

RESOLUTION NO. 2014-100

A RESOLUTION OF THE LODI CITY COUNCIL
APPOINTING JANICE D. MAGDICH TO THE POSITION OF
CITY ATTORNEY AND APPROVING EMPLOYMENT
AGREEMENT

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NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby
appoint Janice D. Magdich to the position of City Attorney for the City of Lodi; and

BE IT FURTHER RESOLVED that the City Council does hereby approve the City
Attorney Employment Agreement attached hereto marked as Exhibit A.

Dated: June 4, 2014

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I hereby certify that Resolution No. 2014-100 was passed and adopted by the
City Council of the City of Lodi in a regular meeting held June 4, 2014, by the following
votes:

AYES: COUNCIL MEMBERS – Hansen, Johnson, Mounce, Nakanishi,
and Mayor Katzakian

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None


RANDI JOHL-OLSON
for City Clerk

CITY ATTORNEY EMPLOYMENT AGREEMENT

This Agreement is made and entered into as of June 4, 2014 by and between the City of Lodi, a municipal corporation, hereinafter called "City," and Janice D. Magdich, hereinafter called "Employee," both of whom agree as follows:

RECITALS:

It is the desire of the City to retain the services of Employee and to provide inducement for her to remain in such employment, make possible full work productivity by assuring Employee's morale and peace of mind with respect to future security, and to provide a just means for terminating Employee's services.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. GENERAL:

City agrees to employ Employee as the City Attorney of City starting June 4, 2014, and Employee accepts such employment and agrees to perform the functions and duties of City Attorney for the City as she may be assigned.

2. DUTIES & AUTHORITY:

Employee has the duty to:

- (a) Perform the functions and duties of City Attorney as specified in applicable statutes including, but not limited to, the California Government Code, Rules of Professional Conduct for Attorneys, and City Ordinances, Resolutions, Rules, and Regulations, as well as all other applicable federal, state, and local laws;
- (b) Provide legal advice, counsel, and representation of the City as requested by appropriate City officials and/or the City Council;
- (c) Perform all legally permissible and proper duties as may be assigned and as may be modified from time to time; and
- (d) Employee, in coordination with the City Manager, shall recommend policies, rules, and regulations to implement City Council policies and shall enforce policies established by the City Council. To accomplish this, Employee shall
 - (1) Attend City Council meetings as needed or required by the City Council.
 - (2) Review all documents agendized for any regular and/or special meetings of the City Council. Employee shall provide legal advice and counsel, and make recommendations in connections with such advice and counsel, to the City Manager and City Council concerning items on the City Council's agenda.

3. EXCLUSIVE EMPLOYMENT:

- (a) Employee has the duty and herein commits to devote her full time and energies in the best interest of the City, and to act in accordance with the duties and responsibilities of the position of City Attorney as specified in Lodi Municipal Code section 2.14.010, as well as other duties assigned by the City Council which reasonably relate to the position of City Attorney.
- (b) Employee shall not accept employment from or on behalf of any person, firm, corporation or entity during the term of this Agreement, except City acknowledges that Employee may engage in other professional activities (including teaching and writing), so long as these activities do not interfere or conflict with Employee's duties as City Attorney. The foregoing shall not be construed to prevent Employee from performing volunteer community service, participating in community service organizations, Employee's membership on non-profit boards, or managing personal and real property investments, provided Employee shall, prior to performing such services, disclose such anticipated services to the City Council and obtain its approval. Any approved outside services shall not create nor tend to create a disqualifying conflict of interest as defined by the California Political Reform Act of 1974, as amended, nor shall such services impair Employee's ability to perform fully her duties for City hereunder.

4. EMPLOYEE COMMITMENTS:

- (a) Specific Tasks and Work Plans – Employee agrees to accomplish specific tasks as specified and described by the City Council from time to time in a timely and professional manner. Such specific tasks shall be discussed with Employee and then adopted by motion by the City Council as frequently as the City Council may choose.
- (b) Hours of Work – Employee is an exempt employee who does not accrue compensatory time off, but is expected to engage in those hours of work which are necessary to fulfill the obligations of her position. Employee does not have set hours of work as she is expected to be available at all times. It is recognized that Employee must devote a great deal of her time outside “normal office hours” to the business of the City, and to that end Employee's schedule of work each day and week shall vary in accordance with the work required to be performed. The Employee has discretion as to her work schedule.

5. CITY COMMITMENTS:

- (a) City shall provide Employee with an office, support staff, office equipment, supplies, and all other facilities and services adequate for the performance of her duties.
- (b) City shall pay for, or provide, Employee reimbursement of actual business expenses. The City shall provide Employee with a City credit card to charge appropriate and lawful business expenses up to the amount provided for in the City budget.
- (c) City shall pay for Employee's California State Bar dues, including membership in the Public Law Section, San Joaquin County Bar Association dues, legal subscriptions, and Minimum Continuing Legal Education (MCLE) expenses.

- (d) City agrees to pay travel and subsistence expenses of Employee to pursue official and other functions for the City, and meetings and occasions to continue the professional development of Employee, including, but not limited to, annual conferences of the League of California Cities, including the annual conference of the League's City Attorney's Division, and other national, regional, state, and local conferences, and governmental groups and committees upon which Employee serves as a member up to an amount provided for in the City budget.

6. MUTUAL COMMITMENTS:

Performance Evaluation – Annual performance evaluations are an important way for the City Council and Employee to ensure effective communications about expectations and performance. The City Council recognizes that for Employee to respond to its needs and to grow in the performance of her job, she needs to know how the City Council Members think she is performing. To assure Employee gets this feedback, the City Council commits to:

- (a) Conduct an evaluation of Employee's performance at least annually, or on any other schedule deemed appropriate by the City Council. The City Council may use an outside facilitator to assist them in conducting this evaluation.
- (b) The annual review and evaluation shall be in accordance with specific criteria developed jointly by the City Council and Employee. Such criteria may be added to or deleted as the City Council may from time to time determine in consultation with Employee.
- (c) The City Council and Employee shall define such goals and performance objectives which they determine necessary for the proper operation of the City for the attainment of the City Council's policy objectives. The City Council and Employee shall further establish a relative priority among those various goals and objectives.

7. COMPENSATION:

City agrees to provide the following compensation to Employee during the term of this Agreement:

- (a) Base Salary – Employee shall be paid an annual salary of \$140,000 per year, which sum may be adjusted from time to time as provided in this Agreement by action of the City Council, payable in twenty-six (26) equal installments in the same manner as City department heads. In recognition of the ongoing contributions of Employee, and in the interest of retaining Employee's future services, Employee's salary, as set forth herein, shall be effective as of February 5, 2014.
- (b) The City shall pay all traditional employer costs required by law, including but not limited to: FICA, Medicare, Unemployment Compensation, and Workers' Compensation.
- (c) Future annual adjustments to Employee's salary shall be set by City Council action. City may not reduce salary or benefits provided by this Agreement unless:

- (i) it does so on a Citywide (all employees) basis, and then in no greater percentage than the average reduction of all City employees, or
- (ii) it does so after providing Employee with a written performance evaluation that provides direction and opportunity for improvement prior to any action to reduce salary or benefits.

8. AUTOMOBILE:

Employee shall not be provided an automobile or automobile allowance. Employee shall be reimbursed for travel expenses in accordance with City's travel policies.

9. GENERAL EXPENSES:

Employee shall also be reimbursed by City for reasonable out-of-pocket expenses incurred in the course and scope of her employment in accordance with City reimbursement policies.

10. BASIC BENEFITS:

- (a) Holidays – Employee shall receive 36 floating hours of paid leave and nine and one half (9½) paid fixed holidays per year credited in the same manner as all other City employees.
- (b) Vacation Leave – In recognition of the ongoing contributions of Employee, and in the interest of retaining Employee's future services, Employee's vacation leave shall be calculated as if she were in her fifteenth year of continuous service to the City (i.e. Employee will receive 160.16 hours of paid vacation leave per year), increasing from there as provided in the Executive Management Statement of Benefits, as it may be amended from time to time by the City Council. Upon termination or resignation of employment, Employee or those entitled to her estate, shall receive a lump sum payment for unused or accumulated vacation time to her credit at her rate of pay as of her date of termination.
- (c) Sick Leave – Employee shall be granted twelve (12) days of sick leave per year which will accrue at a rate of 3.70 hours per pay period with no limit on the amount that can be accumulated.
- (d) Administrative Leave – Employee shall be granted eighty (80) hours of administrative leave per year. Upon termination or resignation of employment, Employee or those entitled to her estate, shall receive a lump sum payment for unused or accumulated administrative leave to her credit at her rate of pay as of her date of termination.
- (e) Other terms and conditions – Except as otherwise provided herein, all provisions of the City of Lodi Municipal Code, official policies, and regulations and rules of the City relating to disability, incapacity, vacation, holidays, retirement systems contributions, 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 executive management employees of City in addition to said benefits set out in this Agreement.

11. INSURANCE:

- (a) Medical Insurance: Employee shall receive family dental insurance, long-term disability, chiropractic insurance, and any other similar benefit which may be made available to Employee by the City as outlined in the City of Lodi Executive Management Statement of Benefits, as it may be amended from time to time by the City Council. The Statement of Benefits or Council Resolution describes these benefits and any applicable deductibles.

Employee shall also receive medical insurance for employee and dependents through Cal-PERS-Medical Plans. City shall pay 100% of the premium for Employee's family category (Family, Employee+1, Single) for the lowest cost PERS HMO available in the City of Lodi's geographic area (excluding PORAC) as of January 1, 2014.

If Employee selects a higher cost medical plan, Employee will pay the difference as a payroll deduction. If Employee elects not to be covered by medical insurance through the City, an additional \$692.81 per month for Family or \$532.92 for Employee+1 or \$305.22 for a Single employee, will be added to either the Employee's deferred compensation account or paid in cash. In order to qualify for this 'cash-out' provision, proof of group insurance coverage must be provided to the City.

Employee will pay 100% of the change in medical costs beginning January 1, 2015. The baseline will be the January 1, 2014 lowest costs PERS HMO for the Employee's family category (Family, \$1,709.06; Employee+1, \$1,314.66; Single, \$657.33).

- (b) Deferred Compensation: Employee may participate in the City's Deferred Compensation plan. The City will match up to a percentage equal to the highest amount provided to any bargaining group.
- (c) Life Insurance: Employee shall receive Life Insurance as provided in the Executive Statement of Benefits, as it may be amended from time to time by the City Council.

12. RETIREMENT:

City is a full member of the Public Employees Retirement System (PERS) to which City agrees to contribute to Employee's retirement account the total amount required by it. Employee shall contribute Employee's contribution of seven percent (7%) to the membership contract with PERS for each pay period.

13. SEPARATION:

- (a) Resignation – In the event Employee terminates this Agreement by voluntary resignation of her position with the City, Employee shall not be entitled to severance pay otherwise provided in Paragraph 14 of this Agreement. In the event Employee voluntarily resigns her position with City, she shall give City at least forty-five (45) days' advance written notice and shall be entitled to all earned salary and all earned, accrued, and unused leave

(vacation, sick, administrative, and holiday) in the same manner as all other City employees.

- (b) Termination & Removal – The City Council may remove Employee with or without cause, by a majority vote of its members. Notice of termination shall be provided to Employee in writing. Any such notice of termination shall be given at a noticed meeting of the City Council. Employee shall not be removed during the first 120 days following any change in membership of the City Council, except upon four-fifths vote of the City Council. Given the at-will nature of the position of City Attorney, an important element of the employment Agreement pertains to termination. It is in both the City's interest and that of Employee that separation of Employee be done in a businesslike manner.

14. TERMINATION AND SEVERANCE:

In the event Employee is terminated by the City Council, City agrees to pay to Employee a lump sum cash payment equal to six (6) months' salary and to continue to pay Employee's health insurance benefits on the same terms set forth in Paragraph 11(a) of this Agreement for six (6) months from the Employee's date of termination. In all cases such payments shall be subject to all rules and regulations governing income tax withholding. Notwithstanding the above, if Employee is terminated due to retirement, or for cause, which shall include, insubordination, incapacity, dereliction of duty, conviction of a crime involving acts of moral turpitude or involving personal gain to her, or a breach of this Agreement, City shall have no obligation to pay any severance provided in this section. In the event Employee is convicted of a crime involving abuse of her office or position, Employee shall reimburse City for any severance pay paid to Employee under this paragraph, as further provided in paragraph 19. In the event Employee is terminated for reasons other than for cause, City shall reasonably endeavor, but shall not be required, to provide Employee a minimum of fourteen (14) days' written notice in advance of termination.

15. EMPLOYMENT TERM:

- (a) Employee is an "at will" Employee and shall serve at the pleasure of the City Council.
- (b) Except as provided in Paragraph 14, nothing in this Agreement shall prevent, limit or otherwise interfere with the rights of the City Council to terminate the services of Employee.
- (c) Nothing in this Agreement shall prevent, limit or otherwise interfere with the rights of Employee to resign at any time from her position as City Attorney, subject only to the provisions set forth in Paragraph 13 of this Agreement.

16. MODIFICATIONS:

No modification of this Agreement shall be valid unless said modification is in writing and signed by the party to be charged.

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17. CONFLICT OF INTEREST:

Because of the duties and role of Employee on behalf of the City and its citizenry, Employee shall not, during the term of this Agreement, individually, as a partner, joint venturer, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of City, except for stock ownership in any company whose capital stock is publicly held and regularly traded, without the prior approval of the City Council.

Employee shall also be subject to the conflict of interest provisions of the California Government Code and any conflict of interest code applicable to her City employment. Employee is responsible for submitting to the City Clerk the Appropriate Conflict of Interest Statements at the time of appointment, annually thereafter, and at the time of separation from the position.

18. INDEMNIFICATION:

In accordance with and subject to the provisions of California's Government Claims Act (Government Code §825, et seq.) and any other applicable law, City shall defend, indemnify, and hold harmless Employee in any civil action against and for all losses sustained by Employee in direct consequence of the discharge of her duties on the City's behalf for the period of her employment. City shall defend, indemnify, and hold harmless Employee against any tort, professional liability claim or demand or other civil legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of her duties as City Attorney. City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon. Whenever Employee shall be sued for damages arising out of the performance of her duties, the City may provide defense counsel for Employee in such suit and indemnify her from any judgment rendered against her; provided that such indemnity shall not extend to any judgment for damages arising out of any willful wrongdoing. Said indemnification shall extend beyond termination of employment and the otherwise expiration of this Agreement to provide protection for any such acts undertaken or committed in her capacity as City Attorney, regardless of whether the notice of filing of a lawsuit occurs during or following employment with the City.

19. ABUSE OF OFFICE

Any severance payments or cash settlement paid in relation to the termination of this Agreement, and any legal criminal defense payments made by the City in the defense of Employee, if any, are subject to, and shall be interpreted to comply with, the limitations set forth in Government Code section 53260, concerning the maximum cash settlement in an employment contract, and Government Code sections 53243 through 53243.4, limiting and/or restricting payment or continued retention of severance payments and/or legal criminal defense payments should Employee be convicted of a crime involving an abuse of office or position. "Abuse of office or position" for purposes of this Agreement, shall be as defined in Government Code section 53243.4 which provides: "'abuse of office or position' means either of the following: (a) An abuse of public authority, including, but not limited to, waste, fraud, and violation of the law under color of authority. (b) A crime against

public justice, including, but not limited to, a crime described in Title 5 (commencing with Section 67) or Title 7 (commencing with Section 92) of Part 1 of the Penal Code.”

20. ATTORNEY’S FEES:

If either of the parties hereto brings any action or proceeding against the other, including but not limited to, an action to enforce or to declare the termination, cancellation or revision of this Agreement, the prevailing party in such action or proceedings shall be entitled to receive from the other party all reasonable attorney’s fees and costs, incurred in connection therewith. In the event either party shall initiate any suit, action, or appeal on any matter related to this Agreement, then the court before whom such suit, action, or appeal is taken shall award to the prevailing party such attorney’s fees as the court shall deem reasonable, and such award and all allowable costs of the event may be either added to or deducted from the balance due under this Agreement or be a separate obligation as appropriate.

21. SEVERABILITY:

If any provision, or any portion of any provision of this Agreement is held to be unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion hereof, shall be deemed severable and shall not be affected, but shall remain in full force and effect.

22. INTEGRATED AGREEMENT:

This writing contains the entire agreement between the parties and all prior or contemporaneous agreements, understandings or discussions relative to this Agreement are hereby superseded.

23. JURISDICTION AND VENUE:

This Agreement shall be construed in accordance with the laws of the State of California and the parties hereto agree that the venue for resolving any dispute regarding this Agreement shall be in San Joaquin County, California.

24. NOTICES:

All written notices required pursuant to this Agreement shall be delivered to: City Clerk, P.O. Box 3006, Lodi, CA 95241 or City Hall, 221 West Pine Street, Lodi, CA 95240; and Janice D. Magdich, City Attorney, P.O. Box 3006, Lodi, CA 95241 or City Hall, 221 West Pine Street, Lodi, CA 95240.

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25. EXECUTION:

IN WITNESS WHEREOF, the City Council of the City of Lodi has caused this Agreement to be signed and executed on its behalf by the Mayor and Employee has signed and executed this Agreement as of the day and year first above written.

CITY OF LODI, a municipal corporation:

EMPLOYEE:

By: _____
Phil Katzakian
Mayor

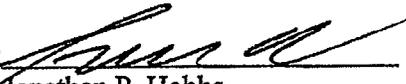
Janice D. Magdich
City Attorney

Approved as to Form:

KRONICK, MOSKOVITZ, TIEDEMANN
& GIRARD
A Professional Corporation

Attest:

Randi Johl-Olson
City Clerk

By: 

Jonathan P. Hobbs
Attorney to the City of Lodi