

RESOLUTION NO. 2018-01-09-1

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, APPOINTING DONALD J. WHITE AS CITY MANAGER AND APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A CITY MANAGER EMPLOYMENT AGREEMENT

WHEREAS, at its November 28, 2017 regular meeting, the City Council accepted the resignation of City Manager Bruce E. Channing, after 26 years of service to the City, effective February 2, 2018; and

WHEREAS, following completion of an internal recruitment process, the City Council identified and selected Assistant City Manager Donald J. White as the most qualified candidate for the position; and

WHEREAS, pursuant to Laguna Hills Municipal Code Chapter 2-08, the City Council now desires to appoint Donald J. White as the City Manager of the City of Laguna Hills and to retain Mr. White and establish the terms and conditions for such employment by approving the attached City Manager Employment Agreement; and

WHEREAS, pursuant to Government Code Section 36506, the City Council is required to establish the compensation of the City Manager by resolution, which appointed official shall hold office at the direction and pleasure of the City Council.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA HILLS, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. The foregoing recitals are true and correct and are incorporated herein by reference.

SECTION 2. Donald J. White is hereby appointed City Manager of the City of Laguna Hills to serve at the direction and pleasure of the City Council, effective February 3, 2018, pursuant to Laguna Hills Municipal Code Chapter 2-08.

SECTION 3. The City Council hereby approves and authorizes the Mayor to execute the City Manager Employment Agreement, dated February 3, 2018, which employment agreement is attached hereto as Exhibit "1" and is incorporated herein by reference, with an effective date and term of office commencement date of February 3, 2018.

SECTION 4. The City Clerk is directed to administer the Oath of Office.

PASSED, APPROVED, AND ADOPTED this 9th day of January 2018.


MELODY CARRUTH, MAYOR

ATTEST:


MELISSA AU-YEUNG, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF LAGUNA HILLS)

I, Melissa Au-Yeung, City Clerk of the City of Laguna Hills, California, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. 2018-01-09-1 adopted by the City Council of the City of Laguna Hills, California, at a Regular Meeting thereof held on the 9th day of January 2018, by the following vote:

- AYES: Council Members Heft, Kogerman, Sedgwick, Mayor Pro Tempore Gilbert, and Mayor Carruth
- NOES: None
- ABSENT: None
- ABSTAIN: None

(SEAL)


MELISSA AU-YEUNG, CITY CLERK

EMPLOYMENT AGREEMENT CITY MANAGER

THIS EMPLOYMENT AGREEMENT (the "Agreement") is made and entered into, to be effective February 3, 2018 ("Effective Date"), by and between the CITY OF LAGUNA HILLS, a California municipal corporation organized and existing under the laws of the State of California (hereinafter referred to as "City"), and DONALD J. WHITE, an individual (hereinafter referred to as "White" or "City Manager"). City and White are sometimes hereinafter individually referred to as "party" and are hereinafter collectively referred to as the "parties."

RECITALS

A. In order to ensure that its governmental responsibilities are met at all times, City must attract and retain in its employment executive management personnel who exhibit the highest degree of knowledge, experience, technical ability, professionalism, and leadership qualities.

B. In order to attract and retain in its employment a city manager who possesses those qualities and the experience necessary to continue to fulfill the City's immediate and long-term goals and policy objectives, the City Council of the City has determined that it is advisable to retain and appoint Donald J. White as City Manager and to enter into this Agreement. All City actions referred to in this Agreement shall mean actions taken by a majority of the City Council.

C. Donald J. White was hired by the City on December 20, 1991 as the Director of Administrative Services and has been employed as the Assistant City Manager of the City since July 1, 1995. In recognition of White's qualifications, performance history, and his dedication and loyalty to the City, as demonstrated by his leadership, knowledge, experience, technical abilities, and professionalism over the course of his thirty-seven year career in public administration, including his exemplary service to the City for the past twenty-six years, the City Council now wishes to retain White as City Manager.

D. It is the desire of the City Council to retain the professional services of Donald J. White to serve as City Manager of the City of Laguna Hills and to provide for certain compensation and benefits, establish conditions of employment, and set working conditions for such services.

E. City and White, therefore, desire to enter into this Agreement in order to specify the terms and conditions of White's employment with the City as City Manager.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

Section 1: Appointment and Term

A. City hereby appoints and retains White to serve as City Manager of the City of Laguna Hills and White hereby accepts such employment with City beginning on February 3, 2018, and continuing until City Manager or City Council terminates this Agreement pursuant to Section 7 below. The City Manager is employed by City in an "at-will" capacity serving at the pleasure of the City Council. Either the City Council or City Manager may terminate this Agreement at any time with or without cause and in its or his sole discretion, as set forth in this Agreement.

B. The Term of this Agreement shall be for three years, commencing on February 3, 2018 and ending on February 3, 2021, unless extended or terminated as provided herein. On February 3, 2019, and annually on each succeeding February 3rd while this Agreement is effective, the Term of this Agreement shall be automatically extended for one additional year. For example, on February 3, 2019 the Term of this Agreement shall be automatically extended until February 3, 2022; on February 3, 2020 the Term of this Agreement shall be extended until February 3, 2023; and so on, unless prior to such date by a majority vote of the total membership of the City Council in attendance at a lawfully called meeting, the City Council takes formal action to declare its intention to not extend this Agreement for one additional year. Any such decision by the City Council to not extend the Term by one additional year shall modify only Section 1(B) of this Agreement and shall not constitute a termination for purposes of Section 7(A) of this Agreement. The parties make no representation with respect to whether such action by the City Council would amount to an adverse employment action.

Section 2: General Duties

White shall serve as the City Manager of the City of Laguna Hills. In that capacity, White shall perform all of the city manager duties specified by the Laguna Hills Municipal Code, the Government Code, and any other applicable laws of the State of California and shall perform the functions and duties as the administrative head of the government of the City of Laguna Hills. As City Manager, White shall also perform such other functions and duties, not inconsistent with the terms of this Agreement, as the City, by and through its duly elected City Council, may legally and properly assign to that position.

Section 3: Devotion to City's Business and Hours of Work

A. White's position as City Manager is considered a full-time position. City Manager shall devote his time, ability, and attention to the business of the City during the term of this Agreement.

B. Except as otherwise provided herein, City Manager shall not engage in any other business, educational, or professional pursuits whatsoever, or directly or indirectly render any service of a business, commercial, or professional nature to any other person or organization,

whether for compensation or otherwise (excluding honoraria or the reimbursement of expenses), without the prior consent of the City Council. White may expend reasonable amounts of time for educational, charitable, personal, or professional activities which shall not be deemed a breach of this Agreement if those activities do not conflict or materially interfere with the professional services required under this Agreement; such limited activities shall not require the prior consent of the City Council.

C. Nothing in this Agreement prohibits City Manager from making passive personal investments or conducting private business affairs, if those activities are not deemed to be a conflict of interest under state law or conflict or materially interfere with the professional management services required under this Agreement.

D. City Manager's duties may involve expenditures of time in excess of the regularly established workday or in excess of a forty-hour workweek and may also include time outside normal office hours, including but not limited to attendance at City Council meetings. City Manager is classified as an exempt employee under the Fair Labor Standards Act ("FLSA") and shall not be entitled to any additional compensation for hours worked in excess of forty in a work week or eight hours per calendar day.

Section 4: Performance Evaluation

The City Council shall review and evaluate the performance of the City Manager annually in October or November during the term of this Agreement. All aspects of this annual review are private personnel matters within the meaning of the Brown Act and are to be conducted in Closed Session of the City Council. Upon execution of this Agreement by both parties, the City Council shall schedule time, and allocate reasonable funds if necessary, to develop mutually agreeable procedures and criteria for these reviews, as well as substantive goals, objectives, and performance standards which will be applied during such annual performance evaluations.

The Mayor, City Council, and the City Manager shall be jointly responsible for the creation of procedural and substantive guidelines for these annual reviews in the first year of this Agreement. After the first annual performance review, the goals, objectives, and performance standards may be modified collaboratively between White and the City Council. Each annual review is to include a written statement of findings which must be provided to the City Manager, who shall be afforded an adequate opportunity to discuss this evaluation with the Mayor and City Council and thereafter to submit a written statement in response.

The City Council may retain, at its sole discretion, the services of a professional facilitator or qualified labor negotiator, or other qualified professional, to assist the City Council in completing this annual performance evaluation process. Failure of the City Council to review and evaluate the performance of the City Manager pursuant to this section shall not affect the right of the City to terminate the City Manager's employment and shall not be considered a breach of this Agreement. Following each annual performance evaluation, the City Council may, at its sole discretion, grant the City Manager a performance bonus equal to 0 – 10% of his then-current annual base salary which, if

awarded, must be approved by minute action and ratified by resolution.

Section 5: Salary

A. As compensation for the professional services to be performed hereunder, effective February 3, 2018, City agrees to pay City Manager an annual base salary of two hundred fifty eight thousand dollars (\$258,000), subject to deductions and withholdings of any and all sums required for federal or state income tax, other deductions or withholdings required by then current state, federal or local law, and paid bi-weekly in accordance with the City's established accounting and payroll practices at the same time and in the same manner as other employees of the City are paid. The City shall also deduct from his annual base salary any applicable sums that City Manager is obligated to pay because of participation in plans or programs described in Section 6 of this Agreement and City Manager hereby authorizes such deductions.

B. Any increases in the annual base salary of City Manager, to the extent provided, may be made effective at any time and shall be made in the sole discretion of the City Council. Increases in City Manager's annual base salary approved by the City Council shall not require an amendment to this Agreement to be effective. Such increases may be set forth in an annual employee salary resolution or minute action approved by the City Council and ratified by resolution at a regularly scheduled meeting of the City Council.

C. City Manager's annual base salary shall not be subject to or affected by any Cost of Living or Consumer Price Index adjustments approved by the City Council to the salaries of other Executive Management employees.

Section 6: Benefits and Leaves of Absence

A. Employee Benefits

Except as expressly provided for in this Agreement, City Manager shall be entitled to receive the same benefits provided to other Executive Management employees pursuant to Resolution No. 2016-11-22-3, as may be amended from time to time by the City Council. These benefits include, but are not limited, to health insurance (medical, dental, vision), holidays, supplemental retirement contribution, retiree health savings plan, group life and disability insurance, sick leave, and bereavement leave.

B. Vacation

City Manager shall accrue vacation at the rate of twenty-five paid days each fiscal year (in addition to recognized regular and floating City holidays). The parties agree that this benefit includes and may be used for time off due to illness (whether personally or of a family member). During the term of this Agreement, White may not carryover more than forty days of accrued vacation from one fiscal year to the next. At any time during the term of this Agreement, White shall be entitled to cash-out accrued vacation days, provided that at least ten accrued vacation days

remain available. The amount paid to White shall be based on White's annual base salary at the time the vacation hours/days are cashed out. Upon separation from employment, White shall be paid for all accrued and unused vacation time available at that time.

C. Retirement Benefits

1. City Manager shall receive retirement benefits through the California Public Employment Retirement System ("PERS"). City Manager is a Tier 1 employee as defined in Resolution No. 2016-11-22-3 and shall continue to be enrolled in the 2% at 60 program. City Manager agrees to pay the full cost of the employee's contribution, currently set at 7% of salary.

2. City Manager is entitled to participate in the International City Managers Association ("ICMA") 457 deferred compensation plan. As part of City Manager's annual compensation, City agrees to provide a Section 457 deferred compensation program for City Manager which will be administered by ICMA and to pay ten thousand dollars (\$10,000) per year (effective January 1, 2019) into such program for White's benefit. Beginning January 1, 2019, this amount shall be paid in a lump sum in January of each calendar year thereafter during the term of this Agreement.

D. Vehicle

City shall provide City Manager with a City leased or owned vehicle of a make and model deemed acceptable by the City, pursuant to Laguna Hills Municipal Code Section 3-08.130, as may be amended, during the Term of this Agreement. City shall be responsible for all operating costs of such vehicle including, but not limited to, all insurance, maintenance, fuel, and repair. As part of his annual compensation, City Manager shall be allowed unrestricted personal use of such vehicle when not engaged in City business, subject to appropriate Internal Revenue Service reporting requirements.

E. Professional Development

City acknowledges its interest in the continuing professional development of City Manager and agrees to pay all reasonable and appropriate expenses associated with professional dues and subscriptions and/or attendance at conferences, training opportunities, and meetings of organizations concerned with the city manager and/or the public administration profession. Such expenses must be approved in advance by the City Council during its biennial budget process.

F. General Business Expenses

The City recognizes that City Manager may incur expenses of a non-personal, job-related nature that are reasonably necessary to City Manager's service to the City. The City agrees to either pay such expenses in advance or to reimburse the expenses, so long as the expenses are incurred and submitted according to the City's established expense reimbursement policies and 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 the City's normal requirements and must be submitted within time limits established by the City.

G. Administrative Leave Pending an Investigation

Because City Manager is an "at-will" employee, the City is not obligated to pay City Manager pending an investigation into any alleged misconduct by the City Manager. Notwithstanding the foregoing, in the event that the City Council determines, in its sole discretion, that it is in the best interest of the City for City Manager to be placed on paid administrative leave pending such an investigation, City Manager shall fully reimburse any salary provided for that purpose if the misconduct for which the City Manager was under investigation results in the City Manager being convicted of a crime involving an abuse of his office or position as defined in Section 7(A)(2) of this Agreement. City Manager shall fully reimburse such salary no later than six months after such conviction.

Section 7: Termination and Separation Pay

A. Termination by City Without Cause or For Reasons Other Than "Cause"

1. If City terminates this Agreement (thereby terminating City Manager's employment) without cause or for reasons other than "cause" as defined in Paragraph B below upon the vote of a majority of the total membership of the City Council in attendance at a lawfully called meeting, and only if City Manager timely executes and delivers to City an original "Separation Agreement and General Release" in the form attached hereto as Attachment 1, and does not thereafter timely exercise his right to revoke said Separation Agreement and General Release, the City shall pay City Manager a lump sum severance benefit equal to the monthly salary of City Manager at the time of separation multiplied by the number of months left on the unexpired term of the employment contract, not to exceed nine months of salary. In addition, City shall continue to pay for nine months the monthly group health and medical insurance benefits as provided under the then applicable salary and benefits resolution (such severance benefits to be referred to collectively as "Separation Pay"), beginning on the date that the revocation period for the Separation Agreement has expired.

2. Such Separation Pay is considered a cash settlement related to the termination of City Manager and shall therefore be fully reimbursed to the City by City Manager if the City Manager is convicted of a crime involving an abuse of his office or position. Abuse of office or position shall have the meaning set forth in Government Code section 53243.4, as may be amended, of either (1) an abuse of public authority, including, but not limited to, waste, fraud, and violation of the law under color of authority or (2) a crime against public justice, including, but, not limited to, a crime described in Title 5 (commencing with Section 67), Title 6 (commencing with Section 85), or Title 7 (commencing with Section 92) of Part 1 of the Penal Code. City Manager shall fully reimburse such Separation Pay no later than six months after such conviction.

B. Termination by City For Cause

If the City terminates this Agreement (thereby terminating City Manager's employment) with cause, City Manager shall not be entitled to any Separation Pay. As used in this Agreement, "cause" shall mean any of the following:

1. Conviction of a felony; or
2. Conviction of a misdemeanor arising out of City Manager's duties or performance under this Agreement; or
3. Misappropriation of public funds; or
4. Willful abandonment of duties consisting of the failure to report to work for five consecutive working days (for reasons not medically related) and not notifying staff and the City Council of his leave status; or
5. A willful and intentional failure to carry out materially significant and legally constituted policy decisions of the City Council made by the City Council; or
6. Any other intentional or negligent action or inaction by City Manager that: (a) materially and substantially impedes or disrupts the operations of the City or its organizational units; (b) is detrimental to employees or public safety; (c) violates properly established rules or procedures of the City causing a material and substantial adverse impact on the City; or (d) has a material and substantial adverse effect on the City's interests as clearly defined and delineated by properly established City Council actions, policies, regulations, or City ordinances.

C. Termination by City Before or After an Election for Council Membership

Except as provided otherwise in Section 7(B) above, during the 90-day period immediately preceding and 180-days following the date of a regular or special municipal election for City Council membership, City shall take no action, whether immediate or prospective, to remove, suspend, terminate, or request the resignation City Manager. City acknowledges that this period is longer, and that this provision is broader, than that specified in the Laguna Hills Municipal Code, but provides said period and provision nevertheless as an additional inducement for City Manager to enter into this Agreement.

D. Termination by City Manager

City Manager may resign from his employment as City Manager and terminate this Agreement at any time. City Manager agrees, if practicable, to give the City Council at least forty-five days advance written notice of his decision to resign. City Manager shall not be entitled to any Separation Pay if he resigns. City Council may choose to waive this forty-five day notice period and/or place City Manager on paid administrative leave through the effective date of the resignation.

The City Council's waiver of this period shall not change the City Manager's resignation to a termination.

E. Notice of Termination

In any event, City shall provide City Manager with not less than thirty days' written notice of its decision to terminate this Agreement (regardless of the reason(s) for the termination), and as provided by the provisions of the Ralph M. Brown Act, California Government Code Section 54950 *et seq.*

F. Constructive Termination

If at any time during the Term of this Agreement City refuses, following written notice, to comply with any provision benefiting City Manager, or City Manager resigns following a request that he resign made by a majority of the total membership of the City Council in attendance at a lawfully called meeting, then City Manager shall be deemed to be "terminated" as of the date of such refusal or request within the meaning and context of Section 7(A) of this Agreement.

Section 8: Confidentiality

City Manager acknowledges that in the course of his employment contemplated herein, City Manager will be given or will have access to 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 City Manager that is not public information or would be exempt from public disclosure as confidential, protected, exempt, or privileged information. City Manager shall hold the Confidential Information in trust for the City's benefit and shall not disclose the Confidential Information to others without the express written consent of the City. All Confidential Information shall be promptly returned to the City immediately upon the effective date of any termination or resignation.

Section 9: Indemnification

A. Except for an act of misappropriation of public funds, or an indictment, the filing of an information, a plea of guilty or a plea of nolo contendere for a crime involving moral turpitude, City shall defend, hold harmless and indemnify City Manager against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring within the scope of his employment as City Manager, using legal counsel of the City's choosing in its sole discretion, in accordance with the provisions of California Government Code Section 825, applicable provisions of the Government Claims Act, and other applicable law. In the event there is a conflict of interest between the City and City Manager in such a case such that qualified independent counsel is required for City Manager, the City shall pay the reasonable fees of such qualified independent counsel, who shall be mutually chosen by the parties. City may compromise and settle any claim or suit against the City Manager and pay the amount of any settlement or judgment rendered therefrom.

B. In the event that the City provides funds for the legal criminal defense of the City Manager, City Manager shall fully reimburse said funds to the City if City Manager is convicted of a crime involving an abuse of his office or position as defined in Section 7(A)(2) of this Agreement. City Manager shall fully reimburse to City such criminal legal defense fees no later than six months after such conviction.

Section 10: Notices

Any notices to be given hereunder by either party to the other shall be in writing and may be transmitted by personal delivery, electronic mail, registered mail or certified mail. Notices delivered personally or by electronic mail shall be deemed communicated as of the date of delivery. Mailed notices shall be deemed communicated as of the date they are postmarked.

Any notices required by this Agreement shall be addressed as follows:

IF TO CITY: Laguna Hills City Council
City of Laguna Hills
Attn.: City Clerk
24035 El Toro Road
Laguna Hills, California 92653

IF TO CITY MANAGER: Donald J. White
[Address on File with Human Resources
Department]

Section 11: Entire Agreement

This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the employment of Donald J. White by City and contains all of the covenants and agreements between the parties with respect to that employment in any manner whatsoever. Each party to this Agreement acknowledges that no representation, inducement, promise, or agreement, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding on either party.

Section 12: Modifications

Any modification of this Agreement shall be effective only if it is in writing and signed by the parties.

Section 13: 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 for all or any other times.

Section 14: 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 anyway.

Section 15: Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California and all applicable City regulations, resolutions, and ordinances.

Section 16: Bonding

City shall bear the full cost of any fidelity or other bonds required of the City Manager under any law or ordinance, or any insurance policies in lieu thereof.

Section 17: City's Policies and Procedures

The terms and conditions of City Manager's employment, including additional employment benefits of City Manager not specifically provided for in this Agreement, shall be governed by City's personnel policies and procedures, salary and benefits resolutions, and administrative regulations, to the extent not inconsistent with the provisions of this Agreement. In the event of any such inconsistency or conflict, the provisions of this Agreement shall govern.

Section 18: City Manager's Independent Review

White acknowledges that he has had the opportunity and has conducted an independent review of the financial and legal effects of this Agreement. White acknowledges that he has made an independent judgment upon the financial and legal effects of the Agreement and has not relied upon representation of the City, its elected or appointed officers and officials, agents or employees, other than those expressly set forth in this Agreement. White acknowledges that he has been advised to obtain, and has availed himself of, independent legal counsel with respect to the terms, conditions and provisions of this Agreement. As an additional inducement for White to enter into this Agreement, City agrees to reimburse White up to one thousand dollars for any legal services obtained by White in connection with the review of this Agreement by independent legal counsel.

Section 19: Enforcement

The prevailing party in any action brought to enforce this Agreement or to resolve any dispute or controversy arising under the terms and conditions hereof shall be entitled to payment of reasonable attorneys' fees and costs.

Section 20: Authority to Enter Agreement

The Mayor of the City of Laguna Hills has the express authority to execute this Agreement with White pursuant to City Council Resolution No. 2018-01-09-1.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date reflected above.

"CITY"
CITY OF LAGUNA HILLS, a California
municipal corporation

By: 


MELODY CARRUTH,
Mayor

ATTEST:



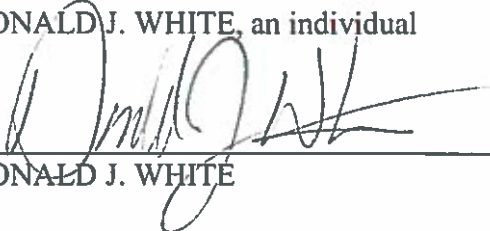
MELISSA AU-YEUNG
Assistant to the City Manager/City Clerk

APPROVED AS TO FORM:



GREGORY E. SIMONIAN,
City Attorney

"CITY MANAGER"
DONALD J. WHITE, an individual



DONALD J. WHITE

ATTACHMENT 1

SEPARATION AGREEMENT AND GENERAL RELEASE

This Separation Agreement and General Release ("Separation Agreement") is entered into by Donald J. White ("City Manager") and City of Laguna Hills ("Employer"), in light of the following facts:

RECITALS

A. City Manager's employment by Employer, and the Employment Agreement under which he was employed, have been terminated effective _____, 20__.

B. City Manager is hereby informed that he has 21 days from the effective date of the termination when he received this Agreement to consider it. Employer hereby advises City Manager to consult with an attorney before signing this Agreement.

C. City Manager acknowledges that for a period of 7 days following the signing of this Separation Agreement ("Revocation Period"), he may revoke this Separation Agreement. This Separation Agreement shall not become effective or enforceable until the Revocation Period has expired.

D. City Manager acknowledges that the Salary Payment referenced in paragraph 1 of this Separation Agreement represents all compensation due and payable to him through his termination. City Manager also acknowledges that Employer has made this Salary Payment without regard to whether he signs this Separation Agreement. The Salary Payment does not constitute consideration for this Separation Agreement.

E. City Manager acknowledges that the Separation Pay referenced in paragraph 2 of this Separation Agreement is in excess of all amounts that are due and owing to him as a result of his employment by Employer.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. **Receipt of Salary Payment.** City Manager hereby acknowledges receipt of a check for all salary and accrued leave owing ("Salary Payment") from Employer as of the effective date of this Separation Agreement (set forth in Recital A, above) pursuant to the Employment Agreement between City Manager and Employer.

2. **Separation Pay.** Following return to Employer of this Separation Agreement signed by City Manager and expiration of the Revocation Period, not having been revoked by City Manager, Employer shall pay the applicable Separation Pay provided for in the

Employment Agreement between City Manager and Employer.

3. **General Release.** In consideration of the Separation Pay to be given to City Manager , and other good and valuable consideration, City Manager hereby releases and discharges Employer and its past and present elected and appointed officials and officers, employees, representatives, agents and attorneys, from all rights, claims, causes of action, and damages, both known and unknown, in law or in equity, concerning and/or arising out of his employment with Employer which he 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 Age Discrimination in Employment Act of 1967, the Fair Labor Standards Act of 1938, the Americans with Disabilities Act, the Meyers-Milias Brown Act, the Vocational Rehabilitation Act of 1973, the Family and Medical Leave Act of 1993, the California Moore-Brown-Roberti Family Rights Act, the California Unruh Civil Rights Act, the California Fair Employment and Housing Act, or the California Labor Code, under any other federal, state, or local employment practice legislation, or under federal or state common law, including wrongful discharge, express or implied contract, breach of public policy, or violation of due process rights.

City Manager hereby waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of California. City Manager 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 which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

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 elected and appointed officials and officers, employees, representatives, agents and attorneys, City Manager expressly acknowledges that this General Release is intended to include in its effect, without limitation, all claims which he does not know or suspect to exist in his favor.

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

4. **Fees and Costs.** City Manager and Employer agree that in the event of litigation relating to this Separation Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

5. **Continuation of Certain Provisions of Employment Agreement.** Employer acknowledges its continuing duty to indemnify City Manager in accordance with Section 9 of the Employment Agreement notwithstanding this Separation Agreement. Employer further acknowledges its duty with respect to City Manager to comply with any and all provisions

of the Laguna Hills Municipal Code conferring benefits on former employees, if any.

6. **Complete Agreement.** Except for the applicable provisions of the parties' Employment Agreement, which are referenced herein, this is the entire agreement between City Manager and Employer with respect to the subject matter hereof and this Separation Agreement supersedes all prior and contemporaneous oral and written agreements and discussions. It may only be amended in writing.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the dates reflected below.

"CITY MANAGER"

DATED: _____

DONALD J. WHITE

"CITY OF LAGUNA HILLS"

DATED: _____

By: _____

