

RESOLUTION NO. 2014-99

A RESOLUTION OF THE LODI CITY COUNCIL  
APPOINTING STEPHEN SCHWABAUER TO THE  
POSITION OF CITY MANAGER AND APPROVING  
EMPLOYMENT AGREEMENT

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NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby appoint Stephen Schwabauer to the position of City Manager for the City of Lodi; and

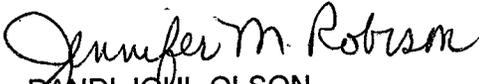
BE IT FURTHER RESOLVED that the City Council does hereby approve the City Manager Employment Agreement attached hereto marked as Exhibit A.

Dated: June 4, 2014

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I hereby certify that Resolution No. 2014-99 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 MANAGER 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 Stephen Schwabauer, 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 him 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 Manager of City starting June 4, 2014, and Employee agrees to perform the functions and duties the City Council shall from time to time assign to him.

**2. DUTIES & AUTHORITY:**

Employee has the duty to:

- (a) Perform the functions and duties of a City Manager as specified in the California Government Code, City Ordinances, Resolutions, Rules and Regulations and other state and local statutes;
- (b) Perform all legally permissible and proper duties and functions as the City Council shall assign. Such duties may be modified from time to time upon such terms as are mutually agreeable to City and Employee;
- (c) Employee shall administer and enforce policies established by the City Council and promulgate rules and regulations as necessary to implement City Council policies;
- (d) Attend City Council meetings as needed by the City Council; and
- (e) Review all documents prior to agendizing for any special and/or regular meetings of the City Council. Employee may make recommendations to the Mayor concerning the endorsement of or opposition to any proposed agenda items. If, in the opinion of Employee and the Mayor, an item is inappropriate for consideration or is inadequately prepared, it shall not be agendized but returned

immediately to the person who submitted it with the reason for rejection. This paragraph shall not limit the right of any City Council member to agendaize any item, provided City Council rules and procedures are complied with.

### **3. EXCLUSIVE EMPLOYMENT:**

- (a) Employee has the duty and herein commits to devote his 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 Manager.
- (b) Employee shall not accept employment from or on behalf of any person, firm, corporation or entity during the term of this Agreement except as approved in writing by the City Council. The foregoing shall not be construed to prevent Employee from performing volunteer community service, 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 fully perform his 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 his position. Employee does not have set hours of work as he is expected to be available at all times. It is recognized that Employee must devote a great deal of his 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 his 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 his 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 such professional dues, subscriptions and memberships in such organizations necessary for Employee to maintain professional relationships in appropriate national, regional, state and local associations and organizations necessary and desirable for his continued professional growth and advancement and benefit to the City. Such memberships shall include, but not be limited to, ICMA, and the California City Management Foundation.
- (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 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 their needs and to grow in the performance of his job, he needs to know how the City Council Members think he 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 the Agreement:

- (a) Base Salary – Employee shall be paid an annual salary of \$179,025.00 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.
- (b) City agrees that Employee shall at all times be the highest paid City employee. Pay for purposes of this paragraph shall be measured as the sum of salary, health benefits and retirement benefits (deferred compensation and PERS) but shall not include any other benefits or overtime compensation. Salaries approved by the City Manager through authority derived from the City Council will not trigger this salary differential provision (i.e., only salaries originated, directly reviewed and approved by the City Council will trigger this provision).
- (c) The City shall pay all traditional employer costs required by law, including but not limited to: FICA, Medicare, Unemployment Compensation, and Workers' Compensation.
- (d) 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 negative 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 his 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 (9 ½) paid fixed holidays per year credited in the same manner as all other City employees.
- (b) Vacation Leave – Employee's vacation shall be calculated as if he were in his fifteenth year of continuous city service (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 his estate, shall receive a lump sum payment for unused or accumulated vacation time to his credit at his rate of pay as of his date of termination.

- (c) Sick Leave - Employee shall be granted 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 his estate, shall receive a lump sum payment for unused or accumulated administrative leave to his credit at his rate of pay as of his 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 (7) percent of salary 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 his 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 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 all earned, accrued, and unused leave (vacation, sick, administrative, and holiday) in the 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 Manager, 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. However, notwithstanding the above, if Employee is terminated due to retirement, insubordination, incapacity, dereliction of duty, conviction of a crime involving acts of moral turpitude or involving personal gain to him, or a breach of this Agreement, City shall have no obligation to pay any severance provided in this Paragraph 14. In the event employee is convicted of a crime involving abuse of his office or position, as described in Paragraph 19, Employee shall reimburse City for any severance pay paid to Employee under this Paragraph 14.

**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 right of Employee to resign at any time from his position as City Manager, 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.

**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 his 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.

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## **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 his duties on the City's behalf for the period of his 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 his duties as City Manager. 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 his duties, the City may provide defense counsel for Employee in such suit and indemnify him from any judgment rendered against him; 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 his capacity as City Manager, 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, pursuant to Paragraph 14, 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 the 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 contract 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 venue shall be in Lodi, 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 Stephen Schwabauer, P.O. Box 3006, Lodi, CA 95241 or City Hall, 221 W. 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

\_\_\_\_\_  
Stephen Schwabauer  
City Manager

Attest:

Approved as to Form:

\_\_\_\_\_  
Randi Johl-Olson  
City Clerk

\_\_\_\_\_  
Janice D. Magdich  
Interim City Attorney 