

EMPLOYMENT AGREEMENT CITY OF FULLERTON CHIEF OF POLICE

This EMPLOYMENT AGREEMENT ("Agreement") is entered into by and between the CITY OF FULLERTON, a California municipal corporation ("City") and ROBERT DUNN II ("Dunn") an individual (sometimes collectively referred to herein as "the Parties").

RECITALS

WHEREAS, the City desires to employ the services of Dunn as Chief of Police of the City of Fullerton ("Chief of Police" or "Police Chief"); and

WHEREAS, the City desires to provide certain benefits, establish certain conditions of employment, and to set working conditions of Chief of Police; and

WHEREAS, the City desires to (1) secure and retain the services of Dunn and to provide inducement for him to remain in such employment, and (2) to make possible full work productivity by assuring Employee's morale and peace of mind with respect to future security; and

WHEREAS, Dunn accepts the offer of employment as Chief of Police made by the City Council on June 18, 2019.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1: Effective Date, Term, Extensions and Notice of Non-Renewal

This Agreement shall be effective on June 29, 2019 ("Effective Date").

Subject to City's right to terminate Employee's appointment as Chief of Police at any time, as provided for in this Agreement, the Term of this Agreement is five (5) years from the Effective Date. The period of five years following the Effective Date shall be referred to hereinafter as the "Initial Agreement Period." The Parties may, by mutual written agreement, extend Dunn's employment under the terms of this Agreement for up to two (2) additional three-year periods. City's election not to extend or renew this Agreement must be delivered in writing to Dunn no later than six (6) months prior to the expiration of the Initial Agreement Period or any extension thereto.

SECTION 2: Duties and Authority

Employer agrees to employ Dunn as Chief of Police to exercise the powers and authority and to perform the functions and duties specified in the Fullerton Municipal Code and all relevant resolutions, rules, regulations, procedures, applicable job description(s) and

state codes, as they currently or may in the future exist. Employee shall exercise such power and authority and perform such other functions and duties, not inconsistent with this Agreement, as City, by its City Council, may legally assign.

SECTION 3: Compensation, Performance Objectives and Performance Evaluation.

- A. Base Salary. City agrees to pay Dunn an annual base salary of \$210,700 (Two Hundred Ten Thousand Seven Hundred Dollars) ("Base Salary"), subject to deductions and withholding of any and all sums required for federal or state income tax, pension contributions, and all other taxes, deductions or withholdings required by then current state, federal or local law, prorated and paid on the City's biweekly payroll cycle. City shall also deduct sums Dunn is obligated to pay because of participation in plans or programs described in Section 4 of this Agreement.
- B. City and Dunn shall set mutually-agreed upon performance objectives for each year under this Agreement. Such performance objectives shall be agreed by the City Manager after consultation with the City Council and Dunn as necessary for the proper operation of the Fullerton Police Department in the attainment of the City Council's policy objectives and shall further establish a relative priority among the agreed objectives. These objectives shall be reasonably attainable within the limitations of the City Council approved operating and capital budgets, authorized appropriations and staffing levels. The initial performance objectives shall be discussed and agreed upon no later than October 31, 2019.
- C. City, through its City Manager after consultation with the City Council, shall conduct an evaluation of Dunn's performance each June during the period in which this Agreement remains in effect, beginning with June 2020.
- D. The Parties agree to reexamine Dunn's Base Salary no less frequently than each June during the period in which this Agreement remains in effect. Any change to Base Salary shall require City Council approval.

SECTION 4: Retirement and Health Benefits

- A. Retirement. The City's contract with CalPERS shall apply to Dunn.
 - 1. The City shall pay on behalf of Dunn seven percent (7%) of the CalPERS normal member contribution (as defined in §20677(a)(2) of the California Government Code pursuant to Section 20691 of the California Government Code. This payment of 7% will be included within Dunn's compensation earnable that is reported to CalPERS, pursuant to Section 20636(c)(4) of the California Government Code. Dunn shall pay the remaining balance of the CalPERS normal member contribution.
 - 2. Dunn shall pay a percent of total compensation earnable to CalPERS by way of cost sharing of the City's employer rate as specified by the contract between

the City and CalPERS. The current cost sharing percentage is 6.357%. The City and Dunn shall negotiate the impacts of any increase in the cost sharing percentage during the term of the contract.

3. The City shall pay the 1959 Survivor Benefits premium for Dunn.
 4. Dunn shall be subject to the provisions of California Government Code Section 20037, whereby his final compensation shall be the highest annual average compensation during any consecutive 36-month period of employment.
- B. Medicare. Dunn shall pay the designated employee contribution for Medicare in accordance with applicable law.
- C. Health Insurance. Dunn's enrollment in City sponsored health coverage shall be subject to the following terms:
1. Dunn shall be eligible to enroll in City sponsored medical, dental and vision plans during the term of this Agreement.
 2. The City's contributions to plans selected by Dunn shall be subject to the following maximum monthly City contributions:
 - a. Medical insurance - \$1,500 per month
 - b. Dental insurance - \$145 per month
 - c. Vision insurance - \$25 per month
 3. Dunn shall not be eligible to receive payment for the cash value difference between the maximum monthly City contribution and the premium of the plan and tier of coverage he enrolls in.
 4. Dunn's salary shall be reduced by the amount of any necessary payroll deduction for health insurance premiums in excess of the agreed City contribution on a before-tax basis.
 5. Dunn may choose to opt out of participation in the City's medical insurance plans. Upon the City's receipt of written notice by Dunn that he wishes to opt out and appropriate proof of alternate coverage, the City will remove Dunn from coverage on the City's plan as soon as possible and shall thereafter deposit \$125 per pay period into a retiree health savings account (RHSA) or directly to Dunn in lieu of contributions to medical insurance as provided in Section C(2)(a) above. The per pay period amount shall be paid directly to Dunn during any period between exercising the opt-out provision and appropriate implementation of the RHSA.
 - a. If during the term of this Agreement, Dunn elects to re-enroll in City sponsored health coverage, he shall no longer be eligible for this retiree health savings account contribution. Dunn's re-enrollment in City sponsored health coverage shall be subject to the following terms:

1. Enrollment may only occur at the City's Open Enrollment or upon any qualifying event recognized by the City's health insurers.
 2. The City's contributions to the medical plan selected by Dunn shall be at the rate specified in Section C(2)(a) and C(3) above.
- D. Retiree Health. In lieu of Dunn's eligibility for a contribution to health insurance after retirement from the City, the City agrees to make contributions of \$125 each pay period that this Agreement is in effect into a retiree health savings account in a plan to be implemented by the City as soon as possible following the Effective Date of this Agreement.
- E. Life Insurance. Dunn shall be eligible for group life insurance equal to his annual base salary up to the annual base salary maximum set in the group policy, which at the Effective Date of this Agreement is \$200,000. Dunn is eligible to purchase voluntary City group term life insurance through payroll deduction.
- F. Long-Term Disability Insurance. The City shall pay 100% of the premium for Dunn to be eligible for the City's long term disability insurance coverage.
- G. Consolidated Omnibus Budget Reconciliation Act of 1985. In the event Dunn is eligible to remain on a City health or dental insurance plan following separation from employment other than retirement, the City may pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) charge Dunn for selected coverage the maximum rate permissible by law (presently 102% of the premium for an active employee).
- H. Medical Examination. Dunn is eligible for reimbursement of up to \$750 per year for the cost associated with undergoing a comprehensive medical examination. Funds not utilized for this purpose may be carried over from one year to the next up to a maximum accrual of \$2,000. Upon submission of certification of completion of a current comprehensive medical exam, all or part of these amounts may be converted to taxable income to pay for expenses which qualify under an Internal Revenue Code Section 125 Medical Reimbursement Account, or for reimbursement of Dunn's enrollment in a health club or in a related "wellness" program - e.g., smoking cessation, stress reduction or weight control.
- I. City Contribution to a Deferred Compensation Plan. City shall deposit a lump sum amount of \$18,500 into a 457 Deferred Compensation plan for Dunn in July 2019 and each July thereafter, during the term of this Agreement. The amount shall be fully earned for any portion of a fiscal year that Dunn is employed as Chief of Police.

SECTION 5: Vehicle Use, Uniform Allowance and Service Weapon

- A. Vehicle Use. City agrees to provide Dunn a City vehicle and necessary service, fuel, equipment and maintenance. Dunn is authorized by the City to use the City vehicle for personal use to and from home and on-call purposes only in his official capacity as Police Chief. In exchange therefor, Dunn agrees:
1. To operate the City vehicle at all times in accordance with the laws of the State of California or other applicable jurisdictions within the United States.
 2. To not drive or allow the City vehicle to be driven outside the jurisdiction of the United States of America.
 3. To fuel the vehicle with appropriate fuel dispensed from City fueling stations or purchased in accordance with City purchasing rules and policies.
 4. To not operate the City vehicle while under the influence of alcohol or any controlled substances.
 5. To not allow any person other than a current employee of the City of Fullerton to operate the City vehicle.
 6. To reasonably maintain the exterior and interior condition of the City vehicle and to immediately report all service and mechanical repair needs to the Public Works Fleet Division.
 7. To not use or allow the use of tobacco products, e-cigarettes or vapor devices inside the City vehicles.
 8. To notify the local police agency and request a report of any accident involving or damage incurred by the City vehicle, except that, in the case of an accident within the City of Fullerton, an outside police agency shall be contacted to investigate the accident.
 9. To complete a City of Fullerton Incident Report form and provide it to the City Manager within 24 hours of any incident involving the City vehicle.
 10. City and Dunn believe the authorized personal use to and from home is not subject to taxation. In the event of changes in the law or application of the law, any resultant tax liabilities shall be the sole responsibility of Dunn.
- B. Uniform Allowance. The City shall pay Dunn the amount of \$50.00 per pay period for the purchase and maintenance of uniforms.
- C. Duty Weapon. Dunn shall be issued a duty weapon per the policy of the Fullerton Police Department.

SECTION 6: Paid Leave

A. Holidays. Dunn shall be eligible for paid leave on the following City recognized holidays:

1. January 1, New Year's Day
2. The third Monday in February, Presidents' Day
3. The last Monday in May, Memorial Day
4. July 4, Independence Day
5. The first Monday in September, Labor Day
6. November 11, Veterans Day
7. Thanksgiving Day
8. The Friday following Thanksgiving Day
9. December 24, Christmas Eve
10. December 25, Christmas Day
11. December 31, New Year's Eve

In the event that Dunn's work duties require him to work on a City recognized holiday, he shall not be entitled to additional compensation.

- B. Vacation. Dunn shall accrue vacation leave at the rate of 160 hours per year. Dunn may accumulate credit up to 320 hours. Dunn is encouraged to use at least 80 hours of vacation leave per year. If Dunn is at his maximum accrual and unable to take vacation leave, 40 hours shall be converted to cash. In addition, Dunn shall be permitted to convert up to 80 hours to cash each payroll year in accordance with the City's annual leave conversion program.
- C. Sick Leave. Dunn shall earn and accumulate 3.69 hours of sick leave for each pay period he has worked at least one full regular workday or been on paid vacation. He may use such sick leave in accordance with rules applying to Executive employees.
- D. Bereavement Leave. Dunn shall be eligible for bereavement leave of up to 27 hours in accordance with the rules applying to Executive employees.
- E. Executive Leave. Dunn shall be entitled to 81 hours of paid Executive Leave per fiscal year. Such leave shall not accrue from year to year. Unused Executive Leave shall be lost at the end of each fiscal year, and shall not be converted to any other form of compensation.

SECTION 7: General Business Expenses

- A. City recognizes that Dunn may incur expenses of a non-personal, job related nature that are reasonably necessary to Dunn's service as Chief of Police. City agrees to either pay such expenses in advance or to reimburse the expenses, so long as the expenses are incurred and submitted according City's regular reimbursement requirements or such other procedure as may be designated by the City Council. To be eligible for reimbursement, all expenses must be supported by documentation

meeting City's normal requirements and must be submitted within time limits established by City.

- B. City agrees to budget and pay for professional dues, membership and subscriptions necessary for Dunn's participation in such organizations as the City Manager and Dunn may agree to as necessary and appropriate.
- C. City agrees to budget and to reimburse or pay for reasonable costs for attendance and participation in meetings, institutes, training programs, conferences, conventions and similar gatherings that support leadership development and the advancement of Parties' mutually agreed upon goals, and which are related to Dunn's duties or City's operations and held in the continental United States. For purposes of this paragraph, reasonable expenses are limited to the reasonable and actual cost of registration, coach-class airfare (where applicable), ground transportation and meals. Reasonable expenses will also include the reasonable and actual cost of lodging for meetings greater than 60 miles outside the City of Fullerton boundaries.
- D. The expenses to be budgeted and paid in Section 7(A), (B), and (C) above, are exclusive of reasonable expenses related to events, participation in organizations, or attendance at events or meetings on behalf of the City as required by the City Manager. City will separately budget and pay for membership and participation in community, civic or other organizations or events in which City requires Dunn to participate.

SECTION 8: At-Will Employment Relationship

- A. Dunn is appointed by, and serves as Chief of Police at the pleasure of, the City Council. The City and Dunn agree that City Council has, through this Agreement, delegated authority for supervision and management of Dunn as Chief of Police, including discipline and dismissal to the City Manager. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of City to terminate this Agreement and the appointment of Dunn as Chief of Police at any time, with or without Cause (as defined below).
- B. If this Agreement is terminated without Cause during the Initial Agreement Period or first three-year extension period, or if City elects not to exercise the first three-year extension period upon expiration of the Initial Agreement Period, Dunn shall be entitled to revert back to his previous position as Police Captain and shall be entitled to all compensation, benefits, and employment rights of a Police Captain at top step with the total years of service accrued by Dunn ("Right of Reversion"). Further, Dunn shall be required to meet all performance standards of a Police Captain in the event he exercises this Right of Reversion.
- C. During any extension period following the Initial Agreement Period, if the City terminates this Agreement without cause, Dunn shall be given at least thirty (30) days written notice prior to the effective date of the termination. However, City and Dunn

agree that termination without cause may not be exercised by the City during the final six months of any extension period of this Agreement or within ninety (90) days of the appointment of a City Manager. In the event City elects to terminate this Agreement prior to a mutually agreed extension thereto, City shall pay Dunn for all services through the effective date of termination and Dunn shall have no right to any additional compensation or payment, except as provided in Section 9, Severance and Benefit Payoff at Termination, and General Release Agreement, below.

- D. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Dunn to resign from his employment with City, subject only to Dunn providing forty-five (45) calendar days' prior written notice to City of the effective date of his resignation. Upon the effective date of resignation, Dunn will forfeit all compensation and benefits owing for the remainder of the term of this Agreement, as well as any potential severance pay. The City acknowledges that Dunn shall be eligible for payout of the cash value of accrued vacation leave at the time of separation.
- E. Government Code Section 3304(c) Rights. The City and Dunn agree that Municipal Code Sections 2.33.010 and 2.33.020 shall not apply to Dunn with respect to the City's disciplinary and appeals procedures. In accordance with the rights Dunn has under Government Code Section 3304(c), prior to action to terminate this Agreement, whether with or without cause, Dunn shall be provided written notice of the proposed action and the reasons for removal from this appointment and in addition, shall be provided the right to an administrative appeal. Such appeal shall be before an independent hearing officer appointed by the City Manager who shall make an advisory recommendation on the matter to the City Manager based solely on a review of the City's written notice (and supporting documentation, if any), documentation submitted by Dunn and any oral presentation by the City or Dunn.

SECTION 9: Severance and Benefit Payoff at Termination, and General Release Agreement

- A. If City elects not to exercise the second three-year extension period of the Agreement term following the first three-year extension period, or if City terminates this Agreement during the second three-year extension period without cause, as determined by the City Manager through the authority delegated by the City Council by way of this agreement, and if Dunn signs, delivers to the City Council, and does not revoke, the General Release Agreement in the form attached hereto as Exhibit A, City shall pay Dunn beginning on the effective date of termination a lump sum benefit in compliance with Government Code Section 53260 equal to twelve (12) times the monthly value of his then applicable Base Salary and shall provide twelve (12) months of medical coverage as provided in Section 4 as long as Dunn is already enrolled and receiving medical coverage through the City medical benefits plan at time of termination (collectively, "Severance"). The City acknowledges that Dunn shall be eligible for payout of the cash value of accrued vacation leave at the time of separation. Upon mutual written agreement of the City and Dunn, in lieu of the Severance, Dunn may exercise the Right of Reversion in Section 8(B) above.

B. If City terminates this Agreement with Cause, as determined by the City Manager exercising the authority delegated by the City Council herein, Dunn shall not be entitled to any additional compensation or payment, including Severance, or Right of Reversion, except that the City acknowledges that Dunn shall be eligible for payout of the cash value of accrued vacation leave at the time of separation. If the City intends to terminate with Cause, based on a reason or reasons set forth in subparts 5 or 6, immediately below, the City Manager shall first deliver to Dunn a written Notice of Intent to Terminate, stating the reason or reasons for the proposed termination, and providing a thirty (30) day period for Dunn to cure. If, in the City Manager's independent judgment, Dunn cures the identified reason or reasons for Cause termination, Dunn shall not be terminated therefor. As used in this Agreement, Cause shall mean any of the following:

1. Conviction of a felony;
2. Conviction of a misdemeanor arising out of Dunn's duties under this Agreement;
3. Conviction of any crime involving an "abuse of office or position," as that term is defined in Government Code section 53243.4;
4. Willful abandonment of duties;
5. Repeated failure to carry out a directive or directives of the City Council or City Manager; and
6. Any grossly negligent action or inaction by Dunn that materially and adversely: (a) impedes or disrupts the operations of City or its organizational units; (b) is detrimental to employees or public safety; or (c) violates rules or procedures of City.

C. If Dunn terminates this Agreement, Dunn shall not be entitled to any additional compensation or payment, including Severance or Right of Reversion. The City acknowledges that Dunn shall be eligible for payout of the cash value of accrued vacation leave at the time of separation.

SECTION 10: Employee's Obligations and Hours of Work

Dunn shall devote his full professional energies, interest, abilities and productive time to the performance of this Agreement and utilize his best efforts to promote City's interests. Dunn's duties may involve expenditures of time in excess of the regularly established workday or in excess of a forty (40) hour workweek and may also include time outside normal office hours (including attendance at City Council meetings and various community meetings, forums or workshops). Dunn's base salary includes compensation for all hours worked. Dunn shall be classified as an exempt employee for purposes the Fair Labor Standards Act and shall not be entitled to any form of compensation for overtime. In recognition of the significant time Dunn will need to devote outside normal office hours to business activities of City and the exempt, salaried nature of the employment, Dunn is permitted to exercise a flexible work schedule. However, consistent

with this flexibility and Dunn's participation in activities out of the office, Dunn will generally be expected to keep office hours at City Hall, during normal business hours.

SECTION 11: Confidentiality

- A. Dunn acknowledges that in the course of his employment contemplated herein, Dunn will be given or will have access to confidential and proprietary documents and information, relating to the City, its residents, businesses, employees, and customers ("Confidential Information"). Such Confidential Information may include, but is not limited to, all information given to or otherwise accessible to Dunn that is not public information or would be exempt from public disclosure as confidential, protected, exempt or privileged information. Dunn shall hold the Confidential Information in trust for City's benefit, and shall not disclose the Confidential Information to others without the express written consent of City.
- B. The obligations of City and Dunn under this Section 11 shall survive the termination of this Agreement.

SECTION 12: Outside Activities

Dunn shall not engage in any activity, consulting service or enterprise, for compensation or otherwise, which is actually or potentially in conflict with, incompatible with or inimical to, or which materially interferes with his duties and responsibilities to City. (Cal. Govt. Code §§ 1125 *et seq.*)

SECTION 13: Defense and Indemnification

In accordance with the provisions of California Government Code Sections 995 and 995.2 as they currently exist or may hereafter be amended, City shall defend and indemnify Dunn, using legal counsel of City's choosing, against any civil action or proceeding brought against Dunn, in his official or individual capacity or both, on account of an act or omission in the scope of his employment as Chief of Police, unless such act or omission was due to actual fraud, corruption, or actual malice. In the event the City determines there is a conflict of interest between the Parties and Dunn and independent counsel is required for Dunn's defense, City shall select and pay the reasonable fees of such independent counsel for Dunn's defense. Dunn shall cooperate fully in the investigation and defense of any civil action or proceeding.

Dunn acknowledges and agrees that City reserves its rights pursuant to Government Code Section 825(a) not to pay any judgment, compromise, or settlement until it is established that the injury arose out of an act or omission occurring within the scope of his employment, and that City's agreement to defend and indemnify him does not constitute an agreement to pay any punitive damages awarded against him. In that regard, Dunn acknowledges and agrees that pursuant to Government Code Section

825(b), City may not make a determination whether or not to indemnify an employee for an award of punitive damages until such time as the award is made.

SECTION 14: Other Terms and Conditions of Employment

City may fix other terms and conditions of employment, as it may determine from time to time, relating to the performance of Dunn, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement or applicable law.

SECTION 15: Notices

Notice pursuant to this Agreement shall be given by depositing written notification in the custody of the United States Postal Service, postage prepaid, addressed as follows:

(1) City:

City of Fullerton
c/o City Clerk
303 W. Commonwealth Ave
Fullerton, CA 92832

(2) Dunn: *on file*

Alternatively, notice required pursuant to this Agreement may be personally served in the same manner as is applicable in civil judicial practice. Notice shall be deemed given as of the date of personal service or five days after the date of mailing.

SECTION 16: General Provisions

- A. Integration: This Agreement sets forth the final, complete and exclusive agreement between City and Dunn relating to the employment of Dunn by City. Any prior discussions or representations by or between the parties are merged into this Agreement or are otherwise rendered null and void. The Parties by mutual written agreement may amend any provision of this Agreement. Such amendments shall be incorporated and made a part of this Agreement. The foregoing notwithstanding, Dunn acknowledges that, except as expressly provided in this Agreement, his employment is subject to City's generally applicable rules and policies pertaining to employment matters, such as those addressing equal employment opportunity, sexual harassment and violence in the workplace, as they currently or may in the future exist, and his employment is, and will continue to be, at the will of the City Council.
- B. Binding Effect: This Agreement shall be binding on the City and Dunn as well as their heirs, assigns, executors, personal representatives and successors in interest.

- C. Choice of Law: This Agreement shall be interpreted and construed pursuant to and in accordance with the laws of the State of California and all applicable City Ordinances, Policies and Resolutions.
- D. Severability: If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect. If any provision is held invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.
- E. Conflict with Municipal Code. The City personnel ordinances, resolutions, rules and policies shall apply to Dunn in the same manner as applied to other management employees, provided, however, in the event of a conflict between the provisions of this Agreement and the Municipal Code, the City Municipal Code shall prevail over this Agreement.
- F. Dunn's Independent Review: Dunn acknowledges that he has had the opportunity and has conducted an independent review of the financial and legal effects of this Agreement. Dunn acknowledges that he has made an independent judgment upon the financial and legal effects of this Agreement and has not relied upon any representation of City, its officers, agents or employees other than those expressly set forth in this Agreement. Dunn acknowledges that he has been advised to obtain, and has availed himself of, legal advice with respect to the terms and provisions of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates reflected below each signature.

CITY OF FULLERTON

ROBERT DUNN II

Jesus Silva, Mayor

Robert Dunn II

Dated: _____

Dated: _____

Approved as to Form:

Richard D. Jones, City Attorney

Dated: _____

Attest:

Lucinda Williams, City Clerk

Dated: _____

EXHIBIT A

GENERAL RELEASE AGREEMENT

This General Release Agreement ("Agreement") is entered into by and between ROBERT DUNN II ("Dunn") and CITY OF FULLERTON ("City"), in light of the following facts:

- A. Dunn's employment with City concluded on _____ (date.)
- B. Certain disputes have arisen between City and Dunn.
- C. City and Dunn each deny any liability whatsoever to the other.
- D. City and Dunn wish to fully and finally resolve any and all disputes they may have with each other.
- E. Dunn is hereby informed that he has twenty-one (21) days from receipt of this Agreement to consider it. City hereby advises Dunn to consult with his legal counsel before signing this Agreement.
- F. Dunn acknowledges that for a period of seven (7) days following the signing of this Agreement ("Revocation Period"), he may revoke the Agreement. This Agreement shall not become effective or enforceable until the day the Revocation Period has expired.
- G. Dunn acknowledges that the Salary Payment referenced in subsection 1 below represents all compensation, including salary, accrued benefit balances and reimbursed expenses, due and payable to him through the date of employment termination. Dunn also acknowledges that City has made this Salary Payment without regard to whether he signs this Agreement. The Salary Payment does not constitute consideration for this Agreement. Dunn acknowledges that the Severance referenced in subsection 2 below is in excess of all amounts that are due and owing to him as a result of his employment by City.
 - 1. Receipt of Salary Payment. Dunn hereby acknowledges receipt of a check or checks for all compensation owing to him, including salary, accrued benefit balances and reimbursed expenses ("Salary Payment") from City.
 - 2. Severance. Within ten (10) days following Dunn's signing, delivering to the City Council, and not revoking this Agreement, City shall pay Dunn the gross amount provided for in Section 9 of the Employment Agreement effective _____, 2019, less applicable deductions, and shall provide the months of medical benefits as provided in that same Section 9 ("Severance"). Dunn acknowledges that the Severance is in excess of all amounts due and owing him as a result of his employment by City.

3. General Release. In consideration of the Severance to be paid and provided to Dunn, and other good and valuable consideration, Dunn hereby releases and discharges City and its past and present City Council Members, employees, representatives and agents, from all rights, claims, causes of action, and damages, both known and unknown, in law or in equity, concerning and/or arising out of his employment with City which he now has, or ever had, including but not limited to any rights, claims, causes of action or damages arising under Title VII of the Civil Rights Act of 1964, the Vocational Rehabilitation Act of 1973, the Dunn Retirement Income Security Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Older Workers Benefits Protection Act, the Family and Medical Leave Act of 1993, the Domestic Partners Act of 2003, the California Labor Code, the Private Attorneys General Act of 2004, the California Moore-Brown-Roberti Family Rights Act, the California Unruh Civil Rights Act, the California Fair Employment and Housing Act, any other federal, state, or local employment practice legislation, or any federal or state common law, including wrongful discharge, breach of express or implied contract, or breach of public policy.

Dunn hereby waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of California. Dunn understands and acknowledges the significance and consequences of this specific waiver of Section 1542. Section 1542 of the Civil Code of California 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.

Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of City and its past and present City Council Members, employees, representatives and agents, Dunn expressly acknowledges that this General Release is intended to include in its effect, without limitation, all claims which he does not know or suspect to exist in his favor.

Dunn further acknowledges that he has read this General Release and that he understands that this is a general release, and that he intends to be legally bound by the same.

4. Fees. Dunn and City agree that in the event of litigation relating to this General Release Agreement, the prevailing party shall not be entitled to recover his/its reasonable attorneys' fees.

CITY OF FULLERTON

ROBERT DUNN II

Mayor

Robert Dunn II

Dated: _____

Dated: _____

Approved as to Form:

Richard D. Jones, City Attorney

Attest:

Lucinda Williams, City Clerk