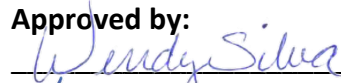
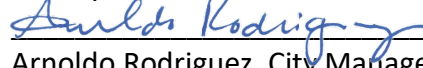


REPORT TO CITY COUNCIL

Approved by:



Wendy Silva, Director of Human Resources



Arnoldo Rodriguez, City Manager

Council Meeting of: August 7, 2019

Agenda Number: C-3

SUBJECT:

Consideration of a Resolution Approving an At-Will Employment Agreement with Alicia Gonzales to Serve as City Clerk of the City of Madera

RECOMMENDATION:

It is recommended the City Council (Council) adopt the resolution approving the At-Will Employment Agreement with Alicia Gonzales to serve as City Clerk and authorize the Mayor to execute the Agreement.

Pursuant to Government Code § 54953(c)(3), prior to taking action on this item, the Council must publicly announce a summary of the action being considered.

Announcement - *If approved, the proposed City Clerk At-Will Employment Agreement would employ Alicia Gonzales as the City Clerk effective August 26, 2019 with an annual salary of \$69,026.40 based on Step A of the published salary range for the position. Other terms and conditions of employment are as stated in the employment agreement.*

SUMMARY:

Following the retirement of the former City Clerk, the City conducted an open, competitive recruitment to fill the position. The Council reviewed all applications submitted and interviewed the top candidates based on this review. From these interviews, Council offered the position of City Clerk to Alicia Gonzales. Ms. Gonzales accepted the offer of employment.

DISCUSSION:

Former City Clerk Sonia Alvarez retired in March 2019. Per Council direction, staff conducted an open, competitive recruitment. Advertisements were placed both online and in print media with a Statewide reach. The Council reviewed applications received and selected the top five (5) candidates for interviews. Of these candidates, Council selected Ms. Gonzales as their top candidate for the City Clerk position.

The City Clerk position is an at-will, direct report to the City Council. As such, the individual appointed to this position is employed under an at-will employment agreement. Council offered and Ms. Gonzales accepted the following terms and conditions of employment, consistent with other management agreements. The At-Will Employment Agreement capturing these provisions is attached as Exhibit 1 to the resolution contemplated with this report.

Employment Agreement Term

- 3 years

Salary

Annual Salary: Range 419 on City of Madera Schedule M					
Step A	Step B	Step C	Step D	Step E	Step F
\$69,026.40	\$72,489.18	\$76,104.72	\$79,911.23	\$83,908.70	\$88,109.87

Severance & Termination

- 1 ½ months salary & health benefits severance
- Employee may be terminated by majority vote of the City Council

Paid Leave

- Vacation – accrues based on years of service; maximum accrued balance will be 360 hours. Employee also receives an 8-hour credit to vacation each year on the employee’s hire anniversary date.
 - Vacation Cash-out: Employee may cash-out unused vacation once per year if vacation balance is at least 160 hours.
 - 0-5 years of service – 40 hours
 - 6+ years of service – 80 hours
- Sick leave – accrues each pay cycle; no cap on accrual. After 5 years of City service, employee may cash-out unused sick leave with positive separation or retirement at the rate of 1% for each year of service to a maximum of 30%.
 - Family Sick Leave - Up to 48 hours of sick leave may be used each year for family.
- Administrative Leave – 40 hours credited each July 1. Not available for carryover or cash-out. New City Clerk will receive a pro-rated amount of Administrative Leave for the fiscal year based on start date.
- Holidays – The City observes 11 paid 8-hour holidays and 2 paid 4-hour holidays.
- Floating Holiday – Employees with 5-9 years of service are credited with 20 hours of Floating Holiday each July 1; employees with 10+ years of City service are credited with 40 hours of Floating Holiday each July 1. Not available for carryover or cash-out.

Retirement

- CalPERS formula will depend on hire date and prior service at a CalPERS agency. Employee pays full Employee Contribution pre-tax (this percent is dependent on the retirement formula).
 - Employee pays 2.375% of base pay towards Employer Contribution.
 - Employee pays for 1959 Survivor Benefit.
- Deferred Compensation – The City offers two 457 Deferred Compensation plans for the employee to choose from and the employee may contribute to the plan of their choice. The City does not make contributions to the deferred compensation plan for management employees.

Health Insurance

- Employee will receive the same plan offerings and employer contribution as that received by the City of Madera Mid Management Employee Group.

Other Benefits

- City Clerk may elect to receive a City-issued smart phone or use her personal phone and receive a \$75/month stipend. If stipend is elected, personal phone number must be publicly available.
- Bereavement Leave: In addition to paid leave available, Employee will receive 3 days of leave per fiscal year in the event of the death of a grandparent, parent, spouse, or child.
- Participation in health after retirement: Employee may elect to continue to purchase health insurance from the City for self and dependents until eligible for Medicare. The cost is equal to the premium plus a 2% admin fee. The City will not contribute to retiree health.
- City paid life/AD&D insurance: \$50,000 employee/\$5,000 dependent; employee can purchase additional voluntary life insurance for self, spouse and/or dependents through the City's provider through payroll deduction.
- City paid Long Term Disability

FINANCIAL IMPACT:

Pay and benefits for the City Clerk position are included in the City's adopted budget. Annual base salary as provided in the Agreement is \$69,026.40. Actual total compensation will depend on the enrollment tier selected for health insurance by the individual employee.

CONSISTENCY WITH THE VISION MADERA 2025 PLAN:

Pay and benefits for City employees are not addressed in the vision or action plan; the requested action is also not in conflict with any of the actions or goals contained in that plan.

ALTERNATIVES:

If the Council does not take action on the resolution, Ms. Gonzales will not be employed as the City Clerk.

ATTACHMENTS:

1. Resolution
2. Exhibit 1: City Clerk At-Will Employment Agreement

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MADERA APPROVING AN
AT-WILL EMPLOYMENT AGREEMENT WITH ALICIA GONZALES TO SERVE AS CITY OF MADERA CITY
CLERK AND AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT

WHEREAS, the City of Madera conducted an open, competitive recruitment to select the City's next City Clerk; and

WHEREAS, through this process, the City Council identified Alicia Gonzales as the candidate of choice to fill the City Clerk position; and

WHEREAS, Ms. Gonzales desires to fill the position of City Clerk with the City of Madera and has completed all required steps of the hiring process; and

WHEREAS, the City of Madera wishes to establish reasonable rules, regulations and compensation for its staff within the financial limits of the organization; and

WHEREAS, an At-Will Employment Agreement has been negotiated with Ms. Gonzales that sets out the salary and benefits for the offered position and both parties are in agreement on the terms of the At-Will Employment Agreement.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF MADERA hereby resolves, finds, and orders as follows:

1. The above recitals are true and correct.
2. The At-Will Employment Agreement between the City of Madera and Alicia Gonzales to serve as City Clerk, attached hereto as Exhibit 1, is approved.
3. The Mayor is authorized to execute the Agreement on the City's behalf.
4. This resolution is effective immediately upon adoption.

* * * * *

CITY CLERK AT-WILL EMPLOYMENT AGREEMENT

THIS AGREEMENT, entered into this 7TH day of August, 2019, by and between the CITY OF MADERA, State of California, a municipal corporation (hereinafter referred to as "Employer" or "City"), and Alicia Gonzales (hereinafter referred to as "Employee"), both of whom understand as follows:

Recitals

WHEREAS, Employer desires to employ the services of Alicia Gonzales as City Clerk for the City of Madera; and

WHEREAS, it is the desire of the City Council of the Employer, hereinafter called "Council," to provide certain benefits, to establish certain conditions of employment, and to set working conditions of said City Clerk; and

WHEREAS, Alicia Gonzales desires to be employed as City Clerk for said City of Madera.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

Agreement

Section 1: TERM

- A. The term of this Agreement shall be 3 years commencing on August 26, 2019. The Employer will provide written notice to the Employee on or before May 28, 2022, of its intent to offer to extend, renew, or otherwise not renew this contract for an additional term. If the Employer chooses to extend the Agreement, the Employer will inform the Employee of the newly proposed term at the time of its offer to renew. The Employee must respond to an offer to extend or renew the Agreement within 45 days of the offered extension or renewal.
- B. The City Clerk shall at all times serve at the pleasure of the Council. This means that the Employee is an at-will employee. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employer to suspend or terminate the services of the Employee at any time.
- C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time, after August 26, 2019, from her position with Employer, upon thirty (30) calendar days advanced written notice to Employer.

Section 2: TERMINATION AND SEVERANCE PAY

- A. In the event Employee is terminated by the Council before expiration of the aforesaid term of employment and during such time that Employee is willing and able to perform her duties under this Agreement, then in that event, Employer agrees to pay Employee a lump sum cash payment equal to the maximum amount of pay permitted by law under Government Code sections 53260 and 53261, up to a lump sum cash payment equal to one and one half (1 1/2) months' aggregate salary and health benefits. Upon such termination, Employee shall also be compensated for all earned paid leave and other accrued benefits to date of termination. This shall not include the payout of accumulated sick leave other than as authorized pursuant to this Agreement.

In the event Employee is terminated for cause or for conviction, then, in that event, Employer shall have no obligation to pay the aggregate severance sum designated in the above paragraph.

- B. In the event Employer at any time during the term of this Agreement reduces the salary or other financial benefits of Employee in a greater percentage than an applicable across-the-board reduction for all Employees of Employer, or in the event Employer refuses, following written notice, to comply with any other provision benefiting Employee herein, or the Employee resigns following a suggestion, whether formal or informal, by the Council that she resign, then, in that event, Employee may, at her option, be deemed to be "terminated" at the date of such reduction, such refusal to comply or such suggestion within the meaning and context of the herein severance pay provisions.

Section 3: DUTIES

- A. Employer hereby agrees to employ the Employee to perform the functions and duties of such office as set forth in the City Clerk Job Description on file with the Office of the City Clerk and referred to for more particulars, and to perform such other duties as the Council may from time to time assign.
- B. The City Clerk is exempt from the overtime provisions of the Fair Labor Standards Act, as amended, but is expected to engage in those hours of work that are necessary to fulfill the obligations of the City Clerk.
- C. Employee may engage in up to five (5) hours per week for teaching without prior written approval of the Employer. Employee shall not be involved in any other outside employment without written prior approval from the Employer. This includes, but is not limited to, consultant work, speaking engagements, entering an independent contract relationship, or any other activities unrelated to the Employee's employment with the City.

- D. Employee will maintain on file with the Employer her current place of residence and telephone number(s), and shall notify the Employer of any changes within twenty-four (24) hours.
- E. In the event the Employee becomes mentally or physically incapable of performing the City Clerk job duties, the Employer will comply with the law in regard to separating the City Clerk from employment.

Section 4: PERFORMANCE EVALUATION

The Council shall review and evaluate the performance of the Employee on an ongoing basis and shall, at least once annually on the employment anniversary date established, complete a written performance review and/or evaluation. The review and/or evaluation shall be in accordance with specific criteria developed by the Council. Specific criterion may be added or deleted as the Council may collectively determine.

Section 5: SALARY

Employer agrees to pay the City Clerk for her services rendered pursuant hereto a base salary of \$2,654.86 bi-weekly (City of Madera Salary Schedule Range 419, Step A), payable in installments at the same time as the majority of the Employer's employees. The Council may review and adjust said base salary in such amounts and to such extent as the Council determines, consistent with the published City of Madera Salary Schedule publicly adopted by the City Council of the City of Madera.

Employee desires to take a reduction in her compensation package equivalent to the salary contribution Miscellaneous employees are making towards the CalPERS Employee Contribution, however, employee already pays the full Employee Contribution per Section 6.C. of the Agreement. Therefore, employee desires to contribute an equivalent amount of salary towards the Employer Contribution to CalPERS. These contributions toward the CalPERS Employer Contribution shall be made as an after-tax payroll deduction and be equivalent to 2.375% of salary.

Section 6: OTHER TERMS AND CONDITIONS OF EMPLOYMENT

A. Paid Leave

1. Vacation

Employee will earn vacation credits, dependent upon the number of years of service with the City, for each pay period Employee is in a paid status at least 50% or more of the period. All accrued vacation is paid to Employee upon retirement, resignation or termination.

COMPLETED YEARS	NUMBER OF HOURS RECEIVED PER PAY PERIOD
0 through 4 yrs.	3.6923 hrs. per pay period
5 through 9 yrs.	4.6156 hrs. per pay period
10 through 14 yrs.	5.5384 hrs. per pay period
15 through 19 yrs.	6.1538 hrs. per pay period
20 plus yrs.	6.4615 hrs. per pay period

The maximum vacation Employee is allowed to accumulate is 360 hours.

Each employee shall receive the date known as the "employee anniversary date" as a vacation day. This day shall be added to vacation time at a straight time rate. Credit for the day will not be given until the employee's anniversary date has passed and is in addition to the above accrual schedule.

Employee may request to cash out vacation once each fiscal year. To be eligible for such cash out provision, employees must have a vacation balance of at least 160 hours at the time of request. Requests must be made in writing to the Payroll Specialist at least 15 days in advance and such requests will be paid on a regular pay date of the City. Employees with 0-5 years of City services are eligible to request up to 40 hours of vacation cash out. Employees with 6 or more years of City service are eligible to request up to 80 hours of vacation cash out.

2. Sick Leave

Sick leave, with pay, accrues at the rate of 3.6923 hours per pay period an employee is in a paid status at least 50% or more of the period. Rules governing sick leave use and eligibility are noted in the City of Madera Personnel Rules and Regulations.

In addition to the reasons for use of Sick Leave as stated in the Personnel Rules & Regulations, an employee may utilize accrued Sick Leave hours for any absence designated by the City as being covered by the Federal Family Medical Leave Act (FMLA) and/or the California Family Rights Act (CFRA), regardless of the reason for the leave. It will be the employee's responsibility to complete the required paperwork to certify the need for leave and he/she must provide timely notification of the need for leave in compliance with FMLA/CFRA regulations. Use of Sick Leave for this purpose will not commence until such requirements have been met. Use of Sick Leave for family members when the leave has been designated as FMLA/CFRA will not count against the employee's annual limit of Family Sick Leave as provided in this Agreement.

Employee may cash out sick leave at the rate of 1% a year for each year of service up to a maximum of 30% for 30 years. To be eligible, employees must be employed with the City on a full time basis for a minimum of five years. The cash out provision of sick leave pertains only to retirements and positive terminations. Negative terminations (discharge) are not eligible for cash out of sick leave. An employee has the option to convert 100% of the remaining sick leave upon retirement to CalPERS service credit.

3. Family Sick Leave

Sick Leave may be used up to the limit of forty-eight hours each calendar year:

3.1. For the diagnosis, care, or treatment of an existing health condition or preventative care for an employee's family member, including:

3.1.1. Child (including a biological, adopted, or foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis.)

3.1.2. Spouse or Registered Domestic Partner

3.1.3. Parent (including biological, adoptive, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child.)

3.1.4. Grandparent

3.1.5. Grandchild.

3.1.6. Sibling.

3.2. To obtain any relief or services related to being a victim of domestic violence, sexual assault, or stalking including the following with appropriate certification of the need for such services:

3.2.1. A temporary restraining order or restraining order.

3.2.2. Other injunctive relief to help ensure the health, safety or welfare of themselves or their children.

3.2.3. To seek medical attention for injuries caused by domestic violence, sexual assault, or stalking.

3.2.4. To obtain services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence, sexual assault, or stalking.

3.2.5. To obtain psychological counseling related to an experience of domestic violence, sexual assault, or stalking.

3.2.6. To participate in safety planning and take other actions to increase safety from future domestic violence, sexual assault, or stalking, including temporary or permanent relocation.

Such leave is a part of Sick Leave accrual, not in addition to, the 12 days (96 hours) of Sick Leave earned per year. All conditions and restrictions placed by the City upon the use by an employee of sick leave for himself or herself shall apply to the use by an employee of sick leave to attend to an illness of his or her identified family member.

All other provisions for use of Sick Leave by the employee also apply to Family Sick Leave use. This includes, but is not limited to, the Sick Leave section of the Personnel Rules and Regulations.

4. Administrative Leave

In recognition of the fact that Employee is expected to work all reasonable hours necessary to accomplish assigned tasks he will be credited with five days (40 hours) of Administrative Leave at the beginning of each fiscal year. This leave may not be carried over or cashed out and shall be taken under the same conditions as vacation leave. It is recognized that such time is not intended to provide an hour for hour or greater leave for actual hours worked over those scheduled, but is a benefit in recognition of duty requirements.

5. Holidays

The following (8) hour days are established as holidays with pay: New Year's Day, Martin Luther King's Birthday, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Day After Thanksgiving, and Christmas Day.

The parties agree that the following half days (4 hours) are established as partial holidays with pay: Good Friday and the last work day prior to Christmas or New Year's Day.

The parties agree that to be eligible to receive a paid holiday, the employee must be in a paid status on the scheduled work day either immediately preceding the identified holiday or on the scheduled work day immediately following the identified holiday.

In addition to the City observed holidays outlined above, Employee will receive floating holiday leave hours. Said leave hours shall be credited to the employee on July 1 of each fiscal year, may not be carried over or cashed out, and shall be taken under the same conditions as vacation leave. Employees with 5-9 years of full time continuous service with the City of Madera as of July 1 of each year shall be credited with 20 hours of floating holiday leave. Employees with 10 or more years of full time continuous service with the City of Madera as of July 1 of each year shall be credited with 40 hours of floating holiday leave.

B. Disability, Health, and Life Insurance

Employer will provide term life insurance for Employee in the amount of \$50,000 which includes accidental death and dismemberment (AD&D) coverage. Employer also will provide dependent life in the amount of \$5,000 and Long Term Disability Insurance, which provides salary replacement benefits.

Employer agrees to provide a monthly health benefit allowance for the employee to purchase health insurance (including medical, dental and vision coverage of the Employee and family) through an IRS Section 125 Cafeteria Plan. The benefit plans offered by Employer and the monthly benefit allowance received by Employee from Employer will be equal to the benefit plans offered to and monthly benefit allowance received by employees represented by the Mid Management Employee Group.

Medicare - 1.45% Employer's contribution matched by an Employee contribution of 1.45% of Employee's salary for mandated Medicare coverage.

C. Retirement

The City participates in the CalPERS retirement system. Employee will be placed on the appropriate miscellaneous plan consistent with CalPERS membership requirements. The Employee will pay all of the Employee Contribution for the plan in pre-tax dollars under IRS Code 414(h)(2). The Employee will also be responsible for the Employee's Contribution for the 1959 Survivor's Benefit.

D. Bereavement Leave

Employee is allowed an additional three (3) days leave per fiscal year in the event of death of any of the following members of the employee's family: spouse, child, parent or grandparent.

E. Retiree Paid Health Insurance

If Employee does not qualify for City Paid Health Insurance Upon Retirement as outlined in Section 6.F. of this agreement, the City will allow Employee to continue to participate in the City health plan offerings (medical, dental, and vision) at the retiree's expense until age 65 or when eligible for Medicare, whichever comes first. Both retiree and dependent coverage are available under this program. An administrative fee in an amount equal to two percent (2%) of the insurance premiums will be charged to the retiree for the City to process the benefit. In the event the administrative fee increases, retiree shall pay the higher fee. If, in the future, the City no longer offers the same insurance carrier/plan the retiree and her or her spouse will be eligible to purchase insurance coverage under the new plan. Coverage must be selected upon retirement; no lapse in coverage will be allowed

under this provision. If retiree chooses not to participate or chooses to terminate participation, retiree may not seek coverage under the City health plan at a later date.

F. Other

The Council shall fix any such other terms and conditions of employment, as s/he may determine from time to time, relating to the performance of the City Clerk, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City of Madera Municipal Code or any other law.

Section 7: TERMINATION

The City Clerk is an at-will employee and serves at the will and pleasure of the Council and may be terminated at any time.

Section 8: DUES AND SUBSCRIPTIONS

Employer agrees, to the extent it is financially able, to budget for and to pay for professional dues and subscriptions of Employee necessary for her continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for her continued professional participation, growth, and advancement, and for the good of the Employer.

Section 9: PROFESSIONAL DEVELOPMENT

- A. Employer hereby agrees, to the extent it is financially able, to budget for and to pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official functions for Employer, including but not limited to such other national, regional, state and local governmental groups and committees thereof which Employee serves as member.
- B. Employer also agrees, to the extent it is financially able, to budget for and to pay for travel and subsistence expenses of Employee for short courses, institutes and seminars that are necessary for her professional development and for the good of the Employer.

Section 10: INDEMNIFICATION

In addition to that required under state and local law, Employer shall defend, hold 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. Employer will compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon.

Section 11: BONDING

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

Section 12: CONFLICT OF INTEREST

- A. Employee shall not engage in any business or transaction or have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper discharge of official duties or would tend to impair independence of judgment or action in the performance of official duties. Personal interests, distinguished from financial interests, include an interest as arising from blood or marriage relationships or close business, and personal or political affiliations.
- B. Employee shall also comply with the conflict of interest provisions of the California Government Code and any conflict of interest code applicable to the City Clerk' employment.
- C. Employee is responsible for submitting to the City Clerk the appropriate Conflict of Interest Statements (including Form 700) at the time of appointment, annually thereafter, and at the time of separation from position.

Section 13: NOTICES

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

Employer: Council, City of Madera, 205 West Fourth Street, Madera CA 93637
Employee: On file with the City of Madera Human Resources Department

Alternately, notices 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 of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

Section 14: REDUCTION OF BENEFITS

Employer shall not at any time during the term of this Agreement reduce the salary, compensation or other financial benefits of Employee, except to the degree of such reduction across-the-board for all Employees of the Employer.

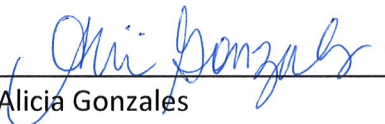
Section 15: GENERAL PROVISIONS

- A. The text herein shall constitute the entire and fully integrated Agreement between the parties and no promise, representation, warranty or covenant not included in this Agreement has been relied upon by any party hereto.
- B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of the Employee; however, this Agreement is not assignable by either party.
- C. This Agreement shall become effective commencing August 26, 2019.
- D. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable by a court of law, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect. This Agreement shall be construed under California law. No waiver of any term or condition of the Agreement shall be considered a continuing waiver thereof.

IN WITNESS WHEREOF, the City of Madera has caused this Agreement to be signed and executed on its behalf by its Mayor, and duly attested by its Interim City Clerk, and Alicia Gonzales has signed and executed this Agreement, both in duplicate, the day and year first above written.

EMPLOYEE

CITY OF MADERA



 Alicia Gonzales

 Andrew J. Medellin, Mayor

ATTEST

 Claudia Mendoza, Interim City Clerk