

EMPLOYMENT AGREEMENT

This agreement, made and entered into this 23rd day of May, 2006, by and between the CITY OF MODESTO, State of California, a municipal corporation, hereinafter called "CITY," and Susana Alcala Wood, hereinafter referred to as "EMPLOYEE," both of whom understand as follows:

RECITALS

WHEREAS, Section 900 of the CITY's Charter provides that the City Attorney of Modesto, California (City Attorney), 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 Attorney of the City of Modesto as provided by said City Charter; and

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

WHEREAS, EMPLOYEE desires to serve as City Attorney; 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 Susana Alcala Wood as City Attorney of said CITY to perform the functions and duties specified in Section 902 of the Modesto City Charter and by

Article 2, Chapter 3, of Title II of the Modesto Municipal Code, and to perform other legally permissible and proper duties and functions as Council shall from time to time assign.

SECTION 2. Term

a. Effective June 12, 2006, EMPLOYEE shall fulfill the powers, functions and duties of City Attorney and shall serve in this capacity until such time as this agreement is terminated pursuant to Section 4, 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 4, 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 Attorney, subject only to the provisions as set forth in Section 4, 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. Suspension

a. COUNCIL may suspend EMPLOYEE with full pay and benefits at any time during the term of this agreement, but only if:

(1) There are affirmative votes of four (4) members of COUNCIL for suspension and EMPLOYEE agrees; or

(2) After a public hearing, four (4) members of COUNCIL affirmatively vote to suspend EMPLOYEE for just cause provided, however, that EMPLOYEE shall have been

given written notice setting forth any charges at least ten (10) days prior to such hearing by COUNCIL members bring such charges.

SECTION 4. 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 votes 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 Attorney, 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 his duties under this Agreement, then EMPLOYEE shall be entitled to a severance payment equal to six (6) 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 Attorney;

- (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.

SECTION 5. Disability

If EMPLOYEE is permanently disabled or is otherwise unable to perform her duties because of sickness, accident, injury, mental incapacity or health for a period of four (4) successive weeks beyond any accrued sick leave, COUNCIL shall have the option to terminate this agreement, subject to the severance pay requirements of Section 4, subparagraph (c). However, EMPLOYEE shall be compensated for any accrued sick leave, vacation, holidays, and other accrued benefits including but not limited to long term disability. However, nothing in this provision is intended to be in conflict with the Family and Medical Leave Act, Government Code Section 12945.2. In the event that there is any unintentional conflict, the provisions of the Family and Medical Leave Act shall supersede this provision and apply.

SECTION 6. Salary

Effective the 12th day of June, 2006, CITY agrees to pay EMPLOYEE for her services rendered pursuant to this agreement an annual base salary of \$144,000.00, payable in installments at the same time as other employees of CITY are paid.

SECTION 7. Other Supplemental Benefits

a. Vacation Leave. Upon the effective date of this agreement, EMPLOYEE shall be credited with one hundred and twenty (120) hours of vacation leave and commence accruing

vacation at the rate of one hundred sixty (160) hours during year one (1), one hundred sixty four (164) hours during year two (2), one hundred sixty eight (168) hours during year three (3) and one hundred seventy two (172) hours during year four (4). In recognition of EMPLOYEES's seventeen (17) years of prior service in municipal government, EMPLOYEE shall accrue vacation at the maximum accrual rate of two hundred (200) hours annually after completion of four (4) years of service with CITY. 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 2006 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 reimburse EMPLOYEE the monthly sum of \$400 for the expense of owning, operating, and maintaining and insuring her personal automobile.

c. Deferred Compensation. CITY shall offer to EMPLOYEE the same 457 deferred compensation plan, and EMPLOYEE shall participate in the mandatory 401(a) plan and CITY contributions as provided to other charter officers.

d. Other Benefits. Employee and her dependents shall continue to be eligible for and receive such disability, health, and life insurance and sick leave as provided to other Management and Confidential employees of CITY. EMPLOYEE shall be credited with sixty (60) hours of sick leave upon commencement of employment. EMPLOYEE shall be included in the Public Employees' Retirement System (PERS). CITY shall pay 6.6% of the "EMPLOYEE's share" and the full "CITY contribution" on behalf of EMPLOYEE. All actions taken by COUNCIL relating to fringe benefits for employees 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 (PERS) benefits and payments, health insurance, dental insurance and life insurance. CITY shall also pay EMPLOYEE's annual California State bar dues.

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 Attorney's Department Conference.

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 operating 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.

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
City Hall
P.O. Box 642
1010 10th Street
Modesto, CA 95354

EMPLOYEE:

Susana Alcala Wood
City Hall
P.O. Box 642
1010 10th Street
Modesto, CA 95354

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 Services.

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 12th day of June, 2006.
- 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, and duly attested by its City Clerk/^{under authority of Reso #2006-296} and EMPLOYEE has signed and executed this agreement, both in duplicate, the day and year first above written, on May 23, 2006 and EMPLOYEE has caused this Agreement to be duly executed.

CITY:

By 

Jim Ridenour
Mayor

EMPLOYEE:

By 

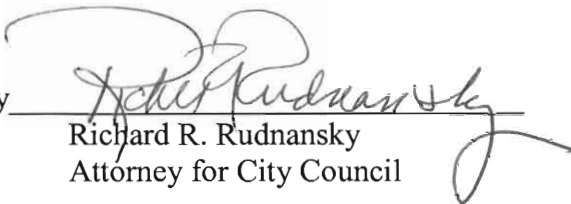
Susana Alcala Wood
City Attorney

ATTEST:

By 

Jean Morris, City Clerk

APPROVED AS TO FORM:

By 
Richard R. Rudnansky
Attorney for City Council

#820712

