

DIRECTOR OF COMMUNITY DEVELOPMENT EMPLOYMENT AGREEMENT

This DIRECTOR OF COMMUNITY DEVELOPMENT EMPLOYMENT AGREEMENT ("Agreement") is entered into and made effective the 11th day of August, 2014, by and between the CITY OF IRWINDALE, a charter city and municipal corporation ("City") and Gustavo Romo, an individual ("Director of Community Development").

RECITALS

WHEREAS, the City Manager desires to employ Gustavo Romo to serve in the position of Director of Community Development for the City, which position is prescribed by state law, Article VIII of the City's Charter, and Chapter 2.16 of the City's Municipal Code;

WHEREAS, the Director of Community Development desires to perform and assume responsibility for the provision of professional services to the City and its related agencies;

WHEREAS, the parties wish to establish the terms and conditions of the Director of Community Development's services to the City and its related agencies through this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, City and the Director of Community Development hereby agree as follows:

AGREEMENT

1.0 EMPLOYMENT & DUTIES

1.1 Duties. City hereby employs Gustavo Romo as Director of Community Development for the City to perform the functions and duties of the Director of Community Development, as specified in the City's Charter and Municipal Code and in the Government Code of the State of California, and to perform such other legally permissible and proper functions and duties as the City Manager shall, from time-to-time, direct or assign. The Director of Community Development shall perform these functions and duties in an efficient, competent, and ethical manner and shall devote his best efforts and full-time attention thereto.

1.2 Work Schedule. It is recognized that the Director of Community Development is expected to engage in the hours of work that are necessary to fulfill the obligations of the position, must be available at all times, and must devote a great deal of time outside the normal office hours to the business of the City. The Director of Community Development acknowledges that proper performance of the duties of the Director of Community Development will require the Director of Community Development to generally observe normal business hours, as set by the City and may be duly revised from time-to-time, and will also often require the performance of necessary services outside of normal business hours. Notwithstanding the foregoing, the City will permit the Director of Community Development such reasonable "time off" as is customary for exempt employees of the City, so long as the time off does not interfere with normal business. The Director of Community Development's compensation (whether salary or benefits or other allowances) is not based on hours worked, and the Director of Community Development shall not be entitled to any compensation for overtime.

1.3 Other Activities. The Director of Community Development shall focus his professional time, ability, and attention to City business during the term of this Agreement. The Director of Community Development shall not engage, without the express prior written consent of the City Manager, in any other business duties or pursuits whatsoever, or directly or indirectly render any services of a business, commercial, or professional nature to any other person or organization, whether for compensation or otherwise, that is or may be competitive with the City, that might cause a conflict-of-interest with the City, or that otherwise might interfere with the business or operation of the City or the satisfactory performance of the functions and duties of the Director of Community Development.

1.4 Employment Status. The Director of Community Development shall serve at the will and pleasure of the City Manager and understands he is an "at-will" employee subject to summary dismissal without any right of notice or hearing, including any so-called Skelly hearing. The City may terminate the employment of the Director of Community Development at any time, as set forth in Section 3.2 and Section 3.3 below. The Director of Community Development shall not be subject to the City's Personnel Rules and Regulations.

1.5 City Documents. All data, studies, reports and other documents prepared by the Director of Community Development while performing his duties during the term of this Agreement shall be furnished to and become the property of the City, without restriction or limitation on their use. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other materials either created by or provided to the Director of Community Development in connection with the performance of this Agreement shall be held confidential by the Director of Community Development to the extent permitted by applicable law, except as may be required by any governmental agency or court of competent jurisdiction. Such materials shall not be used by the Director of Community Development, without the prior written consent of the City Manager, for any purposes other than the performance of his duties. Additionally, no such materials may be disclosed to any person or entity not connected with the performance of services under this Agreement, except as required by (a) law, (b) any governmental agency, (c) subpoena, or (d) an order issued by a court of competent jurisdiction.

1.6 FLSA Exempt Status. The Director of Community Development agrees that his position is that of an exempt employee for the purposes of the Fair Labor Standards Act.

2.0 COMPENSATION AND REIMBURSEMENT

2.1 Compensation. For the services rendered pursuant to this Agreement, The Director of Community Development's initial base annual compensation shall be One Hundred Twenty Eight Thousand Dollars and No Cents (\$128,000.00) annually ("Salary"), which shall be paid on a pro-rated basis bi-weekly at the same time as other employees of the City are paid. Such Salary shall be adjusted for payroll taxes, workers' compensation, and other payroll-related liability costs.

2.2 Annual Salary Review. The City Manager and the Director of Community Development agree to conduct an annual salary review concurrently with the annual performance evaluation set forth in Section 5.2.

2.3 Effectuating Salary Adjustment. The City Manager and the Director of Community Development agree that the Director of Community Development shall be entitled to so-called cost of living adjustment ("COLA") to the Salary, as received by other Management employees of the Irwindale Management Employee Association ("IMEA"), pursuant to the applicable Memorandum of Understanding between the City of Irwindale and IMEA, as the same may be modified for all such IMEA members by resolution of Council from time to time ("IMEA MOU"). The COLA, if any, shall be considered separate from the adjustment of Salary based upon the Director of Community Development's performance, following the annual performance reviews performed in accordance with Section 5.2 of this Agreement.

3.0 TERM

3.1 Initial Term Approved by City Manager. Pursuant to his powers as the appointing authority for any department head of the City under Irwindale Municipal Code section 2.08.050(H), the City Manager has approved this Agreement for an initial term, which shall automatically expire on September 10, 2014 ("Initial Term"), if the City Council does not approve this Agreement at its August 27, 2014 regular City Council meeting for the Extended Term as specified in Section 3.3 below. The approval of the Initial Term shall be evidenced by City Manger's signature under "Initial Term" at the signature page below. Should the City Council approve this Agreement at its August 27, 2014 regular City Council meeting, this Agreement shall remain in full force and effect beyond the Initial Term and for the Extended Term set forth at Section 3.3.

3.2 Commencement & Effective Date. Director of Community Development shall commence his services hereunder at 8:00 a.m. Pacific daylight savings time on August 11, 2014 ("Effective Date"), and shall terminate at the end of the Initial Term, unless this Agreement is approved by the City Council at its August 27, 2014 meeting, in which case, the term shall continue per Section 3.3.

3.3 Extended Term. If approved by the City Council at its August 27, 2014 regular City Council meeting, this Agreement shall continue until terminated as provided herein ("Extended Term"). The approval of the Extended Term shall be evidenced by the City Manager and Deputy City Clerk's signatures under "Extended Term" at the signature page below. The Director of Community Development will not acquire a property interest in the position.

3.4 Termination by City Manager or the Director of Community Development. The City Manager may terminate this Agreement at any time with or without cause, without notice to the Director of Community Development. If the City Manager terminates this Agreement and the services of the Director of Community Development for cause hereunder, the City shall have no obligation to pay severance, except as provided in Section 4.1 below. Additionally, the Director of Community Development may terminate this Agreement at any time with or without cause, provided he provides the City Manager with at least thirty (30) days' advance written notice. Except as provided in Section 4.1 below, the Director of Community Development expressly agrees that he shall not be entitled to any severance pay as the result of the termination of this Agreement.

3.5 Cause. For the purpose of this Agreement, termination for cause by the City Manager shall include, but not be limited to, the following: material dishonesty, willful or persistent material breach of duties, conviction of a felony, any illegal or unethical act involving personal gain, gross insubordination, gross misfeasance, or gross malfeasance.

4.0 SEVERANCE

4.1 Severance Pay. Except as provided in Sections 3.2 and 3.3, should the City elect to terminate this Agreement and the services of the Director of Community Development without cause, the City shall, upon the effective date of such termination, pay to the Director of Community Development severance in an amount equal to six (6) months of his Salary (as defined in Section 2 above, calculated on a per diem basis), less applicable deductions and excluding deferred compensation or the value of any other benefits.

Notwithstanding the foregoing, should such severance payment exceed the amount authorized to be paid under Government Code Section 53260, the amount paid to the Director of Community Development shall be reduced in the amount necessary to comply with the same.

4.2 Sole Rights. The severance rights provided in this Section 4.0 shall constitute the sole and only entitlement of the Director of Community Development with respect to severance pay in the event of the termination, other than for cause, and Director of Community Development expressly waives any and all other rights with respect to severance pay except as provided herein. Any and all severance rights are conditioned upon execution of standard "Agreement of Separation, Severance, and General Release" attached hereto as Exhibit "A."

5.0 PERFORMANCE EVALUATIONS

5.1 Purpose. The performance review and evaluation process set forth herein is intended to provide review and feedback to the Director of Community Development so as to facilitate a more effective management of the Community Development Department and the City. Nothing herein shall be deemed to alter or change the employment status of the Director of Community Development (as set forth in Section 1.3 above), nor shall this Section 5.0 be construed as requiring "cause" to terminate this Agreement, or the services of the Director of Community Development hereunder.

5.2 Annual Evaluation. The City Manager shall review and evaluate the performance of the Director of Community Development annually within thirty (30) days after each anniversary of the Effective Date. In addition, the Director of Community Development shall submit for the City Manager's consideration at those times established by the City Manager, but at least annually, the Director of Community Development's proposed performance goals and objectives and incorporate the City Manager's suggestions. Such review and evaluation shall be conducted concurrently with an annual salary review, and in accordance with the purpose noted in Section 5.1 above.

5.3 Written Summary. The City Manager may, at his sole discretion, elect to provide a written summary of each performance evaluation to the Director of Community Development within two (2) weeks following the conclusion of the review and evaluation

process, and may, at his sole discretion, schedule at least one (1) closed personnel session with the Director of Community Development to deliver and discuss the evaluation.

6.0 BENEFITS

6.1 Technology/Cell Phone Allowance. City shall provide the Director of Community Development with a technology allowance in the amount of One Hundred Twenty-Five Dollars and No Cents (\$125.00) per month, which shall be paid on a pro-rated basis bi-weekly at the same time as other employees of the City are paid. The Director of Community Development understands that any applicable taxes are his responsibility to pay and not covered by the City.

6.2 Education Incentive. The City shall provide an additional amount of One Thousand Two Hundred Dollars and No Cents (\$1,200.00) per year as an education incentive to the Director of Community Development Salary if he has at minimum a Bachelor's Degree with major course work in urban, regional, or land use planning, environmental planning, geography, or a related field from a four-year college or higher. This compensation will be paid out over twenty-six (26) bi-weekly pay periods in a calendar year.

6.3 Bilingual Pay. The City shall pay Director of Community Development an additional two and one-half percent (2½%) of his Salary as bilingual pay incentive upon passing an appropriate exam, if Director of Community Development is proficient in Spanish and/or American Sign Language and is required to use such language(s) during the course of City business. This compensation will be paid out over twenty-six (26) bi-weekly pay periods in a calendar year.

6.4 Medical, Dental, Vision and Other Insurance. The City shall provide to the Director of Community Development the same group medical, dental, and vision insurance plans offered to IMEA members, as provided in the applicable IMEA MOU. The City shall provide and pay for a life insurance policy for the Director of Community Development with coverage in the amount of One Hundred Thousand Dollars and No Cents (\$100,000.00), as well as coverage for spouse and eligible dependent children in the amount of Five Thousand Dollars and No Cents (\$5,000.00) each. The City shall also provide and pay for an accidental death and dismemberment ("AD&D") insurance policy for the Director of Community Development for coverage in the amount of Twenty Thousand Dollars and No Cents (\$20,000.00). Additional AD&D benefit coverage may be purchased at the Director of Community Development's own expense.

Should Director of Community Development retire from the City, the City shall provide to the Director of Community Development the same retiree medical offered to IMEA members, as provided in the applicable IMEA MOU. The retiree medical will be implemented in accordance with the vesting resolution with California Public Employee's Retirement System ("PERS") which mirrors the state plan for contribution levels. The resolution requires ten (10) years of service, five (5) years of which is with the City, for fifty percent (50%) contribution of the state-designated amount towards retiree medical premiums, and twenty (20) years of service, five (5) years of which is with the City, for one hundred percent (100%) contribution of the state-designated amount towards retiree medical premiums for any PERS medical plan.

6.5 PERS. Director of Community Development shall be enrolled in PERS. The City shall pay the full employer contribution to PERS, and Director of Community Development shall pay the full employee contribution. The payments will be reported as being those of the Director of Community Development and credited to his individual account with PERS.

6.6 Deferred Compensation. The Director of Community Development may, at his sole cost and expense, participate in the City's Deferred Compensation Program. The City currently has two plan options under its Deferred Compensation Program: (a) the International City Management Association Retirement Corporation, and (b) the Nationwide Retirement Solutions plans. The Director of Community Development acknowledges that City does not provide any matching benefits or other payments toward the Deferred Compensation Program.

6.7 Vacation and Sick Leave. From and after the Effective Date, the Director of Community Development shall accrue vacation and sick leave at the rate currently afforded to IMEA members under the applicable IMEA MOU.

6.8 Holidays. From and after the Effective Date, the Director of Community Development shall be entitled to such holidays as are currently afforded to IMEA members under the applicable IMEA MOU.

6.9 Floating Holiday. Commencing on the Effective Date, the Director of Community Development shall have a total bank of one hundred thirty (130) hours (pro-rated) per calendar year available to him for holidays. When any of the above-listed holidays fall on a regular work day (Monday-Thursday) or in the case of a Sunday holiday which is celebrated on the following Monday, as determined by the City Manager, nine and one half (9.5) hours will be deducted from the holiday bank of hours for each such holiday, and the holiday will be celebrated in the normal manner. At the beginning of each calendar year, the City will determine and distribute its holiday schedule. Based thereon, the total number of holidays will be multiplied by nine and one half (9.5) hours and the resulting sum will be deducted from the holiday bank of hours, but in no event will such deduction result in a negative holiday bank account balance. The Director of Community Development will be then be credited with the balance, if any, of the remaining one hundred thirty (130) holiday bank hours which may be used as floating holiday time in a manner similar to that of vacation time. All floating holiday time must be used in the calendar year in which it was credited to the Director of Community Development. Any and all unused floating holiday time will be cashed out in January of the following calendar year.

6.10 Bereavement Leave. From and after the Effective Date, the Director of Community Development shall be entitled to such bereavement leave as is currently afforded to IMEA members under the applicable IMEA MOU.

6.11 Administrative Leave. From and after the Effective Date, the Director of Community Development shall accrue executive leave at the rate of sixty (60) hours per year. Administrative leave shall not be carried over from year-to-year. Any unused leave will be cashed out in January of the following calendar year.

6.12 Jury Duty. The Director of Community Development shall receive full pay and benefits while responding to a jury summons or serving on a jury, for up to ten (10) working days. Any compensation for such jury duty (except travel pay) shall be remitted to the City.

6.13 Business Related Equipment. The City shall supply the Director of Community Development a portable laptop computer (inclusive of office docking station) in order to perform duties as outlined in Section 1.1.

6.14 Additional Benefits. Unless otherwise specified to the contrary in this Agreement, the Director of Community Development shall be entitled to such additional benefits, if any, as are afforded under the IMEA MOU.

7.0 PROFESSIONAL DEVELOPMENT

7.1 Membership. The City encourages the Director of Community Development continued professional development and shall provide payment of appropriate related costs for such activities, including membership in relevant professional organizations, as approved by the City Manager.

7.2 Out-of-Town Meetings & Seminars. The City agrees to reimburse the Director of Community Development the actual cost for registration, travel, lodging, meals, and other expenses incurred by the Director of Community Development while attending overnight, out-of-town meetings or seminars related to his employment with the City, in accordance with the City's policies for expense reimbursement. Moreover, to be eligible the Director of Community Development must have budgeted funds available for same; provided, however, that the City Manager may, in his sole discretion, approve such unbudgeted expenditures if he deems it in the best interests of the City.

7.3 Local Meetings & Seminars. The City agrees to reimburse the Director of Community Development the actual cost of registration, meals, and other expenses necessarily incurred while in attendance at local meetings or seminars related to his employment with City in accordance with the City's policies for expense reimbursement.

7.4 Incidental Expenses. The City agrees to reimburse the Director of Community Development the actual cost of those incidental expenses necessarily incurred by the Director of Community Development while engaged in the business of the City upon the presentation of an appropriate receipt therefor, in accordance with the City's policies for expense reimbursement.

7.5 Approval by City Manager. To be eligible to receive reimbursement for the memberships and travel and other expenses incurred pursuant to this Section 7.0, the Director of Community Development shall obtain advance approval of the City Manager where practical to do so or, in the event such approval cannot be timely obtained, advance approval from the Assistant City Manager.

8.0 BONDS AND INDEMNIFICATION

8.1 Indemnification. The City shall defend, hold harmless, and indemnify the Director of Community Development against any tort, professional liability, claim or demand, or other legal action arising out of an alleged act or omission occurring in the performance of the Director of Community Development services under this Agreement. This section shall not apply to any intentional tort or crime committed by the Director of Community Development, to any action outside the course and scope of the services provided by the Director of Community Development under this Agreement, or any other intentional or malicious conduct or gross negligence of the Director of Community Development.

8.2 Bonds. City shall bear the full cost of any fidelity or other bonds, which may be required in the performance of Director of Community Development services under this Agreement.

9.0 GENERAL PROVISIONS

9.1 Entire Agreement. This Agreement represents the entire agreement between the parties and supersedes any and all other agreements, either oral or in writing, between the parties with respect to the Director of Community Development employment by the City and contains all of the covenants and agreements between the parties with respect to such employment. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by either party, or anyone acting on behalf of either party, which are not embodied herein, and that no other agreement, statement or promises not contained in this Agreement shall be valid or binding upon either party.

9.2 Amendment. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing, which amendment shall require City Council approval, except where City Manager approval is expressly authorized herein.

9.3 Notices. Any notice required or permitted by this Agreement shall be in writing and shall be personally served or shall be sufficiently given when served upon the other party as sent by United States Postal Service, postage prepaid and addressed as follows:

To City:

City Manager
City of Irwindale
5050 North Irwindale Avenue
Irwindale, California 91706

To Director of Community Development:

Gustavo Romo
(Address on file)

Notices shall be deemed given as of the date of personal service or upon the date of deposit in the course of transmission with the United States Postal Service.

9.4 Conflicts Prohibited. During the term of this Agreement, the Director of Community Development shall not engage in any business or transaction or maintain a financial interest which conflicts, or reasonably might be expected to conflict, with the proper discharge of the Director of Community Development duties under this Agreement. The Director of Community Development shall comply with all requirements of law, including but not limited

to, Sections 87100 et seq., Section 1090 and Section 1125 of the Government Code, and all other similar statutory and administrative rules.

9.5 Effect of Waiver. The failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

9.6 Partial Invalidity. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

9.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, which are in full force and effect as of the date of execution and delivery by each party hereto.

9.8 AB 1344. Assembly Bill 1344 was enacted as a means to provide greater transparency in local government and institute certain limitations on compensation paid to local government executives. AB 1344 also requires that contracts between local agencies and its employees include provisions requiring an employee who is convicted of a crime involving an abuse of his office or position to provide reimbursement to the local agency (California Government Code §§ 53243 - 53243.4). These sections are set forth in full in Exhibit "B" attached hereto and incorporated herein.

Accordingly, the parties agree that it is their mutual intent to fully comply with the Government Code sections that are part of AB 1344 and all other applicable law as it exists as of the date of execution of this Amendment and as such laws may be amended from time to time thereafter. Specifically, AB 1344 includes the following Government Code sections which are hereby incorporated by this Agreement:

§53243. Reimbursement of paid leave salary required upon conviction of crime involving office or position.

§53243.1. Reimbursement of legal criminal defense upon conviction of crime involving office or position.

§53243.2. Reimbursement of cash settlement upon conviction of crime involving office or position.

§53243.3. Reimbursement of non-contractual payments upon conviction or crime involving office or position.

§53243.4. Abuse of office or position defined.

Director of Community Development has reviewed, is familiar with, and agrees to comply fully with each of these provisions if any of these provisions are applicable to Director of Community Development, including that Director of Community Development agrees that any

cash settlement or severance related to the termination that Director of Community Development may receive from the City shall be fully reimbursed to the local agency if Director of Community Development is convicted of a crime involving an abuse of his or her office or position.

9.9 Independent Legal Advice. The City and the Director of Community Development represent and warrant to each other that each has received legal advice from independent and separate legal counsel with respect to the legal effect of this Agreement, and the City and the Director of Community Development further represent and warrant that each has carefully reviewed this entire Agreement and that each and every term thereof is understood and that the terms of this Agreement are contractual and not a mere recital. This Agreement shall not be construed against the party or its representatives who drafted it or who drafted any portion thereof.

[SIGNATURES ON FOLLOWING PAGE]

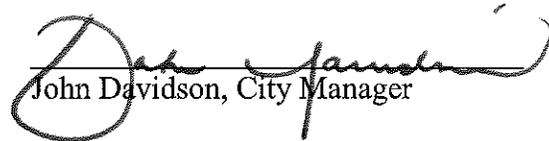
IN WITNESS WHEREOF, the City of Irwindale has caused this Agreement to be signed and executed on its behalf by its City Manager, and duly attested by its officers thereunto duly authorized, and the Director of Community Development has signed and executed this Agreement, all in triplicate.

CITY OF IRWINDALE

Approval of **Initial Term**:


John Davidson, City Manager

Approval of **Extended Term**:


John Davidson, City Manager

ATTEST:


Laura Nieto, Deputy City Clerk

APPROVED AS TO FORM:


Fred Galante, City Attorney

DIRECTOR OF COMMUNITY
DEVELOPMENT


Gustavo Romo

EXHIBIT "A"

AGREEMENT OF SEPARATION, SEVERANCE, AND GENERAL RELEASE

1. PARTIES

This Agreement of Separation, Severance, and General Release (hereinafter referred to as the "AGREEMENT") is entered into by and between the City of Irwindale, a charter city and municipal corporation (hereinafter referred to as "THE CITY"), and Gustavo Romo, an individual (hereinafter referred to as "EMPLOYEE").

2. RECITALS

2.1. EMPLOYEE was hired by THE CITY as an at-will Director of Community Development effective August 11, 2014, serving at the pleasure of the City Manager of THE CITY pursuant to a written contract, a copy of which is attached hereto as Exhibit "A" ("THE CONTRACT"). EMPLOYEE is currently years old.

2.2. THE 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 THE 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 THE CITY and EMPLOYEE by means of EMPLOYEE's voluntary separation as of , . This AGREEMENT sets forth the full and complete terms and conditions concluding EMPLOYEE's employment relationship with the 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 to him at the time of his voluntary separation 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 THE CITY.

3.2. In exchange for the waivers and releases set forth herein, THE 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 THE 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 "THE 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 HIPAA, 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.

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 he knowingly and voluntarily, for just compensation in addition to anything of value to which EMPLOYEE was already entitled, waives and releases any rights

he may have under the ADEA and/or OWBPA. EMPLOYEE further acknowledges that he 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, his rights under the ADEA and OWBPA, and of the legal significance of his waiver of any possible claims he 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 he may have under the ADEA, the OWBPA and similar age discrimination laws; but may, in the exercise of his 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 he should consult with an attorney prior to executing this AGREEMENT;
- (f) EMPLOYEE has discussed this waiver and release with, and been advised with respect thereto by, his counsel of choice, and that he does not need any additional time within which to review and consider this AGREEMENT;
- (g) EMPLOYEE has **seven (7) days following his 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 THE 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. UNKNOWN CLAIMS

In relation to the release provisions of Paragraphs 3 and 4 above, EMPLOYEE understands that California Civil Code section 1542 reads as follows:

"General Release--Claims Extinguished"

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release; which if known by him must have materially affected his settlement with the debtor."

EMPLOYEE hereby waives the protection of California Civil Code section 1542.

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 THE CITY or THE 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 agrees to indemnify and hold harmless THE CITY or THE CITY PARTIES from, and against, any and all claims, damages, or liabilities sustained by them as a direct result of the violation or breach of the covenants, warranties, and representations undertaken pursuant to the provisions of this AGREEMENT. EMPLOYEE understands and agrees that he shall be exclusively liable for the payment of all taxes for which he is responsible, if any, as a result of his receipt of the consideration referred to in Paragraph 3 of this AGREEMENT. In addition, EMPLOYEE agrees fully to indemnify and hold the CITY PARTIES harmless for payment of tax obligations as may be required 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: EMPLOYEE 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 THE CITY with consultation services (including deposition or trial testimony) in any litigation involving THE CITY which is reasonably related to acts or occurrences transpiring during his employment. Said services shall be provided as needed by THE CITY at a rate of \$100.00 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 the City Clerk, all City keys, equipment, computer identification cards or codes, and other equipment or materials or confidential documents provided to or obtained by EMPLOYEE during the course of his employment with THE CITY.

7.9. No Pending Claims and/or Actions: EMPLOYEE represents that he has not filed any complaints or charges against THE CITY or THE CITY PARTIES with any local, state or federal agency or court; that he 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 THE CITY or THE CITY PARTIES on behalf of EMPLOYEE, whenever or where ever filed, he will request such agency or court to withdraw from the matter forthwith.

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 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 THE CITY of any liability of any kind. THE 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 THE CITY.

As to THE CITY:

City Manager
City of Irwindale
5050 North Irwindale Avenue
Irwindale, California 91706

IN WITNESS WHEREOF, THE 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 THE CITY and EMPLOYEE, if any, have approved as to form as of the dates written below.

DATED: _____

EMPLOYEE

By: _____
[NAME]

THE CITY

DATED: _____

By: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Fred Galante, City Attorney

[EMPLOYEE's LAW FIRM]

By: _____
[Counsel]

EXHIBIT "B"

GOVERNMENT CODE SECTION 53243-53243.4 and 53260(a)

53243. On or after January 1, 2012, any contract executed or renewed between a local agency and an officer or employee of a local agency that provides paid leave salary offered by the local agency to the officer or employee pending an investigation shall require that any salary provided for that purpose be fully reimbursed if the officer or employee is convicted of a crime involving an abuse of his or her office or position.

53243.1. On or after January 1, 2012, any contract executed or renewed between a local agency and an officer or employee of a local agency that provides funds for the legal criminal defense of an officer or employee shall require that any funds provided for that purpose be fully reimbursed to the local agency if the officer or employee is convicted of a crime involving an abuse of his or her office or position.

53243.2. On or after January 1, 2012, any contract of employment between an employee and a local agency employer shall include a provision which provides that, regardless of the term of the contract, if the contract is terminated, any cash settlement related to the termination that an employee may receive from the local agency shall be fully reimbursed to the local agency if the employee is convicted of a crime involving an abuse of his or her office or position.

53243.3. On or after January 1, 2012, if a local agency provides, in the absence of a contractual obligation, for any of the payments described in this article, then the employee or officer receiving any payments provided for those purposes shall fully reimburse the local agency that provided those payments in the event that the employee or officer is convicted of a crime involving the abuse of his or her office or position.

53243.4. For purposes of this article, "abuse of office or position" means either of the following:

(a) An abuse of public authority, including, but not limited to, waste, fraud, and violation of the law under color of authority.

(b) A crime against public justice, including, but not limited to, a crime described in Title 5 (commencing with Section 67) or Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

53260. (a) All contracts of employment between an employee and a local agency employer shall include a provision which provides that regardless of the term of the contract, if the contract is terminated, the maximum cash settlement that an employee may receive shall be an amount equal to the monthly salary of the employee multiplied by the number of months left on the unexpired term of the contract. However, if the unexpired term of the contract is greater than 18 months, the maximum cash settlement shall be an amount equal to the monthly salary of the employee multiplied by 18.

GOVERNMENT CODE SECTION 3511.1-3511.2

3511.1. As used in this chapter, the following definitions apply:

(a) "Compensation" means annual salary, stipend, or bonus, paid by a local agency employer to a local agency executive.

(b) "Cost-of-living" means the California Consumer Price Index for Urban Wage Earners and Clerical Workers as calculated by the Department of Industrial Relations.

(c) "Local agency" means a county, city, whether general law or chartered, city and county, town, school district, municipal corporation, district, political subdivision, or any board, commission, or agency thereof, or other local public agency.

(d) "Local agency executive" means any person employed by a local agency who is not subject to the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500)), Chapter 5 (commencing with Section 45100) of Part 25 of Division 3 of Title 2 of the Education Code, or Chapter 4 (commencing with Section 88000) of Part 51 of Division 7 of Title 3 of the Education Code, and who meets either of the following requirements:

- (1) The person is the chief executive officer of the local agency.
- (2) The person is the head of a department of a local agency.

3511.2. On or after January 1, 2012, any contract executed or renewed between a local agency and a local agency executive shall not provide for the following:

(a) An automatic renewal of a contract that provides for an automatic increase in the level of compensation that exceeds a cost-of-living adjustment.

(b) A maximum cash settlement that exceeds the amounts determined pursuant to Article 3.5 (commencing with Section 53260) of Chapter 2 of Part 1 of Division 2 of Title 5.