2020
FIRST AMENDMENT TO CITY MANAGER EMPLOYMENT AGREEMENT
(Employee: Alma K. Martinez)

THIS 2020 FIRST AMENDMENT ("Amendment") to that certain agreement entitled "City Manager Employment Agreement Between the City of El Monte and Alma Martinez," Contract No. 19HR08107 is made and entered into this 5th day of March 2020 ("Effective Date") by and between the CITY OF EL MONTE, a municipal corporation and general law city ("City") and ALMA K. MARTINEZ, an individual ("Employee"). For purposes of this Amendment, the capitalized term "Parties" shall be a collective reference to both City and Employee. The capitalized term "Party" may refer to either City or Employee interchangeably as appropriate.

RECITALS

WHEREAS, the Parties executed and entered into an employment agreement dated August 15, 2019 and entitled "City Manager Employment Agreement Between the City of El Monte and Alma Martinez," Contract No. 19HR08107 hereinafter, the ("Master Agreement")(A true and correct copy of the Master Agreement is attached and incorporated hereto as **Exhibit "A"**); and

WHEREAS, Section 8 of the Master Agreement provides for the conduct of an annual performance evaluation of Employee; and

WHEREAS, Section 6.B. of the Master Agreement provides that following each annual performance evaluation, the City Council of the City of El Monte ("City Council") may consider modifications to Employee's compensation; and

WHEREAS, the City Council did in fact complete its first annual performance evaluation of Employee in closed session under Agenda Item 4.6 at its Regular Meeting of February 18, 2020; and

WHEREAS, based on the results of the February 18, 2020 performance evaluation, it is the desire of the City Council to modify the terms of Employee's compensation; and

WHEREAS, execution of this Amendment was approved in open session at the City Council's Regular Meeting of March 4, 2020 under Agenda Item No. 14.4 as required under Government Code Sections 53262, 54956(b) and 54953(c)(3).

NOW, THEREFORE, in consideration of the mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

SECTION 1. MODIFICATION OF TERM: The provisions of Section 2 (Term) of the Master Agreement notwithstanding, the Term of the Agreement shall be extended by an additional five (5) years commencing as of the Effective Date of this Amendment such that the Term shall expire on March 5, 2025.

SECTION 2. MODIFICATION OF BASE SALARY: Employee's Base Salary, as the term is defined under Section 6.A. of the Master Agreement is hereby amended to the new annual Base Salary sum of TWO HUNDRED AND FORTY THOUSAND DOLLARS ($240,000).

SECTION 3. MODIFICATIONS TO SEVERANCE: Subsection A of Section 11 (Severance) of the Master Agreement is hereby amended in its entirety to now state the following:

A. *If City terminates this Agreement without cause as provided under Section 10(A) of the Master Agreement (thereby terminating Employee's employment), prior to the expiration of the Term of this Agreement or any extension term and while Employee is willing and able to perform the City Manager's duties under this Agreement, the City shall pay Employee severance pay of a lump sum cash payment equal to the lesser of the following:*

   i. *During the period of the Term commencing August 15, 2019 and ending March 4, 2020: (i) the cash value of six (6) months of Base Salary then effect; or (ii) the prorated cash value of one (1) month of Employee's annual Base Salary then in effect multiplied by the number of months (or portion thereof) remaining on the Term or any City Council-approved extension term;*

   ii. *During the period of the Term commencing March 5, 2020 and ending March 4, 2021: (i) the cash value of nine (9) months of Base Salary then effect; or (ii) the prorated cash value of one (1) month of Employee's annual Base Salary then in effect multiplied by the number of months (or portion thereof) remaining on the Term or any City Council-approved extension term;*

   iii. *On or after March 5, 2021: (i) the cash value of twelve (12) months of Base Salary then effect; or (ii) the prorated cash value of one (1) month of Employee's annual Base Salary then in effect multiplied by the number of months (or portion thereof) remaining on the two-year extension term.*

SECTION 4. The text of subsection C of Section 4 (Employee's Obligations and Hours of Work) of the Master Agreement is hereby repealed and deleted and replaced with the following: *"C. [Reserved – No Text]"*

SECTION 5. Except as otherwise provided under the City's Executive Benefits Profile or any other City policy, where the City's Executive Benefits Profile designates the City Manager as the approving official for any request made by an Executive Team member for the approval of any cash-out or conversion of vacation leave or the carry-over of Executive Leave, the Mayor shall serve as the designated approving official for any similar request(s) made by the City Manager.

SECTION 6. Except as otherwise set forth in this Amendment, the Master

Agreement shall remain binding, controlling and in full force and effect. The provisions of this Amendment shall be deemed a part of the Master Agreement and except as otherwise provided under this Amendment, the Master Agreement and all provisions contained therein shall remain binding and enforceable. In the event of any conflict or inconsistency between the provisions of this Amendment and the provisions of the Master Agreement, the provisions of this Amendment shall govern and control, but only in so far as such provisions conflict with the Master Agreement and no further.

SECTION 7. The Master Agreement and this Amendment constitute the entire, complete, final and exclusive expression of the Parties with respect to the matters addressed herein and supersedes all other agreements or understandings, whether oral or written, or entered into between City and Employee prior to the execution of this Amendment. No statements, representations or other agreements, whether oral or written, made by any Party which are not embodied herein shall be valid or binding. No amendment, modification or supplement to the Master Agreement and this Amendment shall be valid and binding unless in writing and duly executed by the Parties in the form of a written contract amendment approved by the City Council.

SECTION 8. The amendments and modifications to the Master Agreement set forth under this Amendment shall take effect upon the Effective Date.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed on the day and year first appearing above.

CITY:

CITY OF EL MONTE

By: Andre Quintero
Andre Quintero
Mayor

Date: 3/5/2020

EMPLOYEE

ALMA K. MARTINEZ, AN INDIVIDUAL

By: Alma K. Martinez
Alma K. Martinez, an individual

Date: 3/5/2020

APPROVED AS TO FORM

By:

Name: Joaquin Vazquez

Title: Deputy City Attorney

RECEIVED
CITY CLERK'S OFFICE
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Exhibit A
August 15, 2019 Master Agreement

CITY MANAGER EMPLOYMENT AGREEMENT BETWEEN THE CITY OF EL MONTE AND ALMA MARTINEZ

This Employment Agreement ("Agreement") is made and entered into as of August 15, 2019, by and between the City of El Monte, a California municipal corporation ("City"), and Alma Martinez, an individual ("Employee"). The capitalized term "Parties" shall be a collective reference to both City and Employee and the capitalized term "Party" may refer to either City or Employee interchangeably as appropriate.

RECITALS

A. The City of El Monte requires the services of a City Manager.

B. Employee represents that Employee has the necessary education, experience, skills and expertise and is otherwise qualified to serve as City Manager and desires to serve in such capacity.

C. City and Employee desire to enter into an employment agreement that sets forth the terms and conditions of employment of Employee as City Manager, including the duties, salary and benefits of employment.

D. Employee desires to accept employment as City Manager under the terms set forth herein.

E. This Agreement was approved by the City Council at Adjourned Regular Meeting of August 14, 2019 in open session as part of the Regular Meeting Agenda under Agenda Item No. 8.1 in compliance with Government Code Sections 53262, 54953(c)(3) and 54956(b).

NOW, THEREFORE, in consideration of these recitals and the performance by the Parties of the promises, covenants, and conditions herein contained, the City and Employee agree as provided in this Agreement.

1. Appointment of City Manager. The City does hereby appoint and employ Employee as its City Manager effective August 15, 2019 ("Effective Date"), and Employee hereby accepts such employment.

2. Term. Unless sooner terminated as provided under Sections 10 and 11 below, the term of this Agreement shall commence on the Effective Date of August 15, 2019 and shall continue for a term of THREE (3) years to August 15, 2022 ("Term"). The City Council, in its discretion, may extend the Term for an additional 2-Year extension term subject to the Agreement's same terms and conditions.

3. City Manager Duties and Authority.

A. Employee shall exercise the full powers and perform the duties of the position of City Manager as set forth in Chapter 2.12 (City Manager) of Title 2 (Administration and Personnel) of the El Monte Municipal Code, the California Government Code, any human resources rules, any departmental and other rules, regulations and procedures, the City Manager job description (if any) and any provisions under state law, as each of them currently or may in the future exist. Employee shall be responsible to the City Council for the proper administration of all affairs of the City. Employee shall also exercise such other powers and authority and perform such other functions and duties as may legally be assigned from time to

time by the City Council.

B. City also designates Employee as the executive director of other City- related legal entities including but not limited to any joint powers authority of which the City is a member or any other agency created or staffed by City, subject to any procedures applicable to said legal entity and if approved by the City Council.

4. Employee's Obligations and Hours of Work.

A. Employee shall devote Employee's full energies, interest, abilities and productive time to the performance of this Agreement and utilize Employee's best efforts to promote City's interests. Employee's duties may involve expenditures of time in excess of the regularly established workday or in excess of a forty (40) hour workweek and may also include time outside normal office hours (including attendance at City Council meetings and other City sponsored functions). Employee's base salary includes compensation for all hours worked and Employee shall be classified as an exempt employee from the overtime pay provisions of California law and federal law and as such is expected to engage in those hours of work that are necessary to fulfill the obligations of the City Manager position. In recognition of the significant time Employee will need to devote outside normal office hours to business activities of the City and the exempt, salaried nature of the employment, Employee is permitted to exercise a flexible work schedule. However, consistent with this flexibility and Employee's participation in activities out of the office, Employee will generally be expected to keep office hours at El Monte City Hall, 11333 Valley Boulevard, El Monte, California 91731 ("City Hall") during the days that City Hall is open during normal business hours.

B. Employee shall not engage in any employment, activity, consulting service or enterprise, for compensation or otherwise, which is actually or potentially in conflict with or inimical to, or which materially interferes with, Employee's duties and responsibilities to the City nor shall Employee have a financial or other personal interest or association, direct or indirect, which is in conflict with the proper discharge of official duties; would tend to impair independence of judgment or action in the performance of official duties; or which would otherwise constitute a violation of State or federal laws, including but not limited to the California Political Reform Act (Government Code Section 81000) and Government Code Section 1090. Subject to the foregoing prohibitions, the City Council, upon the written request of Employee, may authorize Employee to undertake outside employment provided that any such employment may not exceed more than ten (10) hours a month. City Council consent shall be made in writing and the City Council reserves the right to place additional conditions on such outside employment. Personal as distinguished from financial interest includes an interest arising from blood or marriage relationships or close business, personal, or political associations. Further, Employee shall not, during the term of this Agreement, individually, as a partner, joint venture, officer or shareholder, invest or participate in any business venture conducting business in the City of El Monte (except for stock ownership in any company whose capital stock is publicly held and regularly traded) without prior approval of the City Council.

C. For and during the term of this Agreement, Employee further agrees, except for a personal residence or residential property acquired or held for future use as Employee's personal residence, not to invest in any other real estate property improvements within the City without the prior consent of the City Council.

D. Except as otherwise authorized under paragraph (B) of this Section, above, Employee shall not engage in consulting, expert witness testimony, speaking, or other business for which compensation of more than fifty dollars ($50) is paid in any one year

without express prior consent of the City Council, which may be withheld in the sole, discretion of the City Council. Free admission, and refreshments and similar non-cash nominal benefits provided to Employee during an event at which Employee gives a speech, participates in a panel or seminar, or provides a similar service, and actual intrastate transportation and any necessary lodging and subsistence provided directly in the speech, panel, seminar, or service, including but not limited to meals and beverages on the day of the activity, shall not be considered compensation for the purposes of this Section 4(B). Employee will take personal leave (i.e. vacation time or administrative leave) for all compensated outside activities that occur during normal business hours.

E. Employee shall also comply with the conflict of interest provisions of the California Government Code and any conflict of interest code applicable to Employee's City employment. Such compliance includes submitting to the City Clerk a Form 700 Statement of Economic Interest at the time of appointment, annually thereafter, and at the time of separation from the position.

F. In the event Employee becomes mentally or physically incapable of performing the City Manager's functions and duties with or without reasonable accommodation and it reasonably appears such incapacity will last for more than six (6) months, Employee will be deemed to have resigned from Employee's position.

G. The Parties acknowledge that Employee shall become a member of the International City Managers Association ("ICMA"). As a member, Employee commits to comply with all applicable ethical standards having the force of state law and with the ICMA Code of Ethics as attached hereto as **Exhibit "A"** or as the same may be modified or amended from time to time by ICMA.

5. <u>Compensation and Expenses.</u>

A. The City shall provide the City Manager with the compensation and benefits as specified in Section 6 of this Agreement.

B. City recognizes that Employee may incur certain expenses of a non-personal and job related nature. Accordingly, the City shall pay for or provide Employee reimbursement for all actual and necessary business expenses, subject to any budget and appropriations limitation. Such expenses shall be incurred, submitted and reimbursed in compliance with City's approved travel and reimbursement policy as the same may be amended from time to time by the City Council. All expenses must be supported by documentation meeting City's normal requirements and must be submitted within time limits established by City. In accordance with, and subject to, City's policies and procedures governing the issuance and use of City-issued credit cards, City shall provide the City Manager a City credit card to charge appropriate and lawful City-related business expenses.

C. The City agrees to pay the professional dues and subscriptions on behalf of Employee which are necessary for Employee's continuation and full participation in national, regional, state, or local associations and organizations necessary and desirable for the good of the City and which membership is approved by the City Council as necessary for Employee's continued professional participation and advancement.

D. The City agrees to pay the travel and subsistence expenses of Employee to pursue official and other functions for the City, and meetings and occasions to continue Employee's professional development, including, but not limited to, national, regional, state, and local conferences, and governmental groups and committees upon which Employee serves as a

member to the extent funds are appropriated therefore in the City budget.

E. The City agrees to pay for the travel and subsistence expenses of Employee for short courses, institutes and seminars that are necessary for the good of the City or for the professional development of Employee, to the extent funds are appropriated therefore in the City budget.

F. The City recognizes the desirability of representation in and before local civic and other organizations, and subject to approval of the City Council, Employee is authorized to become a member of local civic clubs or organizations, for which the City shall pay membership dues, to the extent funds are appropriated therefore in the City budget. The City's payments shall be restricted to dues only. All other expenses related to membership are the responsibility of Employee.

G. Employee will receive full pay and benefits while responding to a jury summons or serving on a jury, up to a maximum of fourteen (14) business days. Any compensation for such jury duty (except travel pay) shall be remitted to City.

6. Salary and Benefits.

A. Base Salary. From the Effective Date of this Agreement, City shall pay Employee an annual base salary of TWO HUNDRED AND TWENTY THOUSAND DOLLARS ($220,000), subject to legally permissible or required deductions and withholding, prorated and paid on City's normal paydays ("Base Salary"). Employee's compensation is for all hours worked and for all services under this Agreement, including those as an executive director or involving any other position, office or appointment associated with the City. Employee shall be exempt from the overtime pay provisions of California law (if any) and federal law.

B. Modification of Compensation. No sooner than the City Council's completion of the first annual performance evaluation of Employee and thereafter, following the completion of each annual performance evaluation, the City Council may, but is not required to, consider merit increases, performance pay or other compensation enhancements to the extent authorized by applicable law in conjunction with the annual performance review set forth in Section 8, below. Any such compensation enhancements shall be in an amount determined by the City Council and at the City Council's discretion may be based on the level of completion of goals or other criteria formally identified by the City Council.

C. Benefits.

(1) Medical, Dental and Health Benefit Plans. Employee may participate in the City's group medical program (vision, dental and comprehensive medical insurance) in an amount equal and on the same basis to that which is provided to Management employees of the City. Eligibility and benefits will be as determined by the applicable laws, regulations and plan documents. In the event of a conflict between this Agreement and the applicable laws, regulations and plan documents, the latter shall prevail. Notwithstanding anything to the contrary under the most recent, City Council-approved Executive Benefits Profile or any other policies of the City, Employee shall not receive, nor shall Employee be entitled to, cash in lieu of any benefits provided under this paragraph.

(2) Term Life Insurance. During the Term of this Agreement and any extension term, City, at its sole cost and expense, shall procure and provide to Employee, a policy of term life insurance. During the Term and any extension term, the death benefit payable on the life insurance policy shall be capped at the maximum sum of One Million Dollars

($1,000,000). City and Employee's designated beneficiary shall each be named as beneficiaries for one-half (1/2) of the death benefit payment and in the event of Employee's death during the Term of this Agreement or any extension term, City shall receive one-half of the death benefit payment and Employee's designated beneficiary shall receive the other half of the death benefit payment. In the event City is unable to procure a single policy of $1,000,000, as described above, City in the alternative may procure two separate but concurrent policies of Five Hundred Thousand Dollars ($500,000) each and the City shall be designated as the beneficiary for one of the two policies and Employee shall be designated as the beneficiary for the second of the two policies.

(3) Disability Insurance. City shall provide Employee with a long-term Disability Insurance policy in the amount and according to terms applicable to Management employees.

(4) Executive Leave. City shall provide Employee with the same Executive Leave as provided to the Management employees. Notwithstanding, any Executive Leave of more than three (3) consecutive work days that is susceptible to advance scheduling shall be approved in advance by the Mayor or at the Mayor's discretion by the City Council.

(5) Vacation Leave. Employee shall accrue Vacation Leave on the same terms as provided to Management employees. Notwithstanding, any vacation leave of more than three (3) consecutive work days that is susceptible to advance scheduling shall be approved in advance by the Mayor or at the Mayor's discretion by the City Council. Employee shall be paid for any unused accrued vacation upon separation of employment at the Employee's rate of pay at the time of separation. The Parties acknowledge and agree that any pre-existing, accrued but unused Vacation Leave in Employee's City Vacation Leave bank as of the Effective Date shall be carried over under this Agreement. Employee may also convert any accrued but unused Vacation Leave to cash or deferred compensation on the same terms as provided to Management employees.

(6) Sick Leave. Employee shall accrue Sick Leave on the same terms as provided to Management employees. The Parties acknowledge and agree that any pre-existing, accrued but unused Sick Leave in Employee's City Sick Leave bank as of the Effective Date shall be carried over under this Agreement. Employee may convert any accrued but unused Sick Leave to cash or deferred compensation once each fiscal year subject to a maximum conversion cap of one hundred and twenty (120) hours per fiscal year. As of the Effective Date, Management employees may not convert accrued but unused Sick Leave to cash or deferred compensation, however, in the event such option is later made available to Management employees and in the event such conversion may be allowed subject to hours conversion limits greater than those set forth in this Agreement, Employee may then convert such Sick Leave subject to the same hours conversion limits as Management employees.

(7) Retirement. Employee shall be enrolled in City's retirement plan with the California Public Employees' Retirement System (CalPERS), subject to the Tier 2 Retirement benefits formula, terms and conditions applicable non-safety Management employees who are "New Members" within the meaning of the Public Employees' Pension Reform Act of 2013. Employee shall be eligible for the 2% at 62 formula for CalPERS "New Members." Pursuant to current law, and notwithstanding anything to the contrary in this Agreement or City's policies, Employee's contribution shall be not less than one-half of the total normal cost rate, as determined annually by CalPERS and shall be paid entirely by Employee.

(8) Holidays. Employee shall be entitled to the same paid Holidays as provided to other Management employees of the City. The Holidays are subject to change by

the City Council.

(9) Technological Tools. City shall provide, and pay service costs associated with, a cell phone, laptop computer and iPad for purposes of communications with the City Council and employees.

(10) Automobile. Employee shall be paid an automobile allowance of Four Hundred and Fifty Dollars ($450) per month for expenses incurred by Employee for the use of her personal automobile.

(11) Additional Benefits. Employee may participate in any other benefit plans based exclusively on Employee contributions and according to the terms and conditions of the applicable plan documents provided to Management employees.

(12) Bonding. City shall bear the full costs of any fidelity or other bonds required of Employee (if any) under any law or ordinance.

7. Deferred Compensation.

A. Section 457 Plan. Commencing on the Effective Date, the City will make in equal proportionate amounts each pay period an annual contribution of Nineteen Thousand Dollars ($19,000) into a qualified Section 457 Plan maintained by the City. Amounts contributed under this section shall be to the benefit of Employee in accordance with the deferred compensation plan participation agreement. Should the legally authorized contribution limits for the Section 457 Plan exceed $19,000 during the Term or any extension term, Employee shall be solely responsible for the contribution of sums in excess of $19,000.

B. Internal Review Code Compliance. All provisions of this Section 7 are subject to the provisions and limitations of the Internal Revenue Code and its related regulations as amended from time to time. No requirement of any provision of this Subsection 7 shall be effective if it would violate any provision of the Internal Revenue Code or its related regulations.

8. Annual Performance Evaluations.

A. Employee shall report directly to the City Council. The City Council is the legislative body that sets policy for the governance and administration of the City and such policy shall be implemented by and through Employee. The City Council shall spend time each year to work with Employee on setting the City Council's goals and priorities for the City government. Accordingly, Employee shall be evaluated by the City Council on an annual basis or more frequently if the City Council so desires at its discretion. The Parties agree that annual performance evaluations are an important way for the City Council and Employee to ensure effective communications regarding expectations and performance.

B. The City Council will commence the first performance evaluation of Employee no sooner than February 15, 2020 and no later than (60) calendar days from February 15, 2020. Thereafter and except as otherwise provided under this Section, the City Council may conduct a performance evaluation once each fiscal year commencing with the 2020-2021 fiscal year. During the annual evaluation process, the City Council and Employee will create goals or other outcome measures that will provide the basis for assessing the next year's performance. The City Council, in its discretion, may require that the annual evaluation be professionally facilitated by a facilitator approved by the City Council and paid for by the City. Nothing in this Section 8 is intended to limit additional interim evaluations or reviews or to limit the normal communications process between the City Council and Employee.

C. Failure of the City Council to provide a performance evaluation shall not limit the City's ability to terminate this Agreement pursuant to the terms set forth herein.

9. Indemnification.

A. Except as otherwise permitted, provided, limited or required by law, including without limitation California Government Code Sections 825, 995, and 995.2 through 995.8, the City will defend and pay any costs and judgments assessed against Employee arising out of an act or omission by Employee occurring in the course and scope of Employee's performance of Employee's duties under this Agreement.

B. Any and all paid leave, severance payments, defense payments or other benefits which may be provided to Employee under this Agreement upon termination or in the event of an investigation shall be subject to and interpreted to comply with the limitations set forth in Government Code Sections 53243 through 54244, including, without limitation, the obligation of Employee to reimburse the City for any funds paid should Employee be convicted of a crime involving an abuse of office or position as defined in Government Code Section 53243.4.

10. At-Will Employment Relationship.

A. Consistent with subsection (A) of Section 2.12.060 of the El Monte Municipal Code and California Government Code Section 36506, Employee is an "at-will" employee and serves at the pleasure of the City Council. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of City to terminate this Agreement and the employment of Employee and/or remove Employee as City Manager for convenience and without cause, upon written notice. Upon termination, the employment relationship shall end and City shall pay Employee for all services through the effective date of termination. Employee acknowledges and agrees that Employee shall have no right to any additional compensation or payment, except as provided in Section 11, Severance, below.

B. City shall not terminate the employment of Employee for convenience and without cause as provided under paragraph (A) of this Section, above, during or within any period of ninety (90) consecutive calendar days immediately following any General Municipal Election held in the City of El Monte at which election a non-incumbent Mayor or non-incumbent Councilmember is elected. The foregoing notwithstanding, nothing in this subsection shall be construed to prevent the City Council, under such circumstance, from immediately terminating this Agreement and Employee's employment with the City at any time for cause as provided under Section 12 of this Agreement, below.

C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign from Employee's employment with City, subject only to Employee providing sixty (60) calendar days prior written notice to the City Council, unless the Parties mutually agree to waive or alter the time required for such notice.

11. Severance.

A. If City terminates this Agreement without cause as provided under Section 10(A), above, (thereby terminating Employee's employment), prior to the expiration of the Term of this Agreement or any extension term and while Employee is willing and able to perform the City Manager's duties under this Agreement, the City shall pay Employee severance pay of a lump sum cash payment equal to the lesser of the following:

i. During the first year of the initial 3-year Term of this Agreement (i) the cash value

of six (6) months of Base Salary then in effect; or (ii) the prorated cash value of one month of Employee's annual Base Salary then in effect multiplied by the number of months (or portion thereof) remaining on the Term or any City Council-approved extension term;

ii. During the second year of the initial 3-year Term of this Agreement (i) the cash value of nine (9) months of Base Salary then in effect; or (ii) the prorated cash value of one month of Employee's annual Base Salary then in effect multiplied by the number of months (or portion thereof) remaining on the Term or any City Council-approved extension term;

iii. Commencing at the start of the third year of the 3-Year Term of this Agreement (i) the cash value (12) twelve months of Base Salary then in effect; or (ii) the prorated cash value of one month of Employee's annual Base Salary then in effect multiplied by the number of months (or portion thereof) remaining on the Term or any City Council-approved extension term;

iv. After the third year of the 3-year Term of the Agreement, in the event the City Council should extend the Agreement for the two-year extension term, (i) the cash value of twelve (12) months of Base Salary then effect; or (ii) the prorated cash value of one month of Employee's annual Base Salary then in effect multiplied by the number of months (or portion thereof) remaining on the two-year extension term.

B. Notwithstanding any other provision or the term of this Agreement, the maximum severance that Employee may receive under this Agreement as a result of termination, shall not exceed the limitations provided in Government Code Section 53260-53264. In addition, in the event Employee is convicted of a crime involving an abuse of office or position, Employee shall reimburse the City for any paid leave or cash settlement (including separation benefits or severance, if applicable), to the extent and as provided by Government Code Sections 53243-53243.4.

C. The severance rights provided in this Section 10 shall constitute the sole and only entitlement of Employee with respect to severance pay in the event of the termination, other than for cause. Employee expressly waives any and all other rights with respect to severance pay except as provided herein. Any and all severance rights are conditioned upon and in consideration for execution of the standard "Separation, Severance, and General Release Agreement" attached hereto as **Exhibit "B"** which is hereby approved by the Parties as to form.

12. <u>Termination for Cause</u>.

A. Notwithstanding the provisions of Section 10, Employee may be terminated for cause. As used in this paragraph, "cause" shall mean one or more of the following:

(1) Employee's breach of this Agreement;

(2) Conviction (including a plea of no contest) of a felony or any misdemeanor under the Political Reform Act or Government Code Section 1090;

(3) Conviction (including a plea of no contest) of any offense constituting an "abuse of office or position" within the meaning of Government Code Section 53243.4;

(4) Conviction (including a plea of no contest) of a misdemeanor involving a crime of moral turpitude or a felony;

(5) Conviction (including a plea of no contest) of a misdemeanor arising out of Employee's duties under this Agreement and involving a willful or intentional violation of law;

(6) Conviction of a crime (including a plea of no contest) or conduct constituting a violation of state of federal law that renders it more difficult for Employee to deliver pubic services to the City;

(7) Continued abuse of non-prescription drugs or alcohol that materially affects the performance of Employee's duties including but not limited to being under the influence of alcohol or intoxicating drugs while on duty;

(8) Dishonesty involving employment, including falsification of any City report or record or of any report or record required to be, or, filed by Employee;

(9) Acceptance from any source of any emolument, reward, gift or other form of remuneration in addition to Employee's regular compensation, as a personal benefit to the Employee for actions performed in the normal course of Employee's assigned duties;

(10) Repeated and protracted unexcused absences from Employee's City Manager office and duties;

(11) Resume fraud;

(12) A pattern of repeated, willful and intentional failure to carry out materially significant and legally constituted policy decisions of the City Council made by the City Council as a body, or persistent willful violation of properly established rules and procedures;

(13) Continued willful abandonment of duties following a ten (10) day written notice to cure from the City Council; and

(14) Any other action or inaction by Employee that materially and substantially impedes or disrupts the performance of City or its organizational units, is detrimental to employee safety or public safety, violates properly established rules or procedures, adversely affects the reputation of City, its officers or employees, or has a substantial and adverse effect on City's interests.

B. In the event Employee is terminated for cause, then the City may terminate this Agreement immediately, and Employee shall be entitled to only the compensation accrued up to the date of termination and such other payments as may be provided for in this Agreement. Employee shall not be entitled to any Severance pay provided by Section 11 of this Agreement.

C. Except as otherwise mutually agreed, any dispute as to whether severance is excused under this Section 12, shall be referred to arbitration before a single neutral arbitrator selected from a list of seven (7) arbitrators requested from the California State Mediation and Conciliation Service. City will strike the first name and the Parties will alternate striking names until one person is left who shall be designated as the arbitrator. Each Party shall initially pay one-half the cost of the arbitration. The prevailing Party in the arbitration shall be entitled to reasonable attorney fees and that Party's costs of arbitration.

D. If Employee terminates this Agreement (thereby terminating Employee's employment), Employee shall not be entitled to any Severance.

13. Confidential Information. Employee acknowledges and agrees that in the performance of Employee's duties, the City discloses and entrusts Employee with certain confidential or proprietary information. Employee agrees not to directly or indirectly disclose or use at any time any such information, whether it be in the form of records, lists, data, personnel information, reports or otherwise, of a business or technical nature, which was acquired or viewed by Employee during Employee's relationship with the City unless such disclosure is authorized by the City in writing, required by law, or required in the performance of the duties of the City Manager. This provision shall survive the termination or expiration of this Agreement.

14. General Provisions.

A. Integration. This Agreement sets forth the final, complete and exclusive agreement between City and Employee relating to the employment of Employee by City. Any prior discussions, agreements 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 and made a part of this Agreement. The foregoing notwithstanding, Employee acknowledges that, except as expressly provided in this Agreement, Employee's employment is subject to City's generally applicable rules and policies pertaining to employment matters, such as but not limited to those addressing equal employment opportunity, sexual harassment and violence in the workplace as they currently or may in the future exist.

B. Representations. Each Party to this Agreement acknowledges that no representations, inducements, promises or agreements, oral or written, have been made by any Party, or anyone acting on behalf of any Party, which is not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding on either Party. Employee acknowledges that, except as expressly provided in this Agreement, Employee's employment is subject to City's generally applicable rules and policies pertaining to employment matters, such as those addressing equal employment opportunity, sexual harassment and violence in the workplace.

C. Amendments. This Agreement may only be amended by a writing approved by the City Council and signed by both City and Employee.

D. Binding Effect. This Agreement shall be binding on the City and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.

E. Severability. If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect. If any provision is held invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and, effect in all other circumstances.

F. Prevailing Party Attorneys' Fees. In any action to enforce this Agreement or resolve any dispute or controversy arising under the terms and conditions hereof, the prevailing Party shall be entitled to payment of reasonable attorneys' fees and costs.

G. Choice of Law and Venue. This Agreement shall be interpreted and construed pursuant to and in accordance with the local laws of the State of California and all applicable City Codes, Ordinances and Resolutions. The Parties agree that venue shall be in Los Angeles County, California.

H. Drafting of Agreement. The Parties hereto acknowledge and agree that although this Agreement has been drafted by City's legal counsel, Employee has reviewed, or had an opportunity to review the terms of this Agreement with Employee's legal counsel. Consequently, the doctrine that ambiguities in an agreement should be resolved against the drafting Party shall not be employed in connection with this Agreement and this Agreement shall be interpreted in accordance with its fair meaning.

I. Independent Review of Agreement. Employee acknowledges that Employee has had the opportunity and has conducted an independent review of the financial and legal effects of this Agreement. Employee acknowledges that Employee has made an independent judgment upon the financial and legal effects of this Agreement and has not relied upon any representation of City, its officers, agents or Employees other than those expressly set forth in this Agreement.

J. Notices. Any notice given to City under this Agreement shall be given in writing to City, by personal service, by overnight delivery service providing confirmation of delivery, or by registered or certified mail, postage prepaid, addressed to the Director of Human Resources at the City's then principal place of business. Any such notice to Employee shall be given in a like manner and, if deposited with an overnight delivery service or mailed, shall be addressed to Employee at Employee's home address then shown in City's files. For the purpose of determining compliance with any time limit in this Agreement, a notice shall be deemed to have been duly given (a) on the date of delivery, if served personally on the Party to whom notice is to be given, (b) on the next delivery day following deposit with an overnight delivery service or (c) on the third calendar day after mailing, if mailed to the Party to whom the notice is to be given in the manner provided in this paragraph.

K. References. When a reference is made to benefits received by the "Management" employees, the Parties agree that the Agreement is referring to the benefits received by Executive Management employees under the most recent, City Council-approved Executive Benefits Profile as the same may be modified and amended from time to time by the City Council in its sole and absolute discretion.

L. Heirs and Beneficiaries. In the event Employee dies while employed by the City under this Agreement, the Employee's beneficiaries or those entitled to the Employee's estate shall be entitled to Employee's earned salary and any in-lieu payments for accrued benefits, including compensation for the value of accrued balances in accordance with this Agreement, City policy or as required by law subject to the provisions of this Agreement.

15 Voluntary Agreement. Employee represents and warrants that Employee has read carefully and fully understands all the provisions of this Agreement, that Employee is free to enter into this Agreement and to render the services described in it, that Employee entering into and performing under this Agreement will not breach or violate or conflict with any other agreement (written or oral) to which Employee is a Party, and that Employee has had an opportunity to consult with Employee's legal counsel prior to entering into this Agreement and has either done so or voluntarily chosen not to do so. Employee is voluntarily entering into this Agreement. The City represents and warrants that it has the right and power to enter into this Agreement.

16 Other Terms and Conditions of Employment. City may fix other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with

the provisions of this Agreement or applicable law.

17 Pre-employment Contingencies. This Agreement and offer of employment is contingent upon Employee's successful passage and completion of a pre-employment process which consists of a physical examination, pre-employment background check and Livescan fingerprinting.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed and executed personally as of the date and year first written above.

CITY OF EL MONTE
A California municipal corporation

By: _____
Andre Quintero, Mayor

ALMA MARTINEZ, an individual

By: _____
Alma Martinez, Employee

ATTEST:

By: _____
Catherine Eredia, City Clerk

APPROVED AS TO FORM:

By: _____
Rick Olivarez, City Attorney

Exhibit "A"
ETHICS CODE

ICMA | ethics

ICMA Code of Ethics with Guidelines

The ICMA Code of Ethics was adopted by the ICMA membership in 1924, and most recently amended by the membership in June 2018. The Guidelines for the Code were adopted by the ICMA Executive Board in 1972, and most recently revised in June 2019.

The mission of ICMA is to advance professional local government through leadership, management, innovation, and ethics. To further this mission, certain principles, as enforced by the Rules of Procedure, shall govern the conduct of every member of ICMA, who shall:

Tenet 1. Be dedicated to the concepts of effective and democratic local government by responsible elected officials and believe that professional general management is essential to the achievement of this objective.

Tenet 2. Affirm the dignity and worth of the services rendered by government and maintain a constructive, creative, and practical attitude toward local government affairs and a deep sense of social responsibility as a trusted public servant.

GUIDELINE

Advice to Officials of Other Local Governments. When members advise and respond to inquiries from elected or appointed officials of other local governments, they should inform the administrators of those communities.

Tenet 3. Demonstrate by word and action the highest standards of ethical conduct and integrity in all public, professional, and personal relationships in order that the member may merit the trust and respect of the elected and appointed officials, employees, and the public.

GUIDELINES

Public Confidence. Members should conduct themselves so as to maintain public confidence in their position and profession, the integrity of their local government, and in their responsibility to uphold the public trust.

Influence. Members should conduct their professional and personal affairs in a manner that demonstrates that they cannot be improperly influenced in the performance of their official duties.

Length of Service. For chief administrative/executive officers appointed by a governing body or elected official, a minimum of two years is considered necessary to render a professional service

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to the local government. In limited circumstances, it may be in the best interests of the local government and the member to separate before serving two years. Some examples include refusal of the appointing authority to honor commitments concerning conditions of employment, a vote of no confidence in the member, or significant personal issues. It is the responsibility of an applicant for a position to understand conditions of employment, including expectations of service. Not understanding the terms of employment prior to accepting does not justify premature separation. For all members a short tenure should be the exception rather than a recurring experience, and members are expected to honor all conditions of employment with the organization.

Appointment Commitment. Members who accept an appointment to a position should report to that position. This does not preclude the possibility of a member considering several offers or seeking several positions at the same time. However, once a member has accepted a formal offer of employment, that commitment is considered binding unless the employer makes fundamental changes in the negotiated terms of employment.

Credentials. A member's resume for employment or application for ICMA's Voluntary Credentialing Program shall completely and accurately reflect the member's education, work experience, and personal history. Omissions and inaccuracies must be avoided.

Professional Respect. Members seeking a position should show professional respect for persons formerly holding the position, successors holding the position, or for others who might be applying for the same position. Professional respect does not preclude honest differences of opinion; it does preclude attacking a person's motives or integrity.

Reporting Ethics Violations. When becoming aware of a possible violation of the ICMA Code of Ethics, members are encouraged to report possible violations to ICMA. In reporting the possible violation, members may choose to go on record as the complainant or report the matter on a confidential basis.

Confidentiality. Members shall not discuss or divulge information with anyone about pending or completed ethics cases, except as specifically authorized by the Rules of Procedure for Enforcement of the Code of Ethics.

Seeking Employment. Members should not seek employment for a position that has an incumbent who has not announced his or her separation or been officially informed by the appointive entity that his or her services are to be terminated. Members should not initiate contact with representatives of the appointive entity. Members contacted by representatives of the appointive entity body regarding prospective interest in the position should decline to have a conversation until the incumbent's separation from employment is publicly known.

Relationships in the Workplace. Members should not engage in an intimate or romantic relationship with any elected official or board appointee, employee they report to, one they appoint and/or supervise, either directly or indirectly, within the organization.

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This guideline does not restrict personal friendships, professional mentoring, or social interactions with employees, elected officials and Board appointees.

Conduct Unbecoming. Members should treat people fairly, with dignity and respect and should not engage in, or condone bullying behavior, harassment, sexual harassment or discrimination on the basis of race, religion, national origin, age, disability, gender, gender identity, or sexual orientation.

Tenet 4. Serve the best interests of the people.

GUIDELINES

Impacts of Decisions. Members should inform their governing body of the anticipated effects of a decision on people in their jurisdictions, especially if specific groups may be disproportionately harmed or helped.

Inclusion. To ensure that all the people within their jurisdiction have the ability to actively engage with their local government, members should strive to eliminate barriers to public involvement in decisions, program, and services.

Tenet 5. Submit policy proposals to elected officials; provide them with facts and advice on matters of policy as a basis for making decisions and setting community goals; and uphold and implement local government policies adopted by elected officials.

GUIDELINE

Conflicting Roles. Members who serve multiple roles – working as both city attorney and city manager for the same community, for example – should avoid participating in matters that create the appearance of a conflict of interest. They should disclose the potential conflict to the governing body so that other opinions may be solicited.

Tenet 6. Recognize that elected representatives of the people are entitled to the credit for the establishment of local government policies; responsibility for policy execution rests with the members.

Tenet 7. Refrain from all political activities which undermine public confidence in professional administrators. Refrain from participation in the election of the members of the employing legislative body.

GUIDELINES

Elections of the Governing Body. Members should maintain a reputation for serving equally and impartially all members of the governing body of the local government they serve, regardless of

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party. To this end, they should not participate in an election campaign on behalf of or in opposition to candidates for the governing body.

Elections of Elected Executives. Members shall not participate in the election campaign of any candidate for mayor or elected county executive.

Running for Office. Members shall not run for elected office or become involved in political activities related to running for elected office, or accept appointment to an elected office. They shall not seek political endorsements, financial contributions or engage in other campaign activities.

Elections. Members share with their fellow citizens the right and responsibility to vote. However, in order not to impair their effectiveness on behalf of the local governments they serve, they shall not participate in political activities to support the candidacy of individuals running for any city, county, special district, school, state or federal offices. Specifically, they shall not endorse candidates, make financial contributions, sign or circulate petitions, or participate in fund-raising activities for individuals seeking or holding elected office.

Elections relating to the Form of Government. Members may assist in preparing and presenting materials that explain the form of government to the public prior to a form of government election. If assistance is required by another community, members may respond.

Presentation of Issues. Members may assist their governing body in the presentation of issues involved in referenda such as bond issues, annexations, and other matters that affect the government entity's operations and/or fiscal capacity.

Personal Advocacy of Issues. Members share with their fellow citizens the right and responsibility to voice their opinion on public issues. Members may advocate for issues of personal interest only when doing so does not conflict with the performance of their official duties.

Tenet 8. Make it a duty continually to improve the member's professional ability and to develop the competence of associates in the use of management techniques.

GUIDELINES

Self-Assessment. Each member should assess his or her professional skills and abilities on a periodic basis.

Professional Development. Each member should commit at least 40 hours per year to professional development activities that are based on the practices identified by the members of ICMA.

Tenet 9. Keep the community informed on local government affairs; encourage communication between the citizens and all local government officers; emphasize friendly and courteous service to the public; and seek to improve the quality and image of public service.

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Tenet 10. Resist any encroachment on professional responsibilities, believing the member should be free to carry out official policies without interference, and handle each problem without discrimination on the basis of principle and justice.

GUIDELINE

Information Sharing. The member should openly share information with the governing body while diligently carrying out the member's responsibilities as set forth in the charter or enabling legislation.

Tenet 11. Handle all matters of personnel on the basis of merit so that fairness and impartiality govern a member's decisions, pertaining to appointments, pay adjustments, promotions, and discipline.

GUIDELINE

Equal Opportunity. All decisions pertaining to appointments, pay adjustments, promotions, and discipline should prohibit discrimination because of race, color, religion, sex, national origin, sexual orientation, political affiliation, disability, age, or marital status.

It should be the members' personal and professional responsibility to actively recruit and hire a diverse staff throughout their organizations.

Tenet 12. Public office is a public trust. A member shall not leverage his or her position for personal gain or benefit.

GUIDELINES

Gifts. Members shall not directly or indirectly solicit, accept or receive any gift if it could reasonably be perceived or inferred that the gift was intended to influence them in the performance of their official duties; or if the gift was intended to serve as a reward for any official action on their part.

The term "Gift" includes but is not limited to services, travel, meals, gift cards, tickets, or other entertainment or hospitality. Gifts of money or loans from persons other than the local government jurisdiction pursuant to normal employment practices are not acceptable.

Members should not accept any gift that could undermine public confidence. De minimus gifts may be accepted in circumstances that support the execution of the member's official duties or serve a legitimate public purpose. In those cases, the member should determine a modest maximum dollar value based on guidance from the governing body or any applicable state or local law.

The guideline is not intended to apply to normal social practices, not associated with the member's official duties, where gifts are exchanged among friends, associates and relatives.

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Investments in Conflict with Official Duties. Members should refrain from any investment activity which would compromise the impartial and objective performance of their duties. Members should not invest or hold any investment, directly or indirectly, in any financial business, commercial, or other private transaction that creates a conflict of interest, in fact or appearance, with their official duties.

In the case of real estate, the use of confidential information and knowledge to further a member's personal interest is not permitted. Purchases and sales which might be interpreted as speculation for quick profit should be avoided (see the guideline on "Confidential Information"). Because personal investments may appear to influence official actions and decisions, or create the appearance of impropriety, members should disclose or dispose of such investments prior to accepting a position in a local government. Should the conflict of interest arise during employment, the member should make full disclosure and/or recuse themselves prior to any official action by the governing body that may affect such investments.

This guideline is not intended to prohibit a member from having or acquiring an interest in or deriving a benefit from any investment when the interest or benefit is due to ownership by the member or the member's family of a de minimus percentage of a corporation traded on a recognized stock exchange even though the corporation or its subsidiaries may do business with the local government.

Personal Relationships. In any instance where there is a conflict of interest, appearance of a conflict of interest, or personal financial gain of a member by virtue of a relationship with any individual, spouse/partner, group, agency, vendor or other entity, the member shall disclose the relationship to the organization. For example, if the member has a relative that works for a developer doing business with the local government, that fact should be disclosed.

Confidential Information. Members shall not disclose to others, or use to advance their personal interest, intellectual property, confidential information, or information that is not yet public knowledge, that has been acquired by them in the course of their official duties.

Information that may be in the public domain or accessible by means of an open records request, is not confidential.

Private Employment. Members should not engage in, solicit, negotiate for, or promise to accept private employment, nor should they render services for private interests or conduct a private business when such employment, service, or business creates a conflict with or impairs the proper discharge of their official duties.

Teaching, lecturing, writing, or consulting are typical activities that may not involve conflict of interest, or impair the proper discharge of their official duties. Prior notification of the appointing authority is appropriate in all cases of outside employment.

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Representation. Members should not represent any outside interest before any agency, whether public or private, except with the authorization of or at the direction of the appointing authority they serve.

Endorsements. Members should not endorse commercial products or services by agreeing to use their photograph, endorsement, or quotation in paid or other commercial advertisements, marketing materials, social media, or other documents, whether the member is compensated or not for the member's support. Members may, however, provide verbal professional references as part of the due diligence phase of competitive process or in response to a direct inquiry.

Members may agree to endorse the following, provided they do not receive any compensation: (1) books or other publications; (2) professional development or educational services provided by nonprofit membership organizations or recognized educational institutions; (3) products and/or services in which the local government has a direct economic interest.
Members' observations, opinions, and analyses of commercial products used or tested by their local governments are appropriate and useful to the profession when included as part of professional articles and reports.

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Exhibit "B"

SEPARATION, SEVERANCE, AND GENERAL RELEASE AGREEMENT

1. PARTIES

This Separation, Severance, and General Release Agreement (hereinafter referred to as the "AGREEMENT") is entered into by and between the City of El Monte, a general law city and municipal corporation (hereinafter referred to as "CITY"), and _____, an individual (hereinafter referred to as "EMPLOYEE").

2. RECITALS

2.1. EMPLOYEE was hired by CITY as an at-will City Manager effective _____ serving at the pleasure of the El Monte City Council and pursuant to a written contract, a copy of which is attached hereto as Exhibit "A" ("THE CONTRACT").

2.2. CITY and EMPLOYEE desire that EMPLOYEE resign and enter into a severance agreement whereby EMPLOYEE receives severance compensation in exchange for executing a general release and waiver of any and all claims that EMPLOYEE may have against CITY, including but not limited to its elected and non-elected officials, employees, attorneys, and agents. Accordingly, the parties hereto intend by this AGREEMENT to mutually conclude any and all employment relationships between CITY and EMPLOYEE by means of EMPLOYEE's separation as of _____, _____. This AGREEMENT sets forth the full and complete terms and conditions concluding EMPLOYEE's employment relationship with CITY and any obligations related thereto, including any provided under THE CONTRACT.

2.3 In accordance with this AGREEMENT and with applicable state and federal laws, EMPLOYEE acknowledges that EMPLOYEE has been advised of EMPLOYEE's post-employment rights, including but not limited to, EMPLOYEE's rights under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), the Employee Retirement Income Security Act of 1974 ("ERISA"), and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

3. CONSIDERATION

3.1 EMPLOYEE shall receive payment at the time of separation of all earned salary, accrued fringe benefits as detailed in THE CONTRACT, and/or all other wage compensation/benefits owed to EMPLOYEE upon separation of employment, as required by law or THE CONTRACT or any other agreement with CITY.

3.2. In exchange for the waivers and releases set forth herein, CITY shall

also cause to be paid to EMPLOYEE an additional compensatory payment by means of severance, settlement and release in the form of a lump sum amount of _____ and _____ cents ($_____.00), as set forth in THE CONTRACT in the form of a check made payable to EMPLOYEE to be mailed to EMPLOYEE at EMPLOYEE's home address via certified mail return receipt requested within thirty (30) business days after the EFFECTIVE DATE (as defined below) of this AGREEMENT.

3.3 In exchange for the severance payment provided for herein, EMPLOYEE, and on behalf of EMPLOYEE's spouse, heirs, representatives, successors, and assigns, hereby releases, acquits, and forever discharges CITY, and each of its predecessors, successors, assigns, officials, employees, representatives, agents, insurers, attorneys, and all persons and entities acting by, through, under, or in concert with any of them, and each of them (hereinafter referred to as "CITY PARTIES"), from any and all claims, charges, complaints, contracts, understandings, liabilities, obligations, promises, benefits, agreements, controversies, costs, losses, debts, expenses, damages, actions, causes of action, suits, rights, and demands of any nature whatsoever, known or unknown, suspected or unsuspected, which EMPLOYEE now has or may acquire in the future, or which EMPLOYEE ever had, relating to or arising out of any act, omission, occurrence, condition, event, transaction, or thing which was done, omitted to be done, occurred or was in effect at anytime from the beginning of time up to and including _____ (hereinafter referred to collectively as "CLAIMS"), without regard to whether such CLAIMS arise under the federal, state, or local constitutions, statutes, rules or regulations, or the common law. EMPLOYEE expressly acknowledges that the CLAIMS forever barred by this AGREEMENT specifically include, but are not limited to, claims based upon any alleged breach of THE CONTRACT or any other agreement of employment, any demand for wages, overtime or benefits, any claims of violation of the provisions of ERISA, COBRA or WPAA, any alleged breach of any duty arising out of contract or tort, any alleged wrongful termination in violation of public policy, any alleged breach of any express or implied contract for continued employment, any alleged employment discrimination or unlawful discriminatory act, or any claim or cause of action including, but not limited to, any and all claims whether arising under any federal, state or local law prohibiting breach of employment contract, wrongful termination, or employment discrimination based upon age, race, color, sex, religion, handicap or disability, national origin or any other protected category or characteristic, and any and all rights or claims arising under the California Labor Code or Industrial Welfare Commission Wage Orders, the Federal Fair Labor Standards Act, the California Fair Employment and Housing Act, California Government Code §§12, 900 et seq., the Americans With Disabilities Act, Title VII of the Civil Rights Act of 1964, the Public Safety Officers Procedural Bill of Right Act, and any other federal, state, or local human rights, civil rights, or employment discrimination or employee rights statute, rule, or regulation. Nothing herein shall be interpreted as a release or waiver of any workers' compensation claims or in any way prohibit or prevent EMPLOYEE from participating in any claims or administrative action brought by a state or federal agency. Furthermore, nothing

herein shall be interpreted as a release or waiver of CITY's statutory obligations relative to providing defense and indemnification of public employees, if any, including but not limited to Government Code Sections 825-825.6 and Sections 995-996.6.

4. SPECIFIC ACKNOWLEDGMENT OF WAIVER OF CLAIMS UNDER ADEA AND OWBPA

The Age Discrimination in Employment Act of 1967 (hereinafter referred to as the "ADEA") makes it illegal for an employer to discharge any individual or otherwise discriminate with respect to the nature and privileges of an individual's employment on the basis that the individual is age forty (40) or older. The Older Workers Benefit Protection Act (hereinafter referred to as the "OWBPA," 29 U.S.C. § 626, et. seq., Pub L 101-433, 104 Stat. 978 (1990)) further augments the ADEA and prohibits the waiver of any right or claim under the ADEA, unless the waiver is knowing and voluntary. By entering into this AGREEMENT, EMPLOYEE acknowledges that EMPLOYEE knowingly and voluntarily, for just compensation in addition to anything of value to which EMPLOYEE was already entitled, waives and releases any rights EMPLOYEE may have under the ADEA and/or OWBPA. EMPLOYEE further acknowledges that EMPLOYEE has been advised and understands, pursuant to the provisions of the ADEA and OWBPA, that:

(a) This waiver/release is written in a manner understood by EMPLOYEE;

(b) EMPLOYEE is aware of, and/or has been advised of, EMPLOYEE'S rights under the ADEA and OWBPA, and of the legal significance of EMPLOYEE's waiver of any possible claims EMPLOYEE currently may have under the ADEA, OWBPA and/or similar age discrimination laws;

(c) EMPLOYEE is entitled to a reasonable time of at least twenty-one (21) days within which to review and consider this AGREEMENT and the waiver and release of any rights EMPLOYEE may have under the ADEA, the OWBPA and similar age discrimination laws; but may, in the exercise of EMPLOYEE's own discretion, sign or reject this AGREEMENT at any time before the expiration of the twenty-one (21) days;

(d) The waivers and releases set forth in this AGREEMENT shall not apply to any rights or claims that may arise under the ADEA and/or OWBPA after the EFFECTIVE DATE of this AGREEMENT;

(e) EMPLOYEE has been advised by this writing that EMPLOYEE should consult with an attorney prior to executing this AGREEMENT;

(f) EMPLOYEE has had an opportunity to discuss this waiver and release with, and to be advised with respect thereto by, EMPLOYEE's counsel of choice, and that EMPLOYEE does not need any additional time within which to

review and consider this AGREEMENT;

(g) EMPLOYEE has seven (7) days following EMPLOYEE's execution of this AGREEMENT to revoke the AGREEMENT;

(h) Notice of revocation within the seven (7) day revocation period must be provided, in writing, to CITY pursuant to Paragraph 8.9 herein, and must state, "I hereby revoke my acceptance of our Agreement of Severance and General Release;" and

(i) This AGREEMENT shall not be effective until all parties have signed the AGREEMENT and ten (10) days have passed since EMPLOYEE's execution ("EFFECTIVE DATE").

5. SECTION 1542 WAIVER

The matters specifically released and dismissed by this Agreement shall include, but are not necessarily limited to, all claims and causes of action which EMPLOYEE has against the CITY and/ or any of the CITY PARTIES arising on or before the date that this Agreement is executed, and ANY OTHER CLAIM OF ANY TYPE WHATSOEVER AGAINST THE CITY, AND/OR ANY OTHER CITY PARTIES, WHETHER SUCH CLAIM IS KNOWN OR UNKNOWN TO EMPLOYEE AND/OR EMPLOYEE'S REPRESENTATIVES AND ATTORNEYS arising on or before the date that this Agreement is executed. As a further consideration and inducement for this Agreement, to the extent permitted by law, EMPLOYEE hereby waives and releases any and all rights under Section 1542 of the California Civil Code or any analogous state, local, or federal law, statute, rule, order or regulation, EMPLOYEE has or may have with respect to any claims against the CITY PARTIES. California Civil Code Section. 1542 reads as follows:

> **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."**

EMPLOYEE hereby expressly agrees that this Agreement shall extend and apply to all unknown unsuspected, and unanticipated claims, injuries, losses and damages as well as those that are now known and/or disclosed.

6. WAIVER OF ADDITIONAL CLAIMS

EMPLOYEE hereby waives any provisions of state or federal law that might require a more detailed specification of the claims being released pursuant to the provisions of Paragraphs 3, 4, and 5 above.

7. REPRESENTATIONS AND WARRANTIES

Each of the parties to this AGREEMENT represents and warrants to, and agrees with, each other party as follows:

7.1. Advice of Counsel: The parties hereto have received independent legal advice from their respective attorneys concerning the advisability of entering into and executing this AGREEMENT or have been given the opportunity to obtain such advice. The parties acknowledge that they have been represented by counsel of their own choice in the negotiation of this AGREEMENT, that they have read this AGREEMENT; that they have had this AGREEMENT fully explained to them by such counsel, or have had such opportunity to do so and that they are fully aware of the contents of this AGREEMENT and of its legal effect.

7.2. No Fraud in Inducement: No party (nor any officer, agent, employee, representative, or attorney of or for any party) has made any statement or representation or failed to make any statement or representation to any other party regarding any fact relied upon in entering into this AGREEMENT, and neither party relies upon any statement, representation, omission or promise of any other party in executing this AGREEMENT, or in making the settlement provided for herein, except as expressly stated in this AGREEMENT.

7.3. Independent Investigation: Each party to this AGREEMENT has made such investigation of the facts pertaining to this settlement and this AGREEMENT and all the matters pertaining thereto, as it deems necessary.

7.4. Mistake Waived: In entering into this AGREEMENT, each party assumes the risk of any misrepresentation, concealment or mistake. If any party should subsequently discover that any fact relied upon by it in entering into this AGREEMENT was untrue, or that any fact was concealed from it, or that its understanding of the facts or of the law was incorrect, such party shall not be entitled to any relief in connection therewith, including without limitation on the generality of the foregoing any alleged right or claim to set aside or rescind this AGREEMENT. This AGREEMENT is intended to be, and is, final and binding between the parties, regardless of any claims of misrepresentation, promise made without the intent to perform, concealment of fact, mistake of fact or law, or any other circumstance whatsoever.

7.5. Later Discovery: The parties are aware that they may hereafter discover claims or facts in addition to or different from those they now know or believe to be true with respect to the matters related herein. Nevertheless, it is the intention of the parties that EMPLOYEE fully, finally and forever settle and release all such matters, and all claims relative thereto, which do now exist, may exist or have previously existed against CITY or CITY PARTIES. In furtherance of such intention, the releases given here shall be, and remain, in effect as full and complete releases of all such matters, notwithstanding the discovery or existence of any additional or different claims or facts relative thereto.

7.6. Indemnification: EMPLOYEE understands and agrees that EMPLOYEE shall be exclusively liable for the payment of all taxes for which EMPLOYEE is responsible, if any, as a result of the receipt of the consideration referred to in Paragraph 3 of this AGREEMENT. In addition, EMPLOYEE agrees fully to indemnify and hold CITY PARTIES harmless for payment of tax obligations as may be required of EMPLOYEE by any federal, state or local taxing authority, at any time, as a result of the payment of the consideration set forth in Paragraph 3 of this AGREEMENT.

7.7. Future Cooperation & Consultation Fees: The parties shall execute all such further and additional documents as shall be reasonable, convenient, necessary or desirable to carry out the provisions of this AGREEMENT. EMPLOYEE shall provide CITY with consultation services (including deposition or trial testimony) in any litigation involving CITY which is reasonably related to acts or occurrences transpiring during Employee's employment. Said services shall be provided as needed by CITY and as convenient for EMPLOYEE at a rate of Two Hundred Dollars ($200.00) per hour.

7.8. Return of Confidential Information and Property: Prior to the separation date, EMPLOYEE shall submit a written inventory of, and return to CITY Clerk, all City keys, equipment, computer identification cards or codes, technological tools and other equipment or materials or confidential documents provided to or obtained by EMPLOYEE during the course of EMPLOYEE's employment with CITY.

7.9 No Pending Claims and/or Actions: EMPLOYEE represents that EMPLOYEE has not filed any complaints or charges against CITY or CITY PARTIES with any local, state or federal agency or court; that EMPLOYEE will not do so at any time hereafter for any claim arising up to and including the EFFECTIVE DATE of this AGREEMENT; and that if any such agency or court assumes jurisdiction of any such complaint or charge against CITY or CITY PARTIES on behalf of EMPLOYEE, whenever or where ever filed, EMPLOYEE will request such agency or court to withdraw from the matter forthwith. Nothing herein shall be interpreted as a release or waiver of any workers' compensation claims or in any way prohibit or prevent EMPLOYEE from participating in any claims or administrative action brought by a state or federal agency.

7.10. Ownership of Claims: EMPLOYEE represents and warrants as a material term of this AGREEMENT that EMPLOYEE has not heretofore assigned, transferred, released or granted, or purported to assign, transfer, release or grant, any of the CLAIMS disposed of by this AGREEMENT. In executing this AGREEMENT, EMPLOYEE further warrants and represents that none of the CLAIMS released by EMPLOYEE thereunder will in the future be assigned, conveyed, or transferred in any fashion to any other person and/or entity.

7.11 Enforcement Fees and Costs: Should any legal action be required to

enforce the terms of this AGREEMENT, the prevailing party shall be entitled to reasonable attorneys' fees and costs in addition to any other relief to which that party may be entitled.

7.12 Authority: Each party represents to the other that it has the right to enter into this AGREEMENT, and that to the best of its knowledge that it is not violating the terms or conditions of any other AGREEMENT to which they are a party or by which they are bound by entering into this AGREEMENT. The parties represent that they will obtain all necessary approvals to execute this AGREEMENT. It is further represented and agreed that the individuals signing this AGREEMENT on behalf of the respective parties have actual authority to execute this AGREEMENT and, by doing so, bind the party on whose behalf this AGREEMENT has been signed.

8. MISCELLANEOUS

8.1. No Admission: Nothing contained herein shall be construed as an admission by CITY of any liability of any kind. CITY denies any liability in connection with any claim and intends hereby solely to avoid potential claims and/or litigation and buy its peace.

8.2. Governing Law: This AGREEMENT has been executed and delivered within the State of California, and the rights and obligations of the parties shall be construed and enforced in accordance with, and governed by, the laws of the State of California.

8.3. Full Integration: This AGREEMENT is the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. This AGREEMENT may be amended only by a further agreement in writing, signed by the parties hereto.

8.4. Continuing Benefit: This AGREEMENT is binding upon and shall inure to the benefit of the parties hereto, their respective agents, spouses, employees, representatives, officials, attorneys, assigns, heirs, and successors in interest.

8.5. Joint Drafting: Each party agrees that it has cooperated in the drafting and preparation of this AGREEMENT. Hence, in any construction to be made of this AGREEMENT, the parties agree that same shall not be construed against any party.

8.6. Severability: In the event that any term, covenant, condition, provision or agreement contained in this AGREEMENT is held to be invalid or void by any court of competent jurisdiction, the invalidity of any such term, covenant, condition, provision or agreement shall in no way affect any other term, covenant, condition, provision or agreement and the remainder of this AGREEMENT shall still be in full force and effect.

8.7. Titles: The titles included in this AGREEMENT are for reference only and are not part of its terms, nor do they in any way modify the terms of this AGREEMENT.

8.8. Counterparts: This AGREEMENT may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one AGREEMENT, which shall be binding upon and effective as to all parties.

8.9. Notice: Any and all notices given to any party under this AGREEMENT shall be given as provided in this paragraph. All notices given to either party shall be made by certified or registered United States mail, or personal delivery, at the noticing party's discretion, and addressed to the parties as set forth below. Notices shall be deemed, for all purposes, to have been given on the date of personal service or three (3) consecutive calendar days following deposit of the same in the United States mail.

As to EMPLOYEE:

At EMPLOYEE's home address on file with CITY.

As to CITY:

_____
_____
_____
_____

IN WITNESS WHEREOF, CITY has caused this AGREEMENT to be signed and executed on its behalf by its Mayor and duly attested by its City Clerk, EMPLOYEE has signed and executed this Agreement, and the attorneys for CITY and EMPLOYEE, if any, have approved as to form as of the dates written below.

DATED:_____ EMPLOYEE

By:_____
Name

CITY

DATED:_____ By:_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney