

**CITY OF NEWPORT BEACH
SEVENTH AMENDED AND RESTATED EMPLOYMENT AGREEMENT
CITY ATTORNEY**

This SEVENTH AMENDED AND RESTATED EMPLOYMENT AGREEMENT ("Agreement") is made effective as of March 22, 2022 ("Effective Date") and is entered into by and between the CITY OF NEWPORT BEACH, a California municipal corporation and Charter City ("Employer" or "City") and AARON C. HARP ("Employee"), an individual (sometimes collectively referred to herein as "the Parties").

RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City.
- B. Employee has been continuously employed by City as City Attorney since September 6, 2011. Employee is currently employed under a Sixth Amended and Restated Employment Agreement approved January 26, 2021 ("Employment Agreement").
- C. The Parties mutually agree that they intend for this Agreement to supersede all prior Employment Agreements, and that upon execution of this Agreement, any prior Employment Agreements shall have no force or effect.
- D. The Parties also mutually agree that this form of Agreement reflects the terms and conditions under which the Parties intend and desire to continue Employee's employment, and that there are no other Agreements between them; oral, written, or implied.

NOW, THEREFORE, it is mutually agreed by and between the undersigned Parties as follows:

SECTION 1: Term

- A. This Agreement shall become effective March 22, 2022 and shall terminate on December 30, 2028, subject to the City's right to terminate Employee's employment at any time as provided for in this Agreement, and Section 600 of the City Charter.
- B. City's election not to extend this Agreement shall not entitle Employee to Severance pursuant to Section 7 of this Agreement.

SECTION 2: Duties and Authority

- A. Employer agrees to continue to employ Employee as City Attorney, to exercise the powers and authority and to perform the functions and duties specified in the Newport Beach City Charter, the Newport Beach Municipal Code ("NBMC") and all relevant resolutions, rules, regulations, procedures, applicable job description(s) and state codes, as they currently or may in the future exist. Employee shall exercise such power and authority and perform such other functions and duties, not inconsistent with this Agreement, as Employer, by its City Council, may legally assign.

SECTION 3: Compensation and Performance Evaluation.

- A. Employer agrees to pay Employee an annual base salary of Two Hundred, Seventy Thousand, Four Hundred Twenty-Eight Dollars (\$270,428) ("Base Salary"), effective on the first day of the pay period following approval of the Agreement.
- B. Effective the first day of the pay period after January 1, 2023, and each year thereafter, the Base Salary shall be adjusted in accordance with the percentage cost of living adjustment, if any, approved by the City Council for Key and Management Executive Management Employees, as set forth in the Key and Management Compensation Plan ("Compensation Plan").
- C. The Base Salary and compensation payable to Employee shall be subject to deductions and withholdings of any and all sums required for federal or state income tax, pension contributions, and all other taxes, deductions or withholdings required by then current state, federal or local law, prorated and paid on Employer's normal paydays

for the City Manager, City Attorney, City Clerk and any Department Directors not covered by collective bargaining agreements ("Executive Management Employees"). Employer shall also deduct sums Employee is obligated to pay because of participation in plans or programs described in Section 4 of this Agreement. The annual Base Salary of Employee is within the approved salary range adopted by resolution of the City Council and the City Council shall adjust the salary range, as needed, to ensure that the Base Salary remains within the approved salary range.

- D. Employer, by the City Council, and Employee may set mutually agreed upon objectives for each year under this Agreement. Employer, by the City Council, may elect to conduct an evaluation of Employee's performance at any time or times during the period in which this Agreement remains in effect.
- E. Employee's compensation as discussed under this Section is not tied to the compensation of any other City employee or group of City employees, except as expressly provided in this Agreement.

SECTION 4: Employee Benefits

- A. Benefit Balances Carried Over. Employee shall not have a break in employment service between the prior Employment Agreement and this Agreement. All of Employee's accrued leave and other benefit balances shall carry over as agreed, and Employee leave and benefit balances shall continue to accrue under the terms of applicable City policies and this Agreement.
- B. Flex Leave. Employee shall accumulate Flex Leave as provided in Compensation Plan, Executive Management category, at the rate designated for Employee's years of service in the "15 and over" category. Employee's maximum accrual for Flex Leave is limited to four hundred (400) hours. No Flex Leave shall further accrue beyond said maximum. The right to sell back accumulated Flex Leave shall be the same as other Key and Management Employees and shall comply with the Leave Sellback provisions set forth in the Compensation Plan.
- C. Administrative Leave. Employee shall be entitled to eighty (80) hours of paid Administrative Leave and shall be credited with said leave the first pay period in January of each calendar year. Administrative Leave will not rollover from calendar year to calendar year and must be used each

calendar year or no additional entitlement above eighty (80) hours shall arise or occur. Upon separation from employment, Employee shall be entitled to payment of any hours remaining of the eighty (80) entitled hours that were not used in the calendar year. Consistent with the Compensation Plan, there is no right to sell back any accumulated Administrative Leave.

- D. Additional Benefits. Unless otherwise provided in this Agreement, Employee shall receive the same benefits as are available to Executive Management Employees under the Compensation Plan and/or Employee Policy Manual ("EPM"), including, but not limited to, cafeteria benefits, LIUNA Supplemental Pension, IRS Section 125 Flexible Spending Accounts, short-term and long-term disability plans, life insurance plans, and deferred compensation plans. This Agreement shall be deemed amended whenever the City Council adopts a resolution or takes action changing these benefits under the Compensation Plan and/or EPM.

- E. Annual Physical Exam. Employee may undergo an annual physical examination and City shall reimburse Employee for the actual cost of the examination up to a maximum of One Thousand Dollars (\$1,000).

- F. Automobile Allowance. Employee's duties require Employee to be available and to respond to demands of City business at all times and outside of regular business hours, including weekends. Employer shall, therefore, pay to Employee an Automobile Allowance of Five Hundred Dollars (\$500) per month to respond to these demands of City business.

- G. Phone Allowance. Employee shall be entitled to the same phone allowance as provided to any Executive Management Employee.

- H. Deferred Compensation. Upon the Effective Date of this Agreement, Employer contributions to Employee's City-sponsored deferred compensation account (457 Plan) shall cease.

Employee has a 401(a) defined contribution plan account set up by the City which is subject to the rules of Internal Revenue Code Section 415(b). The City shall make bi-weekly contributions to Employee's 401(a) defined contribution plan account, on a pre-tax basis, in the total amount of Fourteen Thousand and Five Hundred Dollars (\$14,500) for calendar year 2022 and increase the annual contribution amount by Two Thousand Five Hundred Dollars (\$2,500) each and every calendar year thereafter. Employee is immediately 100% vested in all Employer contributions made to his 401(a)

defined contribution plan account. Employee shall not be entitled to the 401(a) contributions set forth in the Compensation Plan.

Under federal law, there is an annual maximum contribution which may be made to an employee's 401(a) defined contribution plan account. If Employee's account contributions reach the annual maximum, the City will stop making contributions for the remainder of the calendar year and will not owe Employee any additional compensation related to this Section.

City contributions to the 401(a) Plan cease immediately upon Employee's separation from employment with the City.

- I. Amendment of Benefits. Except as expressly provided under Section 4 of this Agreement, Employee's benefits are not tied to the compensation of any other City employee or group of City employees.
- J. Retirement-CalPERS. Employee contributes thirteen percent (13%) of compensation earnable towards Employee's retirement benefit, which is designated as follows: 8% Employee/Member's total PERSable salary as the Employee/Member Contribution; and 2.42% and 2.58% as cost sharing of the Employer Contribution Rate in accordance with Government Code sections 20516(a) and 20516(f) respectively.

The Parties agree that the City will not report as special compensation the value of any Employer Paid Member Contribution. In the event the City Council adopts a Compensation Plan in which retirement contributions for non-safety employees of the Key & Management Group exceeds 13%, this Agreement shall be deemed amended and Employee will be subject to the same formula or percentage contribution as it is applied to the non-safety employees of the Key & Management Group covered under the Compensation Plan and for the same duration. In no event, shall the Employee's retirement contribution be less than 13%. Employee's retirement contributions that are in addition to the normal PERS Member Contribution shall be calculated on Base Salary, special pays, and other pays normally reported as "PERSable" compensation and will be made on a pre-tax basis through payroll deduction, to the extent allowable by the Government Code.

SECTION 5: General Business Expenses

- A. Employer recognizes that Employee may incur expenses of a non-personal, job-related nature that are reasonably necessary to

Employee's service to Employer. Employer agrees to either pay such expenses in advance or to reimburse the expenses, so long as the expenses are incurred and submitted according to Employer's normal expense reimbursement procedures or such other procedure as may be designated by the City Council. To be eligible for reimbursement, all expenses must be supported by documentation meeting Employer's normal requirements and must be submitted within time limits established by Employer.

- B. Employer shall reimburse Employee for expenses incurred while attending a reasonable number of League of Cities and other similar conferences relevant to the performance of Employee's duties. City shall pay Employee's annual California Bar Association dues, membership in the Orange County Bar Association and appropriate sections of that Association and the expenses for satisfying Employee's Mandatory Continuing Legal Education ("MCLE") obligations. It is not contemplated that travel outside of Orange County will be required for Employee to meet the MCLE obligations.
- C. The expenses to be budgeted and paid in this Section 5, Paragraphs A and B above, are exclusive of reasonable expenses related to events, participation in organizations, or attendance at events or meetings on behalf of the City as required by the City Council. Employer will separately budget and pay for membership and participation in community, civic or other organizations or events in which Employer requires Employee to participate.

SECTION 6: At-Will Employment Relationship

- A. Consistent with Article VI of the City Charter, Section 600, Employee is appointed by and serves at the pleasure of the City Council. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employer to terminate this Agreement and the employment of Employee at any time, with or without Cause (as defined below), and with or without notice. Employer shall pay Employee for all services through the effective date of termination and Employee shall have no right to any additional compensation or payment, except as provided in Section 7, Severance and Benefit Payoff at Termination and General Release Agreement, below.
- B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign from Employee's employment with Employer, subject only to Employee providing a minimum of forty-five

(45) calendar days prior written notice to Employer of the effective date of Employee's resignation. Upon the effective date of resignation, Employee forfeits all compensation and benefits owing for the remainder of the term of this Agreement, as well as any potential "Severance" pay per Section 7 below.

SECTION 7: Severance and Benefit Payoff at Termination and General Release Agreement

A. Termination Without Cause. Notwithstanding any other provision of this Employment Agreement, and as required by Government Code Sections 3511.2 and 53260, if Employer terminates this Agreement (thereby terminating Employee's employment) without Cause, as determined by the affirmative votes of a majority of the members of the City Council at a meeting of the City Council, and if Employee signs, delivers to the City Council, and does not revoke the Agreement of Separation, Severance and General Release Agreement in substantially the same form attached hereto as Exhibit A, as approved by counsel for the City to ensure all potential claims are released, then Employer shall pay Employee beginning on the effective date of termination a cash settlement equal to Employee's monthly Base Salary, as adjusted, multiplied by the number of months left on the unexpired term of the Agreement, with the following exceptions: (1) if Employee is terminated Without Cause on or prior to March 22, 2026, the maximum cash settlement shall be an amount equal to Employee's monthly Base Salary, as adjusted, multiplied by 18; or (2) if Employee is terminated Without Cause after March 22, 2026, the maximum cash settlement shall be an amount equal to Employee's monthly Base Salary, as adjusted, multiplied by 12 . (See, Government Code Section 53260(a).) Additionally, Employer shall provide Employee beginning on the effective date of termination six (6) months of medical coverage as provided under the Compensation Plan, as long as Employee is already enrolled in and receiving medical coverage through the City medical benefits plan at the time of termination.

"The lump sum payment described in this Section 7 (A) shall be referred to herein as "Severance".

B. Termination With Cause. If Employer terminates this Agreement (thereby terminating Employee's employment) with Cause, as determined by the affirmative votes of a majority of the members of the City Council at a meeting of the City Council, Employee shall not be entitled to any additional compensation or payment, including Severance. If the City Council intends to

terminate with Cause, based on a reason or reasons set forth in subparts 5 or 6, immediately below, the Council shall first deliver to Employee a written Notice of Intent to Terminate, stating the reason or reasons for the proposed termination, and providing a thirty (30) day period for Employee to cure. If, in the City Council's independent judgment, Employee cures the identified reason or reasons for Cause termination, Employee shall not be terminated therefor. As used in this Agreement, Cause shall only mean any of the following:

1. Conviction of a felony;
 2. Conviction of a misdemeanor arising out of Employee's duties under this Agreement and involving a willful or intentional violation of law;
 3. Conviction of any crime involving an "abuse of office or position," as that term is defined in Government Code Section 53243.4;
 4. Willful abandonment of duties;
 5. Repeated failure to carry out a directive or directives of the City Council made by the City Council as a body; and
 6. Any grossly negligent action or inaction by Employee that materially and adversely: (a) impedes or disrupts the operations of Employer or its organizational units; (b) is detrimental to employees or public safety; or (c) violates properly established rules or procedures of Employer.
- C. Municipal Elections. In no event may Employee be terminated under this Section within ninety (90) days after any municipal election for the selection or recall of one or more of the members of the City Council.
- D. Resignation. If Employee resigns or otherwise terminates this Agreement (thereby terminating Employee's employment), Employee shall not be entitled to any additional compensation or payment, including Severance.
- E. Accrued Leave. Upon termination (regardless of reason), Employee shall be compensated for all accrued but unused Flex Leave and unused Administrative Leave.

SECTION 8: Employee's Obligations and Hours of Work

- A. Employee shall devote Employee's full energies, interests,

abilities and productive time to the performance of this Agreement and utilize Employee's best efforts to promote Employer's interests. Employee's duties may involve expenditures of time in excess of the regularly established workday or in excess of a forty (40) hour workweek and may also include time outside normal office hours, including attendance at City Council meetings. Employee's Base Salary includes compensation for all hours worked and Employee shall be classified as an exempt employee for purposes of overtime and shall not be entitled to any form of compensation for overtime. In recognition of the significant time Employee will need to devote outside normal office hours to business activities of Employer and the exempt salaried nature of the employment, Employee is permitted to exercise a flexible work schedule. However, consistent with this flexibility and Employee's participation in activities out of the office, Employee will generally be expected to keep office hours at City Hall during normal business hours, subject to paragraph B of this Section.

- B. Employee is authorized to work the 9/80 schedule; however, as City Attorney, Employee shall not take a 9/80 day: (1) on any Monday or Friday immediately preceding a regularly scheduled City Council Meeting; (2) on the same day as the Assistant City Attorney takes a 9/80 day off; or (3) any other day where the press of business requires Employee's attendance, in Employee's good faith judgment, such as court appearances or emergency City Council meetings.

SECTION 9: Confidentiality and Non-Disparagement

- A. Employee acknowledges that in the course of Employee's employment contemplated herein, Employee will be given or will have access to privileged, confidential and proprietary documents and information, relating to the City, its residents, businesses, employees, and customers ("Confidential Information"). Such Confidential Information may include, but is not limited to, all information given to or otherwise accessible to Employee that is not public information or would be exempt from public disclosure as confidential, protected, exempt or privileged information. Employee shall hold the Confidential Information in trust for City's benefit and shall not disclose the Confidential Information to others without the express written consent of City.
- B. The obligations of Employer and Employee under this Section 9 shall survive the termination of this Agreement.

SECTION 10: Outside Activities

- A. Employee shall not engage in any employment, activity, consulting service or enterprise for compensation, or otherwise, which is, actually or potentially, inconsistent, incompatible, in conflict, inimical to or which materially interferes with Employee's duties and responsibilities to Employer. (GOV§ 1125 - 1129)

SECTION 11: Indemnification

- A. To the extent mandated by the California Government Code, the City shall defend, hold harmless, and indemnify Employee against any tort, professional liability, claim or demand, or other legal action arising out of an alleged act or omission occurring in the performance of employee's services under this Agreement. This section shall not apply to any intentional tort or crime committed by Employee, to any action outside the course and scope of the services provided by employee under this Agreement, or any other intentional or malicious conduct or gross negligence of Employee. (GOV§ 825, 995, et. seq.)
- B. Notwithstanding the foregoing, and consistent with Sections 53243 through 53243.3 of the Government Code, Employee shall be required, if convicted of a crime involving an abuse of Employee's office or position, to fully reimburse the City for: (1) any paid leave salary offered by the City to the Employee; (2) any funds provided for the legal criminal defense of the Employee; (3) any cash settlement related to the termination that Employee may receive; and (4) any other payments received by Employee from City that in any way relate to the foregoing.

SECTION 12: Other Terms and Conditions of Employment

- A. Employer may fix other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement or applicable law.

SECTION 13: Notices

- A. Notice pursuant to this Agreement shall be given by depositing written notification in the custody of the United States Postal Service, postage prepaid, addressed as follows:

(1) EMPLOYER:
City of Newport Beach
c/o City Clerk
100 Civic Center Drive
Newport Beach, California 92660

(2) EMPLOYEE: Aaron C. Harp
at the home address then shown in Employer's files

B. Alternatively, notice required pursuant to this Agreement may be personally served in the same manner as is applicable in civil judicial practice. Notice shall be deemed given as of the date of personal service or five days after the date of mailing.

SECTION 14: General Provisions

A. Integration. This Agreement sets forth the final, complete and exclusive agreement between Employer and Employee relating to the employment of Employee by Employer. Any prior discussions or representations by or between the parties are merged into this Agreement or are otherwise rendered null and void. The Parties by mutual written agreement may amend any provision of this Agreement during the life of the Agreement. Such amendments shall be incorporated and made a part of this Agreement. The foregoing notwithstanding, Employee acknowledges that, except as expressly provided in this Agreement, Employee's employment is subject to Employer's generally applicable rules and policies pertaining to employment matters, such as those addressing equal employment opportunity, sexual harassment and violence in the workplace, as they currently or may in the future exist, and Employee's employment is, and will continue to be, at the will of the City Council.

B. Binding Effect. This Agreement shall be binding on the Employer and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.

C. Choice of Law. This Agreement shall be interpreted and construed pursuant to and in accordance with the laws of the State of California and all applicable City Charter provisions, Codes, Ordinances, Policies and Resolutions.

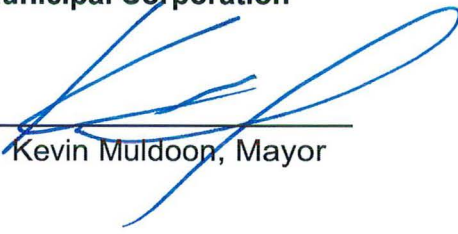
D. Severability. If any provision of this Agreement is held invalid or

unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect. If any provision is held invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.

- E. Conflict with City Charter or Municipal Code. In the event of a conflict between the provisions of this Agreement and the City Charter, or this Agreement and the NBMC, the City Charter or the NBMC shall prevail over this Agreement. All other City personnel ordinances, resolutions, rules, and policies shall apply to Employee in the same manner as applied to other Executive Management Employees.
- F. Employee's Independent Review. Employee acknowledges that Employee has had the opportunity and has conducted an independent review of the financial and legal effects of this Agreement. Employee acknowledges that Employee has made an independent judgment upon the financial and legal effects of this Agreement and has not relied upon any representation of Employer, its officers, agents or employees other than those expressly set forth in this Agreement. Employee acknowledges that Employee has been advised to obtain and has availed oneself of legal advice with respect to the terms and provisions of this Agreement.

[Signatures on next page]

EMPLOYER
CITY OF NEWPORT BEACH,
A Municipal Corporation

By: 
Kevin Muldoon, Mayor

Date: _____

EMPLOYEE,
An Individual

By: 
Aaron C. Harp


Date: 3/22/22

APPROVED AS TO FORM:

By: 
Charles Sakai, Attorney

Date: 3/17/22

ATTEST:

By: 
Leilani Brown, City Clerk 3.23.2022



[End of Signatures]

Attachment: Exhibit A - General Release Agreement

Exhibit A

GENERAL RELEASE AGREEMENT

This General Release Agreement ("Agreement") is entered into by and between AARON C. HARP ("Employee") and CITY OF NEWPORT BEACH ("Employer"), in light of the following facts:

- A. Employee's employment with Employer concluded on_____
- B. Certain disputes have arisen between Employer and Employee.
- C. Employer and Employee each deny any liability whatsoever to the other.
- D. Employer and Employee wish to fully and finally resolve any and all disputes they may have with each other.

E. Employee is hereby informed that Employee has twenty-one (21) days from receipt of this Agreement to consider it. Employer hereby advises Employee to consult with Employee's legal counsel before signing this Agreement.

F. Employee acknowledges that for a period of seven (7) days following the signing of this Agreement ("Revocation Period"), Employee may revoke the Agreement. This Agreement shall not become effective or enforceable until the day the Revocation Period has expired.

G. Employee acknowledges that the Salary Payment referenced below in paragraph 1 of this Agreement represents all compensation, including salary, accrued benefit balances and reimbursed expenses, due and payable to Employee through the date of employment termination. Employee also acknowledges that Employer has made this Salary Payment without regard to whether Employee signs this Agreement. The Salary Payment does not constitute consideration for this Agreement. Employee acknowledges that the Severance referenced below in paragraph 2 of this Agreement is in excess of all amounts that are due and owing to Employee as a result of Employee's employment by Employer.

1. Receipt of Salary Payment. Employee hereby acknowledges receipt of a check or checks for all compensation owing to Employee, including salary, accrued benefit balances and reimbursed expenses ("Salary Payment") from Employer.

2. Severance. Within ten (10) days following Employee's signing, delivering to the City Council, and not revoking this Agreement during the Revocation Period, City shall pay Employee the gross amount provided for in Section 7 of the Seventh

Amended and Restated Employment Agreement effective March 22, 2022, less applicable deductions, and shall provide the months of medical benefits as provided in that same Section 7 ("Severance"). Employee acknowledges that the Severance is in excess of all amounts due and owing Employee as a result of Employee's employment by Employer.

3. General Release. In consideration of the Severance to be paid and provided to Employee, and other good and valuable consideration, Employee hereby releases and discharges Employer and its past and present City Council Members, employees, representatives and agents, from all rights, claims, causes of action, and damages, both known and unknown, in law or in equity, concerning and/or arising out of Employee's employment with Employer which Employee now has, or ever had, including but not limited to any rights, claims, causes of action or damages arising under Title VII of the Civil Rights Act of 1964, the Vocational Rehabilitation Act of 1973, the Employee Retirement Income Security Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Older Workers Benefits Protection Act, the Family and Medical Leave Act of 1993, the Domestic Partners Act of 2003, the California Labor Code, the Private Attorneys General Act of 2004, the California Moore-Brown-Roberti Family Rights Act, the California Unruh Civil Rights Act, the California Fair Employment and Housing Act, any other federal, state, or local employment practice legislation, or any federal or state common law, including wrongful discharge, breach of express or implied contract, or breach of public policy.

Nothing in this Agreement shall affect the EEOC or DFEH rights and responsibilities to enforce Title VII of the Civil Rights Act of 1964, as amended, the Fair Employment and Housing Act, or any other applicable law, nor shall anything in this Agreement be construed as a basis for interfering with Employee's protected right to file a charge with, or participate in an investigation or proceeding conducted by the EEOC or any other state, federal or local government entity; except that, if the EEOC or any other state, federal or local government entity pursues a lawful investigation or issues a complaint on Employee's behalf, Employee specifically waives and releases Employee's right, if any to recover any monetary or other benefits of any sort whatsoever arising from any such investigation, nor will Employee seek reinstatement to Employer employment.

Employee hereby waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of California. Employee understands and acknowledges the significance and consequences of this specific waiver of Section 1542. Section 1542 of the Civil Code of California states 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."

Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of Employer and its past and present City Council Members, employees, representatives and agents, Employee expressly acknowledges that this General Release is intended to include in its effect, without limitation, all claims which Employee does not know or suspect to exist in Employee's favor.

Employee further acknowledges that Employee has read this General Release and that Employee understands that this is a general release, and that Employee intends to be legally bound by the same.

4. Fees. Employee and Employer agree that in the event of litigation relating to this General Release Agreement, the prevailing party shall not be entitled to recover its reasonable attorneys' fees.

5. Older Workers' Benefits Protection Act. It is the intention of the parties that the releases contained in this Agreement apply to all claims of any kind against the Employer. In order to comply with the Older Workers' Benefits Protection Act (29 U.S.C. § 626(f)) and effectuate the release by Employee of any potential claims under the federal Age Discrimination in Employment Act, Employee agrees as follows: (i) Employee has carefully reviewed the foregoing Agreement, and understands the terms and conditions it contains; (ii) by entering into this Agreement, Employee is giving up potentially valuable legal rights, and Employee intends to be bound by all the terms and conditions set forth above; (iii) Employee is entering into this Agreement freely, knowingly, and voluntarily; (iv) Employee has had 21 days to consider whether to agree to the terms and conditions set forth in this Agreement; and (v) for a seven (7) day period following Employee's execution of this Agreement, Employee may revoke this Agreement by delivering a written revocation to counsel for the Employer, and this Agreement shall not become effective nor enforceable until the revocation period has expired

[Signatures on Next Page]

CITY OF NEWPORT BEACH

Dated _____, 20__

By: _____
Newport Beach Mayor

Dated _____, 20__

By: _____
Aaron C. Harp

APPROVED AS TO FORM:

By: _____

Date: _____

ATTEST:

By: _____
Newport Beach City Clerk

Date: _____