

VOLUNTARY SEPARATION AGREEMENT

This Agreement effects an agreeable separation of the employment relationship between Gary Hayes (“EMPLOYEE”) and Pima Association of Governments (“EMPLOYER”), as well as resolution of any claims, known and unknown, now existing between the Parties.

RECITALS

WHEREAS, EMPLOYEE has served honorably and effectively as the Executive Director of EMPLOYER, pursuant to an employment contract (“Contract”) dated January 19, 2004; and

WHEREAS, an issue has arisen as to whether EMPLOYEE is able to continue to fully perform under the Contract; and

WHEREAS, EMPLOYER and EMPLOYEE wish to terminate the Contract, resolve the issue and separate their employment relationship pursuant to the terms of this Agreement.

AGREEMENT

1. **Termination of Employment Contract.** The parties mutually agree to terminate the Contract effective December 31, 2012 (hereinafter referred to as the “Separation Date”).
2. **Consideration.** In consideration for each of the terms of this Agreement, EMPLOYER will provide EMPLOYEE with the following:
 - a. Payout [100%] of any remaining paid time off (PTO) hours, in one lump sum by December 31, 2012.
 - b. Severance pay of six (6) months and two weeks current base salary, minus vehicle allowance and usual withholding amounts, paid in one lump sum by December 31, 2012.
 - c. EMPLOYER does not make any representations as to the taxability of any item paid pursuant to paragraphs (a) and (b), above; and EMPLOYEE agrees that he shall have sole responsibility and be liable for any federal or state taxes which may be required by virtue of his receipt of funds or benefits pursuant to this Agreement and agrees to indemnify and hold EMPLOYER harmless against any and all liabilities including, but not limited to, taxes due, penalties assessed for unpaid taxes or any costs or fees incurred by EMPLOYER should the taxability of any part of the payments or benefits be challenged by any taxing authority.
 - d. The amounts in paragraphs (a) and (b), above, are the total consideration to be paid by EMPLOYER to EMPLOYEE under this Agreement.
3. **Release and Covenant Not to Sue.** EMPLOYEE agrees that he will not initiate or cause to be initiated against EMPLOYER, the Regional Transportation Authority of Pima County or

any of their current, past, or future agents, attorneys, insurers, Council Members, Board Members, elected officials, employees, subsidiaries, affiliated entities, or any person or entity acting by, through, under, or in concert with them, in both their personal and official capacities, (collectively referred to as "Released Parties") any lawsuit, action, grievance proceeding or appeal (collectively referred to as "claims"), or participate in same, individually or as a representative or a member of a class, including but not limited to, claims pertaining to or in any way related to employment or termination of his employment with EMPLOYER. EMPLOYEE agrees that pursuant to this Agreement, he releases, and forever discharges EMPLOYER and the other Released Parties from any and all claims, demands, damages, causes of action, and any liability whatsoever, including, but not limited to, claims on account of or in any manner arising out of EMPLOYEE'S employment or termination of employment with EMPLOYER. By way of example only, and without limiting this release, EMPLOYEE releases EMPLOYER and the other Released Parties from any cause of action, right, claim or liability under Title VII of the 1964 Civil Rights Act, as amended, the Family and Medical Leave Act, the United States Constitution or Arizona Employment Protection Act, the Americans with Disabilities Act, and any other equal employment opportunity law or statute, any due process or other constitutional theory, any Arizona statute, any federal statute, any common law claim including wrongful discharge, rights under the Contract, any other implied or expressed contract, the covenant of good faith and fair dealing, or any other claim in tort or contract arising under any theory of the law.

EMPLOYEE understands and acknowledges that this release forever bars him from suing or otherwise asserting a claim against EMPLOYER or the other Released Parties on the basis of any event occurring on or before the effective date of this Agreement, whether the facts are now known or unknown, and whether the legal theory upon which such claim might be based is now known or unknown.

4. **Provision for Unknown Claims.** EMPLOYEE warrants that he does not have any claim, charge, or complaint, either formal or informal, pending against EMPLOYER or any of the other Released Parties with any court, tribunal, administrative agency, governmental agency, or other such body. EMPLOYEE further waives any right to monetary recovery should any administrative or governmental agency pursue any claim on his behalf.
5. **Bar.** EMPLOYEE agrees that this Agreement may be pleaded as a complete bar to any action or suit with respect to any claim under federal, state or other law including, but not limited to, any claim relating to his employment or separation of employment from EMPLOYER.
6. **Indemnification.** EMPLOYEE agrees to indemnify and hold harmless EMPLOYER and the other Released Parties from and against any and all claims, liabilities, losses, costs, damages or expenses, including, without limitation, attorneys' fees, arising out of a breach of this Agreement or the fact that any representation made herein was false when made.
7. **Denial of Liability.** No provision of this Agreement shall be construed as an admission by EMPLOYEE or EMPLOYER of improper conduct, omission or liability.

8. **Notice of Time for Reflection.** EMPLOYEE acknowledges that the Agreement constitutes written notice from EMPLOYER that **he should consult with an attorney** before signing this Agreement, and he acknowledges that he has fully discussed all aspects of this Agreement with an attorney to the extent he desires to do so. EMPLOYEE agrees that, as part of this Agreement, he has been provided with consideration in addition to anything of value to which EMPLOYEE is already entitled. EMPLOYEE has also been provided with a reasonable opportunity to review and consider this Agreement.
9. **Notice of Time for Reflection.** EMPLOYEE is advised as follows pursuant to the Older Workers' Benefit Protection Act because he is over 40 years of age, and in this Agreement waives claims for age discrimination:
- a. This Agreement constitutes written notice from EMPLOYER that EMPLOYEE should consult with an attorney before signing this Agreement and he acknowledges that he has fully discussed all aspects of this Agreement with his attorney to the extent he desires to do so.
 - b. EMPLOYEE has carefully read and fully understands all of the provisions of this Agreement and he is voluntarily entering into this Agreement.
 - c. As part of this Agreement, EMPLOYEE has been provided with consideration in addition to anything of value to which he is already entitled.
 - d. Because he is over 40 years of age, prior to waiving claims for age discrimination that EMPLOYEE may have under the Age Discrimination in Employment Act, he may take up to forty-five (45) calendar days to consider this Agreement before signing it.
 - e. In the event EMPLOYEE chooses to sign this Agreement prior to the expiration of 45 calendar days, EMPLOYEE acknowledges that he voluntarily and knowingly agrees to waive his entitlement to take 45 days to consider this Agreement for the purpose of expediting the payment outlined in Section 2 above.
 - f. EMPLOYEE may revoke this Agreement within seven (7) calendar days after signing this Agreement. If EMPLOYEE wishes to revoke this Agreement, he or his counsel will notify EMPLOYER, in writing, addressed to: Thomas Benavidez, 7440 N. Oracle Rd., Bldg. 7, Tucson, Arizona 85704, delivered on or before the expiration of the revocation period.
 - g. If EMPLOYEE does not revoke this Agreement before the expiration of the 7-day revocation period, the Agreement will become irrevocably effective and enforceable on the eighth (8th) calendar day after EMPLOYEE signs it.
 - h. EMPLOYEE is aware he is not waiving any rights or claims that may arise after the date this Agreement is executed.

EMPLOYEE understands that he is waiving all rights and claims he has or may have under the Age Discrimination in Employment Act, 29 U.S.C. Section 626, *et seq.*, and any other federal, state, or municipal law or regulation relating to age discrimination.

10. **Return of Property.** EMPLOYEE shall return all property of EMPLOYER in his possession, including, but not limited to, any keys for EMPLOYER'S facilities as of the Separation Date.
11. **Complete Agreement.** This Agreement sets forth the entire agreement between the parties. There are no other terms or promises, oral or written, between the Parties except for those contained within this Agreement. Any other discussions, negotiations or understandings between the Parties are merged into this Agreement. This Agreement shall be binding upon the heirs, personal representatives, successors and assigns of both Parties.
12. **Choice of Law.** This Agreement shall be construed, enforced and governed by the laws of the State of Arizona.
13. **Severability.** Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement.
14. **Effective Date.** This Agreement is effective upon expiration of the 7-day revocation period outlined in Section 9 above.

*****WARNING – DO NOT SIGN THIS AGREEMENT UNLESS YOU UNDERSTAND IT!
THIS AGREEMENT INCLUDES A WAIVER OF YOUR RIGHTS!*****

PIMA ASSOCIATION OF GOVERNMENTS

EMPLOYEE

By: _____
Regional Council Chair, Jennifer Eckstrom

By: _____
Mr. Gary Hayes

Date: _____

Date: _____

APPROVED AS TO FORM:

Thomas Benavidez, Employer's Attorney