

## AMENDED EMPLOYMENT AGREEMENT

This Amended Employment Agreement is made and entered into by and between the City of Anderson (“the City”) and Jeffrey Kiser (“Kiser”).

### RECITALS

1. WHEREAS, the City and Kiser originally entered into an Employment Agreement on May 1, 2012.

2. WHEREAS, the parties now desire to make modifications to the Employment Agreement.

3. WHEREAS, specifically, the parties desire to modify provisions relating to term, compensation, annual vacation leave, advance notice for non-renewal, and benefits available upon termination.

4. WHEREAS, the term of the Agreement is now changed to a five-year term commencing on June 1, 2015 and continuing through June 1, 2020, thereafter renewing automatically on June 1 for successive one-year terms unless terminated or non-renewed by either party.

5. NOW, THEREFORE, the parties have incorporated these changes into this Amended Employment Agreement (“Agreement”), and the above-named parties hereby mutually agree and promise as follows:

### TERMS

#### Section 1: Duties

1.1 City hereby employs Kiser as City Manager of the City to perform the functions and duties specified in Chapter 2.04 of the City’s Municipal Code and to perform other legally permissible and proper duties and functions as the City Council from time to time assigns, consistent with the City’s Municipal Code and other applicable law. In performing his duties as City Manager, Kiser shall at all times adhere to the ICMA Code of Ethics, attached hereto as Exhibit 1, and when eligible become an ICMA Credentialed Manager.

#### Section 2: Term of Agreement – Renewal and Termination

2.1 **Term:** The City hereby employs Kiser as City Manager for a term of five (5) years, commencing on June 1, 2015, and continuing through June 1, 2020, subject to renewal and termination as provided in sections 2.2 and 3 below (“the term”).

2.2 **Renewal:** At least sixty (60) days prior to the expiration of the term of the Agreement, either party can provide the other with sixty (60) days advance written notice of non-renewal of the Agreement. This written notice need not specify a reason for non-renewal. In the event either party desires not to renew the Agreement, no reason need be provided, nor is the Council required to abide by the hearing procedure set forth in section 2.04 of the City’s Municipal Code.

In the event written notice is not given by either party to this Agreement to the other no later than sixty (60) days prior to the termination date (and provided neither party has exercised the right to terminate as provided under Section 3), this Agreement shall be automatically renewed on the same terms and conditions for an additional period of one (1) year. Said agreement shall continue thereafter for successive one-year periods unless either party gives no less than sixty (60) days advance written notice of non-renewal to the other party.

**2.3 At-Will Resignation.** Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of Kiser to resign from his position with City, subject only to the provisions set forth in Section 4 of this Agreement.

**2.4 At-Will Termination.** Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Council to terminate the services of Kiser at any time, subject only to the provisions set forth in Section 3 of this Agreement.

### **Section 3: Termination and Severance Pay**

#### **3.1 Termination by the City.**

**3.1.1 At-Will / Without Cause.** If Kiser is terminated by the Council before expiration of the term of employment and if Kiser is willing and able to perform his duties under this Agreement, then the City will pay Kiser a lump-sum cash payment equal to four months aggregate salary (provided at least four months are remaining in the term of employment). If less than four months are remaining in the term of employment, then the City will pay Kiser a lump-sum cash payment equal to the number of months remaining in the term. The City will also pay to continue Kiser's health benefits for the number of months paid in severance by paying for COBRA coverage for him and his eligible dependents (subject to any contributions Kiser is required to make for his own or his eligible dependent(s)' coverage). In the event this Agreement is terminated under this provision, Kiser shall also be compensated for all earned but unused vacation, holidays, compensatory time (if any), and other accrued benefits to date. In no event will Kiser be paid any severance benefits that exceed those allowed by statute. In order to receive any and all of these severance benefits, Kiser is required to execute a general waiver and release of all claims against the City arising out of his employment relationship.

**3.1.2 Termination for Cause.** Notwithstanding the foregoing language, this Agreement may be terminated by City due to Kiser's willful misconduct, which the parties agree includes fraud, misuse or misappropriation of the City's assets, embezzlement, and/or any acts of dishonesty or moral turpitude and as further described in the City's Municipal Code. If the City terminates Kiser for willful misconduct, no severance pay shall be due or owing. Upon termination, Kiser will be paid wages earned to date, including vacation, holidays, and compensatory time (if any).

**3.1.3 Process for Termination.** If the City terminates this Agreement (whether with or without cause), the City will do so in accordance with the process set forth in the City's Municipal Code. Kiser will be provided with a written notice stating the Council's intention to remove him and the reason therefore at least thirty (30) days before the

effective date of his removal. In accordance with the Municipal Code, Kiser will not be removed from office (other than for misconduct) during or within a period of ninety (90) days after any general municipal election held in the City at which election of a member of the City Council is elected.

**3.1.4 Statutory Obligations; Abuse of Office or Position.** Pursuant to Government Code Section 53243 which became effective on January 2, 2012, if Employee is convicted of a crime involving an abuse of his/her office or position, all of the following shall apply: (1) if Employee is provided with administrative leave pay pending an investigation, Employee shall be required to fully reimburse such amounts paid; (2) if the City pays for the criminal legal defense of Employee (which would be in its sole discretion, as it is generally not obligated to pay for a criminal defense), Employee shall be required to fully reimburse such amounts paid; and (3) if this Agreement is terminated, any cash settlement related to the termination that Employee may receive from the City shall be fully reimbursed to the City. For purposes of this section, "abuse of office or position" means either: (1) an abuse of public authority, including waste, fraud, and violation of the law under color of authority; or (2) a crime against public justice, including a crime described in Title 7 commencing with section 92 of the Penal Code.

**3.2 Termination by Kiser – Resignation.** Kiser can terminate this Agreement at any time for any reason. Kiser is required to provide the City with ninety (90) days advance written notice of his resignation, unless the parties agree otherwise.

#### **Section 4: Compensation**

**4.1 Salary:** Kiser's salary shall be \$125,029 gross per year, which is equivalent to \$10,419.08 gross per month, subject to all appropriate deductions and withholdings and payable in bi-weekly installments at the same time and by the same methods as other City employees are regularly paid.

**4.2 Salary Compaction:** Kiser's salary shall be a minimum of 5% greater than his closest paid subordinate. Currently, there is less than 2% between himself and the next highest paid subordinate. Kiser shall receive a 1% salary increase to eliminate the compaction on each of the following dates: July 1, 2015, July 1, 2016, and July 1, 2017.

**4.3 Bonus:** Additionally, Kiser shall receive a onetime bonus of 3% if the General Fund Reserve is between 20% to 25% on July 1, 2018. If the reserve is not between 20% to 25% on July 1, 2018, Kiser shall receive a onetime bonus of 3% if the General Fund Reserve is between 20% to 25% on July 1, 2019. (This is a onetime bonus that will be paid on either July 1, 2018 or July 1, 2019 but not both).

**4.4 Cost of Living Increases.** Kiser shall be entitled to receive the same cost of living increases to his compensation, if any, granted to other City management personnel during the term of this Agreement or any extensions thereof. Kiser is not automatically entitled to any type of increase, whether COLA or merit-based. Whether and when to provide a compensation increase is committed to the sole discretion of the City Council.

Notwithstanding the foregoing, City agrees to review Kiser's salary no less than thirty (30) days prior to the expiration of this Agreement and consider whether to grant an increase in salary.

**4.5 Pay Reductions.** Kiser's salary can be reduced during the term of this Agreement only if the City implements an across-the-board reduction for all management employees of City.

### **Section 5: Performance Evaluation**

5.1 On an annual basis, the Council shall (with Kiser's input) define goals and performance objectives deemed necessary for the proper operation of the City. The Council shall review and evaluate the performance of Kiser at least once annually in written form. The content of the review and the criteria used shall be at the sole discretion of the Council, provided that Kiser can request that the Council provide input on certain areas or aspects of his performance. The Council shall provide an adequate opportunity for Kiser to discuss his evaluation with the Council.

### **Section 6: Automobile Allowance**

6.1 City shall provide Kiser with a City-owned vehicle for Kiser's use for business use, commuting to and from home, and for *de minimis* personal use on the way to or from performance of his regular employment duties. City shall pay for fuel (for business use and *de minimis* personal use only), maintenance, and insurance costs of said vehicle. Kiser shall be responsible for compliance with all tax laws applicable to his *de minimis* personal use of said vehicle.

### **Section 7: Vacation and Sick Leave**

7.1 Except as provided in section 7.2 regarding annual vacation leave, Kiser shall accrue vacation, management leave, and sick leave at the same rate as other management employees of City. Accrual, use, and pay-out of these leaves are subject to the same terms and conditions as provided in the City's Personnel Rules for other management employees. Notwithstanding the foregoing, Kiser shall be credited with an additional eighty (80) hours of vacation leave upon the commencement of this Agreement.

7.2 Effective May 1, 2014 notwithstanding the foregoing, Kiser shall accrue annual vacation leave at the rate of twenty (20) days per year (which amount is accrued on a pro rata basis each pay period). In all other respects, Kiser's accrual, use, and pay-out of annual vacation leave is governed by the terms and conditions set forth in the City's Personnel Rules.

### **Section 8: Disability, Health, and Life Insurance**

8.1 City agrees to provide medical, vision, life, disability, and dental insurance for Kiser and his eligible dependents and to pay a portion of the premiums thereon equal to that which is provided to all other management employees of City.

## **Section 9: Retirement**

9.1 Kiser shall participate in the Public Employees Retirement System (PERS) and Social Security Retirement systems on the same terms and conditions as all other City employees. In addition, provided Kiser meets all eligibility criteria, Kiser can elect to participate in the ICMA deferred compensation retirement plan, so long as City continues to make such plan available to its employees. Kiser is solely responsible for handling any such contributions and complying with any applicable tax requirements or limitations.

## **Section 10: Dues and Subscriptions**

10.1 Subject to the Council's discretion to adopt and amend the budget, the City agrees to pay for professional dues and subscriptions necessary for Kiser's full participation in national, regional, state, and local associations and organizations necessary and desirable for his continued professional participation, growth, and advancement, and for the good of the City.

## **Section 11: Professional Development**

11.1 Subject to the Council's discretion to adopt and amend the budget, the City agrees to pay for travel and subsistence expenses related to professional and official travel, meetings, and occasions adequate to continue the professional development of Kiser and to adequately pursue necessary official functions for the City, including but not limited to the ICMA Annual Conference, League of California Cities periodic and annual conferences, and such other national, regional, state, and local governmental groups and committees thereof which Kiser serves as a member. Kiser will obtain the ICMA Credentialed Manager status (upon eligibility, currently a City Manager has to have nine (9) years of experience before being eligible to apply for Credentialed status) and maintenance of this certification requires annual continuing education. City agrees to budget and pay for travel and training expenses required to maintain this credential. City also agrees to budget for and to pay for travel and subsistence expenses of Kiser for short courses, institutes, and seminars that are necessary for his professional development and for the good of the City.

## **Section 12: General Expenses**

12.1 Kiser shall receive a monthly cell phone/technology allowance of Seventy-Five Dollars (\$75.00) and will be responsible for providing his own cell phone/personal data assistant. Kiser shall receive an annual reimbursement for physical fitness up to \$500.00 (gym membership or exercise equipment, provided he submits accompanying receipts or statements). In the event Kiser incurs other City-related expenses in the course of performing his duties, he can submit requests for reimbursement (provided he submits accompanying receipts or statements).

## **Section 13: Civic Club Membership**

13.1 City recognizes the desirability of representation in and before local civic and other organizations, and Kiser is authorized to become a member of such civic clubs or organizations. During the term of this agreement, City, at its sole discretion, may elect to pay some or all of Kiser civic club membership expenses. City Council approval must be obtained before any membership expenses are paid or reimbursed.

**Section 14: Indemnification**

14.1 City shall defend, hold harmless, and indemnify Kiser against any claim, demand, or other legal action as required by applicable law.

**Section 19: Other Terms and Conditions of Employment**

19.1 Pursuant to the authority provided in Section 2.04.020 of the Municipal Code, the Council shall not require Kiser become or remain a resident of the City. However, the City expects Kiser to become and remain active in community events and activities and to travel to the City immediately in the event of an emergency requiring City Manager attention.

**Section 20: Notices**

20.1 Notices pursuant to this agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

- (1) CITY: Mayor, City of Anderson, 1887 Howard Street, Anderson, California 96007
- (2) KISER: Jeff Kiser, at the permanent address on record with the City of Anderson

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

**Section 21: General Provisions**


21.1 The text herein shall constitute the entire agreement between the parties. This agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Kiser. This Agreement shall become effective commencing June 1, 2015. If any provision, or portion thereof, contained in this Agreement is held unconstitutional, invalid, or otherwise 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.

**Section 22: Amendment**

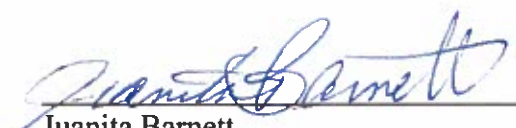
22.1 Any amendment of this Agreement must be in writing and signed by both parties.

IN WITNESS WHEREOF, the City Council of the City of Anderson has caused this agreement to be signed and executed in its behalf by its Mayor, and duly attested by its City Clerk, and Kiser has signed and executed this Agreement, both in duplicate, the day and year first above written.

  
\_\_\_\_\_  
Melissa Hunt,  
Mayor

  
\_\_\_\_\_  
Jeffrey Kiser,  
Employee

ATTEST:

  
\_\_\_\_\_  
Juanita Barnett,  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Ann Siprelle,  
City Attorney

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Ann Siprelle,  
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