

**AT-WILL EMPLOYMENT AGREEMENT  
OF  
KEVIN BURKE**

(One of Two Originals)

**THIS AGREEMENT** is between the CITY OF HEALDSBURG ("City"), a municipal corporation organized in the State of California, and KEVIN BURKE ("Employee"). The parties agree as follows:

1. Appointment as Chief of Police

The City hereby agrees to employ Employee as Chief of Police for the City effective November 1, 2010, subject to the terms, conditions and provisions of this Agreement. Employee hereby accepts such employment.

In addition to the terms of this Agreement, 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.

2. Term of Agreement

The term of this Agreement shall be from November 1, 2010 until terminated by either party in accordance with the provisions of paragraph 4. Employee is an at will employee who shall serve at the pleasure of the City Manager.

3. Duties and Responsibilities

a. As Chief of Police, Employee's duties and responsibilities shall be as set forth in the job description attached as Attachment A to this Agreement, and any other legally permissible and proper duties and functions as the City Manager may from time-to-time assign.

b. 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 recognizes that Employee is expected to devote necessary time outside normal office hours to 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.

#### 4. 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 at any time terminate Employee.

c. The parties recognize and affirm that: 1) Employee is an "at-will" employee whose employment may be terminated by the City without at any time; and 2) there is no express or implied promise made to Employee for any form of continued employment as Chief of Police 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. Notwithstanding the foregoing, Employee shall be entitled to all rights pursuant to Government Code Section 3304, including written notice of the proposed termination and the right to an administrative appeal of said decision. This Agreement is the sole and exclusive basis for an employment relationship between the Employee and the City.

#### 5. Salary

a. Effective November 1, 2010, City agrees to pay Employee \$11,250 in salary per month (\$135,000 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. Employee's first salary payment shall be prorated to reflect the fact that Employee will have worked less than a full pay period.

b. Employee shall have his performance and pay reviewed annually by the City Manager. Any adjustments in Employee's compensation will be determined by and be based upon Employee's performance. Employee shall report directly to the City Manager.

#### 6. Supplemental Benefits

a. The City shall pay on behalf of Employee the total 9% employee's retirement contribution to the California Public Employees Retirement System (PERS). In addition, as part of the PERS contract, this employer paid member contribution (EPMC) is reported as income for purposes of final compensation

upon retirement. Currently, the Safety Employees retirement rate is 3% at 50 with one-year final compensation.

b. The City's benefit package consists of partially paid medical premium for Blue Cross or Kaiser health plan participation. The City shall pay ninety percent (90%) of the selected medical premium. Dental and vision plans and a \$100,000 life insurance policy are fully paid by the City. While Employee is employed by City as Chief of Police, Employee is entitled to these benefits; however, these provisions are subject to change consistent with City policy without further negotiations.

c. Employee's vacation accrual rate shall be one hundred sixty (160) hours per year based on credit for prior experience. After the completion of one full year, vacation shall accrue in the manner applicable to employees at the established rate of one hundred sixty (160) hours of vacation leave in accordance with the Personnel Rules. Sick leave accrues at eight (8) hours per month. Employee's leave bank for purposes of this Agreement shall start with one hundred sixty (160) hours of vacation and ninety six (96) hours of sick leave. Maximum accrual balances, "cash out" options and payment upon separation shall be in accordance with the Personnel Rules.

d. Employee shall be entitled to eighty (80) hours of management leave per fiscal year. This amount shall be pro-rated based on Employee's start date with the City. Any unused management leave shall be paid off each year in the last pay period of June.

e. Employee shall receive a monthly automobile allowance of \$350.00 that is considered wages under the City's contract with PERS for purposes of final compensation.

f. Attendance at continuing education conferences is subject to City Manager's advance approval. Department Head level employees are encouraged to participate in one conference per year, preferably within the state, although exceptions can be made.

g. As a key member of the management team, it is the Employee's responsibility to maintain close working relations with the community. An effective way to achieve this is active participation in a local service club or community activity. Employee is invited to participate in one program for which the City shall pay the job-related expenses involved. These expenses shall include membership, dues and club meals. Employee shall be responsible for voluntary contributions and donations, fines and expenses associated with participation in activities.

h. Employee shall be entitled to compensation adjustments for management positions that are based on annual performance reviews.

i. Upon satisfactory completion of five continual years of service, the City shall pay 2% longevity/merit pay. The longevity/merit pay shall increase by 1% every five years. Upon qualification, Employee shall be entitled to this benefit.

j. Employee's bi-weekly pay shall be credited to an account designated by Employee through direct deposit.

k. The City shall reimburse Employee for relocation expenses not to exceed \$3,500, based upon submittal of receipts. This offer shall be available for a period of one year commencing on November 1, 2010.

## 7. Severance Payment

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 Manager, and his employment may be terminated by the City at any time. In the event of a termination, Employee shall be entitled to all rights pursuant to Government Code Section 3304, including written notice of the proposed termination and the right to an administrative appeal of said decision.

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, Employee shall be paid severance pay as provided in paragraph 7e.

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. Unused management leave shall be paid out on a pro-rated share at the time of separation.

d. If Employee is paid severance pay as provided in paragraph 7e, 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, City Council, and Executive Committee members arising out of his employment with City, or the termination thereof. If Employee does not agree to waive such claims, grievances or causes of action, the City shall not pay Employee severance pay.

e. In payment of severance, City agrees to pay Employee a cash payment equal to three (3) months base salary. Said cash payment may be paid, at the option of the Employee, in 1) lump sum upon date of termination; 2) lump sum on January 1 of the calendar year following termination; or 3) two (2) equal monthly installments. Such payment shall release City from any further obligations under this Agreement.

## 8. 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.

9. No Contract

Nothing in this Agreement shall be construed to create a contract of employment, either express 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. The at-will nature of Employee's employment with the City may be altered only in a writing expressly so stating signed by the City Manager.

10. 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: Marjie Pettus, City Manager  
City of Healdsburg  
401 Grove Street  
Healdsburg, CA 95448

TO EMPLOYEE: Kevin Burke  
City of Healdsburg  
238 Center Street  
Healdsburg, CA 95448

11. 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.

12. 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.

13. 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.

14. 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 Marjie Pettus, City Manager, on behalf of City, and KEVIN BURKE 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.

15. COUNTERPARTS.

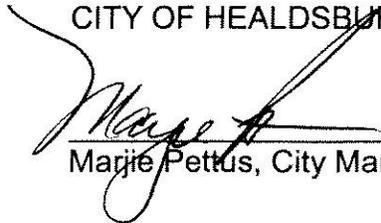
This Agreement shall be executed simultaneously in two counterparts, which shall be identified by number and each of which shall be deemed an original, but all of which together shall constitute one and the same in

**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

  
\_\_\_\_\_  
Kevin Burke, Employee

CITY OF HEALDSBURG

  
\_\_\_\_\_  
Marjie Pettus, City Manager

ATTEST:



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Maria Curiel, City Clerk

APPROVED AS TO FORM:



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Michael Gogna, City Attorney