Office of the City Council
MEMORANDUM

TO: City Council Colleagues
FROM: Council Member Barton
DATE: September 8, 2008
SUBJECT: Approval of City Auditor Employment Agreement with Lynda Flores-Brouchoud

Attached is the proposed employment agreement with Lynda Flores-Brouchoud. It was prepared with the assistance of outside counsel Steven Dorsey of Los Angeles who was selected by our City Attorney. Mr. Dorsey and I believe that the contract is consistent with the Term sheet previously negotiated. Ms. Flores-Brouchoud has reviewed and approved the Agreement.

Attachment:
Employment Agreement
EMPLOYMENT AGREEMENT BETWEEN
THE CITY OF PALO ALTO AND LYNDA FLORES-BROUCHOUD

THIS AGREEMENT is between the City of Palo Alto, a municipal corporation and chartered city ("City") and Lynda Flores-Brouchoud ("Auditor"). It is effective on the latest date next to the signatures on the last page.

This Agreement is entered into on the basis of the following facts, among others:

A. City, acting by and through its duly elected City Council, desires to employ Auditor as its City Auditor subject to the terms and conditions set forth in this Agreement and in the Charter of the City of Palo Alto (the "Charter").

B. Auditor desires to be employed by the City as its City Auditor, subject to the terms and conditions set forth in this Agreement and in the Charter.

C. City and Auditor desire to establish specific terms and conditions relating to compensation and benefits, performance evaluations, and related matters.

D. The Charter provides, among other things, that the City Auditor shall be appointed by the City Council and that she may be removed at the pleasure of the City Council.

E. Auditor desires a predictable amount of severance notice and severance pay should her employment be terminated.

F. City, mindful of the frequency, administrative disruption, and expense of employment-related litigation, desires to prevent litigation arising from any termination of the employment relationship with Auditor.

BASED UPON THE FOREGOING, CITY AND AUDITOR AGREE AS FOLLOWS:

1. **Employment.** City hereby appoints and employs Auditor as City Auditor and Auditor hereby accepts the appointment and employment with the City for an indefinite term to begin on September 18, 2008, provided Auditor actually reports for and commences work on that date (the "Employment Start Date"). In the event Auditor does not actually report for and commence work on September 18, 2008, the Employment Start Date will be the date, if any, as otherwise mutually agreed by the parties.

2. **Duties of Auditor.** Auditor shall perform the duties established for the City Auditor by the Charter, Palo Alto Municipal Code, direction of the City Council, or as otherwise provided by law, ordinance, or regulation.

   2.1 **Full Energy and Skill.** Auditor shall devote her full energy, skill, ability, and productive time to the performance of Auditor’s duties.

   2.2 **No Conflict.** Auditor shall not engage in any employment, activity, consulting service, or other enterprise, for compensation or otherwise, which is actually or potentially in conflict with, inimical to, or which interferes with the performance of Auditor’s duties.
2.3 Permission Required for Outside Activities. Auditor shall not engage in any employment, activity, consulting service, or other enterprise, for compensation or otherwise, without the express permission of the City Council.

3. Compensation. Auditor shall be compensated as provided in this section 3.

3.1 Compensation. Auditor shall receive an initial base annual salary of One Hundred Fifty-Six Thousand and No/100 Dollars ($156,000.00) commencing on the Employment Start Date.

3.2 Salary Adjustments. The Auditor shall be entitled to the same percentage increase in her pay as any inflation or similar adjustment that the City Council approves which applies to all Management and Professional Personnel and Council Appointees. Not less than once each year, the City Council shall meet for the express purpose of evaluating the performance of the Auditor. The Council, in its sole discretion, may grant a base salary increase, special labor market adjustment and/or internal equity adjustment to the Auditor at such times as it considers appropriate.

4. Regular Benefits and Allowances. Auditor will be eligible for, and shall receive, all regular benefits (i.e., health insurance, PERS contribution paid by City, etc.) and vacation, sick leave, and management leave as are generally provided to Management and Professional Personnel and Council Appointees from time to time by the City Council.

5. Additional Benefits and Allowances. In addition to the benefits specified in section 4, Auditor shall receive the following additional benefits and allowances.

5.1 Deferred Compensation. City shall pay a total of Eight Hundred Dollars ($800.00) per month into an Internal Revenue Code section 457 deferred compensation plan and an Internal Revenue Code section 401(a) defined contribution plan established for Auditor. Auditor shall specify how the payment is to be divided between the two plans. City shall take all actions necessary to establish the section 401(a) plan with ICMA-Retirement Corporation, or other mutually acceptable trustee, for the benefit of Auditor, including any administrative or setup fees.

5.2 Automobile. Auditor shall receive a City automobile expense allowance as provided in the Management and Professional Personnel and Council Appointees Compensation Plan because her duties require exclusive and unrestricted use of an automobile. The Auditor may also use the automobile expense allowance for alternate means of transportation necessary and useful for the exercise of her duties.

5.3 Parking. City shall provide parking at the Civic Center at no cost to Auditor.

5.4 Leave Balance upon Start of Employment. Auditor shall be credited with ten (10) days of vacation leave and, notwithstanding the Management and Professional Personnel and Council Appointees Compensation Plan, a total of twelve (12) days of sick leave immediately upon the start of employment.
5.5 **Vacation Accrual.** Auditor’s vacation accrual rate shall be calculated based upon years of service in the Public Employees’ Retirement System ("PERS") or a PERS reciprocal agency, but not less than a rate of one hundred and sixty hours annually prorated and credited each pay period.

6. **Additional Expenses of Employment.** City shall pay the following usual and customary employment expenses.

6.1 The cost of any fidelity or other bonds required by law for the City Auditor.

6.2 The cost to defend and indemnify Auditor to the full extent of the law as provided by the California Tort Claims Act (Gov. Code, § 810, et seq.), or otherwise.

6.3 Reimbursement for expenses reasonably incurred in representing the interests of the City while outside its jurisdiction, including, but not limited to the cost of lodging, meals, and related items.

7. **Duration of Employment.** Auditor understands and agrees that she has no constitutionally protected property or other interest in her employment as City Auditor. She understands and agrees that she works at the will and pleasure of the City Council and that she may be terminated, or asked to resign, at any time, with or without cause, subject only to any limitations which are now, or which may in the future, be included within the City Charter.

7.1 **Severance Pay.** If Auditor is asked to resign in lieu of termination or is terminated as City Auditor she shall receive a cash severance payment, or payments (without interest) at intervals specified by Auditor, calculated as provided below in section 7.1.1. For the purpose of explaining the parties’ intent before setting forth the specific formula in action 7.1.1 below, the severance payment is intended to approximate 6 months salary and benefits, plus 1 additional week of salary and benefits for each year of employment up to a maximum of 9 months in total.

7.1.1 **Equation.** The severance payment shall be calculated by adding Auditor’s then-current monthly salary and non-salary benefits (the cash value of which will be reasonably determined by City), then multiplying the result by the lower of 9 or sum of 6 and the quotient of Auditor’s total number years of City employment (rounded to the nearest year) divided by 4. The severance payment is expressed as the lower of

\[(Salary + Benefits) \times \left( 6 + \frac{YearsEmployed}{4} \right) \text{ or } (Salary + Benefits) \times 9\]

For example, if Auditor were terminated after 10 years, and 3 months, she would receive 6 months salary and benefits, plus 2.5 months salary and benefits (the result of 10 years, 3 months rounded to the nearest year then divided by 4). Also by way of example, if Auditor were terminated after 15 years, she would receive 6 months salary and benefits plus 3 months salary and benefits because even though the result of 15 years divided by 4 is 3.75, severance payments are capped at 9 months.
7.1.2 The monthly non-salary benefits shall be those specified in sections 4 and 5. All normal withholdings as required by law shall be made with respect to any amounts paid under this section.

7.1.3 Non-Payment of Severance Under Certain Conditions. If the termination of Auditor is the result of conviction of a felony, she shall not be paid any severance pay.

8. Miscellaneous.

8.1 Notices. Notices given under this Agreement shall be in writing and shall be either:

a) Served personally; or

b) Delivered by first-class United States mail, certified, with postage prepaid and a return receipt requested; or

c) Sent by Federal Express, or some equivalent private mail delivery service.

Notices shall be deemed received at the earlier of actual receipt or three (3) days following deposit in the United States mail, postage prepaid. Notices shall be directed to the addresses shown below, provided that a party may change such party's address for notice by giving written notice to the other party in accordance with this subsection.

CITY: City of Palo Alto, Attn: Mayor
250 Hamilton Avenue
Palo Alto, CA 95901
Phone: (650) 329-2226/FAX: (650) 328-3631

AUDITOR: Lynda Flores Brouchoud
c/o City of Palo Alto City Auditor's Office,
250 Hamilton Avenue, 7th Floor, Palo Alto, CA 94301
Phone: (650) 329-2667/FAX: (650) 329-2297

8.2 Entire Agreement/Amendment. This Agreement constitutes the entire understanding and agreement between the parties as to those matters contained in it, and supersedes any and all prior or contemporaneous agreements, representations and understandings of the parties. This Agreement may be amended at any time by mutual agreement of the parties, but any such amendment must be in writing, dated, and signed by the parties and attached hereto.

8.3 Applicable Law and Venue. This Agreement shall be interpreted according to the laws of the State of California. Venue of any action regarding this Agreement shall be in the proper court in Santa Clara County.

8.4 Attorney's Fees. If any legal action or proceeding is brought to enforce or interpret this Agreement, the prevailing party as determined by the court shall be entitled to recover from the other party all reasonable costs and attorney's fees, including such
fees and costs as may be incurred in enforcing any judgment or order entered in any such action. Nothing in this subsection shall be read to prevent the parties from agreeing to some alternative method of dispute resolution. If such a method is agreed to, any final determination shall include an award of attorney’s fees and costs by the presiding officer.

8.5 **Severability.** In the event any portion of this Agreement is declared void, such portion shall be severed from this Agreement and the remaining provisions shall remain in effect, unless the result of such severance would be to substantially alter this Agreement or the obligations of the parties, in which case this Agreement shall be immediately terminated.

8.6 **Waiver.** Any failure of a party to insist upon strict compliance with any term, undertaking, or condition of this Agreement shall not be deemed to be a waiver of such term, undertaking, or condition. To be effective, a waiver must be in writing, signed and dated by the parties.

8.7 **Representation by Counsel.** Auditor and City acknowledge that they each did, or had the opportunity to, consult with legal counsel of their respective choices with respect to the matters that are the subject of this Agreement prior to executing it.

8.8 **Section Headings.** The headings on each of the sections and subsections of this Agreement are for the convenience of the parties only and do not limit or expand the contents of any such section or subsection.

CITY OF PALO ALTO

Dated: ____________________________

______________________________
Larry Klein, Mayor

AUDITOR

Dated: 8/8/08

______________________________
Lynda Flores Brouchoud

ATTEST:

______________________________
City Clerk

APPROVED AS TO FORM:

By: ____________________________
City Attorney