

## SEPARATION FROM EMPLOYMENT AND WAIVER AGREEMENT

WHEREAS, I, Bradley Kearl, ("I," "me," or other first-person pronouns) am currently employed by the City of Cedar Hills, Utah, a Utah political subdivision ("City");

WHEREAS, as an employee at will, the Building and Zoning Official and a department head of the City, I have the right to leave the employ of City at any time and for any reason, and City has the right to terminate my employment without additional consideration at any time and for any reason with or without notice;

WHEREAS, City intends to exercise its right to terminate my employment as of May 1, 2012 (the "Termination Date"); and

WHEREAS, City and I desire to reduce to writing this Separation from Employment and Waiver Agreement (the "Waiver Agreement," or the "Agreement");

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained, the adequacy and sufficiency of which are hereby acknowledged, the undersigned parties do hereby promise, covenant and agree as follows:

### 1. SEVERANCE BENEFITS

- (a) As good and adequate consideration for this Agreement, City will pay me a sum equal to <sup>twelve</sup> ~~eight~~ <sub>(12)</sub> weeks of pay plus accrued vacation and sick leave as of this date, to be paid over the next ~~eight (8) weeks~~ <sub>(12) (9/2)</sub> (the "Severance Benefits").
- (b) I agree that there shall be deducted from the Severance Benefits the amount of deductions and withholdings required by law. I agree to indemnify and hold harmless City and the other releasees described in this Agreement from any and all damages, tax liabilities, costs (including attorney or accountant fees), penalties and interest arising out of or relating to the funds paid to me pursuant to this Agreement (whether or not such liabilities, costs, penalties and/or interest are incurred during an investigation, assessment or audit performed by any taxing authority).
- (c) While City shall continue to cover me under City's health insurance through May 31, 2012, this in no way will act to continue City's employment of me after the Termination Date.

### 2. CLAIMS RELEASED UNDER THIS AGREEMENT

In exchange for receiving Severance Benefits, the receipt and sufficiency of which I acknowledge, I, on behalf of myself and anyone claiming through me hereby voluntarily and irrevocably waive, release, dismiss with prejudice and/or withdraw all claims, complaints, suits or demands of any kind whatsoever (whether known or unknown) which I ever had, may have, or now have against City and the City's past, present and future officers, employees, agents, insurers and attorneys in each's individual and/or other capacities (collectively, the "Releasees"), arising from or relating to (directly or indirectly) my employment or the termination of my employment or other events that occurred on or prior to the date of execution of this Agreement. This includes but is not limited to:

- (a) claims for violations of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Fair Labor Standards Act, the Civil Rights Act of 1991, the Equal Pay Act, the Family and Medical Leave Act, 42 U.S.C. § 1981, the National Labor Relations Act, the Labor Management Relations Act, Executive Order 11246, Executive Order 11141, the Rehabilitation Act of 1973, the Sarbanes-Oxley Act of 2002 or the Employee Retirement Income Security Act;
- (b) claims for violations of any other federal or state regulation, legislation or Executive Order;
- (c) claims for lost or unpaid wages, compensation, or benefits, or any other tort or cause of action, including defamation, libel, slander, invasion of privacy, intentional or negligent infliction of emotional distress, assault, battery, wrongful or constructive discharge, negligent hiring, retention or supervision, fraud, misrepresentation, conversion, tortious interference, breach of

contract, claim for employee benefits, or breach of fiduciary duty;

- (d) claims to benefits under any bonus, other separation or severance benefits, workforce reduction, early retirement, outplacement, or any other similar type plan sponsored by City that may have been applicable to me during my employment, if any; and/or

I represent and warrant that I am the sole owner of the claims released hereunder, that such claims have not been assigned, transferred, or disposed of in fact, by operation of law or in any manner whatsoever, and that I have the full right and power to grant, execute and deliver the full and complete releases, undertakings, and agreements herein contained.

### **3. CLAIMS NOT RELEASED UNDER THIS AGREEMENT**

By signing this Waiver Agreement, I am not releasing any claims that may arise under the terms of this Agreement. Likewise, I am not releasing any claim under the Age Discrimination in Employment Act that may arise out of events occurring after the date I execute this Agreement.

### **4. PAYMENT**

I acknowledge and agree that absent this Waiver Agreement, I currently have no right to separation pay and/or severance benefits, and that the consideration I will receive in exchange for accepting this Agreement are in excess of those I would receive from City if I do not elect to sign this Agreement. These excess benefits are sufficient compensation for my acceptance of and voluntary agreement to be bound by this Waiver Agreement.

I understand and acknowledge that City does not maintain a "plan" or other "program" for the administration of severance or separation benefits, and that nothing herein is intended to or shall be construed to require City to institute or continue in effect any particular plan or benefit sponsored by City. City hereby reserves the right to amend or terminate any of its benefit programs at any time, within its sole discretion.

### **5. INDEMNITY/COVENANT NOT TO SUE**

In consideration of the benefits provided by this Waiver Agreement:

- (a) I represent and warrant that I have not filed, and am not a participant or class member in, any other complaints, charges, or legal or administrative proceedings against City with any local, state or federal agency or court;
- (b) I will never sue City and/or any of the other Releasees for any claim which I have released and waived. In addition, I will never maintain, or allow anyone else to maintain on my behalf, any legal or administrative proceeding against City or any of the other Releasees;
- (c) I will not at any time hereafter file, participate in, or become a class member in any other complaints, charges, or legal or administrative proceedings against City, whether or not involving continuing violations, if based in whole or part on any occurrence, action, or omission happening on, or prior to, the date of this Agreement;
- (d) If any board, agency or court assumes jurisdiction of any complaint, charge, or legal or administrative proceeding against City by or on behalf of me, based in whole or part on any occurrence, action, or omission happening on or prior to the date of this Agreement by reason of my employment with City, I shall request such board, agency or court to withdraw or dismiss with prejudice the matter and use my best efforts to cause the agency or court to withdraw or dismiss the matter with prejudice, and I will indemnify City for all damages, costs, and expenses, including a reasonable attorney fees, that City incurs in defending any such matter;
- (e) I will not voluntarily communicate or cooperate with or assist any other person, firm, or organization that is suing or seeks to sue City; and
- (f) I will cooperate with City (for example, by providing truthful information and testimony, if necessary) in defending any complaints, charges, or legal or administrative proceedings relating to events or circumstances that occurred during my employment with City.

If I violate any of the foregoing covenants, I will indemnify and hold harmless City and/or any of the other Releasees from any related or resulting damages, judgments, interests, costs, fees (including attorneys, accounting and consulting fees) and expenses.

#### **6. CONFIDENTIALITY AND NON-DISPARAGEMENT**

I understand and agree that, even following the termination of my employment with City, I agree to keep confidential and not disclose the terms of this Waiver Agreement except to my spouse, attorneys or financial advisors (all of whom must be informed of and agree to be bound by the confidentiality provisions contained in this Agreement before I disclose any information to them about this Agreement), or where such disclosure is required by law.

I further agree that I will not disparage, criticize or make derogatory remarks about City or any of the Releasees, in any form, communication or media whatsoever, and shall take no actions intended to harm the operations of City, or any of the Releasees.

The City agrees to keep confidential and not disclose the terms of this Waiver Agreement, except where such disclosure is required by law.

#### **7. RETURN OF CITY PROPERTY**

I agree to return to City all property of City, including but not limited to data, lists, information, memoranda, documents, identification cards, credit cards, keys, computers, fax machines, beepers, phones, and files of any and all non-public, privileged, or protected documents (including copies thereof).

#### **8. FUTURE EMPLOYMENT**

I understand and agree that City has no obligation to rehire me at any time after the date of this Agreement. I also understand and agree that City has the right and ability to decline or stop considering, at any time, any application for employment I may make in the future. This clause applies to employment, contractual work or any other work arrangement involving City or any of the other Releasees.

#### **9. BREACH**

If I am found to have breached any of the obligations in this Agreement by an arbitrator or court of competent jurisdiction, I agree that such breach will cause irreparable damage to City. In the event of any such breach, City shall have, in addition to any and all remedies at law, the right to an injunction, specific performance and other equitable relief to prevent the violation of my obligations. I agree to indemnify City against any and all losses, damages (including compensatory damages and punitive damages), other claims, costs, expenses, and attorneys' fees incurred or suffered by City as a result of my breach of this Agreement.

#### **10. GOVERNING LAW AND FORUM**

This Waiver Agreement shall be construed and interpreted in accordance with the laws of Utah. I acknowledge and agree that this choice of law is reasonable. I further agree that any claim based on enforcement of this Agreement or any claim arising under this Agreement shall be filed in a court of competent jurisdiction located in the State of Utah. I further acknowledge and agree that this choice of forum is reasonable.

#### **11. SEVERABILITY**

The provisions of this Agreement are severable, and if any part of it is found to be unenforceable, the other parts and/or paragraphs shall remain fully valid and enforceable. Should any provisions of this Agreement be determined by any court or administrative body to be invalid, the validity of the remaining provisions is not affected thereby and the invalidated part shall be deemed not a part of this Agreement. Any court or administrative body shall construe and interpret this Agreement as enforceable to the full extent available under applicable law. This Agreement shall survive the

termination of any arrangements contained in it.

**12. ACKNOWLEDGMENT OF KNOWING AND VOLUNTARY RELEASE**

I have carefully read this Waiver Agreement and I fully understand all of its provisions. I have been encouraged and advised in writing to seek advice from anyone of my choosing regarding this agreement (including my attorney, accountant or tax advisor). Before signing this Agreement, I have been given the opportunity and sufficient time to seek such advice.

I have had the opportunity to review and consider this Agreement and I certify by that execution that I knowingly and voluntarily execute it for reasons personal to me, with no pressure by any City representative to do so.

In signing this agreement, I am not relying on any representation or statement (written or oral) not specifically set forth in this agreement or any of City's representatives with regard to the subject matter, basis, or effect of this agreement or otherwise.

I was not coerced, threatened, or otherwise forced to sign this agreement. I am voluntarily signing and delivering this agreement of my own free will.

I understand that by signing this agreement I am giving up rights I may have. I understand I do not have to sign this agreement.

IN WITNESS WHEREOF, I hereby execute this Agreement this May 1, 2012.

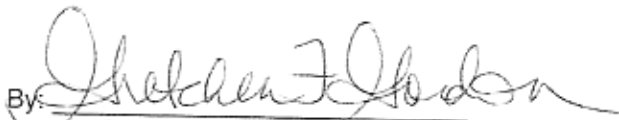
  
Bradley Kears

Acknowledged and Accepted by City

By:   
Mayor, Eric Richardson

Dated: May 1, 2012

ATTESTED

By:   
Deputy City Recorder



Approved by the City Council of the City of Cedar Hills on May 1, 2012