

**CITY OF MODESTO  
EMPLOYMENT AGREEMENT  
JOSEPH P. LOPEZ**

**INTRODUCTION**

This Employment Agreement (this "Agreement") is made and entered into this 10<sup>th</sup> day of July, 2018, by and between the **CITY OF MODESTO**, a municipal corporation, ("Employer" or "City") and **JOSEPH P. LOPEZ**, an individual ("Employee" or "Lopez"), both of whom agree as follows:

**SECTION 1: TERM**

Consistent with Section 800 of the Modesto Charter, Employee is appointed for an indefinite term.

**SECTION 2: DUTIES AND AUTHORITY**

Employer agrees to employ Lopez 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 Two Hundred Fourteen Thousand Three Hundred and Seventy Six Dollars (\$214,376), plus an education incentive as compensation for his Master's Degree in the amount of an additional One and One-Half percent (1.5%) for total annual base salary of Two Hundred Seventeen Thousand Five Hundred and Ninety Two Dollars (\$217,592) payable in installments at the same time that the other employees of Employer are paid.
- B. Consideration shall be given on an annual basis to increase compensation following an annual performance evaluation as set forth in Section 12 of this Agreement.
- C. Employee shall be the highest paid employee of the City. The total annual base salary of Employee (base salary plus all educational incentives) shall remain at least One and One-Half percent (1.5%) higher than that of the next highest paid City employee (including, without limitation, the Chief of Police, the Fire Chief, and Charter Officers). In the event that the total annual base salary of the City's next highest paid employee increases, Employee's total annual base salary shall automatically be increased in the next pay period to maintain such separation.

**SECTION 4: HEALTH , LONG TERM DISABILITY AND LIFE  
INSURANCE BENEFITS**

- A. Employer agrees to provide health, vision, dental, long term disability and comprehensive medical insurance coverage for Employee and his/her dependents equal to that which is provided to all other unrepresented management employees of the City. Employer's contribution toward the premiums for said coverage shall be equal to that which Employer contributes to other non-sworn unrepresented management employees.
- B. Employer shall pay the amount of premium due for a term life insurance policy of Three Hundred Thousand Dollars (\$300,000). Employee shall name the beneficiary of the life insurance policy.

#### **SECTION 5: VACATION, SICK, AND MANAGEMENT/EXECUTIVE LEAVE**

The parties recognize the importance of taking regular time off. Accordingly, Employee is encouraged to take regular vacations and to utilize his management/executive leave on an annual basis.

- A. Employee shall accrue sick leave on an annual basis at the highest rate provided to non-sworn management employees up to a cap of eighty (80) hours. Upon assuming office, Employee shall be allowed to retain all the sick leave that he had previously accrued in his employment with Employer.
- B. Employee shall be provided with one (1) physical exam per year at Employer's expense.
- C. In the event Employee's employment is terminated, either voluntarily or involuntarily, Employee shall be compensated for all accrued vacation, and holiday leave.
- D. Employee shall receive one hundred and sixty hours (160) of vacation leave annually, which accrual rate shall automatically be adjusted on his anniversary consistent with the policy for all unrepresented management employees. Upon assuming office, Employee shall be allowed to retain all the vacation leave that he had previously accrued in his employment with Employer. Employee shall accrue vacation up to a cap of one hundred sixty (160) hours.
- E. Employee shall on January 1st 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 6: AUTOMOBILE ALLOWANCE**

Employer agrees to pay to Employee, during the term of this Agreement and in addition to other salary and benefits herein provided, the sum of Six Thousand Dollars (\$6,000) per year, payable in equal monthly installments, as a vehicle allowance to be used to purchase, lease, or own and operate and maintain a vehicle. 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. Employer shall reimburse 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 seventy-five (75)-mile radius of the Modesto City Hall.

#### **SECTION 7: RETIREMENT**

- A. Employer agrees to enroll Employee into the California Public Employees Retirement System ("CalPERS") in accordance with applicable CalPERS law.
- B. Employer shall provide a qualified 401(a) defined contribution plan offered through ICMA Retirement Corporation for Employee in the form of a money purchase plan to which Employee can contribute up to five percent (5%) of Employee's base salary. Employer shall match Employee's contribution up to a maximum of five percent (5%) of Employee's base salary.
- C. Employer agrees to pay an annual amount equal to one and one-half percent (1.5%) of Employee's base salary into an ICMA 457 deferred compensation plan. Employer shall match Employee's contribution.
- D. Employer shall continue to receive contributions to a Retiree Health Savings Account in the same amounts as provided to other Charter Officers of the City.
- E. Any or all of Employer and Employee contribution amounts designated in this Section are subject to change in the event that the City Council authorizes such change for Charter Officers of the City.

#### **SECTION 8: GENERAL BUSINESS EXPENSES.**

- A. Employer appreciates the importance of Employee's participation and leadership in leading professional organizations. 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 Employer, including but not limited to, the annual conference of the League of California Cities, the International City/County Management Association, California City Management Foundation, the Alliance for Innovation, What Works Cities and such other regional, state, and local governmental groups and committees.

- B. 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 Employee to become an active member in local civic clubs or organizations.
- C. In lieu of being provided with a cellular smartphone for City related matters, Employee shall receive a cellular smartphone stipend in the amount of \$150 per month.

#### **SECTION 9: TERMINATION**

- A. Employee is an at-will employee who shall serve at the pleasure of the City Council. The City Council may terminate Employee's employment at any time, subject to any restrictions in the City Charter, with or without cause. Nothing in this Agreement is intended to, or does, confer upon Employee any right to any property interest in continued employment or any due process rights of any kind.
- B. For the purpose of this Agreement, termination shall occur when the majority of the governing body votes to terminate the Employee at a duly authorized closed or open meeting.
- C. Employer may terminate this Agreement without cause and without payment of severance, by providing Employee written notice of Employer's intent to terminate Employee's employment with the City ("Notice of Termination"). The date of the termination shall not be less than the number of months that Employee is eligible for in severance, pursuant to Section 10 of this Agreement. The City Council's decision to provide Employee with the Notice of Termination at a duly authorized closed or open meeting shall satisfy Section 10(B) above.

#### **SECTION 10: SEVERANCE**

- A. In the event City terminates Employee's employment without cause and without Notice of Termination consistent with the provisions of Section 10, Employee shall be entitled to severance pay of a lump sum payment equal to six (6) months base salary during this Agreement. The severance under this Agreement shall be subject to the restrictions set forth in Government Code section 53260. Said payment of severance pay shall be conditioned upon Employee signing a waiver and release agreement forever releasing and waiving any and all claims against the City in a form acceptable to the City. Employee shall receive the severance payment in a lump sum payment minus all applicable deductions fifteen (15) business days after execution of the waiver and release agreement. Employee shall not receive any severance payments if he resigns, is terminated for cause, or if a waiver and release agreement is not executed by the parties.

- B. This provision does not confer any property rights on Employee, as he remains an at-will employee. The phrase "termination for cause" only pertains to Employee's eligibility for severance as described in this Section. A "termination for cause" for purposes of severance may include, but shall not be limited to, the following:
- i. Violation of any policies or procedures;
  - ii. Failure to properly perform assigned duties;
  - iii. Theft of City property;
  - iv. Insubordination;
  - v. Conviction of a felony or misdemeanor relating to Employee's fitness to perform assigned duties;
  - vi. Unauthorized absence from employment;
  - vii. Failure to maintain satisfactory working relationships with other employees or the public;
  - viii. Improper use of City funds;
  - ix. Unauthorized use of City property;
  - x. Willful misconduct or malfeasance;
  - xi. Any act of moral turpitude or dishonesty; and
  - xii. Other failure of good behavior either during or outside of employment such that the Employee's conduct causes discredit to the City.
- C. The parties acknowledge that pursuant to Section 800 of the Modesto City Charter 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.
- D. Pursuant to Government Code section 53243.2, any cash settlement related to the termination of this Agreement received by Employee from Employer shall be fully reimbursed to City if Employee is convicted of a crime involving an abuse of his office or position as defined in California Government Code section 53243.4.

## **SECTION 11: RESIGNATION**

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

## **SECTION 12: PERFORMANCE EVALUATION**

Annual performance evaluations are an important way for the City Council and the City Manager to ensure effective communications about expectations and performance. On or before August 31, 2018, and annually thereafter, City Council and Employee shall meet and establish performance standards for the position of City Manager to be used in the review and evaluation of the performance of the Employee in the following year. If either City Council or the City Manager requests it, a professional facilitator may be hired to assist in the performance evaluation process. The City Council and Employee shall further establish a relative priority among those various standards to be reduced to writing. These standards shall be obtainable generally within the time limits as specified, and within the

annual operating budgets and appropriations as provided. The achievement of these performance standards shall be considered part of Employee's performance duties. The 2018-19 performance standards shall be adopted in an open session amendment to this Agreement.

### **SECTION 13: HOURS OF WORK**

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

### **SECTION 14: 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 Employer and the community, Employee may elect, with the prior written approval of the Mayor, and written notification to the full 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 15: RESIDENCY**

Employee currently resides in the City.

### **SECTION 16: INDEMNIFICATION**

Employer shall provide for the defense of Employee in any action or proceeding alleging an act or omission within the scope of Employee's employment in accordance with California Government Code sections 825, 995 et seq., and other applicable law. Notwithstanding anything to the contrary in this Agreement, in accordance with California Government Code section 825, subdivision (a), Employer reserves the right to not pay any judgment, compromise or settlement subject to that section until it is established that the injury arose out of an act or omission occurring within the scope of Employee's employment pursuant to this Agreement. Further, notwithstanding anything to the contrary in this Agreement, Employer reserves the right to refuse to provide for the defense of Employee for the reasons set forth in California Government Code section 995.2 or other applicable provisions of law. Any City funds provided for the legal criminal defense of Employee shall be fully reimbursed in accordance with California Government Code section 53243.1 if Employee is convicted of a crime involving an abuse of his office or position as defined in California Government Code section 53243.4.

### **SECTION 17: ABUSE OF OFFICE**

Government Code sections 53243, 53243.1, 53243.2, and 53243.3 are incorporated by this reference as if fully set forth herein.

## **SECTION 18: OTHER TERMS AND CONDITIONS OF EMPLOYMENT**

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

## **SECTION 19: 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:** Joseph P. Lopez, PO Box 583, Modesto, CA 95353

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.

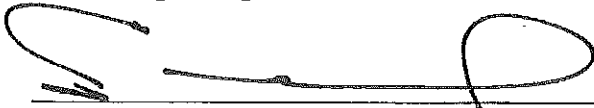
## **SECTION 20: GENERAL PROVISIONS**

- A. Integration. This Agreement sets forth and establishes the entire understanding between Employer and Employee relating to the employment of Employee by 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 this Agreement. Such amendments shall be incorporated and made a part of this Agreement.
- B. Binding Effect. This Agreement shall be binding on Employer and Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.
- C. Effective Date. This Agreement shall become effective on June 27, 2018.
- 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.

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 2018-297 adopted by the Council of the City of Modesto on the 10th day of July, 2018, and EMPLOYEE has caused this Agreement to be duly executed.

**CITY OF MODESTO,**  
a municipal corporation

**EMPLOYEE**



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By: Ted Brandvold, Mayor



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By: Joseph P. Lopez

ATTEST:

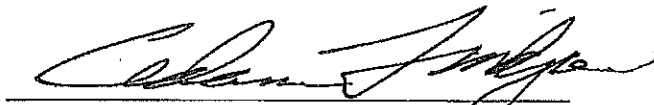


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By: Stephanie Lopez, City Clerk

(SEAL)

APPROVED AS TO FORM:



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By: Adam U. Lindgren, City Attorney

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