RESOLUTION NO. 2016-24

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELL, CALIFORNIA, FORMALLY APPROVING SETTLEMENT AGREEMENTS BETWEEN THE CITY OF BELL AND CARLOS CHACON AND THE CITY OF BELL AND CHRISTINA PENA

WHEREAS, on April 13, 2016, the City Council of the City of Bell ("City") approved and adopted a Memorandum of Understanding Between the City of Bell and the Bell City Employees Association, July 1, 2015 – December 31, 2016 ("BCEA MOU 2015-2016"); and

WHEREAS, the BCEA MOU 2015-2016 approved by the City Council included the basic terms of settlement between the City and two City employees, Carlos Chacon and Christina Pena, pertaining to any and all potential employment claims; and

WHEREAS, the BCEA MOU 2015-2016 approved by City Council specifically contained the following settlement terms:

i) Carlos Chacon would be reclassified from Community Services Technician to Associate Planner at Step C ($5,958.77) to be effective the first full pay period after City approval of the BCEA MOU 2015-2016;

ii) Christina Pena would be reclassified from Community Services Technician to Housing Specialist at Step A ($5,433.93) to be effective the first full pay period after City approval of the BCEA MOU 2015-2016;

iii) Each employee would receive the amount of Fifteen Thousand Dollars ($15,000.00);

iv) These settlement payments would be in exchange for and subject to the condition precedent of execution of a settlement agreement waiving any and all employment claims the employees may have against the City, including but not limited to position, classification, misclassification, working out of class claims, and back pay; and

WHEREAS, at the City Council meeting on April 13, 2016, the City Council requested that the settlement agreements between the City and Carlos Chacon and the City and Christina Pena be brought before Council for formal approval of the agreements; and

WHEREAS, the City Council now desires to formally approve the settlement agreements between the City and Carlos Chacon and the City and Christina Pena and authorize the City Manager to execute these settlement agreements.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BELL DOES HEREBY RESOLVE AS FOLLOWS:

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

SECTION 2. The settlement and release agreement between the City of Bell and Carlos Chacon, attached hereto as Exhibit "A", is hereby formally approved.

SECTION 3. The settlement and release agreement between the City of Bell and Christina Pena, attached hereto as Exhibit "B", and is hereby formally approved.

SECTION 4. The City Manager is authorized to execute the settlement agreements attached as Exhibits "A" and "B" on behalf of the City.

SECTION 5. The City Clerk shall certify to the adoption of this Resolution.

ADOPTED AND APPROVED THIS 27TH DAY OF APRIL, 2016.

Alicia Romero, Mayor

APPROVED AS TO FORM:

David Aleshire, City Attorney

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, Angela Bustamante, Acting City Clerk of the City of Bell, hereby attest to and certify that the foregoing resolution is the original resolution adopted by the Bell City Council at its regular meeting held on the 27th day of April, 2016, by the following vote:

AYES: Councilmember Quintana, Saleh, Valencia, Vice Mayor Gallardo and Mayor Romero

NOES: None

ABSENT: None

ABSTAIN: None

Angela Bustamante, Acting City Clerk

01135.0004/294760.1

EXHIBIT A

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release ("AGREEMENT") is entered into by and between CARLOS CHACON, an individual ("EMPLOYEE"), and the CITY OF BELL, a charter city and municipal corporation ("CITY"), (collectively, the "PARTIES", and individually, "PARTY"), effective as of the date all PARTIES have signed the AGREEMENT and the AGREEMENT has been approved by City Council of the City of Bell ("EFFECTIVE DATE") with reference to the following recitals:

1. RECITALS

1.1 CARLOS CHACON is an employee of the CITY and was initially hired by the CITY on November 8, 2010, on which date EMPLOYEE began working as a Community Services Technician. The Community Services Technician position is a represented classification in the civil service system of the CITY belonging to the miscellaneous bargaining unit represented by the Bell City Employees Association ("BCEA").

1.2 During labor negotiations, the CITY and the BCEA agreed that the CITY would audit the Community Services Technician positions to determine whether the employees in this classification, including CARLOS CHACON, were properly classified.

1.3 On April 13, 2016, the City Council of the CITY approved a Memorandum of Understanding Between the City of Bell and the Bell City Employees Association, July 1, 2015 – December 31, 2016 ("BCEA MOU 2015-2016"). Pursuant to Article III, Section 2 of the BCEA MOU 2015-2016, the CITY and the BCEA agreed as follows:

a. EMPLOYEE would be reclassified from Community Services Technician to Associate Planner at Step C ($5,958.77) to be effective the first full pay period after CITY approval of the BCEA MOU 2015-2016.

b. EMPLOYEE would receive the amount of Fifteen Thousand Dollars and No Cents ($15,000.00) in settlement of any and all potential employment claims from hire to the date of this AGREEMENT ("PAYMENT"), including but not limited to position, classification, misclassification, working out of class claims, and back pay.

c. The PAYMENT would be in exchange for and subject to the condition precedent of execution of a settlement agreement waiving any and all employment claims EMPLOYEE may have against the CITY.

1.4 By entering into this AGREEMENT, the PARTIES now wish to settle and resolve any and all employment claims that EMPLOYEE may have against the CITY, including but not limited to EMPLOYEE's position, classification, misclassification, working out of class, and back pay. The PAYMENT is made 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 officials, employees, representatives, and agents, related to the EMPLOYEE's employment relationship with the CITY, including but not limited to, misclassification, working out of class and back wages. This AGREEMENT is not an admission by CITY or EMPLOYEE of any liability, fault, or wrongdoing of any kind.

2. CONSIDERATION

2.1 All RECITALS above are to be deemed true and material statements upon which this AGREEMENT is based.

2.2 In exchange for the waivers and releases set forth herein, the CITY shall provide EMPLOYEE a payment in the amount of Fifteen Thousand Dollars and No Cents ($15,000.00). Said PAYMENT shall be made in a lump sum, less any applicable payroll or other required taxes.

2.3 The PAYMENT shall be in the form of a check made payable to EMPLOYEE and electronic payroll deposited into EMPLOYEE's designated bank account within ten (10) business days after the EFFECTIVE DATE of this AGREEMENT.

3. RELEASE

3.1 In exchange for the PAYMENT, EMPLOYEE, and on behalf of EMPLOYEE's spouse, heirs, representatives, successors, and assigns, hereby waives, releases, acquits, and forever discharges CITY, and each of its officials, employees, representatives, and agents (collectively, "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, disciplinary appeals 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, resulting from, relating to or arising out of EMPLOYEE's employment relationship with the CITY (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, any claims for misclassification, working out of class, 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 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 §§12,900 *et seq.*, the Americans With Disabilities Act, Title VII of the Civil Rights Act of 1964, and any other federal, state, or local human rights, civil rights, or employment discrimination or employee rights statute, rule, or regulation.

3.2 The releases set forth above are general releases of all CLAIMS of any nature whatsoever and are intended to encompass all known and unknown, foreseen and unforeseen claims that EMPLOYEE may have against the CITY PARTIES, or any of them.

3.3 EMPLOYEE hereby waives any provisions of state or federal law that might require a more detailed specification of the CLAIMS being released pursuant to Section 3.1 of this AGREEMENT.

3.4 The releases do not waive or otherwise affect any of EMPLOYEE's rights or claims that may arise after EMPLOYEE signs this AGREEMENT and it becomes effective, to waive or release any claims which may not be released pursuant to applicable law.

3.5 Nothing herein shall be interpreted as a release or waiver of any workers' compensation claims or EEOC claims or in any way prohibit or prevent EMPLOYEE from participating in any claims or administrative action brought by a state or federal agency, including the EEOC.

4. UNKNOWN CLAIMS

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

> "General Release--Claims Extinguished"
>
> "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

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

5. DISCOVERY OF DIFFERENT OR ADDITIONAL FACTS

EMPLOYEE acknowledges that he may hereafter discover facts different from or in addition to those that he now knows or believes to be true with respect to the CLAIMS that are the subject of the Releases set forth in Article 3 of this AGREEMENT, and expressly agrees to assume the risk of the possible discovery of additional or different facts, and EMPLOYEE agrees that this AGREEMENT shall be and remain effective in all respects regardless of such additional or different facts.

6. REPRESENTATIONS AND WARRANTIES

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

6.1 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.

6.2 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.

6.3 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.

6.4 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.

6.5 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.

6.6 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 Section 2.1 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 Section 2.1 of this AGREEMENT.

6.7 No Pending Claims and/or Action: 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.

6.8 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.

6.9 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.

6.10 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.

7. MISCELLANEOUS

7.1 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.

7.2 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.

7.3 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.

7.4 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.

7.5 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.

7.6 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.

7.7 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.

7.8 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.

7.9 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 last known home address on file with the CITY.

As to the CITY:

City Manager
City of Bell
6330 Pine Avenue
Bell, CA 90201

[SIGNATURES ON FOLLOWING PAGE]

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

CITY

Dated: 5/3/16

Howard Brown, City Administrator

ATTEST:

City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Colin J. Tanner, Deputy City Attorney

EMPLOYEE

Dated: 4/22/16

Carlos Chacon

APPROVED AS TO FORM:
BELL CITY EMPLOYEES ASSOCIATION

By:
Authorized Representative

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

CITY

Dated: _____

_____
Howard Brown, City Administrator

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Colin J. Tanner

Colin J. Tanner, Deputy City Attorney

EMPLOYEE

Dated: 4/22/16

_____
Carlos Chacon

APPROVED AS TO FORM:
BELL CITY EMPLOYEES ASSOCIATION

Mary LaPlante

By:
Authorized Representative

01135.0004/293384.2

EXHIBIT B

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release ("AGREEMENT") is entered into by and between CHRISTINA PENA, an individual ("EMPLOYEE"), and the CITY OF BELL, a charter city and municipal corporation ("CITY"), (collectively, the "PARTIES", and individually, "PARTY"), with reference to the following recitals:

1. RECITALS

1.1 CHRISTINA PENA is an employee of the CITY and was initially hired by the CITY on September 20, 2010. On November 8, 2010, EMPLOYEE began working as a Community Services Technician. The Community Services Technician position is a represented classification in the civil service system of the CITY belonging to the miscellaneous bargaining unit represented by the Bell City Employees Association ("BCEA").

1.2 EMPLOYEE is 40 years of age or older.

1.3 During labor negotiations, the CITY and the BCEA agreed that the CITY would audit the Community Services Technician positions to determine whether the employees in this classification, including EMPLOYEE, were properly classified.

1.4 On April 13, 2016, the City Council of the CITY approved a Memorandum of Understanding Between the City of Bell and the Bell City Employees Association, July 1, 2015 – December 31, 2016 ("BCEA MOU 2015-2016"). Pursuant to Article III, Section 2 of the BCEA MOU 2015-2016, the CITY and the BCEA agreed as follows:

a. EMPLOYEE would be reclassified from Community Services Technician to Housing Specialist at Step A ($5,433.93) to be effective the first full pay period after CITY approval of the BCEA MOU 2015-2016.

b. EMPLOYEE would receive the amount of Fifteen Thousand Dollars and No Cents ($15,000.00) ("PAYMENT") in settlement of any and all potential employment claims from hire to date, including but not limited to position, classification, misclassification, working out of class claims, and back pay.

c. The PAYMENT would be in exchange for and subject to the condition precedent of execution of a settlement agreement waiving any and all employment claims EMPLOYEE may have against the CITY.

1.5 By entering into this AGREEMENT, the PARTIES now wish to settle and resolve any and all employment claims EMPLOYEE may have against the CITY, including but not limited to EMPLOYEE's position, classification, misclassification, working out of class, back pay. PAYMENT is made in exchange for executing a general release and waiver of any and all claims that EMPLOYEE may have against CITY, including but not limited to its officials, employees, representatives, and agents, related to the EMPLOYEE's employment relationship with the CITY, including but not limited to, misclassification, working out of class and back pay. This AGREEMENT is not an admission by CITY of any liability, fault, or wrongdoing of any kind.

2. CONSIDERATION

2.1 All RECITALS above are to be deemed true and material statements upon which this AGREEMENT is based.

2.2 In exchange for the waivers and releases set forth herein, CITY shall provide EMPLOYEE a payment in the amount of Fifteen Thousand Dollars and No Cents ($15,000.00). Said PAYMENT shall be made in a lump sum, less any applicable payroll or other required taxes.

2.3 The PAYMENT shall be in the form of a check made payable to EMPLOYEE and electronic payroll deposited into EMPLOYEE's designated bank account within ten (10) business days after the EFFECTIVE DATE of this AGREEMENT, as defined in Article 4 below.

3. RELEASE

3.1 In exchange for the PAYMENT, EMPLOYEE, and on behalf of EMPLOYEE's spouse, heirs, representatives, successors, and assigns, hereby waives, releases, acquits, and forever discharges CITY, and each of its officials, employees, representatives, and agents (collectively, "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, disciplinary appeals 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, resulting from, relating to or arising out of EMPLOYEE's employment relationship with the CITY (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, any claims for misclassification, working out of class, 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 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 §§12,900 *et seq.*, the Americans With Disabilities Act, Title VII of the Civil Rights Act of 1964, and any other federal, state, or local human rights, civil rights, or employment discrimination or employee rights statute, rule, or regulation.

3.2 The releases set forth above are general releases of all CLAIMS of any nature whatsoever and are intended to encompass all known and unknown, foreseen and unforeseen claims that EMPLOYEE may have against the CITY PARTIES, or any of them.

3.3 EMPLOYEE hereby waives any provisions of state or federal law that might require a more detailed specification of the CLAIMS being released pursuant to Section 3.1 of this AGREEMENT.

3.4 The releases do not waive or otherwise affect any of EMPLOYEE's rights or claims that may arise after EMPLOYEE signs this AGREEMENT and it becomes effective, to waive or release any claims which may not be released pursuant to applicable law.

3.5 Nothing herein shall be interpreted as a release or waiver of any workers' compensation claims or EEOC claims or in any way prohibit or prevent EMPLOYEE from participating in any claims or administrative action brought by a state or federal agency, including the EEOC.

4. SPECIFIC ACKNOWLEDGEMENT 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 labor representative 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

This AGREEMENT shall not be effective until all parties have signed the AGREEMENT, ten (10) days have passed since EMPLOYEE's execution of same, and City Council has approved the AGREEMENT ("EFFECTIVE DATE").

5. UNKNOWN CLAIMS

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

> "General Release--Claims Extinguished"
>
> "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

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

6. DISCOVERY OF DIFFERENT OR ADDITIONAL FACTS

EMPLOYEE acknowledges that she may hereafter discover facts different from or in addition to those that he now knows or believes to be true with respect to the CLAIMS that are the subject of the Releases set forth in Article 3 of this AGREEMENT, and expressly agrees to assume the risk of the possible discovery of additional or different facts, and EMPLOYEE agrees that this AGREEMENT shall be and remain effective in all respects regardless of such additional or different facts.

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 Section 2.1 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 Section 2.1 of this AGREEMENT.

7.7 No Pending Claims and/or Action: 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.

7.8 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.

7.9 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.

7.10 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 last known home address on file with the CITY.

As to the CITY:

City Manager
City of Bell
6330 Pine Avenue
Bell, CA 90201

[SIGNATURES ON FOLLOWING PAGE]

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

CITY

Dated: 5/3/16

Howard Brown, City Administrator

ATTEST:

City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Colin J. Tanner, Deputy City Attorney

EMPLOYEE

Dated: 4-22-2016

Christina Pena

APPROVED AS TO FORM:
BELL CITY EMPLOYEES ASSOCIATION

By:
Authorized Representative

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

CITY

Dated: _____

_____
Howard Brown, City Administrator

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

_____
Colin J. Tanner, Deputy City Attorney

EMPLOYEE

Dated: 4-22-2016

_____
Christina Pena

APPROVED AS TO FORM:
BELL CITY EMPLOYEES ASSOCIATION

_____
By:
Authorized Representative

01135.0004/293512.2