

## SEPARATION AGREEMENT AND GENERAL RELEASE

This Separation Agreement and General Release (hereinafter "Agreement") is made and entered into between the CITY OF LAGUNA BEACH (hereinafter "CITY") and SHOHREH DUPUIS (hereinafter "EMPLOYEE"), collectively referred to as "Parties," or individually as a "Party," and is made in light of the following:

### RECITALS

EMPLOYEE is currently employed by the CITY as City Manager.

The CITY and EMPLOYEE now agree that EMPLOYEE will retire from employment with the CITY according to the terms as set forth in this Agreement.

The Parties desire to resolve all issues related to EMPLOYEE's employment with the CITY, and avoid incurring further cost, expense, and disruption to any further proceedings. The Parties further desire to achieve a full and complete settlement of all issues and claims with reference to each other.

**NOW THEREFORE**, in consideration of the mutual promises contained herein, the Parties hereby agree as follows:

1. EMPLOYEE agrees to retire from her employment with the CITY effective September 1, 2023 ("Separation Date"). EMPLOYEE agrees that she will be on paid leave with pay between the date of her execution of the Agreement and the Separation Date. EMPLOYEE has expressed her intent to retire effective on the Separation Date. EMPLOYEE agrees that if she does not retire on or before the Separation Date, then she shall be deemed to have voluntarily resigned as of the Separation Date.
2. EMPLOYEE agrees that her decision to separate from her employment with the CITY, by retirement or resignation, is irrevocable and that she will not seek to set it aside for any reason in any court or administrative proceeding. EMPLOYEE acknowledges that she is freely and voluntarily deciding to separate from employment with the CITY, that she has had ample time to consider her decision, that she consents to retire without duress, and that her retirement is irrevocable.
3. EMPLOYEE agrees that she will be required to reconfirm her assent to this Agreement ("Reconfirmation of Separation Agreement and General Release") and all of its terms, including all releases and representations made herein, on her Separation Date by executing the Reconfirmation of Separation Agreement and General Release found at the bottom of this Agreement.
4. Except as specifically provided herein, the CITY will provide EMPLOYEE with the compensation and benefits described in EMPLOYEE'S existing employment agreement with the City, initially entered into on May 5, 2021 (Attachment A), which EMPLOYEE would have received had she been terminated without cause.

- a. The CITY shall pay EMPLOYEE the severance pay described in Paragraph 10 of EMPLOYEE's existing employment agreement with the CITY ("Severance Pay") on the first pay date following her Separation Date and her execution of the Reconfirmation of Separation Agreement and General Release. The CITY shall report the Severance Payment as wages to the IRS and make all required withholdings.
  - b. If EMPLOYEE does not execute the Reconfirmation of Separation Agreement and General Release, then she shall not be entitled to the Severance Pay.
5. The Agreement Between the City of Laguna Beach and Shohreh Dupuis and Farzad Mohamadi Regarding Housing Assistance dated May 26, 2016 (Attachment B) shall remain in full force and effect.
6. On the first pay date following the Separation Date, the CITY will issue EMPLOYEE her final pay check for any wages owed to her through the Separation Date other than the Severance Pay.
7. EMPLOYEE acknowledges that, upon full performance by the CITY of the terms of this Agreement, she has been paid in full all sums owed to her by the CITY of any nature whatsoever, and has received consideration for the releases contained in this Agreement.
8. The CITY and EMPLOYEE further agree as follows:
  - a. Settlement Payment: On January 3, 2024, the CITY shall pay EMPLOYEE the sum of Two Hundred Twenty Three Thousand and Seventy Seven Dollars (\$223,077) (the "Settlement Proceeds") as a full and complete settlement and compromise of all issues and claims with reference to the Parties, including, but not limited to, any and all charges, complaints, lawsuits, claims, liabilities, claims for relief, claims for punitive damages, obligations, promises, agreements, contracts, interests, controversies, injuries, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, liens, judgments, indebtedness, and expenses (including attorney's fees and costs actually incurred), of any nature whatsoever, whether in law or in equity, known or unknown, suspected or unsuspected, actual or potential, which EMPLOYEE now has, owns, or holds, or claims to have, own, or hold at common law or under any statute, rule, regulation, order or law, whether federal, state, or local, or on any grounds whatsoever, with respect to any act, omission, event, matter, claim, damage, loss, or injury arising out of EMPLOYEE's employment with the CITY (except for any claims that EMPLOYEE may have under the Workers' Compensation Act) and/or with respect to any other claim, matter, or event arising prior to the execution of this Agreement and EMPLOYEE's Separation Date. The Settlement Proceeds shall be reported to the IRS on an IRS Form 1099 as required by law.
  - b. Attorney's Fees: The CITY shall reimburse EMPLOYEE the attorney's fees EMPLOYEE expended on the legal services of R. Craig Scott, Esq. and/or the

Executive Law Group, Inc. in connection with her separation from employment with the CITY, in an amount not to exceed Ten Thousand Dollars (\$10,000). To be eligible for reimbursement, EMPLOYEE must provide written proof of payment to the CITY'S Director of Human Resources/Risk Management, Aggie Nesh, by email at [anesh@lagunabeachcity.net](mailto:anesh@lagunabeachcity.net). The CITY shall reimburse EMPLOYEE for the attorney's fees described in this paragraph within 30 days of her submission of written proof of payment to the CITY'S Director of Human Resources/Risk Management.

- c. Health Insurance: Under Section 10 of EMPLOYEE's employment agreement (Attachment A), if terminated, EMPLOYEE could elect to receive continued insurance coverage for nine (9) months. In exchange for the promises herein, if EMPLOYEE retires, the CITY agrees to pay for retiree health, dental and vision insurance for EMPLOYEE and her spouse for nine (9) months following the Separation Date. After such time the employee may elect to stay on the City's retiree health plans and pay for retiree's share, elect COBRA coverage or unenroll from the City plan.
- d. EMPLOYEE represents that she has returned any and all property of the CITY, including but not limited to, cell phones, access badges, files and copies of files, including any in electronic form, in her possession, or to which she otherwise has access, keys, or any other items provided to her by the CITY related to her employment with the CITY. EMPLOYEE agrees that if she identifies any CITY property in her possession that she has not returned, EMPLOYEE will notify the CITY and return the property immediately. In such case, EMPLOYEE will notify the CITY'S Director of Human Resources/Risk Management, Aggie Nesh, by email at [anesh@lagunabeachcity.net](mailto:anesh@lagunabeachcity.net).
- e. EMPLOYEE agrees that unless EMPLOYEE presents CITY with a signed authorization, any request for information from any prospective employer concerning EMPLOYEE shall be routed to the CITY'S Human Resources Department, who will state only the dates of her employment, the position(s) held, EMPLOYEE's final salary, and that EMPLOYEE retired or, if EMPLOYEE elects not to retire and resigns instead, that she voluntarily resigned from the position.
- f. The CITY affirms its obligations pursuant to Section 12.3 of EMPLOYEE's employment agreement (Attachment A), which states:

"The City shall defend, hold harmless and indemnify EMPLOYEE against any claim, demand or other legal action arising out of any alleged act or omission occurring in the performance of her duties as the City Manager. The CITY shall pay the amount of any settlement or judgment thereon, provided that EMPLOYEE cooperates in the defense of the claim, demand or action; in this regard, the CITY shall have the discretion to compromise or settle any such claim demand or action and pay the amount of any settlement or judgment rendered thereon. Notwithstanding the foregoing, the CITY shall have no duty to

indemnify, defend, or hold EMPLOYEE harmless from any criminal proceeding, or with regard to any civil, criminal or administrative proceeding initiated by her.

Notwithstanding anything in this Agreement to the contrary, the City reserves all rights (including all rights to full monetary reimbursement) provided under section 53243 et seq. of the Government Code of the State of California. In the event EMPLOYEE is convicted in a court of law of a crime involving an abuse of office or position, EMPLOYEE shall reimburse the CITY for any sums expended investigating and/or defending such wrongdoing as provided under the above-referenced statutes. For purposes of this Agreement, the phrase "abuse of office or position" shall have the same meaning as set forth in section 53243.4 of the Government Code. Further, in the event EMPLOYEE is convicted of any felony under state or federal law for conduct arising out of, or in the performance of, her official duties shall forfeit any contract right or other common law, constitutional or statutory claim against the CITY to retirement or pension rights or benefits, however those benefits may be characterized, including lost compensation, other than the accrued rights and benefits to which she may be entitled under any public retirement system in which she is a member. Such forfeiture shall be in addition to, and independent of, any forfeiture of public retirement system rights pursuant to sections 7522.70, 7522.72, or 7522.74 of the Government Code."

9. In consideration for the payments and agreements that make up this Agreement, EMPLOYEE, on behalf of herself, her agents, relatives, heirs, estate, executors, administrators, successors, and assigns, fully releases, acquits and forever discharges the CITY, its past and present officers, employees, agents, affiliates, and attorneys from all actions, causes of action, claims, judgment, obligations, damages, and liabilities of whatsoever kind and character, including, but not limited to, any actions, causes of action, claims, judgments, obligations, damages, or liabilities relating to EMPLOYEE's employment with the CITY, and the causes, procedures and circumstances surrounding her separation from employment with the CITY, including, but not limited to, those arising out of any claims for violation of any alleged contract, express or implied; any covenant of good faith and fair dealing, whether express or implied; any tort; any federal, state, or local statute or regulation, including any claims under the federal or state constitutions; any federal, state, or local statute or regulation based on or related to California Labor Code section 1194, California Industrial Welfare Commission Wage Orders, Americans with Disabilities Act (42 U.S.C. §§ 12101-12213), California Family Rights Act (Gov. Code §§ 12945.1-12945.2), Age Discrimination in Employment Act as amended by the Older Workers Benefit Protection Act (29 U.S.C. §§ 621-634), Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq., Equal Pay Act of 1963, Fair Labor Standards Act (29 U.S.C. § 201, et seq.), Employment Retirement Income Security Act of 1974 (29 U.S.C. § 1001, et seq.), Title VII (Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-2000e-17), Sections 1981-88 of Title 42 of the United States Code (42 U.S.C. § 1981, et seq.), the California Fair

Employment and Housing Act (Gov. Code §§ 12900-12996), the California Whistleblower Protection Law (Cal. Lab. Code § 1102.5); and Federal Transit Law. Further, EMPLOYEE represents and warrants that she has not filed any complaints, charges, grievances or lawsuits against the CITY, its officers, employees, agents, affiliates, and attorneys with any governmental agency arising out of her employment with and separation from the CITY and that she will not do so at any time hereinafter; provided, however that she shall not be limited from pursuing claims for the sole purpose of enforcing her rights under this Agreement and is not precluded from filing a claim for unemployment benefits or workers' compensation benefits (except as to claims under Labor Code sections 132a and 4553), as well as any other claims that cannot lawfully be released. Further, EMPLOYEE agrees that under this Agreement, she waives any claim for damages incurred at any time after the date of this Agreement because of alleged continuing effects of any alleged unlawful acts or omissions involving EMPLOYEE'S employment with and separation from employment with the CITY and any right to sue for injunctive relief against the alleged continuing effects of alleged acts or omissions.

10. This Agreement does not limit EMPLOYEE's ability to bring an administrative charge with an administrative agency, but EMPLOYEE expressly waives and releases any right to recover any type of personal relief from the CITY, including monetary damages or reinstatement, in any administrative action or proceeding, whether state or federal, and whether brought by EMPLOYEE or on EMPLOYEE's behalf by an administrative agency, related in any way to the matters released herein. Furthermore, nothing in this Agreement prohibits EMPLOYEE from reporting possible violations of law or regulation to any government agency or entity, including but not limited to the Equal Employment Opportunity Commission, the California Civil Rights Department, the Department of Labor and/or the Department of Justice, or making other disclosures that are protected under the whistleblower provisions of law. EMPLOYEE does not need prior authorization of the CITY to make any such reports or disclosures and is not required to notify the CITY that she has made such reports or disclosures.
  
11. EMPLOYEE understands and expressly agrees that this Agreement extends to all claims of every nature and kind whatsoever, known or unknown, suspected or unsuspected, past or present, and all rights under Section 1542 of the California Civil Code are hereby expressly waived. Section 1542 reads as follows:  
  

**“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”**

  - a. EMPLOYEE hereby expressly waives the provisions of California Civil Code Section 1542 and further expressly waives any right to invoke said provisions now or at any time in the future.

- b. EMPLOYEE recognizes and acknowledges that factors which have induced her to enter into this Agreement may turn out to be incorrect or to be different from what she had previously anticipated, and she hereby expressly assumes any and all of the risks thereof and further expressly assumes the risks of waiving the rights provided by California Civil Code Section 1542.
12. EMPLOYEE represents and agrees that she has been advised to discuss this Agreement with an attorney, and that she has carefully read and fully understands all of the provisions of the Agreement, that she is voluntarily entering into this Agreement, and that she has the capacity to enter into this Agreement.
13. EMPLOYEE represents and acknowledges that in executing this Agreement she does not rely and has not relied upon any representation or statement not set forth herein made by any of the Parties or any of the Parties' agents, representatives, or attorneys with regard to the subject matter, basis or effect of this Agreement or otherwise.
14. EMPLOYEE understands and agrees that the obligations of the CITY under this Agreement and its terms are conditioned upon her compliance with the promises made by her under this Agreement, and that failure by EMPLOYEE to comply with her promises herein shall entitle the CITY to seek specific performance of the Agreement and its terms and/or any other necessary and proper relief, including but not limited to damages, from any court of competent jurisdiction in the County of Orange, California.
15. This Agreement sets forth the entire agreement between the Parties hereto and fully supersedes any and all prior agreements or understandings between the Parties pertaining to the subject matter of this Agreement.
16. If any court of competent jurisdiction declares or determines that any provision in this Agreement is illegal, invalid or unenforceable, the legality, validity, and enforceability of the remaining parts, terms and provisions, will not be affected. The provision found illegal, unenforceable or invalid shall be deemed not a part of this Agreement.
17. This Agreement is made and entered into in the State of California and shall in all respects be interpreted and enforced and governed by and under the laws of the State of California. Venue for any action to interpret or enforce any provision of this Agreement shall be in the Superior Court of California, County of Orange.
18. Should it be necessary for either party to commence litigation to enforce any provisions of this Agreement, the prevailing party therein shall be entitled, not by way of limitation, to reasonable attorneys' fees and costs incurred in the enforcement of any provision herein.
19. **Age Discrimination in Employment Act Waiver and Release.** The Age Discrimination in Employment Act of 1967 ("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 or older. The Older Workers Benefit Protection Act ("OWBPA"), 29 USC. §§ 626, et. seq. 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 she is knowingly and voluntarily, for just compensation in addition to anything of value to which EMPLOYEE is already entitled, waiving and releasing any rights she may have under the ADEA and/or OWBPA. EMPLOYEE further acknowledges that she 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 has been advised of her rights under the ADEA and OWBPA, and of the legal significance of her waiver of any possible claims she currently may have under the ADEA, OWBPA, 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 she may have under the ADEA, the OWBPA, or similar age discrimination laws, but she may, in the exercise of her own discretion, sign or reject this Agreement at any time before the expiration of the twenty-one days. If EMPLOYEE elects to sign this Agreement before the expiration of the twenty-one day period, she waives the balance of the twenty-one day period.
- 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 date this Agreement takes effect.
- e. EMPLOYEE was advised and by this Agreement is advised in writing that she should consult with an attorney prior to executing this Agreement. EMPLOYEE has had an opportunity to discuss this waiver and release with, and to be advised regarding this Agreement, by an attorney of her choice, and does not need any additional time within which to review and consider this Agreement.
- f. EMPLOYEE has seven (7) days following her execution of this Agreement to revoke the Agreement by submitting a written revocation addressed to and received by City of Laguna Beach, 505 Forest Avenue, Laguna Beach, CA, 92651, to the of attention Aggie Nesh, Director of Human Resources/Risk Management.
- g. EMPLOYEE knowingly and voluntarily agrees to all of the terms set forth in this Agreement and knowingly and voluntarily intends to be bound by those terms.

**EMPLOYEE ACKNOWLEDGES BY HER SIGNATURE TO THIS AGREEMENT THAT SHE FULLY UNDERSTANDS HER RIGHT TO DISCUSS THIS WAIVER WITH LEGAL COUNSEL, AND HAS CAREFULLY READ AND FULLY UNDERSTANDS THE WAIVER, AND THAT SHE IS VOLUNTARILY AGREEING TO WAIVE ANY CLAIMS THAT SHE HAS OR MAY HAVE UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT, THE OLDER WORKERS BENEFIT PROTECTION ACT, AND ANY OTHER LAWS PROHIBITING AGE DISCRIMINATION IN EMPLOYMENT ARISING FROM OR RELATED OR ATTRIBUTABLE TO THE PARTIES' ALLEGATIONS OR CLAIMS.**

20. The Effective Date of this Agreement shall be the last date on which all of the following occurs: all Parties have signed the Agreement, the seven-day revocation period has expired without receipt of any revocation as set forth in Section 19(f), above, and EMPLOYEE has executed the Reconfirmation of Separation Agreement and General Release.

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21. EMPLOYEE represents that other than the complaints of harassment she has presented to the CITY since February 2023 she has not filed any other lawsuits, complaints, appeals, claims, applications or charges against the CITY or any related persons or against any of its or their past or present officers, directors, governing bodies, elected officials, employees, agents, predecessors, attorneys, divisions, affiliates, representatives, successors in interest and assigns and/or all persons acting by, through, under, or in concert with any of them, with any state or federal court, or local, state or federal agency, or administrative or quasi-administrative tribunal or person, based on any events occurring on or prior to the Effective Date of this Agreement.
22. This Agreement may be executed in any number of counterparts. Any such counterpart when executed shall constitute an original of the Agreement and all such counterparts together shall constitute one and the same agreement.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THE SEPARATION AGREEMENT AND GENERAL RELEASE OF ALL CLAIMS.

Date: 8/14/23

  
Shohreh Dupuis

Date: 8/24/2023

  
Robert Whalen  
Mayor, City of Laguna Beach

**RECONFIRMATION OF SEPARATION AGREEMENT AND GENERAL RELEASE**

EMPLOYEE having executed the Separation Agreement and General Release on \_\_\_\_\_, 2023, in advance of EMPLOYEE's Separation Date of September 1, 2023, as set forth in the Separation Agreement and General Release, incorporated herein by reference, EMPLOYEE reconfirms all promises, covenants, releases of all claims, including those that are known or unknown, suspected or unsuspected, asserted or unasserted, waivers, and all other provisions of the Separation Agreement and General Release without reservation or revision, including any and all claims which may have arisen between the date of execution of the Separation Agreement and General Release and her execution of this Reconfirmation of Separation Agreement and General Release.

Date: \_\_\_\_\_

\_\_\_\_\_  
Shohreh Dupuis