

CITY OF YUBA CITY
STAFF REPORT

Date: October 21, 2008
To: Honorable Mayor & Members of the City Council
From: Administration
Presentation By: Steven R. Jepsen, City Manager

Summary

Subject: **Renewal of City Manager's Employment Agreement for 2008 through 2013**

Recommendation: Authorize the Mayor to sign the Agreement providing for the City Manager's Employment from November 1, 2008 through November 1, 2013.

Fiscal Impact: Approval of the 5 year Employment Agreement with Mr. Jepsen will provide for salary adjustments and compensation as follows: Year 1, no increase (results in a savings of \$14,169), subsequent years' adjustments based on the same salary adjustments provided to First Level Managers, plus a 2.5% merit increase in Year 2 and a 2.5% annual deferred salary contribution to the employee's retirement account.

Background:

Mr. Jepsen was hired as Yuba City's City Manager on May 30, 2006. The City Council entered into a 5 year Agreement with the City Manager on November 1, 2007. That agreement provided for employment through November 2013 with salary and compensation terms set for the life of the agreement and cost of living salary adjustments tied to those provided to the First Level Manager's Group.

Due to uncertainties in the economy and the changing nature of City tax receipts, Mr. Jepsen has voluntarily requested that the City Council forgo his contracted raise of 5.5% for the year, starting November 1, 2008. This will result in savings of \$14,169, including salary and benefits, for the year. Mr. Jepsen requested his Agreement be renewed for an additional five year term.

The revised 5 year Agreement extends the agreement through November of 2013 under similar terms and conditions of the prior agreement.

Analysis:

The revised Agreement is for a 5 year period extending from November 1, 2008 through November 1, 2013. The terms provide for:

- Year 1: Existing compensation of \$192,780 per year, plus existing 2% deferred compensation and auto allowance of \$400 per month.
- Year 2: Cost of living adjustment (same as First Level Managers), 2.5% merit increase, 2.5% deferred compensation increase, and auto allowance of \$400 per month.

Years 3-5: Cost of living adjustment (same as First Level Managers), 2.5% deferred compensation increase, and auto allowance of \$400 per month.

The deferred compensation increase of 2.5% per year for Years 2 through 5 as previously provided in his prior Agreement.

The revised Agreement provides for an increase in vacation time from 3 weeks to 4 weeks.

The revised Agreement provides Mr. Jepsen with a potential credit of 5.5% in the event of future compensation reductions for First Level Managers or other City Employee Groups.

This Agreement provides the same benefits as all other employees.

The Agreement provides the same termination clause as the prior limiting the City's obligation for dismissal to 6 month's salary and benefits. If Mr. Jepsen leaves for any other reason, he is entitled to no additional severance compensation beyond accrued benefits.

Fiscal Impact:

The modifications to the Agreement save the City \$14,169 in the first year. Future compensation adjustments will be based on one merit increase of 2.5% in Year 2 of the Agreement, a deferred compensation increase of 2.5%, per year, for Years 2 through 5, and an annual cost of living adjustment commensurate with the First Level Manager's Group.

Recommendation:

Authorize the Mayor to sign the Agreement providing for the City Manager's employment from November 1, 2008 through November 1, 2013.



Steven R. Jepsen
City Manager

Reviewed By:

Finance

City Attorney

Employment Agreement between the City of Yuba City and Steven R. Jepsen

This Agreement made and entered into this November 1, 2008, by and between the City of Yuba City, California, a general law city, (herein called "the Employer") and Steven R. Jepsen (hereinafter called "Employee") with respect to employment as the City Manager of Yuba City, California.

Section 1: Term

The term of this agreement shall be for an initial period of five years from November 1, 2008 to November 1, 2013. This Agreement shall automatically be renewed for a one year term unless notice that the Agreement shall terminate is given at least 6 months before the expiration date. In the event the agreement is not renewed, all compensation, benefits and requirements of the agreement shall remain in effect until the expiration of the term of the Agreement unless Employee voluntarily resigns. In the event that the Employee is terminated, as defined in Section 8 of this agreement, the Employee shall be entitled to severance as provided for in Section 9 of this Agreement.

Section 2: Duties and Authority

Employer agrees to employ Steven R. Jepsen as City Manager to perform the functions and duties specified in Government Code Section 36506 and Section 2-2.07 of the Yuba City Municipal Code. The City Manager also serves as the Executive Director of Redevelopment Agency. Employee shall hold the appointed office as City Manager at will and during the pleasure of the City Council and may be terminated with or without cause by the City Council. Employee understands that he has no constitutionally protected property or other interest in his employment as City Manager.

Section 3: Compensation

Base Salary: Employer agrees to pay Employee an annual base salary of \$192,780, with annual adjustments as follows:

- Year 1: No adjustment to cost of living or merit increase due to economic conditions.
- Year 2: Cost of living adjustment, plus a merit increase of 2.5%, and a deferred compensation increase of 2.5% as outlined in Section 6 of this Agreement.
- Years 3-5: Cost of living adjustment, plus a deferred compensation increase of 2.5% per year as outlined in Section 6 of this agreement.

Effective with the pay period that includes November 1, 2009, a cost of living adjustment will be based on the same formula used with the agreement for First Level Managers (not less than 2% or greater than 5%, based on California CPI for all consumers) or the actual annual raise given First Level Managers, whichever is less. Under the circumstances where Agreement modifications or renewals provide for a reduction in salary or benefits for the First Level Managers, or other Employee Groups, the City

Manager will be credited 5.5% toward such reductions based on voluntary deferral of pay increases provided in the prior Agreement.

Compensation shall be payable in installments at the same time that the other management employees of the Employer are paid.

Section 4: Health, Disability and Life Insurance Benefits

The Employer agrees to provide for health, hospitalization, surgical, vision, dental and comprehensive medical insurance for the Employee and his dependents equal to that which is provided to all other executive management employees of the Employer.

Section 5: Vacation and Leave

The Employee shall accrue sick leave on a rate provided to all other employees and shall accrue annual vacation at the starting rate of 4 weeks per year thereafter increasing at the same rate as all other employees with 4 weeks vacation accrual.

The Employee shall have access to a bank of 30 sick days to be used in the case of serious medical conditions. This leave can only be used to provide coverage during the waiting period between the onset of illness or disability and the point at which short or long term disability coverage takes effect and may be renewed after each occurrence.

The Employee is entitled to accrue all unused leave, without limit, and in the event the Employee's employment is terminated, either voluntarily or involuntarily, the Employee shall be compensated for all accrued vacation time, all paid holidays, executive leave, and other benefits to date.

The Employee shall annually be credited with ten (10) days of administrative leave.

Up to forty (40) hours of vacation or unused leave time may be converted annually to compensation at the discretion of the employee.

Section 6: Retirement

1. The Employer agrees to enroll the Employee into the applicable state or local retirement system and to make all the appropriate contributions on the Employee's behalf, for both the Employer and Employee share required.
2. In addition to the Employer's payment to the state or local retirement system (as applicable) referenced above, Employer agrees to execute all necessary agreements provided by ICMA Retirement Corporation or other Section 457 deferred compensation plan for Employee's participation in said supplementary retirement plan and, in addition to the base salary paid by the Employer to Employee, Employer agrees to pay an amount based on a percent of Employee's annual salary, as follows:

Year 1	2.0%
Year 2	4.5%
Year 3	7.0%

Year 4 9.5%
Year 5 12.0%

or maximum dollar amount permissible under Federal and state law (if less) into the designated plan on the Employee's behalf, in equal proportionate amount each pay period.

The dollar value of this contribution may be used, at the Employee's option, to purchase service from another qualified plan.

Section 7: General Business Expenses

1. Employer agrees to budget for and to pay for professional dues and subscriptions of the Employee necessary for continuation and full participation in ICMA and one other professional organization necessary and desirable for the Employee's continued professional participation, growth, and advancement, and for the good of the Employer.
2. Employer agrees to budget for and to pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions to adequately continue the professional development of Employee and to pursue necessary official functions for Employer, including but not limited to the ICMA Annual Conference, and/or the California League of Cities.
3. The employer shall provide the employee with an auto allowance of \$400 per month to provide compensation for auto use within the Yuba-Sutter-Sacramento region. Mileage reimbursement will only be paid outside a 50 mile radius of Yuba City for City business. The auto allowance will be reviewed annually for adjustments based on use and cost. Any change in auto allowance rate will require an amendment to this agreement.
4. The Employer shall provide Employee with a cell phone required for the Employee to perform the job and to maintain communication. Usage of cell phone shall be in accordance with the City's policy on cell phone usage.

Section 8: Termination

For the purpose of this agreement, termination shall occur when:

1. The City Council, by a three-fifths vote, terminates the Employee at a duly authorized public meeting.
2. If the Employer reduces the base salary, compensation or any other financial benefit of the Employee, unless it is applied in no greater percentage than the average reduction of all First Level Managers, such action shall constitute a breach of this agreement and will be regarded as a termination.
3. If the Employee resigns following a formal offer to accept resignation by three members of the city council then the Employee may declare a termination as of the date of the resignation offer.

Section 9: Severance

Severance shall be paid to the Employee when employment is terminated as defined in Section 8.

If the Employee is terminated, the Employer shall provide a minimum severance payment equal to six months salary at the current rate of pay. This severance shall be paid in a lump sum unless otherwise agreed to by the Employer and the Employee.

The Employee shall also be compensated for all accrued sick leave, vacation time, all paid holidays, and administrative leave. The Employer agrees to make a contribution to the Employee's deferred compensation account, and PERS, based on the value of this compensation calculated using the rate ordinarily contributed on regular compensation.

For a minimum period of six months following termination, the Employer shall pay the cost to continue the following benefits:

1. Health insurance for the employee and all dependents as provided in Section 4
2. Employer shall take all necessary actions to insure continuation of benefits and service credits with PERS for the severance period.

Employee shall not be entitled to severance pursuant to this section if (1) Employee voluntarily resigns or (2) Employee is terminated for willful misconduct, malfeasance, dishonesty for personal gain, conviction of a misdemeanor involving moral turpitude or conviction of a felony.

Section 10: Resignation

In the event that the Employee voluntarily resigns his/her position with the Employer, the Employee shall provide a minimum of 30 days notice unless the parties agree otherwise.

Section 11: Performance Evaluation

Employer shall annually review the performance of the Employee in September of each year subject to a process, form, criteria, and format for the evaluation which shall be mutually agreed upon by the Employer and Employee. The process at a minimum shall include the opportunity for both parties to: (1) prepare a written evaluation, (2) meet and discuss the evaluation, and (3) present a written summary of the evaluation results. The final written evaluation should be completed and delivered to the Employee within 30 days of the evaluation meeting.

Section 12: Hours of Work

It is recognized that the Employee must devote a great deal of time outside the normal office hours on business for the Employer, and to that end Employee shall be allowed to establish an appropriate work schedule.

Section 13: Outside Activities

The employment provided for by this Agreement shall be the Employee's sole employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to the Employer and the community, the Employee may, with Council approval, elect to accept limited teaching, consulting or other business opportunities with the understanding that such arrangements shall not constitute interference with nor a conflict of interest with his responsibilities under this Agreement.

Section 14: Indemnification

Beyond that required under Federal, State or Local Law, Employer shall defend, save harmless and indemnify Employee 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 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, unless the act or omission involved willful or wanton conduct. The Employee may request and the Employer shall not unreasonably refuse to provide independent legal representation at Employer's expense and Employer may not unreasonably withhold approval. Legal representation, provided by Employer for Employee, shall extend until a final determination of the legal action including any appeals brought by either party. The Employer 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 attorneys fees, and any other liabilities incurred by, imposed upon, or suffered by such Employee 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 or her duties. Any settlement of any claim must be made with prior approval of the Employer in order for indemnification, as provided in this Section, to be available.

Section 15: Bonding

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

Section 16: Other Terms and Conditions of Employment

1. The Employer, only upon agreement with Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Yuba City Municipal Code or any other law.
2. Except as otherwise provided in this Agreement, the Employee shall be entitled to the highest level of benefits that are enjoyed by department heads or general employees of the Employer as provided in the Personnel Rules and Regulations or by practice.

Section 17: Notices

Notice pursuant to this Agreement shall be given by depositing in the custody of the United States Postal Service.

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

Section 18: General Provisions

1. This Agreement sets forth and establishes the entire understanding between the Employer and the Employee relating to the employment of the Employee by the Employer. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The parties by mutual written agreement may amend any provision of this agreement during the life of the agreement. Such amendments shall be incorporated and made a part of this agreement.
2. Binding Effect. This Agreement shall be binding on the Employer and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.
3. Severability. 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 have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.
4. Effective Date. This Agreement shall become effective on November 1, 2007.

Dated: _____

Steven R. Jepsen, City Manager

Dated: _____

Rory Ramirez, Mayor

Attest:

Approved as to Form:

Terrel Locke, City Clerk

Timothy P. Hayes, City Attorney