

CITY OF YUBA CITY
BUSINESS FROM THE CITY COUNCIL

Date: July 16, 2019
To: Honorable Members of the City Council
Presentation By: Shon Harris, Mayor

Summary

Subject: City Manager Employment Agreement

Recommendation:

- A. Adopt a Resolution authorizing the Mayor to sign the City Manager Employment Agreement between the City of Yuba City and Michael Rock effective September 3, 2019
- B. Adopt a Resolution to authorizing the Finance Director to Amend the Salary Schedule for the City Manager
- C. Approve a supplemental appropriation of \$10,000 to the FY 2019/2020 adopted budget to Account Number 1305-62701 City Manager Professional Services

Fiscal Impact: \$5,628 annual increase in Salary and Benefits and \$10,000 for Moving Expenses

Purpose:

To establish the terms and conditions of the City Manager's contract.

Background:

The City of Yuba City hired Bob Murray and Associates to provide an Executive Search for the new City Manager of Yuba City. The City received over 70 applications and Michael Rock rose to the top.

Mr. Rock has a Master's degree in Public Policy and Administration from CSU Sacramento and brings many years of local government experience to Yuba City.

Discussion:

The terms of the Agreement provides for the following:

- Effective September 3, 2019, Employer agrees to pay Employee an annual base salary of \$205,000
- Employee will receive a vehicle allowance of \$500 per month
- Life insurance and Long-term disability benefits shall be maintained for the Employee at the same level as all other Executive Management employees of the Employer
- Employer agrees to provide Comprehensive health insurance for Employee with an 80/20 split, with Employee paying 20% of costs
- Employer agrees to enroll Employee into the Public Employee Retirement System (PERS)

- Employer will reimburse Employee up to \$10,000 for moving expenses.

Recommendation:

- A. Adopt a Resolution authorizing the Mayor to sign the City Manager Employment Agreement between the City of Yuba City and Michael Rock effective September 3, 2019
- B. Adopt a Resolution to authorizing the Finance Director to Amend the Salary Schedule for the City Manager
- C. Approve a supplemental appropriation of \$10,000 to the FY 2019/2020 adopted budget to Account Number 1305-62701 City Manager – Professional Services

Attachments:

- 1. Resolution – Agreement
 - a. Copy of Employment Agreement
- 2. Resolution - Salary Schedule
 - a. Copy of Salary Schedule

Prepared by:

/s/ Terrel Locke

Terrel Locke
Assistant to the City Manager

Submitted by:

/s/ Diana Langley

Diana Langley
Interim City Manager

Reviewed by:

Finance

RB

City Attorney

SLC by email

ATTACHMENT 1

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUBA CITY
APPROVING A CITY MANAGER EMPLOYMENT AGREEMENT
BETWEEN THE CITY OF YUBA CITY AND MICHAEL ROCK**

WHEREAS, Yuba City Municipal Code section 2-2.01 creates and establishes the office of the City Manager and provides that the City Manager shall be appointed by the City Council wholly on the basis of his administrative and executive ability and qualifications, and shall hold office for and during the pleasure of the City Council of the City of Yuba City; and

WHEREAS, the permanent City Manager position in the City of Yuba City has been vacant, and through its professional services recruitment firm Bob Murray & Associates, the Council has been actively recruiting for the position since the prior City Manager's departure; and

WHEREAS, as a result of this active search and recruitment, the City has identified Michael Rock, who possesses the experience, qualifications, knowledge, skills and abilities to serve as the permanent City Manager; and

WHEREAS, the City Council wishes to hire Mr. Rock as the permanent City Manager; and

WHEREAS, per Government Code §36506, the City Council shall fix the compensation of all appointive officers and employees by resolution. Such officers and employees shall hold office at the pleasure of the City Council; and

WHEREAS, per Yuba City Municipal Code section 2-2.05, the City Manager shall receive such salary and benefits as set forth in an employment agreement between the City Council and City Manager.

NOW, THEREFORE, be it resolved by the City Council of Yuba City as follows:

1. Michael Rock is hereby appointed as the City Manager for the City of Yuba City effective September 3, 2019.
2. The City Manager Employment Agreement between the City of Yuba City and Michael Rock, a copy of which is attached hereto as Exhibit "A", is approved. The Mayor is authorized to execute the agreement on behalf of the City.
3. The City Manager's Base Salary is set at \$205,000 effective September 3, 2019.
4. This Resolution shall immediately take effect upon passage.

The foregoing resolution was duly and regularly introduced, passed, and adopted by the City Council of the City of Yuba City at a regular meeting thereof held on the 16th day of July 2019.

AYES:

NOES:

ABSENT:

ATTEST:

Shon Harris, Mayor

Patricia Buckland, City Clerk

APPROVED AS TO FORM
COUNSEL FOR YUBA CITY:

Shannon Chaffin, City Attorney
Aleshire & Wynder, LLP

Attachment(s):

Exhibit A: Employment Agreement (City Manager)

Exhibit A

AGREEMENT NO. _____

EMPLOYMENT AGREEMENT

This **EMPLOYMENT AGREEMENT** (“Agreement”) is made and entered into on July 16, 2019, and effective September 3, 2019 (“Effective Date”), by and between the **CITY OF YUBA**, a municipal corporation (“City” herein), and **MICHAEL ROCK** (“Employee” herein) for the position of City Manager.

R E C I T A L S

WHEREAS, City has undertaken an extensive search for City Manager; and

WHEREAS, Employee has demonstrated the knowledge, skills and abilities to serve as City Manager, and possesses the qualifications of a permanent City Manager under the criteria established by the City Council during City Manager recruitment; and

WHEREAS, the City Council now wishes to hire Employee as the City Manager; and

WHEREAS, the position of City Manager is an “at will” position, not subject to the City’s personnel rules; and

WHEREAS, it is in the City’s best interests to permanently employ Employee as City Manager, subject always to the direction of the City Council.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Yuba City and Employee, incorporating the foregoing recitals, mutually agree as follows:

SECTION I. AUTHORITY, DUTIES, TERM AND COMPENSATION

1. Employment At Will

City agrees to employ Michael Rock as City Manager to perform the functions and duties specified in Sections 2-2.01-2-2.07 of the Yuba City Municipal Code and as further set forth herein. Employee shall hold the appointed office as City Manager and shall at all times serve at the will and pleasure of the City Council and thus may be terminated at any time with or without notice or cause. As such Employee understands and acknowledges that Employee has no constitutionally protected property or other interest in this employment except as set forth contractually herein.

The terms of City’s Merit System Rules set forth in the City of Yuba City Rules and Regulations (“Personnel Rules”), shall not apply to Employee unless made expressly applicable, except that all polices and regulations on the prevention of harassment, discrimination and retaliation, or as required by state or federal law shall apply to Employee.

This Agreement is not intended to, nor does it confer any right to any property interest in continued employment, nor any due process property right to a hearing before or after a decision by the City Council to terminate Employee’s 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 Employee subject only to the provisions set forth herein. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign at any time from his position with City, subject only to the provisions included herein.

2. Scope Of Work And Other Requirements

As City Manager, Employee agrees to exercise all powers and perform all duties set forth in Yuba City Municipal Code Section, 2-2.07, as may be amended, including the following duties:

- a.** Advise City on all issues and activities related to City management;
- b.** Perform all duties typical of a City Manager in a general law City Manager run government;
- c.** Enforce and faithfully observe all franchises, contracts, privileges, and permits granted by the City Council;
- d.** Exercise authority over heads of departments, subordinate officers and employees, except the City Attorney and other positions specified by state or local law;
- e.** Conduct studies and recommend to the City Council administrative reorganization as needed;
- f.** Recommend ordinances and the adoption of measures for the benefit of the City to the City Council;
- g.** Attend all meetings of the City Council;
- h.** Prepare and submit the proposed annual budget and the proposed annual salary plan to the City Council;
- i.** Provide reports to City Council relating to City expenditures;
- j.** Make investigations into the affairs of the City and any department or division thereof, ensure proper performance of City contracts, and investigate all complaints relating to City administration;
- k.** Exercise general supervision over all public places and public property under the control and jurisdiction of the City Council;
- l.** Cooperate with all City Agencies, Boards and Commissions and attend meetings as necessary;
- m.** Be available to the City Council Members, City Attorney, Department Heads, and staff members, by email and telephone, during normal business hours five (5) days per week (Monday-Friday), and in emergency situations;
- n.** Perform all tasks and duties as deemed necessary by the City Council.

3. Permanent Residence

City acknowledges that it cannot require Employee to live in Yuba City, however, emergency situations and public relations issues may arise wherein the City Manager will need to respond quickly and be available within the City of Yuba City. Therefore, it is imperative that Employee's permanent residence be situated within forty five (45) linear miles of City of Yuba City's City Hall (1201 Civic Center Boulevard). Permanent residence is defined as a place where a person lives more than six (6) months out of any calendar year. Failure to meet this requirement within ninety (90) days shall be cause for termination.

4. Term

The term of this Agreement shall be from September 3, 2019 to September 2, 2022, or the date of earlier termination in accordance with the provisions in this Agreement. City's election not to renew this Agreement shall entitle Employee to severance as provided in Section III of this Agreement.

This Agreement shall terminate and expire at the end of the term unless amended by the parties.

5. Compensation

- a. Base Salary.** Annual base salary for all work or services called for under this Agreement shall equal a total of two hundred and five thousand dollars (\$205,000.00), which shall be earned on a pro-rata basis and paid every two weeks per the City's regular payroll dates beginning the effective date of this Agreement.
- b. Salary Adjustment.** At the conclusion of each year in the position and an evaluation rating of "Satisfactory" (or equivalent) or better as provided for in Section III below, the Council, in its sole discretion, may grant Employee an increase in salary based upon satisfactory or above performance. If an evaluation required by Section III is delayed or not completed until after Employee's anniversary date, any subsequent annual increase shall be retroactively effective to the anniversary of the effective date of this Agreement for the applicable evaluation period.
- c. Cost of Living Adjustment.** Upon conclusion of a performance evaluation that is satisfactory or above, the parties shall negotiate in good faith a potential cost-of-living increase in compensation based upon the prior years' salary.

Except as set forth in this Agreement, Employee shall not be eligible for any other benefits or compensation not specifically provided for, hence the compensation set forth in this section shall be Employee's total cash compensation under this Agreement. The position of City Manager is exempt under the Fair Labor Standards Act and, therefore, no overtime pay will be paid to Employee.

SECTION II. EMPLOYEE BENEFITS.

1. Health Insurance

City agrees to provide comprehensive health insurance for Employee and to pay 80% of the premiums with Employee to pay 20% of the premiums. City agrees to offer dental and vision insurance for Employee and to pay 90% of the premiums with Employee to pay 10% of the premiums. All premium amounts, including coverage for qualifying dependents, shall be calculated in the same manner as is done for executive management employees. Upon proof of qualifying outside medical coverage, Employee shall be eligible for cash-in-lieu of payments of medical insurance calculated and paid in the same manner as is done for executive management employees. No cash-in-lieu option is available for dental and vision insurance.

2. Disability

City shall offer short-term disability to Employee at Employee's expense and at the same level as is done for executive management employees. City shall cover and make premium payments for long term disability for Employee at the same level as is done for executive management employees.

3. Life Insurance

City shall pay the premium due for a term life insurance policy at the same level offered to executive management employees. Employee shall name the beneficiary of the life insurance policy. This amount shall be included in Employee's regular payroll check.

4. Vehicle Allowance

City shall pay to Employee, during the term of this Agreement, the total sum of five hundred dollars (\$500.00) per month as a vehicle allowance to be used to lease, own, operate and maintain a vehicle. Upon termination of employment or resignation, the vehicle allowance shall be pro-rated to reflect the number of days during the last month employment that the Employee is employed with the City. Employee shall be responsible for paying for liability, property damage, and comprehensive insurance coverage upon such vehicle and shall be responsible for all expenses relating to the ownership, operation, maintenance, repair, and regular replacement of said vehicle.

All employees are required to adhere to all City policies and procedures regarding use of City vehicles.

5. Expenses

City shall reimburse Employee for all reasonable out-of-pocket expenses incurred while performing the duties described in this Agreement, which may include travel, meals, lodging expenses, and parking fees, consistent with the City's reimbursement policies. City shall reimburse Employee for mileage for Employee travel outside the County of Sutter necessary to perform the duties described in this Agreement. Employee shall submit a receipt and a description of the expenses to the City's Finance Director within thirty (30) days of the date each expense is incurred as a condition of obtaining reimbursement.

In addition, City agrees to pay for Employee's membership in the International City Management Association ("ICMA"), and membership in the California City Management Foundation ("CCMF").

6. Cell Phone

City shall provide Employee a cell phone at City's expense, which shall be used by Employee to conduct official City business consistent with the City's policy on cell phone usage.

7. Vacation, Leave And Holidays

- a. Employee shall accrue sick leave and vacation at the rate provided to executive management employees of the Employer. Employee shall start at the bi-weekly rate of vacation accrual at Employee's total equivalent years of service as a public employee. Payment for unused sick leave will be based on Employee's total equivalent years of service as a public employee.
- b. The Employee is entitled to accrue all unused sick leave, without limit, and vacation leave accrual shall have the same limits as set forth in the Personnel Rules and Regulations. In the event Employee's employment is terminated, either voluntarily or involuntarily, the Employee shall be compensated for all accrued vacation time, all paid holidays, administrative leave, sick leave, and any other benefits to date, in accordance with the Personnel Rules and Regulations.
- c. Employee shall be credited with eighty (80) hours of administrative leave annually. Up to forty (40) hours of unused leave may be converted annually to compensation at the discretion of the Employee. At the end of each calendar year, the Employee may cash out a maximum of forty (40) hours to be paid in the first pay period of the succeeding calendar year, and/or may carry over the unused balance up to forty (40) hours, subject to the following limitations: Employee shall be allowed to carry over unused administrative leave to the next calendar year, subject to a maximum carry over balance of eighty (80) hours.

Two floating holidays per fiscal year shall be provided which must be used during the fiscal year. These two floating holidays shall have no cash value and may not be carried over to a subsequent fiscal year.

Holidays with pay will be provided as outlined in section 2.10 of the City's Personnel Rules and Regulations.

8. Retirement: Public Employees' Retirement System ("PERS")

- a. The City agrees to enroll the Employee into the Public Employee Retirement System ("PERS") and to make all the appropriate contributions on the Employee's behalf, both for the City and the Employee share.
- b. The City shall pay and report 100% of the Employer payment of member contributions ("EPMC") to PERS as additional compensation for retirement purposes only.

- c. Employee shall cost share 7% of City's contribution towards PERS.
- d. Employee shall receive a City contribution of two (2%) percent of Employee's annual salary paid into a City deferred compensation plan. The dollar value of this contribution may be used at the Employee's option, to purchase service from another qualified plan.
- e. In addition to the City's payment to state or local public retirement system (as applicable) referenced above, City agrees to execute all necessary agreements provided by the ICMA Retirement Corporation or other Section 457 deferred compensation plan for Employee's participation in said supplementary retirement plan.
- f. If Employee retires from City, Employee shall have the "Employee Only" medical premium paid by City until such time as Employee is eligible to receive Medicare. If the Employee receives a disability retirement, this benefit is not available.

The amount of premium paid by the City will be determined each year by what the City's maximum health insurance contribution is for "Employee Only" for First Level Managers. The retiree (Employee) will be responsible for paying the difference based on the City's contribution. If the retiree selects a health plan that costs less than the City's contribution, the retiree will not be eligible to receive the cash difference. All premium contributions must be received one month in advance and it is the responsibility of the retiree to ensure that the City receives the payment. Failure to pay the retiree's contribution in a timely manner may result in the loss of the benefit.

9. Moving Expenses

City shall reimburse Employee up to ten thousand dollars (\$10,000.00) for moving-related expenses to help defray Employee's relocation expenses related to employment with the City; provided, that reimbursement for those moving-related expenses shall only be due upon the City's receipt of satisfactory proof of actual expenditures paid by Employee for those expenses, and approval of those expenditures by the Finance Director. Such expenses shall be reimbursed to Employee within thirty (30) days after submission of that satisfactory proof.

SECTION III. PERFORMANCE EVALUATION.

At least one time per year, not later than Employee's anniversary date as calculated from the first day of employment under this Agreement, the City Council shall conduct a performance evaluation of Employee. If Employee has performed "satisfactorily" (or equivalent) during the evaluation period, Employee may be eligible for a compensation increase pursuant to the terms specified in Section 1, paragraph 5 above.

SECTION IV. TERM AND TERMINATION.

1. Term

This Agreement shall be in effect from its effective date, and run for three (3) consecutive years commencing September 3, 2019.

2. Resignation.

If Employee elects to resign at any time during the term of this Agreement, Employee may do so upon giving City thirty (30) days' written notice.

3. Retirement

If Employee elects to retire, Employee shall inform City, in writing, at least thirty (30) days prior to the effective date of such retirement. City shall cooperate fully with Employee and CalPERS to provide all information in a timely manner.

4. Termination "Without Cause"

City reserves the right to terminate this Agreement and Employee's employment at any time, "without cause" or advance notice, except as limited by Yuba City Municipal Code, section 2-2.11 which states:

Notwithstanding the provisions of this article, proceedings for removal of the city manager shall not be instituted other than for cause, during or within a period of ninety (90) days next succeeding any general municipal election held in the city at which election a member of the city council is elected. The purpose of this provision is to allow any newly elected member of the city council or a reorganized city council to observe the actions and ability of the city manager in the performance of the powers and duties of his office. After the expiration of the ninety (90) day period aforementioned, the provisions of Article IV as to the removal of the city manager shall apply and be effective.

In the event that Employee is terminated "without cause," Employee shall be entitled to severance pay of six (6) months of Employee's base monthly compensation as adjusted from time to time as set forth in Section I, paragraph 5, above. The severance pay will be in addition to pay accrued, but not remitted, prior to the notice of termination. The severance rights provided in this paragraph shall constitute the sole and only entitlement of Employee with respect to severance pay in the event of the termination other than for cause or by expiration of this Agreement. Employee expressly waives any and all other rights with respect to severance pay except as provided herein, including any and all rights Employee may have to a separation payment pursuant to any joint powers insurance authority memorandum of liability coverage then in effect. Any and all severance rights are conditioned upon and in consideration for execution of the standard "Agreement of Separation, Severance, and General Release" attached hereto in form only as Exhibit "A."

Notwithstanding the foregoing, should such severance payment exceed the amount authorized to be paid under Government Code, Section 53260, the amount paid to Employee shall be reduced in the amount necessary to comply with said statute.

Pursuant to Government Code section 53243.2, regardless of the term of the Agreement, if the Agreement is terminated, any cash settlement, such as severance payments, related to the termination that Employee may receive from the City shall be fully reimbursed to the City if Employee is convicted of a crime involving an abuse of his office or position with the City.

5. Termination “With Cause”

The City reserves the right to terminate this Agreement and Employee’s employment at any time, “with Cause.” If this Agreement and Employee’s employment are terminated “for Cause,” Employee shall not be entitled to any severance benefits. “Cause” shall include, but not be limited to:

- a. Theft, or attempted theft, financial mismanagement, material dishonesty, willful or persistent breach of duties, engaging in conduct tending to bring embarrassment or disrepute to the City, unauthorized or excessive absences.
- b. A formal investigation commissioned by the City Council and conducted by a third party investigator hired by the City Council in which the City Council has determined that the Employee has engaged in unlawful discrimination or harassment of Employees or any third party while on City premises or on City time. City is not required to wait until Employee has exhausted any appeal rights prior to terminating this Agreement “for cause.”
- c. Conviction of any felony, or for any misdemeanor involving moral turpitude, corruption or dishonesty. “Conviction” shall include any guilty plea, plea of nolo contendere, or any other disposition other than a dismissal of charges or acquittal. City is not required to wait until Employee has exhausted any appeal rights prior to terminating this Agreement “for cause.”
- d. Employee’s death.
- e. Employee’s permanent disability if such disability precludes Employee from performing his essential job duties for more than six (6) cumulative months after attempts at reasonable accommodation pursuant to the Americans with Disabilities Act and/or California’s Fair Employment & Housing Act.

6. Mutual Cooperation and Non-Disparagement. Employee and City agree to do all things and deliver all instruments necessary to fulfill and effect the provisions of this Agreement and to protect the respective rights of the Employee and City. As a material inducement for the parties to enter into this Agreement, the parties agree that (i) in the event that there is a separation from employment, the City and Employee agree that no member of the City Council, the City Executive Staff or the Employee will make any written, oral or electronic statement on behalf of the City or Employee to any member of the public, the press, or any other City Employee concerning the Employee’s separation from employment except in the form of a joint press release or statement, the content of

which is mutually agreed to by the City and Employee; and (ii) that the joint press release or statement shall not contain any text or information that either party considers negative or neither party will directly disclose, disseminate, or use confidential information concerning the other party. The parties agree the following joint press release or a statement that is mutually agreed to and fully complies with the following:

“[name] has served as the City Manager for the City of Yuba City since _____ of 2019. Effective [date], [name] will no longer be serving as the City Manager. The City of Yuba City thanks [name] for his/her service and wishes him/her the best on his/her new endeavors.”

The parties further agree that the following statement by the Employee is mutually agreed to and fully complies with the requirements of this section:

“I have served as the City Manager for the City of Yuba City since _____ of 2019. Effective [date], I will no longer be serving as the City Manager. I thank the City for allowing me to be of service, and wish it the best as it continues forward with new endeavors.”

Notwithstanding anything else in this paragraph nothing in this Agreement will prevent or prohibit Employee or City, or its Employees, officers or consultants, from testifying in any legal proceeding, defending or prosecuting any litigation or any action, from cooperating in good faith in any governmental investigation or action, from making any report required by law, from effectuating separation or termination, conducting any internal investigation, or taking actions otherwise required by law. This provision may be enforced only by a party to this Agreement seeking equitable or specific performance in any court of competent jurisdiction in the County of Sutter. Prior to taking enforcement action, the moving party/petitioner must give the other party thirty (30) business days’ notice and the opportunity to settle, mediate or cure any defect or dispute arising from this Agreement.

SECTION V. MISCELLANEOUS

1. NO WAIVER OF DEFAULT

The failure of any party to enforce against another party any provision of this Agreement shall not constitute a waiver of that party’s right to enforce such a provision at a later time, and shall not serve to vary the terms of this Agreement.

2. GOVERNING LAW

The laws of the State of California will govern the validity of this Agreement, its interpretation and performance. Any litigation arising in any way from this Agreement shall be brought in Sutter County, California.

3. FURTHER ASSURANCES

Each party shall execute and deliver such papers, documents, and instruments, and perform such acts as are necessary or appropriate, to implement the terms of this Agreement and the intent of the parties to this Agreement.

4. NOTICES

All notices relative to this Agreement shall be given in writing and shall be personally served or sent by certified or registered mail and be effective upon depositing in the United States mail. The parties shall be addressed as follows, or at any other address designated by notice:

City: **City of Yuba City**
City Hall
1201 Civic Center Blvd.
Yuba City, California 95993

Employee: **Michael Rock**
(Address in Employee's Personnel File)

5. ASSIGNMENT

Neither this Agreement, nor any interest in it, may be assigned or transferred by any party without the prior written consent of all the parties. Any such assignment will be subject to such terms and conditions as City may choose to impose.

6. BINDING EFFECT

The rights and obligations of this Agreement shall inure to the benefit of, and be binding upon, the parties to the contract and their heirs, administrators, executors, personal representatives, successors and assigns, and whenever the context so requires, the masculine gender and includes the feminine and neuter, and the singular number includes the plural. This Agreement may be executed in any number of counterparts, each of which shall be considered as an original and be effective as such.

7. EXHIBITS

In the event of a conflict between the terms, conditions or specifications set forth in this Agreement and those in exhibits attached hereto, the terms, conditions, or specifications set forth in this Agreement shall prevail.

8. MERGER AND MODIFICATION

This contract sets forth the entire Agreement between the parties and supersedes all other oral or written representations. This contract may be modified only in a writing approved by the City Council and signed by all the parties.

9. EXECUTION

This Agreement is effective the date first stated above. It is the product of negotiation and all parties are equally responsible for authorship of this Agreement. Section 1654 of the California Civil Code shall not apply to the interpretation of this Agreement.

NON-INTEREST With the exception of Employee, no officer or employee of City shall hold any interest in this Agreement (California Government Code section 1090).

10. ACKNOWLEDGEMENT OF STATUTES THAT MAY AFFECT EMPLOYMENT RELATIONSHIP.

City and Employee acknowledge that, in addition to the statutes previously referenced in this Agreement, the following statutes shall govern this employment relationship under the circumstances described in the statutes:

Government Code, section 53243 states that on or after January 1, 2012, any contract executed or renewed between a local agency, such as the City, and an officer or Employee of a local agency, such as Employee, that provides paid leave salary offered by the local agency to the officer or Employee pending an investigation shall require that any salary provided for that purpose be fully reimbursed if the officer or Employee is convicted of a crime involving an abuse of his or her office or position.

Government Code, section 53243.1 states that on or after January 1, 2012, any contract executed or renewed between a local agency, such as the City, and an officer or Employee of a local agency, such as Employee that provides funds for the legal criminal defense of an officer or Employee shall require that any funds provided for that purpose be fully reimbursed to the local agency if the officer or Employee is convicted of a crime involving an abuse of his or her office or position.

Government Code, section 53243.3 states that on or after January 1, 2012, if a local agency, such as the City, provides, in the absence of a contractual obligation, for any of the payments described in the corresponding article of the Government Code, then the Employee or officer, such as Employee, receiving any payments provided for those purposes shall fully reimburse the local agency that provided those payments in the event that the Employee or officer is convicted of a crime involving the abuse of his or her office or position.

Government Code sections 87100 *et seq.*, section 1090 and section 1126, and all other similar statutory and administrative rules, prohibit conflicts

of interest. During the term of this Agreement, Employee shall comply with all those requirements of law, and shall not engage in any business or transaction or maintain a financial interest which conflicts, or reasonably might be expected to conflict, with the proper discharge of Employee's duties under this Agreement.

Employee represents that Employee has reviewed, is familiar with, and agrees to comply fully with each of these provisions if any of these provisions are applicable to Employee, including that Employee agrees that any cash settlement or severance related to a termination that Employee may receive from City shall be fully reimbursed to the local agency if Employee is convicted of a crime involving an abuse of Employee's office or position.

11. PARTIAL INVALIDITY.

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

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12. INDEPENDENT LEGAL ADVICE.

City and Employee represent and warrant to each other that each has received legal advice from independent and separate legal counsel with respect to the legal effect of this Agreement, or had the opportunity to do so, and City and Employee further represent and warrant that each has carefully reviewed this entire Agreement and that each and every term thereof is understood and that the terms of this Agreement are contractual and not a mere recital. This Agreement shall not be construed against the Party or its representatives who drafted it or who drafted any portion thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, the day and year first-above written.

“CITY”

“EMPLOYEE”

By: _____
SHON HARRIS
Mayor

By: _____
MICHAEL ROCK

Date: _____

Date: _____

APPROVED AS TO FORM:

By: _____
SHANNON CHAFFIN, ESQ.
Aleshire & Wynder, LLP
City Attorney

Attachment:

Exhibit A: Agreement Of Separation, Severance And General Release

EXHIBIT A

AGREEMENT OF SEPARATION, SEVERANCE, AND GENERAL RELEASE

1. PARTIES

This Agreement of Separation, Severance, and General Release (hereinafter referred to as the “Agreement”) is entered into effective this _____ day of _____, _____ by and between the City of Yuba City, a municipal corporation (“City” herein), and [name (“Employee” herein)].

2. RECITALS

2.1. Employee was hired by the City as an at-will City Manager effective on or about _____, 2019, serving at the pleasure of the of the City Council of the City pursuant to a written Employment Agreement, a copy of which is attached hereto as Exhibit “A” (“Employment Agreement”). Employee is currently _____ years old.

2.2. The City and Employee desire that Employee separate from employment with the City and enter into this Agreement whereby Employee receives severance compensation in exchange for executing a general release and waiver of any and all claims that Employee may have against the City, including but not limited to, its elected and non-elected officials, Employees, attorneys, and agents. Accordingly, the parties hereto intend by this Agreement to mutually conclude any and all employment relationships between the City and Employee by means of Employee’s separation _____ as of _____, _____. This Agreement sets forth the full and complete terms and conditions concluding Employee’s employment relationship with the City and any obligations related thereto, including any provided under the Employment Agreement.

2.3 In accordance with this Agreement and with applicable state and federal laws, Employee acknowledges that Employee has been advised of Employee’s post-employment rights, including but not limited to, Employee’s rights under the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”), the Employee Retirement Income Security Act of 1974 (“ERISA”), and the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), and of his rights under the Age Discrimination in Employment Act, and the Older Workers Benefit Protection Act.

3. CONSIDERATION

3.1 Employee shall receive payment to him at the time of his voluntary separation all earned salary, accrued fringe benefits as detailed in the Employment Agreement, and/or all other wage compensation/benefits owed to Employee upon separation of employment, as required by state, federal or municipal law or any other Agreement with the City.

3.2. In exchange for the waivers and releases set forth herein, the City shall cause to be paid to Employee an additional compensatory payment as severance pay by means of a lump sum payment of _____ and _____ cents (\$_____.00), as set forth in in the form of a check made payable to Employee to be mailed to Employee at Employee’s home address via certified mail return receipt requested within thirty (30) business days after the Effective Date

(as defined below) of this Agreement. The lump sum payment shall be subject to applicable state and federal withholdings as determined appropriate by the City.

3.3 In exchange for the severance payment provided for herein, Employee, and on behalf of Employee's spouse, heirs, representatives, successors, and assigns, hereby releases, acquits, and forever discharges the City, and each of its predecessors, successors, assigns, officials, employees, representatives, agents, insurers, attorneys, and all persons and entities acting by, through, under, or in concert with any of them, and each of them (hereinafter referred to as "the City Parties"), from any and all claims, charges, complaints, contracts, understandings, liabilities, obligations, promises, benefits, Agreements, controversies, costs, losses, debts, expenses, damages, actions, causes of action, suits, rights, and demands of any nature whatsoever, known or unknown, suspected or unsuspected, which Employee now has or may acquire in the future, or which Employee ever had, relating to or arising out of any act, omission, occurrence, condition, event, transaction, or thing which was done, omitted to be done, occurred or was in effect at anytime from the beginning of time up to and including [REDACTED], [REDACTED] (hereinafter referred to collectively as "Claims"), without regard to whether such Claims arise under the federal, state, or local constitutions, statutes, rules or regulations, or the common law. Employee expressly acknowledges that the Claims forever barred by this Agreement specifically include, but are not limited to, claims based upon any alleged breach of the contract or any other Agreement of employment, any demand for wages, overtime or benefits, any claims of violation of the provisions of ERISA, COBRA or HIPAA, any alleged breach of any duty arising out of contract or tort, any alleged wrongful termination in violation of public policy, any alleged breach of any express or implied contract for continued employment, any alleged employment discrimination or unlawful discriminatory act, or any claim or cause of action including, but not limited to, any and all claims whether arising under any federal, state or local law prohibiting breach of employment contract, wrongful termination, or employment discrimination based upon age, race, color, sex, religion, handicap or disability, national origin or any other protected category or characteristic, and any and all rights or claims arising under the California Labor Code or Industrial Welfare Commission Wage Orders, the Federal Fair Labor Standards Act, the California Fair Employment and Housing Act, California Government Code §§ 12, 900 et seq., the Americans With Disabilities Act, Title VII of the Civil Rights Act of 1964, the Public Safety Officers Procedural Bill of Right Act, and any other federal, state, or local human rights, civil rights, or employment discrimination or Employee rights statute, rule, or regulation. Nothing herein shall be interpreted as a release or waiver of any workers' compensation claims or in any way prohibit or prevent Employee from participating in any claims or administrative action brought by a state or federal agency. Furthermore, nothing herein shall be interpreted as a release or waiver of the City's statutory obligations relative to providing defense and indemnification of public Employees, if any, including but not limited to Government Code Sections 825-825.6 and Sections 995-996.6.

4. SPECIFIC ACKNOWLEDGMENT OF WAIVER OF CLAIMS UNDER ADEA AND OWBPA

The Age Discrimination in Employment Act of 1967 (hereinafter referred to as the "ADEA") makes it illegal for an employer to discharge any individual or otherwise discriminate with respect to the nature and privileges of an individual's employment on the basis that the individual is age forty (40) or older. The Older Workers Benefit Protection Act (hereinafter referred to as the "OWBPA," 29 U.S.C. § 626, et. seq., Pub L 101-433, 104 Stat. 978 (1990)) further augments the ADEA and prohibits the waiver of any right or claim under the ADEA,

unless the waiver is knowing and voluntary. By entering into this Agreement, Employee acknowledges that Employee knowingly and voluntarily, for just compensation in addition to anything of value to which Employee was already entitled, waives and releases any rights he may have under the ADEA and/or OWBPA. Employee further acknowledges that Employee has been advised and understands, pursuant to the provisions of the ADEA and OWBPA, that:

(a) This waiver/release is written in a manner understood by Employee;

(b) Employee is aware of, and/or has been advised of, Employee's rights under the ADEA and OWBPA, and of the legal significance of Employee's waiver of any possible claims Employee currently may have under the ADEA, OWBPA and/or similar age discrimination laws;

(c) Employee is entitled to a reasonable time of at least twenty-one (21) days within which to review and consider this Agreement and the waiver and release of any rights Employee may have under the ADEA, the OWBPA and similar age discrimination laws; but may, in the exercise of Employee's own discretion, sign or reject this Agreement at any time before the expiration of the twenty-one (21) days;

(d) The waivers and releases set forth in this Agreement shall not apply to any rights or claims that may arise under the ADEA and/or OWBPA **after** the Effective Date of this Agreement;

(e) Employee has been advised by this writing that Employee should consult with an attorney prior to executing this Agreement;

(f) Employee has discussed this waiver and release with, and been advised with respect thereto by, Employee's counsel of choice or at least had the opportunity to do so, and Employee represents by signing this Agreement that Employee does not need any additional time within which to review and consider this Agreement;

(g) Employee has **seven (7) days following Employee's execution** of this Agreement to revoke the Agreement;

(h) Notice of revocation within the seven (7) day revocation period must be provided, in writing, to the City pursuant to Paragraph 8.9 herein, and must state, "I hereby revoke my acceptance of our Agreement of Severance and General Release"; and

(i) This Agreement shall not be effective until all parties have signed the Agreement and ten (10) days have passed since Employee's execution of same ("Effective Date").

5. UNKNOWN CLAIMS

In relation to the release provisions of Paragraphs 3 and 4 above, Employee understands that California Civil Code section 1542 reads as follows:

“General Release--Claims Extinguished”

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

Employee hereby waives the protection of California Civil Code section 1542.

6. WAIVER OF ADDITIONAL CLAIMS

Employee hereby waives any provisions of state or federal law that might require a more detailed specification of the claims being released pursuant to the provisions of Paragraphs 3, 4, and 5 above.

7. REPRESENTATIONS AND WARRANTIES

Each of the parties to this Agreement represents and warrants to, and agrees with, each other party as follows:

7.1. Advice of Counsel: The parties hereto have received independent legal advice from their respective attorneys concerning the advisability of entering into and executing this Agreement or have been given the opportunity to obtain such advice. The parties acknowledge that they have been represented by counsel of their own choice in the negotiation of this Agreement, that they have read this Agreement; that they have had this Agreement fully explained to them by such counsel, or have had such opportunity to do so and that they are fully aware of the contents of this Agreement and of its legal effect.

7.2. No Fraud in Inducement: No party (nor any officer, agent, employee, representative, or attorney of or for any party) has made any statement or representation or failed to make any statement or representation to any other party regarding any fact relied upon in entering into this Agreement, and neither party relies upon any statement, representation, omission or promise of any other party in executing this Agreement, or in making the settlement provided for herein, except as expressly stated in this Agreement.

7.3. Independent Investigation: Each party to this Agreement has made such investigation of the facts pertaining to this settlement and this Agreement and all the matters pertaining thereto, as it deems necessary.

7.4. Mistake Waived: In entering into this Agreement, each party assumes the risk of any misrepresentation, concealment or mistake. If any party should subsequently discover that any fact relied upon by it in entering into this Agreement was untrue, or that any fact was concealed from it, or that its understanding of the facts or of the law was incorrect, such party shall not be entitled to any relief in connection therewith, including without limitation on the generality of the foregoing any alleged right or claim to set aside or rescind this Agreement. This Agreement is intended to be, and is, final and binding between the parties, regardless of any claims of misrepresentation, promise made without the intent to perform, concealment of fact, mistake of fact or law, or any other circumstance whatsoever.

7.5. Later Discovery: The parties are aware that they may hereafter discover claims or facts in addition to or different from those they now know or believe to be true with respect to the matters related herein. Nevertheless, it is the intention of the parties that Employee fully, finally and forever settle and release all such matters, and all claims relative thereto, which do now exist, may exist or have previously existed against the City or the City Parties. In furtherance of such intention, the releases given here shall be, and remain, in effect as full and complete releases of all such matters, notwithstanding the discovery or existence of any additional or different claims or facts relative thereto.

7.6. Indemnification: Employee agrees to indemnify and hold harmless the City or the City Parties from, and against, any and all claims, damages, or liabilities sustained by them as a direct result of the violation or breach of the covenants, warranties, and representations undertaken pursuant to the provisions of this Agreement. Employee understands and agrees that Employee shall be exclusively liable for the payment of all taxes for which Employee is responsible, if any, as a result of Employee's receipt of the consideration referred to in Paragraph 3 of this Agreement. In addition, Employee agrees fully to indemnify and hold the City Parties harmless for payment of tax obligations as may be required by any federal, state or local taxing authority, at any time, as a result of the payment of the consideration set forth in Paragraph 3 of this Agreement.

7.7. Future Cooperation & Consultation Fees: Employee shall execute all such further and additional documents as shall be reasonable, convenient, necessary or desirable to carry out the provisions of this Agreement. Employee shall provide the City with consultation services (including deposition or trial testimony) in any litigation involving the City which is reasonably related to acts or occurrences transpiring during Employee's employment. Said services shall be provided as needed by the City at the rate of Employee's annual base compensation at the time of separation divided by 2,500. For example, if the annual base compensation at time of separation was \$150,000, then the services would be provided by Employee at the rate of \$60 per hour.

7.8. Return of Confidential Information and Property: Prior to the separation all City keys, equipment, passwords, computer identification cards or codes, and other equipment or materials or confidential documents provided to or obtained by Employee during the course of Employee's employment with the City shall be provided by Employee to the Finance Director or designee.

7.9. No Pending Claims and/or Actions: Employee represents that Employee has not filed any complaints or charges against the City or the City Parties with any local, state or federal agency or court; that Employee will not do so at any time hereafter for any claim arising up to and including the Effective Date of this Agreement; and that if any such agency or court assumes jurisdiction of any such complaint or charge against the City or the City Parties on behalf of Employee, whenever or where ever filed, Employee will request such agency or court to withdraw from the matter forthwith. Nothing herein shall be interpreted as a release or waiver of any workers' compensation claims or in any way prohibit or prevent Employee from participating in any claims or administrative action brought by a state or federal agency.

7.10. Ownership of Claims: Employee represents and warrants as a material term of this Agreement that Employee has not heretofore assigned, transferred, released or granted, or purported to assign, transfer, release or grant, any of the Claims disposed of by this Agreement. In executing this Agreement, Employee further warrants and represents that none of the Claims

released by Employee thereunder will in the future be assigned, conveyed, or transferred in any fashion to any other person and/or entity.

7.11 Enforcement Fees and Costs: Should any legal action be required to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs in addition to any other relief to which that party may be entitled.

7.12 Authority: Each party represents to the other that it has the right to enter into this Agreement, and that it is not violating the terms or conditions of any other Agreement to which they are a party or by which they are bound by entering into this Agreement. The parties represent that they will obtain all necessary approvals to execute this Agreement. It is further represented and agreed that the individuals signing this Agreement on behalf of the respective parties have actual authority to execute this Agreement and, by doing so, bind the party on whose behalf this Agreement has been signed.

7.13 Unemployment: Nothing in this Agreement shall limit Employee's ability to apply for unemployment benefits, and the City will not contest such an application by the Employee.

8. MISCELLANEOUS

8.1. No Admission: Nothing contained herein shall be construed as an admission by the City of any liability of any kind. The City denies any liability in connection with any claim and intends hereby solely to avoid potential claims and/or litigation and buy its peace.

8.2. Governing Law: This Agreement has been executed and delivered within the State of California, and the rights and obligations of the parties shall be construed and enforced in accordance with, and governed by, the laws of the State of California.

8.3. Full Integration: This Agreement is the entire Agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written Agreements and discussions. This Agreement may be amended only by a further Agreement in writing, signed by the parties hereto.

8.4. Continuing Benefit: This Agreement is binding upon and shall inure to the benefit of the parties hereto, their respective agents, spouses, employees, representatives, officials, attorneys, assigns, heirs, and successors in interest.

8.5. Joint Drafting: Each party agrees that it has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the parties agree that same shall not be construed against any party.

8.6. Severability: In the event that any term, covenant, condition, provision or Agreement contained in this Agreement is held to be invalid or void by any court of competent jurisdiction, the invalidity of any such term, covenant, condition, provision or Agreement shall in no way affect any other term, covenant, condition, provision or Agreement and the remainder of this Agreement shall still be in full force and effect.

8.7. Titles: The titles included in this Agreement are for reference only and are not part of its terms, nor do they in any way modify the terms of this Agreement.

8.8. Counterparts: This Agreement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all parties. Delivery of executed originals of this Agreement, as well as any instrument contemplated in connection with this Agreement, may be effected by facsimile and/or electronic transmission, and in such event, copies of executed originals so delivered may be used in place of, and shall have the same force and effect as, the executed originals.

8.9. Notice: Any and all notices given to any party under this Agreement shall be given as provided in this paragraph. All notices given to either party shall be made by certified or registered United States mail, or personal delivery, at the noticing party's discretion, and addressed to the parties as set forth below. Notices shall be deemed, for all purposes, to have been given and/or received on the date of personal service or three (3) consecutive calendar days following deposit of the same in the United States mail.

City: CITY OF YUBA CITY
City Hall
1201 Civic Center Blvd.
Yuba City, California 95993

Employee: [NAME]
Address set forth in Employee's Personnel File. If no address is in the Personnel File, notice may be sent to Employee's business or home.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, the day and year first-above written.

"CITY"

"EMPLOYEE"

By: _____
[NAME]
Mayor

By: _____
[NAME]

Date: _____

Date: _____

APPROVED AS TO FORM:

For CITY

For EMPLOYEE (if represented)

By: _____
[NAME]
City Attorney

By: _____
Name:
Title:

ATTACHMENT 2

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUBA CITY
AUTHORIZING THE FINANCE DIRECTOR TO AMEND THE SALARY SCHEDULE
FOR THE CITY MANAGER**

WHEREAS, the efficiency of governmental operations is of paramount concern to the City Council, City Management and taxpayers alike; and

WHEREAS, it is in the best interest of the City to establish salaries at levels that attract and retain quality employees.

NOW, THEREFORE, BE IT RESOLVED and ordered by the City Council of the City of Yuba City as follows:

SECTION I.

The salary schedule shall be amended:

From:						5
JCN	TITLE					
8070	CITY MANAGER	-	-	-	-	\$16,714
		-	-	-	-	\$96.43
To:						5
JCN	TITLE					
8070	CITY MANAGER	-	-	-	-	\$17,083
		-	-	-	-	\$98.56

SECTION II.

The Director of Finance is hereby authorized to amend the salary schedule to implement the provisions of this resolution.

The above modifications shall become effective with the payroll period beginning July 16, 2019.

The forgoing Resolution of the City Council of the City of Yuba City was duly introduced, passed and adopted at a regular meeting thereof held on the 16th day of July, 2019.

AYES:

NOES:

ABSENT:

Shon Harris, Mayor

ATTEST:

Patricia Buckland, City Clerk

APPROVED AS TO FORM
COUNSEL FOR YUBA CITY:

Shannon Chaffin, City Attorney
Aleshire & Wynder, LLP

Attachment(s):

Exhibit A: Salary Schedule

**CITY OF YUBA CITY
SALARY SCHEDULE AND GENERAL COMPENSATION PLAN
EFFECTIVE JULY 1, 2019**

Department Heads

JCN	CLASSIFICATION	Bargaining Group	SALARY STEPS					
			1	2	3	4	5	
8070 *	CITY MANAGER	CM	-	-	-	-	17,083	Monthly
			-	-	-	-	98.56	Hourly
8160*	ASSISTANT TO THE CITY MANAGER	Contract	6,236	-	-	-	7,581	Monthly
			35.98	-	-	-	43.73	Hourly
8090*	PUBLIC WORKS DIRECTOR//CITY ENGINEER	DH	11,817	-	-	-	14,364	Monthly
			68.17	-	-	-	82.87	Hourly
8040*	DIRECTOR OF DEVELOPMENT SERVICES	DH	10,718	-	-	-	13,028	Monthly
			61.84	-	-	-	75.16	Hourly
8010*	DIRECTOR OF HUMAN RESOURCES	DH	10,020	-	-	-	12,180	Monthly
			57.81	-	-	-	70.27	Hourly
8140*	DIRECTOR OF COMMUNITY SERVICES	DH	8,600	-	-	-	12,642	Monthly
			49.61	-	-	-	72.93	Hourly
8170	DEPUTY CITY MANAGER, ECONOMIC GROWTH AND PUBLIC AFFAIRS	Contract	7,920	-	-	-	12,000	Monthly
			45.69	-	-	-	69.23	Hourly
8030*	FIRE CHIEF	DH	12,461	-	-	-	15,146	Monthly
			71.89	-	-	-	87.38	Hourly
8150*	HUMAN RESOURCES MANAGER	Contract	6,726	-	-	-	8,174	Monthly
			38.80	-	-	-	47.16	Hourly
8050*	POLICE CHIEF	DH	12,461	-	-	-	15,146	Monthly
			71.89	-	-	-	87.38	Hourly
8020*	DIRECTOR OF FINANCE	DH	10,022	-	-	-	13,764	Monthly
			57.82	-	-	-	79.41	Hourly
8200	DIRECTOR OF ENGINEERING-SBFCA	Contract	10,000	-	-	-	15,000	Monthly
			57.69	-	-	-	86.54	Hourly

7/10/2019 9:50 AM

- * Indicates classifications which are not eligible for overtime compensation and are exempt from the Fair Labor Standards Act (FLSA).
Executive Unit employees who are certified as bilingual will receive a bilingual pay incentive of \$100.00 per month:

EMPLOYEE BARGAINING GROUPS

CON - Confidential

PUE, Local #1 - General Employees

DH - Department Head

MM - Middle Manager

FM - Fire Management

FLM - 1st Level Manager

PD - Police Department

FIRE - Fire Department

PS - Police Sergeant