

RESOLUTION NO. 14-148

RESOLUTION APPROVING AN EMPLOYMENT AGREEMENT BETWEEN THE CITY OF DIXON AND JOAN MICHAELS AGUILAR; AND AMENDING THE CITY OF DIXON SALARY SCHEDULE FOR THE DEPUTY CITY MANAGER/ADMINISTRATIVE SERVICES CLASS; AND APPROVING A 2014-15 BUDGET AMENDMENT

WHEREAS, the City and Joan Michaels Aguilar desire to enter into an Employment Agreement that sets forth the rights and obligations of the parties; and

WHEREAS, the base salary of the Deputy City Manager/Administrative Services will be increased by five percent (5%); and

WHEREAS, to account for the increases to salaries and benefits associated with approval of this Employment Agreement, a 2014-15 budget amendment is necessary to appropriate the funds as outlined in Exhibit A.

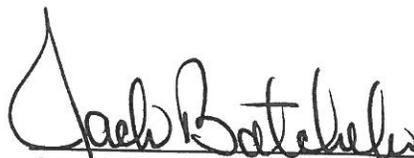
NOW, THEREFORE, BE IT RESOLVED, that the Employment Agreement for Joan Michaels Aguilar, attached hereto as Exhibit A is hereby approved; and

BE IT FURTHER RESOLVED, that the City of Dixon Salary Schedule is amended to increase the base salary of the Deputy City Manager/Administrative Services by five percent (5%).

BE IT FURTHER RESOLVED, that the City of Dixon Fiscal Year 2014-15 Budget is amended to appropriate \$7,056 in the General Fund as outlined in Exhibit A.

PASSED AND ADOPTED AS A RESOLUTION AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF DIXON ON OCTOBER 28, 2014.

AYES: Bird, Bogue, Castanon, Batchelor
NOES: None
ABSTAIN: None
ABSENT: Besneatte



Jack Batchelor, Mayor

ATTEST:


Suellen Johnston, City Clerk

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement") is made and entered into this 2nd day of November, 2014 ("Effective Date"), by and between the City of Dixon, a municipal corporation, ("City") and Joan Michaels Aguilar ("Employee"), an individual. City and Employee may individually be referred to herein as "Party" or collectively as "Parties". There are no other parties to this Agreement.

RECITALS

- A. Employee is presently employed with the City in the capacity as Deputy City Manager for Administrative Services and Finance and Technology Director ("Deputy City Manager"). The Deputy City Manager is the head of administrative services of the City government under the direction and control of the Dixon City Manager ("City Manager") and the Dixon City Council ("City Council");
- B. Employee is currently classified as a Confidential Senior Management Employee ("Confidential Employee");
- C. The City Manager is authorized to appoint City staff pursuant to Dixon Municipal Code ("Municipal Code") Section 2.09.040;
- D. City Manager has evaluated Employee's knowledge, experience, administrative skills and abilities during Employee's current employment as Deputy City Manager, and desires to remove Employee's classification as a Confidential Employee and continue her employment as Deputy City Manager pursuant to the terms of this Agreement;
- E. The Parties agree that this Agreement shall be the sole agreement between the Parties regarding the employment of Employee as Deputy City Manager and replace any previous employment relationship and benefits previously conferred on the Deputy City Manager through the City personnel system;
- F. The Parties desire to execute this Agreement pursuant to the authority of and subject to the provisions of California Government Code ("Government Code") Section 53260 *et seq.*

NOW, THEREFORE, in consideration of the mutual covenants entered into between the Parties, and in consideration of the benefits that accrue to each, it is agreed as follows:

AGREEMENT

Section 1. Recitals. The recitals set forth above (“Recitals”) are incorporated herein by this reference and made a part of this Agreement. In the event of any inconsistencies between the Recitals and Sections 1 through 15 of this Agreement, Sections 1 through 15 will prevail.

Section 2. Effective Date. This Agreement shall become effective once executed by both the City and Employee.

Section 3. Appointment of Deputy City Manager, Duties and Term.

Section 3.1. Appointment of Deputy City Manager and Duties. The City Manager hereby appoints Employee to the position of Deputy City Manager, in and for the City to perform the function and duties of the Deputy City Manager under the direction of the City Manager as the City Manager is authorized to oversee City employees under Section 2.09.040 of the Municipal Code. Employee accepts such appointment and employment pursuant to the terms of this Agreement. Employee shall further perform the functions and duties specified under the laws of the State of California, the Ordinances and Resolutions of the City, and such other duties and functions as the City Manager may from time-to-time assign.

Section 3.2. No Secondary Employment. Employee agrees to devote all of her productive time, ability and attention to the City’s business. During the Term, as defined below in this Agreement, Employee shall not hold secondary employment, and shall be employed exclusively by the City, subject to any exceptions approved in writing by the City Manager or City Council. Provided, however, that Employee has the right to volunteer for such nonprofit organizations as she may see fit; and further provided that such volunteer services shall not interfere with her duties as Deputy City Manager.

Section 3.3. Exempt Employee. The general business hours for City employees are Monday through Fridays, 9:00 a.m. to 5:00 p.m. However, it is recognized by the Parties that Employee is an exempt employee for purposes of the Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 *et seq.*). As such, Employee shall not receive overtime or extra compensation for hours worked outside of the City’s general business hours which are necessary to fulfill the duties of the Deputy City Manager position, unless otherwise provided in this Agreement.

Section 3.4. Schedule. The Deputy City Manager’s schedule of work each day and week shall vary in accordance with the work required to be performed. The City Council and the City Manager recognize that the Deputy City Manager must devote a great deal of her time outside normal office hours to business of the City and to that end, will be allowed to take compensatory time off as she shall deem appropriate during said normal office hours.

Section 3.5. Term. The term of this Agreement shall be for two (2) years from the Effective Date ("Term"). The City Manager in his sole discretion may extend the Term from time to time in increments of at least two (2) years. No later than three months prior to the expiration of the Term, the City Manager shall provide written notice to Employee as to whether the City Manager intends to extend the Term.

Section 4. At-Will Employment. Employee is an at will employee serving at the pleasure of the City Council and City Manager as provided in Government Code Section 36506 and the Municipal Code Section 2.09.040. Accordingly, the City Manager may terminate Employee's employment at any time, with or without cause. Only if Employee is terminated by City without cause, as defined below, shall Employee be entitled to a Severance.

Section 5. Compensation and Evaluations.

Section 5.1. Base Salary. City agrees to pay Employee a salary consistent with the pay plan for the Deputy City Manager ("Base Salary"), payable in installments at the same time that the other City employees are paid.

Section 5.2. Base Salary Adjustments. The City Manager may annually consider adjustment of Employee's Base Salary or other benefits in such amounts and to the extent as the City Manager may determine that it is desirable on the basis of the annual review and evaluation of the Employee as provided for in Section 5.5 of this Agreement.

Section 5.3. Pro-rata Decrease. Employee acknowledges that the Base Salary may be subject to pro-rata decrease based on the City Council's adoption of an unpaid Mandatory Furlough Program adopted as a budgetary measure, provided any such furlough shall not be greater than that imposed upon the Dixon Senior Management Association ("DSMA") from time to time.

Section 5.4. Benefits. During the Term of this Agreement, Employee shall be entitled to receive the same benefits provided in the City's "Compensation Plan for Confidential Senior Management Classification" (the "Compensation Plan") attached hereto as Exhibit A as amended from time to time, unless otherwise provided for in this Agreement. In addition to, or in lieu of, the benefits provided to City Confidential Employees, to the extent more advantageous to the Employee, Employee shall receive all benefits provided in Sections 6, 7, 8, and 9 below.

Section 5.5. Review and Evaluation. The City Manager agrees to review and evaluate Employee's performance of her duties as Deputy City Manager pursuant to the terms of this Agreement ("Review and Evaluation") on not less than an annual basis, and to provide Employee with a written performance review. The annual Review and Evaluation shall be conducted in April of each year.

Section 6. Health Benefits. During the Term of this Agreement, City agrees to continue Employee's health benefits as contained in Article 3 of the Compensation Plan.

Section 7. Vacation and Sick and Other Leave. During the Term of this Agreement, City agrees to continue Employee's leave benefits as contained in Article 4 of the Compensation Plan. In recognition of the extra hours required as part of Employee's duties as Deputy City Manager, Employee shall earn one hundred twenty (120) hours of administrative leave per year.

Section 8. Mileage Reimbursement. Employee is entitled to mileage reimbursement at the rate established by the Federal Government, Internal Revenue Service ("IRS") for any required use of their personal vehicle for City business.

Section 9. Retirement Benefits. The City agrees to continue its contribution to Employee's retirement benefits into the State of California Public Employees Retirement System ("PERS") as set forth in Article 3 of the Compensation Plan.

Section 10. Deferred Compensation. In addition to the City's payment to PERS set forth in Section 9 of this Agreement, City agrees to contribute a two percent (2%) match of Employee's contribution towards Employee's deferred compensation retirement account.

Section 11. Termination of Employment and Severance.

Section 11.1 Voluntary Resignation. Employee may resign at any time and agrees to give the City at least sixty (60) days advance written notice of the effective date of the Employee's resignation, unless the Parties otherwise agree in writing. If the Employee retires from full time public service with the City, the Employee shall provide three (3) months advance written notice. The Employee's actual retirement date will be mutually established between the Parties. During the notice period, all rights and obligations of the Parties under this Agreement shall remain in full force and effect. Promptly after the effective date of resignation, the City shall pay to Employee all salary and benefit amounts both accrued and owing under this Agreement. In the event of voluntary resignation, Employee shall not be entitled to a severance as set forth in this Agreement.

Section 11.2 Termination by City Manager. The City Manager may terminate this Agreement and remove Employee at any time with or without cause. Within ten (10) days of City Manager's termination of this Agreement, Employee may make a written request for hearing before the City Council. Notwithstanding Employee's right to request a hearing, the City Council may in its absolute discretion uphold Employee's termination for any reason, and Employee's removal and termination of this Agreement is not dependent upon any particular showing or degree of proof at the hearing, the purpose of which is solely to allow the Employee to present her grounds of opposition to her removal.

Section 11.3. Termination Without Good Cause. In the event City terminates this Agreement without cause, as defined below, the City shall pay Employee a sum equal to six (6) months Base Salary ("Severance"). This Severance is subject to the restrictions of Government Code Section 53260, including without limitation, that the maximum amount of severance pay that Employee may receive shall not exceed an amount equal to that portion of the Base Salary paid monthly, multiplied by the number of months left on the Term of the unexpired Agreement. And further provided that, pursuant to Government Code Section 53243.2, any cash settlement related to the termination of this Agreement received by Employee from City shall be fully reimbursed to the City if Employee is convicted of a crime involving an abuse of her office or position while employed with City. This Severance shall be paid in the same manner as other Management employees unless otherwise agreed to by the City and Employee. In the event City terminates this Agreement, Employee shall be entitled to continued medical and dental benefits at her cost pursuant to the provisions of the federal Consolidated Omnibus Budget Reconciliation Act ("COBRA").

Section 11.4. Termination For Good Cause. The City may at any time immediately terminate this Agreement for good cause as defined in this section 11.4. If Employee is terminated for good cause the City shall not be required to pay any Severance under this Agreement, and City shall have no obligation to Employee beyond those benefits accrued as of Employee's last day of employment and those City is obligated to provide under federal or state law.

"Good Cause" for purposes of this Agreement, means a fair and honest cause or reason for termination. These reasons include, but are not limited to:

1. Conviction of a felony;
2. Disclosing confidential information of City;
3. Gross carelessness or misconduct;
4. Unjustifiable and willful neglect of the duties described in this Agreement;
5. Mismanagement;
6. Non-performance of duties;
7. Any conduct which violates the City's Personnel Rules and for which a City employee may be terminated;
8. Repeated and protracted unexcused absences from the Deputy City Manager's office and duties;
9. Willful destruction or misuse of City property;

10. Willful political activity involving the support of candidates for City Council;
11. Conduct that in any way has a direct, substantial, and adverse effect on the City's reputation;
12. Willful violation of federal, state or City discrimination laws;
13. Continued substance abuse which adversely affects performance of Employee's duties as Deputy City Manager;
14. Refusal to take or subscribe any oath or affirmation which is required by law; or
15. Permanent disability of Employee, or Employee becoming otherwise unable to perform the duties of Deputy City Manager, by reason of sickness, accident, illness, injury, mental incapacity or health for a period of six (6) weeks following the exhaustion of all available leave balances and any applicable Family Medical Leave Act or California Medical Leave Act leaves, or where the same occurs for forty (40) working days over a sixty (60) working day period following exhaustion of such leaves.

Notwithstanding any provision in this Agreement to the contrary, the City Manager may suspend Employee with full pay and benefits at any time during the Term of this Agreement.

Section 12. Indemnification. City shall defend, hold harmless and indemnify Employee against any tort, personnel, civil rights or professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as Deputy City Manager in accordance with California's Tort Claims Act (Government Code Section 825 et seq.), and shall provide a defense to Employee in accordance with Government Code Sections 995-996.5. The City may decline to defend or indemnify Employee only as permitted by the Government Code. City may compromise and settle any such claim or suit and pay the amount of any resulting settlement or judgment. Provided, however, that the City's duty to defend and indemnify shall be contingent upon Employee's good faith cooperation with such defense. In the event City provides funds for legal criminal defense pursuant to this Section, Employee shall reimburse City for such legal criminal defense funds if Employee is convicted of a crime involving an abuse of office or position, as provided by Government Code Sections 53243-53243.4.

Section 13. Bonding. City shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

15.1. Modification of Agreement. This Agreement may be supplemented, amended, or modified only by a writing signed by the City and Plaintiffs.

15.2. Entire Agreement. This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the Parties pertaining to the Action and supersedes all other prior or contemporaneous oral or written understandings and agreements of the Parties. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty except those expressly set forth in this Agreement.

15.3. Severability of Agreement. If a court or an arbitrator of competent jurisdiction holds any section of this Agreement to be illegal, unenforceable, or invalid for any reason, the validity and enforceability of the remaining sections of this Agreement shall not be affected.

15.4. Authority. All Parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement and the names, titles and capacities herein stated on behalf of any entities, persons, states or firms represented or purported to be represented by such entities, persons, states or firms and that all former requirements necessary or required by the state or federal law in order to enter into this Agreement had been fully complied with. Further, by entering into this Agreement, neither Party hereto shall have breached the terms or conditions of any other contract or agreement to which such Party is obligated, which such breach would have a material effect hereon.

15.5. Headings. The headings in this Agreement are included for convenience only and neither affect the construction or interpretation of any section in this Agreement nor affect any of the rights or obligations of the Parties to this Agreement.

15.6. Necessary Acts and Further Assurances. The Parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement.

15.7. Governing Law. This Settlement Agreement shall be governed and construed in accordance with the laws of the State of California.

15.8. Waiver. No covenant, term, or condition or the breach thereof shall be deemed waived, except by written consent of the Party against whom the waiver is claimed, and any waiver of the breach of any covenant, term, or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term, or condition.

15.9. Counterparts. This Settlement Agreement may be executed in counterparts and all so executed shall constitute an agreement which shall be binding upon the Parties hereto, notwithstanding that the signatures of all Parties and Parties' designated representatives do not appear on the same page.

15.10. Venue. Venue for all legal proceedings shall be in the Superior Court for the County of Solano in the State of California.

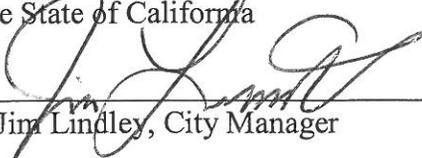
15.11. Attorney's Fees and Costs. If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret sections of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, this Agreement has been entered into by and between EMPLOYEE and CITY as of the date of the Agreement set forth above.

CITY:

City of Dixon, a municipal corporation
of the State of California

By: 

Jim Lindley, City Manager

Date Signed: 11-4-14

EMPLOYEE:

By: 

Joan Michaels Aguilar, an individual

Date Signed: 11/3/14

Approved as to Form and Content:

By: 

Douglas L. White, City Attorney