

CITY OF YUBA CITY
STAFF REPORT

Date: December 21, 2021
To: Honorable Mayor & Members of the City Council
From: Administration Department
Presentation By: Shannon Chaffin, City Attorney

Summary

Subject: City Manager Employment Agreement
Recommendation: Adopt a Resolution Approving A City Manager Employment Agreement between the City of Yuba City and Diana Langley, Effective December 10, 2021 at 5:00 p.m.
Fiscal Impact: No additional fiscal impact above that currently budgeted

Purpose:

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

Background:

The City of Yuba City's permanent City Manager position became vacant after the resignation of City Manager David Vaughn. Mr. Vaughn's last day as City Manager was December 10, 2021.

Diana Langley has served as the Public Works Director and has worked for the City for over 25 years. Ms. Langley has also previously served as Interim City Manager and Acting City Manager. Through her service as Public Works Director and as both Interim City Manager and Acting City Manager, Ms. Langley has demonstrated she possesses the experience, qualifications, knowledge, skills, and abilities to serve as the permanent City Manager.

Analysis:

The City Council will consider confirming the appointment of Diana Langley as City Manager made on December 10, 2021, and approving the proposed employment agreement, which has been signed by Ms. Langley. If approved, the employment agreement will retroactively govern Ms. Langley's service as permanent City Manager commencing December 10, 2021 at 5:00 p.m.

Brown Act Announcement

The Brown Act Requires that prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive during the open meeting in which the final

action is to be taken. (See Government Code §54953 (c)(3).) A summary of the Agreement is described in this Staff Report per the text that is required to be read out loud by the legislative body at the Council Meeting.

Following Announcement to be read:

As required by the Brown Act (Government Code § 54953 (c) (3)), prior to taking action on this item, the Council must publicly announce a summary of the action being considered. If adopted, the proposed resolution will approve the City Manager Employment Agreement with Diana Langley essentially with the same compensation and benefits as the prior City Manager as follows:

1. Term: Four years from December 10, 2021, to December 10, 2025.
2. Salary: Annual salary of \$210,000. At the conclusion of each year, the Council, in its sole discretion, may grant Employee an increase in salary based upon satisfactory or above performance.
3. Health Benefits: City shall provide health insurance, with premiums paid by both the City (80%) and the employee (20%), same as other executive management employees.
4. Dental and Vision benefits: City will offer dental and vision insurance with premiums paid by both the City (90%) and the employee (10%), same as other executive management employees.
5. Disability: City shall provide short-term and long-term disability benefits for the employee, same as other executive management employees.
6. Life Insurance: City shall provide life insurance benefits in the amount of \$150,000 for employee and \$2,000 for dependents, same as other executive management employees.
7. Vehicle Allowance: City shall provide a vehicle allowance of \$500 per month.
8. Cell Phone: City shall provide a City-issued cell phone.
9. Retirement: The City shall enroll the Employee in the CalPERS retirement program at the 2.7% *at age 55* formula.
10. Severance: For termination without cause, the City Manager will be entitled to nine months' salary and nine months' health insurance, subject to any limitations provided by Government Code sections 53260 and 53261.
11. Vacation: Employee shall accrue vacation leave at the rate provided to executive management employees and shall start at the bi-weekly rate of 7.1 hours.
12. Sick Leave: Employee shall accrue sick leave at the rate provided to executive management employees. Employee is entitled to accrue all unused sick leave, without limit.
13. Administrative Leave: Employee shall be credited with eighty (80) hours of administrative leave annually, subject to certain cash out and carry over provisions.
14. Holiday: The City currently recognizes the following holidays and Employee shall be entitled to 8 hours' of holiday leave time for each such holiday: New Year's Day, Martin Luther King, Jr. Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, Day after Thanksgiving; Christmas, eight hours of holiday time to be used on either Christmas Eve or New Year's Eve or, a combination on both days as approved by the department head, and two floating holidays.

A resolution appointing Ms. Langley as the City Manager and approving the City Manager Employment Agreement is included as Attachment 1 to this report.

Alternatives:

Deny or modify the recommendation.

Recommendation:

Adopt a Resolution Approving A City Manager Employment Agreement between the City of Yuba City and Diana Langley, Effective December 10, 2021 at 5:00 p.m.

Attachments:

1. Attachment 1 - Resolution Approving City Manager Employment Agreement (Langley)
2. Attachment 2 - City Manager Employment Agreement - Langley - 12-10-2021 Signed DL

Prepared By:
Shannon Chaffin
City Attorney

Submitted By:
Diana Langley
City Manager

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 DIANA LANGLEY, EFFECTIVE DECEMBER 10, 2021 AT 5:00 P.M.**

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 is vacant; and

WHEREAS, Diana Langley has served as the City's Public Works Director, and has previously served as both Interim City Manager and Acting City Manager; and

WHEREAS, the City has identified Ms. Langley as possessing the experience, qualifications, knowledge, skills and abilities to serve as the permanent City Manager; and

WHEREAS, the City Council wishes to hire Ms. Langley as the permanent City Manager; and

WHEREAS, per Government Code Section 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, the City Council of the City Of Yuba City, California does resolve as follows:

Section 1. The City Council confirms the appointment of Diana Langley as the City Manager for the City of Yuba City, effective December 10, 2021 at 5:00 p.m.

Section 2. The City Manager Employment Agreement between the City of Yuba City and Diana Langley, a copy of which is attached hereto as an attachment, is approved. The Mayor is authorized to execute the agreement on behalf of the City.

Section 3. 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 December 21, 2021, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

David Shaw, Mayor

ATTEST:

Ciara Wakefield, Deputy City Clerk

APPROVED AS TO FORM:

Shannon L. Chaffin, City Attorney
Aleshire & Wynder, LLP

Attachment: City Manager Employment Agreement

ATTACHMENT 2

AGREEMENT NO. _____

CITY MANAGER EMPLOYMENT AGREEMENT

This CITY MANAGER EMPLOYMENT AGREEMENT (“**Agreement**”) is made and entered into on the date last listed on the signatures, below, and made effective on December 10, 2021 at 5:00 p.m. (“**Effective Date**”), by and between YUBA CITY, a municipal corporation (“**City**”), and DIANA LANGLEY (“**Employee**”) for the position of City Manager.

R E C I T A L S

WHEREAS, Employee has previously served as both Interim City Manager and Acting City Manager, was most recently serving as the City’s Public Works Director, and has extensive knowledge of City operations and services; 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 previous City Manager recruitment efforts; 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:

1. AUTHORITY, DUTIES, TERM AND COMPENSATION

1.1 Employment At Will

City agrees to employ Diana Langley 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 Yuba City Rules and Regulations (“Personnel Rules”), shall not apply to Employee unless made expressly applicable, except that all policies 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 her position with City, subject only to the provisions included herein.

1.2 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, a copy of which is attached hereto as Exhibit "A", as may be amended, which duties may include, but are not limited to, the following:

- 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.

1.3 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.

1.4 Term

The term of this Agreement shall be for four (4) years from the Effective Date, 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.

1.5 Compensation

a. **Base Salary.** The annual base salary for all work or services called for under this Agreement shall equal a total of Two Hundred Ten Thousand Dollars (\$210,000.00), 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, except as provided in Section 1.5(b).

b. **Retroactive Pay.** Notwithstanding the effective date of this Agreement, Employee will continue to be paid at Employee's rate of pay as it existed as of December 1, 2021, which rate shall continue through December 17, 2021. Commencing December 18, 2021, Employee will no longer be paid at the rate of pay as Employee earned as the City's Public Works Director, but will instead receive pay at the Employee's base salary under this Agreement, including base salary earned between December 18, 2021, and the effective date of this Agreement.

c. **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.

d. **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.

2. EMPLOYEE BENEFITS.

As a reference to the benefits enumerated in this Section, a summary of benefits available to the executive management employees is attached hereto as Exhibit "B". In the event there are any conflicts between this Agreement and the summary of benefits, the terms of this Agreement shall prevail.

2.1 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.

2.2 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.

2.3 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.

2.4 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 prorated 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.

2.5 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"). City also agrees to pay the renewal fees for Employee's Professional Engineer's license.

2.6 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.

2.7 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 7.1 hours for vacation accrual. 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. 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.
- 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, as may be amended from time to time. A copy of the relevant section of the Personnel Rules is attached hereto as Exhibit "C".

2.8 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 one hundred percent (100%) of the Employer payment of member contributions ("EPMC"), if applicable, to PERS as additional compensation for retirement purposes only.
- c. Employee shall cost share seven percent (7%) of City's contribution towards PERS.
- d. Employee shall receive a City contribution of two point seven (2.7%) 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.

3. 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 1.5 above.

4. TERM AND TERMINATION.

4.1 Term

This Agreement shall be in effect from its Effective Date, and run for four (4) consecutive years thereafter.

4.2 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.

4.3 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.

4.4 Termination "Without Cause"

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

The City Manager may be removed from his or her position in accordance with this section.

(a) The City Manager shall at all times serve at the pleasure of the City Council and, subject to the provisions below, may be removed from office at any time with a three-fifths vote of the City Council, with or without cause;

(b) The removal of the City Manager shall be effected only by the City Council and shall be done in accordance with all applicable laws and ordinances and in compliance with the City Manager's employment agreement.

(c) The City Manager shall not be removed from office, nor shall notice of removal be determined, during or within a period of 90 days next succeeding any municipal election held in the City at which a member of the City Council is elected. The purpose of this provision is to allow any newly elected member to the City Council or a reorganized City Council to observe the actions and ability of the City Manager in the performance of the office of City Manager.

In the event that Employee is terminated "without cause," including a request by the City Council to resign "without cause," Employee shall be entitled to severance pay of nine (9) months of Employee's base monthly compensation as adjusted from time to time as set forth in Section 1.5, above. The severance pay will be in addition to pay accrued, but not remitted, prior to the notice of termination. In addition, the City shall extend to Employee the right to continue health insurance as may be required by and pursuant to the terms and conditions of the Consolidated Omnibus Budget Reconciliation Act of 1986 ("COBRA"). As permitted by Government Code § 53261, City agrees to pay Employee's COBRA coverage for nine (9) months or until Employee finds other employment, whichever occurs first. 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 "D".

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. Government Code § 53260 provides that all contracts of employment with a city must include a provision limiting the maximum cash settlement for the termination of the contract to the monthly salary multiplied by the number of months left on the unexpired term, but not more than eighteen (18) months if the unexpired term exceeds 18 months. Accordingly, should such proposed severance payment exceed the amount authorized to be paid under Government Code Section 53260, then the amount paid to Employee shall be reduced in the amount necessary to comply with such 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 her office or position with the City.

a. 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,” or Employee otherwise resigns including *in lieu* of being 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 her 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.

4.5 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 _____. 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 _____. 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.

5. MISCELLANEOUS

5.1 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.

5.2 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.

5.3 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.

5.4 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: Diana Langley
(Address in Employee's Personnel File)

5.5 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.

5.6 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.

5.7 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.

5.8 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.

5.9 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.

5.10 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).

5.11 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.

5.12 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.

5.13 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"

David Shaw
Mayor

Diana Langley
Diana Langley

Date: _____

Date: December 15, 2021

APPROVED AS TO FORM:

Shannon Chaffin, Esq.
Aleshire & Wynder, LLP
City Attorney

Attachments: Exhibit "A" – Municipal Code Section 2-2.07
Exhibit "B" – Executive Management Employees Summary of Benefits
Exhibit "C" – Section 2.10 of the Personnel Rules
Exhibit "D" – Agreement Of Separation, Severance And General Release

EXHIBIT A
[on following pages]

YUBA CITY MUNICIPAL CODE

Sec. 2-2.07. - Powers and duties.

The City Manager shall be the administrative head of the government of the City under the direction and control of the City Council, except as otherwise provided in this chapter, by law or by direction of the City Council. The City Manager shall be responsible for the efficient administration of all the affairs of the City that are under his or her control. In addition to the general powers as administrative head, the City Manager shall have the following specific duties, responsibilities and powers:

- (a) To enforce all laws and ordinances of the City and to see that all franchises, contracts, permits and privileges granted by the City Council are faithfully observed;
- (b) To control, order and give directions to all heads of departments and to subordinate officers and employees of the City under his or her jurisdiction through their department heads;
- (c) To appoint, promote, demote, remove and grant severance packages in an amount authorized by the City Council for all officers and employees of the City, excepting elective officers and the City Attorney;
- (d) To establish an organizational structure of offices, departments, positions and units within the City as may be indicated in the interest of efficient, effective and economical conduct of the City's business;
- (e) To recommend to the City Council the adoption of such ordinances and resolutions as deemed necessary or appropriate;
- (f) To attend all meetings of the City Council or provide for a designated representative;
- (g) To prepare and submit the proposed annual budget to the City Council for its approval;
- (h) To be responsible for purchasing pursuant to the provisions of Title 2, Chapter 6 of the Yuba City Municipal Code for all the departments of the City;
- (i) To approve agreements for contractual services as defined in Title 2, Chapter 6 of the Yuba City Municipal Code and in accordance with administrative policies adopted by the City Council, which shall, among other things, establish the maximum compensation that may be provided for in any such agreement;
- (j) To investigate, when necessary, the affairs of the City and any department or division thereof and any contract obligation of the City; further, it shall be the duty of the City Manager to investigate all complaints in relation to matters concerning the administration of the City government and in regard to the service maintained by public utilities in the City;
- (k) To exercise general supervision over all public buildings, public parks and all other public properties which are under the control and jurisdiction of the City Council;
- (l) To perform such other duties and exercise such other powers as may be delegated to the City Manager from time to time by ordinance or resolution or other official action in the City Council.

(§ 2, Ord. 013-05, eff. November 17, 2005)

EXHIBIT “B”

[on following pages]



CITY OF YUBA CITY BENEFITS SUMMARY

EXECUTIVE SERVICE 2021-2022

TYPE OF BENEFIT	DESCRIPTION OF BENEFIT												
Administrative Leave	80 hours; payoff maximum is 40 hours. An additional 40 hours may be granted upon the approval of the City Manager. 40 hours can be carried over each year, not to exceed 160-hours total.												
Bilingual Pay	The City will pay \$100 per month bilingual pay incentive for employees who demonstrate proficiency in a foreign language, based on the City's needs.												
Call Back	None												
Cash-in-Lieu (Reduce)	<div>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. The Cash-in-lieu benefit is based upon the lowest cost health plan available to the majority of City employees.</div> <table><tr><td>Plan Type:</td><td>Bonus</td></tr><tr><td>EE +1 to EE</td><td>\$136.25/month</td></tr><tr><td>Family(EE+2) to EE+1</td><td>\$185.20/month</td></tr><tr><td>Family (EE+2) to EE</td><td>\$321.45/month</td></tr></table>	Plan Type:	Bonus	EE +1 to EE	\$136.25/month	Family(EE+2) to EE+1	\$185.20/month	Family (EE+2) to EE	\$321.45/month				
Plan Type:	Bonus												
EE +1 to EE	\$136.25/month												
Family(EE+2) to EE+1	\$185.20/month												
Family (EE+2) to EE	\$321.45/month												
Cash -in-Lieu (Reduce) - Police Chief	<div>The Cash-in-lieu benefit is based upon the lowest cost health plan available to the majority of employees enrolled in CalPERS Health.</div> <table><tr><td>Plan Type:</td><td>Bonus</td></tr><tr><td>EE +1 to EE</td><td>\$231.50/month</td></tr><tr><td>Family(EE+2) to EE+1</td><td>\$234.45/month</td></tr><tr><td>Family (EE+2) to EE</td><td>\$465.95/month</td></tr></table>	Plan Type:	Bonus	EE +1 to EE	\$231.50/month	Family(EE+2) to EE+1	\$234.45/month	Family (EE+2) to EE	\$465.95/month				
Plan Type:	Bonus												
EE +1 to EE	\$231.50/month												
Family(EE+2) to EE+1	\$234.45/month												
Family (EE+2) to EE	\$465.95/month												
Cash-in-Lieu (Forego)	<div>The Cash-in-Lieu of medical insurance bonus for employees electing to forego health insurance coverage will be based on the below percentage of the current lowest cost health plan available to the majority of the employees.</div> <table><tr><td>Plan Type:</td><td>Bonus Percentage</td><td>Bonus</td></tr><tr><td>Employee</td><td>25%</td><td>\$123.75/month</td></tr><tr><td>Employee +1</td><td>25%</td><td>\$260.00/month</td></tr><tr><td>Employee +2/Family</td><td>30%</td><td>\$445.20/month</td></tr></table>	Plan Type:	Bonus Percentage	Bonus	Employee	25%	\$123.75/month	Employee +1	25%	\$260.00/month	Employee +2/Family	30%	\$445.20/month
Plan Type:	Bonus Percentage	Bonus											
Employee	25%	\$123.75/month											
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Employee +2/Family	30%	\$445.20/month											
Cash -in-Lieu (Forego) - Police Chief	<div>The Cash-in-lieu benefit is based upon the lowest cost health plan available to the majority of employees enrolled in CalPERS Health.</div> <table><tr><td>Plan Type:</td><td>Bonus Percentage</td><td>Bonus</td></tr><tr><td>Employee</td><td>25%</td><td>\$199.75/month</td></tr><tr><td>Employee +1</td><td>25%</td><td>\$431.25/month</td></tr><tr><td>Employee +2/Family</td><td>30%</td><td>\$665.70/month</td></tr></table>	Plan Type:	Bonus Percentage	Bonus	Employee	25%	\$199.75/month	Employee +1	25%	\$431.25/month	Employee +2/Family	30%	\$665.70/month
Plan Type:	Bonus Percentage	Bonus											
Employee	25%	\$199.75/month											
Employee +1	25%	\$431.25/month											
Employee +2/Family	30%	\$665.70/month											
Deferred Comp	\$200 per month												
DMV Physical	Amount of same physical with the City's contracted medical provider.												
Employee Assistance Program	Employee and family members are eligible for free and confidential assessments, short term counseling, referrals, and follow-up services. This includes legal services unrelated to City employment issues through Managed Health Network (MHN).												
Wellness Program	Employee and family members - each eligible person receives access to the MHN Wellness Program through Managed Health Network (MHN).												

Health, Dental, Vision Insurance	Medical, Dental, and Vision premiums are paid both by the City and the employee monthly. The following chart details City and employee per pay period contributions for the P5 plan:		
	Plan Type:	City Contribution:	Employee Contribution:
	Employee	\$182.77	\$45.69
	Employee +1	\$384.00	\$96.00
	Employee +2/Family	\$547.94	\$136.98
	Dental/Vision	\$54.97	\$6.11
Health, Dental, Vision Insurance - Police Chief	Medical, Dental, and Vision premiums are paid both by the City and the employee monthly. The following chart details City and employee per pay period contributions for PORAC.		
	Plan Type:	City Contribution:	Employee Contribution:
	Employee	\$295.02	\$73.75
	Employee +1	\$636.92	\$159.23
	Employee +2/Family	\$819.32	\$204.83
	Dental/Vision	\$54.97	\$6.11
Holidays	11 paid holidays per year + 2 floating holidays.		
Life Insurance	Benefit is \$150,000 employee & \$2,000 dependents paid by the City. Employee can elect dependent coverage at employee's cost.		
Long Term Disability	City pay 100% of premium. Monthly maximum benefit is \$10,000.		
PERS Contribution	Miscellaneous Tier 1 (Hired through Jun. 30, 2012): 8% (paid by the City) Tier 2 (Effective Jul. 1, 2012): 7% (paid by the City) Tier 3/New Members (Effective Jan. 1, 2013): 7% Safety Tier 1 & 2 (Hired through Jun. 30, 2012): 9% (paid by the City) Tier 3 (Effective Jul. 1, 2012): 9% (paid by the City) Tier 4 (Effective Jan. 1, 2013): 14.5%		
PERS Employer Contribution Rate (2021/2022)	Miscellaneous Tier 1 & 2: 11.42% Tier 3: 11.42% Safety Tier 1: 27.31% Fire / 27.31% Police Tier 2: 26.08% Fire / 26.08% Police Tier 3: 24.06% Fire / 24.06% Police Tier 4: 14.6% Fire and Police		
PERS Plan	Miscellaneous Tier 1: 2.7% @ 55 Tier 2: 2% @ 55 Tier 3: 2% @ 62 Safety Tier 1 & 2: 3% @ 50 Tier 3: 3% @ 55 Tier 4: 2.7% @ 57		
PERS EPMC (Employer Paid Member Contribution)	Classic PERS Members: The City reports 100% of the employer payment of member contributions (EPMC) to PERS as additional compensation for retirement purposes. New PERS Members (Eff. Jan. 1, 2013): No EPMC benefits per pension reform.		
PERS Cost Sharing	Effective July 25, 2015: Classic PERS members will cost share 9% (Safety)/8% (Misc. Tier 1)/7% (Misc. Tier 2) of the employer contribution rate.		
Professional Development Funds	City pays \$5,000 towards tuition and \$150 towards books annually for job related courses. Non-job related courses are paid at 50%. (Subject to approval.)		

Retiree Health Plan Benefit	<i>Required: 5 yrs of City service and are of full retirement age.</i> The contribution amount paid by the City will be determined each year by what the City's maximum health insurance contribution is for "Employee Only" for non-retired Executive Management employees. The retiree will be responsible for the difference based on the City's contribution.		
Short Term Disability	Cost - .42% of earnings. Benefit - 60% of earnings.		
Sick Leave	3.7 hours per pay period - unlimited accrual.		
Uniform Allowance	Fire Chief - Uniforms are provided. Chief of Police - \$900 per year.		
Vacation	Vacation is earned beginning with the first pay period as outlined below:		
	Years of Service	Bi-Weekly Rate	Max Accrual
	0-4 years	4.0 hours	264 hours
	5-10 years	5.5 hours	327 hours
	11-15 years	6.5 hours	377 hours
	16 + years	7.1 hours	425 hours
* Directors have individual employment agreements with the city. For further detailed benefit information contact Human Resources.			

EXHIBIT “C”

[on following pages]

All employees returning from Pregnancy Disability Leave must submit a health care provider's verification of their fitness to return to work.

If an employee fails to report to work promptly at the end of the Pregnancy Disability Leave and fails to obtain approval for an extended leave of absence, the City will treat the failure to return as a voluntary resignation.

O. Personal Leave

The City complies with all state and federal laws regarding the provision of leaves of absences. Additionally, the City may grant a personal leave of absence at the discretion of the Human Resources Director, in consultation with the Department Head. This will be considered for employees who are not eligible for Family and Medical Leave or who have exhausted their rights to such leave. This will also be considered for an employee who believes that a leave of absence is needed as a form of reasonable accommodation for a possible disability. Before determining whether such employee is eligible for leave, the City will engage in an interactive process with the affected employee to determine whether the employee is eligible for leave and whether leave under the circumstances is reasonable. If an employee anticipates being off work for more than four consecutive weeks, the employee must request a personal leave of absence even if the employee has accrued sick leave or vacation available. Additionally, if an employee is on Pregnancy Disability Leave and/or Family Medical Leave and does not anticipate returning at the conclusion of the designated leave time, the employee must request a personal leave of absence for any additional time off.

Each request will be reviewed individually. The duration, terms, and conditions of each authorized leave of absence, if any, will be based on the circumstances of the individual request. The City will consider, among other things, contemplated by Section 2.11, the need for the requested leave, the employee's length of service, and level of responsibility and decision-making authority. An employee with documented performance problems will not be eligible for a personal leave, except where required by law.

2.10 HOLIDAYS

A. Coverage Except as otherwise provided in this section, all regular and probationary employees of the City shall be entitled to holidays with pay. Holidays are paid on an eight (8) hour basis.

B. Holidays Except as otherwise provided in this section, the following shall be considered holidays for employees in the City service:

1. New Year's Day (the first day of January)
2. Martin Luther King Day (the third Monday in January)
3. Washington's Birthday (the third Monday in February)
4. Memorial Day (the last Monday in May)
5. Independence Day (the fourth day of July)
6. Labor Day (the first Monday in September)
7. Veterans Day (observed on the day established by the Yuba City Unified School District)
8. Thanksgiving Day (the fourth Thursday in November)
9. The day following Thanksgiving Day
10. Christmas Day (the 25th day of December)
11. Eight hours of holiday time to be used on either Christmas Eve or New Year's Eve, or, a combination on both days as approved by the department head.

Master

C. Miscellaneous Provisions

1. Whenever a holiday falls on Sunday, the following Monday shall be observed as a holiday, and whenever a holiday falls on a Saturday, the preceding Friday shall be observed as a holiday.
2. An eligible employee shall be entitled to a holiday with pay only if (i) the employee would have been regularly scheduled to work and (ii) such employee is in a paid status on the date immediately preceding or succeeding the holiday.
3. Employees on alternate work schedules shall supplement holidays with other leave to equal their scheduled work hours.
4. Holidays for Middle Manager employees working flexible work schedules shall have holidays off to the same proportion as to their regular scheduled work hours. If a holiday falls on a regular scheduled day off, the employee shall take an alternate day off within the current or following pay period.
5. In lieu of time off, Police Sergeants assigned to regular patrol shifts shall receive straight time pay for 3.07 hours per pay period. This pay shall be computed at the hourly equivalent rate for the employee's monthly salary. (PS MOU 6/17/200 to June 30, 2004)

D. Holidays for Fire and Police Service Employees in the fire and police service working shifts shall not be eligible for holidays off. For pay in lieu of holidays see the appropriate memorandum of understanding or Section E below.

Police Sergeants

In lieu of time off for holidays and holiday pay, Police Sergeants assigned to regular patrol shifts shall receive straight time pay for 7.33 hours per month, paid and computes on a bi-weekly basis. This pay shall be commuted at the hourly equivalent rate for the employee's monthly salary. For new or terminating employees, said in lieu pay shall be pro-rated from the date of employment or to the date of termination within the pay period. (PS MOU 7/1/2004 – June 30, 2008)

Police Officers' Association

In lieu of time off for holidays and holiday pay, officers assigned to regular patrol shifts and public safety dispatchers shall receive straight time pay for 7.33 hours per month, paid and computed on a bi-weekly basis. This pay shall be computed at the hourly equivalent rate for the employee's monthly salary. For new or terminating employee, said in lieu pay shall be prorated from the date of employment or to the date of termination within the pay period.

Police employees working a four (4) day, ten (10) hour work schedule with holidays off, shall only receive nine (9) ten (10) hour holidays a year which will be selected from the holidays designated for employees in the City service as outlined in Section 2.10 HOLIDAYS (B), of the Personnel Rules and Regulations. Employees will notify their supervisor in selecting the holidays of their (the employee's) choice at least one week prior to the scheduled holiday. Any holiday occurring on days scheduled for work in excess of the selected days shall be worked without additional compensation or taken as a day off without pay or with use of leave time. (POA MOU 6/17/2000 to 6/30/2004)

E. Compensation for Holiday Work

1. Eligible Employees Except as otherwise provided in this section, only City employees who are: (i) working a 40 hour week and (ii) designated as eligible for overtime in the Salary Schedule by Classification are eligible for holiday pay under this subsection.
2. Eligible City employees required to work on paid holidays shall be compensated at the overtime rate for any work during the holiday in addition to their normal rate of pay.
3. If a holiday falls on a Sunday, and Monday is designated by the City as the City holiday, compensation for holiday work shall be allowed for work performed on only Monday. If a holiday falls on a Saturday, and Friday is designated by the City as the City holiday, compensation for holiday work shall be allowed for work performed on only Friday,
4. Employees who work split weeks shall observe the sixth and seventh day as Saturday and Sunday for compensatory purposes.
5. Fire Suppression Personnel (24 hour shift schedule): In lieu of time off for holidays and holiday pay, all fire suppression employees shall receive straight time pay for 9.33 hours per month. This pay shall be computed at the hourly equivalent rate for the employee's monthly salary based on the 24 hour shift hourly rate. Said in lieu pay shall be paid, at the discretion of the City, either each pay period or semi-annually in the months of July and January based on the prior six respective calendar months. For new or terminating employees, said in lieu pay shall be prorated from the date of employment or to the date of termination within the calendar year.
6. Middle Managers
 - a. Middle manager employees shall be entitled to take holidays off as they occur (Personnel Rule Section 2.10(B)).
 - b. Holidays for Middle-Managers working flexible work schedules shall have holidays off to the same proportion as to their regular scheduled work hours. If a holiday falls on a regular scheduled day off, the employee shall take an alternate day off within the current or following pay period.
 - c.. Department Directors shall have the discretion in scheduling holidays off in the event work activities require the presence of the Middle Manager. In such case, the manager shall receive an alternate day off as described in item a above.
 - d. This provision is intended to supersede conflicting provisions in Personnel Rule Section 2.10. (MM MOU 7/1/200 to 6/30/2004)

2.11 LEAVE OF ABSENCE WITHOUT PAY

- A. Departmental Leave** A Department Head may authorize a departmental leave without pay for a regular employee for a period of time not to exceed ten (10) 8-hour working days. An employee shall be authorized a departmental leave only after all accumulated vacation leave and compensatory time off has been utilized by such employee unless said employee requests and receives benefits under the City's Short Term Disability Program, If such a departmental leave is requested because of illness or injury of an employee, such employee

Master

EXHIBIT "D"

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 _____, 2021, 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 her rights under the Age Discrimination in Employment Act, and the Older Workers Benefit Protection Act.

3. CONSIDERATION

3.1 Employee shall receive payment to her at the time of her 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, Agreement s, 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 _____, _____ (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 she 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 made or 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 in Employee's Personnel File)

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

“CITY”

“EMPLOYEE”

[NAME]
[TITLE]

[NAME]

Date: _____

Date: _____

APPROVED AS TO FORM:

[NAME]
City Attorney