

CITY OF MODESTO - EMPLOYMENT AGREEMENT  
- GREG A. NYHOFF -

INTRODUCTION.

This agreement is made and entered into this 8th day of April, 2008, by and between the CITY OF MODESTO, a municipal corporation, (hereinafter called "Employer"), and GREG A. NYHOFF (hereinafter called "Employee"), an individual who has the education, training and experience in local government management and who, as a member of ICMA, is subject to the ICMA Code of Ethics, both of whom agree as follows:

SECTION 1: TERM.

The term of this Agreement shall be for an initial period of three (3) years from June 1, 2008 to June 1, 2011. This Agreement shall automatically be renewed on its anniversary date for a one (1) year term unless notice that the Agreement shall terminate is given at least two (2) months before the expiration date. In the event the Agreement is not renewed, all compensation, benefits and requirements of the Agreement shall remain in effect until the expiration of the term of the Agreement unless Employee voluntarily resigns.

SECTION 2: DUTIES AND AUTHORITY.

Employer agrees to employ Greg A. Nyhoff as City Manager to perform the functions and duties specified in the Modesto Charter and the California Government Code, and to perform other legally permissible and proper duties and functions.

SECTION 3: COMPENSATION.

- A. Base Salary: Employer agrees to pay Employee an annual base salary of One Hundred Ninety-Five Thousand Dollars (\$195,000.00) payable in installments at the same time that the other employees of the Employer are paid.
- B. Consideration shall be given on an annual basis to increase compensation in conjunction with an Annual Performance Evaluation.

SECTION 4: RELOCATION AND MOVING EXPENSES.

- A. Employer agrees to reimburse reasonable expenses associated with moving the Employee and Employee's family and personal property to Modesto. Employee will obtain three (3) bids for moving expenses, and provide these copies to Employer. Employee shall keep track of actual costs, and submit to Employer with receipts. Employer will reimburse up to the lowest of the actual costs of the three (3) bids.

- B. Employer agrees to reimburse Employee temporary monthly housing (rent) until such time as the Employee purchases a new home, sells his home in Colorado or the end of six (6) months whichever is first. Such payment shall be no more than \$1,500.00 per month.
- C. In accordance with the City policy on travel and reimbursement expenses, Employer agrees to reimburse for reasonable expenses incurred by Employee and Employee's spouse for a maximum of two (2) house hunting trips.

SECTION 5: HEALTH , LONG TERM DISABILITY AND LIFE INSURANCE BENEFITS.

- A. The Employer agrees to provide health, hospitalization, surgical, vision, dental and comprehensive medical insurance for the Employee and his/her dependents equal to that which is provided to all other Management and Confidential employees of the City of Modesto or, in the event no such plan exists, to provide coverage for the Employee and dependents. The Employer's contribution toward the premiums for said health, dental and vision coverage shall not be less than that which the Employer contributes to other non-sworn management employees. Notwithstanding any provision, policy or provision to the contrary, such benefits shall be provided as of June 1, 2008.
- B. The Employer agrees to put into force and to make required premium payments for long term disability coverage for the Employee.
- C. The 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. The Employer shall pay the amount of premium due for a term life insurance policy of \$225,000. The Employee shall name the beneficiary of the life insurance policy.

SECTION 6: VACATION, SICK, AND MANAGEMENT/EXECUTIVE LEAVE.

- A. The Employee shall then accrue sick leave on an annual basis at the highest rate provided to non-sworn management employees.
- B. The Employee shall be provided with one (1) physical exam per year at Employer's expense.
- C. The Employee is entitled to accrue all unused leave pursuant to City policy. In the event the Employee's employment is terminated, either voluntarily or involuntarily, the Employee shall be compensated for all accrued vacation time, all accrued holidays, management/executive leave, and other benefits to date.

- D. The Employee shall receive one hundred and twenty hours (120) of vacation leave annually. Upon assuming office the Employee shall be credited with sixty (60) hours of vacation leave. An additional sixty (60) hours will be credited after six (6) months of employment.
- E. The Employee shall on January 1<sup>st</sup> of each calendar year be credited with eighty (80) hours of executive/management leave, forty (40) hours of which shall be credited upon assuming office. Employee may cash out up to eighty (80) hours of unused leave in accordance with City policy.

#### SECTION 7: AUTOMOBILE ALLOWANCE.

The Employer agrees to pay to the Employee, during the term of this Agreement and in addition to other salary and benefits herein provided, the sum of \$6,000 per year, payable in equal monthly installments, as a vehicle allowance to be used to purchase, lease, or own, operate and maintain a vehicle. The Employee shall be responsible for paying for liability, property damage, and comprehensive insurance coverage upon such vehicle and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of said vehicle. The Employer shall reimburse the Employee at the IRS standard mileage rate for any business use of the vehicle beyond the greater Modesto area. For purposes of this Section, use of the car within the greater Modesto area is defined as travel to locations within a 75-mile radius of the Modesto City Hall.

#### SECTION 8: RETIREMENT.

- A. The Employer agrees to enroll the Employee into the California Public Employees Retirement System (PERS). Employer shall pay 6.6% and Employee shall pay 0.40% of the total 7% "Employee's share," and Employer shall pay 100% of "Employer's share" on behalf of the Employee.
- B. The Employer shall provide a qualified 401(a) defined contribution plan offered through ICMA Retirement Corporation for the Employee in the form of a money purchase plan to which the Employer shall contribute five (5%) percent of Employee's base salary. Employee shall match the Employer's contribution.
- C. In addition to the Employer's payment to the state retirement system (as applicable) referenced above, Employer agrees to execute all necessary agreements provided by ICMA Retirement Corporation (ICMA-RC) or other Section 457 deferred compensation plan for Employee's continued participation in said supplementary retirement plan and, in addition to the base salary paid by the Employer to Employee, Employer 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 Employer's contribution. The parties shall fully disclose to each other the financial impact of any amendment to the terms of Employee's retirement benefit.

- D. Any or all of the Employer and Employee contribution amounts designated in this Section are subject to change in the event that the City Council authorizes such change for all Charter Officers of the City of Modesto.

SECTION 9: GENERAL BUSINESS EXPENSES.

- A. In its discretion, Employer shall budget for and pay travel and subsistence expenses of Employee for professional and official travel, meetings, courses, institutes and seminars to continue his professional development and to adequately pursue necessary official and other functions on behalf of the Employer, including but not limited to, the annual conference of the League of California Cities, the International City/County Management Association, and such other regional, state, and local governmental groups and committees.
- B. The Employer acknowledges the value of having Employee, at Employer's discretion, participate and be directly involved in local or regional clubs, associations and organizations necessary and desirable for employee's continued professional participation, growth and advancement, and for the good of Employer. Accordingly, Employer shall pay for the reasonable membership fees and/or dues to enable the Employee to become an active member in local civic clubs or organizations, including but not limited to, professional dues and subscriptions to the International City/County Management Foundation (ICMA), the California City Management Foundation (CCMF) .

SECTION 10: TERMINATION.

For the purpose of this Agreement, termination shall occur when:

- A. The majority of the governing body votes to terminate the Employee at a duly authorized closed or open meeting.
- B. If the Employer, citizens or legislature acts to amend any provisions of the Charter pertaining to the role, powers, duties, authority, responsibilities of the Employee's position that substantially changes the form of government, the Employee shall have the right to declare that such amendments constitute termination.
- C. If the Employer reduces the base salary, compensation or any other financial benefit of the Employee, unless it is applied in no greater percentage than the average reduction of all City employees, such action shall constitute a breach of this Agreement and will be regarded as a termination.
- D. If the Employee resigns following an offer to accept resignation, whether formal or informal, by the Employer as representative of the majority of the governing body that the Employee resign, then the Employee may declare a termination as of the date of the suggestion.

- E. Breach of contract declared by either party within a 30-day cure period for either Employee or Employer. Written notice of a breach of contract shall be provided in accordance with the provisions of Section 20.

SECTION 11: SEVERANCE.

- A. Severance shall be paid to the Employee when employment is terminated as defined in Section 10.
- B. In the event the Employer terminates this agreement during which time Employee is ready, willing and able to perform the functions and duties set forth herein, then, in that event, Employer agrees to:
  - 1. Provide Employee with six (6) months salary, including benefits.
  - 2. The parties acknowledge that pursuant to Section 800 of the Modesto City Charter the Employee shall not be removed from office during or within a period of ninety (90) days next succeeding the election of a member of the Council.

SECTION 12: RESIGNATION.

In the event that the Employee voluntarily resigns his/her position with the Employer, the Employee shall provide a minimum of sixty (60) days advance notice unless the parties agree otherwise.

SECTION 13: PERFORMANCE EVALUATION.

Employer shall annually review the performance of the Employee in June subject to a process, form, criteria, and format for the evaluation, which shall be mutually agreed upon by the Employer and Employee. The process at a minimum shall include the opportunity for both parties to: (1) prepare a written evaluation, (2) meet and discuss the evaluation, and (3) present a written summary of the evaluation results. The final written evaluation should be completed and delivered to the Employee within thirty (30) days of the evaluation meeting.

SECTION 14: HOURS OF WORK.

It is recognized that the Employee must devote a great deal of time outside the normal office hours on business for the Employer, and to that end Employee shall be allowed to establish an appropriate work schedule.

SECTION 15: OUTSIDE ACTIVITIES.

The employment provided for by this Agreement shall be the Employee's sole employment. Recognizing that certain outside consulting or teaching opportunities

provide indirect benefits to the Employer and the community, the Employee may elect, with the prior written approval of the City Council, to accept limited teaching, consulting or other business opportunities with the understanding that such arrangements shall not constitute interference with nor a conflict of interest with his responsibilities under this Agreement.

#### SECTION 16: RESIDENCY.

Employee agrees to maintain residence within the corporate boundaries of the City of Modesto.

#### SECTION 17: INDEMNIFICATION.

Beyond that required under Federal, State or Local Law, Employer shall defend, save harmless and indemnify Employee against any tort, 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 City Manager, or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act or omission involved willful or wanton conduct. The Employee may request and the Employer shall not unreasonably refuse to provide independent legal representation at Employer's expense and Employer may not unreasonably withhold approval. Legal representation, provided by Employer for Employee, shall extend until a final determination of the legal action including any appeals brought by either party. The Employer shall indemnify employee against any and all losses, damages, judgments, interest, settlements, fines, court costs and other reasonable costs and expenses of legal proceedings including attorneys fees, and any other liabilities incurred by, imposed upon, or suffered by such Employee in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of his or her duties. Any settlement of any claim must be made with prior approval of the Employer in order for indemnification, as provided in this Section, to be available.

Employee recognizes that Employer shall have the right to compromise or settle a claim or suit. However, if the Employee is a named party to the suit, Employee's written consent must be given for the compromise or settlement. Further, Employer agrees to pay all reasonable litigation expenses of Employee throughout the pendency of any litigation to which the Employee is a party, witness or advisor to the Employer. Such expense payments shall continue beyond Employee's service to the Employer as long as litigation is pending. Further, Employer agrees to pay Employee reasonable consulting fees and travel expenses when Employee serves as a witness, advisor or consultant to Employer regarding pending litigation if those services occur after Employee is no longer an Employee of the Employer.

SECTION 18: BONDING.

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

SECTION 19: OTHER TERMS AND CONDITIONS OF EMPLOYMENT.

The Employer, only upon agreement 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 the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Modesto Charter or any other law.

Except as otherwise provided in this Agreement, the Employee shall be entitled to the highest level of benefits that are enjoyed by other non-sworn management employees of the Employer as provided in the Charter, Code, Personnel Rules and Regulations or by practice.

SECTION 20: NOTICES.

Notice pursuant to this Agreement shall be given by depositing in the custody of the United States Postal Service, postage prepaid, addressed as follows:

EMPLOYER: City Clerk, City of Modesto, P. O. Box 642, Modesto, CA 95353  
EMPLOYEE: Greg A. Nyhoff \_\_\_\_\_

Alternatively, notice 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 the date of deposit of such written notice in the course of transmission in the United States Postal Service.

SECTION 21: GENERAL PROVISIONS.


- A. Integration. This Agreement sets forth and establishes the entire understanding between the Employer and the Employee relating to the employment of the Employee by the Employer. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The parties by mutual written agreement may amend any provisions of this agreement during the life of the agreement. Such amendments shall be incorporated and made a part of this agreement.
- B. Binding Effect. This Agreement shall be binding on the Employer and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.

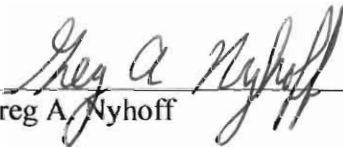
- C. Effective Date. This Agreement shall become effective on June 1, 2008.
- D. Severability. The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

IN WITNESS WHEREOF, the CITY OF MODESTO, a municipal corporation, has authorized the execution of this Agreement in duplicate by its Mayor and attestation by its City Clerk under authority of Resolution No. 2008-207 adopted by the Council of the City of Modesto on the 8th day of April, 2008, and EMPLOYEE has caused this Agreement to be duly executed.

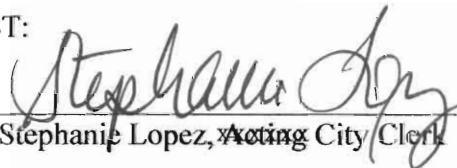
CITY OF MODESTO  
A Municipal Corporation

EMPLOYEE

  
By: Jim Ridenour, Mayor

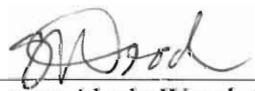
  
By: Greg A. Nyhoff

ATTEST:

  
By: Stephanie Lopez, Acting City Clerk

(SEAL)

APPROVED AS TO FORM:

  
By: Susana Alcalá Wood, City Attorney