

SEPARATION AGREEMENT

BETWEEN

CITY OF ALAMEDA AND JILL KEIMACH

This Separation Agreement (hereinafter referred to as the "Agreement") is made and entered into by and between Jill Keimach ("Keimach") and the City of Alameda, a municipal corporation ("City"). Keimach and the City are collectively referred to as the "Parties."

RECITALS

- A. Keimach has been employed by the City as City Manager since March 7, 2016 under an employment agreement executed on December 29, 2015 and January 21, 2016 (the "March 2016 Employment Agreement").
- B. Keimach and the City agree that that it is the best interests of the Parties to part ways and conclude Keimach's employment as City Manager of the City of Alameda.
- C. Subject only to the excluded items specifically expressed in this Agreement, the Parties wish to resolve all issues related to Keimach's employment with the City.

Now therefore, the City and Keimach, in consideration of the mutual covenants and agreements herein contained, agree as follows.

TERMS OF AGREEMENT

1. **Incorporation of Recitals**: The factual recitals set forth above are hereby expressly incorporated in the Agreement as if set forth in full in this provision.

2. **Effective Date**

This Agreement shall become effective and irrevocable upon execution of the later of the following: the execution of the Agreement by both Parties, approval of the City Council, and upon expiration of the Revocation Period set forth in paragraph 8(e) below ("Effective Date").

3. **Separation**

Keimach's employment as City Manager of the City of Alameda shall end effective on Tuesday, May 15, 2018 at 11:59 p.m. (the "Separation Date"). Until the Separation Date, Keimach will be on paid administrative leave, receiving her regular base salary and benefits. However, Keimach will not continue to accrue sick, vacation, or any other form of paid time off between the Separation Date and the Effective Date of this Agreement.

4. **Severance and Other Consideration**

The City will pay the following:

- a. Severance Payments. The City will pay Keimach \$257,400 in twelve (12) monthly, non-pensionable, equal installments. The first payment will occur the first full month following the Effective Date of this Agreement. This amount will be paid to Keimach, as post-resignation severance at the rate of her base salary of \$21,450 per month, less appropriate deductions for federal and state withholdings and other applicable taxes and legally required deductions. The severance pay shall be paid to Keimach in the City's regular payroll cycle, beginning the first regular payroll date after the Effective Date.
- b. Health Insurance and COBRA Reimbursement Offer. The City will continue to provide health insurance and dental insurance benefits to Keimach through COBRA for eighteen months at the City's cost. If Keimach obtains other employment and elects to discontinue this coverage, the City will pay within 30 days of such election an additional amount to her equal to the City's projected savings resulting from the discontinuation of this coverage.
- c. Attorneys' Fees and Costs. The City will pay Keimach's attorney's fees and costs in the amount of \$125,000, within one week after the Effective Date, by check payable to "Cannata, O'Toole, Fickes & Almazan LLP."
- d. Separation Payment. The City will pay the sum of \$519,709 as a separation payment ("Separation Payment"). At the election of Keimach, some or all of the Separation Payment may be made in the form of an annuity, at the cost of the annuity to the City, which will reduce the amount of the separation payment. Keimach shall have sixty (60) days in which to select and inform the City's Human Resources Department ("City HR") of her selection. The balance of the Separation Payment shall be disbursed to Keimach in two equal installments as follows:
 - i. on August 1, 2018.
 - ii. on February 1, 2019.

5. **Keimach's Representations Regarding Claims**

Keimach represents there are no known actions at law or administrative proceedings initiated by Keimach currently pending which relate, reflect, or concern allegations arising out of Keimach's hiring, retention, or compensation by the City, or the termination of her employment, or based on any act or failure to act by the City affecting, involving, or relating to Keimach and her employment with the City.

6. **City Representations Regarding Claims**

The City represents that there are no known actions at law or administrative proceedings initiated by the City currently pending which relate, reflect, or concern allegations arising out of Keimach's hiring, retention, or compensation by the City, or the termination of her employment, or based on any act or failure to act by Keimach affecting, involving, or relating to her and her employment with the City.

7. **Keimach's Release of Claims.**

In exchange for the valuable consideration and compromises set forth in this Agreement, Keimach, on behalf of herself, her representatives, heirs, executors, administrators, successors, and assigns hereby fully, finally, and forever discharges and releases the City, its City Council, Boards and Commissions, its City Council members, Public Utility Board Members, agents, employees (whether former or current), attorneys, consultants, officers, directors, successors, assigns, and insurers (all hereafter singly and collectively referred to as "the parties hereby released"), from any and all claims, charges, complaints, promises, agreements, controversies, suits, rights, costs, losses, debts, actions, grievances, judgments, obligations, damages, expenses (including any claims for attorneys' fees and costs), demands, causes of action, liability, and obligation of any kind or nature, whether known or unknown, suspected or unsuspected, anticipated and unanticipated which Keimach has, owns or holds, or claims to have, own or hold, or may have, own or hold against the City and the parties hereby released based upon, arising out of or related to any matter, cause, fact, thing, act, or omission whatsoever occurring or existing at any time to and including the date of execution of this Agreement, except for the obligations of the City set forth in this Agreement, including but not limited to:

- (a) Any and all claims for wages, salary, paid leave, and/or benefits;
- (b) Any grievance or other administrative remedy deriving from City policy;
- (c) Any and all claims for wrongful or constructive discharge and/or reinstatement;
- (d) Any and all claims relating to any contracts, express or implied, or breach of the covenant of good faith and fair dealing, express or implied, with the exception of the indemnification obligation identified below;
- (e) Any and all tort claims of any nature, including but not limited to fraud, deceit, misrepresentation, negligent misrepresentation, defamation, invasion of privacy, negligent or intentional infliction of emotional distress;
- (f) Any and all claims of discrimination, harassment, retaliation, or failure to accommodate under Federal, State, or municipal statute or ordinance, including but not limited to race, national origin, color, age, sex, gender, sexual orientation, disability, religion, marital status, whistleblower, protected activity, or any other legally recognized protected status, and including, but not limited to, any claims under the United States Constitution, California Constitution, California Fair Employment and Housing Act, Family and Medical Leave Act, California Family Rights Act, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, 42 U.S.C. Section 1981, 42 U.S.C. Section 1983, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Older Workers' Benefit Protection Act, the California Labor Code including but not limited to Section 1102.5, and any other laws and regulations relating employment;
- (g) Any and all claims for attorneys' fees or costs; and

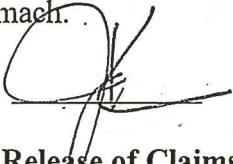
- (h) Keimach hereby further agrees that this Agreement shall operate as a complete bar against any and all litigation, charges, grievances now pending or contemplated by her or which might at any time be filed including but without limiting the foregoing, any and all matters arising out of or connected with Keimach's employment by and separation of employment from the City up to the Effective Date, except as to any litigation to enforce the terms of this Agreement. Each of the aforesaid claims are hereby fully and finally settled, compromised and released by Keimach.

However, Keimach does not release, and instead retains, her rights to the consideration set forth in this Agreement and she does not release her rights under Section 19 of the March 2016 Employment Agreement, which states as follows:

City agrees to defend, hold harmless, and indemnify Keimach against any claims, demands, or legal actions, whether specious, frivolous, or otherwise, arising out of an alleged action or omission, direct or indirect, occurring within the scope and during the course of Keimach's employment with the City. Keimach will cooperate in good faith with the City with respect to the defenses of such claims, demands or legal actions.

~~The City confirms that said defense and indemnity provision includes any potential legal actions, whether administrative, civil, or criminal proceedings for actions taken during the inclusive dates of her employment as City Manager. As to defense of actions that are allegedly criminal in nature, the City will advance defense costs, subject to an undertaking by Keimach to repay the defense costs in the event of a conviction.~~

In addition, in the event that a civil complaint is filed against Keimach for damages by an employee or City Council member, Keimach will be permitted to assert any defenses or cross-claims against the person filing that complaint, and this release will not apply to that defense or cross-claim by Keimach.

Keimach's Initials: 

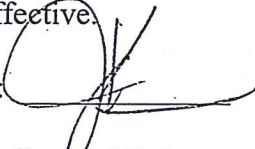
8. **Keimach's Release of Claims Under Age Discrimination in Employment Act**

Keimach acknowledges that she is knowingly and voluntarily waiving and releasing any rights or claims she may have under the Age Discrimination in Employment Act of 1967, as amended by the Older Workers Benefits Protection Act. Keimach further acknowledges she has been advised by this writing that:

- (a) Keimach is advised to consult an attorney of her own choosing before executing this Agreement, and Keimach represents that she has in fact consulted with an attorney regarding this Agreement.
- (b) The compensation and other compromises provided in this Agreement constitute independent consideration for the said waiver and are in addition to any other payment to which she is entitled.

- (c) This Agreement is written in a manner designed to be understood by Keimach and that she has read it carefully and understands its terms.
- (d) Keimach has twenty-one (21) days from receipt of this Agreement to consider it before signing it (the "21-Day Consideration Period"). Keimach may sign this Agreement before the end of the 21-Day Consideration Period, but is under no obligation to do so. Keimach understands that by signing the Agreement prior to the expiration of the 21-Day Consideration Period, she has voluntarily waived the remainder of the 21-Day Consideration Period.
- (e) Keimach acknowledges she has seven (7) days after signing this Agreement to revoke it (the "Revocation Period") and that she may do so by providing written notice to the City of her intent to revoke this Agreement. This Agreement shall not become effective or enforceable until the seven (7) day Revocation Period has expired. The Parties have set the Effective Date of this Agreement as the date upon which this Revocation Period ends. In the event that Keimach revokes the Agreement pursuant to this paragraph, the entire Agreement shall be void and ineffective.

Keimach's Initials:



9. **The City's General Release of Claims Against Keimach**

As a material inducement to Keimach to enter into this Agreement, the City hereby fully, finally, and forever discharges and releases Keimach, together with her heirs, devisees, legatees, executors, representatives, successors, and assigns, from any and all claims, charges, complaints, promises, agreements, controversies, suits, rights, costs, losses, debts, actions, grievances, judgments, obligations, damages, expenses (including any claims for attorneys' fees and costs), demands, causes of action, liability, and obligation of any kind or nature, whether known or unknown, suspected or unsuspected, anticipated and unanticipated which the City has, owns or holds, or claims to have, own or hold, or may have, own or hold against Keimach (together with her heirs, devisees, legatees, executors, representatives, successors, and assigns) based upon, arising out of or related to any matter, cause, fact, thing, act, or omission whatsoever occurring or existing at any time to and including the date of execution of this Agreement.


10. **Mutual Release of Claims Under California Civil Code Section 1542**

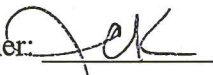
It is the intention of the Parties, in executing this Agreement, that the same shall be effective as a bar to each and every claim, demand, arbitration, and cause of action, regardless of its basis, by such parties against the other, and such parties knowingly, voluntarily, and expressly waive any and all rights and benefits otherwise conferred by the provisions of Section 1542 of the California Civil Code which states as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH,

**IF KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED
HIS OR HER SETTLEMENT WITH THE DEBTOR.**

The Parties expressly consent that, notwithstanding Section 1542 of the California Civil Code, this Agreement shall be given full and final effect according to each and all of its express terms and conditions, including those relating to unknown and unsuspected claims, demands, arbitrations, and causes of action. The Parties acknowledge and agree that this waiver is an essential and material term of this Agreement and, without such waiver, this Agreement would not have been entered into. This release is intended to be as broad as the law allows.

Keimach's Initials: 

City's Initials by authorized signer: 

11. No Admission of Liability

This Agreement and compliance with this Agreement shall not be construed as an admission of any liability by either Keimach and/or the City of any unlawful or wrongful acts by either Party, individually, or collectively. This Agreement is entered into solely to amicably end Keimach's employment with the City.

12. Joint Statement

Keimach and the City agree that their relationship has been based, and shall continue to be based upon professionalism, amicability, and mutual respect. The parties further agree that the joint statement, attached as **Exhibit A** hereto, will be made to the public regarding Keimach's separation from employment with the City.

13. Public Record

Keimach acknowledges and agrees that this Agreement is a public record under the California Public Records Act (California Government Code section 6250 et seq.) and the Alameda Sunshine Ordinance (Alameda Municipal Code chapter 2.90 *et. seq*) and that if City receives a request for disclosure of this Agreement that City shall release a copy to said requestor.

14. Return of Property

Keimach confirms that she has returned to the City all City property in her possession or subject to her control, including without limitation any keys, credit cards, cellular telephones, electronic devices, City files, records, and documents. Keimach will recover her personal property from the City by May 30, 2018.

15. **No Precedent**

The Parties specifically acknowledge and agree that this Agreement is a compromise which shall not operate, nor be considered, as evidence of a practice or past practice of the City or a precedent in the future.

16. **Tax Effects/Consequences**

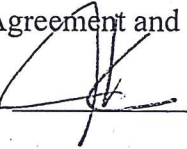
The City makes no promise or representation, and shall have no obligation, concerning the tax consequences of the payments made in this Agreement. The City shall make such deductions and reports to the taxing authorities as are required by law. The City will consult with Keimach's tax attorney or advisor regarding the characterization of the payments.

17. **Construction of the Agreement**

Each Party has cooperated in the drafting and preparation of the Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any Party on the basis that the Party was the drafter.

18. **Acknowledgment of Voluntary Execution**

Both Parties have carefully read this Agreement and understand the contents. Both the City and Keimach have been afforded the opportunity to consult with their own counsel regarding this matter and have in-fact consulted with attorneys of their own choosing. Keimach freely, knowingly, and voluntarily enters into this Agreement without any duress or undue influence on the part of any person released by this Agreement, or by any third party. Keimach warrants and represents that she has the mental and emotional capacity to understand the provisions of this Agreement and its effects upon her legal rights.

Keimach's Initials: 

19. **Partial Invalidity**

In the event that any of the covenants, duties, or restrictions of this Agreement are found to be illegal, invalid, or unenforceable, such provision, if possible, shall be construed so as to render the provision legal, valid, and enforceable. In the event such provision cannot be amended or construed to be legal, valid, and enforceable, such provision shall be deemed deleted and the remainder of this Agreement shall remain in full force and effect.

20. **Entire Agreement**

This Agreement sets forth the entire agreement between the Parties and supersedes any and all prior agreements or understandings, written or oral, between the Parties pertaining to the subject matter hereof. No other promises or agreements shall be binding upon the Parties with respect to the subject matter of this Agreement unless contained herein or separately agreed to in writing by the Parties. This Agreement may not be modified except by a writing signed by Keimach and a duly authorized representative of the City. This Agreement shall be binding on

each of the Parties and each's heirs, estates, administrators, representatives, executors, successors, and assigns, and shall inure to the benefit of each of the Parties and of the Released Parties, and to each's heirs, estates, administrators, representatives, executors, successors, and assigns.

21. **Applicable Law**

This Agreement shall be governed by the laws of the State of California, and shall in all respects, be interpreted and enforced under the laws of California. If litigation arising out of or connected with this Agreement, it shall be instituted and maintained in the courts of Alameda County in the State of California or in the United States District Court, Northern District of California, and the Parties consent to jurisdiction over their person and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.

22. **No Assignment**

Keimach warrants that she has not assigned, transferred, nor purported to assign or transfer, any claim(s) she may have against the City, and she will not assign or transfer, nor purport to assign or transfer, any claim(s) she may have against the City. The City warrants that it has not assigned, transferred, nor purported to assign or transfer any claim(s) it may have against Keimach and that it will not assign nor purport to assign or transfer hereafter any claim(s) it may have against Keimach.

23. **Waiver**

Waiver by either party of any default, breach, or condition precedent shall not be construed as a waiver of any other default, breach, or condition precedent or any other right hereunder.

24. **Section Headings**

The section and paragraph headings contained in this Agreement are for references purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

25. **Originals**

This Agreement may be executed in one or more Originals, each of which shall, for all purposes, be deemed a legally enforceable Original representative of the full and complete agreement of the Parties.

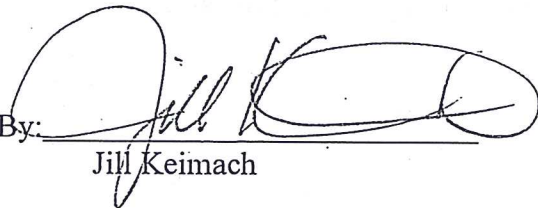
26. **Attorneys' Fees and Costs**

The prevailing party (the "Prevailing Party") in any litigation, arbitration, bankruptcy proceeding, or other formal or informal resolution (collectively, a "Proceeding") of any claims brought by any Party to this Agreement against any other Party to this Agreement based upon, arising from, or in any way related to this Agreement or the transactions contemplated herein, including without limitation contract claims, tort claims, breach of duty claims, and all other

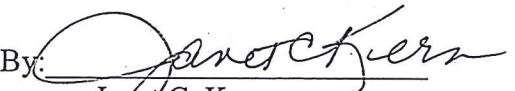
common law or statutory claims (collectively, the "Claims"), shall be entitled to recover from such other party reasonable fees and costs. Should the Parties agree to arbitrate, attorney's fees and costs shall be awarded by the arbitrator in accordance with California Civil Code Section 1717 and/or California Code of Civil Procedure Section 1032 *et al. seq.* and the cases interpreting those statutory provisions. For the purpose of this Agreement, the term "prevailing party" shall have the same meaning as that set forth in Code of Civil Procedure Section 1032(a)(4).

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year written below.

JILL KEIMACH,
an individual

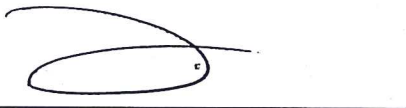
By: 
Jill Keimach

CITY OF ALAMEDA,
a municipal corporation

By: 
Janet C. Kern
as authorized by the City Council

DATE: 5/15/18

APPROVED AS TO FORM:



Therese Cannata
Karl Olson
Counsel for Jill Keimach

DATE: 5-15-18

APPROVED AS TO FORM:



Alan Cohen
Assistant City Attorney

EXHIBIT A

PRESS RELEASE – MAY 15, 2018

JOINT STATEMENT BY THE CITY OF ALAMEDA AND JILL KEIMACH

Jill Keimach and the City of Alameda have mutually agreed that Ms. Keimach will end her employment as City Manager with the City of Alameda, effective May 15, 2018.

The parties have reached a negotiated settlement after a mediation and agreed upon a separation payment to Ms. Keimach to resolve their issues.

~~During her tenure, the City Council and Ms. Keimach successfully worked together to address a number of important issues, on a wide range of projects and initiatives benefitting the citizens of Alameda, from fiscal responsibility to quality of life. The City Council thanks her for her service to the City, and the City wishes Ms. Keimach well in her continued public sector career.~~

(JK)

Removal of paragraph 4 in
page 4a shall have no
interpretive significance.

(M)

M

(part of §7)