

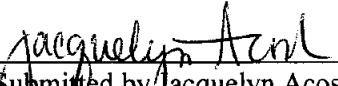


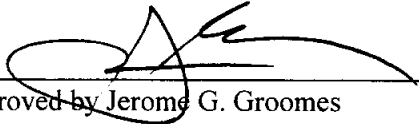
# City of Carson

## Report to Mayor and City Council

December 21, 2010  
New Business Consent

**SUBJECT: CONSIDERATION OF APPROVAL OF A SEVERANCE AGREEMENT BETWEEN THE CITY OF CARSON AND A LAID-OFF EMPLOYEE**

  
Submitted by Jacquelyn Acosta  
Administrative Services General Manager

  
Approved by Jerome G. Groomes  
City Manager

### **I. SUMMARY**

At the direction of the City Council, the City's negotiating team has met and conferred as required by state law with representatives of the Association of Management Employees (AME) regarding the impacts of the layoffs initiated in October 2010. As a result of these negotiations, terms have been tentatively reached pending City Council approval regarding the impacts of the layoffs. These terms are set forth in the attached severance agreement hereby submitted for the City Council's consideration.

### **II. RECOMMENDATION**

TAKE the following actions:

1. APPROVE the Severance Agreement and General Release between the City of Carson and Donyea Adams, Housing and Neighborhood Development Manager.
2. AUTHORIZE the City Manager to execute the Severance Agreement and General Release.

### **III. ALTERNATIVES**

DO NOT APPROVE the Severance Agreement and General Release.

### **IV. BACKGROUND**

Under the Meyers-Miliias-Brown Act ("MMBA")(California Gov't Code § 3500 et seq.), the City has the duty to give notice to each affected employee organization and provide the opportunity to meet and confer in good faith to negotiate any proposed change relating to matters within the scope of representation. The scope of representation covers employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment; except, however, that the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order.

Accordingly, a decision to lay off employees is not within the scope of

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representation or negotiable under the MMBA. Although the decision to lay off employees is not subject to collective bargaining, the City does have an obligation to bargain over the effects of the non-negotiable layoff decision on both departing and remaining employees. Effects subject to bargaining include severance pay, seniority, and pensions, among other things.

Following an assessment of the City's current organizational structure, operational requirements, service demands, staffing levels, and financial resources, the City identified necessary budget reduction measures and operational adjustments that resulted in a reduction in workforce. These measures include the reorganization of functional areas to ensure organizational effectiveness and to respond to decreased service levels and/or activity.

Subsequent to the City making the non-negotiable decision to implement layoffs, the City's negotiating team met and conferred as required by state law with representatives of AME regarding the impacts of the layoffs initiated in October 2010. As a result of these meetings, certain terms have been tentatively negotiated regarding the impacts of the layoffs. Those terms are related to specific positions being laid off and to the severance packages to be offered to the employees being laid off. The terms and conditions have been incorporated into the attached severance agreement.

The severance package is contingent upon the execution of a Severance Agreement and General Release and is comprised of the following components to be paid in accordance with the terms of the Severance Agreement and General Release:

1. Three months paid salary;
2. Three months of City-paid COBRA benefits; and
3. Two months of outplacement assistance provided by the highly respected outplacement firm of Lee Hecht Harrison (LHH) to be paid for by the City.

City Council approval of this Severance Agreement and General Release is required in order for the City Manager to execute the agreement and for staff to implement the terms of the agreement.

**V. FISCAL IMPACT**

The cost of this Severance Agreement and General Release is approximately \$34,000.00.

**VI. EXHIBITS**

1. Severance Agreement and General Release. (pgs. 4-11)

Prepared by: Jacquelyn Acosta, Administrative Services General Manager

sf:Rev061902

Reviewed by:

City Clerk	<u>City Treasurer</u>
<u>Administrative Services</u>	<u>Development Services</u>
<u>Economic Development Services</u>	<u>Public Services</u>

### Action taken by City Council

Date\_\_\_\_\_ Action\_\_\_\_\_

## SEVERANCE AGREEMENT AND GENERAL RELEASE

### 1. PARTIES

This Severance Agreement and General Release (hereinafter referred to as the "AGREEMENT") is entered into by and between the CITY OF CARSON, a municipal corporation (hereinafter referred to as the "CITY") and Donyea R. Adams (hereinafter referred to as the "EMPLOYEE").

### 2. RECITALS

2.1 EMPLOYEE was hired by the CITY in the position of Housing and Neighborhood Development Manager on or about September 18, 2000. EMPLOYEE currently holds the position of Housing and Neighborhood Development Manager. EMPLOYEE is currently 45 years old.

2.2 EMPLOYEE is being separated from the CITY effective November 30, 2010, as a result of a layoff. The CITY and EMPLOYEE wish to enter into a severance arrangement that will facilitate a smooth transition for EMPLOYEE and an amicable employment separation. The CITY has offered, and EMPLOYEE has accepted, severance benefits in exchange for a general release of all claims and waiver of any appeal or grievance rights. This AGREEMENT is therefore entered into by the CITY and EMPLOYEE to document the parties' agreement regarding the terms of EMPLOYEE's separation from the CITY. This AGREEMENT combined with the severance provisions and payments provided herein is made 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 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 separation, with this AGREEMENT setting forth the full and complete terms and conditions concluding EMPLOYEE's employment relationship with the CITY and any obligations related thereto.

2.3 In accordance with this AGREEMENT and with applicable state and federal laws, EMPLOYEE acknowledges 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 In exchange for the waivers and releases set forth herein, including of any administrative appeal or right to grieve the imposed lay off, the CITY shall provide employee the following severance related payments:

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(a) The CITY shall make a severance payment equal to three (3) months base salary to be paid in a lump sum amount of thirty-one thousand, four hundred forty-three dollars (\$31,443.00), less any applicable payroll or other required taxes, in the form of a check made payable to EMPLOYEE to be sent via certified mail return receipt requested to EMPLOYEE's home address on file with the CITY, or by overnight express mail to same, or personally delivered, within ten (10) business days after the EFFECTIVE DATE (as defined below) of this AGREEMENT;

(b) The CITY shall pay the first three months of EMPLOYEE's COBRA premium payments to the extent that there are any such premiums; and

(c) The CITY shall directly pay to vendor the cost of EMPLOYEE's participation in a career transition program with Lee Hecht Harrison known as the Quick Start Program.

3.2 In exchange for the severance related payments 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 collectively 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 the EFFECTIVE DATE (as defined below) (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 the CLAIMS forever barred by this AGREEMENT specifically include, but are not limited to, claims based upon any alleged breach of 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, and any other federal, state, or local human rights, civil rights, or employment discrimination or employee rights statute, rule, or regulation.

*[Handwritten signature]*



3.3 The releases set forth above in Section 3.2 of this AGREEMENT are general releases of all claims, demands, causes of action, obligations, damages, and liabilities of any nature whatsoever as described therein and are intended to encompass all known and unknown, foreseen and unforeseen claims that EMPLOYEE may have against the CITY PARTIES, or any of them; provided, however, that nothing contained herein shall purport to waive or otherwise affect any of EMPLOYEE's rights or claims that may arise after EMPLOYEE signs this AGREEMENT and it becomes effective, or to waive or release any claims which may not be released pursuant to applicable law. It is further understood by the parties that nothing in this AGREEMENT shall affect EMPLOYEE's right to workers' compensation or unemployment benefits, or any rights EMPLOYEE may have under any Pension Plan and/or Savings Plan (i.e., 457 or 403(b) plan) provided by the CITY as of the separation date, such items to be governed exclusively by the terms of the applicable plan documents.

**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 EMPLOYEE knowingly and voluntarily, for just compensation in addition to anything of value to which EMPLOYEE was already entitled, waives and releases any rights EMPLOYEE may have under the ADEA and/or OWBPA. EMPLOYEE further acknowledges that EMPLOYEE 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, EMPLOYEE's rights under the ADEA and OWBPA, and of the legal significance of the waiver of any possible claims EMPLOYEE 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) calendar days within which to review and consider this AGREEMENT and the waiver and release of any rights EMPLOYEE may have under the ADEA, the OWBPA and similar age discrimination laws; but may, in the exercise of EMPLOYEE's own discretion, sign or reject this AGREEMENT at any time before the expiration of the twenty-one calendar (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;

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(e) EMPLOYEE has been advised by this writing that EMPLOYEE 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, EMPLOYEE's counsel of choice, or acknowledges having the opportunity to do so and having freely chosen not to use counsel, and EMPLOYEE does not need any additional time within which to review and consider this AGREEMENT;

(g) EMPLOYEE has seven (7) calendar days following EMPLOYEE's 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 Severance Agreement and General Release;" and

(i) This AGREEMENT shall not be effective until all parties have signed the AGREEMENT, ten (10) days have passed since EMPLOYEE's execution and no revocation has been served, and the City Council has approved same ("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 favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

EMPLOYEE, being aware of section 1542, hereby expressly waives any and all rights that EMPLOYEE may have thereunder, as well as under any other statute or common law principles of similar effect under the laws of any state or the United States. This AGREEMENT shall act as a general release of all claims, whether such claims are currently known or unknown, foreseen or unforeseen including, without limitation, any claims for damages resulting from any acts or omissions which occurred on or before the date of this AGREEMENT. Thus, notwithstanding the provisions of section 1542, and for the purpose of implementing a full and complete release and discharge of the CITY PARTIES, EMPLOYEE expressly acknowledges that this AGREEMENT is intended to include in its effect, without limitation, all released claims which EMPLOYEE does not know or suspect to exist in EMPLOYEE's favor at the time of execution hereof, and that this AGREEMENT contemplates the extinguishment of all such released claims.

#### 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.

*[Handwritten signature]*



## 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 they have been represented or could have been represented by counsel of their own choice in the negotiation of this AGREEMENT; they have read this AGREEMENT; they have had this AGREEMENT fully explained to them by such counsel, or have had such opportunity to do so; and 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 any fact was concealed from it, or 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 any of 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 each and all of 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

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understands and agrees that the CITY shall deduct all applicable state and federal taxes from any payments required hereunder and EMPLOYEE shall be exclusively liable for the payment of all remaining individual taxes for which EMPLOYEE is responsible, if any, as a result of EMPLOYEE's receipt of the consideration referred to in Paragraph 3 of this AGREEMENT. In addition, EMPLOYEE agrees fully to indemnify and hold each and all of 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 Employment Inquiries and/or References: The parties agree that the CITY shall respond to all oral reference requests by giving only dates of employment, positions held, and duties performed. The CITY will comply with all laws relative to the maintenance and confidentiality of EMPLOYEE's personnel file.

7.8 Return of Confidential Information and Property; Non-Disclosure of Confidential Information: At or before or as soon as practical after the separation date, EMPLOYEE shall submit a written inventory of, and return to human resources, all 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 EMPLOYEE's employment with the CITY. EMPLOYEE shall also be entitled to work with Human Resources to obtain all personal items left at the CITY by EMPLOYEE. In addition, throughout EMPLOYEE's employment the CITY, EMPLOYEE may have been the recipient of and may have generated sensitive personnel and other confidential information ("CONFIDENCES"). Unless otherwise required by law, EMPLOYEE shall not disclose any of those CONFIDENCES, or portions thereof.

7.9 No Pending Claims and/or Actions: EMPLOYEE represents that EMPLOYEE has not filed any complaints or charges against any of the CITY PARTIES with any local, state or federal agency or court; that EMPLOYEE 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 any of the CITY PARTIES on behalf of EMPLOYEE, whenever or where ever filed, EMPLOYEE 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 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.

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## 8. MISCELLANEOUS

8.1 No Admission: Nothing contained herein shall be construed as an admission by the CITY or EMPLOYEE of any liability, fault or wrongdoing of any kind. The parties each deny any liability in connection with any claim and intend hereby solely to avoid potential claims and/or litigation and buy their 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 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.

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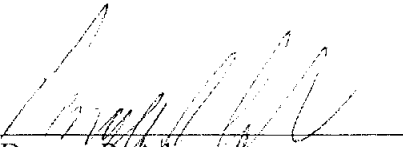
**As to the CITY:**

Jacquelyn Acosta, Employee Relations Officer  
City of Carson  
Post Office Box 6234  
Carson, CA 90749

With copy to: William W. Wynder, Esq.,  
Aleshire & Wynder, LLP  
1515 W. 190th Street, Suite 565  
Gardena, CA 90248

BY SIGNING BELOW, EMPLOYEE certifies that EMPLOYEE has read and understands all of this AGREEMENT, has received any advice or counsel EMPLOYEE deems necessary regarding this AGREEMENT, and is entering into this AGREEMENT freely and voluntarily, intending to be bound by its terms.

Dated: 12-15-10

  
Donyea R. Adams

Dated: \_\_\_\_\_

\_\_\_\_\_  
Jerome Groomes, City Manager

