

**RESOLUTION NO. 54-22 (CM)**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WATSONVILLE APPOINTING IRWIN IVAN ORTIZ CITY CLERK AND APPROVING A CONTRACT BETWEEN THE CITY OF WATSONVILLE AND IRWIN IVAN ORTIZ FOR EMPLOYMENT AS CITY CLERK**

**WHEREAS**, with the retirement of Beatriz Flores, who served as the City Clerk since 2008, the City Council must appoint a successor and enter a contract with the new City Clerk.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WATSONVILLE, CALIFORNIA, AS FOLLOWS:**

1. This action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with CEQA Guidelines Section 15378(b)(5), in that adopting a Resolution appointing a City Clerk and approving a Contract does not meet CEQA's definition of a "project," because the action does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment, and because the action constitutes organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment and if a "project," is exempt under the "common sense" exception (14 Cal. Code Regs. § 15061(b)(3)) because it can be seen with certainty that there is no possibility that this action may have a significant effect on the environment.

2. That Irwin Ivan Ortiz be and is hereby appointed City Clerk, and he shall have the powers and authority granted the City Clerk in Section 803 of the Charter of the City of Watsonville.

3. That the agreement between the City of Watsonville and Irwin Ivan Ortiz for employment as City Clerk of the City of Watsonville, a copy of which is attached hereto and incorporated herein by this reference, is fair and equitable and is hereby approved.

4. That the Mayor be and is hereby authorized and directed to execute the Contract for and on behalf of the City of Watsonville in the form attached hereto and incorporated herein by this reference, with minor revisions that may be approved by the City Manager Pro Tempore and the City Attorney.

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The foregoing resolution was introduced at a regular meeting of the Council of the City of Watsonville, held on the 22<sup>nd</sup> day of March, 2022, by Member Dutra, who moved its adoption, which motion being duly seconded by Mayor Pro Tempore Montesino, was upon roll call carried and the resolution adopted by the following vote:

AYES: COUNCIL MEMBERS: **Dutra, Estrada, García, Hurst, Montesino, Quiroz-Carter, Parker**

NOES: COUNCIL MEMBERS: **None**

ABSENT: COUNCIL MEMBERS: **None**

DocuSigned by:

*Ari Parker*

DA4E22F26943405

Ari Parker, Mayor

ATTEST:

DocuSigned by:

DocuSigned by:

*Irwin Ortiz*  
City Clerk

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3/24/2022 | 1:45 PM PDT

Date

APPROVED AS TO FORM:

DocuSigned by:

*Samantha Butler*

City Attorney

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I, Irwin I. Ortiz, City Clerk of the City of Watsonville, do hereby certify that the foregoing Resolution No. 54-22 (CM) was duly and regularly passed and adopted by the Watsonville City Council at a meeting thereof held on the 22<sup>nd</sup> day of March, 2022, and that the foregoing is a full, true and correct copy of said Resolution.

DocuSigned by:

*Irwin Ortiz*

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Irwin I. Ortiz, City Clerk

Date 3/24/2022 | 1:45 PM PDT

# **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 23, 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 23, 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 23, 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., 4<sup>th</sup> 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

DocuSigned by:

*Irwin Ortiz*

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Irwin Ivan Ortiz, Employee

DocuSigned by:

*Ari Parker*

D44E22F36993465  
Ari Parker, Mayor

ATTEST:

DocuSigned by:

DocuSigned by:

*Irwin Ortiz*

95926F9A882E4FA  
Beatriz Vazquez Flores, City Clerk  
Irwin I. Ortiz, Assistant City Clerk

APPROVED AS TO FORM:

DocuSigned by:

*Samantha Butler*

3164C8D7AE88460  
Samantha W. Zutler, City Attorney

**RESOLUTION NO. 202-21 (CM)**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WATSONVILLE  
APPROVING THE CITY OF WATSONVILLE COMPENSATION AND  
BENEFITS PLAN FOR ASSISTANT CITY MANAGER, DEPARTMENT  
DIRECTORS, DEPUTY CITY MANAGER, CHIEFS OF POLICE AND FIRE  
(EXECUTIVE TEAM)**

**WHEREAS**, the attached Compensation and Benefits Plan is intended to establish compensation, benefits and conditions of employment for all at-will positions including the Assistant City Manager, Department Heads, Deputy City Manager, Police Chief, and Fire Chief; and

**WHEREAS**, these positions are exempt from the Fair Labor Standards Act (FLSA), are at-will employees, serve at the pleasure of the City Manager and can be terminated with or without notice or cause and with no rights of appeal.

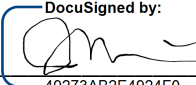
**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY  
OF WATSONVILLE, CALIFORNIA, AS FOLLOWS:**

That the City Council hereby approves and appropriates the City of Watsonville Compensation and Benefits Plan for Assistant City Manager, Department Directors, Deputy City Manager, and Chiefs of Police and Fire (Executive Team), attached hereto and incorporated herein.


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The foregoing resolution was introduced at a regular meeting of the Council of the City of Watsonville, held on the 6<sup>th</sup> day of July, 2021, by Member Montesino, who moved its adoption, which motion being duly seconded by Member Hurst, was upon roll call carried and the resolution adopted by the following vote:

AYES:	COUNCIL MEMBERS:	<b>Estrada, García, González, Hurst, Montesino, Parker, Dutra</b>
NOES:	COUNCIL MEMBERS:	<b>None</b>
ABSENT:	COUNCIL MEMBERS:	<b>None</b>

DocuSigned by:  
  
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**Jimmy Dutra, Mayor**


ATTEST: DS

DocuSigned by:  
  
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**City Clerk**

7/8/2021 | 5:53 PM PDT

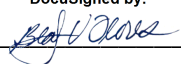
Date

APPROVED AS TO FORM:

DocuSigned by:  
  
 0B41F9CDD09F4B97  
**City Attorney**

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I, Beatriz Vázquez Flores, City Clerk of the City of Watsonville, do hereby certify that the foregoing Resolution No. 202-21 (CM) was duly and regularly passed and adopted by the Watsonville City Council at a meeting thereof held on the 6<sup>th</sup> day of July, 2021, and that the foregoing is a full, true and correct copy of said Resolution.

DocuSigned by:  
  
 26A00ECA30A14E3...  
**Beatriz Vazquez Flores, City Clerk**

Date 7/8/2021 | 5:53 PM PDT

# CITY OF WATSONVILLE

## COMPENSATION AND BENEFITS PLAN

ASSISTANT CITY MANAGER, DEPARTMENT DIRECTORS, DEPUTY CITY  
MANAGER, CHIEFS OF POLICE AND FIRE



EFFECTIVE FIRST FULL PAY PERIOD ON OR AFTER JULY 1, 2021

**Purpose and Intent:** On May 14, 2019, the City Council adopted a resolution No. 65-19 (CM) extracting the at-will, general service positions from the Management Bargaining Unit. This Compensation and Benefits Plan (Plan) is intended to establish compensation, benefits and conditions of employment for all at-will positions including the Assistant City Manager, Department Heads, Deputy City Manager, Police Chief, and Fire Chief. These positions are exempt from the Fair Labor Standards Act (FLSA), are at-will employees, serve at the pleasure of the City Manager and can be terminated with or without notice or cause and with no rights of appeal.

### A. SALARY SCHEDULE

- 1) Effective on the first full pay period on or after July 1, 2021, salaries shall be increased by 2.5%.

Effective on the first full pay period on or after July 1, 2021, the Fire Chief salary shall be increased by 3%.

The Public Works and Utilities Director salary shall be made equal to the Police Chief salary. The Parks and Community Services Director salary shall be made equal to the Administrative Services Director salary.

- 2) Effective on the first full pay period on or after July 1, 2022, salaries shall be increased by 2.5%.

Effective on the first full pay period on or after July 1, 2022, the Fire Chief salary shall be increased by 3%.

### 3) **One Time Pandemic Relief**

On the first full pay period after City Council approval and unit ratification, all positions under this Compensation and Benefits Plan shall receive a \$1000 one-time payment in recognition of the unique workplace challenges brought upon by the pandemic. For employees hired after April 1, 2020 this one-time payment will be pro-rated by months of service

## **B. RETIREMENT**

### **Retirement Contribution**

1. **Miscellaneous Employees Retirement Plan.** The City provides the California Public Employees' Retirement System (CalPERS) 2% @ 55 retirement program plan for Miscellaneous employees hired before July 1, 2011, including CalPERS Section 20862.8 - Credit for Unused Sick Leave. Employees shall pay the full 7% of the employee share.
2. **Miscellaneous Employees Two-Tier Retirement Plan.** The City shall provide the CalPERS 2% @ 60 retirement program plan for Miscellaneous employees hired on or after July 1, 2011 or upon effective date of CalPERS contract amendment including CalPERS Section 20862.8 - Credit for Unused Sick Leave. Final compensation for employees hired on or after July 1, 2011 will be based on the average of the highest wages earned in any consecutive 3-year period. Employees shall pay the full 7% of the employee share.
3. **Miscellaneous Employees PEPRA Tier Retirement Plan.** Pursuant to California Public Employees' Pension Reform Act of 2013 (PEPRA), the City shall provide the CalPERS 2% at 62 retirement plan for Miscellaneous employees hired on or after January 1, 2013 or as soon as administratively possible. Final compensation will be based on the average of the highest wages earned in any consecutive 3-year period.
  - a. **Miscellaneous Employees PEPRA Retirement Contribution.** Pursuant to California Public Employees' Pension Reform Act of 2013 (PEPRA), Miscellaneous employees hired on or after January 1, 2013 shall pay at least 50% of normal cost of pension or what is determined by CalPERS to be the employee contribution rate.
4. **Public Safety Employees Retirement Plan.** Public Safety members of the Management Unit hired prior to July 1, 2011 shall be subject to the same CalPERS retirement program plan provisions outlined in the appropriate public safety bargaining unit MOU.
  - a. **Public Safety Employees Two-Tier Retirement Plan.** Public Safety members of the Management Unit hired on or after July 1, 2011 shall be subject to the same Two-Tier CalPERS retirement program plan provisions outlined in the appropriate public safety bargaining unit MOU. Employees shall pay the full nine percent (9%) of the employee share effective on or after July 1, 2013.
  - b. **Public Safety Employees PEPRA Tier Retirement Plan.** Pursuant to California Public Employees' Pension Reform Act of 2013 (PEPRA), the City shall provide the CalPERS 2.7% at 57 retirement plan for Public Safety employees hired on or after January 1, 2013 or as soon as administratively possible. Final compensation will be based on the average of the highest wages earned in any consecutive 3-year period. Employee will pay the full nine percent

(9%) of the employee share effective the first full pay period on or after July 1, 2013.

- i. **Public Safety Employees PEPRA Retirement Contribution.** Pursuant to California Public Employees' Pension Reform Act of 2013 (PEPRA), Public Safety employees hired on or after January 1, 2013 shall pay at least 50% of normal cost of pension or what is determined by CalPERS to be the employee contribution rate.

5. **Retirement Tax Deferment.** The City shall maintain the IRS Sec. 414(h)(2) provision allowing employees to make employee retirement contributions with pretax (tax deferred) dollars.

### **C. ADMINISTRATIVE LEAVE**

1. Employees shall receive Administrative Leave of 13.5 days per year beginning the first full pay period on or after July 1, 2019. Unused Administrative Leave as of June 30 shall be paid off at the regular rate of pay the succeeding month.
2. Employer shall pro-rate Administrative Leave up to a maximum of 8.66 hours per month for new hires and for every month during the fiscal year for which an employee was employed before termination of City service.

### **D. OVERTIME PAY-DISASTER RESPONSE**

Notwithstanding that employees are exempt from the FLSA, upon issuance of a Proclamation of a local emergency by the City Council or the Director of Emergency Services pursuant to Chapter 2 of Title 4 of the Municipal Code, Unit employees are eligible for overtime compensation. Such overtime eligibility shall cease when the City Manager determines that the disaster response has ended.

### **E. AUTO**

- 1.5.2 Mileage reimbursement for Unit employees shall be at the Federal IRS allowable reimbursement rate.

**F. At-Will Status and Severance Pay**

1. As provided in Section 1001 of the City Charter, the City Manager, City Clerk, City Attorney, and each Department head are in the general service (i.e. at-will). Section 800 of the City Charter provides that the City Council shall establish by ordinance, not inconsistent with the Charter for the organization, conduct and operation of several offices, departments, and other agencies of the City. Section 800 goes on to provide that the City Council may also by ordinance establish additional departments and/or alter or abolish existing departments and/or assign and reassign duties and responsibilities to departments.

At-will status shall mean the right to terminate the employment relationship for any reason, with or without cause, with or without notice, without further obligation or liability except for the severance pay

The City need not state reasons for release of such identified at-will or general service employees, and such employees have no right or expectation to have release or post-release proceedings, hearings, or appeals, except persons subject to the Public Safety Officer Procedural Bill of Rights (Govt. Code Section 3300 et seq). Specifically, the Chief of Police shall be afforded the protections of subdivision (c) of Section 3304 of the Government Code.

As of the date of this Compensation Plan, the following positions are at-will and subject to general service. These employees have no right to return to employment in a former position or a right to employment in a former position, or a right to employment in any other position within the City by reason of their employment status:

Community Development Director  
Administrative Services Director  
Library Director  
Parks and Community Services Director  
Public Works and Utilities Director  
Information Technology Director  
Airport Director  
Assistant City Manager  
Deputy City Manager  
Fire Chief  
Police Chief

No statement, whether oral or written, or conduct may change such status, except a formal resolution of the Council resolved at a duly held meeting adopting a change of the terms of this MOU. Apart from the Council at a duly noticed meeting no person employed by the City has the authority to modify the at-will or general service status of such of head of department employees.

2. Such at-will general service employees shall be entitled to receive three months severance pay if involuntarily terminated by the City. Excluded from the severance pay provision are terminations for illegal activities, gross malfeasance or dereliction of duties or absence from employment without a good cause.

## **G. Special Provisions-Public Safety**

Uniform Allowance Uniform allowance shall be -Seven Hundred (\$700.00) Dollars per year for public safety members of the Management Unit for the purchase and maintenance of required uniform items and footwear.

### **1.8 Bilingual Pay**

#### **1.8.1 Eligibility for Level I Written and/or Conversational Premium Pay:**

In order to receive Level I Written and/or Conversational Bilingual Premium Pay employees proficient in the Spanish language must meet the following criteria:

- (a) The employee must pass the City's bilingual competency test as administered by the Human Resources Department on an annual basis to maintain the premium pay. The City Manager may waive the annual testing requirement for individuals upon recommendation of the Department Head. Annual basis refers to fiscal year; and
- (b) The employee is required to serve as an oral interpreter and provide basic written translations on a regular and on-going basis, as certified by the Department Head

#### **1.8.2 Level I Written and Conversational Premium Pay:**

- (a) For employees hired after November 1, 2006 the City shall pay a stipend of \$250/month, pro-rated for part time employees.
- (b) Employees eligible for Level I Premium Pay before November 1, 2006 shall receive premium pay equal to five percent (5%) of his/her base salary as of November 1, 2006, with the premium rounded to the nearest dollar, and exclusive of any retroactive wage increases provided under this agreement. A list of each employee's premium pay under this section will be provided to the Unit. Employees who receive the five percent premium, above, may irrevocably opt into the \$250/month stipend specified in (a) above.



### 1.8.3 Level I Conversational Only Premium Pay:

- (a) For employees who become eligible and receive Level I Bilingual Conversational Premium Pay on or after July 1, 2013 the City shall pay a stipend of \$75/month, pro-rated for part-time, regular employees.
- (b) Employees currently receiving Level I Written and Conversational Bilingual Premium Pay pursuant to Section 1.8.2 shall continue to receive the premium pay.

### 1.8.4 Level II Bilingual Translator Premium Pay:

In addition to the Level I stipend for Written and Conversational bilingual competency the City will designate a limited number of staff as Level II Bilingual Translators. Such Level II Bilingual Translators shall perform written translations that are viewed by a large audience of City residents (i.e. City mailers, City Council minutes, inserts in City utility bills, etc.). Level II Bilingual Translators must meet all requirements under Level I prior to applying for Level II consideration.

- (a) Qualified Level II Translators shall receive the Level I stipend as outlined in 1.8.2 (b) and an additional \$100/month.
- (b) To evidence competency as a Level II Translator, employees must pass a skills-based test administered by the City to demonstrate competency in written translation.

## 2.0 INSURANCE

### 2.1 Health Insurance

2.1.1 The City shall maintain in effect current health insurance coverages for all full-time Unit employees in the competitive and general services.

2.1.2 The City shall contribute the following monthly amounts towards health insurance coverage for full time employees defined above in Section 2.1.1

Per employee	<u>\$1,189.78</u>
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- 2.1.3 If plan contribution increases are necessary for the 2018 and 2019 plan years, the City and Employees contribution shall be shared equally, provided that increased City and Employee contributions do not exceed \$45/month per employee. Increases above \$45/month cap are subject to meet and confer process

Should insurance plan changes result in City costs below current costs, the intent of the parties is that the savings shall benefit both the bargaining unit and City equally.

- 2.1.4 Regular part-time employees will be fully covered at the employee only level at the City's expense. The employee shall have the option of covering additional dependents at their own expense. This shall be determined by utilizing the three tier rate which the City has established for the COBRA and other purposes (less any surcharges). To cover one (1) dependent, the employee will pay the difference between the employee only rate and the employee plus one rate. To cover the family, the employee will pay the difference between the employee only rate and the full family rate under the three tiers.

The decision to cover family members shall be made during a one time election when this provision becomes effective. Thereafter, employees may only add or delete family members in accordance with plan rules.

- 2.1.5 For any member of the Unit who uses all leave due to illness or injury, which is not a Workers' Compensation claim, the City shall maintain the health insurance coverage and pay the premium on behalf of the member for an additional thirty (30) days.

- 2.1.6 The City and the employees agree to jointly participate in the City Employees Health Committee (CEHC) as outlined in the bylaws dated July 1992.

## **2.3 Long Term Disability Insurance**

The City shall continue paying the Long Term Disability Insurance premium

## **2.4 Life Insurance**

Life insurance coverage is Fifty (\$50,000) Thousand Dollars for all Unit employees and Two Thousand (\$2,000) Dollars per dependents.

# **3.0 LEAVES**

## **3.1 Vacation Leave**

1st year	12 days
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2nd year	13 days
3rd year	14 days
4th year	15 days
5 - 10 years	16 days
11+ years	20 days

### 3.1.1

3.1.1 Employees with more than two (2) times their annual vacation accrual on the books shall bring their accrual within the accrual maximum by December 31, 2017. After one year of service, each employee will be expected to take during each year the vacation to which he/she is entitled. After December 31, 2017, when an employee's vacation balance reaches two times their annual vacation accrual, the employee will not accrue vacation until the vacation balance is below the accrual maximum. If an employee is denied requested vacation due to the needs of the City, the department must send a memo explaining the situation for consideration by the City Manager prior to the employee reaching the maximum accrual. Only the City Manager may grant temporary exceptions to this section in extraordinary circumstances.

## 3.2 **Holidays**

There shall be fourteen (14) holidays per year as specified below:

January 1 (New Year's Day)  
 January 21 (Martin Luther King Day)  
 Lincoln's Birthday (Floating holiday)  
 Third Monday in February (Washington's Birthday)  
 March 31 (Cesar Chavez Day)  
 Last Monday in May (Memorial Day)  
 July Fourth  
 First Monday in September (Labor Day)  
 November 11 (Veterans Day)  
 Thanksgiving Day  
 Friday following Thanksgiving (in lieu of Election Day)  
 December 24 (in lieu of Admission Day)  
 December 25 (Christmas Day)  
 December 31 (in lieu of Columbus Day)

Recognized holidays which fall on Saturday shall be observed on the preceding scheduled work day. Recognized holidays which fall on a Sunday shall be observed on the following scheduled work day.

There will be one (1) floating vacation day credited to each employee on Lincoln's Birthday, which may be taken pursuant to the City's leave regulations.

### **3.3 Sick Leave**

- 3.3.1 Each employee shall accrue sick leave in the amount of one and one quarter (1-1/4) days per month of service (10 hours). Sick leave is payable per City Personnel Rules and Regulations.

The maximum accumulation of unused sick leave is 125 days (1,000 hours). Sick leave accumulated in any calendar year in excess of 125 days (1,000 hours) shall be paid at the rate of 50% of such excess on the first payroll of December. The balance of such unused sick leave is lost and the sick leave accrual is reduced to 125 days (1,000 hours).

- 3.3.2 Unused sick leave may not be used to delay the date of an employee's disability retirement.

## **SEPARATION AGREEMENT**

### **1. PARTIES**

This Separation Agreement (hereinafter referred to as the "AGREEMENT") is entered into by and between the City of Watsonville, a California municipal corporation and general law city (hereinafter referred to as "CITY"), and Irwin Ivan Ortiz, an individual (hereinafter referred to as "EMPLOYEE").

### **2. RECITALS**

2.1. EMPLOYEE was hired by CITY as its permanent City Clerk, to serve at the pleasure of the City Council, pursuant to an Employment Agreement for the Position of City Clerk made and entered into March \_\_\_\_, 2022 ("EMPLOYMENT AGREEMENT").

2.2. CITY and EMPLOYEE desire that EMPLOYEE resign and enter into this AGREEMENT whereby EMPLOYEE receives severance compensation in exchange for executing this AGREEMENT including a general release and waiver of any and all claims that EMPLOYEE may have against CITY, including but not limited to its elected and non-elected officials, employees, attorneys, and agents. Accordingly, the parties hereto intend by this AGREEMENT to mutually conclude any and all employment relationships between CITY and EMPLOYEE by means of EMPLOYEE's voluntary separation as of \_\_\_\_, \_\_\_\_\_. This AGREEMENT sets forth the full and complete terms and conditions concluding EMPLOYEE's employment relationship with the CITY and any obligations related thereto, including any provided under the EMPLOYMENT AGREEMENT.

2.3. In accordance with this AGREEMENT and with applicable state and federal laws, EMPLOYEE acknowledges that EMPLOYEE has been advised of EMPLOYEE's postemployment rights, including but not limited to, EMPLOYEE's rights under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), the Employee Retirement Income Security Act of 1974 ("ERISA"), and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

### **3. CONSIDERATION**

3.1. EMPLOYEE shall receive payment at the time of his voluntary separation all earned salary, accrued fringe benefits as detailed in the EMPLOYMENT AGREEMENT, and/or all other wage compensation/benefits owed to EMPLOYEE upon separation of employment, as required by law or the EMPLOYMENT AGREEMENT or any other agreement with CITY.

3.2. In exchange for the waivers and releases set forth herein, CITY shall also cause to be paid to EMPLOYEE an additional compensatory payment by means of severance, settlement and release in the form of a lump sum amount of

\_\_\_\_\_ and \_\_\_\_ cents (\$\_\_\_\_\_.00), as set forth in the EMPLOYMENT AGREEMENT in the form of a check made payable to EMPLOYEE to be mailed to EMPLOYEE at EMPLOYEE's home address via certified mail return receipt requested within thirty (30) business days after the EFFECTIVE DATE (as defined below) of this AGREEMENT.

3.3. In exchange for the severance payment provided for herein, EMPLOYEE, and on behalf of EMPLOYEE's spouse, heirs, representatives, successors, and assigns, hereby releases, acquits, and forever discharges CITY, and each of its predecessors, successors, assigns, officials, employees, representatives, agents, insurers, attorneys, and all persons and entities acting by, through, under, or in concert with any of them, and each of them (hereinafter referred to as "CITY PARTIES"), from any and all claims, charges, complaints, contracts, understandings, liabilities, obligations, promises, benefits, agreements, controversies, costs, losses, debts, expenses, damages, actions, causes of action, suits, rights, and demands of any nature whatsoever, known or unknown, suspected or unsuspected, which EMPLOYEE now has or may acquire in the future, or which EMPLOYEE ever had, relating to or arising out of any act, omission, occurrence, condition, event, transaction, or thing which was done, omitted to be done, occurred or was in effect at any time from the beginning of time up to and including \_\_\_\_\_, \_\_\_\_\_ (hereinafter referred to collectively as "CLAIMS"), without regard to whether such CLAIMS arise under the federal, state, or local constitutions, statutes, rules or regulations, or the common law. EMPLOYEE expressly acknowledges that the CLAIMS forever barred by this AGREEMENT specifically include, but are not limited to, claims based upon any alleged breach of THE CONTRACT or any other agreement of employment, any demand for wages, overtime or benefits, any claims of violation of the provisions of ERISA, COBRA or HIPAA, any alleged breach of any duty arising out of contract or tort, any alleged wrongful termination in violation of public policy, any alleged breach of any express or implied contract for continued employment, any alleged employment discrimination or unlawful discriminatory act, or any claim or cause of action including, but not limited to, any and all claims whether arising under any federal, state or local law prohibiting breach of employment contract, wrongful termination, or employment discrimination based upon age, race, color, sex, religion, handicap or disability, national origin or any other protected category or characteristic, and any and all rights or claims arising under the California Labor Code or Industrial Welfare Commission Wage Orders, the Federal Fair Labor Standards Act, the California Fair Employment and Housing Act, California Government Code sections 12900 *et seq.*, the Americans With Disabilities Act, Title VII of the Civil Rights Act of 1964, the Public Safety Officers Procedural Bill of Rights Act, and any other federal, state, or local human rights, civil rights, or employment discrimination or employee rights statute, rule, or regulation.

#### **4. SPECIFIC ACKNOWLEDGMENT OF WAIVER OF CLAIMS UNDER ADEA AND OWBPA**

The Age Discrimination in Employment Act of 1967 (hereinafter referred to as the "ADEA") makes it illegal for an employer to discharge any individual or otherwise

discriminate with respect to the nature and privileges of an individual's employment on the basis that the individual is age forty (40) or older. The Older Workers Benefit Protection Act (hereinafter referred to as the "OWBPA," 29 U.S.C. § 626, *et seq.*, Pub L 101-433, 104 Stat. 978 (1990)) further augments the ADEA and prohibits the waiver of any right or claim under the ADEA, **unless the waiver is knowing and voluntary**. By entering into this AGREEMENT, EMPLOYEE acknowledges that she knowingly and voluntarily, for just compensation in addition to anything of value to which EMPLOYEE was already entitled, waives and releases any rights she may have under the ADEA and/or OWBPA. EMPLOYEE further acknowledges that she has been advised and understands, pursuant to the provisions of the ADEA and OWBPA, that:

- (a) This waiver/release is written in a manner understood by EMPLOYEE;
- (b) EMPLOYEE is aware of, and/or has been advised of, his rights under the ADEA and OWBPA, and of the legal significance of his waiver of any possible claims she currently may have under the ADEA, OWBPA and/or similar age discrimination laws;
- (c) EMPLOYEE is entitled to a reasonable time of at least twenty-one (21) days within which to review and consider this AGREEMENT and the waiver and release of any rights she may have under the ADEA, the OWBPA and similar age discrimination laws; but may, in the exercise of his own discretion, sign or reject this AGREEMENT at any time before the expiration of the twenty-one (21) days;
- (d) The waivers and releases set forth in this AGREEMENT shall not apply to any rights or claims that may arise under the ADEA and/or OWBPA after the EFFECTIVE DATE of this AGREEMENT;
- (e) EMPLOYEE has been advised by this writing that she should consult with an attorney prior to executing this AGREEMENT;
- (f) EMPLOYEE has discussed this waiver and release with, and been advised with respect thereto, by her counsel of choice, and that she does not need any additional time within which to review and consider this AGREEMENT;
- (g) EMPLOYEE has seven (7) days following his execution of this AGREEMENT to revoke the AGREEMENT;
- (h) Notice of revocation within the seven (7) day revocation period must be provided, in writing, to THE CITY pursuant to Paragraph 8.7 herein, and must state, "I hereby revoke my acceptance of our Agreement of Severance and General Release;" and

- (i) This AGREEMENT shall not be effective until all parties have signed the AGREEMENT and ten (10) days have passed since EMPLOYEE's execution ("EFFECTIVE DATE").

## **5. UNKNOWN CLAIMS**

In relation to the release provisions of Paragraphs 3 and 4 above, EMPLOYEE understands that California Civil Code section 1542 reads as follows: "General Release-Claims Extinguished":

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

EMPLOYEE hereby waives the protection of California Civil Code section 1542.

## **6. WAIVER OF ADDITIONAL CLAIMS**

EMPLOYEE hereby waives any provisions of state or federal law that might require a more detailed specification of the claims being released pursuant to the provisions of Paragraphs 3, 4, and 5 above.

## **7. REPRESENTATIONS AND WARRANTIES**

Each of the parties to this AGREEMENT represents and warrants to, and agrees with, each other party as follows:

7.1. Advice of Counsel: The parties hereto have received independent legal advice from their respective attorneys concerning the advisability of entering into and executing this AGREEMENT or have been given the opportunity to obtain such advice. The parties acknowledge that they have been represented by counsel of their own choice in the negotiation of this AGREEMENT, that they have read this AGREEMENT; that they have had this AGREEMENT fully explained to them by such counsel, or have had such opportunity to do so and that they are fully aware of the contents of this AGREEMENT and of its legal effect.

7.2. No Fraud in Inducement: No party (nor any officer, agent, employee, representative, or attorney of or for any party) has made any statement or representation or failed to make any statement or representation to any other party regarding any fact relied upon in entering into this AGREEMENT, and neither party relies upon any statement, representation, omission or promise of any other party in executing this AGREEMENT, or in making the settlement provided for herein, except as expressly stated in this AGREEMENT.



7.3. Independent Investigation: Each party to this AGREEMENT has made such investigation of the facts pertaining to this settlement and this AGREEMENT and all the matters pertaining thereto, as it deems necessary.

7.4. Mistake Waived: In entering into this AGREEMENT, each party assumes the risk of any misrepresentation, concealment or mistake. If any party should subsequently discover that any fact relied upon by it in entering into this AGREEMENT was untrue, or that any fact was concealed from it, or that its understanding of the facts or of the law was incorrect, such party shall not be entitled to any relief in connection therewith, including without limitation on the generality of the foregoing any alleged right or claim to set aside or rescind this AGREEMENT. This AGREEMENT is intended to be, and is, final and binding between the parties, regardless of any claims of misrepresentation, promise made without the intent to perform, concealment of fact, mistake of fact or law, or any other circumstance whatsoever.

7.5. Later Discovery: The parties are aware that they may hereafter discover claims or facts in addition to or different from those they now know or believe to be true with respect to the matters related herein. Nevertheless, it is the intention of the parties that EMPLOYEE fully, finally and forever settle and release all such matters, and all claims relative thereto, which do now exist, may exist or have previously existed against CITY or CITY PARTIES. In furtherance of such intention, the releases given here shall be, and remain, in effect as full and complete releases of all such matters, notwithstanding the discovery or existence of any additional or different claims or facts relative thereto.

7.6. Indemnification: EMPLOYEE agrees to indemnify and hold harmless CITY or CITY PARTIES from, and against, any and all claims, damages, or liabilities sustained by them as a direct result of the violation or breach of the covenants, warranties, and representations undertaken pursuant to the provisions of this AGREEMENT. EMPLOYEE understands and agrees that she shall be exclusively liable for the payment of all taxes for which she is responsible, if any, as a result of his receipt of the consideration referred to in Paragraph 3 of this AGREEMENT. In addition, EMPLOYEE agrees fully to indemnify and hold the CITY PARTIES harmless for payment of tax obligations as may be required by any federal, state or local taxing authority, at any time, as a result of the payment of the consideration set forth in Paragraph 3 of this AGREEMENT.

7.7. Future Cooperation and Consultation fees: EMPLOYEE shall execute all such further and additional documents as shall be reasonable, convenient, necessary or desirable to carry out the provisions of this AGREEMENT. EMPLOYEE shall provide CITY with consultation services (including deposition or trial testimony) in any litigation involving CITY which is reasonably related to acts or occurrences transpiring during his employment. Said services shall be provided as needed to CITY at a rate of \$100.00 per hour.

7.8. Return of Confidential Information and Property: Prior to the separation date, EMPLOYEE shall submit a written inventory of, and return to the City Clerk, all

City keys, equipment, computer identification cards or codes, and other equipment or materials or confidential documents provided to or obtained by EMPLOYEE during the course of his employment with CITY.

7.9. No Pending Claims and/or Actions: EMPLOYEE represents that she has not filed any complaints or charges against CITY or CITY PARTIES with any local, state or federal agency or court; that she will not do so at any time hereafter for any claim arising up to and including the EFFECTIVE DATE of this AGREEMENT; and that if any such agency or court assumes jurisdiction of any such complaint or charge against CITY or CITY PARTIES on behalf of EMPLOYEE, whenever or where ever filed, she will request such agency or court to withdraw from the matter forthwith.

7.10. Ownership of Claims: EMPLOYEE represents and warrants as a material term of this AGREEMENT that EMPLOYEE has not heretofore assigned, transferred, released or granted, or purported to assign, transfer, release or grant, any of the CLAIMS disposed of by this AGREEMENT. In executing this AGREEMENT, EMPLOYEE further warrants and represents that none of the CLAIMS released by EMPLOYEE thereunder will in the future be assigned, conveyed, or transferred in any fashion to any other person and/or entity.

7.11. Enforcement Fees and Costs: Should any legal action be required to enforce the terms of this AGREEMENT, the prevailing party shall be entitled to reasonable attorneys' fees and costs in addition to any other relief to which that party may be entitled.

7.12. Authority: Each party represents to the other that it has the right to enter into this AGREEMENT, and that it is not violating the terms or conditions of any other AGREEMENT to which they are a party or by which they are bound by entering into this AGREEMENT. The parties represent that they will obtain all necessary approvals to execute this AGREEMENT. It is further represented and agreed that the individuals signing this AGREEMENT on behalf of the respective parties have actual authority to execute this AGREEMENT and, by doing so, bind the party on whose behalf this AGREEMENT has been signed.

## **8. MISCELLANEOUS**

8.1. No Admission: Nothing contained herein shall be construed as an admission by CITY of any liability of any kind. THE CITY denies any liability in connection with any claim and intends hereby solely to avoid potential claims and/or litigation and buy its peace.

8.2. Governing Law: This AGREEMENT has been executed and delivered within the State of California, and the rights and obligations of the parties shall be construed and enforced in accordance with, and governed by, the laws of the State of California.

8.3. Full Integration: This AGREEMENT is the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. This AGREEMENT may be amended only by a further agreement in writing, signed by the parties hereto.

8.4. Joint Drafting: Each party agrees that it has cooperated in the drafting and preparation of this AGREEMENT. Hence, in any construction to be made of this AGREEMENT, the parties agree that same shall not be construed against any party.

8.5. Severability: In the event that any term, covenant, condition, provision or agreement contained in this AGREEMENT is held to be invalid or void by any court of competent jurisdiction, the invalidity of any such term, covenant, condition, provision or agreement shall in no way affect any other term, covenant, condition, provision or agreement and the remainder of this AGREEMENT shall still be in full force and effect.

8.6. Counterparts: This AGREEMENT may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one AGREEMENT, which shall be binding upon and effective as to all parties.

8.7. Notice: Any and all notices given to any party under this AGREEMENT shall be given as provided in this paragraph. All notices given to either party shall be made by certified or registered United States mail, or personal delivery, at the noticing party's discretion, and addressed to the parties as set forth below. Notices shall be deemed, for all purposes, to have been given on the date of personal service or three (3) consecutive calendar days following deposit of the same in the United States mail.

**As to EMPLOYEE:**

At EMPLOYEE's home address on file with THE CITY.

**As to THE CITY:**

City Manager  
City of Watsonville  
275 Main St., 4<sup>th</sup> Floor  
Watsonville, California 95076

**IN WITNESS WHEREOF**, THE CITY has caused this AGREEMENT to be signed and executed on its behalf by its Mayor and duly attested by its City Clerk or deputy City Clerk, EMPLOYEE has signed and executed this Agreement, and the attorneys for CITY and EMPLOYEE, if any, have approved as to form as of the dates written below.

Dated: \_\_\_\_\_ EMPLOYEE

By: \_\_\_\_\_  
Irwin Ivan Ortiz

Dated: \_\_\_\_\_ CITY

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

ATTEST:

By: \_\_\_\_\_  
\_\_\_\_\_, City Clerk

APPROVED AS TO FORM

[Name of Law Firm]

By: \_\_\_\_\_  
\_\_\_\_\_, City Attorney