

SEVERANCE AGREEMENT AND GENERAL RELEASES

This Severance Agreement and General Releases of all claims (hereinafter "Agreement") is made and entered into by and among the members of the SANTA ANA CITY COUNCIL including Mayor Miguel Pulido, Mayor Pro Tem Michele Martinez, Councilman David Benavides, Councilman Vicente Sarmiento, Councilman Jose Solorio, Councilman Sal Tinajero, and Councilman Juan Villegas, the CITY OF SANTA ANA (hereinafter collectively referred to as "City") and DAVID CAVAZOS (hereinafter referred to as "EMPLOYEE") effective at 7:00 p.m. on January 17, ²⁰¹⁷ and is made in light of the following:

1. EMPLOYEE was employed by the City as City Manager pursuant to an At-will Employment Agreement entered into originally on October 21, 2013 and amended and restated on February 2, 2016. The Employment Agreement provides that should the City terminate EMPLOYEE's employment without cause the EMPLOYEE shall be entitled to certain severance remedies.

2. EMPLOYEE and City have engaged in discussions regarding EMPLOYEE's employment and EMPLOYEE and City acknowledge that there is a controversy as to whether EMPLOYEE is entitled to a twelve-month severance payment. Each has denied, and continues to deny, any and all claims asserted by, or which might be asserted by, the other, but they desire to settle fully and finally any and all perceived or real disputes between them arising out of EMPLOYEE's employment and the Employment Agreement with the City.

3. This Agreement and compliance with this Agreement shall not be construed in any way as an admission by the City of any liability whatsoever, or, that the City has acted wrongfully with respect to EMPLOYEE, or, that EMPLOYEE has any rights whatsoever against the City and/or its City Council Members, officers, employees, agents or attorneys. The City specifically disclaims any liability to, or wrongful acts against, EMPLOYEE or any other person on the part of said City and individuals.

4. EMPLOYEE agrees that he will not file any complaints, claims, charges, grievances, or lawsuits at any time hereinafter with the City, with any governmental agency or with any court arising out of his employment with and release from the City, provided, however, he shall not be limited from pursuing claims or other enforcement activities for the sole purpose of enforcing his rights under this Agreement.

5. CITY releases EMPLOYEE from employment and terminates the Employment Agreement pursuant to the terms and conditions set forth in this Agreement.

6. In consideration of this Agreement, the City agrees to pay EMPLOYEE severance pay as set forth in this Paragraph. Severance pay shall be equal to twelve (12) months compensation at EMPLOYEE's current annual compensation of \$343,224.00. This amount will be paid in two installments. The first installment, in the amount of \$223,224.00, to be paid to EMPLOYEE as soon as possible but no later than January 24, 2017. EMPLOYEE will remain on paid administrative leave until the day that he receives the first installment. The second installment, in the amount of \$120,000.00, to be paid to EMPLOYEE on January 5, 2018. In the event EMPLOYEE dies prior to his receipt of the second installment, the second installment shall be paid to EMPLOYEE's daughter, Amanda Cavazos. The City will not make

contributions to the Public Employee's Retirement System ("PERS") on these severance payments, nor make any payments for long-term disability, life, or any other insurance benefits. EMPLOYEE may, if eligible, seek COBRA continuation health benefits following his date of separation from the City. EMPLOYEE agrees to indemnify, defend and hold harmless the City from and against any and all claims or causes of action affecting any and all liability for any state or federal income tax and PERS liability based upon the severance pay referred in this Paragraph. EMPLOYEE agrees that he will not apply for unemployment benefits following his date of separation from the City.

7. City agrees that EMPLOYEE may request letters of recommendation and references from past, present and future City Council Members and that such letters of recommendation and references may be written on CITY letterhead. EMPLOYEE agrees that by requesting a letter of recommendation or reference, he authorizes and grants absolute privilege to the individual from whom he has requested the recommendation or reference, to release any and all information he or she has concerning EMPLOYEE which may be of a confidential, privileged, positive and/or negative nature, including but not limited to, employment information and/or any other information the individual may possess. EMPLOYEE understands and expressly agrees that information provided by a former, present or future City Council Member in a letter of recommendation or reference requested by EMPLOYEE shall not constitute a violation of this Agreement.

8. The City shall pay EMPLOYEE for all earned and unused accrued vacation, management vacation, and 15 % of unused accrued sick leave, as of the date of separation from employment, less applicable payroll tax withholdings and deductions. This amount will be paid in a lump sum no later than January 24, 2017.

9. EMPLOYEE and the City Council Members mutually agree to refrain from disclosing, making or disseminating derogatory comments orally or in writings (including, but not limited to, emails, letters, notes or text messages) about the other or directing or counseling any other individual to do so. However, nothing in this Agreement shall be deemed to preclude the parties from giving truthful statements, testimony, declarations or other disclosures required by or pursuant to legal process or pursuant to a EMPLOYEE-initiated request for a letter of recommendation or reference as provided for in Paragraph 7 of this Agreement.

10. EMPLOYEE, on behalf of himself, his relatives, heirs, estate, executors, administrators, successors and assigns, and attorneys (hereinafter "EMPLOYEE") and the City, its City Council Members, officers, employees, agents, and attorneys (hereinafter "City") fully release and discharge the other, including the others' respective attorneys, from all actions, causes of action, claims, judgments, obligations, damages, and liabilities of whatsoever kind and character, including, but not limited to, any actions, causes of action, claims, judgments, obligations, damages, or liabilities, and the causes, procedures and circumstances surrounding the termination of his employment with the City, including, but not limited to, those arising out of any claims for violation of any alleged contract, express or implied; any covenant of good faith and fair dealing, whether express or implied; any tort; or any federal, state, or local statute or regulation; any federal, state, or local law statute or regulation based on or related to the Age Discrimination in Employment Act (29 U.S.C. sections 621-634); the Older Workers Benefit Protection Act (29 U.S.C. § 626 et seq.); the Equal Pay Act (29 U.S.C. § 206(d)); the Fair Labor Standards Act (29 U.S.C § 201 et seq.), the Family and Medical Leave Act (29 U.S.C. §2601 et seq.); the Employment Retirement Income Security Act of 1974 (29 U.S.C. §1001 et seq.), the Americans with Disabilities Act (42 U.S.C. §12101 et seq.); Title VII, Civil Rights Act of 1964

(42 U.S.C. sections 2000-2000 (e)-1-17); the California Fair Employment and Housing Act (Gov. Code §§ 12900-12996), Ralph M. Brown Act (California Government Code § 54950 et seq.), the California Family Rights Act (California Civil Code § 51 et seq.), all provisions of the California Labor Code and wage orders or similar directives or authorities issued by any federal or state authority having enforcement powers, the Constitution of the United States, and the Constitution of the State of California. Further, EMPLOYEE represents and warrants that he has not filed any complaints, charges, grievances or lawsuits against the City with any governmental agency arising out of his employment with and separation from the City and that he will not do so at any time hereinafter; provided, however that he shall not be limited from pursuing claims for the sole purpose of enforcing his rights under this Agreement. Furthermore, EMPLOYEE and City agree that under this Agreement, he, it and they waive any claim for damages incurred at any time after the date of this Agreement because of alleged continuing effects of any alleged unlawful acts or omissions involving EMPLOYEE's employment with and termination from the City and any right to sue for injunctive relief against the alleged continuing effects of alleged acts or omissions.

11. EMPLOYEE and City understand and expressly agree that this Agreement extends to all claims of every nature and kind whatsoever, known or unknown, suspected or unsuspected; past or present, and all rights under Section 1542 of the California Civil Code are hereby expressly waived. Section 1542 reads as follows:

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.

12. The Age Discrimination in Employment Act of 1967 ("ADEA" 29 U.S.C. §§ 621-634) 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 or older. The Older Workers Benefit Protection Act ("OWBPA"; 29 U.S.C §§ 626 et seq.) 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, in exchange for consideration stated herein, he knowingly and voluntarily waives and releases any rights that 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 EMPLOYEE understands;

(b) EMPLOYEE is aware of and has been advised by a representative or attorney of his own choosing of his right 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, 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, or similar age discrimination laws, but he may, in the exercise of his own discretion, sign or reject this Agreement at any time before the expiration of the twenty-one (21) day period. To the extent EMPLOYEE takes less than 21 days to consider this Agreement prior to execution, EMPLOYEE acknowledges that he has had sufficient time to consider this Agreement with his legal counsel and that he expressly, voluntarily and knowingly waives any additional time.

(d) The waivers and releases set forth in this Agreement shall not apply to any rights or claims that may arise after the effective date of this Agreement.

(e) EMPLOYEE has had an opportunity to discuss this waiver and release with, and be advised with respect thereto, by an attorney of his choice prior to executing this Agreement. EMPLOYEE has used the services of an attorney of Executive Law Group, Inc. for these purposes, and City shall pay Executive Law Group, Inc., a \$3,500.00 attorneys' fees allowance on the same date as payment is made of the first installment of severance pay.

(f) EMPLOYEE has seven (7) days following his execution of this Agreement to revoke this Agreement. If EMPLOYEE desires to revoke the Agreement, he must give express and actual written notice of revocation to the City of Santa Ana within seven (7) days after he (EMPLOYEE) executes this Agreement. Such notice of revocation shall be effective only if and when received in writing by the City of Santa Ana Personnel Services Department before the close of business no later than the seventh calendar day after EMPLOYEE signs this Agreement.

13. Notwithstanding the mutual releases contained in this Agreement, the City acknowledges and agrees that under the California Government Tort Claims Act the City must provide a defense to and pay any resulting judgment, compromise or settlement based on a civil claim against both present and former employees where such claim arises out of an act or omission that occurred within the scope of employment. The City further acknowledges and agrees that the City may provide a similar defense in a criminal matter related to alleged acts within the scope of employment. City therefore agrees that if any such claims are raised after the effective date of this Agreement, the City agrees to provide any legally required and discretionary defense pursuant to a Reservation of Rights Agreement and in accordance with all applicable procedures set forth in the California Civil and Government Codes. In the event that

EMPLOYEE requests a defense under this Paragraph the City shall provide such defense under such a Reservation of Rights Agreement which will require the EMPLOYEE to indemnify the City for payment of any and all costs incurred by the City should the EMPLOYEE be found by a court of law to have acted or failed to act because of actual fraud, corruption or actual malice or that the claim involving EMPLOYEE did not arise from or was not directly related to EMPLOYEE's performance of his official duties.

14. Within twenty-four (24) hours of the time that this Agreement is fully executed, EMPLOYEE shall return to the City all personal property of the City, including his City-issued cell phone, his laptop, his City-issued vehicle, keys and any and all other equipment. EMPLOYEE shall also return all City-related files, paperwork, calendars or materials. EMPLOYEE is hereby reminded that State and City laws and regulations apply to the retention and destruction of all City records. All equipment and files shall be returned to the City in a form that is consistent with State and City records retention laws and regulations.

15. EMPLOYEE represents and agrees that he has been advised to discuss this Agreement with an attorney, and that he has carefully read and fully understands all of the provisions of the Agreement, that he is voluntarily entering into this Agreement, and that he has the capacity to enter into this Agreement.

16. EMPLOYEE represents and acknowledges that in executing this Agreement he does not rely and has not relied upon any representation or statement not set forth herein made by any of the parties or any of the parties' agents, representatives, or attorneys with regard to the subject matter, basis or effect of this Agreement or otherwise.

17. This Agreement sets forth the entire agreement between the parties hereto and fully supersedes any and all prior agreements or understandings between the parties hereto pertaining to the subject matter hereof.

18. This Agreement is made and entered into in the State of California and shall in all respects be interpreted and enforced and governed by and under the law of the State of California. In the event of a dispute the parties hereto specifically agree the judicial jurisdiction and venue shall be the County of Orange, State of California.

19. Should it be necessary for either party to commence litigation to enforce any provisions of this Agreement the prevailing party therein shall be entitled, not by way of limitation, to reasonable attorneys' fees and costs incurred in the enforcement of any provision herein.

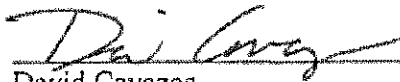
20. Should any of the provisions or terms of this Agreement be determined to be illegal, invalid, or unenforceable by any court or government agency of competent jurisdiction, validity of the remaining parts, terms, or provisions, shall not be affected thereby and said illegal, invalid or enforceable part, term, or provision shall be deemed not to be a part of this Agreement.

21. This Agreement may be executed in any number of counterparts. Any such counterpart when executed shall constitute an original of the Agreement and all such counterparts together shall constitute one and the same agreement.

22. Except as provided above in Section 12(e), each party shall bear its, his or their own attorneys' fees and costs with respect to the matters resolved hereby.


EMPLOYEE REPRESENTS THAT HE HAS CAREFULLY READ THIS AGREEMENT AND KNOWS ITS CONTENTS AND FULLY UNDERSTANDS IT; THAT HE HAS HAD THE OPPORTUNITY TO HAVE IT FULLY EXPLAINED TO HIM BY AN ATTORNEY OF HIS CHOICE AND HAS DISCUSSED THIS AGREEMENT WITH AN ATTORNEY AND HAS CHOSEN TO SIGN IT; THAT HE FULLY UNDERSTANDS ITS FINAL AND BINDING EFFECT; THAT THE ONLY PROMISES MADE TO HIM TO SIGN THIS AGREEMENT ARE THOSE STATED ABOVE; AND THAT HE IS SIGNING IT VOLUNTARILY.

Executed this 10th day of JANUARY, 2017, at NEWPORT BEACH, California.



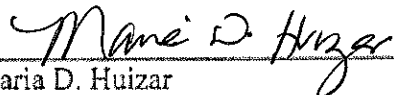
David Cavazos
EMPLOYEE

Executed this 18th day of JANUARY, 2017, at Santa Ana, California.



Mayor Miguel Pulido
CITY OF SANTA ANA

ATTEST:




Maria D. Huizar
CLERK OF COUNCIL

APPROVED AS TO FORM:


APPROVED AS TO FORM:

DATED: JANUARY 10, 2017

DATED: JAN. 18, 2017

By 

R. Craig Scott, Esq.
Executive Law Group, Inc.
for EMPLOYEE

By 

Sonia R. Carvalho
City Attorney
CITY OF SANTA ANA