



AGENDA BILL

Agenda Item No. 7(A)

Date: November 20, 2018
To: El Cerrito City Council
From: City Council Ad Hoc Committee for City Manager Contract
Subject: City Manager Employment Agreement

ACTION REQUESTED

Adopt resolution approving an employment agreement between the City of El Cerrito and Karen Pinkos to be the new City Manager.

BACKGROUND

In June of this year, Scott Hanin, the current City Manager, announced his retirement, to be effective at the end of the calendar year. The City Council decided to interview Karen Pinkos, the current Assistant City Manager, to succeed Mr. Hanin as City Manager. Ms. Pinkos has worked for the City for 17 years, starting as Assistant to the City Manager and subsequently being promoted to Assistant City Manager. In addition to leading numerous initiatives in the City, during her time as Assistant City Manager, she has acted as head of the Community Development Department and Human Resources. She was elected to be the President of the International City/County Management Association (ICMA)—the first assistant city manager ever to be elected to the position.

After the interview and deliberations, the City Council offered the position to Ms. Pinkos, and she accepted. The City Council appointed Mayor Quinto and Councilmember Lyman to serve as an ad hoc committee to meet with Ms. Pinkos to negotiate an employment agreement.

The Ad Hoc Committee worked with the City Attorney to review current salary information for El Cerrito executive employees and for city managers in comparable cities. They also reviewed the current City Manager Employment Agreement and sample agreements from other jurisdictions. The Ad Hoc Committee and Ms. Pinkos met multiple times to discuss compensation and other terms of employment.

On the basis of the City Council's direction and the negotiation process, the Ad Hoc Committee recommends approving the attached employment agreement between the City and Ms. Pinkos.

ANALYSIS

The Ad Hoc Committee's recommendation is to provide Ms. Pinkos starting base pay of \$19,166.67 monthly. That amount is approximately 5.0% more than the current monthly salary of the highest paid department head and approximately 6.5% less than the salary of the current City Manager. It is also at the lower end of the range of base pay for city managers within Contra Costa County and among comparable cities that were included in the Ad Hoc Committee's review. The proposed base pay is consistent with the City

Agenda Item No. 7(A)

Council's opinion of Ms. Pinkos's work and experience as Assistant City Manager. Under the proposed agreement, Ms. Pinkos would be eligible for annual cost-of-living adjustments in line with all other management employees and for performance-based adjustments of up to 4%, dependent on City Council evaluations of her work.

Ms. Pinkos would otherwise receive the same compensation and benefits as other management employees, as established by City Council resolutions, or as provided for in previous City Manager employment agreements.

The proposed agreement with Ms. Pinkos is attached to this staff report and made available to the public consistent with California law.

FINANCIAL CONSIDERATIONS

No changes to the current fiscal year budget are required for the proposed employment agreement with Ms. Pinkos.

LEGAL CONSIDERATIONS

The City Attorney prepared the employment agreement and has reviewed this report.

Reviewed by:



Gabriel Quino, Mayor

Attachments:

1. Resolution approving City Manager Employment Agreement
2. City Manager Employment Agreement

3077762.1

RESOLUTION 2018-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO APPROVING AN EMPLOYMENT AGREEMENT WITH KAREN PINKOS TO SERVE AS CITY MANAGER

WHEREAS, in June 2018, Scott Hanin announced his retirement as City Manager, to be effective at the end of the calendar year; and

WHEREAS, the City Council determined to interview Karen Pinkos, the current Assistant City Manager, for the position of City Manager. After an interview with Ms. Pinkos, the City Council offered her the position, and she accepted; and

WHEREAS, the City Council appointed an Ad Hoc Committee of Mayor Quinto and Councilmember Lyman to meet with Ms. Pinkos to negotiate an employment agreement. The Ad Hoc Committee evaluated executive compensation within the City and compensation of city managers in Contra Costa County and comparable cities. It also considered the City Council's opinion of Ms. Pinkos's work and experience as Assistant City Manager. As a result of those factors and contract negotiations, the Ad Hoc Committee recommended a City Manager Employment Agreement to the City Council.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that it approves the City Manager Employment Agreement between the City and Karen Pinkos, attached as Exhibit A.

BE IT FURTHER RESOLVED, that the City Council hereby authorizes the Mayor to execute the agreement.

BE IT FURTHER RESOLVED, that this Resolution shall become effective immediately upon passage and adoption.

I CERTIFY that at a regular meeting on November 20, 2018, the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on _____, 2018.

Sherry Kelly, Acting City Clerk

APPROVED:

Gabriel Quinto, Mayor

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**CITY OF EL CERRITO
EMPLOYMENT AGREEMENT
KAREN PINKOS**

INTRODUCTION

This Employment Agreement (this “**Agreement**”) is made and entered into this ___ day of _____, 2018, by and between the **CITY OF EL CERRITO**, a municipal corporation, (“**Employer**” or “**City**”) and **KAREN PINKOS**, an individual (“**Employee**” or “**City Manager**” or “**Pinkos**”). City and Pinkos may be referred to in this Agreement individually as a “**Party**” or collectively as the “**Parties.**” The Parties agree as follows:

SECTION 1 EMPLOYMENT AND TERM

- A. City agrees to employ Pinkos as City Manager of the City, and Pinkos agrees to accept such employment.
- B. The term of this Agreement shall be through December 31, 2021.

SECTION 2 DUTIES AND AUTHORITY

Pinkos agrees to perform the functions and duties of the City Manager specified in the El Cerrito Charter, the El Cerrito Municipal Code, and the California Government Code, and to perform other legally permissible and proper duties and functions.

SECTION 3 COMPENSATION

- A. Base Salary: Employer agrees to pay Employee a monthly Base Salary of \$19,166.67. Employee’s Base Salary shall be increased annually by the same cost of living factor as is applied to the base salary of the unrepresented management employees, effective the first pay period of each July.
- B. Upon satisfactory performance, to be determined by the City Council, effective the first pay period in January 2020, Employee’s Base Salary may be increased by up to 4%.
- C. Upon satisfactory performance, to be determined by the City Council, effective the first pay period in January 2021, Employee’s Base Salary may be increased by up to 4%.
- D. The City Council’s determination of satisfactory performance and related adjustments of Employee’s Base Salary, if any, shall be made as part of an annual performance evaluation, including but not limited to an assessment of Employee’s achievement of any goals or performance objectives.

SECTION 4 HEALTH, LONG TERM DISABILITY AND LIFE INSURANCE BENEFITS

Employer agrees to provide health, vision, dental, long term disability and comprehensive medical insurance coverage for Employee and her dependents equal to that which is provided to all other unrepresented management employees of the City, as established by resolution of the City Council. Employer's contribution toward the premiums for said coverage shall be equal to that which Employer contributes to other unrepresented management employees.

SECTION 5 VACATION, SICK, BEREAVEMENT, AND MANAGEMENT/EXECUTIVE LEAVE AND HOLIDAYS

The parties recognize the importance of taking regular time off. Accordingly, Employee is encouraged to take regular vacations and to utilize her management/executive leave on an annual basis.

- A. Employee shall accrue sick leave on the same basis and at the same rate as provided to management employees, as established by resolution of the City Council. Upon assuming office, Employee shall be allowed to retain all the sick leave that she had previously accrued in her employment with Employer. Employee is permitted to use sick leave in connection with the birth or adoption of a child, as well as for other sick leave eligible uses (i.e., serious illness or medical condition of the employee; serious illness or medical condition of a family member who requires the employee's assistance).
- B. Employee shall accrue vacation leave on the same basis and at the same rate as provided to management employees, as established by resolution of the City Council. Upon assuming office, Employee shall be allowed to retain all the vacation leave that she had previously accrued in her employment with Employer.
- C. Employee shall on July 1 of each calendar year be credited with 75 hours of executive/administrative leave. Upon assuming office, Employee will be credited with 37.5 hours of executive/administrative leave or may retain all executive/administrative leave that she had previously accrued in her employment with Employer, whichever is greater. In the event of termination or resignation from employment, Employee shall be entitled to compensation for one hundred percent of accumulated and unused administrative leave days, up to the maximum that may be accumulated.
- D. In the event Employee's employment is terminated, either voluntarily or involuntarily, Employee shall be compensated for all accrued vacation, sick, and holiday leave at Employee's then-current monthly salary rate, in accordance with the policy established by City Council resolution for management employees. Alternatively, if allowed by CalPERS, Employee may apply those accrued leave balances toward service credit for retirement purposes.
- E. Employee shall receive the same paid holidays, floating holidays, and birthday holiday and shall be entitled to the same bereavement leave as management employees, as established by resolution of the City Council.

SECTION 6 AUTOMOBILE ALLOWANCE

Employee shall be provided a monthly automobile allowance of \$350 in exchange for making a vehicle available for the City Manager's own use and for City-related business and/or functions during, before, and after normal work hours. By the City Manager making the City Manager's personal automobile available for use, the City Manager is not precluded from using City vehicles for City business during, before, and after the normal workday on occasion, when appropriate.

SECTION 7 RETIREMENT

- A. Employer agrees to enroll Employee into the California Public Employees Retirement System (“**CalPERS**”) in accordance with applicable CalPERS law and the City’s contract with CalPERS.
- B. Under Government Code Section 20636(c), the City has elected to report the value of employer-paid member contributions (“**EPMC**”) to CalPERS as additional compensation.
- C. For the purposes of reporting to CalPERS reporting, to the extent permitted by CalPERS, the City shall incorporate into the reported base pay as compensation earnable all payments to the City Manager for the following: Base Salary, pay for performance, incentive payments, cafeteria plan contributions, City-paid employee portion of payments to CalPERS, and deferred compensation.

SECTION 8 GENERAL BUSINESS EXPENSES.

- A. Employer appreciates the importance of Employee’s participation and leadership in leading professional organizations. In its discretion, Employer shall budget for and pay travel and subsistence expenses of Employee for professional and official travel, meetings, courses, institutes and seminars to continue her professional development and to adequately pursue necessary official and other functions on behalf of Employer, including but not limited to, the annual conference of the League of California Cities, the International City/County Management Association (“**ICMA**”), California City Management Foundation, and such other regional, state, and local governmental groups and committees. The City acknowledges that during the first year of this Agreement Pinkos will serve as President of ICMA. The City supports Pinkos’s contribution to her profession through her service to ICMA and acknowledges the benefits to the City.
- B. Employer acknowledges the value of having Employee, at Employer’s discretion, participate and be directly involved in local or regional clubs, associations and organizations necessary and desirable for Employee’s continued professional participation, growth and advancement, and for the good of Employer. Accordingly, Employer shall pay for the reasonable membership fees and/or dues to enable Employee to become an active member in local civic clubs or organizations.
- C.. The City shall pay the premium on any bond that Employee is required to provide pursuant to California law and the El Cerrito Municipal Code.

SECTION 9 TERMINATION AND NON-RENEWAL OF AGREEMENT

- A. Employee is an at-will employee who shall serve at the pleasure of the City Council. The City Council may terminate Employee's employment at any time, subject to any restrictions in the City Charter, with or without cause. Nothing in this Agreement is intended to, or does, confer upon Employee any right to any property interest in continued employment or any due process rights of any kind.
- B. For the purpose of this Agreement, termination shall occur when the majority of the governing body votes to terminate the Employee at a duly authorized closed or open meeting.
- C. Employee's employment shall not be terminated during the 90-day period preceding or following any City election for membership on the City Council; during the 90-day period following the appointment of incumbent members of the City Council in lieu of an election; or during the 90-day period following any change in membership of the City Council.

SECTION 10 SEVERANCE

- A. Employee shall be entitled to severance pay of a lump sum payment equal to twelve (12) months' Base Salary in the event that City either terminates Employee's employment without cause or provides notice of nonrenewal of this Agreement, consistent with the provisions of Section 9. In the event that the Parties mutually agree that Employee will thereafter continue employment as City Manager, the severance payment to Employee shall be reduced as provided for in Section 9. The severance under this Agreement shall be subject to the restrictions set forth in Government Code section 53260. Said payment of severance pay shall be conditioned upon Employee signing a waiver and release agreement forever releasing and waiving any and all claims against the City in a form acceptable to the City. Employee shall receive the severance payment in a lump sum payment minus all applicable deductions fifteen (15) business days after execution of the waiver and release agreement. Employee shall not receive any severance payments if she resigns, is terminated for cause, or if a waiver and release agreement is not executed by the parties.
- B. In the event City terminates Employee's employment without cause, Employer shall extend to Employee the right to continue health insurance as may be required by and pursuant to the terms and conditions of the Consolidated Omnibus Budget Reconciliation Act of 1986 ("COBRA"). Employer agrees to pay Employee's COBRA coverage for the same number of months for which the Employee is entitled to severance pay under this Section, or until the Employee either secures full-time employment or obtains other health insurance, whichever of these three events first occurs. Employee shall notify Employer within five days of securing new full-time employment or insurance.
- C. This Section does not confer any property rights on Employee, as she remains an at-will employee. If Employer terminates Employee's employment for cause (also terminating this Agreement), Employee shall not be entitled to any additional compensation or

payment, including severance, but shall be entitled only to accrued base salary and vacation pay, and any other accrued and unused benefit allowances according to their terms. The phrase “termination for cause” only pertains to Employee’s eligibility for severance as described in this Section. A “termination for cause” for purposes of severance includes only the following:

1. Conviction of, or plea of guilty or nolo contendere to, any crime or offense (other than minor traffic violations or similar offenses) which is likely to have a material adverse impact on the City or on the Employee’s reputation.
 2. Proven failure of the Employee to observe or perform any of her duties and obligations, if that failure continues for a period of thirty (30) business days from the date of receipt of notice from the City Council specifying the acts or omissions deemed to amount to that failure.
 3. Conviction of any crime involving an “abuse of office or position,” as that term is defined in Government Code Section 53243.4.
 4. Repeated failure to carry out a directive or directives of the City Council made by the City Council as a body at a Brown Act compliant meeting.
 5. Any grossly negligent action or inaction by Employee that materially and adversely: (a) impedes or disrupts the operations of City or its organizational units; (b) is detrimental to employees or public safety; or (c) violates City’s properly-established rules or procedures.
 6. Repeated and protracted unexcused absences from the City Manager’s office and duties.
- D. Pursuant to Government Code section 53243.2, any cash settlement related to the termination of this Agreement received by Employee from Employer shall be fully reimbursed to City if Employee is convicted of a crime involving an abuse of her office or position as defined in California Government Code section 53243.4.
- E. In the event City terminates City Manager for cause, City and City Manager agree that neither Party shall make any written or oral statements to members of the public or the press concerning City Manager's termination except in the form of a joint press release which is mutually agreeable to both Parties. The joint press release shall not contain any text or information that would be disparaging to either Party. Additionally, either Party may verbally repeat the substance of any such press release in response to inquiries by members of the press or public.

SECTION 11 RESIGNATION AND RETIREMENT

- A. In the event that Employee voluntarily resigns her position with Employer or retires from her position, Employee shall provide a minimum of ninety (90) days’ advance written notice unless the parties agree otherwise.

- B. In the event that the City Council, by majority vote in open or closed session, asks Employee to resign, Employee shall be entitled to resign and still receive the severance benefits provided in Section 10 above.

SECTION 12 PERFORMANCE EVALUATION

Annual performance evaluations are an important way for the City Council and the City Manager to ensure effective communications about expectations and performance. City Council and Employee shall meet at least annually before the end of each calendar year but no later than the succeeding January, unless the parties agree to a different schedule. The City Council, in consultation with the Employee, may define goals and performance objective for the position of City Manager as the City Council determines are necessary for the proper operation of the City. If either City Council or the City Manager requests it, a professional facilitator may be hired to assist in the performance evaluation process. The City Council and Employee may establish a relative priority among the goals and performance objectives. The City Council may consider the goals and performance objectives in making compensation decisions for Employee, taking into account available time, annual operating budgets, and appropriations.

SECTION 13 HOURS OF WORK

It is recognized that Employee must devote a great deal of time outside the normal office hours on business for Employer, and to that end Employee shall be allowed to establish an appropriate work schedule.

SECTION 14 OUTSIDE ACTIVITIES

- A. The employment provided for by this Agreement shall be the Employee's sole employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to Employer and the community, Employee may elect, with the prior written approval of the Mayor, and written notification to the full City Council, to accept limited teaching, consulting or other business opportunities with the understanding that such arrangements shall not constitute interference with nor a conflict of interest with her responsibilities under this Agreement.
- B. The Parties acknowledge that Pinkos is a member of ICMA. The Parties mutually desire that Pinkos be subject to and comply with the ICMA Code of Ethics. A copy of the current version of the ICMA Code of Ethics is attached to this Agreement as **Attachment A**. The City and the City Council agree that neither the City Council nor any of its members will give Pinkos any order, direction, or request that would require her to violate the ICMA Code of Ethics, as they exist as of the Effective Date of this Agreement or as they may be amended in the future.

SECTION 15 INDEMNIFICATION

City shall defend, hold harmless, and indemnify Employee, using legal counsel of City's choosing, in any action or proceeding alleging an act or omission within the scope of Employee's employment. The defense provided by City under this section shall extend until a final determination of all issues in the action or proceeding. In the event that there is a conflict of

interest between City and Employee, such that independent counsel is required for Employee, Employee may engage her own legal counsel, and City shall indemnify Employee, including direct payment of all reasonable fees and costs of Employee's legal counsel. Notwithstanding anything to the contrary in this Agreement, in accordance with California Government Code section 825(a), Employer reserves the right to not pay any judgment, compromise, or settlement subject to that section if it is established that the action or proceeding arose out of an act or omission that did not occur within the scope of Employee's employment pursuant to this Agreement. Further, notwithstanding anything to the contrary in this Agreement, Employer reserves the right to refuse to provide for the defense of Employee 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 Employee shall be fully reimbursed in accordance with California Government Code section 53243.1 if Employee is convicted of a crime involving an abuse of her office or position as defined in California Government Code section 53243.4.

SECTION 16 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.

SECTION 17 OTHER TERMS AND CONDITIONS OF EMPLOYMENT

Employer, only upon agreement with Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the El Cerrito Charter or any other law.

SECTION 18 NOTICES

Any notice to either Party shall be in writing and given by delivering the same to such Party in person; by sending the same by registered mail, return receipt requested, with postage prepaid; or by email, to the following addresses:

EMPLOYER: City of El Cerrito
10890 San Pablo Avenue
El Cerrito, CA 94530
ATTN:
Email:

EMPLOYEE: Karen Pinkos
[TO BE FILLED IN BUT REDACTED IN PUBLIC VERSION]

Either Party may change its mailing address at any time by giving 10 days' written notice to the other party. Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice in the United States Postal Service. Notice by email transmission shall be deemed given upon verification of receipt if received before 5:00 p.m. on a regular business day or else on the next business day.

SECTION 19 GENERAL PROVISIONS

- A. Integration. This Agreement sets forth and establishes the entire understanding between Employer and Employee relating to the employment of Employee by Employer. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The parties by mutual written agreement may amend any provisions of this Agreement during the life of this Agreement. Such amendments shall be incorporated and made a part of this Agreement.
- B. Binding Effect. This Agreement shall be binding on Employer and Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.
- C. Effective Date. This Agreement shall become effective on December 25, 2018, upon the retirement of the current City Manager (the “**Effective Date**”).
- D. Severability. The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties.
- E. Survivability. Any provision of this Agreement that imposes an obligation after termination or expiration of this Agreement shall survive such termination or expiration and be binding on the Parties.
- F. Amendments. This Agreement may be amended at any time by mutual agreement of the City and Pinkos. An amendment shall not constitute termination of Pinkos or of this Agreement. Any amendments must be in writing and approved by the City Council.

IN WITNESS WHEREOF the CITY OF EL CERRITO, a municipal corporation, has authorized the execution of this Agreement in duplicate by its Mayor and attestation by its City Clerk under authority of Resolution _____ adopted by the Council of the City of EL CERRITO on the ____ day of _____, 2018, and EMPLOYEE has caused this Agreement to be duly executed.

CITY OF EL CERRITO,
a municipal corporation

EMPLOYEE

By: [NAME], Mayor

By: Karen Pinkos

ATTEST:

By: Sherry Kelly, Acting City Clerk

APPROVED AS TO FORM:

By: Sky Woodruff, City Attorney

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