

**AGREEMENT FOR EMPLOYMENT OF
BELINDA ESPINOSA**

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

1. **Appointment of ESPINOSA as City Manager and Executive Director of the City of Pinole Redevelopment Agency ("Agency"):**

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

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 ESPINOSA. The parties to this Agreement may terminate this Agreement pursuant to the provisions of paragraph 5.

3. **At-Will Employment:**

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

4. **Duties and Responsibilities:**

a. ESPINOSA shall commence her duties as City Manager and as Executive Director of the Agency effective December 16, 2008.

b. ESPINOSA shall serve as the City Manager for the City and Executive Director of the Agency subject to the terms and conditions set forth herein. ESPINOSA 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 Manager may from time-to-time assign under the periodic performance evaluations anticipated under Section 11 of this Agreement.

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

5. Termination of Employment and Severance:

a. ESPINOSA 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 Espinosa thirty (30) days written notice in advance of termination.

c. In the event the City Council terminates ESPINOSA'S employment without cause, the City shall pay ESPINOSA severance in a sum equal to twelve (12) months base salary and the continuation of all medical benefits (collectively "Severance") under this Agreement for twelve (12) months after the date of termination. Such severance is contingent upon ESPINOSA 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.

d. If ESPINOSA 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 December 16, 2008, ESPINOSA shall be paid an annual base salary of ONE HUNDRED SEVENTY-FIVE THOUSAND FOUR HUNDRED DOLLARS (\$175,400.00), less all applicable federal, state and local withholding. ESPINOSA shall be considered for a merit increase annually in conjunction with the completion of her performance evaluation, as outlined in paragraph 11.

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

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

7. Hours of Work:

ESPINOSA may work under a "flexible" time schedule, in consultation with the City Council, but will otherwise devote her full time, at least an average of forty (40) hours per week, to City and Agency business.

8. Indemnification:

The City shall defend, hold harmless and indemnify ESPINOSA against any lawsuit pursuant and subject to the provisions and limitations of California Government Code section 825, provided such lawsuit is against ESPINOSA 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:
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. ESPINOSA:
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 ESPINOSA'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.

11. Performance Evaluations:

The City Council shall review and evaluate the performance of ESPINOSA 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 ESPINOSA'S performance in the future. The City Council may, at its option, adjust ESPINOSA'S compensation as a result of the performance evaluation.

12. Dues and Subscriptions:

The City shall pay for the professional dues and subscriptions of ESPINOSA 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 ESPINOSA 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 ESPINOSA'S professional development.

ESPINOSA 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. ESPINOSA'S travel, subsistence, and other related expenses shall be reimbursed 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.

EMPLOYEE

Dated: *December 9, 2008*

Belinda B. Espinosa
Belinda Espinosa

CITY

Dated: *12/18/08*

Mary Virginia Foyte, Mayor Pro Tem
Mary A. Horton, Mayor

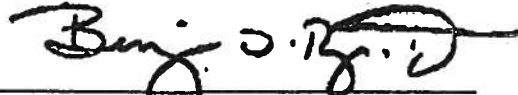
SIGNATURES CONTINUED ON NEXT PAGE

ATTEST:



Patricia Athenour
City Clerk

APPROVED AS TO FORM:



Benjamin T. Reyes II
City Attorney

EXHIBIT A

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

ESPINOSA 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 shall pay up to the Kaiser family premium for health coverage. The City shall pay the full premium for vision, dental, life insurance, and long-term disability benefits.

Should ESPINOSA provide proof of alternate coverage she shall be entitled to receive a Medical Re-direct payment equal to one-half (1/2) of the premium the City would have paid had she been enrolled on the City's plan.

▪ **Retiree Medical**

ESPINOSA and her spouse at the time of retirement shall be eligible to enroll on the City's retiree medical plan, with the City paying the premium up to the Kaiser family rate. Should ESPINOSA elect alternate coverage, the City shall reimburse ESPINOSA for her actual health insurance premium, up to the City's Kaiser family rate. Upon ESPINOSA'S death, her spouse shall continue to be eligible for enrollment on the City's plan, or reimbursement of her health insurance premium for alternate coverage, up to the Kaiser family rate.

▪ **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 ESPINOSA, 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 shall make the Employer and Employee contribution to CalPERS in accordance with that provided to all other Miscellaneous employees.

▪ **Auto Allowance**

ESPINOSA shall receive the amount of \$450 monthly (\$5,400 annually) as a car allowance, less all applicable federal, state and local withholdings.

- **Deferred Compensation – 457 Plan**

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

- **Deferred Compensation – 401(a) Plan**

ESPINOSA shall receive a City paid matching contribution to her 401(a) plan in the amount of two percent (2%) of base salary. This contribution is to be paid by the City and ESPINOSA each pay period.

- **Vacation**

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

ESPINOSA 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, ESPINOSA shall also accrue ninety-six (96) hours of administrative leave per year, accrued incrementally each pay period. ESPINOSA may cash out this leave at any time during the calendar year. Any balance remaining at the end of each calendar year will automatically be paid to ESPINOSA at her hourly base pay in effect on that date.

- **Sick Leave**

ESPINOSA shall accrue ninety-six (96) hours of sick leave per year, accrued incrementally each pay period. In addition, ESPINOSA 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**

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

▪ **Holidays**

ESPINOSA 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 |
| ▪ February | Lincoln'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 |
| ▪ First Monday in September | Labor Day |
| ▪ September 9 | Admissions Day |
| ▪ Second Monday in October | Columbus 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, ESPINOSA shall receive four (4) 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.

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