

ITEM 4.4

CITY MANAGER'S REPORT DECEMBER 11, 2023 CITY COUNCIL REGULAR MEETING

**ITEM: AMENDMENT NO. 5 TO THE CITY MANAGER
EMPLOYMENT AGREEMENT**

**RECOMMENDATION: Adopt a Resolution Approving Amendment No. 5 to
the City Manager Employment Agreement to Allow
Payout of a Portion of Accumulated Sick Leave
Balance**

BACKGROUND:

The City Council is responsible for the employment agreements of the three Council appointed officials; City Manager, City Attorney, and Police Chief. These employment agreements allow for the payout of unused accrued leave.

Section 8 of the City Manager's contract states that "Employee shall be paid for all accrued and unused sick leave" upon end of contract. Under the current employment agreement, time accrued continues to appreciate in value at annual cost of living adjustments or salary increases. Over the course of employment, the accrued sick leave has become a funded liability of the City.

Amendment Number 5 to the City Manager's Employment Agreement is prepared in accordance with the direction of the City Council pursuant to closed session discussions held on November 13, 2023. Amendment Number 5 would allow the City Manager to cash out 14 Hours per pay period of accrued unused sick leave, so long as accrued sick leave balance remains at a minimum of 160 hours. Increments of less than 14 hours above 160 hours of accrued sick leave will not be cashed out.

The proposed amendment is attached herein (Attachment B). Special Counsel Michael Youril reviewed the proposed resolution and employment contract amendments, which are recommended for City Council review and approval.

REASON FOR RECOMMENDATION:

The proposed contract amendment allows the City to be prudent and paydown the City's accumulated liability at the current rate of pay to eliminate future appreciation in value pursuant to annual cost of living adjustments or salary increases.

FISCAL IMPACT:

If approved by Council, the attached resolution will result in an immediate City fund balance savings of \$27,251 by paying out accrued sick leave at current hourly rates instead of future rates. This item authorizes the Finance Department to make appropriate adjustments to the Compensated Absences Liability Account and increase the vacation/ sick leave expenditures for FY 23-24 and FY 24-25, and decrease funded future liability by the same amount.

CITY MANAGER'S REPORT
DECEMBER 11, 2023 CITY COUNCIL REGULAR MEETING
AMENDMENT NO. 5 TO THE CITY MANAGER EMPLOYMENT AGREEMENT

PAGE 2

ATTACHMENTS:

- A. Resolution Approving Amendment No. 5 to the City Manager Employment Agreement
- B. Amendment No. 5 to the Employment Agreement for City Manager, Stephen J. Salvatore

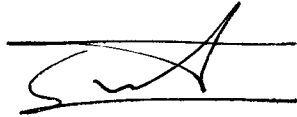
CITY MANAGER'S REPORT
DECEMBER 11, 2023 CITY COUNCIL REGULAR MEETING
AMENDMENT NO. 5 TO THE CITY MANAGER EMPLOYMENT AGREEMENT

APPROVALS:



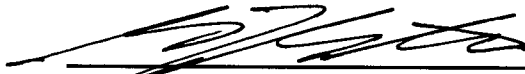
Thomas Hedegard
Deputy City Manager

12/4/2023
Date



Salvador Navarrete
City Attorney

12-6-2023
Date



Stephen J. Salvatore
City Manager

12.6.23
Date

RESOLUTION NO. 23-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LATHROP APPROVING AMENDMENT NO. 5 TO THE CITY MANAGER EMPLOYMENT AGREEMENT TO ALLOW PAYOUT OF A PORTION OF ACCUMULATED SICK LEAVE BALANCE

WHEREAS, the City Council is responsible for the employment agreement of the three Council appointed officials; City Manager, City Attorney, and Police Chief; and

WHEREAS, Section 8 of the City Manager's contract states that "Employee shall be paid for all accrued and unused sick leave" upon end of contract. Under the current employment agreement, time accrued continues to appreciate in value at annual cost of living adjustments or salary increases; and

WHEREAS, over the course of employment, the accrued sick leave has become a funded liability of the City; and

WHEREAS, Amendment Number 5 to the City Manager's Employment Agreement is prepared in accordance with the direction of the City Council pursuant to closed session discussions held on November 13; and

WHEREAS, Amendment Number 5 requires the City Manager to cash out up to 14 Hours per pay period of accrued unused sick leave, so long as accrued sick leave balance remains at a minimum of 160 hours; and

WHEREAS, the proposed contract amendment allows the City to be prudent and paydown the City's accumulated liability at the current rate of pay to eliminate future appreciation in value pursuant to annual cost of living adjustments or salary increases.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lathrop does hereby approve the Amendment Number Five (5) to the City Manager Employment Agreement; and

BE IT FURTHER RESOLVED, that the City Council of the City of Lathrop authorizes the Finance Department to make appropriate adjustments to the Compensated Absences Liability Account and increase the vacation/sick leave expenditures for FY 23-24 and FY 24-25, and decrease funded future liability by the same amount.

The foregoing resolution was passed and adopted this 11th day of December 2023, by the following vote of the City Council, to wit:

AYES:

NOES:

ABSENT:

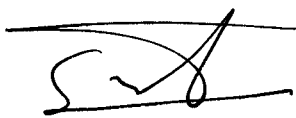
ABSTAIN:

Sonny Dhaliwal, Mayor

ATTEST:

Teresa Vargas, City Clerk

APPROVED AS TO FORM:



Salvador Navarrete, City Attorney

ATTACHMENT " B "

Amendment Number Five to Employment Agreement between The City of Lathrop and Stephen J. Salvatore December 11, 2023

The original Employment Agreement between the City of Lathrop and Stephen J. Salvatore, attached hereto and incorporated herein as Exhibit "A", was entered into between the parties for the services of City Manager on or about September 17, 2012.

On or about August 17, 2015, the City Council approved Amendment Number One to the Employment Agreement, which is attached and incorporated herein as Exhibit " B."

On or about November 19, 2018, the City Council approved Amendment Number Two, which is attached and incorporated herein as Exhibit " C."

On or about August 8, 2022, the City Council approved Amendment Number Three, which is attached and incorporated herein as Exhibit" D."

On or about August 14, 2023, the City Council approved Amendment Number Four, which is attached and incorporated herein as Exhibit" E."

The City Council hereby approves an amendment to the second paragraph of Section 8 of the Employment Agreement to read as underlined below:

If this contract is terminated for any reason specified herein, Employee shall be paid for all accrued and unused sick leave, vacation time, paid holidays; and the value of all benefits including employer's contribution to PERS, Health Insurance allowance, and car allowance. Severance will be paid in one payment within 30 days of termination. Employee shall cash out 14 hours per pay period of accrued unused sick leave, so long as the accrued sick leave balance remains at a minimum of 160 hours. Increments of less than 14 hours above 160 hours of accrued sick leave will not be cashed out.

Unless specifically stated above, no other changes to the original agreement (or Amendments) are intended by this Amendment.

EMPLOYEE

CITY OF LATHROP

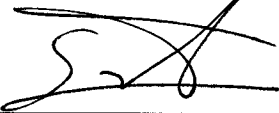
By: _____
Stephen J. Salvatore

Sonny Dhaliwal, Mayor

Date: _____

Date: _____

APPROVED AS TO FORM:



Salvador Navarrete, City Attorney

ATTEST:

Teresa Vargas, City Clerk

Attachments:

- Exhibit "A"— Employment Agreement for Stephen J. Salvatore effective September 17, 2012
- Exhibit "B"— Amendment Number One to Employment Agreement dated August 17, 2015
- Exhibit "C"— Amendment Number Two to Employment Agreement dated November 19, 2018
- Exhibit "D"— Amendment Number Three to Employment Agreement dated August 8, 2022
- Exhibit "E"— Amendment Number Four to Employment Agreement dated August 14, 2023

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Contract") is made and entered into this 17 day of September, 2012, by and between the City of Lathrop, California, a general law city organized under the laws of the State of California, hereinafter called "Employer," and Stephen J. Salvatore, an individual, hereinafter called "Employee," and is effective as of September 17, 2012 ("Effective Date").

The parties agree as follows:

SECTION 1. DUTIES.

Employer hereby employs Employee as City Manager to perform the functions and duties specified in the laws of the State of California, the Municipal Code of the City of Lathrop, and the Ordinances and Resolutions of the City of Lathrop, and to perform such other legally permissible and proper duties and functions as the City Council shall from time to time assign.

SECTION 2. TERM.

- A. The term of this Contract shall initially be for three (3) years, commencing as of the Effective Date, and shall be automatically renewed and extended for additional three (3) year periods at the end of each three year period, unless either party shall provide written notice of non-renewal at least ninety (90) days prior to the end of the period in which notice is given.
- B. Nothing in this Contract shall prevent, limit, or otherwise interfere with the right of Employee to resign as City Manager or as an employee of the City at any time for any reason.
- C. Employee shall remain in the exclusive employ of Employer, and shall neither accept other employment nor become employed by any other employer except upon written approval of Employer.
- D. The term "employed" shall not be construed to include occasional teaching, writing, speaking, or consulting performed during Employee's time off.
- E. Employee's initial date of hire was January 1, 2008, but this Agreement is effective as the Effective Date specified above.

SECTION 3. SALARY.

Employer agrees to pay Employee, commencing with the Effective Date for his duties, the base annual salary of one hundred and seventy one thousand one hundred thirty one dollars

(\$171,131) payable in installments at the same time and in the same manner as other Employees of the Employer are paid.

On the one (1) year anniversary of the Effective Date, the City Council shall conduct an annual performance evaluation. This evaluation shall be completed as a joint effort between Employee and Employer. If desired, an outside facilitator, to be mutually agreed upon by Employer and Employee, and at Employer's sole cost, may be utilized. On the subsequent anniversaries, Employer may grant merit increases to the base annual salary and provide other benefits to Employee under this Contract at their discretion.

SECTION 4. HOURS OF WORK.

It is recognized that Employee must devote a great deal of time outside normal office hours to business of Employer. To that end, Employee will be granted management leave at a rate of four (4) weeks of management leave per calendar year. Management leave is fully credited on January 1st of each year.

SECTION 5. AUTOMOBILE ALLOWANCE.

Employer shall receive an a automobile allowance of \$450.00 per month for the general business use of his personal vehicle; however, Employer shall also reimburse Employee at the IRS standard mileage rate for any business use of his personal vehicle for any single business trip totaling more than 100 miles.

SECTION 6. TERMINATION.

This Contract shall terminate upon the occurrence of any of the following events:

- A. The death of Employee.
- B. The dissolution or bankruptcy of Employer.
- C. The disability of Employee, as defined herein.
- D. The majority of the City Council of Employer votes to terminate the Employee at a duly authorized meeting. Except for non-renewal of contract pursuant to 2A, the Employer however shall not terminate Employee within a "cooling off" period of ninety (90) days either before or after an election for which a City Council Member is elected.
- E. If the Employer, citizens or legislature act or acts to amend any provision of applicable law that substantially changes the role, powers, duties, authority, or responsibilities of the Employee, the Employee shall have the right to declare that such amendments constitute termination.

- F. If the Employer reduces the base salary, compensation or any other financial benefit of the Employee, unless any such reduction is pursuant to a City wide furlough program, such action shall constitute a breach of this Contract and will be regarded as termination.
- G. If the Employee resigns following an offer to accept resignation, by majority of the City Council of Employer, then the Employee may declare a termination as of the date of the requested resignation.
- H. Breach of contract declared by either party with a thirty (30) day cure period for either Employee or Employer to be provided. Written notice of a breach of contract shall be provided.
- I. Conviction of Employee of any public offense that is a felony, and/or involves moral turpitude, and /or the punishment for which includes a prohibition of holding public employment.

SECTION 7. CONFIDENTIALITY.

Unless the Employee expressly requests otherwise in writing, the evaluation of the Employee during his service as City Manager shall at all times be conducted in closed session of the City Council and shall be considered confidential to the full extent permitted by law. Nothing herein shall prohibit the Employer or the Employee from sharing the content of Employee's evaluation with their respective legal counsel.

SECTION 8. SEVERANCE P AY.

If this Contract is terminated pursuant to Section 6, Paragraph B, D, E, F, G or City breach of Contract, Employer shall pay severance to Employee in the amount of six (6) months' salary. Instead of six of severance pay in accordance with this Section, Employee may elect to treat the non-renewal of the Contract (as described in herein and in Section 2) as a termination that entitles him to three (3) months' severance pay in addition to regular pay during the 90 day notice period of non-renewal referenced in Section 2A.

If this contract is terminated for any reason specified herein, Employee shall be paid for all accrued and unused sick leave, vacation time, paid holidays; and the value of all benefits including employer's contribution to PERS, Health Insurance allowance, and car allowance. Severance will be paid in one payment within 30 days of termination.

SECTION 9. NOTICE TO RESIGN

Employee may terminate this Contract by providing written notice to the City at least thirty (30) days prior to the effective date of resignation. The Employer shall have no further obligation to provide payments and benefits to Employee for his service as City Manager after the effective date of the resignation except for all accrued and unused management leave, sick leave and vacation time. The City requests that Employee provide six (6) to twelve (12) months advance notice in the event that he determines to retire from service.

SECTION 10. INDEMNIFICATION.

Employer shall defend, save harmless and indemnify Employee in accordance with Division 3.6 of the California Government Code, commencing with section 810.

SECTION 11. BONDING.

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

SECTION 12. DISABILITY, ADJUSTMENTS, HEALTH AND LIFE INSURANCE, COST-OF-LIVING, VACATION AND SICK LEAVE.

Unless otherwise specifically provided herein, all provisions of the Municipal Code and regulations and rules of Employer relating to vacation and sick leave, retirement system contributions, holidays and other fringe benefits and working conditions as they now exist or hereafter may be amended also shall apply to Employee as they would to other unrepresented employees of the Employer. An annual cost of living increase adjustment shall be applied to the base annual salary going forward to Employee as established for all other non-represented employees. Additionally, Employee will accrue vacation and sick leave at a rate as outlined in the City's Administrative Policies Manual based on his initial hire date.

SECTION 13. RETIREMENT.

Employer shall pay Employee's contribution to the Public Employees Retirement System in accordance with adopted policies of Employer.

SECTION 14. NOTICES.

Notices pursuant to this Contract shall be in writing given by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

- | | |
|--------------|---|
| (1) Employer | Mayor, City of Lathrop, 390 Towne Centre Drive, Lathrop, CA |
| (2) Employee | At his address as reflected in his personnel records of the City. |

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

SECTION 15. GENERAL PROVISIONS.

A. The text herein shall constitute the entire Contract between the parties.

B. If any provision, or any portion thereof, contained in this Contract is held unconstitutional, invalid or unenforceable, the remainder of this Contract, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

IN WITNESS WHEREOF, the City of Lathrop has caused this Contract to be signed and executed in its behalf by its Mayor and duly attested by its City Clerk, and the Employee has signed and executed this Contract, both in duplicate, the day and year first above written.

EMPLOYEE

By: 

Stephen J. Salvatore

Date: 9/12/12

CITY OF LATHROP



J Chaka Santos, Mayor

Date: 9/17/12

APPROVED AS TO FORM:



Salvador Navarrete, City Attorney

ATTEST:



Mitzi Ortiz, City Clerk

**Amendment Number One to Employment Agreement between
The City of Lathrop and Stephen J. Salvatore
August 17, 2015**

The original Employment Agreement between the City of Lathrop and Stephen J. Salvatore, attached hereto and incorporated herein as Exhibit "A", was entered into between the parties for the services of City Manager on or about September 17, 2012.

The City Council has met and unanimously agreed to renew and extend this Employment Agreement pursuant to the conditions as described in Section 2 of the Employment Agreement.

IN WITNESS WHEREOF the City of Lathrop has caused this Amendment No. 1 to be signed and executed in its behalf by its Mayor and duly attested by its City Clerk, and the employee has signed and executed this Amendment both in duplicate.

EMPLOYEE

CITY OF LATHROP

By:

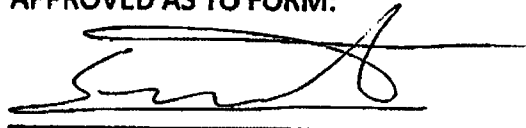

Stephen J. Salvatore


Sonny Dhaliwal, Mayor

Date: 8-17-15

Date: 8/17/15

APPROVED AS TO FORM:


Salvador Navarrete, City Attorney

ATTEST:


Teresa Vargas, City Clerk

Attachment: Exhibit A – Employment Agreement for Stephen J. Salvatore effective September 17, 2012

**Amendment Number Two to Employment Agreement Between the
City of Lathrop and Stephen J. Salvatore
November 19, 2018**

The original Employment Agreement between the City of Lathrop and Stephen J. Salvatore, attached hereto and incorporated herein as Exhibit "A", was entered into between the parties for services of City Manager on or about September 17, 2012.

On or about August 17, 2015, the City council unanimously agreed to renew and extend the Employment Agreement pursuant to the conditions as described in Section 2 of the Employment Agreement, attached hereto and incorporated herein as Exhibit "B". In addition, the Employment Agreement automatically renewed for an additional 3 years in September 2018.

The City Council has met and with a vote of 4-0, with Councilmember Dresser absent, approves the following amendment to the Employment Agreement, effective November 19, 2018:

1. Increase current base annual salary by 5%;
2. Up to forty (40) hours of sick leave can be cashed out annually; and
3. Employer will contribute \$2,179 per month towards the Employee's health, dental and vision insurance benefits, and any such increases to benefits provided to other management employees.


Unless specifically stated above, no other changes to the original agreement (or Amendment One) are intended by this Agreement.

EMPLOYEE:

By: 
Stephen J. Salvatore

Date: 11-19-18

CITY OF LATHROP

By: 
Sonny Dhaliwal, Mayor

Date: 11/19/18

APPROVED AS TO FORM:


Salvador Navarrete, City Attorney

ATTEST:


Teresa Vargas, City Clerk

Attachments:

- Exhibit "A" - Employment Agreement for Stephen J. Salvatore effective September 17, 2012
- Exhibit "B" - Amendment Number One to Employment Agreement dated August 17, 2015

**Amendment Number Three to Employment Agreement Between the
City of Lathrop and Stephen J. Salvatore
August 8, 2022**

The original Employment Agreement between the City of Lathrop and Stephen J. Salvatore, attached hereto and incorporated herein as Exhibit "A", was entered into between the parties for services of City Manager on or about September 17, 2012.

On or about August 17, 2015, the City Council unanimously agreed to renew and extend the Employment Agreement (Amendment Number One) attached and hereto incorporated herein as Exhibit "B".

On or about November 19, 2018 the City Council approved Amendment Number Two, attached and incorporated herein as Exhibit "C".

The City Council hereby approves a performance-based increase in the City Manager's current base salary of 6% , effective July 11, 2022.

Unless specifically stated above, no other changes to the original agreement (or Amendments) are intended by this Amendment.

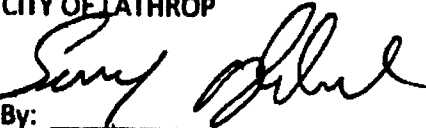
EMPLOYEE

By: 

Stephen J. Salvatore

Date: 8/8/22

CITY OF LATHROP

By: 

Sonny Dhaliwal, Mayor

Date: 8/8/22

APPROVED AS TO FORM:


Michael G. Colantuono
Special Counsel

ATTEST:


Teresa Vargas, City Clerk / Government Services Director

Attachments:

- Exhibit "A" – Employment Agreement for Stephen J. Salvatore effective September 17, 2012
- Exhibit "B" – Amendment Number One to Employment Agreement dated August 17, 2015
- Exhibit "C" – Amendment Number Two to Employment Agreement dated November 19, 2018

EXHIBIT " E "

**Amendment Number Four to Employment Agreement Between the
City of Lathrop and Stephen J. Salvatore
August 14, 2023**

The original Employment Agreement between the City of Lathrop and Stephen J. Salvatore, attached and incorporated herein as Exhibit "A," was entered into between the parties for services of City Manager on or about September 17, 2012.

On or about August 17, 2015, the City Council approved Amendment Number One to the Employment Agreement, which is attached and incorporated herein as Exhibit "B."

On or about November 19, 2018, the City Council approved Amendment Number Two, which is attached and incorporated herein as Exhibit "C."

On or about August 8, 2022, the City Council approved Amendment Number Three, which is attached and incorporated herein as Exhibit "D."

The City Council hereby approves an amendment to the first paragraph of Section 8 of the Employment Agreement to read as follows:

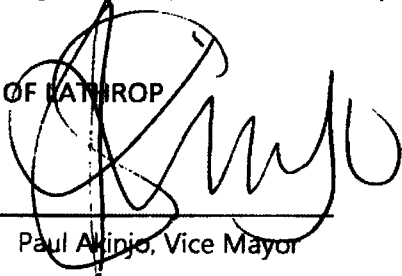
If this Contract is terminated pursuant to Section 6, Paragraph B, D, E, F, G, or City breach of Contract, Employer shall pay severance to Employee in the amount of twelve (12) months of salary. Instead of twelve months of severance pay in accordance with this Section, Employee may elect to treat the non-renewal of the Contract (as described in Section 2) as a termination that entitles him to nine (9) months of severance pay in addition to regular pay during the 90 day notice period of non- renewal referenced in Section 2A. This provision shall be limited by the requirements of Government Code sections 53260 and 53621.


Unless specifically stated above, no other changes to the original agreement (or Amendments) are intended by this Amendment.

EMPLOYEE

By: 
Stephen J. Salvatore


Date: 8.15.23

CITY OF LATHROP


By: 
Paul Avinjo, Vice Mayor

Date: 8/14/23

APPROVED AS TO FORM:


Special Counsel

ATTEST:


Teresa Vargas, City Clerk/Government Services Manager

Attachments:

Exhibit "A" – Employment Agreement for Stephen J. Salvatore effective September 17, 2012

Exhibit "B" – Amendment Number One to Employment Agreement dated August 17, 2015

Exhibit "C" – Amendment Number Two to Employment Agreement dated November 19, 2018

Exhibit "D" – Amendment Number Three to Employment Agreement dated August 8, 2022

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