

## **FINANCE DIRECTOR EMPLOYMENT AGREEMENT**

This FINANCE DIRECTOR EMPLOYMENT AGREEMENT ("Agreement") is entered into and made effective the 23rd day of January 2013, by and between the CITY OF IRWINDALE, a charter city and municipal corporation ("City") and EVA CARREON, an individual ("Finance Director").

### **RECITALS**

WHEREAS, the City Manager desires to employ Eva Carreon to serve in the position of Finance Director 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 Finance Director desires to perform and assume responsibility for the provisions of professional services to the City and its related agencies;

WHEREAS, the parties wish to establish the terms and conditions of the Finance Director'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 Finance Director hereby agree as follows:

### **AGREEMENT**

#### **1.0 EMPLOYMENT & DUTIES**

1.1 Duties. City hereby employs Eva Carreon as finance director for the City to perform the functions and duties of the finance director, 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 Finance Director shall perform these functions and duties in an efficient, competent, and ethical manner and shall devote her best efforts and full-time attention thereto.

1.2 Work Schedule. It is recognized that the Finance Director 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 Finance Director acknowledges that proper performance of the duties of the Finance Director will require the Finance Director 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 Finance Director 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 Finance Director's compensation (whether salary or benefits or other allowances) is not based on hours worked, and the Finance Director shall not be entitled to any compensation for overtime.

1.3 Other Activities. The Finance Director shall focus her professional time, ability, and attention to City business during the term of this Agreement. The Finance Director 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 Finance Director.

1.4 Employment Status. The Finance Director shall serve at the will and pleasure of the City Manager and understands she 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 Finance Director at any time, as set forth in Section 3.2 and Section 3.3 below. The Finance Director 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 Finance Director while performing her 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 Finance Director in connection with the performance of this Agreement shall be held confidential by the Finance Director 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 Finance Director, without the prior written consent of the City Manager, for any purposes other than the performance of her 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 Finance Director agrees that her 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 Finance Director'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 Finance Director 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 Finance Director agree that the Finance Director 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 Finance Director's performance, following the annual performance reviews performed in accordance with Section 5.2 of this Agreement.

### **3.0 TERM**

3.1 Commencement & Effective Date. Director of Finance shall commence her services hereunder at 8:00 a.m. Pacific daylight savings time on January 24, 2013, or such earlier date upon which the City Manager and Director of Finance may mutually agree, in either event such date will also be deemed the effective date of this Agreement ("Effective Date").

3.2 Termination by City Manager or the Finance Director. The City Manager may terminate this Agreement at any time with or without cause, without notice to the Finance Director. If the City Manager terminates this Agreement and the services of the Finance Director for cause hereunder, the City shall have no obligation to pay severance, except as provided in Section 4.1 below. Additionally, the Finance Director may terminate this Agreement at any time with or without cause, provided she provides the City Manager with at least thirty (30) days' advance written notice prior to the effective date of termination, unless a shorter period is acceptable to the City Manager. Except as provided in Section 4.1 below, the Finance Director expressly agrees that she shall not be entitled to any severance pay as the result of the termination of this Agreement initiated by the Finance Director.

3.3 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 Finance Director without cause, the City shall, upon the effective date of such termination, pay to the Finance Director severance in an amount equal to six (6) months of her 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 Finance Director 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 Finance Director with respect to severance pay in the event of the termination, other than for cause, and Finance Director 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 Finance Director so as to facilitate a more effective management of the Finance Department and the City. Nothing herein shall be deemed to alter or change the employment status of the Finance Director (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 Finance Director hereunder.

5.2 Annual Evaluation. The City Manager shall review and evaluate the performance of the Finance Director annually within thirty (30) days after each anniversary of the Effective Date. In addition, the Finance Director shall submit for the City Manager's consideration at those times established by the City Manager, but at least annually, the Finance Director'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 Finance Director 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 Finance Director to deliver and discuss the evaluation.

## **6.0 BENEFITS**

6.1 City Treasurer's Stipend. The City shall provide the Finance Director a City Treasurer's Stipend in the amount of Six Hundred Dollars and No Cents (\$600.00) per year.

6.2 Technology/Cell Phone Allowance. City shall provide the Finance Director with a technology allowance in the amount of One Thousand Five Hundred Dollars and No Cents (\$1,500.00) per year. The Finance Director understands that any applicable taxes are her responsibility to pay and not covered by the City.

6.3 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 Finance Director's Salary if she has at minimum a Bachelor's Degree in accounting, business administration, finance, economics, or a related field at a four-year college or higher. This compensation will be paid out over twenty-six (26) bi-weekly pay periods in a calendar year.

6.4 Bilingual Pay. The City shall pay Finance Director an additional two and one-half percent (2½%) of her Salary as bilingual pay incentive if Finance Director 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.

6.5 Medical, Dental, Vision and Other Insurance. The City shall provide to the Finance Director the same group medical, dental, vision, and life insurance plans and/or programs offered to IMEA members, as provided in the applicable IMEA MOU. The City shall provide and pay for a life insurance policy for the Finance Director in the amount of One Hundred Thousand Dollars and No Cents (\$100,000.00). The City shall also provide and pay for an accidental death and dismemberment insurance policy for the Finance Director in the amount of Twenty Thousand Dollars and No Cents (\$20,000.00).

Should the Finance Director retire from the City, medical insurance will continue into retirement and will be implemented in accordance with the amount, terms and qualifications for receipt of such retiree medical benefits afforded to IMEA members under the applicable IMEA MOU.

6.6 PERS. Finance Director shall be enrolled in the California Public Employee's Retirement System ("PERS") and City shall pay the full employer contribution and the portion, if any, of the employee's contribution of the Finance Director's contribution as provided in the applicable IMEA MOU. The payments will be reported as being those of the Director of Finance and credited to her individual account with PERS.

6.7 PARS. The City participates in PARS, which affords all full time employees the retirement benefit commonly referred to as "1% at 55." The City shall pay the Finance Director's share of all required contributions to PARS, as provided in the applicable IMEA MOU.

6.8 Deferred Compensation. The Finance Director may, at her 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 ("ICMA") Retirement Corporation, and (b) the Nationwide Retirement Solutions plans. The Finance Director acknowledges that City does not provide any matching benefits or other payments toward the Deferred Compensation Program.

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

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

6.11 Floating Holiday. Commencing on the Effective Date, the Finance Director shall have a total bank of one hundred thirty (130) hours (pro-rated) per calendar year available to her 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 Finance Director 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 Finance Director. Any and all unused floating holiday time will be cashed out in January of the following calendar year.

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

6.13 Administrative Leave. From and after the Effective Date, the Finance Director 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.

6.14 Jury Duty. The Finance Director 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.

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

6.16 Additional Benefits. Unless otherwise specified to the contrary in this Agreement, the Finance Director 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 Finance Director's 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 Finance Director the actual cost for registration, travel, lodging, meals, and other expenses incurred by the Finance Director while attending overnight, out-of-town meetings or seminars related to her employment with the City, in accordance with the City's policies for expense reimbursement. Moreover, to be eligible the Finance Director 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 Finance Director the actual cost of registration, meals, and other expenses necessarily incurred while in

attendance at local meetings or seminars related to her employment with City in accordance with the City's policies for expense reimbursement.

7.4 Incidental Expenses. The City agrees to reimburse the Finance Director the actual cost of those incidental expenses necessarily incurred by the Finance Director 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 Finance Director 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 Finance Director 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 Finance Director's services under this Agreement. This section shall not apply to any intentional tort or crime committed by the Finance Director, to any action outside the course and scope of the services provided by the Finance Director under this Agreement, or any other intentional or malicious conduct or gross negligence of the Finance Director.

8.2 Bonds. City shall bear the full cost of any fidelity or other bonds, which may be required in the performance of Finance Director's 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 Finance Director's 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:

To Finance Director:

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

Eva Carreon

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 Finance Director 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 Finance Director's duties under this Agreement. The Finance Director 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.

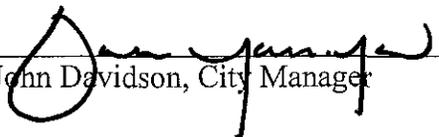
9.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, which are in full force and effect as of the date of execution and delivery by each party hereto.

9.8 Independent Legal Advice. The City and the Finance Director 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 Finance Director 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.

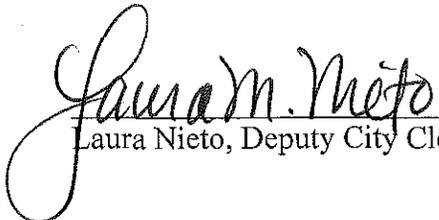
[SIGNATURES ON FOLLOWING PAGE]

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 Finance Director has signed and executed this Agreement, all in triplicate.

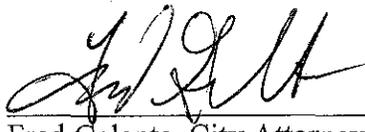
CITY OF IRWINDALE

  
John Davidson, City Manager

ATTEST:

  
Laura Nieto, Deputy City Clerk

APPROVED AS TO FORM:

  
Fred Galante, City Attorney

FINANCE DIRECTOR

  
Eva Carreon

## 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 EVA CARREON, an individual (hereinafter referred to as "EMPLOYEE").

### 2. RECITALS

2.1. EMPLOYEE was hired by THE CITY as an at-will Finance Director effective January 23, 2013 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 [REDACTED] 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 [REDACTED], [REDACTED]. 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 her at the time of her 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 [REDACTED] and [REDACTED] cents (\$ [REDACTED] 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 [REDACTED], [REDACTED] (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 she knowingly and voluntarily, for just compensation in addition to anything of value to which EMPLOYEE was already entitled, waives and releases any rights she may have under the ADEA and/or OWBPA. EMPLOYEE further acknowledges that she 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, her rights under the ADEA and OWBPA, and of the legal significance of her waiver of any possible claims she 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 she may have under the ADEA, the OWBPA and similar age discrimination laws; but may, in the exercise of her 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 she 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, her counsel of choice, and that she does not need any additional time within which to review and consider this AGREEMENT;

(g) EMPLOYEE has **seven (7) days following her 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 her favor at the time of executing the release, which if known by her must have materially affected her 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 she shall be exclusively liable for the payment of all taxes for which she is responsible, if any, as a result of her 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 her 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 her employment with THE CITY.

7.9. No Pending Claims and/or Actions: EMPLOYEE represents that she has not filed any complaints or charges against THE CITY or THE CITY PARTIES with any local, state or federal agency or court; that she 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, she 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: \_\_\_\_\_  
Eva Carreon

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]