

CITY OF YUBA CITY
STAFF REPORT

Date: February 4, 2020

To: Honorable Mayor and Members of the City Council

From: City Manager's Office

Presentation By: Michael Rock, City Manager

Summary

Subject: Executive Service Contract Terms

Recommendation: Adopt a Resolution authorizing the City Manager to execute the Executive Service Employment Agreements

Fiscal Impact: There is no increase in the compensation of Executive Service Employees.

Purpose:

To approve new Executive Services employee agreements.

Background:

The Executive Service employees are the positions of: 1) Police Chief, 2) Fire Chief, 3) Public Works Director, 4) Finance Director, 5) Community Services Director, 6) Development Services Director, 9) Assistant to the City Manager, 10) Human Resources Director. The Executive Service employees serve in "at will" positions, as the terms and conditions reflect. Executive Service employees have individual employment contracts; the current employment contract with Executive Service employees are from 2014. In the past, contract amendments have been utilized to reflect changing terms and conditions and the City Manager has executed amendments with the City Council approved terms. At this time, the City Manager has updated the Executive Services agreements.

Analysis:

The existing language in the agreements for Public Safety Executive Service Employees will remain as previously negotiated, with the exception of the proposed new terms. Some additional language changes were also directed by the City Manager. The new agreements add proposed language changes for the Executive Service agreements to modify the severance pay from three months to six months and eliminate the confusing severance language pertaining to CalPERS and benefits, some of which is not compliant with CalPERS restrictions. Also, it is recommended to increase the calendar year maximum to \$1,750 and for vision, the benefit maximum (as defined in the plan document) shall increase to \$600 every 24 months, effective January 1, 2020. At this time, there is no cost increase for the City to provide these enhanced benefits due to excess reserves in the dental/vision program.

Some minor additional language needs to be included in a couple of the agreements to identify all Executive Service terms and conditions. Specifically, as an example, for the Fire Chief, language shall be added to encompass mutual aid response including the terms of his services and corresponding payments for services. If approved, the City Manager would execute the new terms with the Executive Service employees.

Fiscal Impact:

There is no increase in the compensation or direct benefits to the Executive Service Employees.

Alternatives:

Do not approve Executive Service employee terms and conditions and provide staff direction.

Recommendation:

Adopt a resolution authorizing the City Manager to execute new Executive Service Employment Agreements.

Attachments:

1. Executive Service Agreement Resolution
2. Example Agreement

Prepared By:

[/s/ Natalie Springer](#)
Natalie Springer
Human Resources Director

Submitted By:

[/s/ Michael Rock](#)
Michael Rock
City Manager

Reviewed By:

Finance
City Attorney

[SM](#)

[SS by email](#)

ATTACHMENT 1

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUBA CITY
APPROVING THE EXECUTIVE SERVICE UPDATED CONTRACT TERMS
JULY 1, 2019 – JUNE 30, 2020**

WHEREAS, Executive Service employees include the following positions: Police Chief, Fire Chief, Public Works Director, Finance Director, Community Services Director, Development Services Director, Assistant to the City Manager, and Human Resources Director; and

WHEREAS, the City recognizes the Executive Service employees commitment to the City and its citizens while providing outstanding and dedicated service to all; and

WHEREAS, Executive Service employees are “at will” employees and have individual employee contracts that reflect the terms of their employment; and

WHEREAS, per the City Manager the Executive Service’s contracts are being updated and

WHEREAS, the Executive Service employees terms for severance shall be modified from three months to 6 months’ severance pay, and the previous severance language shall be eliminated (in particular as to language pertaining to CalPERS and benefits); and

WHEREAS, the Executive Service employees shall increase the calendar year maximum to \$1,750 and for vision, the benefit maximum (as defined in the plan document) shall increase to \$600 every 24 months, effective January 1, 2020.

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

- A. Authorize the City Manager to execute the modified severance language with Executive Service employees.

The foregoing 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 4th day of February 2020.

AYES:

NOES:

ABSENT:

Shon Harris, Mayor

ATTEST:

Patricia Buckland, City Clerk

Approved as to form:

Stacey Sheston
BB&K, Special Counsel

ATTACHMENT 2

Employment Agreement between the City of Yuba City and _____ (Name) _____

This Agreement made and entered into on (Date) by and between the City of Yuba City, California, a general law city, (herein called "the Employer") and _____ (Name) (hereinafter called "Employee") with respect to employment as the _____ (Title) for Yuba City, California.

Section 1: Term

The term of this agreement shall be ongoing unless notice that the Agreement shall terminate is given or the Agreement is replaced or amended by mutual agreement of both parties in the future. The employee acknowledges he/she serves in the position of _____ (Title) at the discretion of the City Manager.

Section 2: Duties and Authority

Employer agrees to employ _____ (Name) as _____ (Title) to perform the functions and duties specified in the City's job description for this position. Employee shall hold the appointed office at will and at the pleasure of the City Manager. The Employee understands that he/she is an FLSA-exempt employee and has no constitutionally protected property or other interest in this employment.

Section 3: Compensation

Base Salary: Employer agrees to pay Employee an annual base salary of \$_____ with annual adjustments based on performance and/or market comparisons at the discretion of the City Manager and City Council.

Compensation shall be payable in salary installments at the same City payroll intervals that the other Executive Management employees of the City are paid, and shall be subject to all applicable payroll taxes and withholdings.

In the event that there are other wage reductions or furlough programs implemented, the same conditions that are applied to other bargaining units and management organizations may also be implemented for the (Title) after discussion with the City Manager.

Section 4: Health, Disability and Life Insurance Benefits

1. The Employer agrees to provide for comprehensive medical insurance and vision/dental on a pre-tax basis for the Employee and his/her dependents equal to that which is provided to employees in the Mid-Management Unit (see Exhibit A).
2. The split for medical premium costs shall be 80%/20% between the City and the Employee, with the City paying 80% of the total premium cost and the Employee

paying 20%. The contribution shall be based on the lowest cost health plan available to miscellaneous employees in the Mid-Manager unit (see Exhibit A).

3. Employee shall pay the same premium amount of the City's dental and vision plan as provided to miscellaneous employees in the Mid-Manager unit, as set forth in Exhibit A.
4. Cash-in-Lieu payments of medical insurance shall be calculated as outlined below.

Cash-in-Lieu payments are when an employee reduces the level of health care coverage rather than the entire coverage. Employees who reduce the level of health care coverage to which they are entitled; i.e., from full family coverage to employee plus one, or employee only coverage, or from employee plus one to employee only coverage, shall be entitled to Cash-in-Lieu benefit.

The employee making the election covered above, shall receive the difference between the Cash-in-Lieu benefit to which they would have been entitled had they waived coverage at their present coverage level and Cash-in-Lieu benefit for the lower level elected.

Cash-in-Lieu of medical insurance payments to employees electing to forego health insurance coverage will be based on the percentage of the current lowest cost health plan available to the majority of City employees (this amount is subject to change based on the City's negotiations with bargaining units):

Employee only:	25%
Employee plus one dependent:	25%
Family coverage:	30%

5. Life insurance benefit amount of \$150,000 shall be maintained for the Employee.
6. At the City's expense, the City shall provide long-term disability coverage for Employee.

Section 5: Vacation and Leave

The Employee shall accrue sick leave and vacation at the rate provided to employees pursuant the City's personnel rules and regulations.

The Employee is entitled to accrue all unused sick leave, without limit, and vacation leave accrual shall have the limits as set forth in the Personnel Rules and Regulations. In the event the Employee's employment is terminated, either voluntarily or involuntarily, the Employee shall be compensated for all accrued vacation, holiday leave, and executive

leave, and may be eligible for accrued sick leave compensation (or CalPERS conversion) pursuant to the Personnel Rules and the City's then-current CalPERS contract. The Employee shall annually be credited with eighty (80) hours of administrative leave on the first non-payroll week in January.

In December of each year, Employee may annually make an irrevocable election to cash out a maximum of 40 hours of administrative leave that will be accrued in the following calendar year. The election shall be made on the form provided by the City for this purpose. The hours selected for cash-out will be paid in the first non-payroll week of January of the following year. Any unused balance up to 40 hours will be carried over to the next calendar year, subject to a maximum accrual of 160 hours.

Two (2) floating holidays per fiscal year shall be provided which must be used during the fiscal year. These two floating holidays have no cash value and may not be carried over to a subsequent fiscal year.

Section 6: Retirement

1. The Employer agrees to enroll the Employee into the Public Employee Retirement System (PERS) and to make all the appropriate contributions on the Employee's behalf, for both the Employer and Employee share required.
2. All retirement terms shall be in accordance with state law and with the Mid-Manager Letter of Understanding (Exhibit A), Article 2, which includes the cost sharing provisions. The Employee shall cost share 7% (9%) towards the employer contribution rate.
3. The City shall pay 100% of the Employee's contributions to PERS. For eligible employees, the City shall report 100% of the employer payment of member contributions (EPMC) to PERS as additional compensation for retirement purposes only.
4. Employee shall receive a monthly City contribution of \$200 paid into a City of Yuba City deferred compensation plan.
5. In addition to the Employer's payment to the state or local public 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.
6. If the Employee retires from the City, has at least five years of City service, and is of full retirement age (55 for miscellaneous and 50 for public safety) the Employee shall have the "Employee Only" medical premium paid by the City (at the value based on the lowest cost health plan available, see Exhibit A) until such time as the 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 "Mid-Manager" Employees. The retiree will be responsible for paying the difference based on the City's contribution. The retiree health care plan is separate from the employee health care plan which will result in a difference in premiums between the two plans. The cost of health care, if any, beyond the normal single employee health care contribution by the City will be the responsibility of the Employee. If the retiree selects a health plan that costs less than the City's contribution, they 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.

Section 7: General Business Expenses

1. Employer agrees to budget for and to pay for reasonable professional dues and subscriptions of the Employee necessary for continuation and full participation in two professional organizations necessary and desirable, in the discretion of the City Manager, for the Employee's continued professional participation, growth, and advancement, and for the good of the Employer.
2. Subject to preapproval by the City Manager, Employer agrees to budget for and to pay for reasonable 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.
3. 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

This Agreement shall terminate when:

1. The City Manager terminates the Employee with or without cause.
2. The Employer reduces the base salary, compensation or any other benefit of the Employee, unless it is applied in no greater percentage than the average of all Executive Management.
3. The Employee retires or resigns for any reason. If the Employee resigns following a formal request for or offer to accept Employee's resignation by the City Manager, then the Employee may declare a termination without cause (under subsection (8)(1) above) as of the date of the resignation offer.

Section 9: Severance

Severance shall be paid to the Employee when the Employee is terminated without cause as defined in Section 8.

If the Employee is terminated without cause, the Employer shall provide a severance payment equal to six months' salary at the then-current rate of pay and value of health insurance premiums (at then-existing coverage levels). This severance shall be paid in lump sum unless otherwise agreed by the Employer and the Employee, and shall be subject to all applicable payroll taxes and withholdings.

Employee shall not be eligible for severance pay section if: a) the Employee voluntarily resigns, or b) the Employee is terminated for willful misconduct, malfeasance, dishonesty for personal gain, conviction of a misdemeanor involving moral turpitude or conviction of a felony.

Pursuant to Government Code 53243.2, if the Employee is terminated, any severance or cash settlement related to the termination that the Employee receives from the City, shall be fully reimbursed to the City if the Employee is convicted of a crime involving an abuse of her office or position.

Section 10: Other Benefits

Any other benefits received by the Mid-Manager bargaining unit as outlined in Exhibit A will be applicate to (Name) (i.e. bilingual pay).

Section 11: Resignation

In the event the Employee voluntarily resigns their position with the Employer, the Employee shall provide a minimum of two (2) weeks' notice, unless the parties agree otherwise.

Section 12: Performance Evaluation

Employer shall annually review the performance of the Employee. The evaluation process, form, criteria, and format for the evaluation shall be created by the Employer. At a minimum the evaluation 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 13: Hours of Work

Employee is generally expected to be working during the City's regular business hours. 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 or occasionally adjust an established work schedule, subject to the approval of the City Manager.

Section 14: Outside Activities

The employment provided for by this Agreement shall be the Employee's primary employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to the Employer and the community, the Employee may, with City Manager 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 15: 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 (Title) 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. In accordance with the rights and limitations of the California Government Claims Act, 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 attorney's 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. Pursuant to Government Code 53243.1, if any City funds are provided for the legal criminal defense, said funds shall be fully reimbursed to the City if the Employee is convicted of a crime involving an abuse of her office or position.

Section 16: Other Terms and Conditions of Employment

Employee understands and agrees that Employee's post-City employment is restricted by the "revolving door" limitations set forth in Ordinance No. 2020-_____. Further, 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.

Section 17: Notices

Notice pursuant to this Agreement shall be given by depositing in the custody of the United States Postal Service or by traceable overnight delivery service (e.g. FedEx or equivalent).

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 or traceable overnight delivery 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 (Date).

****Signatures continue on next page****

Dated: _____

(Name)
(Title)

Dated: _____

Michael Rock
City Manager

Attest:

Approved as to Form:

Patricia Buckland, City Clerk
