

SECOND AMENDMENT TO EMPLOYMENT AGREEMENT

ASSISTANT CITY MANAGER TO SERVE AS INTERIM CITY MANAGER

THIS SECOND AMENDMENT TO EMPLOYMENT AGREEMENT ("Amendment") is entered into on September 7, 2023 ("Effective Date"), by and between the CITY OF LODI, a municipal corporation ("City") and Andrew C. Keys, an individual ("Employee").

RECITALS

WHEREAS, the City and Employee first entered into an Employment Agreement dated March 1, 2017, a copy of which is attached hereto and incorporated herein as Exhibit "A," and City then reclassified Employee to Assistant City Manager and the parties entered the Amendment to Employment Agreement dated August 21, 2023, a copy of which is attached hereto and incorporated herein as Exhibit "B" (collectively the "Agreement").

WHEREAS, the current City Manager Steve Schwabauer has announced his resignation from the City of Lodi effective October 6, 2023.

WHEREAS, on September 6, 2023, the Lodi City Council authorized the appointment of Employee to the Interim City Manager position effective at 5:00 p.m., October 6, 2023, for a period of six (6) months, unless earlier terminated or otherwise modified by the parties ("Interim Appointment") and authorized amendments to the Agreement as set forth below.

WHEREAS, City and Employee now desire to enter into this Amendment to modify the terms of the Agreement to take effect with the Interim Appointment as approved by Council on September 6, 2023.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and conditions set forth herein, and as approved by the City Council on September 6, 2023, the City and Employee mutually agree as follows:

I. Recitals Incorporated.

The recitals set forth above are hereby incorporated into this Amendment by this reference.

II. Amendment to the Agreement.

For the foregoing reasons the City and Employee agree that effective upon the start of the Interim Appointment, Paragraphs 1, 2, 4, 6, 7(a), 10, 11, 13, and 14 of the Agreement shall be amended to read as follows:

1. **Employment:** City agrees to employ Employee as Interim City Manager, in accordance with the following provisions:

(a) Employee shall serve as the Interim City Manager, and shall be responsible for managing all Departments and Divisions within the City as directed by the City Council.

(b) Employee shall perform his duties to the best of his ability in accordance with the highest professional and ethical standards of the profession and shall comply with all general rules and regulations established by the City.

(c) Employee shall not engage in any activity, which is or may become a conflict of interest, prohibited contract, or which may create an incompatibility of office as defined under California law. Employee shall comply fully with his reporting and disclosure obligations under regulations promulgated by the Fair Political Practices Commission (FPPC).

(d) Employee agrees to remain in the exclusive employ of the City during the term of this Agreement. Employee shall dedicate his full energies and qualifications to his employment as Interim City Manager, and shall not engage in any other employment except as set forth in this Agreement or as may be specifically approved in writing in advance by the City Council.

2. Start Date and Interim Appointment Term: Employee began work with the City as Deputy City Manager/Internal Services Director on March 27, 2017. He was then reclassified to Assistant City Manager with the City on August 21, 2023.

Employee's appointment to Interim City Manager shall take effect at 5:00 p.m. on October 6, 2023, which term shall continue for a period of six (6) months and end at 5:30 p.m. on April 4, 2024, unless earlier terminated in accordance with Paragraph 4 below, or as otherwise modified by mutual written agreement between Employee and the City Council.

4. Resignation, Expiration of Interim Appointment, and Termination:

(a) Employee may resign at any time from the Interim City Manager position, or completely from all employment with the City, but shall give City at least 30 days advance written notice of the effective date of his resignation and shall clarify whether he is resigning from the Interim City Manager position or all City employment. In such event, Employee shall not be entitled to severance pay as provided in Paragraph 5 herein.

(b) Upon expiration of the Interim Appointment, the effective date of the Employee's resignation from the Interim City Manager position only, or City Council's termination of Employee from the Interim City Manager position without cause, Employee shall automatically return to his prior job duties and classification as Assistant City Manager under the Amendment to Employment Agreement dated August 21, 2023 and no severance payment shall be owed to Employee.

(c) Should the City Council terminate Employee from the Interim City Manager position for cause, Employee shall be placed on paid administrative leave at the Assistant City Manager salary until the newly appointed/acting City Manager determines that Employee can either (1) satisfy the job duties and obligations as Assistant City Manager under the Amendment to Employment Agreement dated August 21, 2023, in which case Employee shall immediately return to his duties as Assistant City Manager under the August 21, 2023 Agreement upon such finding, or (2) determine that there is cause to terminate Employee from all employment with the City and such termination shall take effect immediately upon notification to Employee. However, under either determination Employee shall not be entitled to severance payment under Paragraph 5.

(d) Cause as referenced in Paragraph 4(b) and (c) above, shall mean: gross insubordination, incapacity, dereliction of duty, conviction of a crime involving acts of moral turpitude or involving personal gain to him, or material breach of then existing employment agreement.

(e) In the event of termination, and in recognition of Employee's professional status and integrity, Employee and the City Manager shall prepare a joint public statement to be made by the City Manager. This employment relationship is based on the mutual respect between the parties and a desire to maintain the highest degree of professionalism. In communicating with third parties about the parties' employment relationship and the circumstances under which it may have been severed, the parties shall (a) protect and advance their mutual respect and professionalism, and (b) refrain from making statements that would negatively impact either party.

(f) Employee may choose to resign or retire his office instead of being terminated if agreed to by the City Council. In such an event, the public announcement, as provided for in Paragraph 4 (e) above, will note Employee has resigned or retired. The provisions of Paragraph 4 (e) shall remain applicable.

6. Employment as Interim City Manager is Sole Employment with City: Employee further represents and acknowledges that his employment as Interim City Manager is his sole and exclusive

employment with the City. Employee has no right to concurrently occupy any other exempt position with the City, or to any employment in the classified service.

7. Salary:

(a) City agrees to pay Employee \$21,399.46 in salary per month during the Interim Appointment, payable in installments at the same time as other employees of the City are paid and subject to customary withholding. The City may reduce base salary compensation or other financial benefits of Employee as part of general salary reduction in pay among and common to all employees. In addition, Employee shall pay seven percent (employee's share) of his salary towards the California Public Employees Retirement system benefit, and agrees to an additional six percent (6%) contribution towards the employer's share of CalPERS normal pension cost ("cost-sharing") for a total of thirteen percent (13%) employee contribution.

(b) Employee shall receive a wage increase of five percent (5%) effective January 8, 2023, as approved by Council Resolution 2022-307.

10. Performance Evaluation: The City Council shall review and evaluate the performance of Employee each year and set goals and objectives for the ensuing year. Such review and evaluation shall be in accordance with specific criteria developed in the performance plan in consultation with Employee and the City Council.

11. Assignment: Employee shall not assign any of the duties and responsibilities, or obligations of this Agreement except with the express written consent of the City Council.

13. Notice: All notices required herein shall be sent first class mail to the parties as follows:

To CITY: City of Lodi
 Attn: City Council
 P. O. Box 3006
 Lodi, CA 95241-1910

To EMPLOYEE: Andrew C. Keys
 3705 Gibbons Park Way
 Carmichael, CA 95608

Notice shall be deemed effectively served upon deposit in the United States mail. Either party may change the "Notice" address by notifying the other party in writing of such change.

14. Entire Agreement: This Agreement contains the entire agreement between the parties hereto. No promise, representation, warranty, or covenant not included in this Agreement has been or is relied on by any party hereto. This Agreement may only be amended by written instrument signed by Employee and the City Manager, or Mayor of the City Council when Employee is serving in the Interim City Manager position, and specifically approved by the City Council in open session.

III. Remaining Provisions Unchanged.

All Agreement provisions not specifically referenced in Section II of this Amendment shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the Effective Date.

CITY OF LODI, a municipal corporation

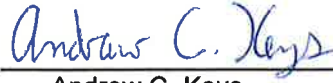
EMPLOYEE

By:



Stephen Schwabauer
City Manager

By:

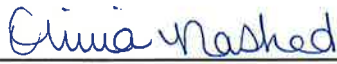


Andrew C. Keys
Assistant City Manager

ATTEST:

APPROVED AS TO FORM:

By:



Olivia Nashed
City Clerk

By:



Katie O. Lucchesi
Interim City Attorney