

AMENDMENT TO HAYWARD CITY CLERK EMPLOYMENT AGREEMENT

THIS AMENDMENT, dated for convenience the **21st day of June 2022**, is by and between **MIRIAM LENS**, an individual (“Employee”) and the **CITY OF HAYWARD**, a public body of the State of California (“Employer”) and amends and replaces the Agreement between Employee and Employer, as amended on June 22, 2021 (“Agreement”).

RECITALS:

WHEREAS, Employer recognizes Employee’s satisfactory performance; and

WHEREAS, a total compensation market study conducted in March 2022 indicated Employee’s salary was more than five percent (5%) below the market median for City Clerk; and

WHEREAS, Employee and Employer have agreed to a three percent (3%) equity salary adjustment effective the pay period including January 1, 2023 and a one-time, lump sum cash payment equal to four percent (4%) of Employee’s annual base salary effective the pay period including July 1, 2022.

NOW, THEREFORE, in consideration of the covenants and conditions hereinafter recognized, Employee and Employer agree to the following:

Section 1 Term

The Term of this Agreement is October 1, 2020, through June 30, 2025. This Agreement shall be renewed subject to annual performance reviews as outlined in Section 12.

Section 2 Duties and Authority

Employer agrees to employ Employee as City Clerk to perform the functions and duties specified in Article VIII section 800 et seq. of the Hayward City Charter and such other lawful and appropriate duties and functions as directed by the City Council. Employee shall be a Certified Municipal Clerk by the International Institute of Municipal Clerks (IICM) and Employee shall maintain current standing for the term of employment. Employee shall adhere to the IICM Code of Ethics. The Employer agrees to pay Employee’s cost for certification.

Section 3 Compensation

The Employee’s salary for FY 2021 (July 1, 2020 through June 30, 2021) is \$141,169.60. Effective the pay period that includes January 1, 2021, Employee shall receive a 6% market equity adjustment. Effective the pay period that includes July 1, 2021, Employee shall be eligible to receive a 2% COLA ~~originally due to Employee effective the pay period including July 1, 2020, but which Employee forewent to offer cost savings due to the COVID-19 pandemic.~~

Effective the pay period that includes January 1, 2022, Employee shall receive a 6% market equity adjustment.

Effective the pay period including January 1, 2023, Employee shall receive a 3% equity adjustment based on the results of a March 2022 market total compensation survey, which indicated the position of City Clerk was more than 5% behind the market median. The equity increase is based on the following methodology:

- 10% adjustment if position is more than 15% behind the market median
- 5% adjustment if position is more than 10% but 15% or less behind the market median
- 3% adjustment if position is more than 5% but 10% or less behind the market median.

Thereafter and subject to an evaluation of performance, Employer may increase Employee's salary by resolution.

During the Term of this Agreement, Employer agrees to pay Employee on the same schedule as other City of Hayward employees, which is currently bi-weekly.

Section 4 One-Time Lump Sum Payment

Employee shall receive a one-time, lump sum payment equal to ~~two-four~~ percent (24%) of Employee's base salary effective the pay period including July 1, 2022 ~~to restore the COLA originally to due to Employee the pay period including July 1, 2020.~~

Section 5 Health Disability Life Insurance and Other Benefits

Upon commencing employment, Employer agrees to provide and pay the premiums for health, hospitalization, surgical, vision, dental, and comprehensive medical insurance for Employee and her dependents equal to that which is provided to all Unrepresented Management Employees of Employer.

Similarly, Employer agrees to obtain short-term and long-term disability insurance coverage for Employee while this Agreement is in effect. Employer shall obtain term life insurance for Employee in an amount equal to Employee's gross annual salary (including all salary increases during the life of this Agreement) or Employer's maximum allowable amount of term life insurance coverage under Employer's contract with its insurer, if said amount is less than Employee's gross annual salary. Employee shall have the right to choose the beneficiary on such policies.

In addition to the benefits set forth herein, all actions taken by the City Council relating to benefits for Unrepresented Management Employees shall be considered actions granting the same level of benefits to Employee, unless Employer and Employee mutually agree otherwise.

Employee is not eligible for a vehicle allowance. Employer agrees to provide Employee mileage reimbursement at the same level as provided for Unrepresented Management employees.

Employer provides employees with access to a deferred compensation plan. Employer will not provide an employer contribution to the deferred compensation plan.

Section 6 Vacation and Sick Leave

Employee shall continue to accrue sick and vacation leave on an annual basis at the rate afforded Unrepresented Management Employees, unless and until this Agreement is amended.

Employee shall be entitled to eighty (80) hours of management leave annually as provided in the Salary and Benefits Resolution for Unrepresented Executive Employees.

Employee shall take no more than fifteen (15) workdays of vacation or management leave at any one time, exclusive of holidays recognized by Employer, to which Employee shall also be entitled. Upon approval of the Council, leave may be extended beyond the fifteen (15) workday limit established above.

During the term of this Agreement, Employee may cash out up to (120) hours of accrued vacation and/or management leave each fiscal year.

In the event of termination, either voluntarily or involuntarily, Employee shall be compensated for accrued sick and vacation time as of the date of termination as provided in the Salary and Benefits Resolution for Unrepresented Management Employees.

Section 7 Retirement

Employee shall be required to pay the full CalPERS Employee contribution rate of eight percent (8%). In addition to the 8% employee rate, the Employee shall continue contributing five percent (5%) toward the Employer contribution rate.

Section 8 Personal Equipment and Automobile Stipend / Health and Wellness Reimbursement

Employee shall receive a \$450 per month stipend for the use of personal equipment and automobile, payable bi-weekly at the rate of \$207.69 per pay period. Personal equipment includes, but is not limited to cell phone, iPad, laptop, printers, etc. Employee may be reimbursed for mileage expenses incurred for non-routine meetings and conferences if vehicle travel exceeds fifty (50) miles one-way. Non-routine meetings are those that do not occur at a regular intervals, i.e.: weekly, monthly, annually, and/or where participation in the meeting is not a requirement of the position. Employer agrees to provide Employee mileage reimbursement for qualified expenses at the same level as provided for Unrepresented Management Employees.

Employer will reimburse Employee the equivalent of a maximum of one hundred dollars (\$100.00) per month for expenses associated with health and wellness programs. This reimbursement may be used for the payment of recurring monthly fees associated with gym or health club memberships, fitness classes, personal trainers, weight loss programs, or other health and wellness related expenses. Requests must be made in writing and submitted with proof of enrollment and receipt(s).

Section 9 Termination

Termination of this Agreement may occur under any of the following circumstances:

- A. If a majority of the governing body votes to terminate Employee at a duly authorized public meeting;
- B. If Employer, the public, or Legislature acts to amend any provisions of the Charter, Ordinances, or appropriate enabling legislation pertaining to the role, powers, duties, authority, and responsibilities of Employee's position, and such amendment substantially changes the form of government, Employee shall have the right to declare that such amendment constitutes termination;
- C. If Employee resigns following an offer by Employer to accept resignation, whether such offer is formal or informal, then Employee may declare a termination as of the date of Employer's acceptance of such formal or informal offer;
- D. If either party fails to cure a breach of contract as declared by either Employer or Employee within a 30-day period after the declaration of such breach of contract, provided written notice of such breach of contract is provided in accordance with provisions of Section 17;
- E. If Employee is convicted of a felony or misdemeanor involving moral turpitude, or if it is established that Employee's performance constitutes malfeasance or gross dereliction of duty;
- F. If Employee fails or refuses to follow a direct, lawful order by Employer.

Section 10 Severance

- A. Except as expressly provided herein, severance shall be paid to Employee when employment is terminated pursuant to Section 9. If Employee is terminated, Employer shall provide a minimum severance payment equal to ninety (90) days' salary and benefits at the then-current rate of pay. This severance shall be paid in a lump sum unless otherwise agreed to by Employer and Employee. Severance does not include life insurance. Employee shall also be compensated for all accrued sick leave, vacation time, all paid holidays and management leave as provided in the Salary and Benefit Resolution for the Unrepresented Management Employees.
- B. If Employee is terminated under any of the circumstances set forth in items E or F of the preceding Section 8, Employer is not obligated to pay severance.

Section 11 Resignation

In the event that Employee voluntarily resigns her position with Employer, Employee shall provide a minimum of ninety (90) days' notice unless the parties agree otherwise.

Section 12 Performance Evaluation

Employer will review the performance at least annually. Performance reviews will include at least the identification of mutually agreed upon goals to be achieved by Employee in the ensuing year, as well as a review of compensation for the coming year.

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

The employment provided for by this Agreement shall be Employee's sole employment, unless otherwise agreed to by Employer prior to Employee engaging in any such other employment.

Section 15 Indemnification

Beyond that required under Federal, State or Local Law, Employer shall defend, save harmless and indemnify Employee 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 Employee's duties as City Clerk or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities unless the act or omission involved willful or wanton conduct. Employer shall indemnify Employee against any and all losses, damages, judgments, interest, settlements, fines, court costs, and other reasonable other costs and expenses of legal proceedings including attorneys' fees, and any liabilities incurred by, imposed upon, or suffered by such Employee in connection with or resulting from any claim, action, suit, or proceeding, actual, or threatened, arising out of or in connection with the performance of her duties. Any settlement of any claim must be made with prior approval of Employer in order for indemnification, as provided in this Section, to be available.

Section 16 Abuse of Office or Position

If Employee is convicted of a crime involving an abuse of her office or position, all of the following shall apply: (1) if Employee is provided with paid administrative leave pending an investigation, Employee shall be required to fully reimburse Employer such amounts paid; (2) if Employer pays for the criminal legal defense of Employee (which would be in its sole discretion, as it is generally not obligated to pay for a criminal defense), Employee shall be required to fully reimburse Employer such amounts paid; and (3) if this Agreement is terminated, any Severance Pay and Severance Benefits related to the termination that Employee may receive from Employer shall be fully reimbursed to Employer or shall be void if not yet paid to Employee. For purposes of this Section, abuse of office or position means either: (1) an abuse of public authority, including waste, fraud, or violation of the law under color of authority; or (2) a crime against public justice.

Section 17 Bonding

Employer shall bear the full cost of any fidelity or other bonds required of Employee under any law or ordinance.

Section 18 Other Terms and Conditions of Employment

Employer may set 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 Hayward City Charter, or any other law.

Section 19 Notices

Notice pursuant to this Agreement shall be given by depositing in the custody of the United States Postal Service postage prepaid addressed as follows:

- (1) EMPLOYER: Mayor of the City of Hayward
Hayward City Hall
777 B Street
Hayward California 94541

- (2) EMPLOYEE: Miriam Lens
Address on File

Alternatively, notice required pursuant to this Agreement 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 the date of deposit of such written notice in the course of transmission in the United States Postal Service.

Section 20 General Provisions; Integration; Severability

This Agreement sets forth and establishes the entire understanding between Employer and Employee relating to the employment of the Employee by the 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 provision of this Agreement during the life of the Agreement. Such amendments shall be incorporated into and made a part of this Agreement.

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 had been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

IN WITNESS WHEREOF, Employee has executed this Amendment, and Employer, by and through its Mayor, duly authorized to act, has executed this Amendment.

Dated: June ____, 2022

Executed by:

Barbara Halliday
Mayor, City of Hayward

Miriam Lens
Employee (City Clerk)

ATTEST:

Avinta Madhukansh-Singh
Deputy City Clerk

APPROVED AS TO FORM:

Michael S. Lawson
City Attorney