

2025  
AMENDED AND RESTATED  
CITY MANAGER EMPLOYMENT AGREEMENT BETWEEN  
THE CITY OF EL MONTE AND ALMA MARTINEZ

This Employment Agreement ("Agreement") is made and entered into as of May 14, 2025 (the "Effective Date"), 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. Employee was first appointed to serve in the capacity of City Manager for the City of El Monte at the El Monte City Council's Adjourned Regular Meeting of August 14, 2019 under Agenda Item No. 8.1; and

B. The terms of Employee's employment were first formalized in that certain employment agreement entitled "City Manager Employment Agreement between the City of El Monte and Alma Martinez", Contract No. 19HR08107 executed August 15, 2019 (the "2019 Master Agreement"); and

C. The 2019 Master Agreement was subsequently amended and modified by the following amendments and side letter agreements: (i) a first amendment entitled "2020 First Amendment to City Manager Employment Agreement", Contract No. 19HR08107.1A dated March 5, 2020; (ii) a side letter agreement entitled "May 2020 Side Letter Agreement between the City of El Monte and Alma K. Martinez, City Manager", Contract No. 20CM04047 dated May 19, 2020; and (iii) a second side letter agreement entitled "June 2020 Second Side Letter Agreement, City Manager Employment Agreement", Contract No. 20CM06070 dated as of June 16, 2020 (all of the foregoing amendments and side letter agreements collectively referred to as the "Subsequent Amendments")(For purposes of this Agreement, the term "Prior Agreement" shall be a collective reference to the 2019 Master Agreement as amended by way of the Subsequent Amendments); and

D. On February 1, 2022, the Parties executed an amended and modified employment contract with Employee entitled "Amended and Restated City Manager Employment Agreement Between the City of El Monte and Alma K. Martinez", Contract No. 22HR02011 (the "2022 Employment Contract") which terminated and replaced the Prior Agreement as amended by the Subsequent Amendments effective as of February 10, 2022; and

E. On February 21, 2024, the Parties amended the 2022 Employment Contract by way of that certain amendment document entitled "First Amendment to the Amended and Restated City Manager Employment Agreement between the City of El Monte and Alma K. Martinez", Contract No. 22HR02011.1A (hereinafter, the "2024 Amendment")(The term "2022 to 2024 Employment Contract" shall be a collective reference to the 2022 Employment Contract and the 2024 Amendment); and

F. The Parties wish to further amend and modify the terms of Employee's employment with the City as set forth in the 2022 Employment Contract as the same was later amended by way of the 2024 Amendment (collectively, the "2022/2024 Employment Contract"); and

G. By execution of this Agreement, the Parties intend to terminate the 2022/2024

Employment Contract and replace the same with this Agreement effective as of the date the El Monte City Council approves this Agreement; and

H. This Agreement was in fact approved by the City Council at its Regular Meeting of May 14, 2025 in open session as part of the Regular Meeting Agenda under Agenda Item No. 14.1 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 as City Manager; Governing Agreement.** The Parties acknowledge and agree that Employee was first appointed to the position of City Manager on August 14, 2019 as described in the Recitals, above, and shall continue to serve in such capacity under the terms of this Agreement effective as of the date the City Council approves this Agreement: May 14, 2025. The Parties also agree that the "Effective Date," as referenced in the first paragraph of this Agreement, shall be May 14, 2025. By execution of this Agreement, the Parties acknowledge and agree that the 2022/2024 Employment Contract shall be of no further force and effect as of May 14, 2025, and the terms of Employee's employment with the City shall thereafter be governed by the provisions of this Agreement.

2. **Term.** Unless sooner terminated, as provided under Sections 10 through 12 below, or Employee's voluntary resignation, the term of this Agreement shall commence on the Effective Date of this Agreement and shall expire on March 5, 2029 ("Term"). The foregoing notwithstanding, this Agreement shall renew automatically for successive two-year extension terms until terminated, pursuant to Sections 10 through 12 below, or upon Employee's voluntary resignation.

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. Notwithstanding the flexibility in Employee's work schedule, Employee will be generally available to the City Council and Management staff during the City's regular 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. 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(C). Employee will take Vacation Leave or Executive Leave for all compensated outside activities that occur during normal business hours.

D. 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.

E. 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.

F. Employee shall become a member of the International City Managers Association ("ICMA") and shall submit written proof of Employee's membership to the Human Resources

within one (1) year of the Effective Date. As a member, Employee shall 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. Compensation and Expenses.**

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. (1) Base Salary. From the Effective Date of this Agreement, City shall pay Employee an annual base salary of THREE HUNDRED AND FIFTY THOUSAND DOLLARS (\$350,000), subject to legally permissible or required payroll taxes, deductions, contributions and

withholdings, 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.

(2) Periodic Cost of Living Adjustments: The Base Salary shall be adjusted by a percentage equal to the percentage of any cost of living adjustment provided to employees within the Executive Management classification as set forth in the most recent Executive Benefits Profile.

(3) Anti-Compaction Adjustment: The periodic cost of living adjustments referenced in Section 6(A)(2) of this Agreement notwithstanding, if at any time during the Term of this Agreement, the difference between Employee's Base Salary and the annual base salary of the highest paid member of the City's Executive Management classification is a sum that is less than twenty percent (20%) of the then current annual base salary of the highest paid employee within the Executive Management classification, Employee's Base Salary shall be further adjusted so that the resulting difference between Employee's anti-compaction adjusted annual Base Salary and the then current annual base salary of the highest paid employee in the Executive Management classification is a sum that is equal to twenty percent (20%) of the annual base salary rounded-up to the nearest dollar of the highest paid employee within the Executive Management classification.

(4) One-time Repayment of Previously Suspended Salary Sums. The Parties acknowledge and agree that for the period commencing July 1, 2020 and ending June 30, 2021, Employee agreed to a temporary 10% reduction in Employee's then-Base Salary of \$240,000 pursuant to that certain side letter agreement entitled "June 2020 Second Side Letter Agreement, City Manager Employment Agreement", Contract No. 20CM06070 dated as of June 16, 2020 (the "June 2020 Side Letter"). By execution of this Agreement, City shall pay Employee a one-time lump sum of \$24,000 within thirty (30) calendar days from May 14, 2025, to repay Employee those salary sums suspended pursuant to the June 2020 Side Letter. The \$24,000 lump sum shall be less any applicable payroll taxes, deductions, contributions and other withholdings.

B. Discretionary Salary Review. Employee's Base Salary will be reviewed annually by the City Council following the conduct of an annual performance evaluation as referenced under Section 8 of this Agreement. Following the conclusion of each annual performance review, the City Council may increase Employee's Base Salary in the City Council's sole discretion. Other than those automatic increases authorized pursuant to Sections 6(A)(2)-(A)(3), above, increases to Employee's Base Salary during the Term of this Agreement shall not take effect until memorialized in the form of a written amendment to this Agreement. Other than those automatic increases authorized pursuant to Sections 6(A)(2)-(A)(3), above, Employee shall not be entitled to any other automatic base salary adjustments that may be given to other City employees.

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 Executive 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). Employee's designated beneficiary shall each be named as beneficiary for 100% 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.

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

(4) Executive Leave. City shall provide Employee with the same Executive Leave as provided to Executive Management employees. Notwithstanding, any Executive Leave of more than three (3) consecutive workdays 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 Executive Management employees. Notwithstanding, any vacation leave of more than three (3) consecutive workdays 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 May 14, 2025, 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 Executive Management employees, provided that employee submits a written request to so convert to City Attorney for review and approval by the City Attorney memorialized in writing.

(6) Sick Leave. Employee shall accrue Sick Leave on the same terms as provided to Executive 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. Upon written approval from the City Attorney, 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, Executive 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 Executive 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 Executive Management employees, provided that employee submits a written request to so convert to City Attorney for review and approval by the City Attorney memorialized in writing.

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

(8) Retirement. Employee shall be enrolled in the 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 Executive 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.

(9) Post-Employment Medical Benefit: Employee shall also receive a post-employment medical benefit (the "Post-Employment Medical Benefit") subject to the following terms, conditions, and restrictions:

- a. The Post-Employment Medical Benefit shall cover Employee and shall also cover each of Employee's children until each child reaches the age of 26, at which point in time a child who reaches age 26 shall cease to receive the benefit.
- b. If Employee retires from the City, the Post-Employment Medical Benefit will be provided through the City's CalPERS retiree medical benefit plan for City retirees and their designated family members, up to the prevailing Los Angeles County Kaiser Permanente Plan rate (one-party, two-party, or three-party; basic, combined, or Medicare supplemental; as applicable, based on actual enrollment). Should City cease to contract with CalPERS for retiree medical benefits, City shall offer a comparable medical plan that does not substantially decrease the level of coverage as determined by City.
- c. If Employee retires from an employer other than City, then in lieu of the CalPERS medical benefit plan coverage, Employee shall instead be entitled to a monetary reimbursement from City for uncovered medical expenses incurred and paid by Employee for herself and/or Employee's children. The annual amount of the reimbursement shall be capped at an amount equal to the prevailing annual premium for the Los Angeles County Kaiser Permanente Plan rate (one-party, two-party, or three-party; basic, combined, or Medicare supplemental; as applicable, based on actual enrollment). Upon Employee reaching age sixty-five (65), the cap for the annual amount of the reimbursement shall be reduced to the prevailing annual premium for the one-party Los Angeles County Kaiser Medicare supplemental plan. Reimbursement requests shall be submitted to City on a quarterly basis. All reimbursement requests must be submitted in writing and must be accompanied by proof of enrollment and payment in a form reasonably satisfactory to City. The reimbursement arrangement described under this paragraph shall also be provided to Employee and Employee's children, during any pre-retirement period of unemployment.
- d. Should a subsequent employer provide Employee with post-retirement medical coverage or medical reimbursement for Employee and/or Employee's children at any time after the Post-Retirement Medical Benefit or alternative reimbursement provided by the City has vested, within sixty (60) calendar days of the vesting of the benefits provided by the subsequent employer, Employee must notify the City as to whether Employee elects to: (i) forego the alternative reimbursement provided by City pursuant to paragraph F of this Section, above, and

instead receive benefits provided by the subsequent employer; or (ii) forego the benefit provided by the subsequent employer and instead receive alternative reimbursement provided by the City pursuant to paragraph F of this Section, above. Employee may not receive the Post-Employment Retirement Benefit or an alternative reimbursement while also receiving a similar benefit provided by another employer.

- e. City shall be under no obligation to pay for any medical reimbursement to Employee for medical expenses incurred by Employee or Employee's children when such expenses are covered by medical coverage provided by Employee's current employer.
- f. Employee shall be required to repay City for any sums paid by City to Employee for medical expenses incurred by Employee or Employee's children that were paid by pre- or post-retirement medical coverage provided by any subsequent employer or any other source.
- g. The extent authorized by applicable law; each of Employee's children shall continue to be eligible for the benefits provided under this Section 6(C)(9) until the child reaches age 26, even if Employee dies before the child reaches age 26. The benefits provided under this Section 6(C)(9) and City's obligations to provide such benefits shall terminate completely when the youngest of Employee's children have reached age 26 and Employee has died.

(10) 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.

(11) Automobile. Employee shall be paid a monthly automobile allowance in an amount equal to the monthly automobile allowance provided to members of the City's Executive Management classification as set forth in the most recent iteration of the Executive Benefits Profile. In lieu of the automobile allowance provided herein, Employee may request in writing to receive a City-issued fleet vehicle, subject to the same standard terms, conditions, and restrictions on use set forth in the most recent City Council-approved Executive Benefits Profile.

(12) Education Incentive Pay. Employee shall receive Education Incentive Pay in the same amount and subject to the same terms and conditions as provided to Management employees pursuant to the most recent Executive Benefits Profile, except that Employee shall not be entitled to such pay retroactive to January 1, 2022, as currently provided under Section 4.12 in the Executive Benefits Profile in effect as of the date of the Effective Date of this Agreement.

(13). 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 Executive Management employees.

(14) 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 into a qualified Section 457 Plan

maintained by the City with the annual aggregate amount being the maximum legally authorized contribution limits for the Section 457 Plan plus all legally permissible and applicable catch-up contribution sums. The Parties acknowledge that as of the Effective Date of this Agreement, the maximum annual contribution limit is currently \$23,500 but further acknowledge that this annual contribution limit may increase over the Term of this Agreement to the extent permitted by law. Amounts contributed under this section shall be to the benefit of Employee in accordance with the deferred compensation plan participation agreement. If Employee is terminated without cause as provided under Section 10 of this Agreement, below, Employee shall receive the full amount of the annual contribution for the calendar year in which Employee is so terminated without prorating to account for that portion of the year in which Employee was no longer employed by the City.

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. Commencing with the 2025-2026 fiscal year, the City Council will conduct such annual performance evaluations no sooner than April 1<sup>st</sup> of each fiscal year and shall endeavor to complete such annual evaluations sixty (60) calendar days thereafter. 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. 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) the cash value of eighteen (18) months of Base Salary then in 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.

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 11 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. 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. Termination for Cause.**

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 or federal law that renders it more difficult for Employee to deliver public 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 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 "Executive 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

ALMA MARTINEZ, an individual

By:   
\_\_\_\_\_  
Jessica Ancona, Mayor

By:   
\_\_\_\_\_  
Alma Martinez, Employee

Date: May 14, 2025

Date: May 14, 2025

ATTEST:

By:   
\_\_\_\_\_  
Gabriel Ramirez, City Clerk

APPROVED AS TO FORM:

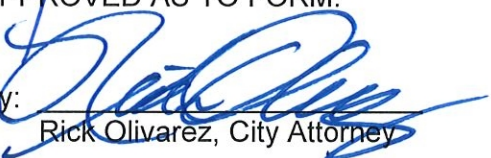
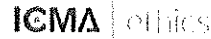
By:   
\_\_\_\_\_  
Rick Olivarez, City Attorney

Exhibit "A"  
ICMA ETHICS CODE



**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 April 2023. The Guidelines for the Code were adopted by the ICMA Executive Board in 1972, and most recently revised in June 2023.

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.** We believe professional management is essential to effective, efficient, equitable, and democratic local government.

**Tenet 2.** Affirm the dignity and worth of local government services and maintain 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 in order to uphold local government professionalism.

**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.

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 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.

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

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.

Conflicting Roles. Members who serve multiple roles – either within the local government

organization or externally – should avoid participating in matters that create either a conflict of interest or the perception of one. They should disclose any potential conflict to the governing body so that it can be managed appropriately.

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 all community members.

GUIDELINES

Effects of Decisions. Members should inform the appropriate elected or appointed official(s) of a decision's anticipated effects on community members.

Promote Equity. Members should ensure fairness and impartiality in accessing programs and services and in the enforcement of laws and regulations. Members should assess and propose solutions to strive to eliminate disparities.

**Tenet 5.** Submit policy proposals to elected officials; provide them with facts, and technical and professional advice about policy options; and collaborate with them in setting goals for the community and organization.

**Tenet 6.** Recognize that elected representatives are accountable to their community for the decisions they make; members are responsible for implementing those decisions.

**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 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 and facilitate active engagement and constructive communication between community members and all local government officials.

GUIDELINE

Engagement. Members should ensure community members can actively engage with their local government as well as eliminate barriers and support involvement of the community in the governance process.

**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.** Manage all personnel matters with fairness and impartiality.

GUIDELINE

Diversity and Inclusion. It is the member's responsibility to recruit, hire, promote, retain, train, and support a diverse workforce at all levels of the organization.

**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.

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.

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.

**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 any time 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