

**EMPLOYMENT AGREEMENT
BETWEEN
THE CITY OF MADISON
AND
LUCIA NUNEZ**

This Agreement made this _____ day of _____, 2006, by and between the City of Madison, a municipal corporation of Dane County, Wisconsin (hereafter, the "CITY") and Lucia Nunez, a natural person (hereafter, the "Director"),

WITNESSETH;

WHEREAS, the City desires to hire the Director as an employee of the City of Madison to perform the services described herein on its sole behalf as the Civil Rights Department Director, and

WHEREAS, the Director represents that she possesses the necessary knowledge, skill, and experience to perform such services and is willing to perform such services as the Civil Rights Department Director, and

WHEREAS, the Director has been duly selected and has been confirmed for appointment to the position of Civil Rights Department Director by the Common Council of the City of Madison on _____, and

WHEREAS, the Common Council of the City has authorized the execution of the Agreement by Resolution No. _____.

THEREFORE, in consideration of the mutual covenants, terms, and agreements contained in this document, the receipt and sufficiency of which is mutually acknowledged, the parties do agree as follows:

I. CIVIL RIGHTS DEPARTMENT DIRECTOR

Lucia Nunez is hereby hired as a non-civil service employee of the City, holding the position of Civil Rights Department Director pursuant to the terms, conditions and provisions of this Agreement. The Director shall have and exercise full authority and discretion as a Department Head within the City's organizational structure and act as Appointing Authority for employees of the Civil Rights Department in accordance with all appropriate City Ordinances and Mayor's Administrative Procedure Memoranda.

II. FUNCTIONS, DUTIES AND RESPONSIBILITIES OF THE CIVIL RIGHTS DEPARTMENT DIRECTOR

The principal function of the Civil Rights Department Director shall be the management of the Civil Rights Department. This is responsible managerial and administrative work in developing, directing, integrating, coordinating, and evaluating the programs and services of the Civil Rights Department. The Civil Rights Department promotes civil rights advocacy and leadership within the community by providing for: Outreach and education to improve race relations, civil rights, disability rights, equal opportunity and accessibility within the City of Madison; the recruitment, promotion and retention of protected classes within City employment; the development and administration of related complaint resolution processes consistent with City ordinances; contract compliance services; the development of related strategic partnerships throughout the City; and the promotion and assurance of compliance with related local, State, and federal standards. This work is characterized by considerable independent judgment and discretion in planning, administering, coordinating and implementing departmental functions and participating in the development and implementation of related Citywide policies. This position functions under the general direction of the Mayor.

- A. The Civil Rights Department Director shall manage the staff, programs and functions of the Civil Rights Department to ensure continued unity of programmatic goals and resources. Provide overall leadership in the development and implementation of civil rights policies and programs, and provide policy direction, interpretations and integration of relevant local, State and federal legislation and guidelines. Participate in the development of related City policies. Establish and implement program priorities. Oversee the development, approval and implementation of City Affirmative Action Plans and programmatic and numerical initiatives. Direct and assist staff in the communication, interpretation, modification and negotiation of related guidelines, procedures and standards with City agencies. Develop and oversee the Department's recruitment program and work with City managers and staff to increase the hiring, promotion and retention at all classification levels for people in protected classes.
- B. Develop civil rights programmatic and planning standards. Oversee and/or develop related statistical recordkeeping systems/formats. Direct and monitor the provision of related technical assistance. Receive, monitor and report on compliance efforts and seek positive change. Develop and recommend policy on the resolution of alleged discrimination and harassment of City employees and administer related complaint resolution processes.

Oversee and coordinate the Citywide Disability Rights Program and staff within applicable State, federal and local regulations to ensure that people

with disabilities participate fully in City government, City programs and our quality of life. Act as liaison to people with disabilities to make sure City government is responsive to their needs. Over the Prevailing and Living Wage programs. Oversee the development, promotion and implementation of the City's Contract Compliance Program, in order to ensure compliance with applicable federal, State and local regulations relative to small, disadvantaged, and minority and women business enterprises. Establish policies and procedures to maximize targeted business participation in competitive bidding. Develop applicable policies and procedures in keeping with program goals.

Direct and participate in the enforcement of the City's Equal Opportunities Ordinance. Develop, direct and evaluate the applicable complaint resolution processes pertaining to intake, investigation, and issuance of Determinations and Hearing Examiner decisions.

Building positive relationships with commissioners, alders, business, advocacy and non-profit groups, and residents to advance civil rights and promote equal opportunities for all persons. Work with persons in the City's protected classes to ensure that Madison's high quality of life is equally available to all of its residents. Work with diverse communities to overcome cultural differences, language barriers and physical barriers.

Provide for the effective integration, coordination, and support of the roles of the Affirmative action Commission, the Equal Opportunities Commission, and the Commission on People with Disabilities as an important linkage to the communities served. Create coalitions within protected classes to build awareness of emerging issues in the community. Provide opportunities for public input regarding issues of civil rights.

Manage all personnel functions of the agency, including hiring, training, evaluating, disciplining and terminating staff, both directly and through subordinates.

Direct and participate in the development and management of the Department's budget. Prepare and defend budgetary recommendations as required. Identify potential non-City revenues. Conduct and supervise the solicitation of targeted funds/resources (e.g., through grants, cooperative efforts, etc.)

- C. The Director agrees to perform such functions and duties at a professional level of competence and efficiency. The Director shall abide by all requirements of the laws of the State of Wisconsin, and of the ordinances, resolutions, regulations, rules and practices of the City which exist at the time of execution of this Agreement or which may, hereafter, be enacted

or amended by the State of Wisconsin or the City in the exercise of their lawful authority. In the event a provision of this Agreement conflicts with any City ordinance, resolution, regulation, rule or policy, the provision of the Agreement shall control, except as provided in Madison General Ordinance 3.47.

- D. The Director shall devote full time to the duties and responsibilities provided herein and shall engage in no pursuit which interferes with them. The Mayor, however, may approve the Director's reasonable time away from the regular duties and responsibilities provided such time is approved in advance and taken as vacation leave or absence without pay. Further, the Mayor may authorize other limited outside professional activities on City time provided that they are determined to be of benefit to the City and the Director is not compensated for such activities. Nothing herein limits the Director from performing outside services for compensation, provided such outside services have been approved by the Mayor, are not done on City time, and otherwise comply with City ordinances and rules.
- E. The standard City work week is 38.75 hours. However, the Director shall have reasonable flexibility from this standard to accommodate additional time expended outside regular working hours required by attendance at meetings and the like. Such flexibility is not intended to provide or be used as additional vacation or other paid leave.
- F. The Director shall have no right to make contracts or commitments for or on behalf of the City except as preauthorized by statute, ordinance or express written consent of the City.
- G. The Director shall be subject to the City's residency requirement.

III. COMPENSATION AND BENEFITS

- A. The Director's initial year's salary shall be based on an annualized rate of \$91,000 and shall be paid in approximately equal biweekly payments according to regular City payroll practices. The effective date of said salary shall be _____, 2006. The Mayor shall review the Director's salary at the conclusion of the Director's probationary period. Annual salary adjustments including 2006 and thereafter may be made at the Mayor's discretion, subject to approval of the Common Council, as provided in the City's established managerial plan. The Director shall not be entitled to receive any additional overtime compensation, compensatory time off, or bonuses.
- B. The Director shall, in addition to the compensation provided in Paragraph A above and except as otherwise set forth in this Agreement, be entitled to the following benefits:

1. The Director shall receive the same benefits as all other non-represented professional employees as may be provided and/or modified by the Madison General Ordinances, Resolution of the Common Council, Administrative Procedure Memoranda or other official City action throughout the duration of this agreement.
2. In addition, the Director shall be entitled to twenty (20) days of vacation during the term of this contract. Credited but unused vacation in excess of ten (10) days may be carried forward to the succeeding year with the approval of the Mayor. Except as otherwise provided, the Director shall be paid in full for credited but unused vacation existing at the expiration of this Agreement or upon the Director's retirement, when qualified for receipt of Wisconsin Retirement Fund benefits. In the event the Director leaves employment with the City, but does not retire, the Director shall be entitled to payment for one-half (50%) of any unused sick leave to which the Director would otherwise be entitled.
3.
 - a. Be eligible to participate at City expense in professional seminars, conferences, workshops and related meetings consistent with the role as Director and in accordance with applicable Administrative Procedures Memoranda.
 - b. Be eligible to be a CARS monitor in the City CARS program.
 - c. Be reimbursed for relevant professional association dues.

IV. TERM: RENEWAL OPPORTUNITY; NON-RENEWAL

- A. This Agreement shall take effect on _____, 2006, and shall expire on _____, 2011, unless sooner terminated as provided herein.
- B. For a period of two (2) years from the effective date of this Agreement, the Director shall serve a probationary period. During the probationary period, the Director serves at the pleasure of the Mayor and may be removed at will by the Mayor. The Mayor will give the Director two (2) weeks notice of removal.
- C. The Mayor, in his/her sole discretion, may offer renewal of this Agreement to the Director. The Mayor shall notify the Director of the intent to renew the Agreement at least ninety (90) calendar days before the expiration of this Agreement. Failure to so notify the Director shall extend the term of this Agreement by the time of the delay in actual notification (but in no event for more than ninety (90) days) without change in the Director's anniversary date, and shall not act as a full renewal of the Agreement.

Renewal of the Agreement and of its provisions shall be subject to the approval of the Common Council. In the event the Common Council does not renew this Agreement, this Agreement will remain in effect for ninety (90) days following the non-renewal action by the Common Council or five (5) years from the date of this Agreement, whichever is later.

- D. The Mayor, in his/her sole discretion, may elect not to offer renewal of this Agreement to the Director. In such event, the Mayor shall notify the Director of the intent not to renew the contract at least ninety (90) calendar days before the expiration of this Agreement. Failure to so notify shall extend the term of this Agreement by the time of the delay in actual notification (but in no event for more than ninety (90) days) and shall not act as a renewal of the Agreement. At the expiration of the Agreement, the parties' rights, duties, responsibilities and obligations shall end. However, after the first renewal of this Agreement, the Director will, at the sole discretion of the Mayor, be eligible to take a voluntary demotion into any vacant or newly created position for which the Director is qualified.
- E. In the event of non-renewal of this Agreement, under either Paragraphs C or D above, the Mayor may, in his/her sole discretion, terminate this Agreement at any earlier date within ninety (90) days of the expiration of this Agreement, as determined by the Mayor. The early termination is to be accomplished by (a) notifying the Director of the date of early termination, and (b) committing to buy out the balance of this Agreement by paying the Director the balance due under this Agreement in a lump sum, including salary and leave benefits (vacation, floating holiday, paid leave, sick leave) earned or to be earned through the original term of this Agreement, together with payment of the City's share of any health insurance premiums or the provision for such payment through the original term of this Agreement. The buy-out may be for the full period left on this Agreement, or any portion of the final ninety (90) days thereof. If this Agreement is terminated early through the provisions of this buy-out clause, the Director's employment with the City ends as of the date of early termination.

V. PERSONNEL ACTIONS

The Director is subject to the Mayor's supervision and is, during the term of this Agreement, subject to the Mayor's authority to impose discipline on or to discharge the Director as is provided in Sec. 3.35(16) of the Madison General Ordinances, or as may be renumbered or amended hereafter. The Director shall be entitled to the procedural appeal and provisions contained in such subsection or as may be provided other non-represented employees at the time of imposition of suspension or discharge.

VI. CITY OBLIGATIONS AND RIGHTS

The City shall provide staff, equipment, supplies and space which it deems reasonable, in its sole discretion, for the conduct of the work of the Director. The City retains the sole right to determine the organizational structure and overall functioning of the Civil Rights Department.

VII. REOPENING THE AGREEMENT

Either party may request that the Agreement be reopened for renegotiation if or when the Director's duties or responsibilities change significantly. A "significant" change in the Director's duties is defined as that degree of change in duties and responsibilities which would qualify a civil service position for reclassification pursuant to standard City personnel practices.

Factors which may be considered include the addition or deletion of duties, changes in Departmental/Divisional services or the addition or deletion of programs. If there is no agreement, the original Agreement shall control and shall not be reopened. Agreement changes, if any, and any resulting reclassification of the position shall not be deemed the creation of a new position so as to require competition.

VIII. LIABILITY PROTECTION

The City shall defend and indemnify the Director against and for any and all demands, claims, suits, actions and legal proceedings brought against his/her in his/her official capacity or personally for acts performed within the scope of him/her employment to the extent and only to the extent authorized by the Wisconsin Statutes in effect at the time of the act complained of and as may be provided by any City insurance coverage for employees at such time.

IX. DISCLOSURE OF ECONOMIC INTERESTS

Pursuant to Madison General Ordinance 3.47, the Director shall file a Statement of Economic Interests with the City Clerk within 14 days of his appointment. Each person required to file a Statement of Economic Interests shall annually file with the Clerk an updated Statement no later than April 30 of each year.

X. APPEARANCE BEFORE ANY CITY ENTITY FOLLOWING SEPARATION FROM EMPLOYMENT

The Director shall be subject to the provisions of Madison General Ordinance 3.47.

XI. DOCUMENTS AND MATERIALS PROPERTY OF THE CITY

All of the documents, materials, files, reports, data and the like which the Director prepares or receives while this Agreement is in effect are the sole property of the City of Madison. The Director will not publish any such materials or use them for any research or publication without attribution to the City other than as work performed pursuant to the terms of this Agreement.

XII. TERMINATION OF AGREEMENT

- A. The Director may unilaterally terminate this Agreement during its term. If the Director unilaterally terminates this Agreement on less than ninety (90) calendar days notice in writing to the Mayor, the Director shall forfeit all rights to recover the cash equivalent of accumulated sick leave, unused vacation leave, and all other future benefits. These forfeiture provisions shall not apply if the Director retires from this position (upon qualifying for receipt of benefits pursuant to the Wisconsin Retirement Fund requirements).

- B. The Director's discharge (as provided for in Madison General Ordinance 3.35(16) during the term of this Agreement shall be deemed a breach of material provision of the Agreement. In the event of a discharge or other breach of a material provision of the Agreement by the Director, the Director shall forfeit all compensation and benefits from the date of notification of the breach by the City. This action shall not impact the receipt of benefits earned during the total period of employment. In the event of an alleged breach of a material provision of this Agreement by either party, the concerned party shall notify the other party in writing within thirty (30) working days, which shall be followed by a meeting of the parties to resolve the alleged breach. In the event the issue is not resolved, the Director may pursue contract remedies.

- C. The City retains the right, in its sole discretion, to abolish the position of Civil Rights Department Director or to reorganize as it deems in the best interest of the City. In the event the City abolishes the position of Civil Rights Department Director or reorganizes the Department/Division to the extent that the position of Civil Rights Department Director is no longer required, this Agreement shall terminate and all rights, duties and obligations of the parties shall mutually end without recourse one hundred eighty (180) calendar days after final approval of such abolishment of position or reorganization by the Common Council, except as provided in Madison General Ordinance 3.47.

XIII. NO ASSIGNMENT OR SUBCONTRACT

The Director shall not assign or subcontract any interest of obligation under this Agreement.

XIV. AMENDMENT

This Agreement shall be amended only by written Addendum to Agreement of the parties approved and authorized for execution in the same fashion as this original Agreement.

XV. NO WAIVER

No failure to exercise and no delay in exercising any right, power or remedy on either party's part shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof, or the exercise of any other right, power, or remedy.

XVI. ENTIRE AGREEMENT

No agreements, oral or written, express or implied, have been made by either party hereto, except as expressly provided herein. All prior agreements and negotiations are superseded hereby. This Agreement and any duly executed addenda or amendments thereto constitute the entire Agreement between the parties hereto.

XVII. SEVERABILITY

In the event any provisions of this Agreement are determined by any court of law to be unconstitutional, illegal, or unenforceable, it is the intention of the parties that all other provisions of this Agreement shall remain in full force and effect.

XVIII. GOVERNING INTENT AND LAW

This Agreement shall be interpreted in the first instance in accordance with the spirit and intent of the Substitute Report of the Human Resources Committee Report approved by the Common Council on August 2, 1988 and shall be controlled, construed and enforced in accordance with the laws of the State of Wisconsin.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the day and year first written above.

CITY OF MADISON
A Municipal Corporation

Witness

David J. Cieslewicz, Mayor

Witness

Ray Fisher, City Clerk

Witness

Lucia Nunez, Civil Rights
Department Director

APPROVED:

APPROVED AS TO FORM:

Dean Brasser, City Comptroller

Michael P. May, City Attorney