

## EMPLOYMENT AGREEMENT

THIS AGREEMENT is made and entered into this 2nd day of October, 2007, by and between the CITY OF BENICIA, hereinafter called "Employer" and Heather Mc Laughlin, City Attorney, hereinafter called "Employee", both of whom understand as follows:

### Recitals

- A. Employer desires to continue to employ the services of Employee to act as City Attorney for the City of Benicia, California.
- B. Employer desires to provide certain benefits, establish conditions of employment, and to set working conditions of Employee.
- C. Employee desires to continue to be employed as City Attorney for the City of Benicia, California.

### SECTION 1. Scope of Services.

Employee agrees to diligently and faithfully perform the duties of the Benicia City Attorney. Specific duties include, but are not limited to, the following:

- (a) Attendance at City Council meetings and other meetings as required;
- (b) Research, preparation and review ordinances, resolutions, agreements, contracts, leases, written options and other documents of a legal nature necessary or as requested by the City Council;
- (c) Provision of all legal advice on behalf of the City and City Council, City Manager and other City officers and employees;
- (d) Representation of the City Council, members of the City Council and other city officers and employees in litigation as necessary;
- (e) Selection, retention, supervision and monitoring of all outside counsel;
- (f) Commencement and prosecution of all criminal actions and civil abatements necessary and appropriate to enforce the City's ordinances; and
- (g) Monitoring and advising the City Council and City staff regarding legislation and case law affecting the City.

Services are to be performed in accordance with the City Attorney job description, which is attached hereto and incorporated herein by reference. Employee will focus her professional time, ability, and attention to City business during the term of this Agreement. Employee shall not engage in any other business duties or pursuits whatsoever or, directly or indirectly, render any services of a business, commercial, or professional nature to any other person or organization, whether for compensation or otherwise, without the prior consent of the City Council, except that:

(a) The expenditure of reasonable amounts of times not in conflict with the City's needs and interests, for educational, charitable, community and professional activities, shall not be deemed a breach of this Agreement and shall not require prior consent. Examples of types of activities include, but are not limited to, the League of California Cities and Soroptimist International.

(b) This Agreement shall not be interpreted to prohibit Employee from making passive personal investments or conducting private business affairs if those activities do not materially interfere with the services required under this Agreement.

(c) All data, studies, reports and other documents prepared by Employee while performing her duties during the term of this Agreement shall be furnished to and become the property of the City, without restriction or limitation on their use.

## SECTION 2. TERM.

- A. The term of this Agreement shall commence on July 1, 2007 and shall be effective for two years until June 30, 2009.
- B. Employment is "at will" and, as such, nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employer to terminate the services of Employee at any time, subject only to the provisions set forth in Section 3 of this Agreement.
- C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign or retire at any time from her position with Employer, subject only to the provisions set forth in Section 2, paragraph D of this Agreement.
- D. Notwithstanding any other provisions of this Agreement, in the event Employee voluntarily resigns or retires from her position with Employer before the expiration of the aforesaid term of her employment, Employee shall give Employer three (3) months notice in advance, unless the parties agree otherwise.
- E. In the event that Employee has provided 120 days advanced notice to Employer of the expiration date of the term of this Agreement and notice is not given by Employer to Employee three (3) months prior to the termination date as hereinabove provided, this Agreement shall be automatically extended on the same terms and conditions as herein provided for an additional two (2) year term and for successive two (2) year terms thereafter unless canceled or terminated by the City Council of the City of Benicia. In the event that written notice is not given by Employee to Employer one (1) month prior to the termination date as hereinabove provided, this Agreement shall be extended on the same terms and conditions as herein provided for an additional two (2) year term and for successive two (2) year terms.

## SECTION 3. TERMINATION AND SEVERANCE PAY.

- A. It is understood by and between the parties to this Agreement that Employee, in providing legal services to the City of Benicia, serves at the pleasure of the City Council, and Employee shall have no rights to a termination hearing, or to any vested property right to her position other than as contained in this Agreement.

- B. Should Employer desire to terminate Employee's services, Employer may only do so by an affirmative vote of three (3) members of the City Council. Such action shall not be taken within ninety (90) days after any election to which a new Council Member has been elected. If Employee is involuntarily terminated by Employer for any reason or no reason at all, Employer agrees to pay Employee, or to Employee's heirs or assigns, a sum of money equal to payment of six (6) months of the total salary and benefits in effect on the date of the involuntary termination. Said cash payment may be paid at the option of Employee in one (1) lump sum upon termination, or in three (3) equal monthly payments.
- C. The term "Involuntary Termination" as used in this section includes any action by Employer resulting in: 1) Employee's discharge or dismissal by Employer; 2) Employee's resignation following a salary, compensation and/or benefit reduction without her consent; 3) Employee's resignation following a request by the City Council, approved by a majority vote, that the Employee resign and 4) failure of the City to extend this Agreement upon the expiration of any term.

#### SECTION 4. COMPENSATION.

- A. (1) Employer agrees to pay Employee for her services, rendered pursuant hereto, by annually increasing existing Employee's salary to the greater of within 5% of the average for city attorneys for the City's traditional survey cities or applying the Cost of Living Adjustment given to any other department head to her existing salary. The compensation shall be payable in monthly installments or more frequent installments if other employees of Employer are so paid. Any compensation increases under this section shall be made without further contract amendment. Employer may not, at any time during the term of this Agreement, reduce the salary, compensation or other financial benefits of Employee without her consent, except in financial emergencies.
- (2) In addition, Employer agrees to increase Employee's salary and/or other benefits of Employee in such amount and to such extent as Employer may determine on the basis of a performance and salary review of Employee. Such review shall be conducted annually.
- B. Employer shall provide office space, secretarial staff, law library and other office equipment and material, as it deems appropriate. All office equipment and material shall be the property of the Employer during and after the term of this Agreement.
- C. Employer shall monthly contribute toward the account of Employee to a deferred compensation plan equal to 9.5% base salary contingent upon Employee's contribution of 3% base salary and may increase this amount in a future contract amendment.
- D. Employer shall provide to Employee a term life insurance policy. The amount of the policy shall be two (2) times base salary. This policy shall be owned by Employee and paid for by Employer.
- E. Employer shall provide to Employee the same medical, dental and vision insurances as are currently available to full time non-public safety employees of the City. Should Employee not require any of the insurances, Employee shall receive the monthly "in lieu" payment that any other employees receive. Any increases to these insurances or "in-lieu" payments shall be made through a future contract amendment.
- F. At Employee's option, medical insurance will be made available by Employer for Employee and her dependents. In the event Employee exercises her option to receive

City-funded medical insurance, she will forfeit the monthly "in-lieu" payment referenced in Section 4-E of this Agreement.

#### SECTION 5. RETIREMENT

- A. Employee shall be covered by the retirement program (i.e., Public Employees Retirement System – PERS) by which all other miscellaneous employees are covered.
- B. Employer shall pay Employee's contribution to the same retirement system's cost, at the time each contribution is made to the system, up to the maximum rate of 8% of Employee's PERS payment.

#### SECTION 6. PROFESSIONAL DEVELOPMENT

- A. Employer agrees to budget for and pay the travel and subsistence expenses of Employee for professional and official travel and meetings necessary and desirable to continue the professional development of Employee and to adequately pursue necessary official and other functions from Employer, including, but not limited to, those of the League of California Cities, and such other national, regional, state and local governmental groups and committees thereof of which Employee serves as a member.
- B. Employer also agrees to budget and to pay for the travel and subsistence expenses of Employee for short courses, institutes and seminars that are necessary for her professional development and for the good of the Employer.
- C. Employer agrees to budget and to pay for the professional dues and subscriptions of Employee necessary for her continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for her continued professional participation, growth and advancement and for the good of the Employer, including but not limited to the California State Bar Association and the Solano County Bar Association.

#### SECTION 7. OTHER TERMS AND CONDITIONS OF EMPLOYMENT

- A. Employer, in consultation with Employee, shall fix any other terms and conditions of employment, as it may determine from time to time, provided such terms and conditions are not inconsistent with, or in conflict with, the provisions of this Agreement, City ordinances or any other law.
- B. Employer shall provide Employee those benefits, including but not limited to, vacation leave, holiday leave, insurance, administrative leave and sick leave currently provided to other miscellaneous employees who are covered under the management team compensation package. Any increase in these benefits shall be made through a future contract amendment.

SECTION 8. NOTICES

A. Notices pursuant to this Agreement shall be given by deposit in the United States Postal Service, postage prepaid, addressed as follows:

- (1) Mayor  
City of Benicia  
250 East L Street  
Benicia, CA 94510
  
- (2) Heather Mc Laughlin  
City of Benicia  
250 East L Street  
Benicia, CA 94510

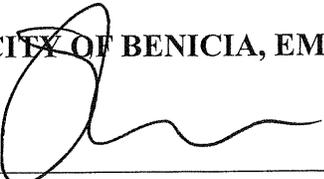
Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as applicable to civil judicial process. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the United States Postal Service.

SECTION 9. GENERAL PROVISIONS

- A. The text herein and referenced attachment 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 be deemed effective on July 1, 2007.
  
- 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 of Benicia has caused this Agreement to be signed and executed on its behalf by its Mayor and duly attested by its City Clerk and the Employee has signed and executed this Agreement, the day and year first written above.

**CITY OF BENICIA, EMPLOYER:**

  
\_\_\_\_\_  
Steve Messina, Mayor  
City of Benicia

**EMPLOYEE:**

  
\_\_\_\_\_  
Heather C. Mc Laughlin

Attest:



Lisa Wolfe, City Clerk

## **CITY ATTORNEY**

### **POSITION DESCRIPTION**

#### **DEFINITION:**

Under policy direction of the City Council, acts a legal advisor to and a counsel for the City Council and City officials in matters relating to official City duties; may represent the City in litigation; and performs related work as required.

#### **DISTINGUISHING CHARACTERISTICS:**

The City Attorney serves as primary legal advisor to the City Council with day-to-day direction and general guidance of the City Manager. The position requires aggressive and creative problem solving ability and emphasizes practice of preventative law while keeping City Council and City Staff well informed and up to date on all matters regarding legal implementation, compliance and legislative impacts.

#### **EXAMPLES OF DUTIES:**

Renders legal opinions to the City Council, City Manager and City Staff as requested.

Attends all City Council meetings and meetings of other boards and commissions as required.

Performs legal research and prepares opinions.

Confers with and renders assistance to the City Manager and City Staff in establishing departmental policies by developing and applying legal points and procedures.

Recommends changes in policies and procedures in order to meet legal requirements.

Monitors and analyzes legislation affecting the City.

Assists in the preparation and review of proposed agreements, contracts, and related documents.

Advises various Commissions and Boards as required and renders legal advice on matters on the agenda.

Prepares drafts of proposed agreements, ordinances, resolutions, deeds, pleadings, and other legal documents.

## **City Attorney**

Assists in resolving code enforcement issues and securing compliance.

Assists in the conduct of legislative and administrative hearings conducted by the Council and Commissions.

Represents the City in administrative hearings and lawsuits.

Prepares election documents for general and special municipal elections.

Prepares, justifies and administers the City Attorney's budget.

Coordinates and supervises work with special outside legal counsel(s).

Supervises and reviews the work of legal and clerical support staff.

Assists with negotiations involving contracts, zoning issues and property transactions.

## **QUALIFICATIONS:**

### **Knowledge of:**

Legal principles and practices, including civil, criminal, constitutional, administrative and general municipal law and procedures.

Judicial procedures and rules of evidence.

Methods of legal research.

Ordinances, statues, and court decisions relating to municipal government.

Special district and assessment district formation and administration.

Principles and practices of personnel law, planning and land use, Risk Management, Civil and criminal enforcement.

### **Ability to:**

Communicate clearly and concisely both orally and in writing.

Analyze and prepare a wide variety of legal documents.

**City Attorney**

Conduct research on legal problems and prepare sound legal opinions.

Prepare and present cases in court.

Perform legal work requiring the use of independent judgment.

Work independently in the absence of supervision.

Establish and maintain cooperative relationships with those contacted in the course of work.

**EXPERIENCE AND EDUCATION:****Experience:**

Four years increasingly responsible public agency legal experience performing duties comparable to those of an attorney in the office of a City Attorney or County Counsel.

**Education:**

Equivalent to a Juris Doctor degree from an accredited law school.

**SPECIAL REQUIREMENTS:**

Membership in the State Bar of California. Qualified to practice law before all California State and Federal Courts.

Possession of an appropriate California driver's license issued by the State Department of Motor Vehicles.