

**EMPLOYMENT AGREEMENT BETWEEN THE CITY OF GRASS VALLEY
AND XXXXXXXXXXXXX
UTILITES DIRECTOR**

1. Effective Date

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

2. Term of Employment

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

3. Duties; Hours of Work

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

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

4. Compensation

A. Utilities Director shall receive an annual base salary of \$xxx,xxx.00, payable in equal bi-weekly payments to be made at the same time as other employees are paid.

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

C. Salary may be reduced in the event Utilities Director receives an unsatisfactory evaluation, either at the annual evaluation or at any additional evaluation completed by the City Manager. Compensation may be reduced as determined by the City Manager within the salary range (Compensation and Benefits - Appendix A) for the Utilities Director.

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

5. Health Insurance

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

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

6. Annual Leave

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

7. Retirement

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

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

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

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

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

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

8. Deferred Compensation

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

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

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

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

9. Annual Performance Evaluation

The City Manager and/or their designee shall evaluate Utilities Director ’s performance at least once annually. The City Manager and Utilities Director shall annually develop mutually agreeable performance goals and criteria which the City Manager shall use in reviewing Utilities Director’s performance in the following year. It shall be Utilities Director’s responsibility to initiate this review each year.

10. Indemnification

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

proceedings in which City is providing Employee a defense, even if Employee objects to such compromise or settlement.

11. Other Terms and Conditions of Employment

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

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

C. Utilities Director shall be exempt from paid overtime compensation.

12. Termination

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

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

receive from City shall be fully reimbursed to City if Employee is convicted of a crime involving an abuse of his or her office or position.

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

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

D. Utilities Director may voluntarily terminate his or her employment, by resignation or retirement or some other similar manner, upon at least one-month notice. In this circumstance, Utilities Director is not entitled to any severance pay.

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

13. Compliance With Law

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

14. General Provisions

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

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

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

- D. If an action at law or in equity is necessary to enforce or interpret this Agreement, the prevailing party in that action shall be entitled to reasonable and actual attorneys’ fees and costs with respect to the prosecution or defense of the action.
- E. A waiver of any of the terms and conditions of this Agreement shall not be construed as a general waiver and either party shall be free to enforce any term or condition of this Agreement with or without notice to the other notwithstanding any prior waiver of that term or condition.

15. Amendments

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

Dated: _____

 Tim Kiser, City Manager

Dated: _____

_____, Utilities Director

Approved as to form:

Dated: _____

Michael G. Colantuono, City Attorney