

EMPLOYMENT SEPARATION AGREEMENT

This Employment Separation Agreement ("Agreement") is entered into this 25 day of October 2014, by and between the City of Commerce (the "City") and Wendell E. Johnson ("Employee").

RECITALS

WHEREAS, Employee was hired by the City on March 24, 2014 as the Assistant Director of Public Services; and

WHEREAS, the City implemented an Reorganization Plan in June of 2014, which changed the position to Deputy Director of Engineering Services; and

WHEREAS, the City and Employee has concurred that Employee will no longer continue his employment with the City; and

WHEREAS, on September 23, 2014, after the reorganization that impacted his position, Employee advised the City that he was resigning from his employment from the City; and

WHEREAS, Employee and the City have discussed the terms of a separation agreement and have agreed that Employee's resignation will become effective after the parties have executed such an agreement; and

WHEREAS, on September 23, 2014, Employee was placed on administrative leave, with pay, pending the completion and execution of this Agreement including the seven day Revocation period after this Agreement is signed and dated by the Employee.

NOW, THEREFORE, in consideration of the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Employee hereby agree as follows:

AGREEMENT

SECTION 1. RELEASE

The Employee agrees to honor the release from public service effective October 31, 2014.

SECTION 2. GENERAL RELEASE

- A. Employee hereby releases and forever discharges the City, its management and supervisory team, and other employees of all charges, claims, and causes of action of every kind that Employee has, or has ever had, or may in the future have relating in any manner to Employee's employment with the City up to and including the date this agreement has been signed by all parties.
- B. Employee agrees not to start, join or cause to be started a lawsuit or any action arising from any alleged unlawful conduct relating to his employment with the City up to and including the date this Agreement is signed by all parties, in any forum.
- C. Employee understands and agrees that the waivers in this Agreement include any and all discrimination action(s), including actions for age discrimination under the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964, The California Fair Employment and Housing Act, and under any other federal or state laws, the law of contract and tort, or common law.
- D. It is understood and agreed that this general release does not alter the vacation, retirement, health benefit coverage, or other benefits that Employee is otherwise entitled following this separation.

SECTION 3. SEVERANCE PAYMENT

- A. The City agrees to pay to Employee a Fee equal to four months of pay and value of benefits for that same four months period (the "Severance Payment"), subject to appropriate and required tax withholding. In no way does this mean that the Employee should consider himself employed at the City during this period. The Severance Payment amount is set forth in "Exhibit A", which is attached hereto and incorporated herein by reference. Exhibit A requires separate signatures to complete this Agreement.
- B. The Employee will also be compensated for all leave accruals at Employee's hourly rate, which include; Administrative, Personal, Sick, and Vacation, leave earned, accrued or granted from March 24, 2014 through October 31, 2014.
- C. Employee understands and agrees that the Severance Payment made by the City described herein as severance pay represents compensation and that, therefore, the City will withhold from the gross amount of this payment all taxes and other appropriate deductions that it would normally withhold from the earnings of Employee, and that the City will report the gross amounts of those payments to governmental agencies as earnings of the individual to whom net payment is made, as done in the past.

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- D. Although Employee is not otherwise entitled to it, the City agrees to pay, and Employee agrees to accept, the severance pay sum as full and complete compensation and satisfaction of any present and prospective claims. Because under the terms of this Section 3 Employee will be fully compensated for any arguable back pay and benefits owed, and because Employee is not and would not be entitled to any future wages or benefits pursuant to any claims, it is understood and agreed that Employee has no present claim for wages. Therefore, the parties agree that the entire amount described in this paragraph is to settle any potential claims.

SECTION 4. CITY RESPONSE TO FUTURE EMPLOYER INQUIRIES

Employee and City understand that Employee may seek future employment that will result in a potential employer contacting the City to determine the reason for Employee's separation from the City. The City agrees that it will respond to such inquiries by stating that:

"Mr. Johnson was employed by the City as the Assistant Director of Public Works and Development on March 24, 2014. He was thereafter advised by the City of a reorganization that would impact his position and caused him to be reclassified. Mr. Johnson did not believe that the reorganization would meet his career objectives and therefore resigned, effective October 31, 2014. Before his resignation, he had received a performance evaluation that indicated satisfactory performance of his job duties."

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SECTION 5. UNEMPLOYMENT INSURANCE

The City will not contest Employee's application for unemployment insurance benefits as a result of this Agreement. The City does not admit or deny, by so doing, that the Employee had a right to receive unemployment insurance benefits.

SECTION 6. MISCELLANEOUS

A. It is understood and agreed that this is a settlement agreement of disputed claims to avoid any possible lawsuit. By entering into this Settlement Agreement and General Release, the City does not admit liability or responsibility at any time for any purpose.

B. Employee promises and agrees not to publish or distribute the terms of this Agreement by any written or verbal means. This paragraph is not intended to prohibit the use of this Agreement in any proceeding if either of the parties alleges a breach of this Agreement.

C. If any party starts an action to enforce this Agreement, the prevailing party shall recover as costs his/her attorney's fees, costs and expenses actually incurred in such action.

D. If Employee breaks the promises contained in this agreement and files a claim or lawsuit based on legal claims that have been released, Employee will pay for all costs incurred by the City or its agents or employees, including reasonable attorneys' fees, in defending against the Employee's claim. In the event of any litigation between the parties respecting this Agreement, the prevailing party shall be entitled to recover from the unsuccessful party its reasonable attorneys' fees and costs as part of the judgment.

E. This Agreement shall not be a precedent or model for the resolution or settlement of any future claim resulting from similar or different circumstances.

F. Employee and the City agree that this Agreement constitutes a full settlement and resolution of all disputes and issues between the parties relating in any manner to Employee's employment with the City, up to and including the date this Agreement is signed by all parties. It is also understood and agreed that this Agreement is a full and final release applying to all unknown and unanticipated damages or losses to Employee resulting from or in any way related to his employment with the City, up to and including the date this Agreement is signed by all parties. Employee hereby waives the provisions of section 1542 of the California Civil Code, which states:

"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." (Civil Code, S 1542.)

G. Employee represents that he has been represented in negotiations for and the preparation of this Agreement by counsel of his own choosing, and that he understands all of this Agreement and is fully aware of its content and of its legal effects. Employee represents that he has been encouraged to consult with an attorney before signing this Agreement. Employee understands that whether or not to do so is Employee's decision.

H. Employee understands that he has been given a period of twenty-one (21) days to review and consider this Agreement before signing it. Employee further understands that he may use as much of this twenty-one (21) day period as he wishes prior to signing the Agreement.

I. Employee may revoke this Agreement within seven days of Employee's signing it. Revocation can be made by delivering a written notice of revocation to Mike Casalou, City of Commerce Human Resources Director, at 2535 Commerce Way, Commerce, California, 90040. For this revocation to be effective, such written notice must be received no later than the close of business on the seventh day after Employee signs this Agreement. If Employee revokes this Agreement, it shall not be effective or enforceable and Employee will not receive the benefits described in this Agreement.

J. This Agreement states the entire understanding and agreement between the parties with respect to its subject matter. The City has made no promises to Employee other than those contained in this Agreement. This Agreement may be modified, or any provision waived, only by a signed written agreement of the affected parties.

K. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by duly authorized individuals effective as of the date first written above.

EMPLOYEE

By: Wendell Johnson

Wendell Johnson

Date: 11-03-2014

CITY OF COMMERCE

By: Tina Baca Del Rio

Tina Baca Del Rio, Mayor

Date: 11-18-2014

Approved as to form:

By: Eduardo Olivo

Eduardo Olivo, City Attorney

Attachment: Exhibit A