

**VOLUNTARY SEPARATION AGREEMENT
AND GENERAL RELEASE**

This Separation Agreement and General Release of Claims (“Agreement and General Release”) is entered into on this [REDACTED] day of [REDACTED] 2020 by and between the City of Modesto, including, without limitation, the City Council, City Council members, City directors, departments, commissions, predecessors, successors, subsidiaries, related entities, past and present employees, officers, consultants, independent contractors, managers, attorneys, agents, and assigns (“City”), and [REDACTED] (“Employee”). Collectively, the City and Employee are referred to as the “Parties.” This Agreement and General Release covers all claims brought or which could have been brought by Employee against the City.

RECITALS

WHEREAS, in response to economic hardship caused by the COVID-19 pandemic, the City has adopted the Early Retirement Incentive Plan (ERIP) for eligible employees;

WHEREAS, the ERIP offers employees a one-time opportunity to receive the benefits described herein in exchange for their voluntary separation from employment;

WHEREAS, Employee wishes to voluntarily separate from Employee’s employment with the City, as part of the ERIP;

WHEREAS, as set forth herein, the Parties have agreed that Employee will separate from Employee’s employment with the City on [REDACTED] 2020 (“Separation Date”) and the City and Employee will resolve, fully and forever, any and all actual and potential grievances, disputes, controversies, claims, actions, and lawsuits Employee might have against the City in exchange for the consideration and terms set forth in this Agreement and General Release.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

AGREEMENT

1. **Last Day of Employment.** The Parties agree that Employee voluntarily resigns and separates from Employee’s employment with the City effective [REDACTED] 2020.

2. **Consideration.** In consideration of signing this Agreement and General Release and in compliance with the promises made herein, the City agrees to pay Employee a one-time lump-sum payment equal to a total amount of [REDACTED] ten-thousand dollars (\$10,000) (“Settlement Payment”), which the City will credit to Employee’s direct deposit account or Retirement Health Savings account. If Employee elects to receive the Settlement Payment as a one-time lump sum payment, the City shall take all applicable federal, state and local deductions from the Settlement Payment. The Settlement Payment shall be issued to

Employee during the month following the Separation Date, as defined above, and upon the expiration of the revocation period, as described in **Section 18**, provided Employee has not breached this Agreement and General Release. In addition, Employee agrees that the Settlement Payment constitutes the entire amount of monetary consideration provided to Employee under this Agreement and General Release.

3. **General Release of Claims.** In consideration of the foregoing, Employee, for himself or herself, Employee's heirs, executors, administrators, assigns, and successors, hereby fully and forever, irrevocably and unconditionally, releases, discharges, and covenants not to sue, or otherwise institute in any way, any legal or administrative proceedings against City, including, without limitation, the City Council, City directors, departments, commissions, predecessors, subsidiaries, related entities, employees, managers, agents, attorneys, and assigns, past, present, or future (collectively, "Releasees"), from any and all claims, actions, causes of action, judgments, liens, indebtedness, damages, obligations, losses, liabilities, costs, claims for attorneys' fees or costs, and all other claims and rights of action of all kinds and descriptions, which Employee has or may have, whether known or unknown, suspected or unsuspected, which were raised or which may have been raised, or arise out of, are connected with, or in any manner related to Employee's employment with City, Employee's separation from employment, and/or the negotiation or execution of this Agreement and General Release, including, without limitation, claims of wrongful discharge, retaliation, emotional distress, defamation, invasion of privacy, intentional or negligent infliction of emotional distress, breach of contract, breach of covenant of good faith and fair dealing, violation of the provisions of the California Labor Code, the District's Policies and Procedures, Civil Service Commission Rules, and other District enactments, the Meyers-Milias-Brown Act, claims of discrimination based on disability, sex, age, race, national origin, or on any other legally prohibited basis, including those under Title VII of the Civil Rights Act of 1964, as amended, the California Fair Employment and Housing Act, the California and United States Constitutions, the Americans with Disabilities Act, the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, the Civil Rights Act of 1866, and all other claims premised or related to Employee's employment, with the exception of the following which are not being released:

- a) claims under Government Code section 825 through 825.6 for defense and indemnification by City for actions taken by Employee that arise out of an act or omission occurring within the scope of Employee's employment with the City;
- b) claims that relate to workers' compensation benefits;
- c) claims for unemployment benefits;
- d) claims for pension benefits;
- e) claims for other post-employment benefits under any established City ordinance, rule, resolution, or labor agreement;
- f) claims which may arise from the breach of this Agreement and General Release by either party;
- g) claims or rights that, as a matter of law, cannot be waived or released by an

agreement between an employer and an employee.

4. **Affirmations.** Employee affirms that Employee has not filed, caused to be filed, or presently is a party to any claim, complaint, or action against City or Releasees in any forum or form. Employee affirms that Employee has been provided and/or has not been denied any leave requested under the Family and Medical Leave Act and/or the California Family Rights Act.

5. **Waiver of Civil Code Section 1542.** Employee acknowledges that this Agreement and General Release was entered into voluntarily, and expressly also acknowledges that Employee has been informed of and is familiar with the provisions of California Civil Code section 1542 which provides 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.

Employee expressly waives the provisions of California Civil Code section 1542, and further waives any rights Employee might have to invoke said provisions now or in the future with respect to the releases set out in this Agreement and General Release. Employee hereby agrees to accept and assume the risk that any fact with respect to any matter in this Agreement and General Release may hereafter be found to be other than, or different from the facts Employee believes at the time of this Agreement and General Release to be true, and Employee agrees that this Agreement and General Release shall be, and will remain effective notwithstanding any such differences in fact. (INITIAL)

6. **Release of Age Discrimination in Employment Act (ADEA) Claims.** **THIS AGREEMENT CONTAINS A WAIVER OF AGE DISCRIMINATION CLAIMS, AND EMPLOYEE HAS CAREFULLY READ AND ACKNOWLEDGES THE FOLLOWING:** In order to comply with the Older Workers Benefit Protection Act (“OWBPA”), and effectuate the release by Employee of any potential claims under the Age Discrimination in Employment Act (“ADEA”), Employee agrees as follows. Employee specifically acknowledges that Employee is waiving and releasing any rights Employee may have under the ADEA (which prohibits discrimination against older workers in a variety of different contexts) and that this waiver and release is knowing and voluntary. Employee also acknowledges that Employee has been given the opportunity to consider this Agreement and General Release for at least forty-five (45) days before signing it, and acknowledges that Employee may revoke this Agreement and General Release for a period of seven (7) days after signing it, provided that any revocation must be submitted in writing to Joe Lopez, City Manager, 1010 10th Street, 6th Floor, Modesto, CA 95354. Should Employee revoke the Agreement and General Release during the seven-day period, the City may in its discretion rescind all or part of this Agreement and General Release, and recover all allocations made

hereunder. This Agreement and General Release shall not become effective and enforceable until the revocation period has expired. If the last day of the revocation period is a Saturday, Sunday, or City holiday, then the revocation period shall not expire until the next following day which is not a Saturday, Sunday, or City holiday. The term "City Holiday" is defined within the City's Personnel Rules. Employee has carefully reviewed this Agreement and General Release and understands the terms and conditions it contains. By entering into this Agreement and General Release, Employee is giving up potentially valuable legal rights and intends to be bound by all the terms and conditions set forth in this Agreement and General Release. Employee is entering into this Agreement and General Release freely, knowingly, and voluntarily. Employee has been informed of his right to consult counsel at all stages of the negotiation of this Agreement and General Release. [REDACTED] (INITIAL)

7. **Attorneys' Fees.** The Parties agree that each will bear its own costs and attorneys' fees incurred in connection with all matters resolved by this Agreement and General Release, and Employee and City expressly waive any right to recover attorneys' fees and costs.

8. **Entire Agreement.** This Agreement and General Release constitutes a single integrated contract expressing the entire agreement of the Parties. This Agreement and General Release shall supersede, and render null and void any and all prior agreements between the Parties, concerning the subject matter of this Agreement and General Release. The usual construction of an agreement as to the drafting party shall not apply to this Agreement and General Release.

9. **Amendment.** This Agreement and General Release may not be modified, altered or changed except upon express written consent of the Parties wherein specific reference is made to this Agreement and General Release.

10. **No Admission of Wrongdoing.** Employee acknowledges that this Agreement and General Release represents a "no fault" settlement, and neither this Agreement and General Release, nor any part of this Agreement and General Release, shall be construed to be, nor shall be, admissible in any proceeding as evidence of, or any admission by, any party of any violation of law or any wrongdoing whatsoever, except to enforce the terms of the Agreement and General Release. All Parties expressly deny any wrongdoing in connection with this Agreement and General Release.

11. **Voluntary Agreement.** Employee represents that Employee has thoroughly discussed all aspects of this Agreement and General Release with his legal counsel, if Employee has retained legal counsel, and that Employee has carefully read and fully understands all of the provisions of this Agreement and General Release and is voluntarily entering into this Agreement and General Release without coercion. Employee understands that the waivers Employee has made and the terms Employee has agreed to herein are knowing, conscious, and with full appreciation that Employee is forever foreclosed from pursuing any of the rights so waived.

12. **Governing Law and Interpretation.** This Agreement and General Release is executed and delivered in the State of California and the rights and obligations of the Parties hereunder shall be construed and enforced in accordance with the laws of the State of California. The Parties stipulate that jurisdiction and venue shall be exclusively in the State of California, County of Stanislaus, for any action involving the validity, interpretation and enforcement of this Agreement and General Release, or for any claim for breach of this Agreement and General Release, for damages, and for any other relief sought under this Agreement and General Release.

13. **Waiver of Breach.** No waiver by any party of any breach of any term or provision of this Agreement and General Release shall be construed to be, nor shall be, a waiver of any preceding, concurrent or succeeding breach of the same or any other term or provision of this Agreement and General Release.

Joint Drafting. This Agreement and General Release is deemed to have been drafted jointly by the Parties. Any uncertainty or ambiguity shall not be construed for or against any party based upon attribution of drafting to any party.

14. **Counterparts.** This Agreement and General Release shall be admissible in counterparts. All executed copies are duplicate originals and are equally admissible in evidence.

15. **Severability.** In the event that any term, condition or provision of this Agreement and General Release shall be held by a court of competent jurisdiction to be invalid or against public policy, that term, condition or provision shall be deemed to be deleted, and the remaining terms, conditions and provisions shall continue in force and effect.

16. **Hold Harmless and Indemnification.** Employee recognizes and warrants that this Agreement and General Release is intended to dispose of all liability of the City and Releasees to Employee, Employee's heirs, and assigns, and to any other person or entity that might now or in the future have a claim as a result of any injury to Employee as described and limited in this Agreement and General Release. Should any further claim with respect to matters released by this Agreement and General Release, set forth above, be made by any person or entity for which Releasees might be liable, directly or indirectly, Employee on behalf of Employee, Employee's heirs, and assigns agrees to and will hold harmless.

17. **Revocation.** Employee may revoke this Agreement and General Release for a period of seven (7) calendar days following the day Employee executes this Agreement and General Release. Any revocation within this period must be submitted, in writing to Joe Lopez, City Manager, 1010 10th Street, 6th Floor, Modesto, CA 95354, and state, "I hereby revoke my acceptance of our Agreement and General Release." This revocation must be emailed to Joe Lopez, City Manager, joelopez@modestogov.com. This Agreement and General Release shall not become effective and enforceable until the revocation period has expired. If the last day of the revocation period is a Saturday, Sunday, or Federal holiday, then the revocation period shall not expire until the next following day which is not a Saturday, Sunday, or Federal holiday.

18. **Full Power to Enter Into Agreement and Make Releases.** The Parties represent and warrant that each has full power to make the releases and agreements contained herein. Employee expressly represents and warrants that Employee has not assigned, encumbered, or in any manner transferred all or any portion of the claims covered by the releases and agreement contained herein. Employee acknowledges and agrees that this warranty and representation is an essential and material term of the Agreement and General Release.

IN WITNESS WHEREOF, the Parties knowingly and voluntarily executed this Separation Agreement and General Release of Claims as of the date set forth below:

EMPLOYEE:

CITY:

[EMPLOYEE NAME]

Joe Lopez, City Manager

Date signed: _____

Date signed: _____

APPROVED AS TO FORM:

DATED: _____ By: _____

Attorney at Law, Meyers Nave