

**PUBLIC WORKS DIRECTOR/CITY ENGINEER EMPLOYMENT AGREEMENT**

This Agreement is made and entered into this 24th day of September 2001, by and between the CITY OF IRWINDALE, a municipal corporation (“CITY” hereinafter), and KWOK TAM (hereinafter referred to as “PUBLIC WORKS DIRECTOR/CITY ENGINEER”).

**A. Recitals.**

(i) The City Council of the City of Irwindale (hereinafter called the “CITY COUNCIL”) desires to retain the services of KWOK TAM as PUBLIC WORKS DIRECTOR/CITY ENGINEER.

(ii) It is the desire of the CITY COUNCIL to establish certain conditions of employment and set certain working conditions of PUBLIC WORKS DIRECTOR/CITY ENGINEER.

**B. Agreement.**

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

**1. Duties.**

A. CITY hereby agrees to employ KWOK TAM as PUBLIC WORKS DIRECTOR/CITY ENGINEER of the City of Irwindale to perform legally permissible and proper duties and functions consistent with the office of PUBLIC WORKS DIRECTOR/CITY ENGINEER.

cc: Kathy } 04.04.02  
Abe  
Colin Sanner - 02/10/10

SCANNED  
DATE 08-11-08  
SIGNED JG

**2. Term.**

A. The term of this Agreement shall be from SEPTEMBER 24, 2001, until termination by either party in accordance with the provisions set forth in this section and Section 4 hereof. During the term of this Agreement, PUBLIC WORKS DIRECTOR/CITY ENGINEER shall be a full-time PUBLIC WORKS DIRECTOR/CITY ENGINEER. The term "full-time" shall not be construed to prohibit occasional writing, teaching, or consulting performed on PUBLIC WORKS DIRECTOR/CITY ENGINEER's time off, so long as the City Manager is advised of and approves such additional activities of PUBLIC WORKS DIRECTOR/CITY ENGINEER in advance, in writing.

B. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of PUBLIC WORKS DIRECTOR/CITY ENGINEER to resign at any time from his position with CITY. Prior to September 24, 2003, PUBLIC WORKS DIRECTOR/CITY ENGINEER shall give ninety (90) days written notice to CITY prior to the effective date of resignation. Subsequent to September 24, 2003, PUBLIC WORKS DIRECTOR/CITY ENGINEER shall give thirty (30) days notice. Should these noticing requirements not be met, PUBLIC WORKS DIRECTOR/CITY ENGINEER will pay the CITY the lump sum of his full salary for the period of time he leaves early (not including the value of benefits).

**3. Residency.**

The parties hereto agree that PUBLIC WORKS DIRECTOR/CITY ENGINEER is not required to establish residency within the City of Irwindale.

**4. Termination.**

A. PUBLIC WORKS DIRECTOR/CITY ENGINEER is an "at-will" employee serving at the pleasure of the CITY COUNCIL and subject to dismissal without any right of notice or hearing, including any Skelly hearing. CITY may in its absolute discretion, if approved by three (3) members of the CITY COUNCIL at a meeting held in accordance with the Brown Act (Gov. Code § 54950 *et. seq.*), terminate the employment of PUBLIC WORKS DIRECTOR/CITY ENGINEER at any time, with or without cause. If PUBLIC WORKS DIRECTOR/CITY ENGINEER is terminated without cause before June 30, 2003, CITY agrees to pay to PUBLIC WORKS DIRECTOR/CITY ENGINEER the lump sum equivalent of all accrued leave as well as full salary (not including the value of benefits) that would have been earned during three (3) months employment from the official date of such termination. PUBLIC WORKS DIRECTOR/CITY ENGINEER shall not be entitled to any other benefits or payment after the last day of service except (1) said severance payment, and (2) benefits or payments accrued prior to the last day of service. The last day of service shall be as determined by the CITY COUNCIL.

B. Notwithstanding any other provision of this Section 4, CITY shall not be obligated to make any severance payment as described herein if PUBLIC WORKS DIRECTOR/CITY ENGINEER is terminated for cause including, but not limited to, corrupt or willful misconduct in office, malfeasance, misfeasance or nonfeasance constituting grounds for removal from office or conviction of an illegal act involving moral turpitude. In the event PUBLIC WORKS DIRECTOR/CITY ENGINEER is under investigation for any of the foregoing reasons, CITY may withhold part or all of such severance pay until it is determined if charges will be filed, and if charges are filed, until final judgment is rendered.

C. The severance rights provided in this Section shall be in lieu of any other notice, hearing or severance rights PUBLIC WORKS DIRECTOR/CITY ENGINEER may have under any other code or regulation of CITY and PUBLIC WORKS DIRECTOR/CITY ENGINEER expressly waives all such rights including the notice and hearing procedure under CITY's Code except as provided herein.

**5. Salary.**

CITY agrees to compensate PUBLIC WORKS DIRECTOR/CITY ENGINEER for all services rendered hereunder, with a monthly salary of \$6,193.00 - \$7,528.00, commencing on September 24, 2001, to be paid biweekly. Range shall increase to \$6,585.00 - \$7,967.00 should KWOK TAM possess a State Traffic License.

**6. Auto Allowance**

PUBLIC WORKS DIRECTOR/CITY ENGINEER will either be provided with a City vehicle for official and personal use as approved by the City Manager, or a monthly automobile allowance of \$350, at the discretion of COUNCIL.

**7. Sick Leave, Vacation and Holidays.**

PUBLIC WORKS DIRECTOR/CITY ENGINEER shall be entitled to sick leave at the same rate as Management employees of CITY. PUBLIC WORKS DIRECTOR/CITY ENGINEER shall also be entitled to holidays and vacation on the same basis as Management employees of CITY. Both will have begun to accrue on September 24, 2001. PUBLIC WORKS DIRECTOR/CITY ENGINEER will also be credited with one hundred (100) hours of vacation time which shall be deemed accrued effective September 24, 2001.

**8. Indemnification.**

CITY shall defend, hold harmless and indemnify PUBLIC WORKS DIRECTOR/CITY ENGINEER against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the

performance of PUBLIC WORKS DIRECTOR/CITY ENGINEER's duties in accordance with the provisions of California Government Code §825. CITY may compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered therefrom. This covenant shall survive the termination of this Agreement.

**9. Expenses.**

PUBLIC WORKS DIRECTOR/CITY ENGINEER shall be reimbursed, or CITY may pay directly, for business, travel and related expenses incurred by PUBLIC WORKS DIRECTOR/CITY ENGINEER in accordance with CITY expense policies.

**10. Other Terms and Conditions of Employment.**

A. CITY COUNCIL, in consultation with PUBLIC WORKS DIRECTOR/CITY ENGINEER, shall fix any such other terms and conditions of employment as it may determine from time to time, relating to the performance of PUBLIC WORKS DIRECTOR/CITY ENGINEER, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Irwindale Municipal Code, any charter, provision, ordinance or resolution of the CITY, or other applicable law.

B. Working conditions, rules and regulations applicable to Management employees of CITY, as such rules now exist or hereinafter may be amended, shall also apply to PUBLIC WORKS DIRECTOR/CITY ENGINEER, except where such working conditions are inconsistent with the terms contained herein.

C. PUBLIC WORKS DIRECTOR/CITY ENGINEER will undergo and pass a standard CITY medical examination within thirty (30) days.

D. At least once annually, (September of each year) the PUBLIC WORKS DIRECTOR/CITY ENGINEER's performance shall be evaluated based on mutually agreed upon goals and objectives. At that time, PUBLIC WORKS DIRECTOR/CITY ENGINEER's compensation shall also be reviewed, although the CITY is under no obligation to grant salary increases.

E. PUBLIC WORKS DIRECTOR/CITY ENGINEER shall be granted the same package of benefits as provided to CITY's Management employees and those benefits outlined in the CITY's management compensation program. This includes, but is not limited to, life-time medical insurance, should PUBLIC WORKS DIRECTOR/CITY ENGINEER execute an eligible PERS retirement from CITY.

**11. 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:

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

To PUBLIC WORKS DIRECTOR/CITY ENGINEER:

KWOK TAM

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.

**12. General Provisions.**

A. The text herein shall constitute the entire agreement between the parties.

B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of PUBLIC WORKS DIRECTOR/CITY ENGINEER.

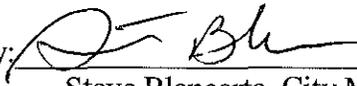
C. This Agreement shall become effective upon execution.

D. If any provision or any portion thereof contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable and shall not be affected and shall remain in full force and effect.

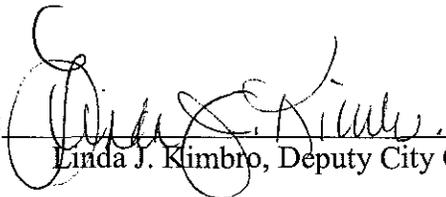
E. In the event of any legal action between the parties hereto to enforce the provisions of this Agreement, the prevailing party shall be entitled to reasonable legal fees and costs as fixed by the Court.

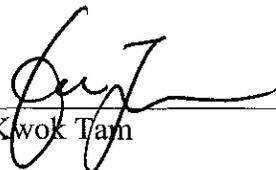
IN WITNESS WHEREOF, CITY has caused this Agreement to be signed and duly executed on its behalf by its Mayor, and duly attested by its Deputy City Clerk, and PUBLIC WORKS DIRECTOR/CITY ENGINEER has signed and executed this Agreement, in triplicate, the day and year first above written.

THE CITY OF IRWINDALE, A Municipal Corporation

By:   
Steve Blancarte, City Manager

ATTEST:

By:   
Linda J. Kimbro, Deputy City Clerk

By:   
Kwok Tam

Approved as to form:

  
David J. Aleshire, City Attorney

State of California  
County of Los Angeles  
City of Irwindale

I, Linda J. Kimbro, Deputy City Clerk, do hereby certify that the attached is a full, true and correct copy of the original, Public Works Director / City Engineer Employment Agmt and on file in the City files of the City of Irwindale, and that I have carefully compared the same with the original.

  
Deputy City Clerk

FIRST AMENDMENT TO PUBLIC WORKS DIRECTOR/CITY ENGINEER  
EMPLOYMENT AGREEMENT

This FIRST AMENDMENT PUBLIC WORKS DIRECTOR/CITY ENGINEER EMPLOYMENT AGREEMENT AMENDMENT ("Amendment") is effective September 25, 2013, by and between the CITY OF IRWINDALE, a charter law City and municipal corporation ("City") and WILLIAM TAM, an individual ("Tam".)

RECITALS

WHEREAS, Tam has been serving as Public Works Director/City Engineer since September 24, 2001, per the Public Works Director/City Engineer Employment Agreement ("Agreement") approved and executed on September 24, 2001;

WHEREAS, Tam is now known as "WILLIAM" TAM, with WILLIAM TAM and KWOK TAM being one and the same person;

WHEREAS, by this Amendment, the parties wish to update the language in the Agreement to make the provisions consistent with the City's Municipal Code, Charter and City Council-City Manager form of government, reflect the current compensation being paid to Tam, and incorporate new legal provisions required to be included in the Agreement pursuant to AB 1344;

WHEREAS, the parties hereby acknowledge that Tam receives the same benefits as the Management employees of the City, which are now referred to as the Irwindale Management Employee Association ("IMEA"); as such, any references in the Agreement to City's "Management employees" shall mean the IMEA, and Mr. Tam shall receive such benefits (including, but not limited to, cost-of-living adjustments, if any) received by IMEA pursuant to the then-applicable Memorandum of Understanding between the City and IMEA;

WHEREAS, the City and Tam recognize and agree that no other purported amendments to the Agreement is recognized and any such purported amendments are null and void and that the purpose of this Amendment is to approve the current salary for Tam and not a ratification of any prior purported amendments to the Agreement insofar as they were not authorized by the City Council.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions contained herein, City and Tam hereby agree as follows:

1. Termination. Subsection 4.A. of the Agreement shall be amended in its entirety to make such provision consistent with the City' Municipal Code, Charter and City Council-City

Manager form of government, which provision shall read as follows, with Subsections 4.B and C remaining unmodified and in full force and effect:

**“4. Termination.**

A. Public Works Director/City Engineer is an "at-will" employee serving at the pleasure of the City Manager and subject to dismissal without any right of notice or hearing, including any Skelly hearing. City Manager may in his/her absolute discretion, terminate the employment of Public Works Director/City Engineer at any time, with or without cause. If Public Works Director/City Engineer is terminated without cause, City agrees to pay to Public Works Director/City Engineer the lump sum equivalent of all accrued leave as well as full salary (not including the value of benefits) that would have been earned during three (3) months employment from the official date of such termination. Public Works Director/City Engineer shall not be entitled to any other benefits or payment after the last day of service except (1) said severance payment, and (2) benefits or payments accrued prior to the last day of service. The last day of service shall be as determined by the City. Notwithstanding the foregoing, should such severance payment exceed the amount authorized to be paid under Government Code Section 53260, the amount paid to the Public Works Director/City Engineer shall be reduced in the amount necessary to comply with the same.”

2. Salary. Section 5 of the Agreement, entitled “Salary”, is hereby amended in its entirety to read as follows, and the City hereby acknowledges that prior compensation paid to Tam in accordance with adopted City Salary Resolutions since the date of the Agreement are hereby ratified, which ratification is solely intended to approve the prior salary paid to Tam and not intended as an approval or ratification of any prior purported amendment to the Agreement without City Council authorization:

**“5. Salary.**

For the services rendered pursuant to this Agreement, Public Works Director/City Engineer’s base annual compensation is and shall be One Hundred Twenty Nine Thousand Five Hundred Dollars (\$129,500) (“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.”

Pursuant to City Council action taken on September 11, 2013 granting a 2% cost-of-living adjustment to IMEA members and in view of the fact that Tam shall receive the same benefits as the IMEA members, the base annual compensation for Tam shall increase to One Hundred Thirty Two Thousand and Ninety Dollars (\$132,090) retroactive to September 15, 2013.

3. AB 1344. Assembly Bill 1344 was recently 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 "A" 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.

Public Works Director/City Engineer has reviewed, is familiar with, and agrees to comply fully with each of these provisions if any of these provisions are applicable to Public Works Director/City Engineer, including that Public Works Director/City Engineer agrees that any cash settlement or severance related to the termination that Public Works Director/City Engineer may receive from the City shall be fully reimbursed to the local agency if Public Works Director/City Engineer is convicted of a crime involving an abuse of his or her office or position.

4. Full Force and Effect. Except as specifically provided in this Amendment, the terms of the Agreement shall remain unchanged and in full force and effect.

This Amendment is signed and executed on behalf of the City by its City Manager, and Tam has signed and executed this Amendment on this 25<sup>th</sup> day of September, 2013.

CITY OF IRWINDALE

  
\_\_\_\_\_  
John Davidson, City Manager

ATTEST:

  
\_\_\_\_\_  
Laura Nieto, Deputy City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Fred Galante, City Attorney

PUBLIC WORKS DIRECTOR/CITY ENGINEER

  
\_\_\_\_\_  
William Tam

## Exhibit A

### 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.