

## EMPLOYMENT AGREEMENT

This agreement, made and entered into this 13 day of May, 2008, by and between the CITY OF MODESTO, State of California, a municipal corporation, hereinafter called "CITY," and Stephanie D. Lopez, hereinafter referred to as "EMPLOYEE," both of whom understand as follows:

### RECITALS:

WHEREAS, Section 900 of the CITY's Charter provides that the City Clerk of Modesto, California (City Clerk), shall be appointed by and serve at the pleasure of the City Council of the City of Modesto ("COUNCIL"), and

WHEREAS, CITY desires to employ the services of EMPLOYEE as City Clerk of the City of Modesto as provided by said City Charter, and

WHEREAS, COUNCIL desires to employ EMPLOYEE as City Clerk and to provide certain benefits, establish certain conditions of employment and set working conditions of EMPLOYEE, and

WHEREAS, EMPLOYEE desires to serve as City Clerk, and

WHEREAS, it is the desire of the parties hereto to provide the terms and conditions by which CITY shall receive and retain the services of EMPLOYEE and to provide for her to remain in such employment, to act as a deterrent against malfeasance or dishonesty for personal gain on her part; and to provide for terminating her services at such time as she may be unable to fully discharge her duties or when COUNCIL may otherwise desire to terminate her employ.

### SECTION 1. Duties

CITY hereby agrees to employ said Stephanie D. Lopez as City Clerk of said CITY to perform the functions and duties specified in Section 901 of the Modesto City Charter and to

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perform other legally permissible and proper duties and functions as COUNCIL shall from time to time assign.

SECTION 2. Term

a. Effective April 8, 2008, EMPLOYEE shall fulfill the powers, functions and duties of City Clerk and shall serve in this capacity until such time as this agreement is terminated pursuant to Section 3, below.

b. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of COUNCIL to terminate the services of EMPLOYEE at any time subject only to the provisions set forth in Section 3, below.

c. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of EMPLOYEE to resign at any time from her position as City Clerk, subject only to the provisions as set forth in Section 3, below.

d. EMPLOYEE agrees to remain in exclusive employ of CITY, and neither to accept other employment or to become employed by any other employer until this agreement is terminated.

SECTION 3. Termination and Severance

a. EMPLOYEE may terminate this Agreement, with or without cause, by giving the CITY sixty (60) days written notice in advance of termination unless the parties agree otherwise. During the notice period, all the rights and obligations of the parties under this agreement shall remain in full force and effect. EMPLOYEE will not receive any severance pay if EMPLOYEE's resignation is solely voluntary on EMPLOYEE's part.

b. The COUNCIL may terminate this Agreement upon affirmative vote of four (4) members of the COUNCIL, with or without cause. COUNCIL shall give EMPLOYEE a minimum of sixty (60) days written notice prior to terminating EMPLOYEE as City Clerk, provided however that if EMPLOYEE is terminated for cause as defined in this agreement, the sixty (60) day written notice requirement shall not apply and EMPLOYEE may be terminated effective immediately upon written notice.

c. If the COUNCIL discharges EMPLOYEE without cause during the term of this Agreement, and EMPLOYEE is willing and able to perform her duties under this Agreement, then EMPLOYEE shall be entitled to a severance payment equal to three (3) months of EMPLOYEE's then current annual base salary. This provision will not apply in the event the COUNCIL discharges EMPLOYEE for cause, in which case EMPLOYEE will not be entitled to any severance payment or continuation of benefits. The determination of whether there is good cause for termination shall be in the sole discretion of the COUNCIL.

d. For purposes of this agreement, cause shall mean:

- (1) Willful and repeated failure to perform the duties of City Clerk;
- (2) Conviction of an employment-related illegal act;
- (3) Conviction of a felony; or
- (4) Malfeasance materially related to the job.

e. Notwithstanding the provisions of this section and in accordance with Article IX, Section 900 of the City Charter, COUNCIL shall not terminate this agreement during or within ninety (90) days next succeeding the election of a member of the COUNCIL.

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SECTION 4. Salary

Effective the 8<sup>th</sup> day of April, 2008, CITY agrees to pay EMPLOYEE for her services rendered pursuant to this agreement an annual salary of ninety six thousand two hundred (\$96,200.00) dollars, payable in installments at the same time as other employees of CITY are paid.

SECTION 5. Health, Long Term Disability and Life Insurance Benefits

a. CITY agrees to provide health, dental and vision insurance for EMPLOYEE and dependents equal to that which is provided to all other unrepresented Management and Confidential employees of CITY. CITY's contribution toward the premiums for said health, dental and vision coverage shall not be less than that which CITY contributes to other Executive employees of the CITY.

b. CITY agrees to provide long term disability coverage for EMPLOYEE at CITY's expense.

c. EMPLOYEE may elect to submit once per calendar year to a complete physical examination by the CITY medical provider or by the EMPLOYEE's physician under the EMPLOYEE's group insurance plan with CITY reimbursement for EMPLOYEE's out-of-pocket costs.

d. CITY shall pay the amount of premium due for a term life insurance policy consistent with that provided to other unrepresented Management and Confidential employees of CITY. EMPLOYEE shall name the beneficiary of the life insurance policy.

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SECTION 6. Retirement

a. CITY shall continue enrollment of EMPLOYEE in the California Public Employees' Retirement System (CalPERS). CITY shall pay 6.6% and EMPLOYEE shall pay 0.40% of the total 7% "Employee's share," and CITY shall pay 100% of the "Employer's share" on behalf of the EMPLOYEE.

b. CITY shall provide a qualified 401(a) defined contribution plan for EMPLOYEE in the form of a money purchase plan to which CITY shall contribute five (5%) percent of EMPLOYEE's base salary. EMPLOYEE shall match the CITY's contribution.

c. CITY shall provide a Section 457 deferred compensation plan for EMPLOYEE's voluntary participation. In addition to the base salary paid by CITY to EMPLOYEE, CITY agrees to pay an amount equal to one and one-half percent (1.5%) of EMPLOYEE's base salary, or greater, into the designated plan on the EMPLOYEE's behalf, in equal proportionate amounts each pay period. EMPLOYEE shall match CITY's contribution.

d. Any or all of the CITY and EMPLOYEE contribution amounts designated in this Section are subject to change in the event that COUNCIL authorizes such change for all Charter Officers of the CITY.

SECTION 7. Other Supplemental Benefits

a. Vacation Leave. Upon the effective date of this agreement, EMPLOYEE shall be credited with twenty (20) hours of vacation leave and commence accruing vacation at the rate of one hundred sixty (160) hours during year one (1). In each subsequent year, EMPLOYEE's vacation accrual rate shall increase on her employment

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anniversary date of March 20<sup>th</sup>, consistent with the standard vacation accrual progression for Management and Confidential employees. This vacation accrual is in addition to the standard eighty (80) hours of Management Leave afforded annually to Executives and Charter Officers. EMPLOYEE shall be credited with a pro-rata share of Management Leave hours for calendar year 2008 hours, upon effective date of this agreement.

b. Automobile. EMPLOYEE's functions and duties require that she shall have the use of an automobile during her employment with the CITY. CITY shall pay EMPLOYEE the monthly sum of \$400 for the expense of owning, operating, and maintaining and insuring her personal automobile.

c. Other Benefits. All actions taken by COUNCIL relating to fringe benefits for unrepresented Management and Confidential employees shall be considered actions granting the same benefits to EMPLOYEE. As used herein, fringe benefits include but are not limited to vacation, sick leave, holidays, retirement (CalPERS) benefits and payments, health insurance, dental insurance, vision insurance, and life insurance.

#### SECTION 8. Professional Development

In its discretion, COUNCIL shall budget for and pay travel and subsistence expenses of EMPLOYEE for professional and official travel, meetings, courses, institutes and seminars adequate to continue her professional development and to adequately pursue necessary official and other functions on behalf of the CITY, including but not limited to the annual conference of the League of California Cities and the annual League of California Cities City Clerk's Department Conference.

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SECTION 9. Indemnification

CITY shall defend, save harmless and indemnify EMPLOYEE against any tort, professional liability claim or demand or any other legal action, whether groundless or otherwise, arising out of any alleged act or omission occurring in the course and scope of performance of EMPLOYEE's functions and duties. CITY may compromise and settle any claim or suit and shall pay the amounts of all settlements or judgments rendered against EMPLOYEE and/or CITY thereon.

SECTION 10. Performance Evaluation

a. COUNCIL shall review and evaluate EMPLOYEE's performance at least once a year.

b. Annually, the COUNCIL may define such goals and performance objectives as COUNCIL determines necessary for the proper operation of CITY and the attainment of the COUNCIL's policy objectives and may further establish a relative priority among those various goals and objectives, said goals and objectives to be reduced to writing. Said goals and objectives shall generally be attainable within the time limitations as specified in the annual operations and capital budgets and appropriations provided.

c. In effecting the provisions of this section, the COUNCIL and EMPLOYEE mutually agree to abide by the provisions of applicable law.

d. EMPLOYEE will timely cause to be placed on the COUNCIL agenda each year a "closed session" for purposes of her performance evaluation.

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SECTION 11. Additional Term of Employment

COUNCIL, in consulting with EMPLOYEE, shall fix any such other terms and conditions of employment as it may determine from time to time relating to the performance of EMPLOYEE, provided that such terms and conditions are reduced to writing and included in an amendment to this agreement.

SECTION 12. Notices

Notices pursuant to this agreement shall be given by deposit in the custody of the United States Postal Service, postage pre-paid, addressed as follows, or as such address may be changed from time to time upon notice to the other:

CITY:  
Mayor  
City of Modesto  
P. O. Box 642  
1010 10<sup>th</sup> Street, Suite 6200  
Modesto CA 95353

EMPLOYEE:  
Stephanie D. Lopez

Alternatively, notices required pursuant to this agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

SECTION 13. General Provisions

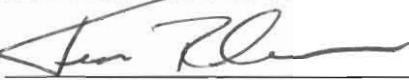
- a. The text herein shall constitute the entire agreement between the parties.
- b. This agreement shall be binding upon and inure to the benefit of the heirs at law and executors of EMPLOYEE.
- c. This agreement shall become effective commencing the 8<sup>th</sup> day of April, 2008.

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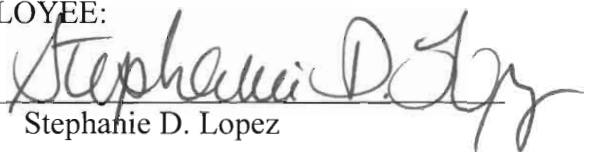
d. If any provision, or any portion thereof, contained in this agreement is held unconstitutional, invalid or unenforceable, the remainder of this agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

IN WITNESS WHEREOF the CITY has caused this agreement to be signed and executed in its behalf by its Mayor under authority of Resolution No. 2008-268, and EMPLOYEE has signed and executed this agreement, both in duplicate, the day and year first above written, and EMPLOYEE has caused this agreement to be duly executed.

CITY OF MODESTO  
A MUNICIPAL CORPORATION:

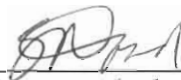
By  \_\_\_\_\_  
Jim Ridenour, Mayor

EMPLOYEE:

By  \_\_\_\_\_  
Stephanie D. Lopez

(SEAL)

APPROVED AS TO FORM:

By  \_\_\_\_\_  
Susana Alcala Wood, City Attorney

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