

CITY OF YUBA CITY
STAFF REPORT

Date: March 17, 2020
To: Honorable Mayor & Members of the City Council
From: City Council
Presentation By: Mayor Shon Harris

Summary:

Subject: Interim City Manager Employment Agreement with Diana Langley

Recommendation: Adopt a Resolution Approving the Agreement for Employment of Interim City Manager between Diana Langley and the City of Yuba City

Fiscal Impact: Compensation rates are not changed; employee may potentially cash a portion of vacation leave accruals that have been earned

Purpose:

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

Background:

Ms. Langley served as the Interim City Manager from February 15, 2019 to September 3, 2019 after the previous City Manager retired. Since that time, she has been serving as the Acting City Manager when the City Manager is absent or otherwise unavailable. Ms. Langley was an outstanding Interim City Manager, providing stability and leadership to the organization and Council, and has performed well as an Acting City Manager. Ms. Langley has agreed to serve as Interim City Manager until the process to hire a permanent City Manager completed.

The City Council appointed Diana Langley as the Interim City Manager during a special meeting on March 12, 2020.

Ms. Langley is currently serving as the Public Works Director, and is employed under an agreement with the City dated February 4, 2020, as amended ("Public Works Director Agreement").

Analysis:

Although the City Council has already appointed Ms. Langley, any compensation or other benefits established by agreement must be approved at a regular meeting of the City Council. A proposed agreement with Ms. Langley for Interim City Manager services is attached as an exhibit to the Resolution included as part of this staff report item. The proposed Agreement provides that:

- Ms. Langley acknowledges that she will serve in the position of Interim City Manager.
- At her request, Ms. Langley will continue to receive the same compensation and benefits as she currently does under the Public Works Director Agreement, including vacation leave, except that she will be able to cash out up to an additional 120 hours of vacation

leave that she has already accrued.

- The Agreement will automatically terminate upon the appointment of an interim or permanent City Manager, or December 16, 2020, whichever is earlier. Either the City Council or Ms. Langley will also have the option to terminate the Agreement prior to that date.
- After her services as Interim City Manager are concluded, Ms. Langley will continue to be the Public Works Director consistent with the Public Works Director Agreement.

The matter is now being brought before the City Council for approval of the Agreement regarding the specific terms of appointment.

Fiscal Impact:

The base annual salary is not changed; however employee may bank, and potentially cash a portion, of vacation time earned as noted above.

Recommendation:

Adopt a Resolution Approving the Agreement for Employment of Interim City Manager between Diana Langley and the City of Yuba City.

Attachments:

- Resolution Approving an Interim City Management Employment Agreement between the City of Yuba City and Diana Langley (with attached Agreement for Employment of Interim City Manager).

Prepared and submitted By:

Shannon Chaffin, City Attorney

Reviewed By:

Diana Langley _____

Human Resources _____

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUBA CITY
APPROVING AN INTERIM CITY MANAGEMENT EMPLOYMENT
AGREEMENT BETWEEN THE CITY OF YUBA CITY AND DIANA LANGLEY**

WHEREAS, the City of Yuba (the “City”) has begun an active recruitment process to hire a permanent City Manager; and

WHEREAS, the City is in need of an Interim City Manager pending hiring of a permanent City Manager; and

WHEREAS, Diana Langley (“Ms. Langley”) is employed by the City as its Public Works Director and entitled to certain benefits in accordance with the terms and conditions of that certain Employment Agreement between the Public Works Director and the City, dated February 4, 2020, as amended (“Public Works Director Agreement”); and

WHEREAS, Ms. Langley has served as the Acting City Manager with the City in the absence or unavailability of the City Manager, and possesses the skills and knowledge necessary to perform the duties of Interim City Manager; and

WHEREAS, Ms. Langley desires to temporarily perform and assume responsibility for the provisions of professional services to the City and its related agencies as the Interim 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, the parties desire to establish the terms and conditions of Ms. Langley’s services as the Interim City Manager to the City and its related agencies through an agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF YUBA CITY AS FOLLOWS:

Section 1. The City Council finds that all of the facts set forth in the recitals above of this Resolution are true and correct and incorporated herein.

Section 2. The “Agreement for Employment of Interim City Manager” between the City and Ms. Langley (the “Agreement”), which is attached hereto as Exhibit “A”, is approved.

Section 3. The effective date of the Agreement date shall be March 12, 2020 and shall remain in effect until such time as the City hires a permanent City Manager or pursuant to Sections 1.4 and 3.3.

Section 4. The Mayor is authorized to execute the agreement on behalf of the City.

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 17th day of March, 2020.

Ayes:

Noes:

Absent:

Shon Harris, Mayor

ATTEST:

Terrel Locke, Deputy City Clerk

APPROVED AS TO FORM
COUNSEL FOR YUBA CITY

SHANNON CHAFFIN, City Attorney
Aleshire & Wynder, LLP

EXHIBIT "A"

**CITY OF YUBA CITY
AGREEMENT FOR EMPLOYMENT OF INTERIM CITY MANAGER**

CITY OF YUBA CITY

AGREEMENT FOR EMPLOYMENT OF INTERIM CITY MANAGER

This AGREEMENT FOR EMPLOYMENT OF INTERIM CITY MANAGER (“Agreement”) is effective the 12th day of March, 2020, by and between the CITY OF YUBA CITY, a municipal corporation (“City”) and Diana Langley, an individual (“Diana Langley” or “Employee”).

RECITALS

WHEREAS, the City is beginning the process of an active recruitment process to hire a permanent City Manager; and

WHEREAS, the City is in need of an Interim City Manager pending hiring of a permanent City Manager; and

WHEREAS, prior to the Effective Date, Employee was employed by the City as its Public Works Director and entitled to certain benefits in accordance with the terms and conditions of that certain Employment Agreement between the Public Works Director and the City, dated February 4, 2020, as amended (“Public Works Director Agreement”); and

WHEREAS, Employee has previously served as the Interim City Manager, as well as the Acting City Manager with the City in the absence or unavailability of the City Manager, and possesses the skills and knowledge necessary to perform the duties of Interim City Manager; and

WHEREAS, Employee desires to temporarily perform and assume responsibility for the provisions of professional services to the City and its related agencies as the Interim City Manager; and, except as provided hereinafter, upon the conclusion of her services as Interim City Manager, she shall return to the performance of her duties as the Public Works Director in accordance with the Public Works Director Agreement earning the same compensation and enjoying the same benefits as she would be entitled to under said agreement; and

WHEREAS, during the effective period of this Agreement, the parties desire Employee to continue to received the same benefits and salary that she would normally receive under the Public Works Director Agreement, except as specifically modified herein; and

WHEREAS, the parties wish to establish the terms and conditions of Employee’s services as the Interim City Manager to the City and its related agencies through this Agreement.

NOW, THEREFORE, incorporating the foregoing recitals herein, City and Employee mutually agree as follows:

AGREEMENT

1.0 EMPLOYMENT & DUTIES

1.1 Duties. City hereby appoints and contracts Diana Langley as Interim City Manager for the City to perform the functions and duties of the City Manager, as specified in Section 2-2.07 of the Yuba City Municipal Code and in the Government Code of the State of California, and to perform such other legally permissible and proper duties and functions as the City Council shall, from time-to-time, direct or assign, including overseeing the City's Public Works Department and performing the functions of its department head until the appointment of an Interim Public Works Director or termination of this Agreement. As Interim City Manager, Employee's duties would include the appointment, promotion, demotion and removal of all officers and employees of the City, excepting elective officers and the City Attorney, including appointment of an acting City Manager, interim assistant directors and interim directors as may be indicated in the best interests of the City. Employee shall devote her best efforts and full-time attention to performance of these duties.

1.2 Work Schedule. It is recognized that Interim City Manager is expected to engage in the hours of work that are necessary to fulfill the obligations of the position, must be available at all times, and must devote a great deal of time outside the normal office hours to the business of the City. In addition to personal presence, availability also includes availability by phone, text or email as may be reasonably appropriate for the situation. In emergency situations, Employee would normally be expected to be physically available or have appointed an acting City Manager to be physically available. Employee acknowledges that proper performance of the duties of the Interim City Manager will require Employee to generally observe normal business hours, as set by the City and may be duly revised from time-to-time and will also often require the performance of necessary services outside of normal business hours. Notwithstanding the foregoing, the City will permit Employee such reasonable "time off" as would otherwise be customary for other executive employees of the City so long as the time off does not interfere with normal business. Employee must reasonably be available to maintain the customary and normal business of the City as typically would be expected for other executive employees of the City.

1.3 Other Activities. Employee shall focus her professional time, ability, and attention to City business during the term of this Agreement. Employee shall not engage, without the express prior written consent of the City Council, in any other business duties or pursuits whatsoever, or directly or indirectly render any services of a business, commercial, or professional nature to any other person or organization, whether for compensation or otherwise, that is or may be competitive with the City, that might cause a conflict-of-interest with the City, or that otherwise might interfere with the business or operation of the City or the satisfactory performance of the functions and duties of the Employee.

1.4 Employment Status. Employee shall serve at the will and pleasure of the City Council and understands she is an "at-will" employee subject to summary dismissal without any right of notice or hearing, including any so-called *Skelly* hearing. The City Council may terminate the employment of Interim City Manager at any time, as set forth in Section 3.3 below, in which case Employee will revert to her position of Public Works Director, subject to the

provisions of the Public Works Director Agreement. Employee shall not be subject to the City's Personnel Rules and Regulations.

1.5 City Documents. All data, studies, reports and other documents prepared by Employee while performing her duties during the term of this Agreement shall be furnished to and become the property of the City, without restriction or limitation on their use. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other materials either created by or provided to Employee in connection with the performance of this Agreement shall be held confidential by Employee to the extent permitted by applicable law, and except as may be required by any governmental agency or court of competent jurisdiction. Such materials shall not, without the prior written consent of the City Council, be used by Employee for any purposes other than the performance of her duties. Provided, further that no such materials may be disclosed to any person or entity not connected with the performance of services under this Agreement, except as required by (a) law, (b) any governmental agency, (c) subpoena, or (d) an order issued by a court of competent jurisdiction.

1.6 FLSA Exempt Status. Employee agrees that her position is that of an exempt employee for the purposes of the Fair Labor Standards Act.

1.7 Public Works Director Agreement. Throughout its entire term and except as expressly provided herein, this Agreement shall supersede and take precedence over all provisions of the Public Works Director Agreement. Upon the termination of this Agreement, Diana Langley shall be subject to the terms and conditions of the Public Works Director Agreement. If new agreements are approved for other executive employees during the term of this Agreement, upon termination of this Agreement the successor interim or permanent City Manager shall consider appropriate adjustments to employee's compensation or benefits in light of any updated executive employee agreements consistent with the budget approved by the City Council.

2.0 COMPENSATION AND BENEFITS

2.1 Compensation and Benefits. Employee expressly waives any increase in additional compensation to serve as Interim City Manager. Instead, for the services rendered pursuant to this Agreement, the compensation and benefits shall be the same as those set forth in the Public Works Director Agreement except as follows:

(a) Employee is currently subject to certain caps for cashing accrued vacation leave. Notwithstanding this cap, at any time during this Agreement Employee may cash out up to an additional 120 hours of accrued vacation leave at Employee's discretion.

2.2 Special Compensation. Employee acknowledges that the City makes no representation, and Employee shall not rely on any representation, that the difference in compensation provided in this Agreement and the compensation provided in the Public Works Director Agreement will be treated as "final compensation" under CalPERS regulations for purposes of calculating her CalPERS service retirement benefits.

3.0 TERM

3.1 Commencement & Effective Date. Effective March 12, 2020, Employee shall commence her services as Interim City Manager hereunder at 12:18 p.m..

3.2 Term. The term of this Agreement shall begin on March 12, 2020 (Effective Date) and shall terminate on December 16, 2020, unless terminated at an earlier date ("Expiration Date"). This Agreement may be terminated prior to said Expiration Date in accordance with the terms and conditions of this Agreement. Under no circumstances shall this Agreement be effective after the Expiration Date unless the parties agree in writing to extend this Agreement under terms and conditions mutually satisfactory to Employee City Manager and Council mutually deem appropriate, as evidenced by a writing signed by both parties.

3.3 Termination by City Council. The City Council may terminate this Agreement at any time with or without cause, without notice to Employee. This Agreement shall automatically terminate upon either the appointment of a new Interim City Manager or permanent City Manager by the City Council. Upon termination of this Agreement, Employee shall revert back to her position as the Public Works Director, subject to the terms and conditions of the Public Works Director Agreement. Employee expressly agrees that she shall not be entitled to any severance pay as the result of the termination of this Agreement. Notwithstanding anything to the contrary stated herein, during the term of this Agreement, Employee may, upon giving the City 30 days' advance written notice, either terminate her employment from the City or resign her position as Interim City Manager and return to the position of and be reinstated as the Public Works subject to the terms and conditions of the Public Works Director Agreement.

4.0 PERFORMANCE EVALUATIONS

1. Purpose. The performance review and evaluation process set forth herein is intended to provide review and feedback to Employee so as to facilitate a more effective management of the City. Nothing herein shall be deemed to alter or change the employment status of Employee (as set forth in Section 1.3 above), nor shall this Section 4.0 be construed as requiring "cause" to terminate this Agreement, or the services of Employee as Interim City Manager hereunder.

2. Evaluation. As a guideline, the City Council shall review and evaluate the performance of Employee bi-annually and periodically thereafter. Nothing in this Agreement shall preclude the City Council from holding more frequent evaluations at any time.

3. Written Summary. The City Council may, at its sole discretion, elect to provide a written summary of each performance evaluation to Employee within two (2) weeks following conclusion of the review and evaluation process, and may, at its sole discretion, schedule at least one (1) closed personnel session with Employee to deliver and discuss the evaluation.

5.0 PROFESSIONAL DEVELOPMENT

1. Out-of-Town Meetings & Seminars. City agrees to reimburse Employee the actual cost for registration, travel, lodging, and meals and other expenses incurred by Employee while attending overnight out-of-town meetings or seminars related to her employment with City in accordance with the City's policies for expense reimbursement. Moreover, to be eligible

Employee must have budgeted funds available for same; provided, however, that the City Council may, in its sole discretion, approve such unbudgeted expenditures if it deems it in the best interests of the City.

2. Local Meetings & Seminars. City agrees to reimburse Employee the actual cost of registration, meals and other expenses necessarily incurred while in attendance at local meetings or seminars related to her employment with City in accordance with the City's policies for expense reimbursement.

3. Incidental Expenses. City agrees to reimburse Employee the actual cost of those incidental expenses necessarily incurred by Employee while engaged in the business of City upon the presentation of an appropriate receipt therefor in accordance with the City's policies for expense reimbursement.

6.0 BONDS AND INDEMNIFICATION

1. Indemnification. City shall defend, hold harmless and indemnify Employee against any tort, professional liability, claim or demand, or other legal action arising out of an alleged act or omission occurring in the performance of Employee's services under this Agreement. This section shall not apply to any intentional tort or crime committed by Employee, to any action outside the course and scope of the services provided by Employee under this Agreement, or any other intentional or malicious conduct or gross negligence of Employee.

2. Bonds. City shall bear the full cost of any fidelity or other bonds, which may be required in the performance of Employee's services under this Agreement.

7.0 GENERAL PROVISIONS

1. Entire Agreement. This Agreement represents the entire agreement between the parties and supersedes any and all other agreements, either oral or in writing, between the parties with respect to Employee's employment by City and contains all of the covenants and agreements between the parties with respect to such employment. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by either party, or anyone acting on behalf of either party, which are not embodied herein, and that no other agreement, statement or promises not contained in this Agreement shall be valid or binding upon either party.

2. Amendment. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing, which amendment shall require City Council approval.

3. Notices. Any notice required or permitted by this Agreement shall be in writing and shall be personally served or shall be sufficiently given when served upon the other party as sent by United States Postal Service, postage prepaid and addressed as follows:

To City:
City Council

Attn: Mayor Shon Harris
City of Yuba City
1201 Civic Center Blvd.
Yuba City, CA 95993

To Interim City Manager:
Diana Langley
(Home address on file with the City)

Notices shall be deemed given as of the date of personal service or upon the date of deposit in the course of transmission with the United States Postal Service.

4. Conflicts Prohibited. During the term of this Agreement, Employee 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 shall comply with all requirements of law, including but not limited to, Sections 87100 *et seq.*, Section 1090 and Section 1125 of the Government Code, and all other similar statutory and administrative rules.

5. Effect of Waiver. The failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

6. 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.

7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, which are in full force and effect as of the date of execution and delivery by each party hereto.

8. Government Code §§ 53243 - 53243.4. Assembly Bill 1344, which was subsequently enacted as Government Code §§ 53243 - 53243.4, sought to a means to provide greater transparency in local government and institute certain limitations on compensation paid to local government executives. These statutes also require that contracts between local agencies and its employees include provisions requiring an employee who is convicted of a crime involving an abuse of his office or position to provide reimbursement to the local agency. These statutes are set forth in full in Exhibit "A" attached hereto and incorporated herein. Accordingly, the parties agree that it is their mutual intent to fully comply with these Government Code sections and all other applicable law as it exists as of the date of execution of this Agreement and as such laws may be amended from time to time thereafter. Specifically, the following Government Code sections are called out and hereby incorporated by this Agreement:

§53243. Reimbursement of paid leave salary required upon conviction of crime involving office or position.

§53243.1. Reimbursement of legal criminal defense upon conviction of crime involving office or position.

§53243.2. Reimbursement of cash settlement upon conviction of crime involving office or position.

§53243.3. Reimbursement of noncontractual payments upon conviction or crime involving office or position.

§53243.4. "Abuse of office or position" defined.

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

9. Independent Legal Advice. City and Employee represent and warrant to each other that each has received, or had the opportunity to have receive, legal advice from independent and separate legal counsel with respect to the legal effect of this Agreement 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.

[signatures on following page]

IN WITNESS WHEREOF, the City of Yuba City has caused this Agreement to be signed and executed on its behalf by its City Council, and duly attested by its officers thereunto duly authorized, and Diana Langley has signed and executed this Agreement.

CITY OF YUBA CITY

Shon Harris, Mayor

ATTEST:

Patricia Buckland
City Clerk

APPROVED AS TO FORM:

Shannon Chaffin, City Attorney

INTERIM CITY MANAGER

Diana Langley

Exhibit "A" To Agreement For Employment Of Interim City Manager

GOVERNMENT CODE SECTIONS 53243-53243.4 and 53260(a)

53243. On or after January 1, 2012, any contract executed or renewed between a local agency and an officer or employee of a local agency 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.

53243.1. On or after January 1, 2012, any contract executed or renewed between a local agency and an officer or employee of a local agency 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.

53243.2. On or after January 1, 2012, any contract of employment between an employee and a local agency employer shall include a provision which provides that, regardless of the term of the contract, if the contract is terminated, any cash settlement related to the termination that an employee may receive from the local agency shall be fully reimbursed to the local agency if the employee is convicted of a crime involving an abuse of his or her office or position.

53243.3. On or after January 1, 2012, if a local agency provides, in the absence of a contractual obligation, for any of the payments described in this article, then the employee or officer 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.

53243.4. For purposes of this article, "abuse of office or position" means either of the following:

(a) An abuse of public authority, including, but not limited to, waste, fraud, and violation of the law under color of authority.

(b) A crime against public justice, including, but not limited to, a crime described in Title 5 (commencing with Section 67), Title 6 (commencing with Section 85), or Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

53260. (a) All contracts of employment between an employee and a local agency employer shall include a provision which provides that regardless of the term of the contract, if the contract is terminated, the maximum cash settlement that an employee may receive shall be an amount equal to the monthly salary of the employee multiplied by the number of months left on the unexpired term of the contract. However, if the unexpired term of the contract is greater than 18 months, the maximum cash settlement shall be an amount equal to the monthly salary of the employee multiplied by 18.

GOVERNMENT CODE SECTIONS 3511.1-3511.2

3511.1. As used in this chapter, the following definitions apply:

(a) "Compensation" means annual salary, stipend, or bonus, paid by a local agency employer to a local agency executive.

(b) "Cost-of-living" means the California Consumer Price Index for Urban Wage Earners and Clerical Workers as calculated by the Department of Industrial Relations.

(c) "Local agency" means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission, or agency thereof, or other local public agency.

(d) "Local agency executive" means any person employed by a local agency who is not subject to the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500)), Chapter 5 (commencing with Section 45100) of Part 25 of Division 3 of Title 2 of the Education Code, or Chapter 4 (commencing with Section 88000) of Part 51 of Division 7 of Title 3 of the Education Code, and who meets either of the following requirements:

(1) The person is the chief executive officer, a deputy chief executive officer, or an assistant chief executive officer of the local agency.

(2) The person is the head of a department of a local agency.

(3) The person's position within the local agency is held by an employment contract between the local agency and that person.

3511.2. On or after January 1, 2012, any contract executed or renewed between a local agency and a local agency executive shall not provide for the following:

(a) An automatic renewal of a contract that provides for an automatic increase in the level of compensation that exceeds a cost-of-living adjustment.

(b) A maximum cash settlement that exceeds the amounts determined pursuant to Article 3.5 (commencing with Section 53260) of Chapter 2 of Part 1 of Division 2 of Title 5.