

CITY OF HESPERIA

CITY MANAGER EMPLOYMENT AGREEMENT

This CITY MANAGER EMPLOYMENT AGREEMENT (hereinafter referred to as the "AGREEMENT") is entered into the 4th day of October 2022, by and between the CITY OF HESPERIA, a general law city and municipal corporation (hereinafter referred to as the "CITY") and RACHEL MOLINA, an individual (hereinafter referred to as "EMPLOYEE"). For purposes of this AGREEMENT, CITY and EMPLOYEE may be collectively referred to as the "Parties" or individually as a "Party."

RECITALS

WHEREAS, it is the desire of the City Council of the City of Hesperia (hereinafter the "City Council") to employ an individual to serve in the position of city manager, which position is prescribed by state law and the CITY's Municipal Code; 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 duties of the city manager of the CITY are set forth in full in Hesperia Municipal Code ("HMC") Section 2.08.070; and

WHEREAS, pursuant to HMC Section 2.08.010, "[t]he city manager shall be appointed by the city council wholly on the basis of his administrative and executive ability and qualifications and shall hold office for and during the pleasure of the city council[;]" and

WHEREAS, the CITY will require the services of a new city manager upon the retirement of the incumbent city manager, which is anticipated in 2023; and

WHEREAS, based on EMPLOYEE's executive and administrative qualifications and ability, the City Council desires to employ EMPLOYEE to serve as the city manager for the CITY immediately following the retirement of the incumbent city manager; and

WHEREAS, EMPLOYEE has the required level of education, experience, skills and expertise to serve as the city manager of the CITY; and

WHEREAS, EMPLOYEE desires to perform and assume responsibility for the provision of city manager services to the CITY and its related agencies; and

WHEREAS, the Parties wish to establish the terms and conditions of EMPLOYEE's provision of city manager professional services to the CITY and its related agencies through this AGREEMENT.

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

A G R E E M E N T

1.0 EMPLOYMENT & DUTIES

1.1 Duties. As of the Effective Date of this Agreement, as defined in Section 3.1 below, the City Council will appoint and employ EMPLOYEE as city manager for the CITY to perform the functions and duties of that position, as described in Hesperia Municipal Code Section 2.08.070, the California Government Code, and such other legally permissible and proper duties and functions as the City Council shall, from time to time, direct or assign to EMPLOYEE. CITY reserves the right to amend Hesperia Municipal Code Chapter 2.08, including Section 2.08.070 which defines city manager powers and duties, as it deems necessary and appropriate, without requiring EMPLOYEE's acquiescence or an amendment of this AGREEMENT. Additionally, such duties shall include, but are not limited to: (i) leading and coordinating, as directed by the City Council of the City, the City's efforts to develop and implement strategic and operating plans for the City; (ii) executing the day-to-day general management of the City; and (iii) performing such functions as the City Council of the CITY may direct the EMPLOYEE to perform for the Hesperia Water District, the Hesperia Fire District, the Hesperia Housing Authority, the Hesperia Community Development Commission, the Successor Agency to the Hesperia Community Redevelopment Agency, and other subsidiary entities of the CITY that may be created from time to time. EMPLOYEE agrees to perform all such functions and duties to the best of her ability and in an efficient, competent, and ethical manner.

1.2 Work Schedule. It is recognized that the city manager is expected to engage in the hours of work that are necessary to fulfill the obligations of the position, must be available at all times, and must devote a great deal of time outside the normal office hours to the business of the CITY. EMPLOYEE acknowledges that proper performance of the duties of city manager will require EMPLOYEE to generally observe normal business hours (currently a 9/80 work schedule, Monday through Thursday and every other Friday), as set by the CITY and as may be duly revised from time-to-time by the CITY, and will also often require the performance of necessary services outside of normal business hours. EMPLOYEE's compensation (whether salary or benefits) is not based on hours worked. Furthermore, the city manager position remains an "exempt" classification under the overtime provisions of the federal Fair Labor Standards Act ("FLSA") and EMPLOYEE shall not be entitled to any compensation for overtime nor subject to such overtime provisions of the FLSA.

1.3 FLSA Exempt Status. EMPLOYEE acknowledges and agrees that the city manager position is that of an exempt employee of the CITY for the purposes of the FLSA.

1.4 Other Activities. EMPLOYEE shall focus her professional time, ability, and attention to the CITY's business during the term of this AGREEMENT. EMPLOYEE shall not engage, without the express prior written consent of the City Council, in any other business duties or pursuits whatsoever, or directly or indirectly render any services of a business, commercial, or professional nature to any other person or organization, whether for compensation or otherwise, that is or may be competitive with the CITY, that might cause a conflict-of-interest with the CITY, or that otherwise might interfere with the business or operation of the CITY or the satisfactory performance of the functions and duties of the city manager.

1.5 Employment Status. Upon appointment to the city manager position, EMPLOYEE shall serve at the will and pleasure of the City Council and understands that by accepting the city manager appointment, she shall be an "at-will" employee and shall be subject to summary dismissal without any right of notice or hearing, 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 Exemption from Personnel System. HMC Section 2.24.040(B) expressly exempts the city manager position from the CITY's Personnel System established in HMC Chapter 2.24. EMPLOYEE understands, acknowledges and agrees that EMPLOYEE is exempt from the CITY's Personnel System.

1.7 CITY Documents. All data, studies, reports and other documents prepared by EMPLOYEE while performing her 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 EMPLOYEE in connection with the performance of this AGREEMENT shall be held confidential by EMPLOYEE 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 EMPLOYEE, without the prior written consent of the City Council, for any purposes other than the performance of EMPLOYEE's 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.

1.8 Exclusive Employment. During the term of this AGREEMENT, EMPLOYEE agrees to remain in the exclusive employ of CITY and neither to accept other employment nor to become employed by any other employer during the term of this AGREEMENT. However, this Section shall not prevent EMPLOYEE from family business or personal pursuits, provided that this activity is performed on EMPLOYEE's time off and does not interfere with the performance of her obligations under this Agreement or violate any applicable State or local law. Furthermore, this Section shall not prevent EMPLOYEE from being a member of, participating in the activities of, or performing services for religious, charitable, community, or service organizations provided such activities do not conflict with or hinder the performance of EMPLOYEE's duties under this AGREEMENT.

1.9 Council-Manager Relations. In accordance with HMC Section 2.08.080(A), the City Council and its members shall deal with the administrative services of CITY only through EMPLOYEE, except for the purpose of inquiry, and neither the City Council nor any member thereof shall give orders or instructions to any subordinates of EMPLOYEE. EMPLOYEE shall take his/her orders and instructions from the City Council only when sitting in a duly convened meeting of the City Council and no individual Councilmember shall give any orders or instructions to EMPLOYEE.

2.0 COMPENSATION AND REIMBURSEMENT

2.1 Base Salary. For the services rendered pursuant to this AGREEMENT, EMPLOYEE's annual base salary shall be Two Hundred Forty Thousand Dollars (\$240,000.00) ("Salary"), which shall be paid on a pro-rated basis bi-weekly at the same time as other employees of the CITY are paid, effective the effective date of this AGREEMENT as provided in Section 3.1 hereof. Such Salary shall be subject to normal and proper withholdings as determined by state and federal law and as determined appropriate by the City Council and shall be subject to payroll taxes, workers' compensation, and other payroll-related liability costs.

2.2 Salary Review. The City Council and EMPLOYEE agree to endeavor to conduct an annual Salary review concurrently with the annual performance evaluation set forth in Section 5.2 hereof.

2.3 Salary Adjustment. Following the annual performance evaluation set forth in Section 5.2 hereof and the annual Salary review set forth above in Section 2.2, the City Council may increase EMPLOYEE's base salary and benefits package based on the results of those annual reviews. Any adjustments in the base salary and/or benefits following the annual performance evaluation under Section 5.2 and review under Section 2.2 shall be at the sole discretion of the City Council. Additionally, EMPLOYEE shall be entitled to a Cost of Living Adjustment ("COLA") on the same basis as other non-represented CITY employees.

2.4 401(a) Pension Plan and Deferred Compensation. EMPLOYEE shall be provided the CITY's 401(a) pension plan, with the CITY contributing the maximum allowed by law or rule, as adjusted from time to time without requiring an amendment to this Agreement. Additionally, EMPLOYEE shall be eligible to participate in the CITY's 457(b) deferred compensation plan.

3.0 TERM

3.1 Commencement & Effective Date. EMPLOYEE shall commence service as city manager hereunder at 7:30 a.m. Pacific Daylight Time on the day immediately following the last day of the incumbent City Manager's day of employment, which shall also be deemed the effective date of this Agreement ("Effective Date").

3.2 Termination Prior to Effective Date. Either EMPLOYEE or CITY may terminate this Agreement prior to its Effective Date at any time. In the event of termination prior to the Effective Date by EMPLOYEE or the CITY, EMPLOYEE shall be entitled to retain her position as Assistant City Manager. Termination of this Agreement prior to the Effective Date shall not entitle EMPLOYEE to any severance or be deemed a breach of this Agreement, and neither party shall be liable to the other for any damages as a result of termination of this Agreement prior to the Effective Date.

3.3 Termination by EMPLOYEE. EMPLOYEE may terminate this AGREEMENT at any time, provided EMPLOYEE provides the City Council with at least thirty (30) days' advance written notice, or as otherwise agreed by EMPLOYEE and CITY. In the event EMPLOYEE terminates this AGREEMENT, EMPLOYEE expressly agrees that EMPLOYEE shall not be entitled to any severance pay.

3.4 Termination by CITY. The City Council may terminate this AGREEMENT at any time with or without cause. The City Council's right to terminate EMPLOYEE pursuant to this Section 3.4 shall not be subject to or in any way limited by the CITY's Personnel Rules and Regulations, or any subsequent related resolutions, or past CITY practices related to the employment, discipline or termination of the CITY's employees. EMPLOYEE expressly waives any rights provided for the city manager under the CITY's Personnel Rules and Regulations, Municipal Code, or under other local, state or federal law to any other form of pre- or post-termination hearing, appeal, or other administrative process pertaining to termination. 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. Notwithstanding this Section 3.4, upon appointment to the city manager position, EMPLOYEE remains an at-will employee serving at the pleasure of the City Council.

(a) Termination by CITY for Cause. The CITY may terminate this AGREEMENT at any time by providing EMPLOYEE with five (5) business days' written notice of the termination for cause and the facts and grounds constituting such cause. Termination for cause shall require at least three (3) votes of the City Council. The term "cause" shall be defined to include any misconduct materially related to performance of official duties, including but not be limited to any of the following: 1) breach of this AGREEMENT, 2) willful or persistent material breach of duties, 3) résumé fraud or other acts of material dishonesty, 4) unauthorized absence or leave, 5) conviction of a misdemeanor involving moral turpitude (i.e., offenses contrary to justice, honesty, or morality), conviction of a misdemeanor DUI, or conviction of a felony under California law (the CITY may, in its discretion, place EMPLOYEE on paid or unpaid administrative leave until resolution of charges brought against EMPLOYEE), 6) violation of the CITY's anti-harassment policies and/or a finding that legally prohibited personal acts of harassment against a CITY official or employee or legally prohibited personal acts of discrimination against a CITY official or employee has occurred, 7) violation of the CITY's Municipal Code, ordinances, rules, and regulations, including but not limited to the CITY's Personnel Rules and Regulations and Administrative Policies, 8) use or possession of illegal drugs, 9) engaging in conduct tending to bring embarrassment or disrepute to the CITY, 10) any illegal or unethical act involving personal gain, 11) pattern of repeated, willful and intentional failure to carry out materially significant and legally constituted directions or policy decisions of the City Council, and 12) gross misfeasance or gross malfeasance. If the CITY terminates for cause this AGREEMENT and the services of EMPLOYEE hereunder, the CITY shall have no obligation to pay EMPLOYEE any severance.

(b) Termination by CITY Without Cause. By providing EMPLOYEE at least thirty (30) days' prior written notice thereof, the CITY may terminate EMPLOYEE without cause but rather based upon management reasons such as implementing the CITY's goals or policies, including but not limited to: i) change of administration, or ii) incompatibility of management styles. Pursuant to Hesperia Municipal Code section 2.08.090(A) and contingent upon this agreement being approved by four (4) votes of the City Council, termination of EMPLOYEE without cause shall require at least four (4) votes of the City Council. In the event EMPLOYEE is terminated without cause, EMPLOYEE expressly agrees that EMPLOYEE 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 Limitation on Termination Without Cause Before and Following Municipal Election. Notwithstanding the foregoing, in light of the requirements of HMC Section 2.08.090(B), no termination without cause shall be permitted within one hundred twenty (120) days before or after the date: (i) a municipal election held in this city at which election a member of the City Council is elected, or (ii) a new City Council member is appointed ("No Termination Window"). In addition, termination without cause within sixty (60) days before or after the No Termination Window shall require a four-fifths (4/5) vote of the City Council.

4.0 SEVERANCE

4.1 Severance Pay. In the event EMPLOYEE is terminated without cause and EMPLOYEE does not challenge such termination, including but not limited to, by means of appeal or civil or administrative claim or liberty hearing, then CITY shall pay to EMPLOYEE severance in an amount equal to EMPLOYEE's monthly base salary then in effect multiplied by six (6), excluding the 401(a) pension plan or the value of any other benefits.

Notwithstanding any other provision of this paragraph 4.1, should such proposed severance payment exceed the amount authorized to be paid under Government Code Section 53260, then the amount paid to EMPLOYEE shall be reduced in the amount necessary to comply with such statute. (Government Code Section 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).

4.2 No Severance Pay if Termination for Cause or Initiated by EMPLOYEE. As provided in Section 3.4(a), should EMPLOYEE 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 EMPLOYEE initiate termination of this AGREEMENT, the CITY shall have no obligation to pay the severance provided for 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 EMPLOYEE with respect to severance pay in the event of the termination, other than for cause or by expiration of the AGREEMENT. EMPLOYEE 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 "A."

5.0 PERFORMANCE EVALUATIONS

5.1 Purpose. The performance review and evaluation process set forth herein is intended to provide review and feedback to EMPLOYEE so as to facilitate a more effective management of the CITY. Nothing herein shall be deemed to alter or change the employment status of EMPLOYEE as 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 EMPLOYEE hereunder.

5.2 Annual Evaluation. The City Council shall conduct a formal or informal review and evaluate the performance of EMPLOYEE on an annual basis to coincide with the anniversary date of EMPLOYEE's appointment to the position of city manager, using an evaluation form to be approved by City Council. Such performance review and evaluation shall be conducted concurrently with an annual base salary review provided for in Section 2.2 hereof, and in accordance with the purpose noted in Section 5.1 above.

5.3 Written Summary. The City Council may, at its sole discretion, elect to provide a written summary of each performance evaluation to EMPLOYEE within two (2) weeks following the conclusion of the performance review and evaluation process, and may, at its sole discretion, schedule at least one (1) City Council closed session with EMPLOYEE to deliver and discuss the evaluation.

6.0 BENEFITS AND OTHER COMPENSATION

6.1 General Benefits. During the term of this AGREEMENT, EMPLOYEE shall be eligible to receive, subject to the terms and conditions of this AGREEMENT, the benefits as provided for in this Article 6.0 for services rendered to CITY (collectively, "Benefits").

6.2 Participation in Benefit Plans. During the term of this AGREEMENT, CITY shall provide EMPLOYEE and her dependents with the same CITY contribution amounts as At-Will Senior Management employees receive for such group insurance, that may include, hospitalization, comprehensive medical and surgical care, optical, dental, prescription, health and accident, disability, or life insurance or similar plan or program of such benefits, as provided in the CITY's Personnel Rules and Procedures and the Non-Represented Employees' Compensation and Benefits Plan as they now exist or may hereafter be amended, provided, however, that EMPLOYEE and her dependents are otherwise eligible for coverage under the general provisions of such plan or program.

EMPLOYEE shall be provided retiree medical contributions in the same amounts as At-Will Senior Management employees receive, subject to the same terms and conditions as provided the City's Non-Represented Employees' Compensation and Benefits Plan.

6.3 Car Allowance. During the term of this AGREEMENT, CITY shall pay EMPLOYEE a car allowance as established for At-Will Senior Management employees listed in the City's Non-Represented Employees' Compensation and Benefits Plan.

6.4 Telecommunication Allowance. During the term of this AGREEMENT, CITY shall pay EMPLOYEE a telecommunication allowance as established for At-Will Senior Management employees listed in the City's Non-Represented Employees' Compensation and Benefits Plan.

6.5 Professional Development. CITY agrees, subject to the approval of sums by the City Council of CITY upon the adoption of an annual budget, to budget and pay for appropriate professional dues and subscriptions for the continued participation of EMPLOYEE in national, state, and local associations and organizations necessary and desirable in the view of the

City Council for EMPLOYEE's continued professional growth and for the good of CITY. CITY agrees to allow EMPLOYEE reasonable time off in addition to accrued vacation time in an amount not to exceed fifteen (15) days in any calendar year, as well as to budget and pay for travel and subsistence expenses of EMPLOYEE for professional and official travel, meetings, and occasions adequate to continue the professional development of EMPLOYEE and to adequately pursue necessary official and other functions of CITY, including but not limited to annual conference of national, state and local associations and organizations necessary and desirable in the view of the City Council of CITY for EMPLOYEE's continued professional growth and for the good of CITY. It is agreed the City Manager may participate in the tuition reimbursement program as established for At-Will Senior Management employees listed in the CITY's Non-Represented Employees' Compensation and Benefits Plan.

6.6 Eligible Reimbursements. Employee shall be eligible to receive reimbursement of the following expenses to that extent such expenses were actually incurred, reasonable in amount, directly related to CITY business, and within a budget for such expenses to be agreed upon by the City Council and EMPLOYEE at the commencement of each fiscal year of CITY:

a. Business Travel. EMPLOYEE shall be eligible to receive a per diem travel reimbursement, including expenses for air and ground transportation, accommodations, and meals, as provided in City Council Resolution 2009-057, as may be amended by the CITY from time to time.

b. Business Expenses. EMPLOYEE shall be eligible to receive reimbursement for documented business expenses incurred in connection with the performance of EMPLOYEE's duties under this AGREEMENT as provided in the Personnel Rules and Procedures of the CITY, as they now exist or may hereafter be amended.

c. Agreed Expenses. The parties recognize that certain expenses may be difficult to categorize as business expenses, but the incurrence of which shall nevertheless be deemed in furtherance of the business and affairs of the CITY. EMPLOYEE shall be eligible to receive reimbursement for such documented expenses as have previously been agreed upon between the City Council and EMPLOYEE.

6.7 Bonding. City shall bear the full cost of any fidelity or other bond that may be required of EMPLOYEE under any applicable California or federal law.

6.8 Leave. During the term of this AGREEMENT, EMPLOYEE shall be eligible to receive, subject to the terms and conditions of this AGREEMENT, the following leave time (collectively, "Leave"):

(a) Holidays. EMPLOYEE shall be eligible for the same hours of Holiday time per calendar year as other non-represented CITY employees. Specifically, EMPLOYEE shall be granted the following holidays: Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve, Christmas Day, New Year's Day, Martin Luther King Jr. Day, President's Day and Memorial Day. If the City Council recognizes an additional

holiday for CITY employees, said holiday shall be extended to EMPLOYEE. Unused holiday time shall not accrue any cash value and shall not be carried over from year to year.

(b) Vacation Leave. EMPLOYEE shall continue to accrue vacation leave at the same rate as is provided to non-represented CITY employees based on the number of years of continuous CITY service, pursuant to the CITY's Non-Represented Employees' Compensation and Benefits Plan as it may hereafter be amended. Vacation leave time may be carried over from year to year, without limit on accrual. EMPLOYEE's use of vacation is subject to Section 6.8(e) [Restriction on Use of Leave]. Unused vacation shall accrue cash value based upon prorating EMPLOYEE's compensation. The CITY shall have the right at any time to pay any accrued and unused vacation leave. Vacation leave must be used and deducted from accruals on a minute by minute basis for time missed from normal work hours which for purposes of this section are deemed to be normal CITY operating hours.

(c) Sick Leave. EMPLOYEE shall accrue sick leave at the rate of ninety-six (96) hours per year (*i.e.* 3.69 hours per pay period). Accrued sick leave may be carried over from year to year, without limit on accrual. EMPLOYEE shall be able to use sick leave for personal leave in the amount and manner as other non-represented CITY employees. Sick leave must be used and deducted from accruals on a minute by minute basis for time missed from normal work hours which for purposes of this section are deemed to be normal CITY operating hours. Upon termination for any reason, EMPLOYEE shall not be entitled to cash out any accrued sick leave.

(d) Administrative Leave. EMPLOYEE shall accrue administrative leave at the rate of one hundred twenty (120) hours per fiscal year, effective beginning the Effective Date of this Agreement. In the first year of EMPLOYEE's employment as city manager, accrual of administrative leave shall be prorated to the end of the fiscal year. EMPLOYEE's use of administrative leave time is subject to Section 6.8(e) [Restriction on Use of Leave]. Any unused administrative leave will be converted to vacation leave at the conclusion of the fiscal year. Administrative leave must be used and deducted from accruals in increments of no less than one hour for time missed from normal work hours which for purposes of this section are deemed to be normal CITY operating hours. During the last full pay period of the fiscal year, any unused administrative leave may be converted to vacation hours.

(e) Restriction on Use of Leave. EMPLOYEE agrees not to take any vacation or leave, except for sick leave, at a time that would adversely impact CITY. EMPLOYEE shall not take vacation or leave, except for sick leave, in excess of one week without first obtaining the approval of the CITY's Mayor.

6.9 Retirement and Deferred Compensation.

(a) EMPLOYEE is believed to be a "classic member" as defined by CalPERS and as mandated by the Public Employees' Pension Reform Act of 2013 ("PEPRA"), and if determined by CalPERS to be such shall be permitted to participate in the CITY's CalPERS Retirement Program with the 2.7% at 55 formula and one (1) Year Average formula.

(b) Employee Contribution. EMPLOYEE shall be responsible for the full member contribution for EMPLOYEE's CalPERS retirement plan, which is currently 8% and any other required contribution pursuant to the CITY's Non-Represented Employees' Compensation and Benefits Plan as it now exists or may hereafter be amended.

7.0 INDEMNIFICATION

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 EMPLOYEE's employment, or any other intentional or malicious conduct or gross negligence of EMPLOYEE.

8.0 OTHER TERMS- CONDITIONS OF EMPLOYMENT

The City Council, in consultation with EMPLOYEE, shall establish any such other terms and conditions of employment as it may determine from time to time, provided such terms and conditions do not exceed the maximum salary and benefits approved by the City Council and are reduced to writing and signed by EMPLOYEE and the Mayor.

9.0 GENERAL PROVISIONS

9.1 Entire AGREEMENT. This AGREEMENT represents the entire AGREEMENT and understanding between the Parties and supersedes any and all other agreements and understandings, either oral or in writing, between the Parties with respect to EMPLOYEE's employment by the CITY and contains all of the covenants and agreements between the Parties with respect to such employment. No ordinances or resolutions of CITY governing employment, including the Personnel System, shall apply unless specified herein. 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 or promises not contained in this AGREEMENT shall be valid or binding upon either Party.

9.2 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 City Council approval.

9.3 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:

Mayor
City of Hesperia
9700 Seventh Avenue

To EMPLOYEE:

Rachel Molina
[On file with Human Resources Dept.]

Hesperia, CA 92345

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.

9.4 Conflicts Prohibited. During the term of this AGREEMENT, EMPLOYEE shall not engage in any business or transaction or maintain a financial interest which conflicts, or reasonably might be expected to conflict, with the proper discharge of EMPLOYEE's duties under this AGREEMENT. EMPLOYEE shall comply with all requirements of law, including but not limited to, Sections 87100 *et seq.*, Section 1090 and Section 1126 of the Government Code, and all other similar statutory and administrative rules.

9.5 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.

9.6 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.

9.7 Governing Law. This AGREEMENT shall be governed by and construed in accordance with the laws of the State of California, which are in full force and effect as of the date of execution and delivery by each Party hereto.

9.8 Government Code §§ 53243 - 53243.4. Assembly Bill 1344, which was subsequently enacted as Government Code §§ 53243 - 53243.4, sought to provide greater transparency in local government and institute certain limitations on compensation paid to local government executives. These statutes also require that contracts between local agencies and its employees include provisions requiring an employee who is convicted of a crime involving an abuse of her office or position to provide reimbursement to the local agency. These statutes are incorporated herein by reference. 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.

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

9.9 Independent Legal Advice. The CITY and EMPLOYEE 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 had the opportunity to do so, and the CITY and EMPLOYEE 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.

IN WITNESS WHEREOF, the City of Hesperia 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 EMPLOYEE has signed and executed this AGREEMENT, all in triplicate.

CITY OF HESPERIA


Brigit Bennington, Mayor

ATTEST:


Melinda Sayre, City Clerk

APPROVED AS TO FORM:


Pam Lee, City Attorney

CITY MANAGER

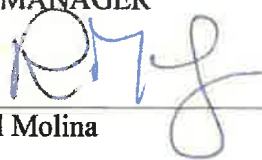

Rachel Molina

EXHIBIT A

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 Hesperia, a general law city and municipal corporation (hereinafter referred to as "THE CITY"), and RACHEL MOLINA, an individual (hereinafter referred to as "EMPLOYEE").

2. RECITALS

2.1. EMPLOYEE was hired by THE CITY as an at-will city manager effective on or about [REDACTED] 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"). EMPLOYEE is currently [REDACTED] years old.

2.2. THE CITY and EMPLOYEE desire that EMPLOYEE separate from employment with THE CITY 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 separation by means of [REDACTED] as of [REDACTED], [REDACTED]. 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 her at the time of her 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 state, federal or municipal law or THE CONTRACT or any other agreement with THE CITY.

3.2. In exchange for the waivers and releases set forth herein, THE CITY shall cause to be paid to EMPLOYEE an additional compensatory payment as severance pay by means of a lump sum payment of [REDACTED] and [REDACTED] cents (\$ [REDACTED].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 payment shall be subject to applicable state and federal 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 anytime from the beginning of time up to and including [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, the Public Safety Officers Procedural Bill of Right Act, 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. Furthermore, nothing herein shall be interpreted as a release or waiver of the 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 EMPLOYEE knowingly and voluntarily, for just compensation in addition to anything of value to which EMPLOYEE was already entitled, waives and releases any rights she may have under the ADEA and/or OWBPA. EMPLOYEE further acknowledges that EMPLOYEE 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, EMPLOYEE's rights under the ADEA and OWBPA, and of the legal significance of EMPLOYEE's waiver of any possible claims EMPLOYEE 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 EMPLOYEE may have under the ADEA, the OWBPA and similar age discrimination laws; but may, in the exercise of EMPLOYEE's 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 EMPLOYEE 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, EMPLOYEE's counsel of choice or at least had the opportunity to do so, and EMPLOYEE represents by signing this AGREEMENT that EMPLOYEE does not need any additional time within which to review and consider this AGREEMENT;
- (g) EMPLOYEE has **seven (7) days following EMPLOYEE's 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 of same ("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 EMPLOYEE shall be exclusively liable for the payment of all taxes for which EMPLOYEE is responsible, if any, as a result of EMPLOYEE's 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. EMPLOYEE shall provide THE CITY with consultation services (including deposition or trial testimony) in any litigation involving THE CITY which is reasonably related to acts or occurrences transpiring during EMPLOYEE's employment. Said services shall be provided as needed by THE CITY at a rate of \$100.00 per hour.

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 EMPLOYEE's employment with THE CITY.

7.9 No Pending Claims and/or Actions: EMPLOYEE represents that EMPLOYEE has not filed any complaints or charges against THE CITY or THE CITY PARTIES with any local, state or federal agency or court; that EMPLOYEE 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, EMPLOYEE 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 Enforcement Fees and Costs: Should any legal action be required to enforce the terms of this AGREEMENT, the prevailing party shall be entitled to reasonable attorneys' fees and costs in addition to any other relief to which that party may be entitled.

7.12 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 and/or received 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:

Mayor
City of Hesperia
9700 Seventh Avenue
Hesperia, CA 92345

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: _____
Rachel Molina

THE CITY

DATED: _____

By: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
[REDACTED], City Attorney

[EMPLOYEE'S ATTORNEY'S LAW FIRM]

By: _____
[Counsel Name]