

CITY OF CHULA VISTA
CITY CLERK EMPLOYMENT AGREEMENT

1. **Employment:**

This City Clerk Employment Agreement (Agreement) is entered into by and between the City of Chula Vista (“City”) and Kerry Bigelow (“City Clerk” or “Employee”). Under this Agreement, the City offers, and City Clerk accepts, employment as City Clerk of the City of Chula Vista. City Clerk acknowledges and agrees that the position of City Clerk is an “at will” position and that there is no right to continued employment in said position, including, but not limited to Civil Service rights.

2. **Duties and Devotion to City Business:**

Ms. Bigelow is employed to serve as the City Clerk and shall perform such duties as are customarily performed by a City Clerk, and such other duties as the City Council or its designee, assigns from time to time. Employee acknowledges that she will report to the City Council, who will be Employee’s supervisor.

As part of Employee’s duties, Employee acknowledges and understands that: (a) Employee will devote her utmost knowledge and best skill to the performance of her duties; (b) Employee shall devote her full business time to the rendition of such services, subject to absences for customary vacations and for temporary illness; (c) Employee will not engage in any other gainful occupation which requires her personal attention without prior consent of the City, with the exception that Employee may personally trade in stock, bonds, securities, commodities or real estate investments for her own benefit (subject to section (d), which follows); (d) Employee will not engage in the following without City Council approval:

- i. Invest or participate, either individually, as a partner, officer, or shareholder, in any business, corporation, business venture or joint venture, which is conducting business in the corporate limits of Chula Vista, except for stock ownership in any company whose capital stock is publicly held and regularly traded, and except as a mere depositor of funds in a bank located within the City limits of Chula Vista; or
- ii. Invest in any real estate or property improvements within the corporate limits of the City of Chula Vista, except for a personal residence or residential property acquired or held for future use as City Clerk’s personal residence; or
- iii. Provide consulting services to any company, business venture or any other types of business entity conducting business in the corporate limits of Chula Vista.

3. **Personnel Policies and Procedures:**

The City shall have the authority to establish from time to time personnel policies and procedures to be followed by its employees. Employee agrees to comply with the policies and procedures of the City. To the extent any provisions in the City's personnel policies and procedures differ with the terms of this Agreement, the terms of this Agreement shall apply. However, in no event shall the aforementioned personnel policies and procedures convert the "at will" employment status of the City Clerk classification to any other form of employment status, including creating any right to continued employment.

4. **Term:**

The term of this Agreement shall begin on the effective date stated above and shall remain in effect unless terminated pursuant to Section 5.

5. **Termination of Employment and this Agreement; General Release; Severance:**

A. Subject to the terms of this Paragraph, the City has the right to terminate this Agreement without cause at any time (thereby separating City Clerk from City service). If the City terminates this Agreement (thereby terminating City Clerk's employment) without cause, as determined by the affirmative votes of a majority of the members of the City Council, and if City Clerk signs, delivers to the City Council, and does not revoke, the General Release Agreement ("Release Agreement") in the form attached hereto as Exhibit A, City shall:

1. Pay the City Clerk a lump sum benefit equal to nine (9) months of her then Base Salary and nine (9) months of health (medical, dental, and vision) benefits (the cash payment and continuing benefits, collectively "Severance").
2. Pay the City Clerk for her accumulated Annual Leave, but not her unused Management Leave, unused Hard Holidays, or unused Floating Holidays. The City Clerk shall not be paid out her unused Sick Leave, but may convert her accumulated Sick Leave to CalPERS service credit, as permitted by CalPERS
3. Pay any pending reimbursement requests, if properly payable.

The City Clerk shall not receive any other payments not specified in this section.

B. If City terminates this Agreement (thereby terminating City Clerk's employment) with Cause, as determined by the affirmative votes of a majority of the member of the City Council, City Clerk shall not be entitled to any additional compensation or payment, including Severance, but shall be entitled only to accrued Base Salary and vacation pay, and any other accrued and unused benefit allowances according

to their terms (“Accrued Salary and Benefits”). As used in this Agreement, Cause shall only mean any of the following:

1. Conduct involving or conviction of, or plea of guilty or nolo contendere (or no contest) to, any crime or offense (other than minor traffic violations or similar offenses) which is likely to have a material adverse impact on the City or on the City Clerk’s reputation;
2. Proven failure of the City Clerk to observe or perform any of her duties and obligations, if that failure continues for a period of thirty (30) business days from the date of his receipt of notice from the City Council specifying the acts or omissions deemed to amount to that failure;
3. Conduct involving or conviction of, or plea of guilty or nolo contendere, any crime involving an “abuse of office or position,” as that term is defined in Government Code Section 53243.4;
4. Repeated failure to carry out a directive or directives of the City Council made by the City Council as a body at a Brown Act-compliant meeting;
5. Any negligent action or inaction by City Clerk that materially and adversely: (a) impedes or disrupts the operations of the City or its organizational units; (b) is detrimental to employees or public safety; or (c) violates City’s properly established rules or procedures;
6. Violation of the City’s EEO/Sexual Harassment Policies, Workplace Violence Policies, and Substance Abuse Policies; or
7. Failure to comply with the terms of this Agreement.

C. If, during the term or any extended Term, City Clerk dies, City Clerk’s estate shall receive Accrued Salary and Benefits, but shall not be entitled to any additional compensation or payment, including Severance.

D. In the event City Clerk is permanently disabled or is otherwise unable to perform her duties because of sickness, accident, injury, or mental incapacity for a period of three consecutive months beyond any provided sick leave, the City may terminate City Clerk’s employment and this Agreement.

E. City Clerk may resign from his employment at any time, upon giving forty-five (45) days written notice to the City Council. A resignation shall not entitle City Clerk to Severance as set forth in Section 5(A) (1).

6. **Compensation and Annual Evaluation:**

A. Employee shall be paid a salary that is equivalent to One Hundred Thirty Thousand Dollars (\$130,000) per year, payable in accordance with prevailing City policies (“Base Salary”). The City and City Clerk agree that except for any cost of living adjustments provided to all City Executives (as set forth in Section 6(C)), any increase to the City Clerk’s salary shall be based on performance evaluations.

B. City, by the City Council, and City Clerk may set mutually-agreed-upon objectives for each year under this Agreement. The City Council shall evaluate City Clerk’s performance within six (6) months of appointment to office; again six months thereafter, and then annually at the anniversary of her appointment. Performance reviews may also be conducted at other times, as determined to be necessary by City Council.

C. City Clerk shall be entitled to receive cost-of-living adjustments or any similar across-the-board increases that the City Council determines, in its discretion, to approve for all City Executives. In addition, the City Council may increase the City Clerk’s Base Salary at any time in the sole discretion of the City Council.

D. City Clerk’s Base Salary increases approved by the City Council from time to time pursuant to this Agreement shall not require an amendment to this Agreement to be effective. Such may be set forth in an annual salary resolution or minute action approved by the City Council and ratified by resolution.

E. The City Clerk shall be subject to reductions in Base Salary or other financial benefits in the event similar across-the-board reductions are imposed by the City Council in its discretion with respect to all City Executives. If the City reduces the Base Salary or any other financial benefit of the City Clerk in a percentage that is greater than the average reduction of all City Executives, the City Clerk may deem such action a termination of this Agreement without Cause under Section 5(A) of this Agreement, and City Clerk shall be entitled to Severance under Section 5(A) (1).

7. **Deferred Compensation:**

As part of City Clerk’s annual compensation, City agrees to provide a Section 457 deferred compensation program which will be administered by Nationwide or any other City approved vendor chosen by the City.

The City shall contribute 5% of the City Clerk’s base salary into a 401(a) deferred compensation program as long as it is allowable by law.

8. **Pension:**

City agrees to continue to enroll City Clerk as a “Classic Member” of the Public Employees Retirement System (PERS) in the PERS plan selected by City in its sole discretion.

9. **Health and Medical Benefits Insurance:**

As is provided to other City Executives, City shall provide City Clerk a Cafeteria Plan for medical benefit (medical/dental/vision) as set by the City via City resolution. City Council, in its discretion, may amend (including increase or decrease) the Cafeteria Plan (including annual amount used to purchase benefits or cash-out amounts).

10. **Life Insurance:**

As is provided to other City Executives, the City shall pay the premiums for \$50,000 basic group term life & accidental death and dismemberment insurance policy. City Clerk may purchase, as other City Executives may purchase, additional coverage at her own expense.

11. **Business and Professional Expenses:**

A. City recognizes that City Clerk may incur expenses of a non-personal, job-related nature that are reasonable necessary to City Clerk's service to City. City agrees to either pay such expenses in advance or to reimburse the expenses, so long as the expenses incurred and submitted according to City's normal expense reimbursement procedures 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 pay the professional dues and subscriptions on behalf of City Clerk which are necessary for City Clerk's continuation or full participation in international, national, regional, state, or local associations and organizations necessary and desirable for City Clerk's continued professional participation, growth and advancement, or for the good of the City.

C. City agrees to pay City Clerk's travel and subsistence expenses for official travel, meetings, and occasions reasonably necessary to continue City Clerk's professional development, and for City Clerk's reasonable participation in necessary official and other functions for the City; including, but not limited to, national, regional, state, and local conferences, and governmental groups and committees on which City Clerk serves as a member. Notwithstanding the above, the number of conferences or meetings City will pay for each year, and attendance at out-of-state conferences and meetings, shall be at the discretion of the City Council as set forth in the City's budget.

12. **Annual Leave, Management Leave, Sick Leave and Holidays:**

A. As is provided to other City Executives, the City Clerk shall receive leave as follows

- i. Annual Leave. The City Clerk shall earn 200 hours of Annual Leave per fiscal year accrued at 7.69 hours per pay period. Annual leave may be accumulated up to 600 hours per fiscal year. Up to 120 hours of Annual Leave per fiscal year may be cashed out.
- ii. Management Leave. The City Clerk shall receive 96 hours of Management Leave per fiscal year. The Management Leave shall be credited at the start of each fiscal year. Management Leave must be used within the fiscal year it is accrued or forfeited.
- iii. Sick Leave. The City Clerk shall receive Sick Leave as provided for in the Civil Service Rules, currently 96 hours per fiscal year and distributed on a bi-weekly basis. At retirement, accumulated Sick Leave may be converted to service credit as authorized by CalPERS. Sick Leave may be cashed out in accordance with City Policy.
- iv. Holidays. The City Clerk shall receive ten (10) Hard Holidays. The City Clerk shall also receive 24 hours of Floating Holiday time. The Floating Holiday time must be used within the fiscal year it is accrued or forfeited.

B. The above leave and holiday benefits mirror those provided to other City Executives in the City. The City, in its discretion, may amend the above leave and holiday benefits to mirror changes made to leave and holiday benefits for City Executives.

13. **Investigations:**

The City reserves the right to investigate and/or discipline the City Clerk, in the City's sole discretion, for any act of misconduct and/or poor performance. The City may place City Clerk on paid or unpaid administrative leave during the investigation as it deems appropriate. The City Clerk may deem placement of administrative leave for more than ninety (90) days as a termination without cause, unless the City at any time provides notice that it intends to or is considering a termination for cause or terminates the City Clerk for cause. The City Clerk is an "at will" position and this section does not create any rights for City Clerk.

14. **Abuse of Office or Position:**

If City Clerk is convicted of a crime (including guilty or no contest plea) involving an abuse of her office or position, any felony, crime of moral turpitude, or which requires forfeiture of office, all of the following shall apply: (a) if City Clerk is provided with administrative leave pay pending an investigation, City Clerk shall be required to fully reimburse City such amounts paid; (b) if City pays for the criminal legal defense of City Clerk (which would be in its sole discretion, as it is generally not obligated to pay for a criminal defense), City Clerk shall be required to fully reimburse City such amounts paid;

and (c) if this Agreement is terminated, any Severance Pay and Severance Benefits related to the termination that City Clerk may receive from City shall be fully reimbursed to City or shall be void if not yet paid to City Clerk. For purposes of this Section, abuse of office or position means either: (x) an abuse of public authority, including waste, fraud, bribery, or violation of the law under color of authority; or (y) a crime against public justice.

15. **Communications Upon City Clerk's Separation:**

In the event the City terminates the City Clerk for any reason or no reason, the City and the City Clerk agree to the following:

A. **Confidentiality.** City Clerk agrees that, to the extent permitted by law, all matters relative to any separation agreement, including the attached General Release Agreement, shall remain confidential. Accordingly, City Clerk agrees that, with the exception of her immediate family, legal counsel and tax advisors, she shall not discuss, disclose or reveal to any other persons, entities or organizations, whether within or outside of the City, the terms and conditions of any separation agreement, including General Release Agreement. City Clerk and her agents and legal counsel shall not issue a press release or contact the press regarding any separation agreement, including General Release Agreement, or their terms. If City Clerk is contacted by the press and questioned regarding any separation agreement, including General Release Agreement, she is permitted to respond and say she has entered into an agreement with the City and has agreed not to discuss the terms of any Agreement, including General Release Agreement, or any of the negotiations concerning the Agreement. The City agrees that, to the extent permitted by law, all matters relative to any separation agreement, including the General Release Agreement, shall remain confidential. In the event that a Public Records Act request is made for any separation agreement, including General Release Agreement, the City shall immediately notify City Clerk. City Clerk and City acknowledge and agree that the General Release Agreement or any other separation agreement shall be disclosed in accordance with applicable law. If the City is contacted by the press regarding any separation agreement, including General Release Agreement, the City is permitted to indicate that it has entered into an agreement with City Clerk, shall confirm the consideration paid and, if applicable, may indicate that it entered into the settlement to avoid the legal fees and costs that it might have incurred to defend a lawsuit or any other claim against the City, and that this is not in any way an admission of liability on part of the City.

B. **Non-Disparagement.** City Clerk agrees she will not make any defamatory or derogatory statements, written or verbal, regarding the City or any of its present or former elected officials, appointed officials, officers, employees, or volunteers to anyone.

C. **Reference Requests.** Any reference request concerning City Clerk will be referred to the Human Resources Director. The only information that will be provided in response to such a request will be City Clerk's date of employment, his title, confirmation of his rate of pay, and a statement that it is the City's policy to only provide that information.

16. **Indemnification:**

- A. Pursuant to Government Code section 995, the City shall defend, hold harmless, and indemnify City Clerk using legal counsel of City's choosing, against expense or legal liability in a civil action or proceeding for acts or omissions by City Clerk occurring within the course and scope of City Clerk's employment under this Agreement.
- B. Notwithstanding Paragraph A, pursuant to Government Code sections 995.2, 995.4, 995.6, 995.8, and/or 995.9, the City, in its sole discretion, may refuse to defend, hold harmless, and/or indemnify City Clerk.
- C. If the City elects to defend and provides legal representation, legal representation, provided by City for City Clerk, shall extend until a final determination of the issues including any and all losses, damages, judgments, interest, settlements, fines, court costs, and the reasonable costs and expenses of legal proceedings, including appeals, and including attorneys' fees, and expert witness fees and all other trial and appellate costs, and other liabilities incurred, imposed upon, or suffered by City Clerk in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened. In the event there is a conflict of interest between City and City Clerk such that independent counsel is required for City Clerk, City Clerk may engage her own legal counsel, in which event, City shall indemnify City Clerk, including direct payment of all such reasonable costs related thereto.
- D. This section shall not be construed to provide City Clerk greater rights to defense, hold harmless, and/or indemnification than provided by statute nor to reduce the City's right to refuse to provide said defense, hold harmless, and/or indemnification.

17. **Notices:**

Any notices to be given hereunder by either party to the other in writing may be effected either by personal delivery, mail, or email. Mailed notices shall be addressed to the parties as set forth below, but each party may change his/hers/its address by written notice given in accordance with this Section. Notices delivered personally or by email will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated and received as of three (3) calendar days following date of mailing.

CITY: City of Chula Vista
 Attention: Mayor
 Copy to: City Attorney and City Manager
 276 Fourth Avenue
 Chula Vista, CA 91910

Ms. Bigelow: Kerry Bigelow
276 Fourth Ave
Chula Vista, CA 91910

18. **Conflict With City Charter or Municipal Code:**

The City personnel ordinances, resolution, rules and policies shall apply to City Clerk in the same manner as applied to other management employees. In the event of a conflict between the provisions of this Agreement and the City Charter, or this Agreement and the Municipal Code, the City Charter or the Municipal Code shall prevail over this Agreement.

19. **Entire Agreement:**

This Agreement represents the entire agreement between the parties and supersedes any all other agreements, either oral or in writing, between the parties with respect to the employment of City Clerk by City, and contains all of the covenants and agreements between the parties with respect to that employment. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements oral or otherwise, have been made by either party, or by anyone acting on behalf of either party, which are not embodied herein, and that no other employment agreement, statement, or promise not contained in this Agreement shall be valid or binding upon either party.

20. **Modifications:**

Any modifications to this Agreement shall be effective only if in writing and signed by both of the parties hereto.

21. **Effect of Waiver:**

The failure of either party to insist upon strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment or any right or power at any one time or times be deemed a waiver or relinquishment of that right of power for all or any other times.

22. **Partial Invalidity:**

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

23. **Governing Law and Venue:**

Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action arising under or relating to this Agreement shall be brought only in the federal or state courts located in San Diego County, State of California, and if applicable, the City of Chula Vista, or as close thereto as possible. Venue for this Agreement, and performance under it, shall be the City of Chula Vista.

24. **Claims Requirement:**

No suit or arbitration shall be brought arising out of this Agreement, against City unless a claim has first been presented in writing and filed with City and acted upon by City in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista Municipal Code, as same may from time to time be amended, the provisions of which are incorporated by this reference as if fully set forth herein, and such policies and procedures used by City in the implementation of same. Upon request by City, City Clerk shall meet and confer in good faith with City for the purpose of resolving any dispute over the terms of this Agreement.

(Signature Page to follow.)

**SIGNATURE PAGE TO
CITY OF CHULA VISTA
CITY CLERK EMPLOYMENT AGREEMENT**

IN WITNESS WHEREOF, City and City Clerk have executed this Agreement, indicating that they have read and understood same, and indicate their full and complete consent to its terms:

For the City of Chula Vista:

By: _____

Mayor, City of Chula Vista

Attest:

Tyshar Turner, Records Manager/Deputy City Clerk

Approved as to form:

Glen R. Googins, City Attorney

For Ms. Kerry Bigelow:

By:  _____

Kerry Bigelow

Exhibit List to Agreement: Exhibit A

EXHIBIT A

GENERAL RELEASE AGREEMENT

This General Release Agreement (“Release Agreement”) is entered into by and between Kerry Bigelow (“City Clerk”) and CITY OF CHULA VISTA (“City”) (Collectively the “Parties”), in light of the following facts:

- A. City Clerk’s employment with City concluded on _____.
- B. Certain disputes have arisen between City and City Clerk.
- C. City and City Clerk each deny any liability whatsoever to the other.
- D. City and City Clerk wish to full and finally resolve any and all disputes they may have with each other.
- E. City Clerk is hereby informed that she has twenty-one (21) days from receipt of this Agreement to consider it. City hereby advises City Clerk to consult with his/her legal counsel before signing this Agreement.
- F. City Clerk acknowledges that for a period of seven (7) days following the signing of this Agreement represents all compensation, including salary, accrued benefit balances and reimburse expenses, due and payable to him/her through the date of employment termination. City Clerk also acknowledges that City has made this Salary Payment without regard to whether he/she signs this Agreement. The Salary Payment does not constitute consideration for this Agreement.
- G. City Clerk acknowledges that the Salary Payment referenced in paragraph 1 of this Agreement, below, represents all compensation, including salary, accrued benefit balances and reimbursed expenses, due and payable to him/her through the date of employment termination. City Clerk also acknowledges that City has made this Salary Payment without regard to whether he/she signs this Agreement. The Salary Payment does not constitute consideration for this Agreement.

The City and City Clerk agree to incorporate the above facts into this Release Agreement and, for valuable and sufficient consideration, hereby agree as follows:

1. Receipt of Salary Payment. City Clerk hereby acknowledges receipt of a check or checks for all compensation owing to him/her, including salary accrued benefit balances and reimbursed expenses (“Salary Payment”) from City.
2. Severance. Within five (5) days following City Clerk’s signing, delivering to the City, and not revoking this Agreement, City shall pay City Clerk the gross amount

provided for in Section 5(A)(1) of the attached Employment Agreement, less applicable deductions. City Clerk acknowledges that the Severance is in excess of all amounts due and owing her as a result of her employment by City.

3. General Release of all Claims Except ADEA Claims. In consideration of the Severance to be paid and provided to City Clerk, and other good and valuable consideration, City Clerk 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/her employment by City which he/she 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 Employee Retirement Income Security 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.

City Clerk hereby waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of California. City Clerk 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, City Clerk expressly acknowledges that this General Release is intended to include in its effect, without limitation, all claims which he/she does not know or suspect to exist in his/her favor.

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

4. Release of All ADEA Claims. The Parties further agree as follows:

A. This section of the Waiver exclusively addresses City Clerk’s release of claims arising under federal law involving discrimination on the basis of age in employment (age forty and above). This section is provided separately, in compliance with federal law, including but not limited to the Older Worker’s Benefit Protection Act of 1990, to ensure that City Clerk clearly understands her rights so that any release of age discrimination claims under federal law (the Age Discrimination in Employment Act of

1967, as stated in 29 U.S.C. §§621-634, (“ADEA”) is knowing and voluntary on the part of City Clerk.

B. City Clerk represents, acknowledges, and agrees that the City has advised her, in writing, to discuss this Agreement with an attorney, and to the extent if any, that City Clerk has desired, City Clerk has done so; that the City has given City Clerk twenty-one (21) days from receipt of this Release Agreement to review and consider this Release Agreement before signing it, and City Clerk understands that she may use as much of this twenty-one (21) day period as she wishes prior to signing it; and that no promise, representation, warranty, or agreements not contained herein have been made by or with anyone to cause her to sign this Release Agreement; that she has read this Release Agreement in its entirety, and fully understands and is aware of its meaning, intent, content, and legal effect; and that she is executing this release voluntarily and free of any duress or coercion. The twenty-one (21) day review period runs from the date of the City’s final offer to City Clerk. If City Clerk executes this Release Agreement prior to the conclusion of the twenty-one (21) day review period, City Clerk represents, acknowledges, and agrees that her execution of the Release Agreement during the shortened time period is her choice and is not compelled by the City.

C. The parties acknowledge that for a period of seven (7) days following the execution of this Release Agreement, City Clerk may revoke the Release Agreement, and the Release Agreement shall not become effective or enforceable until the revocation period has expired. This Release Agreement shall become effective eight (8) days after City Clerk and the City have signed it, and in the event the Parties do not sign on the same date, then this Release Agreement shall become effective eight (8) days after the date it is signed by City Clerk.

D. In consideration of the Severance to be paid and provided to City Clerk, and other good and valuable consideration, City Clerk does hereby unconditionally, irrevocably, and absolutely release and discharge the City of Chula Vista, its elected officials, officers, employees, agents, and attorneys from any and all loss, liability, claims, demands, causes of action or suits of any type arising under ADEA and related directly or indirectly to City Clerk’ employment with the City, termination of said employment, and/or subsequent resignation from employment.

5. Fees and Costs. City Clerk and City agree that in the event of litigation relating to this Release Agreement, the prevailing party shall be entitled to recover his/her/its reasonable attorney’s fees and costs.

6. No Further Action. City Clerk represents and warrants that she will withdraw, abandon, and not pursue or prosecute nor allow to be prosecuted on her behalf any complaints, charges, grievances or lawsuits against City and its elected officials, officers, employees, agents and attorneys she has filed or lodged with any governmental agency or court arising out of her employment with, termination from, and/or subsequent resignation from City. Further, City Clerk represents and warrants that she will not file or pursue or allow to be prosecuted on her behalf at any time hereinafter any complaints,

charges, grievances or lawsuits against City and its elected officials, officers, employees, agents and attorneys with any governmental agency or court arising out of her employment with, termination from, and/or subsequent resignation from City; provided, however that the parties shall not be limited from pursuing claims for the sole purpose of enforcing their rights under this Agreement. Further, City Clerk agrees that under this Agreement, she waives any claim for damages incurred at any time after the date of this Agreement because of alleged continuing effects of any alleged unlawful acts or omissions involving City Clerk' employment with, termination from, and/or subsequent resignation from City and any right to sue for injunctive relief against the alleged continuing effects of alleged acts or omissions.

7. Complete Defense. This Release Agreement maybe pleaded as a full and complete defense against any action, suit, or proceeding, which may be prosecuted, instituted, or attempted by either party in breach thereof.

8. Severability. If any provision of this Release Agreement, or part thereof, is held invalid, void, or voidable as against public policy or otherwise, the invalidity shall not affect other provisions, or parts thereof, which may be given effect without the invalid provisions or part. To this extent, the provisions, and parts thereof, of this Agreement are declared to be severable.

9. No Admission of Liability. It is understood that this Release Agreement is not an admission of any liability by the City, including its elected officials, officers, employees, agents, or attorneys, but is in compromise of any and all disputed claims.

10. Successors and Assigns. This Release Agreement shall be binding upon and inure to the benefits of the Parties hereto and their respective heirs, legal representatives, successors, and assigns.

11. Communications Upon Separation. The City and City Clerk agree to the following:

A. Confidentiality. City Clerk agrees that, to the extent permitted by law, all matters relative to any separation agreement, including this General Release Agreement, shall remain confidential. Accordingly, City Clerk agrees that, with the exception of her immediate family, legal counsel and tax advisors, she shall not discuss, disclose or reveal to any other persons, entities or organizations, whether within or outside of the City, the terms and conditions of any separation agreement, including this General Release Agreement. City Clerk and her agents and legal counsel shall not issue a press release or contact the press regarding any separation agreement, including this General Release Agreement, or their terms. If City Clerk is contacted by the press and questioned regarding any separation agreement, including this General Release Agreement, she is permitted to respond and say he has entered into an agreement with the City and has agreed not to discuss the terms of the agreement (including this General Release Agreement) or any of the negotiations concerning the agreement (including General Release Agreement). The City agrees that, to the extent permitted by law, all matters

relative to any separation agreement, including this General Release Agreement, shall remain confidential. In the event that a public records act request is made for any separation agreement, including this General Release Agreement, the City shall immediately notify City Clerk. The City and City Clerk acknowledge that this General Release Agreement or any separation agreement shall be disclosed in accordance with applicable law. If the City is contacted by the press regarding any separation agreement, including this General Release Agreement, the City is permitted to indicate that it has entered into an agreement with City Clerk, shall confirm the consideration paid and, if applicable, may indicate that it entered into the settlement to avoid the legal fees and costs that it might have incurred to defend a lawsuit, and that this is not in any way an admission of liability on the part of the City.

B. Non-Disparagement. City Clerk agrees she will not make any defamatory or derogatory statements, written or verbal, regarding the City or any of its present or former elected officials, appointed officials, officers, employees, or volunteers to anyone.

C. Reference Requests. Any reference request concerning City Clerk will be referred to the Human Resources Director. The only information that will be provided in response to such a request will be City Clerk's date of employment, her title, confirmation of her rate of pay and a statement that it is the City's policy to only provide that information.

BY HER SIGNATURE BELOW, CITY CLERK REPRESENTS THAT SHE HAS CAREFULLY READ THIS RELEASE AGREEMENT AND KNOWS ITS CONTENTS AND FULLY UNDERSTANDS IT; THAT SHE HAS HAD THE OPPORTUNITY TO HAVE IT FULLY EXPLAINED TO HER BY AN ATTORNEY OF HER CHOICE AND HAS EITHER DISCUSSED THIS RELEASE AGREEMENT WITH AN ATTORNEY OR HAS VOLUNTARILY CHOSEN TO SIGN IT WITHOUT CONSULTING AN ATTORNEY; THAT SHE FULLY UNDERSTANDS ITS FINAL AND BINDING EFFECT; THAT THE ONLY PROMISES MADE TO HER TO SIGN THIS AGREEMENT ARE THOSE STATED ABOVE; AND THAT SHE IS SIGNING IT VOLUNTARILY. CITY CLERK HAS BEEN GIVEN AT LEAST 21 DAYS TO CONSIDER THIS RELEASE AGREEMENT AND UNDERSTANDS THAT AFTER IT IS SIGNED, SHE MAY REVOKE THIS RELEASE AGREEMENT BY DELIVERING A WRITTEN NOTICE OF REVOCATION TO THE DIRECTOR OF HUMAN SERVICES, 276 FOURTH AVENUE, HUMAN RESOURCES DEPARTMENT, BUILDING 300, CHULA VISTA, CA 91910, NO LATER THAN SEVEN DAYS AFTER SHE EXECUTES THIS RELEASE AGREEMENT, AND THAT THIS RELEASE AGREEMENT DOES NOT BECOME EFFECTIVE OR ENFORCEABLE UNTIL AFTER THE SEVEN DAY PERIOD HAS EXPIRED.

(Signature Page to follow.)

SIGNATURE PAGE TO GENERAL RELEASE AGREEMENT

IN WITNESS WHEREOF, City and City Clerk have executed this General Release Agreement (“Release Agreement”), indicating that they have read and understood same, and indicate their full and complete consent to its terms:

For the City of Chula Vista:

By: _____

Mayor, City of Chula Vista

Attest:

[Name], [Title]

Approved as to form:

Glen R. Googins, City Attorney

For Ms. Kerry Bigelow:

By: _____

Kerry Bigelow