

RESOLUTION NO. 5276

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL SEGUNDO, CALIFORNIA, MODIFYING THE ANNUAL SALARY FOR THE CITY MANAGER JOB CLASSIFICATION

The City Council of the City of El Segundo does resolve as follows:

SECTION 1: The City Council approves the following basic salary:

Classification	Annual Salary
City Manager	\$259,700

SECTION 2: *Authority.* The City Manager or his designee is authorized to take any steps necessary in order to effectuate this Resolution.


SECTION 3: *Construction.* This Resolution must be broadly construed in order to achieve the purposes stated in this Resolution. It is the City Council's intent that the provisions of this Ordinance be interpreted or implemented by the City and others in a manner that facilitates the purposes set forth in this Resolution.


SECTION 4: *Severability.* If any part of this Resolution or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this Ordinance are severable.

SECTION 5: The City Clerk is directed to certify the adoption of this Resolution; record this Resolution in the book of the City's original resolutions and make a minute of this adoption of the Resolution in the City Council's records and the minutes of this meeting.

SECTION 6: This Resolution is effective July 1, 2021 and will remain effective unless repealed or superseded.

PASSED AND ADOPTED this 19TH day of October, 2021.


Drew Boyles, Mayor


Mayor Patricia

ATTEST:

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS
CITY OF EL SEGUNDO)

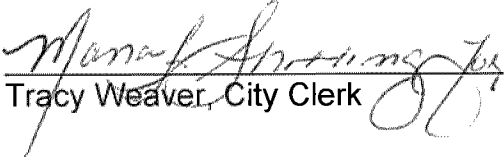
I, Tracy Weaver, City Clerk of the City of El Segundo, California, do hereby certify that the whole number of members of the City Council of said City is five; that the foregoing Resolution No. 5276 was duly passed and adopted by said City Council, approved and signed by the Mayor, and attested to by the City Clerk, all at a regular meeting of said Council held on the 19th day of October, 2021, and the same was so passed and adopted by the following vote:

AYES: Mayor Boyles, Mayor Pro Tem Pimentel, Council Member Pirsztuk, Council Member Nicol, and Council Member Giroux

NOES: None

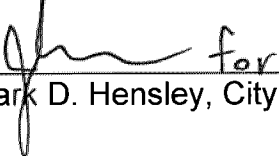
ABSENT: None

ABSTAIN: None



Tracy Weaver, City Clerk

APPROVED AS TO FORM:



Mark D. Hensley, City Attorney

**EMPLOYMENT AGREEMENT BETWEEN
CITY OF EL SEGUNDO
AND
CITY MANAGER**

This Employment Agreement ("Agreement") is entered into on this 18th day of June, 2019 ("effective Date") between City of El Segundo ("City") and Scott Mitnick ("City Manager").

RECITALS

- A. City desires to employ services of Scott Mitnick to serve as its City Manager.
- B. City desires to establish certain conditions and of employment, provide certain compensation and benefits, and set working conditions for such employment, as authorized by El Segundo City Council.
- C. Scott Mitnick desires to accept such employment on terms, as set forth herein.

AGREEMENT

The parties agree as follows:

Section 1. Duties – Exclusive Employment

City agrees to employ Scott Mitnick (hereinafter referred to as "City Manager") to serve as the City's chief executive officer and to perform the duties and functions specified in: A) California state law; B) El Segundo Municipal Code (including having the authority to interview, hire, and dismiss employees, and to direct City work force in accordance with applicable state laws, the El Segundo Municipal Code and applicable personnel rules and bargaining unit agreements); C) Applicable City ordinances, resolutions, rules, and policies; D) Current City job specification; and, E) Other legally permissible duties and functions as City Council may direct from time to time.

City Manager agrees that he will, at all times, be employed exclusively by City to perform all duties and obligations required either expressly or implicitly by this Agreement and may not be employed in any other capacity while employed by City without prior consent of City Council. City Manager shall focus his professional time, ability, and attention to City business during time in which this Agreement is in force.

City Manager shall not engage 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 provided compensation or otherwise, without prior consent of City Council. Notwithstanding the foregoing, the expenditure of reasonable amounts of time not in conflict with City's needs and interests for educational, charitable, community, and/or professional activities shall not be deemed a breach of this Agreement and shall not require prior consent.

Section 2. Term and At-Will City Manager Status

The term of this Agreement shall be for a period of four (4) years, from July 1, 2019 to June 30, 2023 and may only be extended by a written amendment to this Agreement. In the event that the Agreement is not renewed but the City Manager continues to be employed by the City, all terms of the Agreement shall remain in effect until terminated as provided under this Agreement except City Manager shall not be entitled to any Severance Payment pursuant to Section 3.F. of this Agreement.

City Manager serves as an "at will" employee (as defined in California Labor Code Section 2922 while this agreement has a potential term of four years there is no specified or guaranteed term of employment for the City Manager pursuant to this Agreement), serving at the pleasure of City Council, and nothing in this Agreement shall require cause for removal, or prevent, limit, or otherwise interfere with the right of City Council to terminate the services of City Manager at any time, subject only to the provisions set forth in Section 3 of this Agreement. In addition, nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of City Manager to resign at any time from his position with City, subject only to the provisions set forth in Section 3 of this Agreement.

Section 3. Termination of Agreement

This Agreement shall become effective on the Effective Date and may thereafter be terminated in any of the following ways:

- A. By mutual written agreement of the parties.
- B. The City may terminate this Agreement for Cause or without Cause. For purposes of this Agreement, "Cause" shall mean: (1) City Manager's commission of an act of fraud, embezzlement or misappropriation or a crime of moral turpitude; (2) City Manager's continuing or willful misconduct or failure, refusal or neglect to perform his job functions, adhere to the lawful direction of the City consistent with his position, or adhere to the lawful policies and practices of the City, or (3) Conviction of a crime involving an "Abuse of office or position" as defined in Government Code Section 53243.4. Notwithstanding the foregoing, if the occurrence of an event of "neglect" described in clause (2) above is capable of being cured, such occurrence shall constitute Cause only if written notice specifying in reasonable detail the nature thereof, and the manner in which the City requires cure to be effected, is provided to City Manager within thirty (30) days of the City becoming aware of the alleged event or conduct and City Manager shall have substantially failed to cure such event as soon as reasonably possible but in no event later than fourteen (14) days after receiving such notice. The written notice shall: 1) Specify the particular cause(s) for termination and the facts supporting the decision to terminate for

cause; 2) Provide notice of City Manager's right to legal representation; and, 3) Provide notice of City Manager's right to request a hearing before City Council to address the basis for the termination.

- C. Termination by City Manager. City Manager may terminate this Agreement for any reason upon thirty (30) days' notice.

- D. Death/Disability of City Manager. This Agreement shall terminate automatically upon City Manager's death. The City may terminate This Agreement upon City Manager's Disability. For purposes of this Agreement, "Disability" means that City Manager has become "disabled" within the meaning of Section 409A of the Internal Revenue Code of 1986, as amended. If the City Manager becomes disabled within the meaning of Government Code Section 20027, then the City will place the City Manager on an unpaid leave of absence and apply for a disability retirement.

- E. In the event City terminates the Agreement without cause, City shall pay City Manager an amount equal to the lesser of the base salary for the unexpired term of this Agreement or fifty percent (six months) of the City Manager's then Base Salary ("Severance Payment"), less applicable taxes and withholdings and City health, dental vision and other group insurance benefits for the same period of time after the date of termination, to the extent permitted by the then applicable insurance plans and benefit programs. Upon receipt of an executed copy of the applicable Settlement Agreement and Release ("Release") (attached as Exhibit B), City shall make the Severance Payment, at the option of City Manager, in any of the following manner: (1) A lump sum upon date of termination; (2) A lump sum on January 1 of the following year; (3) On the same schedule as the City's normal payroll cycle but not as an employee of the City; or, (4) Any combination of previous three options, as directed by City Manager. If the City Manager elects Severance Payment option (1), City shall make the Severance Payment within 15 days of the date of receipt of the fully executed Release.

- F. In the event that City, and any time during the period in which this Agreement is in force, reduces the salary and/or other benefits of City Manager in a greater percentage than applicable to an across-the-board reduction for executive management employees of the City, City Manager may, at his option, deem the salary reduction a termination without cause, entitling City Manager to the Severance Payment and Insurance Payment (if applicable) as set forth in section 3(F) above.

Section 4: Salary

City agrees to pay City Manager for his services rendered an initial base annual salary of \$245,000.00 ("Base Salary"), effective July 1, 2019, payable in the normal payroll installments at the same time as other executive management employees of City are paid. City Council shall review City Manager's salary annually as part of his performance evaluation, as set forth in Section 6, and may provide adjustments as it determines appropriate. City Council may take into consideration annual cost of living and/or merit salary adjustments provided to other executive management employees.

Section 5: Annual Performance Bonus

City Manager shall be eligible to receive an "Annual Performance Bonus" of up to 15% of the City Manager's Base Salary per year based on City Council's annual performance review. Such bonus, if provided, may be received by the City Manager as regular pay, converted to deferred compensation (401a Plan, 457 Plan, HSA, or other allowed City plan to the extent allowed by law), and/or some other mechanism mutually agreed to by City Council and City Manager.

Section 6: Performance Evaluation

City Council shall conduct its first initial performance review of City Manager after the completion of his first six months. City Council shall provide input with respect to City Manager's initial performance and alignment with City Council goals and objectives. An adjustment to compensation at this time will be at City Council's discretion.

Commencing with the completion of the City Manager's first full year with the City, City Council shall annually review and evaluate his performance and compensation in closed session. If possible, this annual review should take place in July of each year to allow for timely evaluation and payment of the annual salary adjustment and/or one-time performance bonus, if City Council determines in its discretion that City Manager is eligible for either. Said review and evaluation shall be in accordance with specific performance measures and rating criteria mutually agreed to by City Council and City Manager.

Section 7: Hours of Work & Designation of “Acting City Manager”

It is recognized that City Manager must devote the time necessary even outside City’s normal operating hours, and to that end, City Manager may take leave as he deems appropriate. During any such leave, City Manager may designate an “Acting City Manager” to oversee operation of the City in his absence, in compliance with El Segundo Municipal Code.

Section 8: Benefits

Benefits provided to City Manager are addressed in Exhibit A.

Section 9: Professional Development & General Business Expenses

A. City agrees to budget and pay for professional dues, fees, subscriptions, and related expenditures on behalf of City Manager which are necessary for continuation and full participation in international, national, state, regional, and local associations and organizations necessary and desirable for City Manager’s continued professional growth and development, and for the good of the City.

B. Subject to approval of a budget by the City Council, City agrees to pay for travel and City’s normal per diem or expenses of City Manager for professional and official travel, meetings, and occasions necessary to continue the professional development of City Manager and to adequately pursue official and other functions of the City, including but not limited to the International City/County Management Association (ICMA), National League of Cities, League of California Cities, and other such international national, state, regional, and local governmental and professional groups and committees which City and/or City Manager serves as a member.

C. Subject to approval of a budget by the City Council, City agrees to pay for the travel and City’s normal per diem or expenses of City Manager for multi-day courses, institutes, training, and seminars that are necessary for professional development and for the good of the City, as determined by City Manager. City Manager shall not be entitled to receive reimbursement for mileage so long as the City Manager receives a car allowance pursuant to this Agreement.

D. Subject to approval of a budget the City Council, City agrees to pay for one-time and recurring costs of office furniture, equipment, supplies, etc. as City Manager deems necessary to carry out his duties for the City. The City must provide City Manager with the necessary office space, furniture, equipment and supplies necessary and customarily provided to perform the duties of a City Manger

Section 10: Moving and Relocation Expenses

If City Manager moves his principal residence into or near El Segundo, City shall reimburse City Manager for actual and reasonable moving and relocation expenses incurred and approved by the City Council.

Section 11: Other Terms and Conditions of Employment

City Manager shall be entitled to receive all employee benefits provided to executive management employees not specifically addressed herein, including any future benefits provided to executive management employees during the term of this Agreement.

Section 12: Notices

Any notice required by this Agreement shall be in writing and delivered either personally, via overnight courier, or U.S. First Class Mail. The notice address for the City is: El Segundo City Council, c/o City Attorney, 350 Main Street, El Segundo, CA 90245. The notice address for the City Manager is the address supplied by City Manager and on file with the City. Either part may specify an alternate address in accordance with this notice section. Notice shall be effective upon receipt.

Section 13. Mediation/Arbitration

Any and all disputes of whatever kind or nature arising out of or related to this Agreement or City Manger's employment or separation from the City shall be resolved through mediation and then binding arbitration, if necessary, utilizing Judicial Arbitration and Mediation Services ("JAMS") and shall be conducted in JAMS Century City or downtown Los Angeles offices or such other location mutually agreed upon by the parties. JAMS mediation and arbitration procedures and rules shall be utilized for purposes of conducting the mediation and arbitration. JAMS shall randomly provide the parties with a list of three mediators or arbitrators, depending on which process is being utilized, and each party shall have the right to reject one of the mediators or arbitrators. In the event that more than one mediator or arbitrator is left after the parties have each had the opportunity to reject one of the mediators or arbitrators, JAMS shall randomly select the mediator or arbitrator to mediate or arbitrate the dispute(s). The City will pay the arbitrator's fees and arbitration expenses and any other costs unique to the arbitration, recognizing that each side bears its own deposition, witness, expert and attorney's fees and expenses to the same extent as if the matter were being heard in court. If, however, any party prevails on a statutory claim, which affords the prevailing party attorney's fees and costs, then arbitrator may award reasonable fees and costs to the prevailing party. Any dispute as to who is the prevailing party and/or the reasonableness of any fee or cost shall be resolved by the arbitrator.

Section 14. ASSEMBLY BILL 1344 COMPLIANCE.

To the extent CITY provides: (i) paid leave to EMPLOYEE pending an investigation; (ii) funds for the legal criminal defense of the EMPLOYEE; and/or (iii) a cash settlement to EMPLOYEE related to the termination of the EMPLOYEE, pursuant to this AGREEMENT and Government Code Section 53243 et seq., EMPLOYEE shall fully reimburse the City for any and all amounts paid by the City which fall within subsections (i) through (iii) in the event that the EMPLOYEE is convicted of a crime involving the abuse of his office or position.


Section 15: General Provisions

- A. All of City Manager's writings, reports, and other documentation generated as part of his day-to-day duties during his employment with the City are the property of the City.
- B. This Agreement is for professional services that are personal to the City, and the Agreement is not assignable by City Manager.
- C. The provisions of this Agreement shall be construed as a whole according to its common meaning or purpose of providing a public benefit and not strictly for or against any party. It shall be construed consistent with the provisions hereof, in order to achieve the objectives and purposes of the parties. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neutral genders or vice versa.
- D. This Agreement and the rights and obligations of the parties shall be governed and interpreted in accordance with the laws of the State of California.
- E. The text herein shall constitute the entire Agreement between the parties and supersedes any other agreements, either oral or in writing, between the parties hereto with respect to rendering these services, compensation matters, or benefits. Any modification of this Agreement shall be effective only if it is in writing and signed by both parties.
- F. This Agreement shall inure to the benefit of the heir at law and executor(s) of City Manager.
- G. The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provision or section of this Agreement.
- H. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable by a Court, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

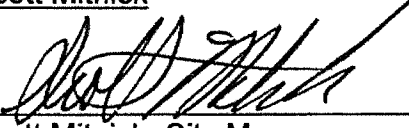
- I. Each part of this Agreement acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding on either party.
- J. The parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the parties, and this Agreement reflects their mutual agreement with respect to the subject matter of this Agreement. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any party to be the drafter of this Agreement. Therefore, no presumption for or against validity or as to any interpretation hereof, based upon the identity of the drafter, shall be applicable in interpreting or enforcing this Agreement.
- K. Both parties have had sufficient time and opportunity to consult with legal counsel of their own choosing regarding the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.


City of El Segundo

 for 6/18/19
 Drew Boyles, Mayor. Date

Scott Mitnick

 18 June 2019
 Scott Mitnick, City Manager Date

Attest:

By:  6.18.19
 City Clerk Date

Approved as to form:

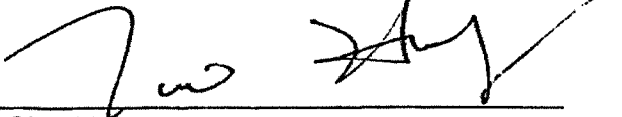
By:  June 18, 2019
 City Attorney Date

EXHIBIT A

**CITY OF EL SEGUNDO
CITY MANAGER BENEFITS
(As of July 1, 2019)**

Benefits shall be provided as follows:

1. Medical, Dental, and Vision Insurance:

City Manager shall be eligible to participate in the health, dental, and vision insurance plans provided to City employees, including the current health plans provided through CalPERS on the same terms and conditions as employees of the executive management group.

2. Retirement:

If City Manager's employment is concurrently terminated at the same as retiring from CalPERS, he shall be immediately entitled to City-paid post-retirement medical insurance benefits on the same terms and conditions as the executive management group.

3. Deferred Compensation:

Effective July 1, 2019, each pay period City agrees to pay an amount equal to ten (10) percent of City Manager's monthly Base Salary into applicable City Internal Revenue Code Section 401a and/or Section 457 deferred compensation plan(s). City Manager is also eligible to participate in City's 401a Plan, 457 Plan, Health Savings Plan, Retiree Health Savings Plan, and/or related plans.

4. Life Insurance:

City shall provide City Manager with a term life insurance policy in the amount of \$500,000, with a separate travel life insurance provision (as per the City's regular policy provisions). City Manager shall be eligible to participate in City's Supplemental Life Insurance Program at his own expense.

5. Long-Term Disability:

City shall provide long-term disability income insurance pursuant to the provisions of the City's Executive LTD Plan.

6. Vacation Leave:

City Manager shall be entitled to a starting balance of one hundred (100) hours of Vacation Leave on the effective date of this Agreement. Annual hours shall accrue at the same rate used for executive management City employees based on City

Manager's total lifetime years of PERS service, which is currently 200 hours per year. City Manager shall receive same annual cash conversion option as executive management employees.

City and City Manager shall mutually agree to all vacation periods and such time should be scheduled at least thirty (30) days in advance of the vacation date, unless otherwise allowed by City Council. Upon termination or separation of employment from City, City Manager shall have the option to be paid for unused Vacation Leave hours, to convert the hours to deferred compensation to the extent permitted by law (401a Plan, 457 Plan, HSA, or other allowed plan), and/or to use for other allowed uses for executive management employees.

7. Sick Leave:

City Manager shall be entitled to a starting balance of one hundred (100) hours of Sick Leave on the effective date of this Agreement. Annual hours shall accrue at the same rate used for executive management employees, which is currently 8 hours per month. Upon termination or separation of employment from City, City Manager shall on the same terms and conditions as executive management employees (except his years of service shall be based upon his lifetime years of PERS service) have the option to be paid for unused Sick Leave hours, to convert the hours to deferred compensation (401a Plan, 457 Plan, HSA, or other allowed plan), and/or to other allowed uses for executive management employees.

8. Executive Leave:

City Manager shall be entitled to 80 hours of Executive Leave per year. Leave cannot be cashed in or otherwise be transferred or converted for value.

9. Holidays & Other Leave:

City Manager shall receive the same paid holidays, bereavement leave, etc. as executive management employees.

10. Automobile Allowance:

City Manager's duties require that he shall have the unrestricted use, at all times during his employment with City, of an automobile. In lieu of using a City provided automobile, City Manager shall receive a City-provided monthly automobile allowance of \$500.00 starting on the effective date of this Agreement. Annual inflation adjustments to this amount shall be provided as per the then current United States Internal Revenue Service (IRS) Standard Mileage Rate for Business Use and will take place at the beginning on July 1st of each year. . City Manager shall at all times keep on file with the City Clerk's Office proof of current automobile insurance with a minimum of three hundred thousand dollars (\$300,000.00) of liability coverage.

11. Section 125 Flex Plan:

City Manager shall be eligible to enroll in City's Section 125 Plan for payment of employee-paid insurance, medical treatment, etc. with pre-tax dollars to the extent permitted by law. City shall pay any administrative fee(s).

12. Employee Assistance Program:

City shall pay for the full cost of Employee Assistance Program for City Manager and dependents.

EXHIBIT B

SEPARATION AND RELEASE AGREEMENT

1. PARTIES

This Separation, Severance and General Release Agreement (“AGREEMENT”) is made and executed as of _____, by and between _____ (“EMPLOYEE”) and the CITY OF EL SEGUNDO (“CITY”).

2. RECITALS

2.1 EMPLOYEE commenced employment with the CITY as city manager on or about _____, 2019, pursuant to that EMPLOYMENT AGREEMENT entered into between the parties on or about _____, 2019.

2.2 This AGREEMENT is made to amicably resolve all matters between EMPLOYEE and the CITY regarding EMPLOYEE’s employment and the cessation of said employment.

2.3 The parties understand and agree that a material purpose of this AGREEMENT is to resolve any disputes and CLAIMS arising from or relating to EMPLOYEE’s employment with CITY, if any, and provide for a separation payment for EMPLOYEE.

3. CONSIDERATION

3.1 In exchange for EMPLOYEE’s execution, faithful performance and compliance with this AGREEMENT, including without limitation the granting of the releases set forth herein, and in full satisfaction and settlement of EMPLOYEE’s CLAIMS, if any, the CITY shall pay EMPLOYEE the sum of \$ _____ [amount equivalent to six month base pay or amount of time left on contract, whichever is less plus medical/dental/vision for the same period of time as specified in the EMPLOYMENT AGREEMENT] (“SEVERANCE PAYMENT”) in the form of a check made payable to _____, to be in accordance with the schedule the EMPLOYEE chooses from the options set forth in the EMPLOYMENT AGREEMENT. Required tax withholdings and deductions will be made from the SEVERANCE PAYMENT.

3.2 Respecting the SEVERANCE PAYMENT referenced in paragraphs 3.1 above, EMPLOYEE understands and agrees that EMPLOYEE’s portion of any federal, state or local taxes, if any, that may be owed or payable on the sums caused to be paid hereunder by the CITY are the sole and exclusive responsibility of EMPLOYEE.

3.3 EMPLOYEE and the CITY shall otherwise each bear their own attorney fees and costs incurred in connection with any disputes and this AGREEMENT.

3.4 Except as set forth in this Paragraph 3, the parties agree that no other monies or benefits are due, owing or unpaid by reason of EMPLOYEE's employment or association with CITY and that no other monies or benefits will be paid or maintained by CITY to/for EMPLOYEE, in EMPLOYEE's name, or on EMPLOYEE's behalf. EMPLOYEE expressly agrees that the SEVERANCE PAYMENT described in Paragraph 3 supersede and are in substitution for any payments or benefits under any employment agreement(s), business agreement(s) or arrangement(s), oral or written promises, or severance policy or plan respecting or regarding his employment or association with CITY.

4. Specific Acknowledgement of Waiver of Claims under ADEA and OWBPA

The Age Discrimination in Employment Act of 1967 (29 U.S.C. § 626, *et. seq.*; "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 ("OWBPA," 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, 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 **before** executing this AGREEMENT;
- (f) EMPLOYEE has discussed, or had the opportunity to discuss, 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 this paragraph and must state, "I hereby revoke my acceptance of our 'Separation and Release Agreement'"; 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 of the AGREEMENT (the "EFFECTIVE DATE").

5. RELEASE

In exchange for the SEVERANCE PAYMENT, representations and covenants made herein, and except only as to such rights or claims as may be created by this AGREEMENT, EMPLOYEE hereby, and for his heirs, representatives, successors, and assigns, releases, acquits, and forever discharges the CITY, and all of its agents, officers, current and former elected and appointed officials, current and former employees, representatives, insurers, attorneys, and all persons acting by, through, under, or in concert with any of them, and each of them, from any and all claims (including without limitation all claims for workers compensation benefits, if any), charges, complaints, 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, which relate to or arise out of any act, omission, occurrence, condition, event, transaction, or thing which was done, omitted to be done, occurred (including without limitation any circumstance(s) giving rise to liability for workers compensation benefits) or was in effect at any time from the beginning of time up to and including the EFFECTIVE DATE of this AGREEMENT ("CLAIMS"), without regard to whether such CLAIMS arise under the federal, state or local constitutions, statutes, rules, ordinances or regulations, workers compensation statutes or the common law. EMPLOYEE expressly acknowledges that the CLAIMS forever barred by this AGREEMENT specifically include, but are not limited to, claims related to the DISPUTES, his employment with the CITY and its cessation, any claims for wages, overtime or benefits (including without limitation workers compensation benefits), any alleged breach of any duty, any alleged employment discrimination, harassment, retaliation or unlawful discriminatory act, any alleged breach of any express or implied employment contract, breach of any duty arising out of contract, statute, regulation, ordinance or tort, constructive discharge, wrongful termination or constructive discharge in violation of public policy, 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 or respecting wrongful termination, breach of employment contract, or employment discrimination, employee injury, death, workers compensation, wrongful hiring, harassment or retaliation based upon sex, race, age, color, religion, handicap or disability, national origin or any other protected category or characteristic, including but not limited to the Federal Fair Labor Standards Act, the California Fair Employment and Housing Act, the Americans With Disabilities Act, Title VII of the Civil Rights Act of 1964, and any other federal, state, or local human rights, civil rights, or employment discrimination or employee rights statute, rule, regulation, ordinance or decisional law.

Additionally, the CITY hereby agrees not to initiate, or proceed with any actions, causes of action, claims, etc., that could be or that have been asserted against EMPLOYEE

arising out of EMPLOYEE's employment with the CITY, in any forum, whatsoever. To the extent that any such actions, causes of action, claims, etc., are, or become pending in any forum whatsoever, the CITY agrees to execute all documents necessary for the withdrawal of such actions, causes of action, claims, with prejudice, forthwith.

6. UNKNOWN CLAIMS

6.1 EMPLOYEE on the one hand, and the CITY, on the other hand, each hereby waive and release any rights which the other and its successors, heirs, executives, administrators, may have directly or indirectly, if any, jointly or severally, directly or indirectly, under the provisions of California Civil Code § 1542, and any similar state or federal statute, which reads in sum, substance or substantial part as follows:

“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

6.2 EMPLOYEE and the CITY acknowledge that the facts with respect to which each gives this GENERAL RELEASE may turn out to be different from the facts they now believe to be true. EMPLOYEE and the CITY hereby assume the risk of the facts turning out to be different, and agree that this AGREEMENT shall in all respects be effective and not subject to termination or rescission because of any such difference in facts.

7. WAIVER OF ADDITIONAL CLAIMS

EMPLOYEE and the CITY hereby waive any provisions of state or federal law that might require a more detailed specification of the claims being released pursuant hereto.

8. REPRESENTATIONS AND WARRANTIES

Each of the parties to this AGREEMENT represent and warrant and agree with each other party as follows:

8.1 No Other Claims: EMPLOYEE and the CITY hereby represent and warrant that EMPLOYEE nor the CITY has not filed, nor will they file in the future, any complaint, charge, claim, legal action, or proceeding arising out of EMPLOYEE' employment with the CITY, the DISPUTES or the CLAIMS released hereby or in any way related to his employment with the CITY or separation therefrom with any court, agency, board, hearing officer or tribunal against the CITY or any of its agents, officers, current and former elected or appointed officials, current and former employees, representatives, insurers, attorneys, and all persons acting by, through, under, or in concert with any of them. EMPLOYEE retains his right to request indemnification from the City pursuant to California Government Code § 825 *et seq.* with respect to any action brought against EMPLOYEE in his capacity as an employee.

8.2 Advice of Counsel: Each party has received, or has had the opportunity to receive, independent legal advice from their respective attorney(s) with respect to the

advisability of making the settlement and releases provided herein, with respect to the advisability of executing this AGREEMENT, and with respect to the meaning of California Civil Code § 1542.

8.3 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 (or of any officer, agent, employee, representative, or attorney of or for any party) in executing this AGREEMENT, or in making the settlement provided for herein, except as expressly stated in this AGREEMENT.

8.4 Independent Investigation: Each party to this AGREEMENT has made such investigation of the facts pertaining to this severance and settlement and this AGREEMENT and all the matters pertaining hereto as it deems necessary.

8.5 Comprehension and Authority: Each party or responsible officer thereof has read this AGREEMENT and understands the contents hereof. Any of the officers executing this AGREEMENT on behalf of the CITY are empowered to do so and thereby bind the entity.

8.6 Mistake Waived: In entering into this AGREEMENT and the severance and settlement provided for herein, 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 rescind or set aside the 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.

8.7 Later Discovery: EMPLOYEE and the CITY 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 both parties' intention to fully, finally and forever settle and release all such matters, and all claims relative hereto, which do now exist, may exist or have previously existed between both 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.

8.8 Ownership of Claims: EMPLOYEE represents and warrants as a material term of this AGREEMENT that he 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 represents and warrants that none of the CLAIMS released by his hereunder will in the future be assigned, conveyed, or transferred in any fashion to any other person and/or entity.

8.9 Future Cooperation: The parties will execute all such further and additional documents as shall be reasonable or necessary to carry out the provisions of this AGREEMENT.

9. MISCELLANEOUS

9.1 No Admission: Nothing contained herein shall be construed as an admission by the parties of any liability of any kind. The parties each deny any liability in connection with any claim or wrongdoing. Each party also intends hereby solely to amicably resolve all matters between the parties.

9.2 Governing Law: This AGREEMENT 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. The venue for any dispute arising out of or relating to this AGREEMENT shall be the Los Angeles Superior Court.

9.3 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.

9.4 Continuing Benefit: This AGREEMENT is binding upon and shall inure to the benefit of the parties hereto, their respective agents, employees, representatives, officers, and officials.

9.5 Joint Drafting: Each party has cooperated in the drafting and preparation of this AGREEMENT. Hence, in any construction to be made of this AGREEMENT, the same shall not be construed against any party.

9.6 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.

9.7 Titles: The titles included in this AGREEMENT are for reference only and are not part of the terms of this AGREEMENT, nor do they in any way modify the terms of this AGREEMENT.

9.8 Counterparts: This AGREEMENT may be executed in counterparts, and by facsimile 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.

9.9 Executed Copy: All parties shall receive a fully executed copy of this AGREEMENT.

9.10 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:

Name
Address
Address

As to the CITY:

Attn: City Clerk
350 Main Street
El Segundo, CA 90245

WHEREFORE, the parties hereto have read all of the foregoing, understand the same, and agree to all of the provisions contained herein.

DATED: _____

CITY OF EL SEGUNDO

By: _____
Mayor

DATED: _____

EMPLOYEE

By: _____
Scott Mitnich

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney