

CITY OF CARSON
TEMPORARY AT-WILL INTERIM CITY MANAGER
EMPLOYMENT AGREEMENT

This TEMPORARY AT-WILL INTERIM CITY MANAGER EMPLOYMENT AGREEMENT ("Agreement") is entered into and made effective the 8th day of January 2019, by and between the CITY OF CARSON, a general law city and municipal corporation ("City") and SAIED NAASEH-SHAHRY, an individual ("Employee").

RECITALS

WHEREAS, the City's City Manager recently announced he will be retiring effective December 24, 2018, such that thereafter the position of City Manager for the City will be vacant; and

WHEREAS, Employee was hired as a Senior Planner for the City on April 28, 2009; and

WHEREAS, Employee was promoted to the position of Planning Manager effective November 10, 2014; and

WHEREAS, prior to the Effective Date of this Agreement, Employee served as the Director of Community Development for the City, a position he has held since March 7, 2018; and

WHEREAS, the terms and conditions of employment for department heads and the city manager are established by the Unclassified Management Employees Benefits Resolution then in effect, as it may be amended from time to time (currently Resolution 18-170, entitled "A Resolution of the City Council of the City of Carson, California, Establishing the Salary and Benefits for Unclassified Management Employees Effective July 4, 2018" as amended and ratified by Resolution 19-015); and

WHEREAS, effective December 21, 2018 Employee was designated by the City Council of the City of Carson (hereinafter the "City Council") as its Acting City Manager, pursuant to Carson Municipal Code ("CMC") Section 2103; and

WHEREAS, it is the desire of the City Council to contract with Employee to serve in the position of Interim City Manager for the City to temporarily fill the position of City Manager, which position is prescribed by state law and the City's Municipal Code, Interim Executive Director of the Successor Agency to the Dissolved Carson Redevelopment Agency, a public body, corporate and politic, and Interim Executive Director to the Carson Housing Authority, a public body, corporate and politic; 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 powers and duties of the City Manager of the City are set forth at CMC Section 2107; and

WHEREAS, based on Employee's qualifications and ability, the City Council desires to employ Employee to serve as the Interim City Manager for the City effective upon its approval of this Agreement on January 8, 2019; and

WHEREAS, Employee desires to temporarily perform and assume responsibility for the provision of City Manager services to the City and its related agencies on an interim basis and except as provided hereinafter, upon the conclusion of his services as Interim City Manager, he shall return to the performance of his duties as Director of Community Development earning the same salary and enjoying the same benefits immediately prior to the Effective Date, pursuant to the Unclassified Management Employees Benefits Resolution and subject to any cost of living adjustments or benefits adjustments provided therein; 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 on an interim basis 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. City hereby employs Employee as Interim City Manager for the City to perform the functions and duties of the City Manager on an interim basis, as specified in the job description attached hereto as Exhibit "A," the City's Municipal Code, and in the Government Code of the State of California, and to perform such other legally permissible and proper duties and functions as the City Council shall, from time-to-time, direct or assign. Employee shall devote his best efforts and full-time attention to performance of these duties. During the term of this Agreement, Employee will only perform the duties of Interim City Manager. The City anticipates designating an acting or interim Community Development Director to fill that vacant position while Employee serves as Interim City Manager pursuant to this Agreement.

1.2 Work Schedule. It is recognized that Employee 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 Interim City Manager will require Employee to generally observe normal business hours, as set by the City and may be duly revised from time-to-time (currently 7:00 a.m. to 6:00 p.m., Monday through Thursday), and will also often require the performance of necessary services outside of normal business hours. Notwithstanding the foregoing, the City will permit Employee such reasonable "time off" as is customary for exempt employees of the City, so long as the time off does not interfere with normal business. Employee's compensation (whether salary or benefits or other

allowances) is not based on hours worked, and Employee shall not be entitled to any compensation for overtime.

1.3 Other Activities. Employee shall focus his professional time, ability, and attention to City 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 Interim City Manager.

1.4 Employment Status. Upon appointment to the Interim City Manager position, Employee shall serve at the will and pleasure of the City Council and understands that he shall be an “at-will” employee without recourse to bumping or other demotion rights and shall be subject to summary dismissal without any right of notice or hearing except as expressly provided in this Agreement, including any so-called due process pre-disciplinary “Skelly” hearing. Subject to Article 4.0, the City may terminate Employee as Interim City Manager at any time in accordance with Section 3.4 below.

1.5 City Documents. All data, studies, reports and other documents prepared by Employee while performing his 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 his 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.

1.6 Exclusion from Competitive Service. Employee understands, acknowledges and agrees that he is exempt from the City’s personnel system pursuant to Carson Municipal Code §2903(g) and Article V, Section 4 of the Resolution No. 18-170, entitled “A Resolution of the City Council of the City of Carson, California Establishing the Salary and Benefits for Unclassified Management Employees Effective July 4, 2018” (hereinafter “Unclassified Management Employees Benefits Resolution”).

1.7 FLSA Exempt Status. Employee agrees that his position is that of an exempt employee for the purposes of the Fair Labor Standards Act.

2.0 COMPENSATION AND REIMBURSEMENT

2.1 Compensation. For the services rendered pursuant to this Agreement, Employee’s base compensation shall be Twenty Thousand Dollars and No Cents (\$20,000.00)

per month ("Salary"), which shall be paid on a pro-rated basis bi-weekly at the same time as other employees of the City are paid. Such Salary shall be adjusted for payroll taxes, workers' compensation, and other payroll-related liability costs.

2.2 Salary Adjustment. City Council and Employee agree that Employee shall not be entitled to any so-called cost of living ("COLA") adjustment to the Salary, as received by other City employees. Employee's rights to salary adjustments, if any, shall be based on Employee's performance.

2.3 Special Compensation. Employee acknowledges that the City makes no representation, and Employee shall not rely on any representation, that the difference in compensation provided in this Agreement and the compensation provided to Employee will be treated as "final compensation" under CalPERS regulations for purposes of calculating his CalPERS service retirement benefits. The City will report Employee's service and compensation as Acting City Manager and Interim City Manager in accordance with the Public Employees' Retirement Law ("PERL") and CalPERS rules and regulations.

3.0 TERM

3.1 Commencement & Effective Date. Employee commenced services as Acting City Manager effective December 21, 2018. Employee shall commence his services hereunder, as Interim City Manager, upon approval of this Agreement by the City Council on January 8, 2019 or such earlier date upon which the City Council and Employee may mutually agree, in either event such date will also be deemed the effective date of this Agreement ("Effective Date").

3.2 Term. The term of this Agreement shall begin on the Effective Date and shall terminate one hundred and eighty (180) days from the Effective Date (i.e. July 8, 2019). In the event the City has not terminated this Agreement within one hundred and fifty (150) days from the Effective Date or provided Employee notice within one hundred and fifty (150) days of its intent to terminate the Agreement (i.e., prior to June 8, 2019), then the Term of this Agreement shall automatically be extended until January 8, 2020 ("Expiration Date"). This Agreement may be terminated at any time in accordance with Section 3.3 and 3.4, subject to Article 4.0. Under no circumstances shall this Agreement be effective after the Expiration Date unless the parties agree in writing to extend this Agreement under terms and conditions mutually satisfactory to the parties. This Agreement may be extended for such an additional term(s) as Employee and Council mutually deem appropriate, as evidenced by a writing signed by both parties.

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. In the event Employee terminates this Agreement, Employee shall revert to the position of Director of Community Development earning the same salary and enjoying the same benefits immediately prior to the Effective Date of this Agreement, subject to any cost of living adjustments or benefits adjustments provided pursuant to the Unclassified Management Employees Benefits Resolution then in effect. However, in such event, Employee shall not be entitled to any severance under Section 4.2 of this Agreement should he be terminated from the

position of Director of Community Development within three (3) years of reappointment to that position.

3.4 Termination by City. The City Council may terminate this Agreement at any time with or without cause, by providing written notice of the reason(s), subject to Article 4.0 below. 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 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, Municipal Code, or under other state or federal law to any other form of pre- or post-termination hearing, appeal, or other administrative process pertaining to termination, including Sections 2104 and 2105 of the Carson Municipal Code pertaining to City Manager removal. (In the event Employee is hired as the permanent City Manager, then Carson Municipal Code Sections 2104 and 2015 will apply.) Nothing herein, however, shall be construed to create a property interest, where one does not exist by rule of law, in the position of City Manager. Upon appointment to the Interim 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 and Employee's employment with the City for cause 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. The term "cause" shall be defined to include any of the following: 1) résumé fraud or other acts of material dishonesty, 2) unauthorized absence or leave, 3) conviction of a misdemeanor involving moral turpitude (i.e., offenses contrary to justice, honesty, or morality) or conviction of a felony under California law, 4) violation of the City's anti-harassment policies, including Chapter 11 of Article II of the Carson Municipal Code, 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, 5) violation of personnel policies or rules pertaining to the prevention of discrimination or workplace violence, 6) use or possession of illegal drugs, 7) corrupt or willful misconduct in office, including any illegal or unethical act involving personal gain, 8) "abuse of office or position" as defined in Government Code §53243.4 (i.e., waste, fraud, and violation of the law under color of authority and crimes against public justice, including crimes involving bribery and corruption). For any of the foregoing, the City may, in its discretion, place Employee on paid or unpaid administrative leave until resolution. If the City terminates for cause this Agreement and/or the services of Employee hereunder, then Employee shall have no right to revert to the position of Director of Community Development and the City shall have no obligation to pay Employee any form of severance as provided in Article 4.0.

(b) Termination by City Council Without Cause. The City Council may terminate Employee's appointment as Interim City Manager without cause at any time 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, subject to Article 4.0 below.

(c) Automatic Termination Due to Appointment of Permanent City Manager. In the event the City Council appoints someone other than Employee as its permanent

City Manager, then this Agreement shall automatically terminate as of the effective date of the appointment of the new City Manager. In such event, Employee shall be reappointed to the position of Director of Community Development as provided in Section 4.1 below.

4.0 RIGHT TO REAPPOINTMENT TO DIRECTOR OF COMMUNITY DEVELOPMENT POSITION/ SEVERANCE

4.1 Right to Reappointment to Director of Community Development Position. In the event this Agreement: i) expires automatically on its own terms, ii) is terminated by Employee as provided in Section 3.3, iii) is terminated by the City without cause as provided in Section 3.4(b), or iv) automatically terminates due to the appointment of a permanent City Manager other than Employee as provided in Section 3.4(c), then Employee shall be reappointed to the position of Director of Community Development earning the same salary and enjoying the same benefits immediately prior to the Effective Date of this Agreement, subject to any cost of living adjustments or benefits adjustments provided pursuant to the Unclassified Management Employees Benefits Resolution then in effect.

4.2 Severance Pay For Termination Within Three Years Of Reappointment to Director of Community Development Position. This Section 4.2 shall apply in the event Employee is reappointed to the position of Director of Community Development, other than if such reappointment is due to Employee's termination of this Agreement or if the City has terminated this Agreement for cause as provided in Section 3.4(a). Subject to Section 8.8 below, if Employee is terminated by the City within three (3) years from the date of his reappointment to this position- other than if terminated for cause as defined in Section 3.4(a) of this Agreement- and does not challenge such termination, including but not limited to by means of appeal or civil or administrative claim, then Employee shall be entitled to a severance payment equal to his monthly base salary as Director of Community Development then in effect multiplied by nine (9), less applicable deductions and excluding deferred compensation or the value of any other benefits. After three (3) years following Employee's reappointment to the position of Director of Community Development, then Employee shall have no right to severance pursuant to this Section 4.2. Should Employee be terminated as Community Development Director for cause as defined in Section 3.4(a) of this Agreement, then Employee shall not be entitled to severance pay.

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 18 months if the unexpired term exceeds 18 months. Should Employee be reappointed to the position of Director of Community Development, there will be no fixed term for such reappointment. Accordingly, any severance paid pursuant to this Article 4.0 will not exceed the maximum amount of eighteen (18) months authorized to be paid under Government Code Section 53260. Notwithstanding the foregoing, for purposes of compliance with Government Code Section 53260, should the amount to be paid to Employee exceed the amount of severance allowed by law, then the amount paid to Employee shall be reduced in the amount necessary to comply with such statute.

4.3 No Severance Pay if Termination Initiated by Employee. 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 4.2 above. Additionally, should Employee resign as the Director of Community Development Director within three (3) years following his reappointment to this position, then the City shall have no obligation to pay the severance provided for in Section 4.2 above.

4.4 Sole Rights. The severance rights provided in this Article 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. 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 "B."

4.5 Survival of this Article Following Termination. This Article 4.0 shall survive termination of this Agreement.

5.0 BENEFITS

5.1 Automobile Allowance. The City shall reimburse Employee for the use of his personal automobile for official City business at the rate of Five Hundred Dollars (\$500.00) per month. City will also reimburse Employee for all parking fees incurred on City business under the same terms and conditions applicable to classified City employees. The car allowance and parking expense reimbursements authorized by this Section shall constitute full compensation for any and all expenses related to the operation and maintenance of Employee's vehicle for City purposes. Employee shall maintain throughout the term of this Agreement automobile liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) for bodily injuries or death of one person and Fifty Thousand Dollars (\$50,000.00) for property damage arising from one accident. Employee shall provide City with evidence of such automobile liability insurance coverage, to consist of a certificate of insurance or a copy of the insurance policy. City shall reimburse Employee for the additional costs incurred by Employee in raising his personal automobile insurance limits to meet the requirements of this Section.

5.2 Health, Dental, and Vision Insurance. The City shall provide to Employee the same group medical, dental, and vision insurance plans offered to Unclassified Management Employees pursuant to the Unclassified Management Employees Benefits Resolution, as it may be amended from time to time.

5.3 PERS. Employee is a "classic" member of CalPERS and shall continue to participate in the City's 3% at 60 formula, as Employee was initially hired by the City on April 28, 2009. Such formula is subject to the following CalPERS contract provisions: (i) average monthly pay rate and special compensation for highest twelve (12) consecutive months; (ii) military service credit as public service; (iii) fourth level of 1959 Survivors Program; (iv) two years additional service credit; (v) ability for Employee to participate in the part time service credit purchase program, but solely at his own cost; and (vi) Pre-Retirement Option 2W Death Benefit improved non-industrial disability allowance. The City shall pay the full employer CalPERS contribution. Employee shall pay the full employee contribution.

5.4 Deferred Compensation. City agrees that Employee may, at his sole cost and expense, participate in City's Deferred Compensation Program. City further agrees that it shall match Employee's contributions, if any, into City's Deferred Compensation Plan on a dollar-for-dollar basis, up to a maximum of Six Thousand Dollars (\$6,000.00) per year as allowed by state law.

5.5 Vacation Leave. Employee shall initially accrue vacation leave at the rate of 10 hours per month or major portion thereof. Effective the first full pay period following April 29, 2019 (commencement of Employee's 11th year of City service), Employee shall accrue vacation leave at the rate of 13.33 hours per month or major portion thereof. Vacation leave accrual will be capped at six hundred (600) hours, after which accruals shall cease until total accrued vacation leave drops below the 600 hour accrual cap.

Employee shall not be credited with vacation leave during leaves of absence without pay exceeding eighty (80) working hours in any calendar month. Employee shall not use less than one (1) hour of vacation leave at any one time. Vacation leave must be used and deducted from accruals on an hour by hour basis for time missed from normal work hours which for purposes of this section are deemed to be normal City operating hours. Insofar as is practicable, such vacation shall be taken at times least likely to result in inconvenience to the administration of the City. Employee shall notify the Council at least two (2) weeks in advance of any vacation time to be taken in excess of three (3) consecutive days.

5.6 Sick Leave. Employee shall accrue sick leave at the rate of ten (10) hours of sick leave for each month of service or major portion thereof. Sick leave shall not be credited for leaves of absence without pay exceeding eighty (80) working hours in any calendar month. Employee may accrue a maximum of one thousand forty (1,040) hours of sick leave hours. Sick leave must be used and deducted from accruals on an hour by hour basis for time missed from normal work hours which for purposes of this section are deemed to be normal City operating hours. In the event of separation from the City service for whatever reason, Employee shall be compensated for one-half (1/2) of the value of accrued sick leave up to the maximum of one thousand forty (1,040) hours.

5.7 Holidays. Employee shall be entitled to the holidays and holiday leave as provided to Unrepresented Management Employees in the Unrepresented Management Employees Benefits Resolution then in effect, and subject to the same terms and conditions provided in the Unrepresented Management Employees Benefits Resolution, as it may be amended from time to time.

5.8 Administrative Leave. Employee shall accrue administrative leave as time off from work, instead of pay or compensatory leave credit for overtime work, at the rate of 8.33 hours per month or major portion thereof. Employee shall not accrue more than 100 hours of administrative leave. Employee shall not use less than one (1) hour of administrative leave at any one time. Administrative leave must be used and deducted from accruals on an hour by hour basis for time missed from normal work hours which for purposes of this section are deemed to be normal City operating hours. Upon Employee's separation from City service for any reason, the City shall compensate Employee for any accrued administrative leave. The value of accrued

administrative leave shall be calculated using Employee's prevailing pay rate on the date of Employee's separation from City service.

5.9 Leave Redemption. Employee may redeem any accumulated leave accrued following the Effective Date of this Agreement, up to a combined total of 100 hours per fiscal year. Sick leave shall be redeemable at a rate of one (1) hour of pay for each two (2) hours of sick leave redeemed, subject to Section 5.6. All other types of leave shall be redeemed at a rate of one (1) hour of pay for each one (1) hour of leave redeemed. Employee shall not be entitled to redeem leave accrued prior to the Effective Date of this Agreement at the Interim City Manager rate of compensation. Employee shall be entitled to redeem leave accrued prior to the Effective Date of this Agreement at the rate applicable to the Community Development Director position pursuant to the Unclassified Management Employees Benefits Resolution then in effect (total redemption still subject to 100 hours total per fiscal year).

5.10 Jury Duty. Paid leave for jury service shall be limited to ten (10) working days in any one calendar year.

5.11 Short and Long Term Disability Insurance. The City shall provide to Employee the same short and long term disability insurance benefits offered to Unclassified Management Employees pursuant to the Unclassified Management Employees Benefits Resolution, as it may be amended from time to time.

5.12 Life Insurance. The City shall provide Employee with term life insurance coverage of not less than Two Hundred Fifty Thousand Dollars (\$250,000.00), with no cash surrender value to Employee, after an evidence of insurability (EOI) form is submitted and approved by the City's life insurance carrier. If the EOI form is not submitted, the maximum coverage amount shall be One Hundred Ten Thousand Dollars (\$110,000.00), subject to any age reduction schedules mandated by the insurance company.

5.13 Use of Veterans Park Sports Complex. Employee and his family shall be entitled to use all facilities and programs at Veterans Sports Complex at the following rates:

Employee-- \$100.00 per year

Employee and family -- \$150.00 per year

In the event Employee renews his membership, he shall receive the same percentage discount on the above prices as the general public receives at the time of renewal. For purposes of this section, family shall mean those family members eligible for coverage under the CalPERS health insurance plan provided by the City.

5.14 Cellular Telephone/ Blackberry Allowance. Employee shall be provided a monthly cellular telephone/ blackberry allowance of Seventy Five Dollars (\$75.00) for reimbursement for the costs associated with the use of his personal cellular telephone/ blackberry service for business purposes. The City shall not be liable for any expenses beyond such allowance. The cellular telephone/ blackberry allowance provided pursuant to this Section shall be subject to the requirements of SMP 6.50, entitled "Cellular Telephone/ Blackberry Allowance

for Elected Officials & Unclassified Employees,” and Employee shall be subject to the terms and conditions of SMP 6.50.

5.15 Except as specifically provided herein, Employee shall be entitled to the benefits provided to the City Manager pursuant to the Unclassified Management Employees Benefits Resolution, and subject to the terms and conditions provided therein.

6.0 PROFESSIONAL DEVELOPMENT

6.1 Professional Development Pay. The City agrees to provide Employee, within the first quarter of each fiscal year, an allowance of Eight Hundred Dollars (\$800.00) in anticipation of his expenditures for professional development. Such expenditures may include: costs incurred for job-related classes or seminars not paid for by the City; computer equipment and job-related software; books, reference publications or other educational materials; membership or association fees; or any other expenses which promote the professional development of the Employee and promote the best interests of the City.

6.2 Service Organization Membership. The active promotion of City shall be one of Employee's duties under this Agreement. As such, the City shall pay up to Three Hundred Fifty Dollars (\$350.00) for the Employee toward the annual membership fee for one service organization or non-profit board based in Carson. The membership fee notice must be provided by the organization to the City. City shall also pay for Employee's memberships in the Carson Chamber of Commerce and the International Employees Association.

6.3 Out-of-Town Meetings & Seminars. The City agrees to reimburse Employee the actual cost for registration, travel, lodging, meals, and other expenses incurred by Employee while attending overnight, out-of-town meetings or seminars related to his employment with the City, in accordance with the City's policies for expense reimbursement. Moreover, to be eligible Employee must have budgeted funds available for same; provided, however, that the City Council may, in its sole discretion, approve such unbudgeted expenditures if it deems it in the best interests of the City.

6.4 Local Meetings & Seminars. The City agrees to reimburse Employee the actual cost of registration, meals, and other expenses necessarily incurred while in attendance at local meetings or seminars related to his employment with City in accordance with the City's policies for expense reimbursement.

6.5 Incidental Expenses. The City agrees to reimburse Employee the actual cost of those incidental expenses necessarily incurred by Employee while engaged in the business of the City upon the presentation of an appropriate receipt therefor, in accordance with the City's policies for expense reimbursement.

7.0 BONDS AND INDEMNIFICATION

7.1 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 the services provided by Employee under this Agreement, or any other intentional or malicious conduct or gross negligence of Employee.

7.2 Bonds. City shall bear the full cost of any fidelity or other bonds, which may be required in the performance of Employee's services under this Agreement.

8.0 GENERAL PROVISIONS

8.1 Entire Agreement. This Agreement represents the entire agreement between the parties and supersedes any and all other agreements, 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. 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.

8.2 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.

8.3 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:

City of Carson
Attention: City Clerk
701 East Carson Street
Carson, California 90745

To Employee:

Saied Naaseh-Shahry
[On file with Human Resources Dept.]

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.

8.4 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 1125 of the Government Code, and all other similar statutory and administrative rules.

8.5 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.

8.6 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.

8.7 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.

8.8 Mandatory Government Code Provisions. Government Code §§ 53243 - 53243.4 require that contracts between local agencies and its employees include provisions requiring an employee who is convicted of a crime involving an abuse of his office or position to provide reimbursement to the local agency for the following forms of payment: (i) paid leave salary; (ii) criminal defense costs; (iii) cash settlement payments; and (iv) any non-contractual settlement payments. 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.

8.9 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, 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 Carson 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 CARSON

Albert Robles, Mayor

ATTEST:

Donesia Gause-Aldana, City Clerk

APPROVED AS TO FORM:

Sunny K. Soltani, City Attorney

EMPLOYEE

Saied Naaseh-Shahry

EXHIBIT "A"

[City Manager Job Description]

EXHIBIT "B"

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 Carson, a charter city and municipal corporation (hereinafter referred to as "THE CITY"), and SAIED NAASEH-SHAHRY, an individual (hereinafter referred to as "EMPLOYEE").

2. RECITALS

2.1. EMPLOYEE was hired by THE CITY as an at-will Interim City Manager effective _____ 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 ____ years old.

2.2. THE CITY and EMPLOYEE desire that EMPLOYEE separate 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 voluntary separation as of _____, _____. 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 him at the time of his 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 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 also cause to be paid to EMPLOYEE an additional compensatory payment by means of severance, settlement and release in the form of a lump sum amount of _____ and ____ cents (\$_____.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.

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 _____, _____ (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 §§12, 900 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.

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 he knowingly and voluntarily, for just compensation in addition to anything of value to which EMPLOYEE was already entitled, waives and releases any rights he may have under the ADEA and/or OWBPA. EMPLOYEE further acknowledges that he 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, his rights under the ADEA and OWBPA, and of the legal significance of his waiver of any possible claims he 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 he may have under the ADEA, the OWBPA and similar age discrimination laws; but may, in the exercise of his 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 he 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, his counsel of choice, and that he does not need any additional time within which to review and consider this AGREEMENT;

(g) EMPLOYEE has **seven (7) days following his 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 ("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 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 settlement with the debtor."

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 he shall be exclusively liable for the payment of all taxes for which he is responsible, if any, as a result of his 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 his 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 his employment with THE CITY.

7.9 No Pending Claims and/or Actions: EMPLOYEE represents that he has not filed any complaints or charges against THE CITY or THE CITY PARTIES with any local, state or federal agency or court; that he 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, he will request such agency or court to withdraw from the matter forthwith.

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 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:

City of Carson
Attention: City Clerk
701 East Carson Street
Carson, CA 90745

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: _____
[NAME]

THE CITY

DATED: _____

By: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
_____, City Attorney

[EMPLOYEE's LAW FIRM]

By: _____
[Counsel]