

RESOLUTION NO. 2010-59

A RESOLUTION OF THE LODI CITY COUNCIL  
RATIFYING THE EMPLOYMENT AGREEMENT  
BETWEEN THE CITY MANAGER AND ELECTRIC  
UTILITY DIRECTOR ELIZABETH "LIZ" A. KIRKLEY

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NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby ratify the Employment Agreement entered into between the City Manager and Electric Utility Director Elizabeth "Liz" A. Kirkley, as shown on Exhibit " A attached hereto and made a part hereof.

Dated: May 5, 2010

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I hereby certify that Resolution No. 2010-59 was passed and adopted by the City Council of the City of Lodi in a special meeting held May 5, 2010, by the following vote:

- AYES: COUNCIL MEMBERS – Hansen, Hitchcock, Johnson, and Mayor Katzakian
- NOES: COUNCIL MEMBERS – Mounce
- ABSENT: COUNCIL MEMBERS – None
- ABSTAIN: COUNCIL MEMBERS – None

  
RANDI JOHL  
City Clerk

**EMPLOYMENT AGREEMENT**

**Executive Management  
Exempt Service**

**Electric Utility Director**

**THIS AGREEMENT** entered into on \_\_\_\_\_, 2010, by and between the CITY OF LODI, a municipal corporation (hereinafter referred to as "City") and Elizabeth A. Kirkley, an individual (hereinafter referred to as "Employee").

**WHEREAS**, Employee desires to be employed as Electric Utility Director and City desires to employ the services of Employee as Electric Utility Director; and

**WHEREAS**, City and Employee agree in writing to the terms and conditions of employment as Electric Utility Director; and

**WHEREAS**, Employee and City agree and acknowledge that Employee's employment as Electric Utility Director is her 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 Electric Utility Director, in accordance with the following provisions:

(a) Employee shall serve as Electric Utility Director, and shall be responsible for managing and directing the operations of the Electric Utility Department in accordance with an agreed upon performance plan.

(b) Employee shall perform her duties to the best of her 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 her 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 her full energies and qualifications to her employment as Electric Utility Director, and shall not engage in any other employment except as may be specifically approved in writing in advance by the City Manager.

2. **Start Date:** Employee shall begin work between May 5, 2010 and July 5, 2010 upon one weeks notice from employee.

**3. 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 membership in professional organizations related to city utility 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.

**4. Resignation or Termination:**

(a) Employee may resign at any time and agrees to give City at least 30 days advance written notice of the effective date of her resignation. In such event, Employee shall not be entitled to severance pay as provided in Paragraph 5 herein.

(b) 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 a crime involving acts of moral turpitude or involving personal gain to her, 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.

(e) Employee may choose to resign or retire her office instead of being terminated if agreed to by the City Manager. In such an event the public announcement, as provided for in Paragraph 3 (d) above, will note Employee has resigned or retired. The provisions of Paragraph 3 (d) shall remain applicable. In such event, Employee shall not be entitled to severance pay as provided in Paragraph 5 herein.

**5. Severance Pay:** If Employee is terminated by the City Manager without cause while still willing and able to perform the duties of Electric Utility 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 subject to reduction as set forth in this Paragraph 4. The Severance payment will be paid over time at the same time as other employees of the City are paid 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 her new Employment. To be eligible for such severance pay, Employee shall fulfill all of her obligations under this Agreement, and shall sign an Acknowledgment and Release of Claims against the City. Payment under this paragraph 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 her employment as Electric Utility Director is her 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. **Relocation Expenses:** City agrees to pay costs of moving Employee's household goods to Lodi to a **maximum** of the lowest of three bids.

8. **Salary:**

(a) City agrees to pay Employee \$155,000 in salary per annum for her services, 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 management employees. Currently, the City has instituted and Employee agrees to accept the following two reductions:

a) one unpaid furlough day per month **through June 30, 2011**; and

b) elimination of deferred compensation matches employee would otherwise be entitled to through the pay period in which **July 1, 2011 falls.**

9. **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. 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: vacation, 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 calculated as if Employee was in her sixth year of employment (i.e., Employee shall accrue fifteen days of vacation **per year** increasing from there as provided **in** the Executive Management Statement of Benefits.) in addition, Employee shall be granted a 10 day vacation/sick leave bank that can **only be used** during Employee's first 12 months of employment. This secondary bank shall expire upon Employee's first anniversary with the City. Employee will also earn and accumulate sick leave and vacation as provided in the Executive Management Statement of Benefits.

10. **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.

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 Manager.

**12. Authority to Work in the United States:** Employee represents, under penalty of perjury, that she 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 she is legally entitled to work in the United States, and must execute the verification required by that Act.

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

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

To CITY:

City of Lodi  
P. O. Box 3006  
Lodi, CA 95241-1910

To EMPLOYEE:

Elizabeth "Liz" A. Kirkley  
748 University Street  
Healdsburg, CA 95448

Notice shall be deemed effectively served upon deposit in the United States mail. Either party may change the address notices are to be sent to them 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 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.

EMPLOYEE

By: 