

RESOLUTION NO. 2008-234

A RESOLUTION OF THE LODI CITY COUNCIL
RATIFYING THE EMPLOYMENT AGREEMENT
BETWEEN THE CITY MANAGER AND DEPUTY
CITY MANAGER/INTERNAL SERVICES DIRECTOR
JORDAN V. AYERS

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby ratify the Employment Agreement entered into between the City Manager and Deputy City Manager/Internal Services Director Jordan V. Ayers, as shown on Exhibit A attached.

Date: December 3, 2008

I hereby certify that Resolution No. 2008-234 was passed and adopted by the Lodi City Council in a regular meeting held December 3, 2008, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Hitchcock, Johnson, and
Katzakian

NOES: COUNCIL MEMBERS – Mayor Mounce

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



RANDI JOHL
City Clerk

EMPLOYMENT AGREEMENT

**Executive Management
Exempt Service**

Deputy City Manager/Internal Services Director

THIS AGREEMENT is entered into on _____, 2008, by and between the CITY OF LODI, a municipal corporation (hereinafter referred to as "City") and Jordan V. Ayers, an individual (hereinafter referred to as "Employee").

WHEREAS, City desires to employ the services of Employee as Deputy City Manager/Internal Services Director; and

WHEREAS, Employee desires to serve as Deputy City Manager/Internal Services Director for the City beginning December 15, 2008; and

WHEREAS, City and Employee agree in writing to the terms and conditions of employment as Deputy City Manager/Internal Services Director; and

WHEREAS, Employee and City agree and acknowledge that Employee's employment as Deputy City Manager/Internal Services Director is his sole and exclusive employment with City, and that their employment relationship is governed solely and exclusively by this Agreement.

NOW, THEREFORE, in consideration of the promises and conditions set forth herein, the parties mutually agree as follows:

1. **Employment:** City agrees to employ Employee as Deputy City Manager/Internal Services Director, in accordance with the following provisions:

(a) Employee shall serve as Deputy City Manager/Internal Services Director, and shall be responsible for managing and directing the operations of the Budget, Financial Services, Human Resources and Information Systems Divisions of the City Manager's Office.

(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 Deputy City Manager/Internal Services Director, and shall not engage in any other employment except as may be specifically approved in writing in advance by the City Manager.

2. **Maintenance of Professional Expertise:** To promote continued professional growth and benefit to the City, Employee shall, at City expense and consistent with budgetary constraints: maintain professional licenses and certifications, maintain membership in professional organizations related to finance and administration and related professional disciplines; attend workshops, seminars and other similar activities designed to advance Employee's professional development; and, represent the City in professional associations and other organizations.

3. **Separation:**

(a) Resignation – In the event Employee terminates this agreement by voluntary resignation of his position with the City, Employee shall not be entitled to severance pay otherwise provided in Section 5 of this contract. In the event Employee voluntarily resigns his position with City, he shall give City at least forty-five (45) days advance written notice and shall be entitled to all earned salary and vacation leave.

(b) Termination & Removal – The parties recognize and affirm that Employee may be terminated by the City Manager with cause, which shall mean gross insubordination, incapacity, dereliction of duty, conviction of any felony or any crime involving acts of moral turpitude or involving personal gain to him, or material breach of this Agreement. In such event, Employee shall not be entitled to severance pay as provided in Paragraph 5 herein.

(c) The parties recognize and affirm that Employee may be terminated by the City Manager without cause. In such event, Employee shall be entitled to severance pay as provided in Paragraph 5 herein.

(d) 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.

4. **EMPLOYMENT TERM:**

(a) Employee is an "at will" employee and shall serve at the pleasure of the City Manager.

(b) Except as provided in Section 3, nothing in this Agreement shall prevent, limit or otherwise interfere with the rights of the City Manager to terminate the services of Employee.

(c) Except as provided in Section 3 of this Agreement, nothing in this Agreement shall prevent, limit or otherwise interfere with the right of employee to resign at any time from his position as Deputy City Manager/Internal Services Director.

5. **Severance Pay:** If Employee is terminated by the City Manager without cause while still willing and able to perform the duties of Deputy City Manager/ Internal Services Director, City agrees to pay Employee a cash payment equal to six (6) months' aggregate salary and the City's cost of six (6) months' health insurance benefits (no other benefits will be accrued or converted to a cash equivalent) subject to reduction as set forth in this Paragraph 5. The

severance payment will be paid in installments coinciding with the City's regular paydays during the severance period and subject to customary withholdings. In the event Employee retains new employment during the six-month severance period, any remaining severance payment will be forfeited as of the date Employee begins his new employment. To be eligible for such severance pay, Employee shall fulfill all of his obligations under this Agreement, and shall sign an Acknowledgment and Release of Claims against the City in a form acceptable to the City Attorney. Payment under this Paragraph 5 will release City from any further obligations under this Agreement, or any other transaction between the parties.

6. **Employment as Department Head is Sole Employment with City:** Employee further represents and acknowledges that his employment as Deputy City Manager/ Internal Services Director is his sole and exclusive employment with the City. Employee has no right to any other exempt position with the City or to any employment in the classified service.

7. **Salary:** City agrees to pay Employee \$145,000 in salary per annum for his services, payable in installments at the same time as other employees of the City are paid and subject to customary withholding. In accordance with Section 9 of this contract, the City Manager may grant an increase subject to performance and city resources.

8. **Benefits:** The City shall provide Employee the same benefits as provided to management employees in accordance with the terms of the Executive Management Statement of Benefits dated 1998 and as they may be amended, increased or decreased, except as modified herein. Except as provided herein, these are the sole and exclusive benefits to be provided to Employee. Any improvement or modification of such benefits may only be made by written instrument signed by the City Manager. As used herein, benefits include, but are not limited to: sick leave, holidays, administrative leave, retirement, vision insurance, health insurance, dental insurance, long-term disability insurance and life insurance. Employee's vacation leave shall be 15 days per year, equivalent to six years of service, future vacation leave shall be earned according to the Executive Management Statement of Benefits, with the sixth year of service equal the 12th, the ninth year equal to the 15th year and so on. In addition, Employee shall be granted a one-time 15 day vacation/sick leave Bank that can only be used during Employee's first 12 months of employment. This Bank shall expire upon Employee's first anniversary with the City. During Employee's first year regular vacation will be accrued on top of the vacation bank. Employee may participate in City's deferred compensation program. City contributes up to a maximum of three percent (3%) of base salary.

9. **Performance Evaluation:** The City Manager 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 Manager.

10. **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 Manager.

11. **Authority to Work in the United States:** Employee represents, under penalty of perjury, that he is authorized to work in the United States. In accordance with §274A (8 USC 1324) of the Immigration Reform and Control Act of 1986 before this Agreement can become effective, Employee must provide documentary evidence to City consistent with the Act, that he is legally entitled to work in the United States, and must execute the verification required by that Act.

12. **Cell Phone:** Employee will be provided with a Cell Phone for employment related use at the City's expense on terms consistent with other Executive Managers.

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

To **CITY:** Blair King, City Manager
City of Lodi
P. O. Box 3006
Lodi, CA 95241-1910

To **EMPLOYEE:** Jordan V. Ayers
2448 El Burlon Cr
Rancho Cordova, CA 95670

Notice shall be deemed effectively served upon deposit in the United States mail.

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 and specifically approved by the City Council in open session.

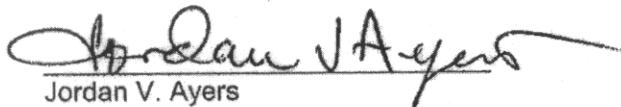
15. **Severability:** If any provision of this Agreement is invalid or unenforceable, it shall be considered deleted herefrom and the remainder of this Agreement shall be unaffected and shall continue in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year written above.

CITY OF LODI, a municipal corporation

EMPLOYEE

Blair King
City Manager


Jordan V. Ayers

Attest:

By: _____
Randi Johl, J.D.
City Clerk

APPROVED AS TO FORM:

D. Stephen Schwabauer
City Attorney