

**MUTUAL SEPARATION AGREEMENT
AND GENERAL RELEASE**

THIS MUTUAL SEPARATION AGREEMENT AND GENERAL RELEASE (hereinafter this "Agreement") is entered into by and between Tadeo Azael De La Hoya ("DE LA HOYA"), on the one hand, and the City of San Luis (the "CITY"), on the other hand.

WHEREAS, DE LA HOYA is employed by the CITY; and

WHEREAS, the CITY and DE LA HOYA mutually desire to terminate the employment relationship, and in the process, settle, compromise, and resolve any and all potential differences and disputes between them.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, and for other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the CITY and DE LA HOYA voluntarily and knowingly agree as follows:

1. **Definitions.** For the purposes of this entire Agreement, the term "CITY" includes the City of San Luis and, to the extent applicable, as direct, intended and third-party beneficiaries hereof, its past, present, and future officers, employees, representatives, trustees, administrators, fiduciaries, attorneys, insurers, agents, subsidiaries, affiliated entities, elected officials, councilmembers, predecessors, successors, heirs, and assigns, jointly and severally, in both their personal and official capacities (collectively, the "Released Parties"). For the purposes of this entire Agreement, the term "DE LA HOYA" shall refer to Tadeo Azael De La Hoya, his marital community (if any), and his heirs and assigns.

2. **Termination of Employment.** The parties agree that DE LA HOYA's employment with CITY shall be terminated effective August 12, 2021.

The CITY agrees that it shall not oppose any application for unemployment benefits that DE LA HOYA may choose to make based on the termination of the employment relationship.

3. **Consideration by the CITY.**

- a. The CITY shall pay DE LA HOYA a lump sum equivalent to seven months of his current annual salary, less applicable state and federal withholding taxes. The payment shall be made within ten (10) business days after the effective date of this Agreement.
- b. The CITY shall pay DE LA HOYA for all accrued, unused sick and vacation time in accordance with its personnel policies in effect on the date of termination.
- c. The form of payment for the amounts due under Sections 3(a) and 3(b) shall be a check payable to "Tadeo Azael De La Hoya." The CITY shall make the payment to

DE LA HOYA not more than ten (10 business days after all of the following events have occurred, each of which is a condition precedent to payment: (1) this Agreement has been executed by both Parties; (2) the termination of the employment relationship between the CITY and DE LA HOYA has become effective; and (3) DE LA HOYA has complied with his obligation to return the CITY's property, as set forth in Section 11 of this Agreement.

- d. The CITY shall reimburse DE LA HOYA for the cost of COBRA continuation coverage for health, dental, and vision for DE LA HOYA for a period of 18 months following the effective date of this Agreement or until he becomes eligible for other employer-provided health insurance coverage, whichever is shorter. DE LA HOYA shall be solely responsible for completing the required enrollment forms and making all COBRA payments. The CITY shall reimburse DE LA HOYA on a monthly basis within seven (7) business days of receipt of a qualifying COBRA invoice from DE LA HOYA.

DE LA HOYA agrees to provide notice to the CITY within seven (7) business days of becoming eligible for other employer-provided health insurance coverage.

- e. DE LA HOYA acknowledges that he will be exclusively liable for the payment of all federal, state, and local taxes, if any, which may be due as a result of the monetary consideration he receives pursuant to this Agreement. In addition, if the CITY or any other Released Party is required at any time to pay any taxes or other amounts, including without limitation penalties or interest or reasonable attorneys' fees, for failing to withhold federal or state income or withholding taxes on any payment made pursuant to this Agreement, or on account of DE LA HOYA failing to pay taxes on any such payment, DE LA HOYA agrees to indemnify the CITY or any other Released Party and hold it harmless from any penalties, claims, lawsuits, attorneys' fees, and expenses.

4. **Release.** DE LA HOYA hereby irrevocably and unconditionally releases and discharges the CITY and all other Released Parties from any and all claims, demands, liens, agreements, covenants, actions, suits at law or equity, obligations, debts, damages, judgments, liabilities, attorneys' fees, costs, and expenses of whatever kind, known or unknown, suspected or unsuspected, which he had or has based on any matter or thing occurring prior to his execution of this Agreement, including but not limited to claims that arise from or relate to DE LA HOYA's employment with the CITY or the termination of the employment relationship. The released claims include any claims arising under the Age Discrimination in Employment Act, the Arizona Civil Rights Act, the Arizona Wage Payment Act, or Title VII of the Civil Rights Act of 1964. The released claims further include, but are not limited to, all claims for breach of contract, wrongful discharge or layoff, constructive discharge, retaliatory discharge, impairment of economic opportunity, intentional or negligent infliction of emotional harm, distress, or any other tort, including but not limited to defamation, invasion of privacy, intentional interference with contract or prospective advantage, violation of any constitutional right, sex discrimination, race discrimination, disability discrimination, age discrimination or any other form of

employment discrimination or retaliation, and any and all claims arising from any alleged violations by or on behalf of the CITY or any other Released Party under every applicable federal, state or local law, rule, regulation, ordinance, public policy or common law, including under the Arizona Employment Protection Act, the Arizona Fair Wages and Healthy Families Act; the Civil Rights Act of 1991, the Equal Pay Act, the Americans with Disabilities Act, or the Family and Medical Leave Act. DE LA HOYA also waives and releases any appeal or grievance rights pursuant to the CITY's personnel policies or municipal code.

DE LA HOYA understands and acknowledges that this release forever bars him from suing or otherwise asserting a claim against the CITY or any of the other Released Parties on the basis of any event occurring through his execution of this Agreement, whether the facts are now known or unknown, and whether the legal theory upon which such claim might be based is now known or unknown. DE LA HOYA further agrees and acknowledges that the Released Parties are intended third party beneficiaries of this release of claims.

DE LA HOYA understands and acknowledges that nothing in this Agreement shall be construed as prohibiting him from filing an administrative charge with a governmental agency.

5. **Acknowledgement of Full Payment.** DE LA HOYA acknowledges and agrees that upon receipt of the payments outlined in Sections 3(a) and 3(b) above, he will have been paid in full by the CITY for all wages, overtime, bonuses, or other forms of compensation to which he is entitled as a result of his employment with the CITY.

6. **Provision for Unknown Claims.** DE LA HOYA warrants that he does not have any claim or charge pending against the CITY or any of the other Released Parties with any court, tribunal, administrative agency, governmental agency, or other such body.

7. **Waiver of Right to Recovery and No Inducement.** DE LA HOYA waives any right to monetary recovery should any administrative agency pursue any released claim on his behalf. To the extent permitted by law, and/or unless required by law, DE LA HOYA agrees that he will not induce, aid, or abet anyone in instituting or prosecuting any pending or future claim against the CITY or any other Released Party in any court, arbitral tribunal, or administrative agency. However, nothing in this provision shall be construed as prohibiting DE LA HOYA from communicating with any government agency regarding any matter within such agency's jurisdiction.

8. **Consultation with Legal Counsel.** DE LA HOYA acknowledges that this Agreement constitutes written notice from the CITY that it advises him to seek legal counsel before signing this Agreement.

9. **Neutral Reference.** DE LA HOYA agrees to direct all reference requests from prospective employers to the CITY's human resources department. The CITY agrees that the human resources department shall respond to such reference requests by disclosing only the following information regarding DE LA HOYA: dates of employment, position(s) held.

10. **Effective Date of Agreement.** This Agreement will be effective upon execution by both parties.

11. **Return of Property.** Upon the effective date of this Agreement, DE LA HOYA shall return all property of the CITY in his possession.

12. **Full Consideration.** DE LA HOYA agrees that payment by the CITY of the sums stated in Section 3 as well as compliance with the above-described terms constitutes full and sufficient legal consideration for the promises and covenants set forth in this Agreement.

13. **No Admission of Wrongdoing.** The parties each agree that nothing in this Agreement shall be construed as an admission by either of them of any wrongdoing or violation of any applicable law, and that nothing in this Agreement shall be so construed by any other person.

14. **Bar.** DE LA HOYA specifically agrees that this Agreement may be pled by the CITY or any of the other Released Parties as an absolute bar to any released claim.

15. **Complete Agreement.** This Agreement sets forth all of the terms and conditions of the agreement between the parties and shall be considered and understood to be a contractual commitment and not a mere recital. The CITY and DE LA HOYA expressly agree that this Agreement supersedes and extinguishes all obligations under the City Manager's "Employment Agreement between the parties, including any severance obligation set forth therein. This Agreement" shall be binding upon the CITY and its successors and assigns and upon DE LA HOYA and his respective agents, heirs, executors, representatives, and assigns.

16. **Fees and Costs.** Each party shall bear and pay his or its own costs and attorneys' fees with regard to this Agreement and any matters covered herein. However, in an action to enforce any term or terms of this Agreement or to seek damages for breach of this Agreement, the prevailing party in that action shall be entitled to recover reasonable attorneys' fees.

17. **Waiver and Amendment.** A waiver of any right under this Agreement must be in writing to be effective. This Agreement may be amended only by a writing signed by the parties. Any oral representation or modification concerning this Agreement shall be of no force or effect.

18. **Severability.** If any portion of this Agreement is held invalid by operation of law, the remaining terms of this Agreement shall not be affected, provided, however, that if the release in Section 4 of this Agreement is held invalid, the CITY shall have the right to seek rescission of this Agreement.

19. **Choice of Law.** The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against either of the parties. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona, except to the extent that federal laws apply.

20. **Acknowledgement.** DE LA HOYA acknowledges that in executing this Agreement, he does not rely on any inducements, promises or representations made by the CITY other than those expressly stated herein. Further, DE LA HOYA declares that he has read this Agreement and fully understands its terms and contents, including his rights and obligations hereunder, and freely, voluntarily and without coercion enters into this Agreement. DE LA HOYA agrees and acknowledges that the waiver and release of all rights or claims he may have under any local state or federal law is knowing and voluntary.

City of San Luis, Arizona

Africa Luna-Carrasco, Vice Mayor

Date: _____

ATTEST:

Sonia Cornelio, City Clerk

APPROVED AS TO FORM:

Kay Marion Macuil, City Attorney

Tadeo Azael De La Hoya

Tadeo Azael De La Hoya

Date: _____