RESOLUTION NO. 115-19 (CM)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WATSONVILLE APPROVING FIRST AMENDED AND RESTATED EMPLOYMENT CONTRACT BETWEEN THE CITY OF WATSONVILLE AND BEATRIZ VÁZQUEZ FLORES FOR EMPLOYMENT AS CITY CLERK

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

1. That the First Amended and Restated Employment Contract between the City of Watsonville and Beatriz Vázquez Flores for employment as City Clerk of the City of Watsonville, which Contract is attached hereto and incorporated herein by this reference, is fair and equitable and is hereby ratified and approved.

2. That the Mayor be and is hereby authorized and directed to execute the First Amended and Restated Employment Contract for and on behalf of the City of Watsonville.

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Reso No. 115-19 (CM)
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The foregoing resolution was introduced at a regular meeting of the Council of the City of Watsonville, held on the 9th day of July, 2019, by Member Hurst, who moved its adoption, which motion being duly seconded by Member Hernandez, was upon roll call carried and the resolution adopted by the following vote:

AYES:Council Members: Garcia, Gonzalez, Hernandez, Hurst, Parker, Estrada
NOES: Council Members: Coffman-Gomez
ABSENT: Council Members: None

ATTEST:

[Signature]
City Clerk
July 9, 2019
Date

APPROVED AS TO FORM:

[Signature]
City Attorney

I, Beatriz Vázquez Flores, City Clerk of the City of Watsonville, do hereby certify that the foregoing Resolution No. 115-19 (CM) was duly and regularly passed and adopted by the Watsonville City Council at a meeting thereof held on the 9th day of July, 2019, and that the foregoing is a full, true and correct copy of said Resolution.

[Signature]
Beatriz Vázquez Flores, City Clerk
Date July 9, 2019
1st AMENDED AND RESTATED EMPLOYMENT CONTRACT BETWEEN THE CITY OF WATSONVILLE AND BEATRIZ VÁZQUEZ FLORES FOR EMPLOYMENT AS CITY CLERK

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O-O-O

THIS FIRST AMENDED AND RESTATED CONTRACT, entered into this 10th day of July, 2019, between the City of Watsonville, a municipal corporation, hereafter referred to as "City," and Beatriz Vázquez Flores, hereafter referred to as “Flores.”
WITNESSETH

WHEREAS, Flores has been performing the duties of the City Clerk since August 2008; and

WHEREAS, Flores has a contract with City to provide services through and including December 31, 2020, and

WHEREAS, it is in the best interest of the City and Flores to supersede and replace Flores present contract and contract with Flores for an extended period as provided here, and

WHEREAS, Flores agrees to remain in the exclusive employ of City for an indefinite term as provided by Section 701 of the City Charter, and neither to accept other employment nor to become employed by any other employer until said expiration date, unless said expiration date is affected as hereinafter provide. The term “employed” shall not be construed to include occasional teaching, writing, or consulting performed on Flores’ time off.

Flores shall not spend more than ten (10) hours per week in teaching, consulting or other non-City connected business without the prior approval of the City Council.

NOW, THEREFORE, THE PARTIES HERETO DO MUTUALLY AGREE AS FOLLOWS:

A. TERM
   This Contract is for a thirty (30) month term commencing July 1, 2019, and expiring December 31, 2021.

B. DUTIES.
   Flores hereby agrees to be employed with City and to perform the duties of City Clerk as set forth in Section 803 of the City Charter and any other functions required by the Watsonville Municipal Code and the City Council.
C. COMPENSATION.

1. BASE SALARY.
   Effective July 1, 2019, the annual base salary of Flores for service to all City departments
   and enterprises for FY 2019-2020 (July 1, 2019-June 30, 2021) shall be increased by 4.4% from
   $138,313.85 to $144,399.65.\(^1\)

2. ADJUSTMENTS TO BASE SALARY.
   Effective July 1, 2020, the annual base salary starting July 1, 2020, shall be increased by
   4.4% of $144,399.65.

3. DEFERRED COMPENSATION
   In addition to the base salary above, City shall also make a bi-weekly contribution of
   $250.00 to a deferred compensation plan of Flores' choice.

4. RETIREMENT.
   The Council shall provide Flores with the same retirement benefit package, as set forth in
   Section B of the "Compensation and Benefits Plan for Executive Team,\(^2\)" and as it may be
   amended by the Council from time to time.

5. ADMINISTRATIVE LEAVE.
   During the period of this Contract, Flores shall receive the same administrative leave as
   set forth in the Compensation and Benefits Plan for Executive Team as set forth in Section C,
   and as it may be amended by the Council from time to time.

6. OVERTIME PAY-DISASTER RESPONSE.
   Notwithstanding that employees are exempt from the California Fair labor Standards Act,
   upon 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, Flores is eligible for overtime
   compensation. Such overtime eligibility shall cease when the City Manager determines that the
   disaster response has ended.

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\(^1\) The FY 2019-2020 base salary of $144,399.65 is calculated by increasing the FY 2018-2019 salary of $138,313.85
by 4.4% ($6,086.80) as follows: $138,313.85 + $6,086.80 = $144,399.65.

\(^2\) Compensation and Benefits Plan for Executive Team: Assistant City Manager, Department Directors, Deputy City
7. AUTOMOBILE.
Mileage reimbursement for Flores shall be at the Federal IRS allowable reimbursement rate as set forth in the Compensation and Benefits Plan for Executive Team in Section E.1. and as it may be amended by the Council from time to time.

8. BILINGUAL PAY.
Flores shall receive Bilingual Pay at the Level II Translator Premium Pay as set forth Compensation and Benefits Plan for Executive Team in Section H. Flores possession of Certificate of Translation Studies in English to Spanish from the University of New York satisfies all competency tests required for Level II Translator Premium Pay.

9. INSURANCE.
(A) HEALTH INSURANCE.
City shall maintain contributions towards health insurance coverage for Flores equal to contributions as set forth in the Compensation and Benefits Plan for Executive Team in Section I.1.

If Flores uses all leave due to illness or injury, which is not a Workers’ Compensation claim, the City shall maintain the health coverage and pay the premium on behalf of Flores for an additional thirty (30) days after expiration of all accrued leave.

(B) EXCESS DISABILITY INSURANCE.
Excess disability insurance shall be provided in the same manner and to the same extent as set forth in the Compensation and Benefits Plan for Executive Team in Section I.2. and as it may be amended by the Council from time to time.

(C) LONG TERM DISABILITY INSURANCE.
City shall pay the full premium for a Disability Insurance Program for Flores. Said plan shall be equivalent as set forth in the Compensation and Benefits Plan for Executive Team in Section I.3. and as it may be amended by the Council from time to time.

(D) LIFE INSURANCE.
Flores shall receive term life insurance coverage as set forth in the Compensation and Benefits Plan for Executive Team in Section I.4. and as it may be amended by the Council from time to time.
10. LEAVE.

(A) VACATION LEAVE.
Flores shall be entitled to the same number of vacation days as set forth in the Compensation and Benefits Plan for Executive Team in Section J.1.

(B) HOLIDAYS.
Holidays shall be the same as set forth in the Compensation and Benefits Plan for Executive Team in Section J.2., as such Plan may be amended from time to time.

(C) SICK LEAVE.
Flores shall accrue sick leave in the amount as set forth in the Compensation and Benefits Plan for Executive Team in Section J.3.

11. DISABILITY.
If Flores is permanently and fully disabled and unable to perform the essential functions of her job without reasonable accommodations because of sickness, accident, injury, mental incapacity or health for a continuous period of four (4) successive weeks beyond any accrued vacation and sick leave, the City Council may terminate Flores’ employment. However, Flores shall be compensated for any accrued sick leave, vacation, holiday, and other accrued benefits. Termination under this section does not excuse City from any requirement to pay for Workers’ Compensation or disability benefits related to employment.

D. TERMINATION.

1. RIGHT TO TERMINATE CONTRACT.
   (A) TERMINATION WITHOUT CAUSE
   Nothing in this Contract shall prevent, limit or otherwise interfere with the right of the City to terminate the services of Flores at any time without cause, subject only to the without cause severance compensation as described herein.

   Nothing in this Contract shall prevent, limit or otherwise interfere with the right of Flores to resign, without cause, at any time from her position with City.

   (B) SEVERANCE DAMAGES UPON TERMINATION WITHOUT CAUSE
   City shall give Flores six (6) month’s salary and benefits if Flores’ employment is terminated without cause during the term of this Contract, or if Flores is given less than six (6) months advance notice of non-renewal of this Contract.
Severance damages are equal to six (6) months full salary and benefits described herein, payable bi-weekly. Severance damages shall be Flores’ sole and exclusive measure of damage in such event.

Notwithstanding any provision to the contrary, the maximum cash settlement Flores shall receive for City’s termination of this contract shall be an amount not exceeding the monthly salary of Flores multiplied by the number of months left on the unexpired term of the contract. Such cash settlement shall not include any other non-cash items except health benefits, which may be continued for the same duration of time as covered in the settlement, pursuant to the same 6-month time limit, or until Flores finds other employment, whichever first occurs³.

(C) TERMINATION FOR CAUSE.

Severance: During the term of this Agreement, Flores may only be terminated for cause. Cause is defined as conviction or guilty to a criminal act involving moral turpitude.

If Flores is terminated for cause, City shall have no obligation to pay any severance pay as set forth below. If the City decides to terminate for cause, it may, but need not give notice of the reasons or conduct justifying for cause termination nor is the City required to conduct any administrative review of such decision.

If City at any time during the term of this Contract reduces the salary or other financial benefits of City Clerk in a greater percentage than an applicable across-the-board reduction for all employees of City, Flores may, at her option, be deemed to be “terminated” without cause at the date of such reduction. In the event Flores resigns at the request of a majority of the City Council without cause, then Flores shall be deemed to be “terminated” without cause.

E. ANNUAL PERFORMANCE EVALUATION.

(a) Annually, the City Council and Flores may define such goals and performance objectives which they determine necessary for the proper operation of the City and in the attainment of the City Council’s policy objectives and may further establish a relative priority among those various goals and objectives, said goals and objectives to be reduced to writing.
They shall generally be attainable within the time limitations as specified and the annual operation and capital budgets and appropriations provided.

(b) The City Council may review and evaluate the performance of Flores once annually in advance of the adoption of the annual operating budget. Said review and evaluation shall be in accordance with specific criteria developed jointly by Flores and City Council. Said criteria may be added or deleted as Flores and Council may from time to time determine. Further, the City Council may provide Flores with a written evaluation and provide an adequate opportunity for Flores to discuss her evaluation with the City Council.

(c) Should the Council elect to not renew Flores’ contract after such annual review, the Council shall either provide Flores a six-month written notice of such decision or, absent such six-month notice, Flores shall be entitled to receive severance pay, as defined herein.

F. INDEMNIFICATION.
City shall defend, save harmless and indemnify Flores against any tort, 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 Flores’ duties as City Clerk. This obligation shall not extend to defense of charges of intentional criminal conduct.

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

H. CHANGES IN TERMS AND CONDITIONS OF EMPLOYMENT.
The City and Flores may add, delete or change terms and conditions of employment, from time to time, relating to the performance of Flores, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Contract, the City Charter, or any other law.

I. GENERAL PROVISIONS.
1. NOTICES.
Notices pursuant to this Contract shall be given by depositing in the custody of the United States Postal Service, postage prepaid, addressed as follows:
Alternatively, notices required pursuant to this Contract may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the court of transmission in the United States Postal Service.

2. RECITALS.
The recitals set forth at the beginning of this Contract of any matters or facts shall be conclusive proof of the truthfulness thereof and the terms and conditions set forth in the recitals, if any, shall be deemed a part of the Contract.

3. ENTIRE AGREEMENT.
This Contract is the entire agreement between the parties and cannot be amended or modified except by a written agreement.

4. SUCCESSORS AND ASSIGNEES.
This Contract shall bind and inure to the benefit of the parties hereto, their heirs, successors, executors or administrators.

5. EFFECTIVE DATE.
This First Amended and Restated Contract shall become effective upon approval by the City Council of the City of Watsonville and shall remain in full force and effect until December 31, 2021, or until a new contract has been approved.

6. PARTIAL INVALIDITY.
If any provisions, or any portion thereof, contained in this Contract is held unconstitutional, invalid or unenforceable, the remainder of this Contract, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

7. APPLICABLE LAW.
This Contract shall be construed and enforced in accordance with the laws of the State of California. Any suit brought by either party against the other arising out of the performance of this Contract, shall be filed and maintained in the Superior or Municipal Court of the County of Santa Cruz.
IN WITNESS WHEREOF, this First Amended and Restated Contract has been executed by the parties hereto on the day and year first above written.

“CITY”
CITY OF WATSONVILLE
By: Francisco Estrada, Mayor

“CITY CLERK”
By: Beatriz Vázquez Flores, City Clerk

ATTEST:
City Clerk

APPROVED AS TO FORM:
Alan J. Smith, City Attorney