

CITY OF YUBA CITY
BUSINESS FROM THE CITY COUNCIL

Date: December 19, 2017

To: Honorable Members of the City Council

Presentation By: Preet Didbal, Mayor

Summary

Subject: City Manager Employment Agreement

Recommendation: A. Adopt a Resolution authorizing the Mayor to sign the City Manager Employment Agreement between the City of Yuba City and Steven C. Kroeger from December 19, 2017 through December 31, 2020

B. Approve a supplemental appropriation of \$5,200 to the FY 2017/2018 adopted budget to Account Numbers 1305-612xx City Manager Salary and Benefits

Fiscal Impact: \$5,200 annual increase in Salary and Benefits

Purpose:

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

Discussion:

This contract is proposed to revise Mr. Kroeger's current contract that was adopted on October 18, 2016 and provided for an expiration date of December 31, 2019. The revised Agreement includes a new expiration date of December 31, 2020.

The terms of the Agreement are proposed to be amended to provide for the following:

- Employee shall receive a one-time PERSable stipend in an amount equivalent to 2% of annual salary effective with the full pay period following ratification of this contract by City Council.
- Effective July 1, 2018, Employer agrees to pay Employee an annual base salary of \$200,569 (which is a 2% increase over previous base salary of \$196,636).
- Continuation of 120 hours of Administrative Leave.
- Life insurance and Long-term disability benefits shall be maintained for the Employee at the same level as all other Executive Management employees of the Employer.

Recommendation:

- A. Adopt a Resolution authorizing the Mayor to sign the City Manager Employment Agreement between the City of Yuba City and Steven C. Kroeger from December 19, 2017 through December 31, 2020
- B. Approve a supplemental appropriation of \$5,200 to the FY 2017/2018 adopted budget to Account Numbers 1305-612xx City Manager Salary and Benefits

Attachments:

1. Resolution
2. Employment Agreement

Reviewed by:

City Attorney [TH via email](#)

City Manager [SK](#)

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 STEVEN C. KROEGER
DECEMBER 19, 2017 – DECEMBER 31, 2020**

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.

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

SECTION I.

The City Manager Employment Agreement between the City of Yuba City and Steven C. Kroeger, a copy of which is attached hereto as Exhibit 'A', is approved.

SECTION II.

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 19th day of December, 2017.

Ayes:

Noes:

Absent:

ATTEST:

Preet Didbal, Mayor

Patricia Buckland, City Clerk

ATTACHMENT 2

Employment Agreement between the City of Yuba City and Steven C. Kroeger

This Agreement is made and entered into on December 19, 2017, by and between the City of Yuba City, California, a general law city, (herein called "the Employer") and Steven C. Kroeger (hereinafter called "Employee") with respect to employment as the City Manager of Yuba City, California. This Agreement supersedes and replaces the previous Agreement between the City of Yuba City and Steven C. Kroeger dated October 18, 2016. This contract is not meant to supersede any State laws.

Section 1: Duties and Authority

Employer agrees to employ Steven C. Kroeger as City Manager to perform the functions and duties specified in Section 2-2.07 of the Yuba City Municipal Code. Employee shall hold the appointed office as City Manager at will and at the pleasure of the City Council and may be terminated at any time with or without cause by the City Council. Employee understands that he has no constitutionally protected property or other interest in his employment as City Manager.

Section 2: Term

The term of this Agreement shall be from December 19, 2017 through December 31, 2020, or the date of earlier termination in accordance with provisions in this Agreement. City's election not to renew the Agreement shall not entitle Employee to severance as provided in Section 8 of this Agreement. This Agreement shall automatically be renewed for one year unless notice is given at least six months before the expiration date or the Agreement is replaced and/or amended by mutual agreement of both parties in the future.

In the event the Agreement is not renewed, all compensation, benefits and requirements of the Agreement shall remain in effect until the expiration of the term of the Agreement unless Employee voluntarily resigns. The Employee acknowledges he serves in the position of City Manager at the discretion of the City Council and may be terminated at any time and prior to the expiration of the term of this Agreement. In the event that the Employee is terminated, as defined in Section 8 of this Agreement, the Employee shall be entitled to severance as provided for in Section 9 of this Agreement.

Section 3: Compensation

Base Salary: Employer agrees to pay Employee an annual base salary of \$196,636 as the City Manager.

Employee shall receive a one-time PERSable stipend in an amount equivalent to 2% of annual salary effective with the full pay period following ratification of this contract by City Council.

Effective July 1, 2018, Employer agrees to pay Employee an annual base salary of \$200,569 (which is a 2% increase over previous base salary of \$196,636).

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

Section 4: Health, Disability and Life Insurance Benefits

1. The Employer agrees to provide for comprehensive medical insurance and vision/dental on a pre-tax basis for the Employee and his dependents equal to that which is provided to all other Executive Management employees of the Employer.

2. The split for medical costs shall be 80%/20% between the City and the Employee, with the City paying 80% of the total premium cost and the Employee paying 20%. The contribution shall be based on the lowest cost health plan available to the majority of City employees and is subject to Section 8.2.
3. Employee shall pay the same premium amount of the City's dental and vision plan as provided to all other Executive Management employees of the Employer.
4. Cash-in-lieu payments of medical insurance shall be calculated in the same manner as all other City employees.
- ~~5.~~ Life insurance and Long-term disability benefits shall be maintained for the Employee at the same level as all other Executive Management employees of the Employer.

Section 5: Vacation, Leave, and Holidays

The Employee shall accrue sick leave and vacation at the rate provided to all other miscellaneous employees of the Employer.

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

The Employee shall annually be credited with one hundred twenty (120) hours of administrative leave.

Up to forty (40) hours of unused leave time 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 40 hours to be paid in the first pay period of the succeeding calendar year, and/or may carry over their unused balance up to 40 hours, subject to 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 80 hours.

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

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

Section 6: Retirement

1. The Employer agrees to enroll the Employee into the Public Employee Retirement System (PERS) and to make all the appropriate contributions on the Employee's behalf, for both the Employer and Employee share required and is subject to Section 8.2.
2. The City shall pay and report 100% of the Employer payment of member contributions (EPMC) to PERS as additional compensation for retirement purposes only and is subject to Section 8.2.
3. Employee shall cost share 8% of Employer's contribution towards PERS.
4. Employee shall receive a City contribution of two (2) percent of Employee's annual salary paid into a City of Yuba 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.

5. In addition to the Employer's payment to the state or local public retirement system (as applicable) referenced above, Employer agrees to execute all necessary Agreements provided by ICMA Retirement Corporation or other Section 457 deferred compensation plan for Employee's participation in said supplementary retirement plan.
6. If the Employee retires from the City, the Employee shall have the "Employee Only" medical premium paid by the City until such time as the Employee is eligible to receive Medicare. If the Employee receives a disability retirement, this benefit is not available.

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

Section 7: General Business Expenses

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

Section 8: Termination

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

1. The City Council, by a three-fifths vote, terminates the Employee as the City Manager at a duly authorized public meeting.
2. If the Employer reduces the base salary, compensation or any other benefit of the Employee, unless it is applied in no greater percentage than the average reduction of all Executive Management employees, such action shall constitute a breach of this Agreement and will be regarded as a termination.

3. If the Employee resigns following a formal offer to accept resignation by three members of the City Council, then the Employee may declare a termination as of the date of the resignation offer.

Section 9: Severance

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

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

The Employee shall also be compensated for accrued sick leave in accordance with the Personnel Rules and Regulations, vacation time, all paid holidays, and administrative leave. The Employer agrees to make a contribution to the Employee's deferred compensation account, and PERS, based on the value of this compensation calculated using the rate ordinarily contributed on regular compensation. If the amount of the contribution exceeds the deferred compensation limit, the remainder shall be paid to the Employee in a lump sum as taxable compensation.

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

- a) Health insurance for the Employee and all dependents as provided in Section 4.
- b) Employer shall take all necessary actions to insure continuation of benefits and service credits to PERS for the severance period.

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

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

Section 10: Resignation

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

Section 11: Performance Evaluation

Employer shall annually review the performance of the Employee in September of each year starting in 2015 subject to a process, form, criteria, and format for the evaluation which shall be mutually agreed upon by the Employer and Employee. The process at a minimum shall include the opportunity for both parties to: (1) prepare a written evaluation, (2) meet and discuss the evaluation, and (3) present a written summary of the evaluation results. The final written evaluation should be completed and delivered to the Employee prior to October 31st of each year. Employer shall review Employee's salary and benefits as part of the performance evaluation process.

Section 12: Hours of Work

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

Section 13: Outside Activities

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

Section 14: Relations with City Council

As set forth in Section 2-2.08 of the Yuba City Municipal Code and the City Council's adopted "Rules of Decorum and Conduct", the City Council shall respect the City Manager's administrative authority to faithfully implement the City Council's direction. The City Council and its members shall deal with the administrative services of the City only through the City Manager and neither the City Council nor any member thereof shall give orders to any subordinates of the City Manager, except that this limitation and prohibition does not apply to the City Council's relations with the City Attorney. No individual Councilmember shall give any orders or instructions to the City Manager. The City Council shall instruct the City Manager in matters of policy. Any action, determination or omission of the City Manager shall be subject to review by the City Council.

Section 15: Indemnification

Beyond that required under Federal, State or Local Law, Employer shall defend, save harmless and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as City Manager or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act or omission involved willful or wanton conduct. The Employee may request and the Employer shall not unreasonably refuse to provide independent legal representation at Employer's expense and Employer may not unreasonably withhold approval. Legal representation, provided by Employer for Employee, shall extend until a final determination of the legal action including any appeals brought by either party. The Employer shall indemnify Employee against any and all losses, damages, judgments, interest, settlements, fines, court costs and other reasonable costs and expenses of legal proceedings including attorneys fees, and any other liabilities incurred by, imposed upon, or suffered by such Employee in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of his or her duties. Any settlement of any claim must be made with prior approval of the Employer in order for indemnification, as provided in this Section, to be available. Pursuant to Government Code 53243.1, if any City funds are provided for the legal criminal defense, said funds shall be fully reimbursed to the City if the Employee is convicted of a crime involving an abuse of his office or position.

Section 16: Bonding

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

Section 17: Other Terms and Conditions of Employment

The Employer, only upon Agreement with Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Yuba City Municipal Code or any other law.

Section 18: Notices

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

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

Section 19: General Provisions

1. This Agreement sets forth and establishes the entire understanding between the Employer and the Employee relating to the employment of the Employee by the Employer. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The parties by mutual written Agreement may amend any provision of this Agreement during the life of the Agreement. Such amendments shall be incorporated and made a part of this Agreement.
2. Binding Effect. This Agreement shall be binding on the Employer and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.
3. Severability. The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.
4. Effective Date. This Agreement shall become effective on December 19, 2017.

Dated: _____

Steven C. Kroeger, City Manager

Dated: _____

Preet Didbal, Mayor

Attest:

Approved as to Form:

Patricia Buckland, City Clerk

Timothy P. Hayes, City Attorney