

**RESOLUTION NO. 2021-03**

**A RESOLUTION OF THE CITY OF LOS ALTOS APPOINTING BRAD KILGER AS INTERIM CITY MANAGER UNDER GOVERNMENT CODE SECTION 21221(h)**

**WHEREAS**, the City of Los Altos is in the process of actively recruiting a qualified permanent City Manager;

**WHEREAS**, the City would like to retain Brad Kilger's services as Interim City Manager to allow the City of Los Altos sufficient time to recruit and hire a permanent City Manager;

**WHEREAS**, Brad Kilger possesses necessary and specialized skills to perform the functions of Interim City Manager during the recruitment process;

**WHEREAS**, the City Council of the City of Los Altos hereby appoints Brad Kilger to the position of Interim City Manager under Government Code section 21221(h), an appointment deemed to be for interim purposes and requiring specialized skills, effective January 13, 2021 through August 31, 2021, unless terminated earlier, including when the City hires a permanent City Manager, and subject to a limit of 960 hours for all CalPERS employers in a fiscal year;

**WHEREAS**, the appointment of Brad Kilger under Government Code section 21221(h) shall only be made once; and

**WHEREAS**, the compensation of Brad Kilger shall not be less than the minimum nor exceed the maximum published pay schedule for the vacant position of City Manager, divided by 173.333 to equal an hourly rate. Mr. Kilger shall not receive any benefits, incentives, or compensation in addition to the hourly rate.

**THEREFORE, BE IT RESOLVED** by the City Council of the City of Los Altos that Brad Kilger is appointed Interim City Manager, effective January 13, 2021, based on the terms described in the "Retired Annuitant Employment Agreement" attached to this Resolution as Attachment 1, and incorporated by this reference.

**I HEREBY CERTIFY** that the foregoing is a true and correct copy of a Resolution passed and adopted by the City Council of the City of Los Altos at a meeting thereof on the 12<sup>th</sup> day of January 2021 by the following vote:

AYES: Council Members Lee Eng, Meadows, Weinberg, Vice Mayor Enander and Mayor Fligor  
NOES: None  
ABSENT: None  
ABSTAIN: None



\_\_\_\_\_  
Neysa Fligor, MAYOR

Attest:



Andrea Chelemengos, CITY CLERK

## Retired Annuitant Employment Agreement

This Retired Annuitant Employment Agreement (“Agreement”) is made and entered into between Brad Kilger (“Kilger”) and the City of Los Altos, (“City”), in order to provide, in writing, the terms and conditions of employment for the interim appointment under Government Code section 21221(h) for the position of City Manager. Kilger and City are individually referred to as a “Party” and collectively referred to as the “Parties” in this Agreement.

1. Employment. The City hereby appoints Kilger as the Interim City Manager, and Kilger hereby accepts that employment effective January 13, 2021. The employment under this agreement incorporates all of the requirements under Government Code sections 21221(h) and 7522.56. Kilger acknowledges that he will be an at-will, exempt, temporary employee of City, and that he shall serve at the pleasure of City Council. Nothing in this Agreement is intended to, or does, confer upon Kilger any right to any property interest in continued employment, or due process rights, including but not limited to a hearing before or after a decision by City Council to terminate his employment. Nothing contained in this Agreement shall in any way prevent, limit or otherwise interfere with the right of City to terminate the services of Kilger. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Kilger to resign at any time from this position with City, subject only to the provisions set forth in paragraph 5 herein.
2. Duties. Kilger shall serve as the Interim City Manager and shall be for the term of this Agreement vested with the powers, duties and responsibilities of the City Manager as specified in Los Altos Municipal Code, Chapter 2.01 and ordinances and resolutions of City Council, and to perform other legally permissible and proper duties and functions as City Council may from time to time assign. It is the intent of City Council for the Interim City Manager to function as the chief executive officer of City. Without additional compensation, Kilger shall provide such other services as are customary and appropriate to the position of Interim City Manager. Kilger shall devote his best efforts and full-time attention to the performance of these duties. During the period of his employment, Kilger shall not accept any other employment or engage, directly or indirectly, in any other business, commercial, or professional activity, whether or not to pecuniary advantage, that is or may be competitive with City, that might cause a conflict of interest with City, or that otherwise might interfere with the business or operation of City or the satisfactory performance of Kilger’s duties as Interim City Manager. During the period of his employment, Kilger shall not accept any other employment for or serve as a consultant for any other public or private organization without the prior written consent of City Council. Nothing in this Agreement limits Kilger’s ability to continue serving as an ICMA Senior Advisor, provided that those activities do not create a conflict of interest.
3. Compensation. City shall pay Kilger an hourly rate of \$117.83 at the same time and intervals as other employees of the City are paid. This rate is consistent with the rate required under Government Code sections 21221(h) and 7522.56. Kilger will receive no benefits, incentives, or compensation in addition to the hourly rate of pay. The City will

reimburse Kilger for City related business expenses approved by the City Council and mileage accrued between his primary residence and Los Altos City Hall that is reasonable and necessary for him to perform his duties as Interim City Manager and in accordance with the applicable mileage rate.

4. Hours of Work. Kilger shall devote the time necessary to adequately perform his duties as Interim City Manager. The Parties anticipate that Kilger will work approximately forty (40) hours per week allocated between regular business hours and hours outside of regular business hours including, but not limited, to attendance at regular and special City Council meetings, and attendance at such community events and City functions as the City Council may direct. Toward that end, Kilger shall be allowed reasonable flexibility in setting his own office hours, provided the schedule of such hours includes some presence at City Hall in compliance with all applicable Federal, State and/or County Public Health and Safety COVID-19 orders, reasonable availability to 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. Necessary in-person meetings must also be in compliance with Federal, State and/or County Public Health and Safety COVID-19 orders. The position of Interim City Manager is an exempt position pursuant to the Fair Labor Standards Act and any other relevant provision of Federal or State law.
5. Term. The term of this agreement shall be from January 13, 2021 to August 31, 2021, unless terminated earlier by either Party for any reason. This Agreement may be terminated by Kilger for any reason thirty (30) days after notice in writing to City Council of such termination. City Council shall have the option in its discretion, to make Kilger's termination effective at any time prior to the end of such period, provided City pays Kilger all compensation for the hours he has worked prior to the date of termination.

Unless otherwise agreed to in writing between the Parties and allowed under applicable laws, the Agreement shall automatically terminate upon the occurrence of any of the following events:

The mutual agreement of the Parties;

Notice of termination is given by either Party;

The death or permanent incapacity of Kilger;

The City hires a permanent City Manager;

Kilger works 960 hours in a fiscal year (July 1-June 30) for all CalPERS employers; or

The City stops actively recruiting for a permanent City Manager.

The Parties understand and agree that this appointment is made only during that time that the City is recruiting to fill the City Manager position on a permanent basis and that this agreement will not be renewed or extended.

6. Maximum Hours. Kilger may not work more than 960 hours in a fiscal year (July 1 through June 30). Kilger also understands that if he works for more than one CalPERS agency during a fiscal year, the total number of hours worked for all CalPERS employers are included within the 960 hour maximum.
7. City Council Commitments. Except for the purpose of inquiry, the City Council and its members shall keep the Interim City Manager apprised of any City related business discussions with all subordinate City employees, officers, contractors, and consultants and neither the City Council nor any member thereof shall give direction to any subordinate of the Manager, either publicly or privately, without a prior discussion with the Interim City Manager. No member of the City Council will order the appointment or removal of any person to any office or employment under the supervision and control of the Manager. Neither the City Council nor any of its members shall interfere with the execution of the powers and duties of the Manager, as specified in the City Municipal Code, this Agreement, or any other lawfully adopted and authorized document.
8. Effect on Retirement Benefits and Hold Harmless Agreement. The City makes no representation, promises, guarantees, or warranties, express or implied, on the impact, if any, this Agreement may have on Kilger's California Public Employees' Retirement System ("CalPERS") retirement benefits, status, duties, or obligations. Kilger acknowledges that in entering into this Agreement, he has not relied upon any representations by the City regarding the impact of this Agreement on his retirement benefits.
9. Effect of Waiver. The failure of either Party to insist on 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.
10. Entire Agreement. Kilger and the City declare and represent that no promise, inducement, or agreement not discussed in this Agreement has been made between them and that this Agreement contains the entire expression of agreement between Kilger and the City on the subjects addressed in this Agreement.
11. Integration. This Agreement is intended by the Parties to be a fully integrated document. The terms of this Agreement are the complete, exclusive, and final embodiment of the Parties' intent.
12. Negotiated Agreement. The Parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the Parties, and this Agreement reflects their mutual agreement regarding the subject matter of this

Agreement. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any Party to be the drafter of this Agreement and, therefore, no presumption for or against validity or as to any interpretation hereof, based upon the identity of the drafter shall be applicable in interpreting or enforcing this Agreement.

13. Indemnification. To the fullest extent permitted by law, City shall defend, save harmless and indemnify Kilger against any and all claims, losses, damages, judgments, interest, settlements, fines, court costs and other reasonable costs and expenses of legal proceedings including attorney's fees, and any other liabilities incurred by, imposed upon, or suffered by Kilger in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of his duties. Said duty to defend, indemnify and save harmless shall include, without limitation, any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, that is asserted by a third-party other than the City and arises out of an alleged act or omission occurring in the performance of Kilger's duties or resulting from his exercise of judgment or discretion in connection with the performance of his duties or responsibilities, unless the act or omission involved Kilger's criminal act, or willful or wanton misconduct. Kilger shall promptly give written notice of any claim, threatened claim or litigation. Provided that prompt written notice is given, Kilger may request and the City shall not unreasonably refuse to provide independent legal representation with legal counsel selected by City at City's expense. Legal representation, provided by City for Kilger, shall extend until a final determination of the legal action including all appeals brought by either Party, and will be provided under a reservation of rights to not pay any judgment, compromise or settlement if it is established by a judicial decision or jury verdict after completion of all appeals that the claim arose out of an act that fell outside the scope of Kilger's duties and employment or was the result of a criminal act, or willful or wanton misconduct of the Kilger. Any settlement or compromise of any claim must be made with prior approval of City, which approval shall not be unreasonably withheld or delayed in order for indemnification, as provided in this Section, to be available. Any duty of City to defend or indemnify Kilger is contingent upon Kilger's full, open and honest cooperation with defense counsel for City and Kilger. Said duties of defense, indemnity and cooperation shall survive the termination of employment under this Agreement.
14. Amendments. This Agreement may not be amended or modified except in a written document signed by Kilger, approved by the City Council and signed by City's Mayor or authorized designee.
15. Notices. Any notices to be given under this Agreement by either Party to the other in writing may be effected either by personal delivery or by mail. Mailed notices shall be addressed to the Parties as set forth below, but each Party may change its address by written notice given in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated and received as of five (5) calendar days following the date of mailing:

CITY:           City of Los Altos

Attention: Mayor Neysa Fligor  
1 North San Antonio Road  
Los Altos, CA 94022

KILGER: Brad Kilger  
2816 Antwerp Circle  
Modesto, CA 95356

16. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California in full force and effect as of the date of full execution.

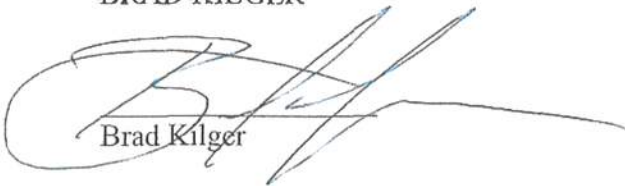
This Agreement is entered into this 12th day of January, 2021.

CITY OF LOS ALTOS



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Neysa Fligor, Mayor

BRAD KILGER



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Brad Kilger