

INTERIM CITY MANAGER EMPLOYMENT AGREEMENT

Between the
CITY OF PORTOLA
And
JON KENNEDY

This City Manager Employment Agreement (“Agreement”) is entered into and effective this ____ day of February, 2023 by and between the CITY OF PORTOLA (“City”), a municipal corporation of the State of California, and Jon Kennedy (“Manager”), an individual. City and Manager may be referred to herein individually as “Party” and collectively as “Parties.” Under this Agreement, the City offers, and Manager accepts, employment as Interim City Manager of the City.

1. Duties:

Manager shall be the chief executive officer of the City and perform those duties as set forth in the Portola Municipal Code (“Municipal Code”), Chapter 2.04, those duties that are prescribed by the laws of the State of California and of the United States of America and those responsibilities that are commonly assigned to a city manager of a city in California. Manager shall perform such other legally permissible and proper duties and functions appropriate to and consistent with the professional role and responsibilities of City Manager, as the City Council shall from time to time assign.

A. Manager shall administer and enforce policies established by the City Council and promulgate rules and regulations as necessary to implement City Council policies.

B. Direct the work of all appointive City Officers and departments that are the concern and responsibility of the City Council, except those that are directly appointed by or report directly to the City Council.

C. Recommend to the City Council, from time to time, adoption of such measures as Manager may deem necessary or expedient for the health, safety, or welfare of the community or for the improvement of administrative services.

D. Evaluate administrative practices that may result in greater operational effectiveness or economy in City government and develop and recommend to the City Council long range plans to improve City operations and prepare for the City’s growth and development.

E. Provide for management, development and training and develop leadership qualities as necessary to insure the highest standards of managerial practices.

F. Manager shall act in the City's best interests at all times and perform Manger's duties in a competent and professional manner. Furthermore, as the City's highest officer, Manager shall endeavor at all times to exercise the highest degree of integrity, committing to comply with the International City/County Managers Association ("ICMA") Code of Ethics and shall not engage in any conduct or activities, on- or off-duty, that reflect discredit or bring disrepute on the City or impair its efficient and effective operation.

G. Manager is exempt from the overtime provisions of the Fair Labor and Standards Act, as amended, but is expected to engage in those hours of work that are necessary to fulfill the obligations of the Manager.

H. Manager shall perform the duties required hereunder at City's City Hall and at such other place or places as the City or Manager shall in good faith require or as the interests, needs, business, and opportunities of the City shall require or make advisable. In order to facilitate the discharge of his duties, Manager agrees to live within fifteen (15) minutes driving distance to City's City Hall, as measured during what would be considered to be normal or average driving conditions.

2. Devotion to City Business:

The Manager position is a full-time position. Therefore, Manager shall focus his professional time, ability, and attention to the City's business during the term of this Agreement.

3. Hours of Work:

The Manager position is full-time with a work schedule generally consistent with the normal business hours adopted by the City. Manager shall devote the time necessary to adequately perform his duties as City Manager. The Parties anticipate that Manager will work a sufficient number of hours per week allocated between regular business hours and hours outside of regular business hours including, without limitation, attendance at regular and special City Council meetings. Toward that end, Manager shall be allowed reasonable flexibility in setting his own office hours, provided the schedule of such hours provides a significant presence at City Hall, reasonable availability to the City Council, City staff, and members of the community during regular City business hours and for the performance of his duties and of City business. Manager may perform work off site as appropriate. Manager agrees to be reachable by telephone for consultation and advice when he is not physically working in the City. Manager also agrees to respond to the City for emergency situations.

4. Term:

- A. Manager's employment will commence on February 24, 2023, and continue for a period of _____ year until _____. This Agreement and Manager's employment shall terminate on _____, unless terminated sooner in accordance with this Agreement.
- B. The Parties may mutually agree to extend the term of this Agreement. Any such extension shall be set forth in a written document approved and executed by both Parties.
- B. The Parties acknowledge and agree that Manager's employment by the City pursuant to this Agreement is on a temporary and interim basis during which the City will seek to fill the City Manager position with a regular, full-time City Manager ("RFTCM"). The Parties further acknowledge and agree that as of the effective date of this Agreement, Manager has expressed interest in being appointed and serving as the City's RFTCM and that during the term of this Agreement the Manager shall evaluate whether he has continued interest in such position and the City will consider and evaluate whether it is interested in contracting with Manager to be appointed to and serving in such position. The Parties may, but are not required to, agree to amend or revise this Agreement or enter into a new agreement for Manager to be appointed and serve as the City's RFTCM. At all times during the term of this Agreement, the Manager shall not participate in the making of the contract for the RFTCM position, shall play no role whatsoever in the contracting-making process for such position, shall not engage in and shall disqualify himself from participating in any act involving preliminary discussions, negotiations, compromises, reasoning, planning, preparing, suggesting or distributing job qualifications or solicitations for such position and shall not influence or attempt to influence directly or indirectly the City in the award of a contract for such position to promote his personal interests. The Parties further acknowledge and agree that the activities described in the preceding sentence are outside the scope of Manager's duties pursuant to this Agreement that they shall be performed by the City's City Council and other City staff, consultants and contractors selected and directed by the City Council. This sub-Section 4.C. is not intended and shall not be interpreted as requiring the City and Manager to amend or revise this Agreement or enter into a new agreement for Manager to be appointed and serve as the City's RFTCM or to change the at-will nature of Manager's employment with the City or either Party's right to terminate this Agreement as provided herein.

5. Compensation:

B. Manager's initial annual Base Salary shall be _____ Thousand Dollars (\$_____). Said amount shall be payable in installments at-the same time and in the same manner as other employees of the City are paid.

B. Manager shall be entitled to receive cost-of-living adjustments or any similar across-the-board increases that the City Council determines, in its discretion, to approve for all City employees.

C. Manager's Base Salary increases approved by the City Council from time to time pursuant to this Agreement shall not require an amendment to this Agreement to be effective. Such increases may be set forth in a resolution or minute action approved by the City Council and ratified by resolution.

D. If the City reduces the Base Salary or any other financial benefit of the Manager in a percentage that is greater than the average reduction of all City employees, without the approval of the Manager, Manager shall be entitled to severance pay under Section 12.B. of this Agreement.

6. Periodic Evaluation:

B. City shall review the performance of Manager within approximately six (6) months of the commencement of Manager's employment and shall thereafter meet approximately every six (6) months, or more frequently as either Party desires, to review the Manager's performance.

B. Increases to the Manager's Base Salary will be considered, at the sole discretion of the City, as part of the initial performance evaluation and each evaluation.

7. Additional Benefits:

A. City shall pay Manager Four Hundred Dollars (\$400.00) monthly in compensation on a pro rata basis for the use and maintenance of Manager's personal vehicle on City business. The car allowance is subject to federal and state income tax provisions for salary purposes. Manager shall not receive further reimbursement for travel mileage within a fifty (50) mile radius of the City. For any required travel mileage outside the fifty (50) mile radius, Manager shall be reimbursed at the current allowable I.R.S. rate. The Employee shall maintain and be responsible for paying for liability, property damage, and comprehensive insurance coverage, with minimum coverages of \$100,000 for each injury and \$300,000 for all injuries in one accident and \$100,000 for property damage, upon such vehicle and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair, and replacement of said vehicle.

- B. Cell phone: City shall provide Manager with a cell phone for use for conducting City business and limited personal use as appropriate.
- B. Vacation Time: City shall provide Manager ten (10) paid vacation days of paid vacation during the term of this Agreement.
- D. Sick Time: City shall provide Manager with four (4) hours for each 80 hours pay period of paid sick.
- E. Paid Holidays: City shall provide Manager fourteen (14) days per year of paid holidays as determined by the City.
- F. Health Benefits: City shall provide Manager with the same health plans (medical, dental, and vision) under the same terms, conditions, and administrative procedures as determined by the City Council for all City employees.
- G. Pension: City agrees to enroll Manager as a member of the California Public Employees Retirement System (CalPERS). The Manager is responsible for paying the full employee portion of CalPERS. City shall pay Manager's required contributions consistent with the contribution level paid on and behalf of all other City employees.
- B. Management Leave: City shall provide Manager forty (40) hours per year of personal leave in accordance with the City's policies.
- B. Memberships: The City will pay for Manager's ICMA membership. The City will consider paying for Manager's membership in other organizations on an individual basis.
- B. The Manager will receive all benefits set forth in City policies and be subject to all City rules, procedures and policies, including personnel policies, except the benefits set forth in this Agreement shall control over the benefits set forth in City policies.

8. Business and Professional Expenses:

- B. City recognizes that Manager may incur expenses of a non-personal, job-related nature that are reasonably necessary to Manager's service to City. City agrees to either pay such expenses in advance or to reimburse the expenses, provided that the expenses are incurred and submitted according to City's normal expense reimbursement procedures or such other procedure as may be designated by the City Council. To be eligible for reimbursement, all expenses must be set forth and approved by City Council in the City's budget, supported by documentation meeting City's normal requirements and must be submitted within time limits established by City.

- B. City agrees to pay Manager's travel and subsistence expenses for official travel, meetings, and occasions reasonably necessary to continue Manager's professional development, and for Manager's reasonable participation in necessary official and other functions for the City, including, but not limited to, regional, state, and local conferences, and governmental groups and committees on which Manager serves as a member. Notwithstanding the above, the number of conferences or meetings City will pay for each year, and attendance at out-of-state conferences and meetings, if any, shall be at the discretion of the City Council as set forth in the City's budget.

9. City Property

Manager agrees that materials, regardless of their form, that Manager creates, receives, creates or produces in connection with this Agreement and/or Manager's employment as City Manager are and will remain the exclusive property of the City. Manager will deliver all originals and all copies of such materials to the City that in Manager's possession or control upon termination or expiration of this this Agreement or upon any request from the Mayor or the City.

10. Non-Disclosure of Proprietary or Confidential Information:

Manager will not at any time, in any form or manner, either directly or indirectly, except in the discharge of Manager's duties as City's Interim City Manager, divulge, disclose, or communicate to any person, firm, or corporation in any manner whatsoever any Proprietary or Confidential Information produced, received, acquired or learned by Manager while performing the duties of City Manager. For purposes of this Agreement Proprietary and Confidential Information, includes but is not limited to, all information and any ideas pertaining in any manner to the business of the City, trade secrets, inventions, processes, formulae, data, know-how, software, strategies, information about City employees, City utility customers, elected and appointed officials and officers, attorney-client privileged information and any information concerning any matters detrimentally affecting or relating to the business of the City without regard to whether any or all of the foregoing matters would be deemed confidential, material, or important. During Manager's employment by City, Manager shall use Proprietary and Confidential Information only for the benefit of the City and as is, or may be, necessary to perform Manager's job responsibilities under this Agreement. Following termination or expiration of this Agreement, Manager shall not use any Proprietary or Confidential Information and shall not disclose any Proprietary or Confidential Information to any person or entity without the express written consent of City.

11. Manager's Commitments Binding on City Only on Written Consent:

Manager shall not have the right to make any contracts or other commitments for or on behalf of the City without the written consent of City or as delegated to Manager by the City Council.

12. Termination of Employment and this Agreement; General Release; Severance:

B. Manager is an at-will employee and works exclusively at the pleasure and sole discretion of the City Council. This Agreement and at-will employment relationship, as provided in Government Code Section 36506 and in this Agreement, may be terminated at any time, with or without cause or notice by the City Council as determined by the affirmative votes of a majority of the members of the City Council at a meeting of the City Council, except that Manager's employment may only be terminated without cause by a unanimous vote of the City Council during the first one hundred twenty (120) days after the seating and swearing-in of one or more City Council members. Nothing in this Agreement, nor in any City policy, rule, procedure or ordinance shall modify the Manager's status as an at-will employee or limit the City's ability to treat the Manager as an at-will employee, even though Manager's job duties, title, compensation, and benefits, as well as the City's policies, may change from time to time.

B. If Manager is terminated without cause, Manager will be provided with severance pay equal to _____ of Manager's Base Salary. Payment of severance pay is subject to the following:

1. Upon Manager's execution of the "General Release Agreement" in the form set forth in in Exhibit "A" of this Agreement, Severance Pay shall be payable in one lump sum pursuant to the terms of said Agreement.

2. Manager agrees and understands that acceptance of the City's offer of severance pay at the time Manager's at-will employment is terminated by the City Council is pursuant to the execution of the "General Release Agreement" identified in Exhibit "A" of this Agreement and shall constitute liquidated damages and Manager's sole and exclusive remedy for any termination of this Agreement by the City Council as noticed in said Agreement.

3. In the event Manager voluntarily terminates Manager's employment with City, no severance pay shall be payable to Manager.

4. In the event City terminates Manager's at-will employment "for cause", City shall have no obligation to pay severance pay under this Agreement. A termination "for cause" may include, but shall not be limited to, the following:

- (a) A material breach of the terms of this Agreement;
- (b) Violation of City policies or procedures;
- (c) Failure to properly perform assigned duties;
- (d) Theft of City property;
- (e) Insubordination;
- (f) Unauthorized absence from employment;
- (g) Conviction of, or plea of guilty or nolo contendere to a felony or misdemeanor relating to Manager's fitness to perform assigned duties or Manager's reputation;
- (h) Conviction of any crime involving an "abuse of office or position," as that term is defined in Government Code Section 53243.4;
- (i) Failure to maintain satisfactory working relationships with other employees or the public;
- (j) Improper use of City funds;
- (k) Unauthorized use of City property;
- (l) Willful misconduct or malfeasance;
- (m) Failure or inability to provide a bond as required by the Portola Municipal Code;
- (n) Conduct unbecoming the position of City Manager or repeated failure of good behavior either during or outside of employment such that the Manager's conduct causes, or is likely to cause, scandal, severe discredit or embarrassment to the City or damage to the reputation of the City; and

(o) Any act of dishonesty, fraud, misrepresentation or moral turpitude.

C. If, during the Term or any extended Term, Manager dies, Manager's estate shall receive any accrued Base Salary and benefits, but shall not be entitled to any additional compensation or payment, including severance pay.

D. In the event Manager is permanently disabled or is otherwise unable to perform Manager's duties because of sickness, accident, injury, or mental incapacity for a period of sixty (60) consecutive days, the City may terminate Manager's employment and this Agreement. Manager shall receive any accrued Base Salary and benefits, but shall not be entitled to additional compensation or payment, including severance pay.

E. Manager may resign from Manager's employment at any time upon giving forty-five (45) days written notice to the City Council. If Manager resigns from employment, Manager shall not be entitled to any additional compensation or payment, including severance pay, but shall be entitled only to accrued Base Salary and benefits.

14. Abuse of Office or Position:

Notwithstanding anything to the contrary in this section, pursuant to the requirements set forth in Government Code Section 53243.2, if Manager is convicted of a crime involving an abuse of Manager's office or position, all of the following shall apply: (a) if Manager is provided with administrative leave pay pending an investigation, Manager shall be required to fully reimburse City such amounts paid; (b) if City pays for the criminal legal defense of Manager (which would be in City's sole discretion, as it is generally not obligated to pay for a criminal defense), Manager shall be required to fully reimburse City such amounts paid; and (c) if this Agreement is terminated, any severance pay related to the termination that Manager may receive from City shall be fully reimbursed to City or shall be void if not yet paid to Manager. For purposes of this Section, abuse of office or position means either: (i) an abuse of public authority, including, but not limited to, waste, fraud, and violation of the law under color of authority; or (ii) a crime against public justice.

15. Indemnification:

In accordance with and subject to California's Government Claims Act, the City shall defend and indemnify the Manager against and for all losses sustained by the Manager in direct consequences of the discharge of Manager's duties on the City's behalf for the period of Manager's employment. City shall defend, hold harmless and indemnify the Manager 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 Manager's duties as the City Manager. The City will compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon, as appropriate and determined by the City Council.

In the event the Manager is sued for damages arising out of the performance of Manager's duties, the City shall provide defense counsel for the City Manager in such suit and indemnify Manager from any judgment rendered against Manager, provided that such indemnity shall not extend to any judgment for damages arising out of any willful wrongdoing. Said indemnification shall extend beyond termination of employment and the otherwise termination or expiration of this Agreement to provide protection for any such acts undertaken or committed in Manager's capacity as City Manager, regardless of whether the notice of filing of a lawsuit occurs during or following employment with the City.

16. Conflict of Interest

Because of the duties and role of the Manager on behalf of the City and its citizenry, the Manager shall not, during the term of this Agreement, individually, as a partner, joint venturer, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of the City, except for stock ownership in any company whose capital stock is publicly held and regularly traded, without the prior approval of the City Council. For and during the term of this Agreement, the Manager further agrees, except for a personal residence or residential property acquired or held for future use as Manager's personal residence, not to invest in any other real estate or real property improvements within the corporate limits of the City, without informing the Mayor prior to such investment.

The Manager shall not engage in any business or transaction or have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties. Personal, as distinguished from financial, interest includes an interest arising from blood or marriage relationships or close business, personal or political associations. This section shall not serve to prohibit independent acts or other forms of enterprise during those hours not covered by active City employment, providing such acts do not constitute a conflict of interest as defined herein or by applicable law.

The Manager shall also be subject to the conflict of interest provisions of the California Government Code and any conflict of interest code applicable to Manager's City employment. The City Manager is responsible for submitting to the City Clerk the appropriate Conflict of Interest Statements at the time of appointment, annually thereafter, and at the time of separation from the position.

17. Assistance in Litigation

Manager agrees that Manager will furnish information and proper assistance to the City as it may reasonably require with any litigation, arbitration or mediation in which it may become involved, either during or after termination or expiration of this Agreement. Manager further agrees that Manager will not discuss, reveal or convey any information or documents pertaining to the City to any person or entity, or attorney for or representative of any person or entity, with actual or potential claims adverse to the City except pursuant to duly issued legal process or as otherwise authorized by the City. Manager agrees to notify the City immediately upon receipt of any legal process or contact pertaining to the City.

18. Entire Agreement:

This Agreement represents the entire and fully integrated agreement between the Parties and supersedes any and all other agreements, either oral or in writing, between the Parties with respect to the employment of Manager by City and contains all of the covenants and agreements between the Parties with respect to that employment. Each Party to this Agreement acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made by either Party, or by anyone acting on behalf of either Party, which are not embodied herein, and that no other employment agreement, statement, or promise not contained in this Agreement shall be valid or binding upon either Party.

19. Modifications:

Any modifications to this Agreement shall be effective only if in writing and signed by both of the Parties.

20. Effect of Waiver:

The failure of either Party to insist upon strict compliance with any of the terms, covenants, or conditions of this Agreement by the other Party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

21. Partial Invalidity:

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall be deemed severable and continue in full force without being impaired or invalidated in any way.

22. Attorney's Fees:

If either Party brings any action or proceeding against the other, including but not limited to, an action to enforce or to declare the termination, cancellation or revision of the Agreement, the prevailing Party in such action or proceedings shall be entitled to receive from the other Party all reasonable attorney's fees and costs, incurred in connection therewith.

23. Governing Law and Venue:

This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action to interpret or enforce the terms of this Agreement shall be held exclusively in a state court in Plumas County, California. Manager expressly waives any right to remove such action from Plumas County.

24. Notices:

Any notices to be given hereunder by either Party to the other in writing may be affected either by personal delivery, mail, or email. Mailed notices shall be addressed to the Parties as set forth below, but each Party may change their address by written notice given in accordance with this section. Notices delivered personally or by email will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated and received as of three (3) calendar days following the date of mailing.

CITY: City of Portola
Attention: Mayor
35 Third Avenue
Portola, CA 96122

MANAGER: Jon Kennedy
6620 Central Avenue
Ukiah, CA 95482

This Agreement is entered into this _____ day of _____, 2023.

CITY OF PORTOLA

MANAGER

By: _____

Tom Cooley, Mayor

Jon Kennedy, Manager

Attest:

Approved as to Form:

Jason Shaw, Deputy City Clerk

Steven C. Gross, City Attorney

EXHIBIT "A"
GENERAL RELEASE AGREEMENT

THIS GENERAL RELEASE AGREEMENT (hereinafter "Agreement") is entered into this ____ day of _____ 202_, by and between the CITY OF PORTOLA, a municipal corporation of the State of California (hereinafter referred to as "City", "Party", or "Parties", as the context may require), and Jon Kennedy, an individual residing in Ukiah, California, (hereinafter referred to as "Kennedy", "Party", or "Parties", as the context may require), with respect to the following recitals:

RECITALS

- A. Whereas, Kennedy has been employed by the City as its Interim City Manager pursuant to an Interim City Manager Employment Agreement entered into and effective as of January 24, 2023 ("Employment Agreement");
- B. Whereas, pursuant to Section ____ of the Employment Agreement, the City terminated Employee from Employee's at-will employment as of _____ ("Separation Date"); and
- C. Whereas, pursuant to Sections ____ of the Employment Agreement, Employee has voluntarily agreed to accept the following severance payment from the City in consideration of the terms of this Agreement.

NOW, THEREFORE, Kennedy and the City agree and promise as follows:

- 1. In accordance with the terms and conditions set forth in this Agreement:

Kennedy agrees that effective as of the Separation Date, he has separated from and is no longer employed by the City.

- a. Kennedy agrees that he will not contact, disrupt or attempt to disrupt City employees while they are working and will not interfere with, undermine or attempt to undermine the authority of any of supervisory or managerial staff at the City and will not encourage or assist others to do so.
- b. Kennedy acknowledges that he has been paid through the Separation Date: (1) all wages; (2) reimbursement for all expenses; and (3) for all of his accrued and unused paid vacation.
- c. Kennedy and the City agree that as consideration for entering into this Agreement, the City will pay Kennedy only _____ month of his base salary as of the Separation Date, less required and authorized withholdings and deductions.

2. In exchange for the consideration set forth in Section 1, above, and for the covenants and mutual releases provided herein, Kennedy, on behalf of himself and his representatives, heirs, successors and assigns (collectively hereinafter also “Kennedy”), does hereby completely release and forever discharge the City and its past and present elected and appointed officials, employees, agents, representatives, attorneys, insurers, successors, and assigns (collectively “Released Parties”) from any and all claims, rights, demands, actions, causes of action, obligations, liabilities, debts, damages, losses, loss of service, liens, liabilities, costs, attorneys’ fees, experts’ fees, debts and expenses, of any and every kind, nature and character whatsoever, in law or in equity, known or unknown, which she may have based on or related to (i) a tort, including but not limited to negligent or intentional tort; (ii) contract, including but not limited to implied, oral or written contract, or (iii) any federal, state or local law, statute or regulation, which Kennedy may now have or have ever had against the Released Parties, based on any act or omission, including but not limited to, any and all claims arising out of or in any way connected with Kennedy’s employment with the City and the separation of such employment.

3. Kennedy specifically acknowledges and agrees that this Agreement shall operate as a complete bar to any litigation, charges, complaints, grievances or demands of any kind whatsoever, including but not limited to those arising under any and all policies and procedures of

the City, Constitution of the United States; Title VII of the Civil Right Act of 1964, as amended, 42 U.S.C. 2000(e) *et seq.*, which prohibits discrimination in employment based on race, color, national origin, religion or sex; the Civil Rights Act of 1966, 42 U.S.C. 1981 *et seq.*; the American with Disabilities Act (“ADA”), the Equal Pay Act, which prohibits paying men and women unequal pay for equal work; the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. § 621 *et seq.*; the Older Workers Benefit Protection Act (“OWBPA”), 29 U.S.C. § 623 *et seq.*; the Sarbanes-Oxley Act, 42 U.S.C. Section 1981, Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. 10001 *et seq.*; Executive Orders 11246 and 11141; the Fair Labor Standards Act (“FLSA”); the Family and Medical Leave Act (“FMLA”), 29 U.S.C Section 2601 *et seq.*; the Federal Department of Labor (“DOL”); the Constitution of the State California; the California Labor Code; the California Department of Labor Standards Enforcement (“DLSE”) regulations, polices or guidelines; any other federal, California state statute, regulation, ordinance, or other law concerning the payment of wages, overtime, on-call time and benefits; the California Fair Employment & Housing Act at California Gov’t Code §§ 12940, *et seq.*; California Pregnancy Disability Leave (“PDL”) at California Gov’t Code § 12945; California Family Rights Act (“CFRA”) at California Gov’t Code § 12945.1 *et seq.*; any other federal, California law prohibiting discrimination, harassment, retaliation or protecting whistle blowing activity; any claims of breach of public policy of the State of California, or other law prohibiting negligence; civil conspiracy; negligent and intentional infliction of emotional distress; breach of contract; wrongful discharge; constructive discharge; breach of an implied covenant of good faith and fair dealing; any express or implied contracts; and any federal or state common law and any federal, state or local statutes, ordinances and regulations. Notwithstanding the generality of the foregoing, Employee does not release any claims that cannot be released as a matter of law including, without limitation, claims for indemnity or unpaid wages under the California Labor Code, claims for worker’s compensation benefits, his right to bring to the attention of the Equal Employment Opportunity or California Department of Fair Employment and Housing claims of discrimination; however, that he does release his right to secure damages for any alleged discriminatory treatment.

4. Kennedy represents and warrants that:

a. He has not filed, initiated, or caused to be filed or initiated any grievance or legal action covering any claim or liability released in this Agreement or any claim or liability against the Released Parties and hereby agrees and promises he will not file, initiate, or cause to be filed or initiated, at any time subsequent to the execution of this Agreement, any grievance, complaint, claim, charge, suit, action, or cause of action, in any state or federal court or before any state, federal or local government or administrative agency, against the Released Parties.

b. He has no claims that he could file with the California Fair Employment and Housing Commission or the California Worker's Compensation Appeals Board.

5. The matters specifically released and dismissed by this Release Agreement shall include, but are not necessarily limited to, all claims and causes of action which Employee has against the City and/or any of the Released Parties arising on or before the date that this Release Agreement is executed, and ANY OTHER CLAIM OF ANY TYPE WHATSOEVER AGAINST THE CITY, AND/OR ANY OTHER RELEASED PARTY; WHETHER SUCH CLAIM IS KNOWN OR UNKNOWN TO EMPLOYEE AND/OR EMPLOYEE'S REPRESENTATIVES AND ATTORNEYS arising on or before the date that this Release Agreement is executed. As a further consideration and inducement for this Release Agreement, to the extent permitted by law, Employee hereby waives and releases any and all rights under Section 1542 of the California Civil Code or any analogous state, local, or federal law, statute, rule, order or regulation, Employee has or may have with respect to any claims against the City. California Civil Code Section 1542 reads as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

Employee hereby expressly agrees that this Agreement shall extend and apply to all unknown, unsuspected, and unanticipated claims, injuries, losses and damages, as well as those that are now known and/or disclosed.

6. The Parties acknowledge that they have had the opportunity to be or have been represented by counsel in the negotiation and preparation of this Agreement. Except as provided in Section 1 above, the Parties agree that each Party shall be responsible for the payment of its own costs, attorneys' fees, and all other expenses in connection with the negotiation of this Agreement and any claims waived and/or released herein.

7. It is understood and agreed that this is a compromise settlement of potential disputed claims, and the furnishing of the consideration for this Agreement shall not be deemed or construed as an admission of liability or responsibility at any time for any purpose regarding any matter covered by this Agreement. It is further agreed and understood that this compromise and Agreement are being entered into solely for the purpose of allowing the Parties to avoid the expense and inconvenience of bringing or defending against any and all potential claims, rights, demands, actions, obligations, liabilities, and causes of action referred to hereinabove.

8. The Parties acknowledge that they have carefully reviewed the Agreement and know what it contains and have entered into this Agreement voluntarily, without coercion and based on their own judgment and not in reliance on any representation or promises made by the other Parties other than those contained herein. This Agreement incorporates the entire understanding between the Parties and recites the sole considerations for the promises exchanged herein. The Parties have read this Agreement, and they are fully aware of its contents and of its legal effect.

9. Kennedy assumes full responsibility to state and federal taxing authorities for any tax consequences arising out of payments made or benefits provided to him under this Agreement.

10. Kennedy agrees that he will not make any false or otherwise defamatory statements about the Released Parties, including without limitation with respect to Kennedy's employment with and separation from the City. Kennedy agrees that his breach of the terms and conditions set forth in this section is a material breach of this Agreement, such that the City will be irreparably

harmful as a matter of law and will be entitled to pursue its legal and equitable remedies, including without limitation the right to recover money damages and seek injunctive relief, plus reasonable attorneys' fees, without limiting any other remedy it may have at law or equity.

11. Kennedy acknowledges that by reason of his position with the City, he has had access to trade secrets, proprietary information and confidential information pertaining to the Released Parties and the City's elected and appointed officials, employees, customers, contractors and vendors (collectively "Confidential Information"). For purposes of this Agreement, "Confidential Information" includes without limitation, passwords, keys and other security information which may or may not be encrypted; personal information about past and present elected and appointed officials and employees of the City, such as addresses, telephone numbers, email addresses, personnel files, evaluations and actions related to personnel matters, such as applications for employment, hiring, promotions, separations, disciplinary actions, requests for and utilization of leaves of absences, health and other benefits; personal health information (including information subject to the Health Insurance Portability and Accountability Act ("HIPAA")); and information related to past and present negotiations and bargaining positions of the City with the City's contractors, vendors and represented and unrepresented employees and their bargaining representatives. For purposes of this Agreement, "Confidential Information" does not include information: (i) that is or becomes generally available to the public other than as a result of disclosure by Kennedy or any party to whom Kennedy has disclosed such information, except for information that is or becomes generally available to the public through disclosure by Kennedy or any party to whom Kennedy has disclosed such information in the course and scope of Kennedy's employment by the City; (ii) that is obtained by Kennedy on a non-confidential basis from a third party entitled to disclose such information.

a. Kennedy represents, warrants and promises that he has returned to the City all documents and records containing Confidential Information or any other tangible Confidential Information in his possession, custody, or control, and he has not made or kept any hard or computerized copies, notes, abstracts, summaries, lists, tapes or other record of any type of Confidential Information. For purposes of this Agreement, the term "document" means any written, computerized, typewritten, printed, or recorded material whatsoever, including, but not

limited to, notes, lists, memoranda, letters, reports, business records publications, data compilations, and computer diskettes and files.

b. Kennedy represents, warrants and promises he has not used and will not use for his own benefit, or divulge to any other person, firm, corporation, or other entity, any of the Confidential Information which he has obtained or learned as a result of his employment relationship with the City, except in the course and scope of his employment by the City.

c. Kennedy acknowledges and agrees (i) that any violation of this Section would cause immediate irreparable damage to the Released Parties and (ii) that determining the amount of damage caused to the Released Parties by any such violation would be extremely difficult or impossible. Kennedy therefore agrees that the Released Parties' remedies at law are inadequate, and Kennedy consents to the issuance of injunctive relief after proper judicial proceedings, including, but not limited to, a temporary restraining order, a preliminary injunction, and a permanent injunction, by a court of appropriate jurisdiction in order to restrain any actual or threatened violation of this paragraph without limiting any remedy the Released Parties may have at law or in equity.

12. This Agreement contains a waiver and release of all claims that Kennedy may currently have under the Age Discrimination in Employment Act of 1967 (29 U.S.C. §621-634). Kennedy understands and agrees that Kennedy:

- a. Has reviewed all aspects of this Release Agreement;
- b. Has carefully read and fully understands all of the provisions of this Agreement;
- c. Has had a full twenty-one (21) days within which to consider this Agreement before executing it;
- d. Is, through this Agreement, releasing the City and the Released Parties from any and all claims Employee may have;
- e. Knowingly and voluntarily agrees to all of the terms set forth in this Agreement;
- f. Knowingly and voluntarily intends to be legally bound by the terms set forth in this Agreement;

- g. Was advised, and by this Agreement is advised in writing, to consider the terms of this Agreement and consult with Employee's attorney prior to executing this Agreement;
- h. Has a full seven (7) days following the execution of this Agreement to revoke this Agreement and has been and is hereby advised in writing that this Agreement shall not become effective or enforceable until the revocation period has expired; and
- i. Understands that rights or claims including those under the Age Discrimination in Employment Act of 1967 (29 U.S.C. §621-634) that may arise after the date of this Agreement is executed are not waived.

13. This Agreement shall not be modified by oral representation made before, during or after the execution of this Agreement. All modifications must be in writing and signed by both Parties.

14. This Agreement may be executed in one or more counterparts, or duplicates of originals, all of which, taken together, shall constitute one and the same instrument.

15. In the event that any part or provision of this Agreement is found to be illegal or unconstitutional by a court of competent jurisdiction, such findings shall not affect the remaining parts, portions, or provisions of this Agreement, which shall continue to remain in full force and effect.

16. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

17. Should either Party commence any court action to enforce or interpret this Agreement, the prevailing Party therein shall be entitled to recover its reasonable costs, attorneys' fees and experts' fees incurred therein. Any court action shall only be commenced and maintained in the Superior Court in and for the County of Plumas, State of California.

CITY OF PORTOLA

KENNEDY

By: _____

_____, Mayor

Jon Kennedy

Attest:

Approved as to Form:

Jason Shaw, Deputy City Clerk

Steven C. Gross, City Attorney