

**FIRST AMENDMENT  
TO THE AMENDED AND RESTATED CITY MANAGER EMPLOYMENT  
AGREEMENT BETWEEN CITY OF SAN DIMAS AND CHRIS CONSTANTIN**

This FIRST AMENDMENT TO THE AMENDED AND RESTATED CITY MANAGER EMPLOYMENT AGREEMENT BETWEEN THE CITY OF SAN DIMAS AND CHRIS CONSTANTIN (the “First Amendment”) is made and entered into the 13th day of February, 2024, by and between the CITY OF SAN DIMAS (“City”), and CHRIS CONSTANTIN, an individual (hereinafter referred to as the “City Manager”).

**RECITALS**

WHEREAS, on January 4, 2021, Chris Constantin commenced service as the City’s City Manager pursuant to the terms and conditions of the City of San Dimas City Manager Employment Agreement (the “Original Agreement”) entered into on November 12, 2020; and

WHEREAS, on August 10, 2021, the City and City Manager entered into a First Amendment to the Original Agreement; and

WHEREAS, on July 25, 2023, the City and City Manager entered into the Amended and Restated City Manager Employment Agreement (the “Amended and Restated Agreement”); and

WHEREAS, the City and City Manager now desire to amend the Amended and Restated Agreement by this First Amendment to (i) reflect a 5% increase in the City Manger’s salary; and (ii) delete language automatically providing to the City Manager any Cost of Living Adjustments (“COLA”) afforded to all other City employees by resolution of the City Council.

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

**AGREEMENT**

SECTION 1. The above recitals are incorporated by reference as if set forth in full herein.

SECTION 2. The first paragraph of Section 2.1 of the Amended and Restated Agreement is amended to read as follows (deleted text is indicated in ~~strikethrough~~ & added text in ***bold and italics***):

“2.1 Monthly Compensation. ***Effective the first full pay period following approval of the First Amendment***, City agrees to compensate City Manager for services rendered hereunder at a monthly salary of ~~Twenty-two Thousand nine hundred fifty-seven Dollars and Sixty-seven Cents (\$22,957.67)~~ ***Twenty-Four Thousand One Hundred Five Dollars and Fifty-Five Cents (\$24,105.55)***. Such salary shall be payable in installments at the same time as other employees of City are paid. City Manager shall pay his contribution to FICA.”

SECTION 3. Section 2.4 of the Amended and Restated Agreement is deleted in its entirety as follows (deleted text is indicated in ~~strikethrough~~):

~~“2.4 Cost of Living Adjustments. Consistent with the intent of Section 6.11, the City Manager shall be provided a cost of living adjustment (“COLA”) equal to any COLAs afforded to all other City employees by resolution of the City Council, to be effective the same date as such COLAs are provided to all other City employees.”~~

SECTION 4. Except as expressly amended by this First Amendment, the underlying terms, conditions, and compensation of City Manager by City as and for his employment as city manager shall be as set forth in the Amended and Restated Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this First Amendment on the date and year written below.

**CITY OF SAN DIMAS**

  
\_\_\_\_\_  
Emmett Badar, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Debra Black, City Clerk

Dated: 2-13-24

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Jeff Malawy, City Attorney

**CHRIS CONSTANTIN**

  
\_\_\_\_\_  
Chris Constantin, City Manager

Dated: 2/27/2024

[END OF SIGNATURES]

**AMENDED AND RESTATED CITY MANAGER EMPLOYMENT AGREEMENT  
BETWEEN CITY OF SAN DIMAS AND CHRIS CONSTANTIN**

This AMENDED AND RESTATED CITY MANAGER EMPLOYMENT AGREEMENT (the “Agreement”) is made and entered into this 25th day of July, 2023, by and between the CITY OF SAN DIMAS (“City”), and CHRIS CONSTANTIN, an individual (hereinafter referred as the “City Manager”).

**RECITALS**

WHEREAS, it is the desire of the City Council of the City of San Dimas (hereinafter the "Council") to continue to employ an individual to serve in the position of City Manager, which position is prescribed by state law and Chapter 2.24 of the City’s Municipal Code, and to retain their services as Executive Director of the Successor Agency to the Former San Dimas Redevelopment Agency, the San Dimas Public Financing Authority, and San Dimas Housing Authority Successor Agency, and such other agencies of the City to which he may be appointed from time-to-time; and

WHEREAS, California Government Code Section 34852 provides that an ordinance establishing a city manager form of government shall define the powers and duties of the city manager; and

WHEREAS, the powers and duties of the city manager of the City are set forth San Dimas Municipal Code Section 2.24.070; and

WHEREAS, San Dimas Municipal Code Section 2.24.030(A) provides that “[t]he city manager shall be chosen by the city council solely on the basis of his or her executive and administrative qualifications, with special reference to his actual experience in, or his or her knowledge of accepted practice in respect to the duties of his or her office as set forth in [Chapter 2.24];” and

WHEREAS, based on City Manager’s executive and administrative qualifications and ability, the Council desires to employ and continue the employment of the City Manager to serve as the city manager for the City to perform and assume responsibility for the provision of city manager services to the City and its related agencies; and

WHEREAS, on November 12, 2020, the City and the City Manager entered into a *City Manager Employment Agreement Between City of San Dimas and Chris Constantin* (the “Original Agreement”); and

WHEREAS, on August 10, 2021, the City and City Manager entered into a First Amendment to the Original Agreement (“First Amendment”) extending ongoing Cost of Living Adjustments and an initial six month salary increase to the City Manager consistent with such provided to all City employees; and

WHEREAS, the City and City Manager agree to restate the Original Agreement and First Amendment to include all mutually agreed upon amendments and revisions.

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

## A G R E E M E N T

### 1.0 EMPLOYMENT & DUTIES

1.1 Duties. City hereby employs City Manager to perform the functions and duties of the position of city manager, as specified in the job description attached as Exhibit "A," the City's Municipal Code and in the Government Code of the State of California, and to perform such other legally permissible and proper duties and functions as the Council shall, from time to time, direct or assign. City Manager acknowledges that the assigned duties shall also include services to the Successor Agency to the Former San Dimas Redevelopment Agency, San Dimas Public Financing Authority and San Dimas Housing Authority.

1.2 Work Schedule. It is recognized that City Manager is expected to engage in the hours of work that are necessary to fulfill the obligations of the position and is expected to devote a great deal of time both during and outside the normal office hours to the business of the City. City Manager acknowledges that proper performance of the duties of city manager will require City Manager to generally be accessible during normal and outside normal business hours and will also often require the performance of necessary services outside of normal business hours. City Manager will be responsible to set their work schedule and will ensure accessibility when not physically present during normal business hours. Notwithstanding the foregoing, the City will permit City Manager such reasonable "time off" as is customary for exempt employees of the City, so long as the time off does not interfere with normal business. City Manager's compensation (whether salary or benefits or other allowances) is not based on hours worked, and City Manager shall not be entitled to any compensation for overtime unless otherwise permitted by law in the case of reimbursement from a federal agency. While the City Manager will remain reasonably available outside normal working hours and during "time off", non-normal working hours and time off shall not be considered City working time unless such time is a City event, City community event, or performing City work where the City Manager is attending or performing in their official capacity.

1.3 Other Business Activities. City Manager shall focus their professional time, ability, and attention to City business during the term of this Agreement. City Manager shall not engage in other business activity, without the express prior written consent of the City Council, that is competitive or may be a conflict-of-interest with the City, or that otherwise interferes with the business or operation of City or the satisfactory performance of City Manager's duties. Nothing in this Agreement shall abridge the City Manager's ability to participate in activity outside normal City business hours when such activity is not competitive, a conflict of interest, or impairing the City Manager's ability to perform their City duties, including but not limited to, volunteer reserve police officer duty and participating in religious activity.

1.4 Other Activities. Without materially impacting their primary focus to City business, the City Manager may continue their academic, teaching, and professional development activity which provides a reasonable benefit to the City and the public administration profession. However, the City Manager will evaluate interference to City

business as identified by the City Council and consider ceasing and/or modifying such activity when the impact outweighs the benefit.

1.5 Employment Status. Upon appointment to the city manager position, City Manager shall serve at the will and pleasure of the Council and understands that he shall be an “at-will” employee without recourse to bumping or other demotion rights and shall be subject to summary dismissal without any right of notice or hearing except as expressly provided in this Agreement, including any so-called due process pre-disciplinary “Skelly” hearing. The City may terminate Employee at any time in accordance with Section 3.4 below.

1.6 City Documents. The City Manager will have access to and develop City Documents in furtherance of City business, including but not limited to data, studies, reports, computer data and other documents related to City business. All data, studies, reports and other documents prepared by City Manager while performing their duties during the term of this Agreement shall be furnished to and become the property of the City, without restriction or limitation on their use. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other materials either created by or provided to City Manager in connection with the performance of this Agreement shall be held confidential by City Manager to the extent permitted by applicable law, except as may be required by any governmental agency or court of competent jurisdiction. Such materials shall not be used by City Manager, without the prior written consent of the Council, for any purposes other than the performance of their duties. Additionally, no such materials may be disclosed to any person or entity not connected with the performance of services under this Agreement, except as required by (a) law, (b) any governmental agency, (c) subpoena, or (d) an order issued by a court of competent jurisdiction. Nothing in this section shall abridge the City Manager’s use and ownership of any material, documents, ideas, or other intellectual property developed, authored, or created on their own time outside of City working hours on non-City owned property and non-City owned equipment when such material is not related to City business.

1.7 Exclusion from Competitive Service. City Manager understands, acknowledges and agrees that he is exempt from the City’s personnel system pursuant to San Dimas Municipal Code §2.30.050(A).

1.8 FLSA Exempt Status. City Manager agrees that their position is that of an exempt employee for the purposes of the Fair Labor Standards Act.

1.9 City Council Commitments. Except for the purpose of inquiry, the City Council and its members shall deal with all subordinate City employees, officers, contracts, and consultants through the City Manager or the City Manager’s designee, and neither the City Council nor any member thereof shall give direction to any subordinate of the City Manager, either publicly or privately. No member of the City Council will order the appointment or removal of any person to any office or employment under the supervision and control of the City Manager. Neither the City Council nor any of its members shall interfere with the execution of the powers and duties of the City Manager, as specified in the Municipal Code, this Agreement, or any other lawfully adopted and authorized document.

## **2.0 COMPENSATION**

2.1 Monthly Compensation. City agrees to compensate City Manager for services rendered hereunder at a monthly salary of Twenty-two-Thousand-nine-hundred-fifty-seven Dollars and Sixty-seven Cents (\$22,957.67) effective the first pay after execution of this Agreement. Such salary shall be payable in installments at the same time as other employees of City are paid. City Manager shall pay his contribution to FICA.

In the first full pay period following approval of this Agreement, the City shall provide to City Manager a one-time, lump sum payment in the amount of Sixteen Thousand Dollars Five Hundred Dollars (\$16,500) to encourage City Manager's continued retention under the terms of the Agreement. This lump-sum payment shall not be reported to the California Public Employees' Retirement System ("CalPERS") as "compensation earnable" as defined in Government Code section 20636(a).

2.2 Salary Review. City and City Manager may, at the Council's discretion, agree to conduct a salary review at any time, including concurrently with the annual performance evaluation set forth in Section 5.2 hereinafter. Such salary review may include consideration of the salary and those benefits afforded City Manager in this Agreement.

2.3 Effectuating Salary Adjustment. City and City Manager agree that the affirmative vote of three (3) members of Council at a public meeting shall be required to effectuate an increase in the salary paid to City Manager paid pursuant to this Agreement, as well as amendment of this Agreement.

2.4 Cost of Living Adjustments. Consistent with the intent of Section 6.11, the City Manager shall be provided a cost of living adjustment ("COLA") equal to any COLAs afforded to all other City employees by resolution of the City Council, to be effective the same date as such COLAs are provided to all other City employees.

### **3.0 TERM**

3.1 Commencement & Effective Date. The Effective Date of this Agreement is the date it is signed by the City provided it has first been signed by City Manager, or the date it is signed by City Manager provided it has first been signed by the City. City Manager service, which commenced on January 4, 2021, shall continue without interruption unless terminated pursuant to the terms of the Agreement.

3.2 Term. This Agreement shall remain in effect from the Effective Date until terminated pursuant to Section 3.3 or Section 3.4.

3.3 Termination By City Manager. City Manager may terminate this Agreement at any time, provided City Manager provides the Council with at least sixty (60) days' advance written notice prior to the effective date of termination, unless a shorter period is acceptable to Council. In the event City Manager terminates this Agreement, City Manager expressly agrees that he shall not be entitled to any severance pay.

3.4 Termination by City. The Council may terminate this Agreement at any time with or without cause, by providing written notice of the reason(s). The Council's right to terminate

City Manager pursuant to this Section 3.4 shall not be subject to or in any way limited by the City's Personnel Rules or past City practices related to the employment, discipline or termination of the City's employees. However, in no event may City Manager be terminated within ninety (90) days before or after any municipal election for the selection or recall of one or more of the members of the City Council. Nothing herein shall be construed to create a property interest, where one does not exist by rule of law, in the position of city manager.

(a) Termination by Council for Cause. The Council may terminate this Agreement for cause at any time by vote of three of the five City Councilmembers at a publicly agendized meeting in accordance with the Government Code §§ 54950 *et seq.* ("Brown Act"). For purposes of this Agreement, the term "cause" shall be defined to include, any misconduct materially related to performance of official duties as provided below. In the event for termination for cause, the City shall, if desired by City Manager, afford City Manager a public name-clearing hearing before the City Council. Request for a name clearing hearing shall be made to the City Clerk within fifteen (15) days of City Manager's receipt of notice of termination.

1. For the following when substantiated by either competent, independent investigation or court of competent jurisdiction and in which the City Manager was given appropriate opportunity to review and refute in person any evidence or testimony used to support findings following completion of an investigation report, the City Council may terminate this Agreement for cause (or may discipline) by providing the City Manager with five (5) business days' written notice of termination for cause and the facts and grounds constituting such cause.
  - a. Conviction for Felony. Conviction for a felony by a court of competent jurisdiction.
  - b. Conviction for Illegal Acts. Conviction for criminal acts related to City business or other acts constituting moral turpitude which result in incompatibility to serve as City Manager (excepting traffic or moving violations) by a court of competent jurisdiction.
  - c. Loss of Mental Capacity. Loss of mental capacity for more than six (6) consecutive months as determined by a court of competent jurisdiction. Written notice of termination must be provided to both the City Manager and any identified power of attorney or guardian. Nothing in this section shall abridge the City Manager's remedies as permitted by law if such loss of mental capacity was caused by City employment.
  - d. Unauthorized Leave of Absence. Absence without justification or authority for more than five (5) business days without providing reasonable justification of absence.
  - e. Refusal of Oath. Refusal to take or subscribe to any oath or affirmation which is required by law.

2. For the following when substantiated by competent, independent investigation and in which the City Manager was given appropriate opportunity to review and refute in person any evidence or testimony used to support findings following completion of an investigation report, the City Council may terminate this Agreement for cause (or may discipline) by providing the City Manager with fifteen (15) business days' written notice of termination for cause and the facts and grounds constituting such cause.
  - a. Neglect of Duty or Insubordination. Persistent, habitual, or willful neglect to perform their obligated duty on a material City matter after the City Council has clearly established or directed the duty obligation and conveyed such obligation in a clear manner as the City Council body either in writing or in open or closed session.
  - b. Unreasonable Intoxication. Unreasonable intoxication while working, attending a City event, or attending a community event as a representative of the City, whether by alcohol, prescription or non-prescription drugs, and in the case of prescription drugs, where they are being used in a manner not authorized by City Manager's treating physician.
  - c. Financial mismanagement. Management that involves deliberative mishandling in a manner that can be characterized as grossly negligent or incompetent and that will materially reflect negatively upon the financial standing of the City.
  - d. Material dishonesty. Willfully providing to the City Council or any City Councilmember materially dishonest and knowingly false information.
  - e. Discrimination and Harassment. Willful and substantiated violation of Federal, State or City discrimination and harassment laws concerning race, religious creed, color, national origin, ancestry, physical handicap, marital status, sexual orientation, sex or age concerning either members of the general public or City's employee(s) while acting in the course and scope of employment, while on City premises or time, and/or while acting without the prior approval or direction of the Council.
  - f. Retaliation. Willful and unlawful retaliation substantiated against any City officer or employee or member of the general public who in good faith reports, discloses, divulges or otherwise brings to the attention of any appropriate authority any facts or information relative to actual or suspected violations of any law occurring on the job or related directly thereto.
  - g. Conflict of Interest. Willful and material violation of any conflict of interest or incompatibility of office laws as provided under California State law.



For any reason at any time and without prior investigation, the City may, in its discretion, place City Manager on paid administrative leave. However, the City Council will consider and weigh reasonable alternatives to paid administrative leave with the potential reputational impact of placing the City Manager on paid administrative leave before taking any action. If the City terminates for cause under this Agreement and the services of Employee hereunder, then the City shall have no obligation to pay severance.

(b) Termination by Council Without Cause. By providing City Manager written notice thereof, the Council may terminate City Manager without cause but rather based upon management reasons, including but not limited to incompatibility of management styles. However, in no event may City Manager be terminated within ninety (90) days before or after any municipal election for the selection or recall of one or more of the members of the City Council. In the event City Manager is terminated without cause, City Manager expressly agrees that he shall not be entitled to any severance pay as the result of the termination of this Agreement except as provided in Section 4.1 below.

3.5 Waiver of Certain Discipline and Termination Rights. Except for the right under Government Code §54957(b) to have complaints or charges against an employee heard in a public session upon the employee's request, City Manager expressly waives any rights afforded under City's personnel system or policies, and any rights afforded to City Manager under the San Dimas Municipal Code (including Section 2.24.060) or under State or Federal law, to any form of pre- or post- discipline or termination hearing, appeal, or other administrative process pertaining to discipline or termination, except those rights City Manager may have under the California or United States constitutions to a name-clearing hearing.

3.6 Communication Upon City Manager Separation. Upon separation of the City Manager for any reason, no official statements will be made by either the City or by City Manager other than one or more joint press releases approved by both the City and City Manager.

#### **4.0 SEVERANCE**

##### **4.1 Severance Pay and Benefits.**

If, after the Effective Date of this Agreement, the Council terminates City Manager without cause and City Manager does not challenge such termination, including but not limited to by means of appeal or civil or administrative claim, then City shall pay to City Manager severance in an amount equal to their monthly base salary (as defined in Section 2 above, calculated on a per diem basis) then in effect multiplied by nine (9) less applicable deductions normally deducted during regular payroll payments and excluding deferred compensation or the value of any other benefits.

The City is currently a member of the CJPIA which makes available to City Manager six (6) months of compensation and COBRA benefits according to the terms and conditions of the CJPIA'S Special Liability Protection Program. The terms and conditions of the CJPIA's Special Liability Protection Program ("CJPIA Program") may vary from time to time. The terms and conditions of the CJPIA Program, if any, in effect at the time of termination of City Manager's

employment will govern. If, at the time of City's termination of City Manager's employment, City is no longer a member of CJPIA, this paragraph shall not apply, and the benefit, if any, available to City Manager under the CJPIA Program shall be determined at the time of City's termination of City Manager, if at all.

In the event the City discontinues the CJPIA Program and the Council thereafter terminates City Manager without cause and City Manager does not challenge such termination, including but not limited to by means of appeal or civil or administrative claim, then City shall pay to City Manager severance in an amount equal to their monthly base salary (as defined in Section 2 above, calculated on a per diem basis) then in effect multiplied by fifteen (15) less applicable deductions normally deducted during regular payroll payments and excluding deferred compensation or the value of any other benefits.

Notwithstanding the foregoing, Government Code § 53260 provides that all contracts of employment with a city must include a provision limiting the maximum cash settlement for the termination of the contract to the monthly salary (excluding benefits) multiplied by the number of months left on the unexpired term, but not more than eighteen (18) months if the unexpired term exceeds 18 months. Accordingly, should such proposed severance payment exceed the amount authorized to be paid under Government Code Section 53260, then the amount paid to City Manager shall be reduced in the amount necessary to comply with such statute. (For example, if termination occurs with two (2) months left in the term, severance would be equal to the monthly base salary multiplied by two (2) rather than the 9 months provided in this Section.)

4.2 No Severance Pay if Termination for Cause or Initiated By City Manager. As provided in Section 3.4(a), should City Manager be terminated for cause, the City shall have no obligation to pay the severance provided for in Section 4.1 above. As provided in Section 3.3 should City Manager initiate termination of this Agreement, the City shall have no obligation to pay the severance provided for above in Section 4.1 above.

4.3 Sole Rights. The severance rights provided in this Section 4.0 shall constitute the sole and only entitlement of City Manager with respect to severance pay in the event of the termination, other than for cause. City Manager expressly waives any and all other rights with respect to severance pay except as provided herein. Any and all severance rights are conditioned upon and in consideration for execution of the standard "Agreement of Separation, Severance, and General Release" attached hereto in form only as Exhibit "B."

## **5.0 PERFORMANCE EVALUATION**

5.1 Purpose. The performance review and evaluation process set forth herein is intended to provide review and feedback to City Manager so as to facilitate a more effective management of City. Nothing herein shall be deemed to alter or change the employment status of City Manager (as set forth in Section 1.5 above), nor shall this Section 5.0 be construed as requiring "cause" to terminate this Agreement, or the services of City Manager thereunder.

5.2 Annual Evaluation. Council shall review and evaluate the performance of City Manager annually on or about the one (1) year anniversary of City Manager's start date. A performance evaluation shall be conducted by means of a either a third-party facilitated

performance evaluation or by the City Council directly. The selection of the third-party facilitator shall be in the sole discretion of the City Council. The City Council and City Manager shall mutually agree on the criteria, metrics, and/or expectations used to evaluate the City Manager. It shall be the obligation of City Manager and/or the City Clerk to notify Council of the need to conduct the evaluation required by this Section.

5.3 Development and Mentoring. Council will support the continuous development and mentoring of the City Manager to stay current on local government matters, enhance knowledge, skills, and abilities to effectively manage City operations, and will annually budget the resources necessary to further this objective.

5.4 Written Summary. City and City Manager agree to jointly prepare a written summary of each performance evaluation of City Manager, except for the first, and to include the same in their personnel file within two (2) weeks following conclusion of the review and evaluation process. Council and shall schedule at least one (1) closed personnel session with City Manager to deliver and discuss the evaluation.

## **6.0 EMPLOYMENT BENEFITS**

6.1 Vehicle Allowance. City Manager shall be afforded a monthly vehicle allowance as set forth in the City's then-current Pay Plan and Reimbursement Schedule Resolution, as it may be amended from time to time, in full compensation for the usage of City Manager's personal vehicle for City-related business. As of the Effective Date of this Agreement, the current version of the Pay Plan and Reimbursement Schedule provides for a Six Hundred Dollar (\$600.00) per month vehicle allowance to the city manager. City shall provide City Manager with a toll way transponder and shall pay the monthly toll charges related to City business.

6.2. Technology Reimbursement. City Manager shall receive a monthly allowance of \$150 for personal technology expenses, including but not limited to personal cell phone and data expenses. City Manager may use City-owned and City-managed technological equipment and software of whatever type City Manager chooses, provided it is reasonably consistent with the cost of equipment/software provided to the City Council or City staff.

6.3 Medical, dental, and vision insurance. The City shall continue to provide to City Manager medical, dental, and vision insurance at the same level as all full-time employees. The City Manager shall continue to be eligible to receive the other Optional Benefit Plan contributions for retirement medical currently contributed in accordance with the City's then-current Pay Plan and Reimbursement Schedule.

6.4 Life and long-term disability insurance. The City shall provide to City Manager the same life insurance and long-term disability insurance benefits offered to all full-time employees.

6.5 CalPERS Retirement. Employee is a "classic" member of CalPERS and shall continue to participate in the City's 2% at 55 CalPERS formula. The City shall pay the full employer CalPERS contribution. The employee contribution of 7% shall be paid by Employee.

6.6 Deferred Compensation. City Manager shall be eligible to participate in the City's Deferred Compensation Program provided to all full-time employees, subject to the terms and conditions in the City's Personnel Rules, as may be amended from time to time. As of the Effective Date of this Agreement, the City will match employee deferred compensation contributions dollar for dollar up to \$250 per month, or as otherwise provided in the City's then-current Pay Plan and Reimbursement Schedule.

6.7 Sick, Vacation, and Other Leaves. Unless otherwise specified in this Section 6.7, City Manager shall receive sick, vacation and other leaves as provided to all full-time employees, subject to the terms and conditions in the City's Personnel Rules as amended from time to time and as modified below by this section.

(a) Sick Leave. Sick leave shall accrue, without limitation at the amount of 8 hours per month. Sick leave may be used for actual personal sickness of or injury to City Manager or City Manager's family member, and for medical, dental and vision care appointments. "Family member" includes a spouse, children, step-children, parent, step-parents and parents-in-law. Time off work as a result of a proven job-related illness shall not be charged against accumulated sick leave.

Sick leave shall be deducted from accrued sick leave on an hour-for-hour basis when the total leave exceeds two hours. If City Manager utilizes all of City Manager's accrued sick leave and is still unable to return to work due to illness or injury, City Manager shall automatically be placed on leave without pay, unless City Manager advises the Finance Office to charge the additional sick time against accrued vacation leave.

Upon termination of service, no compensation for accrued sick leave shall be made except that: 1) upon retirement, City Manager may convert up to 50% of accrued sick leave to cash, in an amount not to exceed \$10,000; and 2) upon retirement, accumulated sick leave may be converted to sick leave credit in accordance with CalPERS requirements and the City's contract with CalPERS, except that in the event of any election to convert such sick leave to cash, the retirement sick leave credit shall be reduced commensurately.

(b) Vacation Leave. City Manager shall accrue vacation leave at the rate of 7.69 hours biweekly (200 hours per year) with a maximum accrual balance of 400 hours. Vacation leave shall be taken for any period exceeding four (4) hours in a day and any vacation exceeding a full day will require notification to the City Council. The City Manager waives any annual cash payout for accrued vacation leave.

(c) Administrative Leave. City Manager shall accrue 96 hours of administrative leave on January 1 of each calendar year in addition to other leaves granted herein subject to the City's Personnel Rules. Administrative leave accrual shall be capped at 96 hours.

(d) Holiday Leave. City Manager shall be entitled to observe all legal holidays recognized by the City on the days that they are observed by the City.

(e) Birth or Adoption of a Child Leave. In the event of the birth or adoption of a child, City Manager shall be entitled to leave of absence with pay for a period of ten (10) consecutive days. Such leave shall be commenced within 14 days after the date of such birth or adoption.

(f) Bereavement Leave. If any member of City Manager's immediate family dies, City Manager shall be entitled to a period of five (5) work days of paid bereavement leave with pay. Such leave shall be taken within seven (7) days after the death of the family member or within seven (7) days of the date of the funeral or memorial service for the deceased. Immediate family shall include a spouse, child, step-child, parent, step-parent, sibling, parent-in-law, grandparent, spouse's grandparent or grandchild.

(g) The City recognizes that the City Manager serves as a specified position, a volunteer firefighter, reserve peace officer, or emergency rescue position, and will comply with California Labor Code Section 230.3 and 230.4. These sections require employers to allow the specified employee to take time off to perform emergency duty or to take leave for an aggregate amount of up to 14 days per calendar year to engage in fire, law enforcement, or emergency rescue training. Accordingly, the City will not abridge or discriminate against an employee for taking time off to perform these activities.

6.8 Workers Compensation. City agrees to provide workers' compensation insurance as provided to all City employees in accordance with all applicable provisions of State law.

6.9 Training and Business Expenses. City recognizes that the role of City Manager requires work both in and out of the office and can benefit from continuous development of the City Manager. Additionally, the City recognizes the City Manager may incur expenses of a non-personal, job-related nature that are reasonably necessary to City Manager's service to City. City agrees to reimburse City Manager, or the City will pay for attendance at conferences and payment of professional dues, subscriptions, certifications, training related to certifications, and other City-related training provided such expenses are included in the City budget. Additionally, the City Manager shall be reimbursed for job-related expenses, including but not limited to, meeting with other government officials, vendors, or any other expense which would otherwise be an expense made by the City in furthering its operations. Reimbursement shall be subject to the City's Reimbursement Policy, Personnel Rule XVIII, Section 20 and where such policy or personnel rule does not explicitly apply or conflicts with this section, the City Manager will obtain review and approval by the Mayor prior to incurring an expense and/or submitting for reimbursement.

6.10 Longevity Incentive. City Manager shall be eligible for the City's Longevity Service Incentive as provided in the then-current "Pay Plan and Reimbursement Schedule" resolution, as may be amended from time to time.

6.11 Additional Benefits. Unless otherwise specified to the contrary in this Agreement, City Manager shall be entitled to such additional benefits as are afforded full time employees or as the same may be modified for all employees by resolution of Council from time to time or as specified within the City's Personnel Rules. No other benefits shall accrue not provided under this Agreement, resolution of Council, or City's Personnel Rules.

## **7.0 INDEMNIFICATION, DEFENSE AND BONDS**

7.1 Indemnification. For the purpose of indemnification and defense of legal actions, City Manager shall be considered an employee of the City and entitled to the same rights and subject to the same obligations as are provided for all other employees of the City as set forth in Sections 825 through 825.6 and Sections 995 throughout 996.6 of the California Government Code. City Manager may request, and the City shall not unreasonably refuse to provide, independent legal counsel at the City's expense to defend City Manager in any action, suit or proceeding in which City has a duty to defend City Manager. City Council may cap the hourly rate for any independent counsel to the City Manager at the City Attorney's then-current standard hourly litigation rate. If the City agrees to City Manager's request, the choice of such legal counsel shall be made by the City Manager. The defense provided by the City for City Manager shall continue until a final conclusion of the claim, action, suit or proceeding, including any appeals brought by any party.

7.2 Bonds. The City shall bear the full cost of any fidelity or other bonds required of the City Manager by the Council or as required under any law or ordinance.

## **8.0 GENERAL PROVISIONS**

8.1 Entire Agreement. This Agreement represents the entire agreement between the parties and supersedes any and all other agreement, either oral or in writing, between the parties with respect to the employment of City Manager by City, including the Original Agreement and First Amendment, and contains all of the covenants and agreements between the parties with respect to that employment. Each party to this agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by either party, or anyone acting on behalf of either party, which are not embodied herein, and that no other agreement, statement of promises not contained in this Agreement shall be valid or binding upon either party.

8.2 Amendment. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing, which amendment shall require approval by the affirmative vote of three (3) members of the Council.

8.3 Heirs and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the heirs at law and executors of the City Manager.

8.4 Effect of Waiver. The failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or

power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

8.5 Partial Invalidity. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

8.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, in full force and effect as of the date of execution.

8.7 Mandatory Government Code Provisions. Government Code §§ 53243 - 53243.4 require that contracts between local agencies and its employees include provisions requiring an employee who is convicted of a crime involving an abuse of their office or position to provide reimbursement to the local agency for the following forms of payment: (i) paid leave salary; (ii) criminal defense costs; (iii) cash settlement payments; and (iv) any non-contractual settlement payments. Accordingly, the Parties agree that it is their mutual intent to fully comply with these Government Code sections and all other applicable law as it exists as of the date of execution of this Agreement and as such laws may be amended from time to time thereafter. Specifically, the following Government Code sections are called out and 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 noncontractual payments upon conviction or crime involving office or position.

§53243.4. "Abuse of office or position" defined.

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

8.8 Independent Legal Advice. City and City Manager represent and warrant to each other that each has received, legal advice from independent and separate legal counsel with respect to the legal effect of this Agreement, or has at least had the opportunity to do so, and City and City Manager further represent and warrant that each has carefully reviewed this entire Agreement and that each and every term thereof is understood and that the terms of this

Agreement are contractual and not a mere recital. This Agreement shall not be construed against the party or its representatives who drafted it, or who drafted any portion thereof.

8.9 Conflicts Prohibited. During the term of this Agreement, City Manager shall not engage in any business or transaction or maintain a financial interest which conflicts, or reasonably might be expected to conflict in any manner, with the proper discharge of their duties under this Agreement. City Manager shall comply with all requirements of law, including but not limited to, Sections 87100 *et seq.*, Section 1090 and Section 1125 of the Government Code, and all other similar statutory and administrative rules. Whenever any potential conflict arises or may appear to arise, the obligation shall be on City Manager to seek legal advice concerning whether such conflict exists and City Manager's obligations arising therefrom.

8.10 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:

City of San Dimas  
Attn: Mayor  
245 E. Bonita Ave., San Dimas,  
CA 91773

To City Manager:

[ON FILE WITH HUMAN  
RESOURCES]

w/copy to:

City Attorney  
c/o Aleshire & Wynder, LLP  
3701 Wilshire Blvd., Suite 725,  
Los Angeles, CA 90010

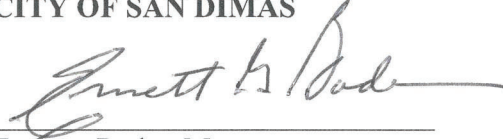
Notices shall be deemed given as of the date of personal service or upon the date of deposit in the course of transmission with the United States Postal Service.

[SIGNATURES ON THE FOLLOWING PAGE]



IN WITNESS WHEREOF, the CITY OF SAN DIMAS has caused this Agreement to be signed and executed on its behalf by its Mayor, and duly attested by its officers thereunto duly authorized, and CITY MANAGER has signed and executed this Agreement, both in duplicate.

**CITY OF SAN DIMAS**



Emmett Badar, Mayor

Dated: 7/27/23

**ATTEST:**

*Debra Black*

\_\_\_\_\_  
Debra Black, City Clerk

**APPROVED AS TO FORM:**



Jeff Malawy (Jul 26, 2023 15:15 PDT)

\_\_\_\_\_  
Jeff Malawy, City Attorney

**CHRIS CONSTANTIN**



Chris Constantin (Jul 26, 2023 18:12 PDT)

\_\_\_\_\_  
Chris Constantin, City Manager

Dated: Jul 26, 2023

[END OF SIGNATURES]

**EXHIBIT "A"**



City Manager

Department/Division:	City Manager's Office
Reports To:	City Council
Provides Direction To:	Department directors; City Clerk, Housing Programs Manager, and administrative support staff

**1.0 GENERAL PURPOSE**

Under general direction of the City Council, directs, coordinates, and manages the overall administrative activities, programs and operations of the City; advises, initiates and oversees the implementation of City development goals in accordance with Council goals; oversees department heads as well as managers and staff assigned to the City Manager's Office; and performs related duties as required.

**1.1 DISTINGUISHING CHARACTERISTICS**

This is the top managerial position within the City; this position reports directly to the City Council and oversees the work of departmental directors and the operations of the entire City. The scope of responsibility, decision-making authority, and scope of supervision exercised is larger than any other City position.

**1.2 ESSENTIAL DUTIES AND RESPONSIBILITIES**

The duties listed below are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related or a logical assignment to this position.

1. Directs, guides and participates in the development and implementation of City- wide goals, objectives, policies and procedures.
2. Plans, oversees and approves the preparation and administration of the City budget with the assistance of departmental directors.

3. Selects, trains, supervises and evaluates the work of department directors and approves application of Personnel Rules and disciplinary standards.
4. Serves as Director of the Successor Agency to the Former San Dimas Redevelopment Agency.
5. Prepares long-term plans for capital improvements and debt financing.
6. Confers with department heads concerning administrative and operational problems and originates solutions that meet City and departmental needs.
7. Prepares and submits to the City Council reports of City finances and administrative activities.
8. Advises City Council as to the success and status of enforcement of various programs and requirements; conceptualizes future needs of the City.
9. Oversees the enforcement of all City ordinances and the plans and requirements of the City Council.
10. Interprets, analyzes and explains policies, procedures, and programs to the City Council, staff and the public, including major complaints.
11. Confers with residents, taxpayers, businesses and other individuals, groups and outside agencies having an interest or potential interest in the affairs of the City; represents the City in the community and at professional meetings as required.
12. Coordinates City activities with other governmental agencies and outside organizations.

### 1.3 QUALIFICATIONS GUIDELINES

#### **Knowledge of:**

Municipal administrative methods and procedures, organizations and functions; current social, political, and economic trends and operations programs of municipal government; applicable Federal and State laws, rules and regulations regarding local government operations; principles of effective public relations and interrelationships with community groups and agencies, private businesses and firms, and other levels of government; principles of management, finance and supervision.

#### 1.4 Ability to:

Serve effectively as the administrative agent of the City Council and to properly represent the City; provide effective leadership and coordinate the activities of a municipal

organization; analyze, interpret, summarize, and present administrative and technical information and data in an effective manner; exercise effective leadership and judgement in policy, personnel and budgetary matters and adopt an effective course of action; establish and maintain effective relationships with City Council, department directors, officials, public and private representatives, vendors, contractors, consultants, and the general public.

### 1.5 Education/Training/Experience:

Any combination equivalent to experience and education that could likely provide the desired knowledge and abilities. A typical way to obtain the knowledge and abilities would be:

**Experience:** Ten years of progressively responsible experience in an administrative, managerial, or staff capacity in a medium size municipal organization, involving the responsibility for the planning, organization, implementation and supervision of varied work programs, and preferably involving local government management experience.

**Education:** Equivalent to a Master's degree from an accredited college or university with major course work in public or business administration or a closely related field.

### 1.6 Licenses; Certificates; Special Requirements:

A valid Class C or Class 3 California State driver's license issued from the California Department of Motor Vehicles is required in order to attend various business meetings and conferences.

## 1.7 PHYSICAL AND MENTAL DEMANDS

The physical and mental demands described here are representative of those that must be met by employees to successfully perform the essential functions of this class. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

### 1.8 Physical Demands

While performing the duties of this job, the employee is frequently required to use hands to finger, handle, feel or operate objects, tools, or controls; and reach with hands and arms. The employee is frequently required to sit, talk or hear and to occasionally lift and carry records and documents typically weighing less than 20 pounds. The employee is occasionally required to stand and walk. Specific vision abilities required by this job include close vision, color vision and the ability to adjust focus.

## ARTICLE II      Mental Demands

While performing the duties of this class, employees are regularly required to use written and oral communication skills; read and interpret data, information and documents; explain policies and procedures as applied to specific situations; apply independent judgement in solving work problems; use math and mathematical reasoning; observe and interpret situations; learn and apply new information or new skills; work under deadlines with constant interruptions; and interact with City staff, other organizations and the public, and occasionally deal with dissatisfied or quarrelsome individuals.

## ARTICLE III WORK ENVIRONMENT

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this class. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

The position works under typical office conditions and the noise level is frequently quiet.

## EXHIBIT "B"

### AGREEMENT OF SEPARATION, SEVERANCE, AND GENERAL RELEASE

#### **1. PARTIES**

This Agreement of Separation, Severance, and General Release (hereinafter referred to as the "AGREEMENT") is entered into by and between the City of San Dimas, a general law city and municipal corporation (hereinafter referred to as "THE CITY"), and \_\_\_\_\_, an individual (hereinafter referred to as "EMPLOYEE").

#### **2. RECITALS**

2.1. EMPLOYEE was hired by THE CITY as an at-will City Manager effective \_\_\_\_\_ serving at the pleasure of the City Council of THE CITY pursuant to a written contract, a copy of which is attached hereto as Exhibit "A" ("THE CONTRACT").

2.2. THE CITY and EMPLOYEE desire that EMPLOYEE resign and enter into a severance agreement whereby EMPLOYEE receives severance compensation in exchange for executing a general release and waiver of any and all claims that EMPLOYEE may have against THE CITY, including but not limited to its elected and non-elected officials, employees, attorneys, and agents. Accordingly, the parties hereto intend by this AGREEMENT to mutually conclude any and all employment relationships between THE CITY and EMPLOYEE by means of EMPLOYEE's voluntary separation as of \_\_\_\_\_, \_\_\_\_\_. This AGREEMENT sets forth the full and complete terms and conditions concluding EMPLOYEE's employment relationship with the CITY and any obligations related thereto, including any provided under THE CONTRACT.

2.3 In accordance with this AGREEMENT and with applicable state and federal laws, EMPLOYEE acknowledges that EMPLOYEE has been advised of EMPLOYEE's post-employment rights, including but not limited to, EMPLOYEE's rights under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), the Employee Retirement Income Security Act of 1974 ("ERISA"), and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

#### **3. CONSIDERATION**

3.1 EMPLOYEE shall receive payment to him at the time of their voluntary separation all earned salary, accrued fringe benefits as detailed in THE CONTRACT, and/or all other wage compensation/benefits owed to EMPLOYEE upon separation of employment, as required by federal, state or municipal law or THE CONTRACT or any other agreement with THE CITY, with the exception of any severance payments.

3.2. In exchange for the waivers and releases set forth herein, THE CITY shall also cause to be paid to EMPLOYEE an additional compensatory payment by means of severance, settlement and release in the form of a lump sum amount of \_\_\_\_\_ and \_\_\_\_\_ cents (\$ \_\_\_\_\_ .00), as set forth in THE CONTRACT in the form of a check made payable to EMPLOYEE to be mailed to EMPLOYEE at EMPLOYEE's home address via certified mail return receipt requested within thirty (30) business days after the EFFECTIVE DATE (as defined below)

of this AGREEMENT. The lump sum shall be subject to applicable federal and state withholdings as determined appropriate by THE CITY.

3.3 In exchange for the severance payment provided for herein, EMPLOYEE, and on behalf of EMPLOYEE's spouse, heirs, representatives, successors, and assigns, hereby releases, acquits, and forever discharges THE CITY, and each of its predecessors, successors, assigns, officials, employees, representatives, agents, insurers, attorneys, and all persons and entities acting by, through, under, or in concert with any of them, and each of them (hereinafter referred to as "THE CITY PARTIES"), from any and all claims, charges, complaints, contracts, understandings, liabilities, obligations, promises, benefits, agreements, controversies, costs, losses, debts, expenses, damages, actions, causes of action, suits, rights, and demands of any nature whatsoever, known or unknown, suspected or unsuspected, which EMPLOYEE now has or may acquire in the future, or which EMPLOYEE ever had, relating to or arising out of any act, omission, occurrence, condition, event, transaction, or thing which was done, omitted to be done, occurred or was in effect at any time from the beginning of time up to and including [REDACTED], [REDACTED] (hereinafter referred to collectively as "CLAIMS"), without regard to whether such CLAIMS arise under the federal, state, or local constitutions, statutes, rules or regulations, or the common law. EMPLOYEE expressly acknowledges that the CLAIMS forever barred by this AGREEMENT specifically include, but are not limited to, claims based upon any alleged breach of THE CONTRACT or any other agreement of employment, any demand for wages, overtime or benefits, any claims of violation of the provisions of ERISA, COBRA or HIPAA, any alleged breach of any duty arising out of contract or tort, any alleged wrongful termination in violation of public policy, any alleged breach of any express or implied contract for continued employment, any alleged employment discrimination or unlawful discriminatory act, or any claim or cause of action including, but not limited to, any and all claims whether arising under any federal, state or local law prohibiting breach of employment contract, wrongful termination, or employment discrimination based upon age, race, color, sex, religion, handicap or disability, national origin or any other protected category or characteristic, and any and all rights or claims arising under the California Labor Code or Industrial Welfare Commission Wage Orders, the Federal Fair Labor Standards Act, the California Fair Employment and Housing Act, California Government Code §§12900 *et seq.*, 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, or regulation. Nothing herein shall be interpreted as a release or waiver of any workers' compensation claims or in any way prohibit or prevent EMPLOYEE from participating in any claims or administrative action brought by a state or federal agency. This AGREEMENT, however, does operate to prevent EMPLOYEE from seeking or recovering monetary damages or other individual-specific relief in connection with any such claims or administrative action brought by a state or federal agency. Furthermore, nothing herein shall be interpreted as a release or waiver of THE CITY's statutory obligations relative to providing defense and indemnification of public employees, if any, including but not limited to Government Code Sections 825-825.6 and Sections 995-996.6.

#### **4. SPECIFIC ACKNOWLEDGMENT OF WAIVER OF CLAIMS UNDER ADEA AND OWBPA**

The Age Discrimination in Employment Act of 1967 (hereinafter referred to as the "ADEA") makes it illegal for an employer to discharge any individual or otherwise discriminate

with respect to the nature and privileges of an individual's employment on the basis that the individual is age forty (40) or older. The Older Workers Benefit Protection Act (hereinafter referred to as the "OWBPA," 29 U.S.C. § 626 *et seq.*, Pub L 101-433, 104 Stat. 978 (1990)) further augments the ADEA and prohibits the waiver of any right or claim under the ADEA, **unless the waiver is knowing and voluntary**. By entering into this AGREEMENT, EMPLOYEE acknowledges that he knowingly and voluntarily, for just compensation in addition to anything of value to which EMPLOYEE was already entitled, 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, their rights under the ADEA and OWBPA, and of the legal significance of their 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 their 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 prior to executing this AGREEMENT;
- (f) EMPLOYEE has discussed 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 their execution** of this AGREEMENT to revoke the AGREEMENT;
- (h) Notice of revocation within the seven (7) day revocation period must be provided, in writing, to THE CITY pursuant to Paragraph 8.9 herein, and must state, "I hereby revoke my acceptance of our Agreement of Severance and General Release;" and
- (i) This AGREEMENT shall not be effective until all parties have signed the AGREEMENT and ten (10) days have passed since EMPLOYEE's execution ("EFFECTIVE DATE").

## **5. UNKNOWN CLAIMS**

In relation to the release provisions of Paragraphs 3 and 4 above, EMPLOYEE understands that California Civil Code section 1542 reads as follows:



“General Release--Claims Extinguished”

“A general release does not extend to claims 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.”

EMPLOYEE hereby waives the protection of California Civil Code section 1542.

**6. WAIVER OF ADDITIONAL CLAIMS**

EMPLOYEE hereby waives any provisions of state or federal law that might require a more detailed specification of the claims being released pursuant to the provisions of Paragraphs 3, 4, and 5 above.

**7. REPRESENTATIONS AND WARRANTIES**

Each of the parties to this AGREEMENT represents and warrants to, and agrees with, each other party as follows:

7.1. Advice of Counsel: The parties hereto have received independent legal advice from their respective attorneys concerning the advisability of entering into and executing this AGREEMENT or have been given the opportunity to obtain such advice. The parties acknowledge that they have been represented by counsel of their own choice in the negotiation of this AGREEMENT, that they have read this AGREEMENT; that they have had this AGREEMENT fully explained to them by such counsel, or have had such opportunity to do so and that they are fully aware of the contents of this AGREEMENT and of its legal effect.

7.2. No Fraud in Inducement: No party (nor any officer, agent, employee, representative, or attorney of or for any party) has made any statement or representation or failed to make any statement or representation to any other party regarding any fact relied upon in entering into this AGREEMENT, and neither party relies upon any statement, representation, omission or promise of any other party in executing this AGREEMENT, or in making the settlement provided for herein, except as expressly stated in this AGREEMENT.

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

7.4. Mistake Waived: In entering into this AGREEMENT, each party assumes the risk of any misrepresentation, concealment or mistake. If any party should subsequently discover that any fact relied upon by it in entering into this AGREEMENT was untrue, or that any fact was concealed from it, or that its understanding of the facts or of the law was incorrect, such party shall not be entitled to any relief in connection therewith, including without limitation on the generality of the foregoing any alleged right or claim to set aside or rescind this AGREEMENT. This AGREEMENT is intended to be, and is, final and binding between the parties, regardless of

any claims of misrepresentation, promise made without the intent to perform, concealment of fact, mistake of fact or law, or any other circumstance whatsoever.

7.5. Later Discovery: The parties are aware that they may hereafter discover claims or facts in addition to or different from those they now know or believe to be true with respect to the matters related herein. Nevertheless, it is the intention of the parties that EMPLOYEE fully, finally and forever settle and release all such matters, and all claims relative thereto, which do now exist, may exist or have previously existed against THE CITY or THE CITY PARTIES. In furtherance of such intention, the releases given here shall be, and remain, in effect as full and complete releases of all such matters, notwithstanding the discovery or existence of any additional or different claims or facts relative thereto.

7.6. Indemnification: EMPLOYEE agrees to indemnify and hold harmless THE CITY or THE CITY PARTIES from, and against, any and all claims, damages, or liabilities sustained by them as a direct result of the violation or breach of the covenants, warranties, and representations undertaken pursuant to the provisions of this AGREEMENT. EMPLOYEE understands and agrees that he shall be exclusively liable for the payment of all taxes for which he is responsible, if any, as a result of their receipt of the consideration referred to in Paragraph 3 of this AGREEMENT. In addition, EMPLOYEE agrees fully to indemnify and hold the CITY PARTIES harmless for payment of tax obligations as may be required by any federal, state or local taxing authority, at any time, as a result of the payment of the consideration set forth in Paragraph 3 of this AGREEMENT.

7.7. Future Cooperation & Consultation fees: EMPLOYEE shall execute all such further and additional documents as shall be reasonable, convenient, necessary or desirable to carry out the provisions of this AGREEMENT.

7.8. Return of Confidential Information and Property: Prior to the separation date, EMPLOYEE shall submit a written inventory of, and return to the City Clerk, all City keys, equipment, computer identification cards or codes, and other equipment or materials or confidential documents provided to or obtained by EMPLOYEE during the course of their employment with THE CITY.

7.9. No Pending Claims and/or Actions: EMPLOYEE represents that he has not filed any complaints or charges against THE CITY or THE CITY PARTIES with any local, state or federal agency or court; that he will not do so at any time hereafter for any claim arising up to and including the EFFECTIVE DATE of this AGREEMENT; and that if any such agency or court assumes jurisdiction of any such complaint or charge against THE CITY or THE CITY PARTIES on behalf of EMPLOYEE, whenever or where ever filed, he will request such agency or court to withdraw from the matter forthwith. Nothing herein shall be interpreted as a release or waiver of any workers' compensation claims or in any way prohibit or prevent EMPLOYEE from participating in any claims or administrative action brought by a state or federal agency.

7.10. Ownership of Claims: EMPLOYEE represents and warrants as a material term of this AGREEMENT that EMPLOYEE has not heretofore assigned, transferred, released or granted, or purported to assign, transfer, release or grant, any of the CLAIMS disposed of by this AGREEMENT. In executing this AGREEMENT, EMPLOYEE further warrants and represents

that none of the CLAIMS released by EMPLOYEE thereunder will in the future be assigned, conveyed, or transferred in any fashion to any other person and/or entity.

7.11 Authority: Each party represents to the other that it has the right to enter into this AGREEMENT, and that it is not violating the terms or conditions of any other AGREEMENT to which they are a party or by which they are bound by entering into this AGREEMENT. The parties represent that they will obtain all necessary approvals to execute this AGREEMENT. It is further represented and agreed that the individuals signing this AGREEMENT on behalf of the respective parties have actual authority to execute this AGREEMENT and, by doing so, bind the party on whose behalf this AGREEMENT has been signed.

## **8. MISCELLANEOUS**

8.1. No Admission: Nothing contained herein shall be construed as an admission by THE CITY of any liability of any kind. THE CITY denies any liability in connection with any claim and intends hereby solely to avoid potential claims and/or litigation and buy its peace.

8.2. Governing Law: This AGREEMENT has been executed and delivered within the State of California, and the rights and obligations of the parties shall be construed and enforced in accordance with, and governed by, the laws of the State of California.

8.3. Full Integration: This AGREEMENT is the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. This AGREEMENT may be amended only by a further agreement in writing, signed by the parties hereto.

8.4. Continuing Benefit: This AGREEMENT is binding upon and shall inure to the benefit of the parties hereto, their respective agents, spouses, employees, representatives, officials, attorneys, assigns, heirs, and successors in interest.

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

8.6. Severability: In the event that any term, covenant, condition, provision or agreement contained in this AGREEMENT is held to be invalid or void by any court of competent jurisdiction, the invalidity of any such term, covenant, condition, provision or agreement shall in no way affect any other term, covenant, condition, provision or agreement and the remainder of this AGREEMENT shall still be in full force and effect.

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

8.8. Counterparts: This AGREEMENT may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one AGREEMENT, which shall be binding upon and effective as to all parties.

8.9. Notice: Any and all notices given to any party under this AGREEMENT shall be given as provided in this paragraph. All notices given to either party shall be made by certified or registered United States mail, or personal delivery, at the noticing party's discretion, and addressed to the parties as set forth below. Notices shall be deemed, for all purposes, to have been given on the date of personal service or three (3) consecutive calendar days following deposit of the same in the United States mail.

**As to EMPLOYEE:**

At EMPLOYEE's home address on file with THE CITY.

**As to THE CITY:**

City of San Dimas  
Attention: City Clerk  
245 E. Bonita Ave.,  
San Dimas, CA 91773

**IN WITNESS WHEREOF**, THE CITY has caused this AGREEMENT to be signed and executed on its behalf by its Mayor and duly attested by its City Clerk, EMPLOYEE has signed and executed this Agreement, and the attorneys for THE CITY and EMPLOYEE, if any, have approved as to form as of the dates written below.

DATED: \_\_\_\_\_

EMPLOYEE

By: \_\_\_\_\_  
[NAME]

THE CITY

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

ALESHIRE & WYNDER, LLP

By: \_\_\_\_\_  
\_\_\_\_\_, City Attorney

[EMPLOYEE's LAW FIRM]

By: \_\_\_\_\_  
[Counsel]