

**AGREEMENT FOR EMPLOYMENT OF
MICHELLE FITZER**

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

1. Appointment of FITZER as City Manager

The City Council of the City of Pinole is authorized to negotiate the terms of an agreement with FITZER for her services through its duly appointed labor negotiator. The City Council and FITZER have engaged in such negotiations, and FITZER and the City now desire to agree in writing to the terms and conditions of FITZER'S employment as City Manager.

2. Term of Agreement

This Agreement will become effective on the date this Agreement is approved by the City Council and executed by the Mayor, or in the Mayor's absence, the Mayor Pro-Tem and FITZER. This Agreement and FITZER's employment shall remain in effect for four (4) years from the date of such execution unless terminated in accordance with paragraph 5 herein. If no successor Agreement is entered into to extend FITZER's employment beyond the four (4) year term, her employment with the City shall end with no payment of severance.

3. At-Will Employment

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

4. Duties and Responsibilities

a. FITZER shall commence her duties as City Manager on November 30, 2015, and will continue for a term of four (4) years through November 29, 2019.

b. FITZER shall serve as the City Manager for the City subject to the terms and conditions set forth herein. FITZER 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 Manager position, and such other duties and functions as the City Council may from time-to-time assign.

c. FITZER agrees to devote her productive time, ability and attention to the City's business. For the duration of this Agreement, FITZER 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, FITZER shall not receive overtime or extra compensation for work performed outside normal business hours.

5. Termination of Employment and Severance

a. FITZER 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, giving FITZER thirty (30) days written notice in advance of termination.

c. In the event the City Council terminates FITZER'S employment without cause, the City shall pay FITZER severance in a lump sum equal to six (6) months base salary, auto allowance, cell phone allowance, as well as the City's share of all health/benefit premium contributions, minus all applicable deductions. This amount shall increase by one (1) week for each one (1) year of service as City Manager, with a cap of nine (9) months total severance. Any severance payment pursuant to this Agreement is contingent upon FITZER 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) in a form acceptable to the City Attorney. Any severance amount paid pursuant to this Agreement shall be subject to the restrictions set forth in California Government Code § 53260. FITZER shall not receive any severance if she resigns, is terminated for cause, if the term of this Agreement lapses, or if a waiver and release agreement is not executed by the parties. If the City elects to terminate this Agreement and Fitzer's employment without good cause as defined in this Agreement, a Notice of Termination Without Cause shall be provided in writing.

d. If FITZER is terminated for "cause," the City shall not owe any severance under this Agreement. This provision does not confer any property rights on FITZER, as she remains an at-will employee. The phrase "termination for cause" only pertains to FITZER's eligibility for severance as described in this Section. A "termination for cause" for purposes of severance may include, but shall not be limited to, the following:

- i. Insubordination;
- ii. Dishonesty;
- iii. Embezzlement;
- iv. Violation of Federal, State or Local laws;
- v. Conviction of a felony or misdemeanor relating to FITZER's fitness to perform assigned duties;
- vi. Any act involving moral turpitude;

- vii. Taking a position adverse to the interests of the City without the City's prior written consent;
- viii. Violation of any fiduciary duty owed to the City;
- ix. Failure to abide by the terms of this Agreement; or
- x. Failure to observe or perform any of her duties and obligations under this Agreement, if that failure continues for a period of thirty (30) days after FITZER receives written notice from City Council or its designee specifying the acts or omissions that constitute the failure.

If the City elects to terminate this Agreement and Fitzer's employment for cause as defined in this Agreement, a Notice of Termination For Cause shall be provided in writing outlining the reason(s) for termination.

e. Pursuant to Government Code section 53243.2, any cash settlement related to the termination of this Agreement received by FITZER from the City shall be fully reimbursed to City if Employee is convicted of a crime involving an abuse of his office or position as defined in California Government Code section 53243.4.

6. Compensation:

a. Effective November 30, 2015, FITZER shall be paid an annual base salary of ONE HUNDRED EIGHTY-NINE THOUSAND DOLLARS (\$189,000.00), less all applicable federal, state and local withholding.

b. FITZER shall receive cost of living salary increases equal to that provided to the AFSCME bargaining unit during the term of this Agreement.

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

7. Hours of Work

FITZER shall work a minimum of forty (40) hours per week on City and Agency business. FITZER may work a 9/80 or other flexible work schedule, following consultation with the City Council.

8. Indemnification

The City shall provide for the defense of FITZER in any action or proceeding alleging an act or omission within the scope of FITZER's employment in accordance with California Government Code sections 825, 995 et seq., and other applicable law. Notwithstanding anything to the contrary in this Agreement, in accordance with California Government Code section 825, subdivision (a), the City reserves the right to not pay any judgment, compromise or settlement subject to that section until it is established that the injury arose out of an act or omission occurring within the scope of FITZER's employment pursuant to this Agreement. Further, notwithstanding anything to the contrary in this Agreement, the City reserves the right to refuse to provide for the defense of FITZER for the reasons set

forth in California Government Code section 995.2 or other applicable provisions of law. Any City funds provided for the legal criminal defense of FITZER shall be fully reimbursed in accordance with California Government Code section 53243.1 if FITZER is convicted of a crime involving an abuse of her office or position as defined in California Government Code section 53243.4.

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:

Mayor of the City of Pinole
2131 Pear Street
Pinole, CA 94564

With a Copy to the

City Attorney
2131 Pear Street
Pinole, CA 94564

b. FITZER:

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. Abuse of Office

Government Code sections 53243, 53243.1, 53243.2, and 53243.3 are incorporated by this reference as if fully set forth herein.

11. Performance Evaluations

The City Council shall review and evaluate the performance of FITZER at least once every twelve (12) months. At the time of each evaluation, performance goals shall be discussed that will be used to assist in the evaluation of FITZER'S performance in the future. The City Council may, at its option, adjust FITZER'S compensation as a result of the performance evaluation.

12. Dues and Subscriptions

The City shall pay for the professional dues and subscriptions of FITZER necessary for her continuation and full participation in appropriate professional organizations.

13. Professional Development

At the time of the execution of this Agreement, the parties acknowledge that FITZER 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 FITZER'S professional development.

FITZER 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 Council. FITZER'S registration, travel, subsistence, and other related expenses shall be paid in advance directly to the vendor or reimbursed to FITZER consistent with applicable City policy.

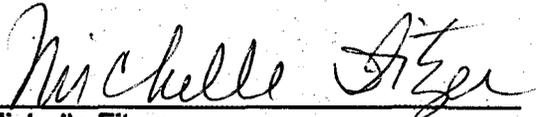
14. Miscellaneous

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.

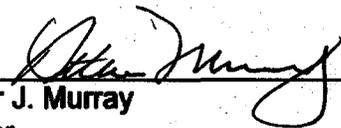
b. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

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.


Michelle Fitzer

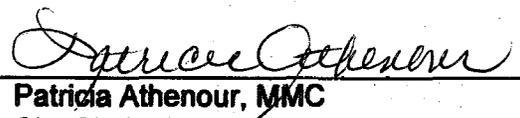
11/10/15
DATED


Peter J. Murray
Mayor

10/20/2015
DATED:

ATTEST:

APPROVED AS TO FORM:


Patricia Athenour, MMC
City Clerk

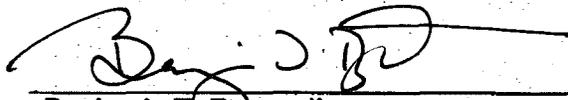

Benjamin T. Reyes, II
City Attorney

EXHIBIT A

- **Health, Vision, Dental, Life Insurance, STD/LTD Benefits**

FITZER shall receive health, vision, dental, life insurance and long/short-term disability benefits under the same terms those benefits are provided to the City's unrepresented managers.

- **Retiree Medical**

To the extent allowable by law, FITZER and her spouse at the time of retirement shall be eligible to enroll in the City's retiree medical plan. The City shall reimburse FITZER for her medical insurance premium, up to the Kaiser family rate. Should FITZER participate in alternate coverage, the City shall reimburse FITZER for her actual health insurance premium, up to the City's Kaiser family rate. Upon FITZER's death, her spouse shall continue to be eligible for enrollment on the City's health plan and premium contribution, or reimbursement of his health insurance premium for alternate coverage, up to the City's Kaiser family rate. In the event that he were to remarry, the City shall not reimburse premium costs for the new spouse.

FITZER's service requirement to be eligible for this benefit shall be the same as the City's represented employees consistent with California Government Code Section 7522.40. The PERS Health vesting schedule in Government Code Section 22893 requires five (5) years of service with Pinole and 20 years in PERS. Since FITZER is a returning employee with over six (6) years of service with Pinole and over 25 years in PERS, this benefit is vested upon hire.

- **Retirement Plan**

The City currently participates in a retirement system through a contract with the California Public Employees Retirement System (CALPERS). For the Miscellaneous Employees, including FITZER, the CALPERS contract offers the following options:

- 2.5% @ 55 Retirement Plan
- Military Buy Back
- Third Level Survivors Benefit
- Single Highest Year Compensation Formula
- Service for Unused Sick Leave

The City and FITZER shall make the Employer and Employee contributions to CalPERS benefits under the same terms provided to unrepresented managers.

- **Auto and Cell Phone Allowances**

FITZER shall receive the amount of \$450 monthly as a car allowance and \$65 monthly as a cell phone allowance, less all applicable federal, state and local withholdings.

- **Deferred Compensation - 457 Plan**

The City makes a 457 plan available for FITZER to contribute to through payroll deduction. The City shall make no contributions to this plan on behalf of FITZER.

- **Vacation**

FITZER shall accrue vacation leave at a rate of 144 hours per year, accrued incrementally each pay period. Upon separation from the City, FITZER shall be paid for all unused accrued vacation leave based upon her base salary on the date of separation. At the beginning of FITZER'S fourth (4th) year of employment as City Manager, her accrual rate will increase to 160 hours per year.

FITZER may cash out accrued vacation in a manner consistent with unrepresented managers. FITZER cannot take any paid vacation during the first six (6) months of this Agreement. Any vacation time off during those six (6) will be unpaid.

- **Administrative Leave**

The City shall grant FITZER ninety-six (96) hours of administrative leave at the beginning of each calendar year. FITZER may cash out administrative leave in a manner consistent with unrepresented managers.

- **Sick Leave**

FITZER shall accrue eight (8) hours per month, ninety-six (96) hours of sick leave per year, accrued incrementally each pay period.

- **Other Leaves**

FITZER shall receive all other leaves (Bereavement, Family and Medical, Jury Duty, Military, etc.) that are provided to unrepresented managers.

- **Holidays**

FITZER shall receive the same holidays and floating holidays as the City's unrepresented managers.

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**MICHELLE FITZER BIO
OCTOBER 2015**

EDUCATION

Michelle has a Bachelor's degree in Psychology, and a Master's degree in Business Administration (MBA) with a Human Resources Management option. Both degrees were received from California State University Hayward.

CITY GOVERNMENT WORK HISTORY

Michelle has over twenty-five years of City government experience, with four (4) Contra Costa County cities.

CITY OF ANTIOCH

Since October 1, 2012, Michelle has worked for the City of Antioch. Currently her title is Administrative Services Director and she has direct management oversight of the Human Resources and City Clerk departments. In addition, she assists the City Manager and Finance Director with annual budget preparation and administration. Michelle also provides management assistance to all of the City departments, and on special projects, as requested by the City Manager. Additionally, she periodically serves as the Acting City Manager in the Manager's absence. For the period of October 2012 – May 2014 Michelle also served as the Economic Development Director.

Some of Michelle's accomplishments in Antioch include:

City Management:

- Project Coordinator for the City Council Governance Training and Community Café Strategic Planning process.
- Developed Measure C and O informational PowerPoint presentation, staff reports, and community mailers.
- Served as a member of the City's project team for the Northeast Annexation.
- Served as a member of the City's team meeting with a community group and Apartment Owners Association representatives regarding a possible Business License ballot measure for November 2014 (became Measure O).
- Recreation Department financial audit commissioning and follow-up.
- Assisting the Finance Director and Police Chief as a liaison to the Sales Tax Oversight Committee.

Economic Development:

- Received a CALED Economic Development Certification.
- Developed Property Inventory Sheets to provide information on available non-residential properties in the City.
- Served on the Contra Costa County Northern Waterfront Development Initiative Steering Committee.

- Met with potential development representatives and attended the ICSC 2013 convention.
- Served as a City representative to EC²: East Contra Costa the Collaborative.
- Participated in Successor Agency Property Management Plan development.

Human Resources:

- Completed a comprehensive classification plan update, and resolved various classification issues outstanding for years.
- Established a continuous recruiting plan and fast-track hiring for Police Officers.
- Lead staff to implement PEPRA (pension reform).
- Conducted a records management clean-up project.
- Initiated a comprehensive update to the Personnel Rules, Administrative Policies, and Employer/Employee Relations Resolution.
- Developed a new comprehensive Personnel Action Form and other HR forms/letters.

City Clerk's Office:

- Created a Request for Public Records form, a Request for Proclamation form and a new City Council staff report template.
- Suggested enhancements to the Council agenda format.
- Participated in the City Clerk's aspects of a recall effort.

CITY OF PINOLE, June 2006 to October 2012

Prior to joining Antioch, Michelle worked for the City of Pinole for slightly more than six (6) years. When she departed Pinole she was serving as the Assistant City Manager. Michelle had also served as Assistant to the City Manager and Human Resources Director during her tenure. She had direct responsibility for the Human Resources, Redevelopment (Successor Agency)/Economic Development/Housing and Fire departments. Additionally, she worked very closely with the City Clerk, Finance, Police and Public Works departments. Michelle was responsible for citywide budget development and oversight, including the Capital Improvement Plan, served as the Deputy City Clerk, and as the Acting City Manager in the Manager's absence.

Some of Michelle's accomplishments in Pinole include:

City Management:

- With the City Manager and Finance Director, developed balanced budgets for FY 2010-11, 2011-12, and 2012-13, including providing quarterly status reports and budget adjustment recommendations to Council.
- Served as the lead staff negotiating the sale of the City's interest in Pinole Vista Crossings and Pinole Valley shopping centers, recouping funds in excess of the City's outstanding investment in both properties.
- Served on the selection committee for the design engineers for the \$47 million Wastewater Plant Upgrade project.

- Lead staff analyzing Pinole's options for delivering fire services in the long-term on a financially sustainable basis, including serving as co-Chair of the West Contra Costa County Technical Advisory Committee on fire service delivery.
- Lead staff for November 2012 Utility Users Tax ballot measure.
- Served as a staff liaison for the management transition at Pinole Assisted Living.
- Worked with the City Manager, City Attorney's Office, and Finance Director on several sensitive Redevelopment issues, including implementation of the 2011 Redevelopment Dissolution legislation.

Human Resources:

- Drafted and negotiated new Personnel Rules; finalized the re-write and negotiated an updated Employer/Employee Relations Resolution.
- Designed and facilitated a Leadership Development Series, a citywide training program for managers and supervisors.
- Conducted a comprehensive classification plan update.
- Developed a benefit matrix, position control tracking, and draft Administrative Directives; organized all HR Department records - paper and electronic.
- Served two years on the League of California Cities Employee Relations Board of Directors (2007 – 2009) and three years on the Employee Relations Policy Committee.

Prior to Pinole, Michelle worked for the City of Pittsburg from December 1997 to June 2006 in the Human Resources Department, and for the City of Martinez from May 1990 to December 1997 in the Finance and Human Resources Departments.