

**AT-WILL EMPLOYMENT AGREEMENT
OF
Irwin Ivan Ortiz**

This agreement is between the CITY OF WATSONVILLE ("City"), a municipal corporation organized in the State of California, and IRWIN IVAN ORTIZ ("Employee") ("Agreement"). The parties agree as follows:

1. Effective Date

The effective date of this Agreement is March ____, 2022.

2. Appointment as City Clerk and Start Date

The City agrees to employ Employee as City Clerk for the City, subject to the terms, conditions and provisions of this Agreement. Employee accepts such employment. Employee shall be "at will" and serve at the pleasure of the City Council.

Employee's employment with the City shall be subject to all requirements of the City's Personnel Rules ("Rules") unless contradicted by some provision of this Agreement. Employee shall perform all duties consistent with the City's Rules and comply, at all times, with the City's Personnel Rules.

3. Term of Agreement

The term of this Agreement shall be from March __, 2022 until terminated by either party pursuant to section five (5) below. Employee is an at will employee who may be terminated at any time, with or without cause, and shall serve at the pleasure of the City Council. Employee may resign at any time for any reason by providing notice to City Council.

4. Duties and Responsibilities

a. Employee will perform the functions and duties specified in the laws of the United States and the State of California in Section 803 of the City's Charter, as well as the City's Municipal Code, the Personnel Rules, ordinances and resolutions of City, and to perform other legally permissible and proper duties and functions of the City Council may, from time to time, assign.

b. Employee shall perform his duties to the best of his ability in accordance with the highest professional and ethical standards of the profession, comply with all general rules and regulations established by the City, and obey all State and Federal laws.

c. Employee agrees to devote his productive time, ability and attention to the City's business during the term of this Agreement. Employee shall not hold secondary employment, and shall be employed exclusively by the City. The City and Employee recognize that Employee is expected to devote necessary time outside normal office hours to perform business of the City. Since Employee's position is "exempt" under the Fair Labor Standards Act, Employee shall not receive overtime or extra compensation for work performed outside normal business hours.

d. Employee shall not engage in any activity, which is or may become a conflict of interest, prohibited by contract, or which may create an incompatibility of office as defined under California law. Prior to performing any services under this Agreement and annually thereafter, the Employee must complete disclosure forms as required by law.

5. Resignation and Termination

a. Resignation: Employee may resign at any time with or without cause and agrees to give City at least forty-five (45) days advance written notice of the effective date of his resignation, unless the parties mutually agree otherwise.

b. Termination by City: City may terminate Employee, with or without cause, at any time, consistent with the requirements of section 802 of the City's Charter.

i. Termination without Cause: City may terminate Employee without cause by providing him with a written notice of termination. If City terminates employee without cause, City shall provide Employee forty-five (45) days written notice of such termination, unless the parties mutually agree otherwise. If the City, at the request of a majority of the City Council, requests Employee's resignation without cause, then Employee shall be deemed terminated without cause. If the Employee is terminated without cause, then the employee is entitled to receive severance as detailed in section eight (8) below.

ii. Termination for Cause: City may terminate Employee for cause by providing him with a written notice of termination. Such termination may be effective immediately. The following are sufficient basis for termination for cause:

- A. Employee engages in illegal activities;
- B. Gross malfeasance;
- C. Dereliction of duties;
- D. Absence from employment without a good cause;
- E. Failure to perform duties and responsibilities under this Agreement, as defined in the City's Charter, or as specified in the City Clerk's job description.
- F. Resume fraud or other acts of material dishonesty;
- G. Violation of the City's Rules, including but not limited to, the City's rule against harassment, discrimination, and retaliation;
- H. Use or possession of illegal drugs;
- I. Engaging conduct tending to bring embarrassment or disrepute to the City;
- J. Conviction of any felony or any criminal offense involving moral turpitude; or
- K. An abuse of his office or position" as that term is defined in Government Code Section 53243.4.

c. Termination by Reduction of Salary or Benefits: If City at any time during this Agreement reduces the salary of City Clerk in a greater percentage than an applicable across-the-board reduction for other "at will" employees, as defined in the City's Compensation and Benefits Plan for at-will employees ("Plan"), the Employee may, at his option, be deemed to be "terminated" without cause at the date of such reduction.

d. Affirmation of "At-Will" status: The parties recognize and affirm that: 1) Employee is an "at-will" employee whose employment may be terminated by the City Council at any time;

and 2) there is no express or implied promise made to Employee for any form of continued employment as City Clerk or any other position of employment with City. This Agreement is the sole and exclusive basis for an employment relationship between Employee and the City.

6. Salary

a. Effective March ____, 2022, City agrees to pay Employee \$10,423.50 in base salary per month (\$125,082.00 per year) thereafter for his services. All salary payments to Employee shall be payable in installments at the same time as other employees of the City are paid and subject to the customary withholding.

b. Employee shall be entitled to receive a salary increase of 2.5% cost of living increase in July 2022.

c. City agrees to review Employee's performance in April 2023. In the Council's discretion, it may provide Employee an additional salary increase at that time. Thereafter, the Council will review Employee's performance and compensation on an annual basis. The City, in its sole discretion, may increase Employee's salary based on Employee's performance review.

7. Supplemental Benefits

a. Economic Benefits: Except as otherwise provided in this Agreement, Employee shall receive the same economic benefits as other non-safety employees as detailed in the City's Compensation and Benefits Plan for at-will employees, attached hereto as Exhibit A, currently and as it may be amended by the City from time to time. Employee shall not receive the salary increases provided for in the Plan, as employee will negotiate any salary increase with the Council upon receiving a performance review.

b. Deferred Compensation: In September 2022, City will evaluate Employee's performance to determine whether providing a deferred compensation benefit for employee is appropriate based on Employee's performance. City shall retain sole discretion in determining whether Employee will receive this deferred compensation benefit and the amount of such benefit.

8. Severance

a. As stated herein, Employee's employment with City is for no definite term or period of time. Employee shall serve at the will and pleasure of the City Council, and his employment may be terminated by the City Council at any time. Termination of Employee's employment shall not require any showing of cause or justification, nor shall Employee be entitled to any internal administrative appeal of the decision of the City Council, beyond any process required by law.

b. In the event of Employee's involuntary termination for reasons other than his resignation, death, disability, or termination with cause as provided in section 5(b)(ii) above, Employee shall be paid severance pay as provided in section 8(e) below.

c. In accordance with state law, Employee shall be entitled to receive all compensation earned, but unpaid, for actual work performed and accrued unused vacation time as of the date of termination.

d. If Employee is paid severance pay as provided in section 8(e), below, payment of

such severance shall be conditioned upon Employee's signature on written waiver, attached hereto as Exhibit B, of any claims, grievances or causes of action against City, its employees, agents, officers, and City Council arising out of or concerning this Agreement, Employee's employment with City, or the termination of his employment with the City. If Employee does not agree to waive such claims, grievances or causes of action, the City shall not pay Employee severance pay.

e. If Employee's employment is terminated, and severance pay is applicable pursuant to the terms stated above, City agrees to pay Employee a lump sum payment of six (6) months of base salary, minus any required withholding. Such payment shall release City from any further obligations under this Agreement.

9. Annual Performance Evaluation

a. Annually, the City Council will define reasonable goals and performance objectives, within the scope of Section 803 of the City's charter that the City Council determines necessary for the proper operation of the City. City Council will consider input from Employee when developing the above goals and performance objectives.

b. The City Council will provide Employee with an annual review as detailed in section 6(c) above based on Employee's performance of assigned duties as detailed in this Agreement.

10. Indemnification

The City shall defend, hold harmless and indemnify Employee against any tort, civil rights, personnel, discrimination, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties in accordance with the provisions of California Government Code section 825. The City shall provide a defense in accordance with California Government Code section 995. The City may decline to defend and/or indemnify Employee only as permitted by the California Government Code. The City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment therefrom.

11. Bonding

City shall bear the full cost of any fidelity or other bonds the City Council requires of Employee under any law or ordinance or otherwise.

12. Notices

Any notices required by this Agreement shall be in writing and either given in person or by first class mail with the postage prepaid and addressed as follows:

TO CITY: City Manager
City of Watsonville
275 Main St., 4th Floor
Watsonville, CA 95076

TO EMPLOYEE: Irwin Ivan Ortiz
[Most recent address on file with human resources]

13. Abuse of Office

California Government Code Sections 53243, 52431.1, 53243.2 and 52431.3 are incorporated by reference as if fully set forth herein.

If this contract is terminated, any cash settlement related to the termination that Employee may receive from City shall be fully reimbursed to the City if Employee is convicted of a crime involving an abuse of his or his office or position.

14. Entire Agreement

This Agreement and its attachments and exhibits are the final expression of the complete agreement of the parties with respect to the matters specified herein and supersedes all prior oral and written understandings and agreements, and, except as prescribed herein, this Agreement cannot be modified except by written mutual agreement signed by the parties.

15. Severability, Applicable, Law, and Interpretation

In the event that any provision of this Agreement is held to be illegal or void by a court having jurisdiction over the parties, the remainder of this Agreement shall remain in full force and effect unless the parts found to be void are wholly inseparable from the remaining portion of this Agreement. Any dispute concerning this Agreement shall be governed by the laws of the State of California. The parties consent to the jurisdiction of the California courts with venue in Santa Cruz County.

16. Informed Agreement.

This Agreement has been negotiated between the City Council, on behalf of City, and IRWIN IVAN ORTIZ as Employee. City and Employee acknowledge that they have each contributed to the making of this Agreement and that in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. City and Employee acknowledge that they have each had an adequate opportunity to consult with their own legal counsel in the negotiation and preparation of this Agreement.

IN WITNESS WHEREOF, the City has caused this Agreement to be signed and executed in its behalf by its Mayor and duly attested by the City Clerk. It has also been executed by the Employee.

EMPLOYEE

CITY OF WATSONVILLE

Irwin Ivan Ortiz, Employee

Ari Parker, Mayor

ATTEST:

Beatriz Vazquez Flores, City Clerk

APPROVED AS TO FORM:

Samantha W. Zutler, City Attorney