

AGREEMENT FOR EMPLOYMENT OF HEATHER IOPU

This Agreement is made and entered into by and between the City of Pinole ("the City"), a general law city, and Heather Iopu ("IOPU" or "Employee"). This Agreement ("Agreement") will become effective as specified herein.

1. Appointment of Heather Iopu as City Clerk:

The City Council of the City has authorized the City Manager to negotiate the terms of an agreement with IOPU for her services. The City Manager and IOPU have engaged in such negotiations, and IOPU and the City now desire to agree in writing to the terms and conditions of IOPU's employment as City Clerk.

2. Term of Agreement:

This Agreement will become effective on the date executed by the Mayor, and will continue for a term of four (4) years. The parties to this Agreement may terminate this Agreement pursuant to the provisions of paragraph 5.

3. At-Will Employment:

IOPU is an "at will" employee who shall serve at the pleasure of the City Council. Accordingly, the City Council may terminate IOPU's employment at any time, with or without cause. This provision may not be altered except by a written instrument executed by IOPU and the City Council, which specifically references this Agreement and section.

4. Duties and Responsibilities:

a. IOPU shall commence her duties as City Clerk effective March 18, 2019.

b. IOPU shall serve as the City Clerk for the City subject to the terms and conditions set forth herein. IOPU shall also perform the functions and duties specified under the laws of the State of California; the Municipal Code of the City; the Ordinances and Resolutions of the City; the job description for the City Clerk position; and such other duties and functions as the City Council may from time-to-time assign under the periodic performance evaluations anticipated under Section 11 of this Agreement.

c. IOPU agrees to devote her productive time, ability and attention to the City's business. For the duration of this Agreement, IOPU shall not hold secondary employment, and shall be employed exclusively by the City, subject to any exceptions approved in writing by the City Council. As an exempt employee, IOPU shall not receive overtime or extra compensation for work performed outside normal business hours.

5. Termination of Employment and Severance:

a. IOPU may terminate this Agreement with or without cause, by giving the City Council thirty (30) days written notice in advance of termination. During the notice period, all the rights and obligations of the parties under this Agreement shall remain in full force and effect.

b. The City Council may terminate this Agreement with or without cause, subject to any limitations in the Municipal Code at the time of termination.

c. In the event the City terminates IOPU's employment without cause after the first twelve (12) months of employment, the City shall pay IOPU severance in a sum equal to one (1) month base salary and the value of continuation of all medical benefits for a period of one (1) month, for every year of service, up to a maximum of six (6) months base salary and the value of continuation of all medical benefits for a period of six (6) months (collectively "Severance") under this Agreement. Such severance is contingent upon IOPU signing and delivering a general release of all claims against the City (including without limitation its former and current elected officials, employees, officers and agents). Any severance amount paid pursuant to this Agreement shall be subject to the restrictions set forth in California Government Code § 53260. If IOPU retires within 120 days after separation, and becomes eligible for coverage under the City's retiree health plan, IOPU shall reimburse the City the full value of the health premium portion of the severance payment.

d. If IOPU is terminated for "cause," the City shall not owe any severance under this Agreement. The determination of whether there is "cause" for termination shall include but not be limited to those items listed in the Personnel Rules.

6. Compensation:

a. Effective March 6, 2019, IOPU shall be paid an annual base salary of \$115,000 or \$9,583.33 per month, less all applicable federal, state and local withholding. IOPU shall be considered for a merit increase annually in conjunction with the completion of her performance evaluation, as outlined in paragraph 11. Merit increases shall be subject to the City's ability to pay for a salary increase.

b. IOPU shall receive cost of living salary increases equal to that provided to the AFSCME bargaining unit.

c. IOPU shall receive the benefits identified in Exhibit A to this Agreement.

7. Hours of Work:

IOPU may work under a “flexible” time schedule, in consultation with the City Council and/or their designee.

8. Indemnification:

The City shall defend, hold harmless and indemnify IOPU against any lawsuit pursuant and subject to the provisions and limitations of California Government Code section 825, provided such lawsuit is against IOPU for acts within the course and scope of her employment. The City may decline to defend and/or indemnify 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.

9. Notices:

Notices pursuant to this Agreement shall be in writing given by deposit in the custody of the United States Postal Service, first class postage prepaid, addressed as follows:

- a. The City: City Manager
2131 Pear Street
Pinole, CA 94564
- b. Heather IOPU:
To the address shown as current in the payroll system

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial process. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice, postage prepaid, with the United States Postal Service.

10. Arbitration:

a. Any controversy or claim arising out of or relating to this Agreement or the breach thereof, or arising out of or relating to IOPU's employment or termination thereof, including but not limited to claims of employment discrimination based on federal and state law, which cannot be resolved among the parties themselves, shall, on the written request of either party served on the other within the applicable statute of limitations, be submitted and resolved by final and binding arbitration in a manner consistent with the Federal Arbitration Act, if applicable, or the California Code of Civil Procedure (including CCP Section 1283.05). Service of the written request shall be made only by certified mail, with a return receipt requested. Time is of the essence; if the request is not served within a one-year period for claims arising out of this Agreement, or within the applicable statute of limitations for the alleged federal and state law claims, the complaining party's claim(s) shall be forever waived and barred before any and all forums, including, without limitation, arbitration or judicial forums.

- b. The Arbitrator shall have no authority to alter, amend, modify or

change any of the terms of this Agreement unless a provision expressly conflicts with applicable federal or state laws. Any arbitrator selected under this provision shall have the express authority to consider statutory violations of federal and state law in addition to disputes involving this Agreement.

The decision of the Arbitrator shall be final and binding and judgment therein may be entered in any court having jurisdiction over the dispute.

c. The Arbitration shall be conducted under the National Rules ("Rules") for the Resolution of Employment Disputes of the American Arbitration Association ("AAA") current at the time of the dispute. In the event that any of the above Rules are determined to be in conflict with federal or state law, then the arbitrator shall have the authority to amend the Rules accordingly. The City shall be responsible for paying all the AAA's administrative and arbitrator's fees. In all other respects, the parties shall bear their own attorneys' fees and costs except as otherwise required by law. The parties shall have the right to conduct discovery which provides them with access to documents and witnesses that are essential to the dispute, as determined by the arbitrator. The arbitrator's written award shall include the essential findings and conclusions upon which the award is based.

d. The parties intend that this arbitration procedure is mandatory and shall be the exclusive means of resolving all disputes whether founded in fact or law between Employee and the City and/or its employees, elected officials, directors, agents, officers or managers arising out of or relating to this Agreement, the parties' employment relationship and/or the termination of that relationship, including, but not limited to, any controversies or claims pertaining to wrongful or constructive discharge, violations of the covenant of good faith and fair dealing, implied contracts, public policies, anti-discrimination statutes or any employment-related statutes. THE PARTIES EXPRESSLY WAIVE ANY CONSTITUTIONAL OR STATUTORY RIGHT TO HAVE ANY SUCH DISPUTE DECIDED IN A COURT OF LAW AND/OR BY A JURY IN A COURT PROCEEDING.

11. Performance Evaluations:

The City Council shall review and evaluate the performance of IOPU every twelve (12) months, or on any other schedule deemed appropriate by the Council. At the time of each evaluation, performance goals shall be discussed that will be used to assist in the evaluation of IOPU's performance in the future. The performance evaluation shall be documented in memo form and shall address the ongoing role of IOPU, an evaluation of past performance and mutual expectations of future performance. These memos shall further define the role and performance expectations of IOPU.

12. Dues and Subscriptions:

The City shall pay for the professional dues and subscriptions of IOPU necessary for her continuation and full participation in appropriate professional organizations, subject to available budgeted funds.

13. Professional Development:

At the time of the execution of this Agreement, the parties acknowledge that IOPU is, or will be, a member of various professional and service organizations. In addition, other organizations sponsor and offer short courses, institutes, seminars, and the like, which would be beneficial to IOPU's professional development.

IOPU is permitted, encouraged, and in some instances, required by the City, to attend such meetings, activities, seminars, courses, institutes, and the like, as deemed appropriate by the City Manager. IOPU's travel, subsistence, and other related expenses shall be reimbursed consistent with applicable City policy and available budgeted funds.

14. Miscellaneous:

a. The text herein shall constitute the entire agreement between the parties. This Agreement may not be modified, except by written agreement executed by both parties.

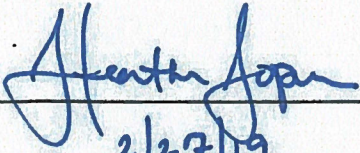
b. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

c. This Agreement shall be governed by the laws of the State of California.

d. This Agreement may be executed in counterparts containing original signatures.

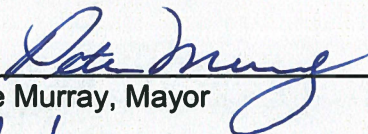
HEATHER IOPU

DATED:


2/27/19

CITY

DATED:


Pete Murray, Mayor
3/4/19

ATTEST:


Hector De La Rosa
Assistant City Manager

APPROVED AS TO FORM:


Eric Casher
City Attorney

EXHIBIT A

▪ **Health, Vision, Dental, Retirement Benefits**

IOPU shall receive the same health, vision, dental, retirement, life insurance (\$40,000), long-term disability and other benefits, including PERS that are provided to all other Miscellaneous City employees.

Premium Contributions: The City's contribution toward IOPU's health insurance premium shall be based on the Kaiser 2018 rates, based on family status (single = \$779.86, 2-party = \$1,559.72, or family = \$2,027.64). If IOPU elects to participate in the medical in-lieu benefit, the amount provided to IOPU shall be \$225, \$450, or \$600 per month, depending on the family status.

▪ **Retiree Medical**

IOPU and her spouse at the time of retirement shall be eligible to enroll on the City's retiree medical plan, in accordance with the provisions of the CalPERS Health Plans and the CalPERS Health Vesting Schedule.

The City shall make contributions toward IOPU's retiree health insurance premium in accordance with the CalPERS Health Vesting Schedule.

Upon IOPU's death, her spouse shall continue to be eligible for enrollment on the City's plan, in accordance with the CalPERS Health Plan eligibility requirements and restrictions.

▪ **Retirement Plan**

PEPRA Employees:

The City currently participates in a retirement system through a contract with the California Public Employees Retirement System (CALPERS). Effective January 1, 2013, new employees falling under the PEPRA law shall pay 50% of the Normal Cost.

▪ **Cell Phone/PDA Stipend**

If IOPU obtains a personal Cell Phone/PDA and wishes to utilize the device for business purposes, in lieu of a City issued PDA, the City shall provide IOPU with a \$60 monthly stipend. This stipend shall be payable on one pay period each month and be subject to all federal and state withholding and tax laws.

IOPU hereby acknowledges and agrees that receipt of this stipend means that any voice-mail, text or e-mail messages received on her personal device that are related to City business are property of the City and are subject to disclosure in accordance with the Public Records Act and applicable case law. IOPU further hereby confirms that he/she will provide authorization for the City to obtain such records from her service provider.

EXHIBIT A

▪ **Deferred Compensation – 457 Plan**

The City makes a 457 plan available for IOPU to contribute to through payroll deduction.

▪ **Vacation**

IOPU shall accrue vacation leave at a rate of 96 hours per year, accrued incrementally each pay period. Upon separation from the City, IOPU shall be paid for all unused accrued vacation leave based upon her base salary on the date of separation. At the beginning of IOPU's fifth (5th) year of employment her accrual rate will increase to 144 hours per year. At the beginning of IOPU's tenth (10th) year of employment her accrual rate will increase to 160 hours per year. At the beginning of IOPU's sixteenth (16th) year of employment her accrual rate will increase to 192 hours per year.

IOPU may cash out up to 52 hours of vacation annually, provided that she has a minimum of 20 days (160 hours) accumulated.

▪ **Administrative Leave**

In addition to vacation leave, the City will grant IOPU ninety-six (96) hours of administrative leave at the beginning of each calendar year. IOPU may cash out up to sixty four (64) hours of this leave at any time during the calendar year. Any balance remaining at the end of each calendar year will automatically be paid to IOPU at her hourly base pay in effect on that date.

▪ **Sick Leave**

IOPU shall accrue ninety-six (96) hours of sick leave per year, accrued incrementally each pay period. In addition, IOPU shall receive an additional four (4) hours of vacation accrual twice a year (8 hours total per year) if she does not use any sick leave during the six months of January-June and July-December each year.

▪ **Other Leaves**

IOPU shall receive all other leaves, (Bereavement, Family and Medical, Jury Duty, Military, etc.) as provided to other Miscellaneous City employees.

▪ **Holidays**

IOPU shall receive the following legal paid holidays:

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|----------------------------|-------------------------------|
| ▪ January 1 | New Year's Day |
| ▪ Third Monday in January | Martin Luther King's Birthday |
| ▪ Third Monday in February | Washington's Birthday |
| ▪ Last Friday in March | Caesar Chavez Day |
| ▪ Last Monday in May | Memorial Day |
| ▪ July 4 | Independence Day |

EXHIBIT A

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|-------------------------------|------------------------|
| ▪ First Monday in September | Labor Day |
| ▪ November 11 | Veteran's Day |
| ▪ Fourth Thursday in November | Thanksgiving |
| ▪ Fourth Friday in November | Day after Thanksgiving |
| ▪ December 25 | Christmas |

In the event that any of the aforementioned days falls on a Saturday, the preceding Friday shall be considered a holiday for pay purposes. In the event that any of the aforementioned days falls on a Sunday, the following Monday shall be considered a holiday for pay purposes.

Every day proclaimed by the President or the Governor as a public fast, Thanksgiving, day of mourning, or holiday shall be observed as a holiday for pay purposes.

In addition, IOPU shall receive twelve (12) hours of floating holiday each fiscal year. These hours are not vested and must be taken by June 30th of each year or they will be lost. These hours may not be cashed out.