitute the entire agreement between the parties.
2. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of EMPLOYEE.
3. This Agreement shall become effective immediately upon the adoption of a resolution authorizing the Mayor to execute this agreement.
4. If any provision, or any portion thereof, contained in this Agreement is held 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.

IN WITNESS WHEREOF, the City of Benicia has caused this Agreement to be signed and executed on its behalf by its Mayor and duly attested by its City Clerk and the EMPLOYEE has signed and executed this Agreement, the day and year first written above.

CITY OF BENICIA, EMPLOYER:

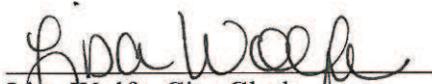
EMPLOYEE:


Elizabeth Patterson, Mayor
City of Benicia


Brad L. Kirger

Attest:

Approved as to Form:


Lisa Wolfe, City Clerk


City Attorney

ICMA Code of Ethics

With Guidelines

The ICMA Code of Ethics was adopted by the ICMA membership in 1924, and most recently amended by the membership in May 1998. The Guidelines for the Code were adopted by the ICMA Executive Board in 1972, and most recently revised in July 2004.

The mission of ICMA is to create excellence in local governance by developing and fostering professional local government management worldwide. To further this mission, certain principles, as enforced by the Rules of Procedure, shall govern the conduct of every member of ICMA, who shall:

1. Be dedicated to the concepts of effective and democratic local government by responsible elected officials and believe that professional general management is essential to the achievement of this objective.
2. Affirm the dignity and worth of the services rendered by government and maintain a constructive, creative, and practical attitude toward local government affairs and a deep sense of social responsibility as a trusted public servant.

Guideline

Advice to Officials of Other Local Governments. When members advise and respond to inquiries from elected or appointed officials of other local governments, they should inform the administrators of those communities.

3. Be dedicated to the highest ideals of honor and integrity in all public and personal relationships in order that the member may merit the respect and confidence of the elected officials, of other officials and employees, and of the public.

Guidelines

Public Confidence. Members should conduct themselves so as to maintain public confidence in their profession, their local government, and in their performance of the public trust.

Impression of Influence. Members should conduct their official and personal affairs in such a manner as to give the clear impression that they cannot be improperly influenced in the performance of their official duties.

Appointment Commitment. Members who accept an appointment to a position should not fail to report for that position. This does not preclude the possibility of a member considering several offers or seeking several positions at the same time, but once a *bona fide* offer of a position has been accepted, that commitment should be honored. Oral acceptance of an employment offer is considered binding unless the employer makes fundamental changes in terms of employment.

Credentials. An application for employment or for ICMA's Voluntary Credentialing Program should be complete and accurate as to all pertinent details of education, experience, and personal history. Members should recognize that both omissions and inaccuracies must be avoided.

Professional Respect. Members seeking a management position should show professional respect for persons formerly holding the position or for others who might be applying for the same position. Professional respect does not preclude honest differences of opinion; it does preclude attacking a person's motives or integrity in order to be appointed to a position.

implement local government policies adopted by elected officials.

Reporting Ethics Violations. When becoming aware of a possible violation of the ICMA Code of Ethics, members are encouraged to report the matter to ICMA. In reporting the matter, members may choose to go on record as the complainant or report the matter on a confidential basis.

Confidentiality. Members should not discuss or divulge information with anyone about pending or completed ethics cases, except as specifically authorized by the Rules of Procedure for Enforcement of the Code of Ethics.

Seeking Employment. Members should not seek employment for a position having an incumbent administrator who has not resigned or been officially informed that his or her services are to be terminated.

4. Recognize that the chief function of local government at all times is to serve the best interests of all of the people.

Guideline

Length of Service. A minimum of two years generally is considered necessary in order to render a professional service to the local government. A short tenure should be the exception rather than a recurring experience. However, under special circumstances, it may be in the best interests of the local government and the member to separate in a shorter time. Examples of such circumstances would include refusal of the appointing authority to honor commitments concerning conditions of employment, a vote of no confidence in the member, or severe personal problems. It is the responsibility of an applicant for a position to ascertain conditions of employment. Inadequately determining terms of employment prior to arrival does not justify premature termination.

5. Submit policy proposals to elected officials; provide them with facts and advice on matters of policy as a basis for making decisions and setting community goals; and uphold and

Guideline

Conflicting Roles. Members who serve multiple roles--working as both city attorney and city manager for the same community, for example--should avoid participating in matters that create the appearance of a conflict of interest. They should disclose the potential conflict to the governing body so that other opinions may be solicited.

6. Recognize that elected representatives of the people are entitled to the credit for the establishment of local government policies; responsibility for policy execution rests with the members.
7. Refrain from all political activities which undermine public confidence in professional administrators. Refrain from participation in the election of the members of the employing legislative body.

Guidelines

Elections of the Governing Body. Members should maintain a reputation for serving equally and impartially all members of the governing body of the local government they serve, regardless of party. To this end, they should not engage in active participation in the election campaign on behalf of or in opposition to candidates for the governing body.

Elections of Elected Executives. Members should not engage in the election campaign of any candidate for mayor or elected county executive.

Running for Office. Members shall not run for elected office or become involved in political activities related to running for elected office. They shall not seek political endorsements, financial contributions or engage in other campaign activities.

Elections. Members share with their fellow citizens the right and responsibility to vote and to voice their opinion on public issues.

However, in order not to impair their effectiveness on behalf of the local governments they serve, they shall not participate in political activities to support the candidacy of individuals running for any city, county, special district, school, state or federal offices. Specifically, they shall not endorse candidates, make financial contributions, sign or circulate petitions, or participate in fund-raising activities for individuals seeking or holding elected office.

Elections on the Council-Manager Plan.

Members may assist in preparing and presenting materials that explain the council-manager form of government to the public prior to an election on the use of the plan. If assistance is required by another community, members may respond. All activities regarding ballot issues should be conducted within local regulations and in a professional manner.

Presentation of Issues. Members may assist the governing body in presenting issues involved in referenda such as bond issues, annexations, and similar matters.

8. Make it a duty continually to improve the member's professional ability and to develop the competence of associates in the use of management techniques.

Guidelines

Self-Assessment. Each member should assess his or her professional skills and abilities on a periodic basis.

Professional Development. Each member should commit at least 40 hours per year to professional development activities that are based on the practices identified by the members of ICMA.

9. Keep the community informed on local government affairs; encourage communication between the citizens and all local government officers; emphasize friendly and courteous service to the public; and seek to improve the quality and image of public service.

10. Resist any encroachment on professional responsibilities, believing the member should be free to carry out official policies without interference, and handle each problem without discrimination on the basis of principle and justice.

Guideline

Information Sharing. The member should openly share information with the governing body while diligently carrying out the member's responsibilities as set forth in the charter or enabling legislation.

11. Handle all matters of personnel on the basis of merit so that fairness and impartiality govern a member's decisions pertaining to appointments, pay adjustments, promotions, and discipline.

Guideline

Equal Opportunity. All decisions pertaining to appointments, pay adjustments, promotions, and discipline should prohibit discrimination because of race, color, religion, sex, national origin, sexual orientation, political affiliation, disability, age, or marital status.

It should be the members' personal and professional responsibility to actively recruit and hire a diverse staff throughout their organizations.

12. Seek no favor; believe that personal aggrandizement or profit secured by confidential information or by misuse of public time is dishonest.

Guidelines

Gifts. Members should not directly or indirectly solicit any gift or accept or receive any gift—whether it be money, services, loan, travel, entertainment, hospitality, promise, or any other form—under the following circumstances: (1) it could be reasonably inferred or expected that the gift was intended to influence them in the performance of their official duties; or (2) the gift was intended to serve as a reward for any official action on their part.

It is important that the prohibition of unsolicited gifts be limited to circumstances related to improper influence. In *de minimus* situations, such as meal checks, some modest maximum dollar value should be determined by the member as a guideline. The guideline is not intended to isolate members from normal social practices where gifts among friends, associates, and relatives are appropriate for certain occasions.

Investments in Conflict with Official Duties.

Member should not invest or hold any investment, directly or indirectly, in any financial business, commercial, or other private transaction that creates a conflict with their official duties.

In the case of real estate, the potential use of confidential information and knowledge to further a member's personal interest requires special consideration. This guideline recognizes that members' official actions and decisions can be influenced if there is a conflict with personal investments. Purchases and sales which might be interpreted as speculation for quick profit ought to be avoided (see the guideline on "Confidential Information").

Because personal investments may prejudice or may appear to influence official actions and decisions, members may, in concert with their governing body, provide for disclosure of such investments prior to accepting their position as local government administrator or prior to any official action by the governing body that may affect such investments.

Personal Relationships. Members should disclose any personal relationship to the governing body in any instance where there could be the appearance of a conflict of interest. For example, if the manager's spouse works for a developer doing business with the local government, that fact should be disclosed.

Confidential Information. Members should not disclose to others, or use to further their personal interest, confidential information acquired by them in the course of their official duties.

Private Employment. Members should not engage in, solicit, negotiate for, or promise to accept private employment, nor should they render services for private interests or conduct a private business when such employment, service, or business creates a conflict with or impairs the proper discharge of their official duties.

Teaching, lecturing, writing, or consulting are typical activities that may not involve conflict of interest, or impair the proper discharge of their official duties. Prior notification of the appointing authority is appropriate in all cases of outside employment.

Representation. Members should not represent any outside interest before any agency, whether public or private, except with the authorization of or at the direction of the appointing authority they serve.

Endorsements. Members should not endorse commercial products or services by agreeing to use their photograph, endorsement, or quotation in paid or other commercial advertisements, whether or not for compensation. Members may, however, agree to endorse the following, provided they do not receive any compensation: (1) books or other publications; (2) professional development or educational services provided by nonprofit membership organizations or recognized educational institutions; (3) products and/or services in which the local government has a direct economic interest.

Members' observations, opinions, and analyses of commercial products used or tested by their local governments are appropriate and useful to the profession when included as part of professional articles and reports.