

## **EMPLOYMENT AGREEMENT**

**THIS EMPLOYMENT AGREEMENT** (“Agreement”) is made and entered into, with an effective date of April 5, 2021, by and between the City of Orinda (“City”) and DAVID BIGGS (“Employee”). This Agreement is authorized by City Council Resolution No. 06-21 after Council passes that Resolution.

### **RECITALS**

**WHEREAS**, the City desires to employ the services of DAVID BIGGS as City Manager;  
and

**WHEREAS**, on February 2, 2021, the City Council will consider approving this Employment Agreement by Resolution 06-21, with employment to begin on the effective date of April 5, 2021; and

**WHEREAS**, the City desires to provide certain benefits, establish certain conditions of employment, and to set working conditions of Employee; and

**WHEREAS**, the City desires to secure and retain the services of Employee and to provide inducement for him to remain in such employment; and

**WHEREAS**, Employee desires to be employed as City Manager of the City of Orinda;  
and

**NOW, THEREFORE**, in consideration of the mutual covenants contained in this document, the City and Employee agree as follows:

#### **1. TERM**

This Agreement shall be in full force and effective from the effective date stated in the Agreement’s first paragraph through June 30, 2024, unless terminated earlier by the City or Employee as provided herein. (See Paragraphs 5 and 7). Employee and City may agree to extensions of this Agreement in one-year increments or as otherwise mutually agreed.

**2. DUTIES**

The City agrees to employ DAVID BIGGS as the City Manager of the City of Orinda to perform the functions and duties as currently in effect or as may later be established by ordinance, resolution or action of the City Council.

**3. COMPENSATION AND HOURS**

The City agrees to compensate Employee for his services as City Manager as follows:

A. As of the effective date, Employee's base salary will be \$243,000.00 per year, which will be paid according to the City's regular payroll periods, policies, and practices, except as modified by the specific terms of the Agreement. The City will review Employee's salary not later than November 1, 2021 to determine whether a salary adjustment is warranted based on market comparability and performance. Employee shall assure that this review item is placed on an open session agenda for Council consideration.

i. Employee will perform 40 or more hours of work per week, or Employee will otherwise account for at least 40 hours per week as non-work time. More specifically, Employee will account for 40 hours a week as one of the following:

1. Hours worked, or
2. Hours not worked but paid, such as general leave, holiday, jury duty service, or other paid time off category, or
3. Hours not paid (or unpaid leave), with Employee's salary to be accordingly reduced by the amount of unpaid leave taken. (29 C.F.R. 541.710).

ii. Employee will be exempt from overtime pay because Employee will be paid a salary and will perform exempt services as an exempt executive and/or administrative employee.

B. Periodically, City Council will set performance objectives for Employee. Periodically, Employee and City Council shall hold a work plan review or performance review with Employee, and such a review shall occur within the 12-month period after the Agreement's effective date. Employee shall assure that this

review item is placed on the closed session agenda for Council consideration. City Council shall evaluate the effectiveness of Employee, and the parties will review the effectiveness of the Agreement.

- C. If Employee's performance is satisfactory when reviewed, Employee shall timely cause the City Council's consideration of a salary increase to be placed on the City Council's regular meeting open session agenda in or around Spring or Summer of each year, beginning in 2022. A salary increase, if any is granted, will be effective on the date Council specifies. The total salary increase to be considered at that time shall not exceed three percent (3%), unless Council determines a higher increase is both fiscally responsible and is warranted in recognition of the City Manager's accomplishments.
- D. The Agreement terminates on June 30, 2024, or on the effective date of a termination or resignation, whichever is earliest. (See Paragraphs 5 and 7). There is no automatic increase in the level of compensation, so the Agreement complies with Cal. Gov't Code § 3511.2(a).

#### **4. BENEFITS**

In addition to the compensation set forth in Section 3 of this Agreement, Employee shall receive benefits to which Employee is entitled, including the following benefits:

##### **A. General Leave.**

Employee shall receive general leave annually of 25 days or 200 hours (which is 7.69 hours per pay period for 26 payroll periods).

- i. Accrued general leave may be used for vacation or for sick leave. Up to 24 hours per year of accrued general leave may be used for the purposes for which Paid Sick Leave (PSL) is allowed to be used under the California Healthy Workplaces, Healthy Families Act of 2014. PSL may be used for the diagnosis, care, or treatment of an existing health condition of, or preventative care for, an employee or an employee's family member. The definition of "family member" is broad and includes, for instance, children, parents, parents-in-law, spouses, registered domestic partners, grandparents, grandchildren, and siblings. PSL may also be used by victims of crimes.

- ii. General Leave is accrued throughout the year based on time worked, as described above in 4.A. of this Agreement, and will not accrue during any period of an unpaid leave of absence of a week or more.
- iii. When Employee takes a full day off, Employee will be paid 8 hours from his accrued general leave account.
- iv. Employee's use of general leave for vacation, if two or more workdays off, will be scheduled with at least two weeks' prior notice to Council, and Employee will make every reasonable effort to schedule vacation at a time when there is no regularly scheduled Council meeting. If Employee will miss a regularly scheduled Council meeting because of vacation, Employee will obtain the Mayor's prior approval before scheduling that vacation. Such approval will not be unreasonably withheld. For missed Council meetings, Employee will name an Acting City Manager and prepare staff to cover the meeting. Council is already aware of Employee's time off for several days for the following dates, so no further notice or approval is required: August 13 to September 5, 2021.
- v. Once during each fiscal year, if Employee has accrued more than 240 hours of general leave, he may elect to cash out a maximum of 80 hours of accrued general leave. A balance of no less than 160 hours must remain after cash out.
- vi. Upon termination, including death, Employee or his estate shall be paid for all accrued unused general leave at the Employee's base rate at the time of termination.
- vii. The Employee has a pre-planned vacation beginning in August of 2021, so the City will advance Employee 90 hours of general leave, which can be used to receive pay during that vacation or to receive pay during an illness, but those 90 hours of advanced general leave must be earned or accrued in the future months of employment to pay back to the City the advance of 90 hours. If Employee's employment were to end before the Employee has earned back the 90 advanced general leave hours, Employee agrees that the monetary value of the advanced general leave hours that are not earned before employment ends will be deducted from his final paycheck.

- B. **Holidays.** The City observes the following holidays and will provide Employee time off with pay of 8 hours for each holiday unless otherwise provided in this Agreement.

<b>Holiday</b>	<b>Day Observed</b>
New Years Day	January 1
MLK Jr. Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veterans' Day	November 11
Thanksgiving Day	Fourth Thursday in November
The Day After Thanksgiving	Fourth Friday in November
Christmas Eve (1/2 day or 4 hours)	December 24
Christmas	December 25

If the observed holiday falls on a Saturday, the City shall observe it on the Friday immediately preceding the holiday. If the observed holiday falls on a Sunday, the City shall observe it on the Monday immediately following the holiday. Employee also shall be granted two floating holidays of 8 hours each day for each calendar year. If an observed City holiday occurs while Employee is taking general leave, no deduction from such accrued leave will be made for the holiday period.

- C. **Bereavement Leave.** If Employee experiences a death in Employee's immediate family, Employee shall be granted up to 3 working days of 8 hours each day of paid leave for the purpose of arranging and attending the funeral or memorial service. "Immediate family" is limited to spouse or domestic partner, mother, father, sister, brother, child, grandmother, grandfather, aunt, uncle, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandchild or dependent.
- D. **Jury Duty & Subpoena Leave.** If Employee is called or required to serve as a juror, he shall be entitled to be absent with pay (8 hours each day) from his duties with the City during the period of such service and while necessarily being present in court as a result of such call. Employee is required to be present at work when not serving as a juror or as a member of a jury selection panel.

Employee must surrender to the City any payment received for jury service, excluding mileage reimbursement. If Employee is called to testify pursuant to a subpoena in litigation not involving the City, he may use accrued general leave during that time. If Employee is subpoenaed for litigation involving the City, leave with pay will be given.

- E. **Group Medical/Dental/Vision Insurance Benefits.** Employee may participate in the City's group medical and dental benefits with the City that are available to Employee, with City paying the "Total City Medical Contribution" premium costs of the applicable plan, and Employee paying the balance for the plan chosen. The City's "Total City Medical Contribution" is the maximum contribution amount the City pays for an unrepresented employee's health insurance coverage or "cap," as such maximum "Total City Medical Contribution" amount may be increased or decreased. Any increase above the "Total City Medical Contribution" shall be paid by the Employee. The City will also pay 100% of the family premium for dental and vision plans for Employee and eligible dependents, including a domestic partner, with rate increases up to 10% annually. If Employee is required to partially pay premiums, he shall be allowed to make these payments with pre-tax deductions. The medical and dental benefit coverage for dependent children extends to the date of their 26th birthday, providing they meet the Internal Revenue Service definition of "dependent". If Employee chooses to complete and submit an Affidavit of Domestic Partnership and sign up for medical benefits and/or dental benefits for a domestic partner, Employee shall be subject to federal and state income tax withholding on the imputed income (City's contribution toward the domestic partner's benefits) if the domestic partner is not a dependent as defined by the IRS. Employee may also choose the cash-in-lieu of benefits if Employee waives medical insurance coverage and meets the requirements for the cash-in-lieu payment. Upon termination of Employee's employment, to the extent allowed by COBRA, Employee and dependents may remain in the same City group medical, dental, and/or vision plan for the time allowed under COBRA if immediately before Employee's separation,

each is an active subscriber. Under COBRA, Employee pays the full premium costs.

- F. **Retirement Plan.** The City will make annual contributions to the International City Management Association Retirement Corporation (ICMA-RC) Money Purchase Plan (401(a)) in the amount of 13% of Employee's base salary identified in 3.A. of the Agreement. Additionally, if Employee contributes 3% of Employee's base salary identified in 3.A. of the Agreement to this 401(a) plan, the City shall contribute a 3% match. Employee may contribute more than 3% to this 401(a) plan, up to a maximum of 10% of Employee's base salary, if elected within the plan's time requirement when hired. Employee is also eligible to participate in the City's Deferred Compensation Plan (457) deferred compensation plan through voluntary payroll deductions from Employee's salary. Employee may contribute, by payroll deduction, an amount up to the maximum allowed by law.
- G. **Flexible Benefits Plan.** Employee may participate in the City's standard flexible benefits plan, a full description of which is available from the Human Resources Manager.
- H. **Vehicle, Technology/Cell, and Work from Home Allowance.** Employee shall receive an allowance of \$500.00 per month for use of Employee's personal vehicle, technology/cell phone, and working from home. This allowance covers the use of Employee's vehicle for City business, any incidental use of Employee's personal cell phone or technology, and any incidental use of items if Employee works from home on certain days because of the COVID-19 pandemic.
- I. **Administrative Leave.** Employee receives administrative leave of 80 hours each fiscal year, which is prorated for FY 20-21 (20 hours for use in FY 20-21).
- J. **Professional Development Costs.** The City shall pay standard professional development costs and membership fees for Employee.
- K. **Disability Insurance.** The City shall provide and pay for coverage for Employee under its standard long-term disability insurance, a full description of which is available from the Human Resources Manager.

- L. Accidental Death and Dismemberment Insurance. The City shall provide and pay for coverage for Employee under its standard accidental death and dismemberment insurance, a full description of which is available from the Human Resources Manager.
- M. Life Insurance. The City shall provide and pay for life insurance for Employee in the same amount and program as received by other employees, which is currently a life insurance benefit in the amount of each employee's annual salary, up to a maximum of \$150,000.00, if that program is available to add Employee, or if not available, at least in the amount of one hundred thousand dollars (\$100,000.00).
- N. Technical Equipment. The City shall provide necessary technical equipment as Employee and the City reasonably deems appropriate.

**5. TERMINATION BY CITY**

The Agreement is for employment at will. Without cause and without stating a reason, the City may terminate the Agreement with two weeks' advance written notice to Employee with the termination effective two weeks after the notice, unless the parties otherwise agree to a shorter notice period and effective date. The City may pay two weeks' salary in lieu of having Employee work the two-week notice period, in which case the termination may be made effective on the date of the notice.

**6. SEPARATION, ACCRUED LEAVE, AND SEVERANCE**

If Employee's employment is ended, City shall compensate Employee for all accrued but unused general leave.

If Employee's employment is terminated without cause during the first year of employment, the City will not offer a severance package.

If Employee's employment is terminated without cause after the first full year of employment, the City will offer a severance package, which will be three months' salary, if Employee signs and agrees to be bound by a written general release agreeing not to sue and waiving claims and recovery against the City and all City representatives and agents.

After the first full year of employment, if Employee's employment is terminated without cause, the severance will be increased by one (1) month's salary for each additional full year of



work completed up to a maximum of six (6) months' salary, if Employee signs and agrees to be bound by a written general release agreeing not to sue and waiving claims and recovery against the City and all City representatives and agents.

The City may choose to offer certain benefits as part of the severance and release agreement.

Under no circumstances shall the maximum cash settlement and any non-cash benefit provided to Employee exceed the statutory maximum amounts set forth in Government Code Sections 53260 and 53261 or other law.

#### **7. RESIGNATION BY EMPLOYEE**

In the event that Employee voluntarily resigns his position with the City, Employee shall give the City two months' written notice in advance, if feasible, with the resignation effective two months after the notice, unless the parties otherwise agree to a shorter or longer notice period and effective date.

#### **8. INDEMNIFICATION**

Beyond that required under federal, state or local law, City shall defend, save harmless and indemnify Employee against any third party tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring within the scope of employment and in the performance of Employee's duties as City Manager or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, except if the act or omission involved willful or wanton misconduct, actual fraud, corruption or actual malice, and/or except if applicable law prohibits the save harmless and indemnification. These exceptions apply to all paragraphs in this Section 8.

Employee may request and the City shall not unreasonably refuse to provide independent legal representation at City's expense if independent legal counsel for Employee is required under applicable law. Legal representation selected by City and provided by City for Employee shall extend until a final determination of the legal action, including any appeals brought by any party.

The City shall indemnify Employee against any and all losses, damages, judgments, interest, settlements, fines, court costs and other reasonable costs and expenses of legal proceedings including but not limited to attorneys' fees, and any other liabilities incurred by, imposed upon, or suffered by Employee in connection with or resulting from any claim, action, suit, or other proceedings, actual or threatened, arising out of or in connection with the performance of his duties which the City is required to defend under the previous paragraphs. Any settlement of any claim requires prior approval of City in order for indemnification, as provided in this Section, to be available.

Further, City agrees to pay all reasonable litigation expenses of Employee throughout the pendency of any litigation that the City is required to defend under the previous paragraphs. Such expense payments shall continue beyond Employee's service to City as long as litigation is pending.

Further, City agrees to pay Employee reasonable consulting fees not to exceed the Employee's last salary rate calculated as a per-hour rate (based on dividing the last weekly salary by 40 hours) and travel expenses when, during a period when Employee is no longer employed by City, Employee serves as a witness, advisor or consultant to City regarding pending litigation.

**9. BOND**

The City shall bear the full cost of any fidelity or other bonds required of Employee under any law or ordinance.

**10. PROVISIONS REQUIRED BY ASSEMBLY BILL 1344 (2011)**

As required by Government Code section 53243, to the extent this Agreement provides paid leave salary pending an investigation, any such salary provided for that purpose shall be fully reimbursed if Employee is convicted of a crime involving an abuse of his office or position. As required by Government Code section 53243.1, to the extent this Agreement provides funds for the legal criminal defense of Employee, any such funds provided for that purpose shall be fully reimbursed to the City if Employee is convicted of a crime involving an abuse of his office or position. As required by Government Code section 53243.2, regardless of the term of this Agreement, if it is terminated, any cash settlement related to the termination that Employee may receive shall be fully reimbursed to the City if Employee is convicted of a crime involving an

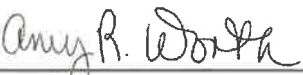
abuse of his office or position. As required by Government Code section 53243.3, if City provides, in the absence of a contractual obligation, for any of these payments mentioned in this paragraph, then Employee, if Employee receives any payments provided for those purposes, shall fully reimburse City if Employee is convicted of a crime involving an abuse of his office or position. The phrase "abuse of office or position" is defined by Government Code section 53243.4 to mean either: (a) An abuse of public authority, including, but not limited to, waste, fraud, and violation of the law under color of authority, or (b) A crime against public justice, including, but not limited to, a crime described in Title 5 (commencing with Section 67), Title 6 (commencing with Section 85), or Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

#### **11. GENERAL PROVISIONS**

- A. This Agreement shall constitute the entire Agreement between the parties, and this Agreement supersedes all prior agreements, documents, understandings, and discussions between the parties.
- B. This Agreement shall be binding upon and inure to the benefit of the successors in interest of Employee, including but not limited to heirs, devisees, assigns, fiduciaries and personal representatives of Employee.
- C. The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they were executed by both parties subsequent to the expungement or judicial modification of the invalid provision.
- D. This Agreement shall be construed in accordance with the laws of the State of California, and the parties agree that venue shall be in Contra Costa County, California.
- E. Some sections of this Agreement are intended, by their terms, to survive termination of Employee's employment with the City. Those sections shall survive termination of employment and/or this Agreement.


- F. This Agreement may be amended from time to time by mutual written agreement of the parties. This Agreement cannot be modified by the parties except in a writing that is signed by both parties and that is approved by City Council.
- G. Employee shall be subject to and comply with all federal, state and local laws regarding conflicts of interest.
- H. All documents provided to Employee by the City and all reports and supporting data prepared by Employee for the City are the sole property of the City and shall be delivered to the City upon termination of this Agreement or at the City's written request. All confidential reports, information, exhibits and data, including but not limited to electronic data, prepared or assembled by Employee while he serves as City Manager are confidential until released by the City to the public, and Employee shall not make any of these unreleased documents or information available to any individual or organization, other than the City Attorney without prior written consent signed by the City Council.
- I. The parties agree that any ambiguity in this Agreement shall not be construed or interpreted against, or in favor of, either party. The parties agree that ambiguities concerning matters addressed in this Agreement should be resolved in a manner consistent with the City Council's approved Manual governing the employment of mid-managers and directors, to the extent those provisions are not inconsistent with this Agreement.

**AUTHORIZED SIGNATURES:**

  
\_\_\_\_\_  
Amy R. Worth, Mayor  
City of Orinda

  
\_\_\_\_\_  
David Biggs, Employee

**ATTEST:**

  
\_\_\_\_\_  
Sheri Marie Smith  
City Clerk

**APPROVED AS TO FORM:**

*Deanna Mouser*

Deanna Mouser  
Employment Counsel for City

**FIRST AMENDMENT TO  
EMPLOYMENT AGREEMENT**

**between**

**CITY OF ORINDA AND DAVID BIGGS**

**(Effective January 3, 2022)**

**1. PARTIES AND EFFECTIVE DATE.**

The parties to this First Amendment to Employment Agreement (“First Amendment”) are the City of Orinda (“CITY”) and DAVID BIGGS (“Employee”), and the effective date of this First Amendment shall be January 3, 2022 (“Effective Date”). CITY and EMPLOYEE shall be collectively referred to as “parties”.

**2. PURPOSE**

The parties have previously entered into an Employment Agreement between CITY and EMPLOYEE (“Employment Agreement”) effective beginning April 5, 2021. The parties now wish to amend the Employment Agreement to modify EMPLOYEE’s compensation as follows:

**3. AMENDMENT**

Section 3.A. of the Employment Agreement entitled “COMPENSATION AND HOURS” is hereby amended as follows:

**3. COMPENSATION AND HOURS**

The City agrees to compensate Employee for his services as City Manager as follows:

- A. “As of the effective date, Employee’s base salary will be \$250,290.00 per year, which will be paid according to the City’s regular payroll periods, policies, and practices, except as modified by the specific terms of the Agreement.”

Except as otherwise specifically set forth in this First Amendment, the remaining terms and obligations set forth in the Employment Agreement between the CITY and EMPLOYEE shall remain in full force and effect.

This First Amendment shall be effective as of January 3, 2022, regardless of when executed by the parties.

**AUTHORIZED SIGNATURES:**

DocuSigned by:  
*Dennis Fay* 1/12/2022  
30DA7DE4022E486...  
Dennis Fay, Mayor  
City of Orinda

DocuSigned by:  
*David Biggs* 1/12/2022  
700BA8DCBBF5413...  
David Biggs, Employee

**ATTEST:**

DocuSigned by:  
*Sheri Smith* 1/12/2022  
8246939E00F6464...  
Sheri Marie Smith  
City Clerk

**APPROVED AS TO FORM:**

DocuSigned by:  
*Deanna Mouser* 1/12/2022  
45CBF0C8D39244F...  
Deanna Mouser  
Employment Counsel for City