



## **Model Employment Agreement for In-house Counsel**

IMLA focuses on achieving excellence in local governance by advocating on behalf of local governments in the courts and by advancing the professionalism of local government lawyers. IMLA, the International Municipal Lawyers Association, provides member support; publications, data, and information; amicus assistance; and training and professional development to its members from local governments represented by outside counsel to local governments represented by from just one to over 700 attorneys. Elected leaders and appointed officials in thousands of communities ranging from small villages to the largest cities in the United States and Canada rely on IMLA trained attorneys for legal services and advice. IMLA members are cities, counties, special districts and other local governments who are served through their chief legal officers.

IMLA gratefully acknowledges the work of its Committee whose members worked diligently to put this model contract together. We thank:

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## Using this Agreement.

- A. This Agreement is intended to provide a guide for a local government employer and a prospective city attorney to negotiate an employment agreement. It is not intended to be legal advice. It is modelled after a model agreement that ICMA suggests for its members and local governments to use.
- B. Because this Agreement is a legal document and creates certain rights and responsibilities, both Employer and Employee are cautioned to seek independent counsel when negotiating its terms and to refer to state law to ensure the Agreement does not conflict with state law. Employer and Employee are also cautioned that this Agreement may have tax consequences for each and that their review of its terms should include a review of its tax consequences. Implementation of this Agreement may implicate issues of federal law that should also be considered.
- C. IMLA recommends that both Employer and Employee use the City Manager's Agreement as a starting point for negotiations as the position of City Manager most closely parallels that of City Attorney; however in some cities the contract for its most senior executive staff should be used as comparators for the terms to be included in this Contract and benefits and compensation provided the City Manager [or to those most senior executives] ought to align subject, of course, to differences in the prevailing salaries in the area and the work history of each. In some cases, the City Attorney may be expected to have a better compensation package than the City Manager or other senior executives and in other cases not. While compensation packages are individually tailored and negotiated, the Employer is cautioned in both cases to conduct due diligence in determining what compensation is appropriate.
- D. In some sections IMLA has offered suggested options from which the Employer and Employee may choose. This does not mean that other options are not available or that there are not other options to consider in those paragraphs where IMLA has not suggested an option.
- E. As in the ICMA model agreement where ICMA includes language that requires payment of membership dues on behalf of the Employee, IMLA includes language that requires the Employer to join IMLA. With ICMA the Employee is a member, with IMLA the municipality is a member and it is served through its law office with one single membership. Both organizations believe that professionals must maintain their understanding of their profession through conferences and educational programs and that the Employer should support those efforts. IMLA benefits to the municipality and its employees can be reviewed at [www.imla.org](http://www.imla.org). IMLA membership supports its legal advocacy program in the courts.
- F. When hiring a full time city attorney, the Employer should consider that unlike a City Manager or other senior executives, an attorney is required to hold a state issued license to perform the duties of the profession and is required by ethical rules to maintain independence of legal judgment in the performance of services. Accordingly, an attorney cannot switch jobs as easily, may be limited by professional ethics and state laws from some future representations based on service to the city

and may need more severance protections than a City Manager or other senior executives. Attorneys can be foreclosed by ethical limitations from resuming their private practices, from starting a private practice or in handling the work of some clients based on their city duties; these limitations may require a more lucrative compensation package than provided the City Manager or other senior executives or other employees who will not have the same limitations applied to their future earning power.

- G. This Agreement creates an attorney client relationship and should be governed by the Lawyers Rules of Professional Conduct or such other ethical guidelines as have been adopted in the state. In a case involving the attorney for the City of Miami, a Florida court concluded that the city attorney had a duty to advise the governing board to seek independent advice while renegotiating his contract. That court also found that the resulting agreement was ambiguous and not clearly explained to the governing body. IMLA recommends that the governing body seek legal counsel to conduct an independent review of an Agreement to hire its attorney just as it should in negotiating and adopting contracts with its other officials.
- H. IMLA provides consulting services to cities and may be able to help a city when it is considering hiring a city attorney to determine appropriate compensation. IMLA does not provide legal consultation and use of its consulting service is not a substitute for getting independent legal counsel.

## IMLA Model City Attorney Agreement

This Agreement, made and entered into this [date], by and between the [local government] of [state], [town/city/county] a municipal corporation, (hereinafter called "Employer") and [name], (hereinafter called "Employee"), both of whom understand and agree as follows:

### Section 1: Licensure

#### **Option 1** [Employee licensed in state.]

Employee warrants and agrees that Employee is licensed to practice law in this state without limitation. Employee must maintain Employee's license to practice law in good standing throughout the term of this Agreement as a condition of employment. Should the Employee no longer be authorized to practice law in this state, this contract will terminate immediately for good cause.

#### **Option 2** [Employee not currently licensed in state.]

Employee warrants that Employee is licensed in good standing to practice law in the State(s) of \_\_\_\_\_, but acknowledges that Employee is not yet licensed to practice law in this state. Employee agrees to become licensed to practice law in this state within \_\_\_\_ months of the signing of this Agreement and upon failure to do so, this Agreement will terminate immediately for good cause.

*Comment: Some cities engage in nationwide searches to seek the best qualified candidates for a position and that may include the position of city attorney. In some states a person licensed to practice law in one state may act as in-house counsel to a corporation without being licensed in the state and there may be other exceptions to licensing that can apply. A city that employs an attorney who is not licensed in the state should be very careful in doing so by getting legal counsel to advise it as to the extent to which the person can and cannot engage in the practice of law and limit this Agreement accordingly. Significant adverse consequences can result to the detriment of the city if it is not careful in hiring an attorney who is not licensed. There may also be charter limitations that limit the city's authority to hire a person who is not licensed in the state.*

## Section 2: Term

**Option 1** [This paragraph should be used when the employment of the attorney is for an indeterminate term.]

A. This Agreement shall remain in full force and effect from [date] until terminated by the Employer or Employee as provided in this Agreement.

**Option 2** [This paragraph should be used when the employment of the attorney is for an identified term and is automatically renewed unless terminated.]

The term of this agreement shall be for an initial period of [#] years from [date] to [date]. This Agreement shall automatically be renewed on its anniversary date for a [#] year term unless the Employer provides notice in writing to the Employee that the Agreement shall not be renewed at least [#] months (at least 6 months recommended) before the expiration date. In the event the agreement is not renewed, all compensation, benefits and requirements of the agreement shall remain in effect until the expiration of the term of the Agreement unless Employee voluntarily resigns.

*Comment to Section 2: The Model Rules of Professional Conduct a lawyer must withdraw from representing a client when discharged. See: Rule 1.16. The provisions of this Agreement are not intended to affect the lawyer's duty under Rule 1.16 but they provide how compensation is to be handled upon the termination of the representation and the effect of differing forms of discharge. The Rules of Professional Conduct inform the interpretation of this Agreement. The term of the Agreement may also be influenced by state law where restrictions may limit agreements that are perceived as binding future legislative bodies or that might violate the appointment process required under the local charter or state law.*

## Section 3: Duties

A. Employer employs the Employee as [title] to perform the duties specified in [legal reference] of the [local government] charter and/or by ordinance/resolution (#) dated [legal reference] of the [local government] code and the job description, and to perform other legally permissible and proper duties and functions of the position.

B. It shall be the duty of the Employee to employ on behalf of the Employer all other employees of the (name of Office: such as “Law Department”; “Office of City Attorney”; “Office of Corporation Counsel”; “Office of City Solicitor”) consistent with the policies of the governing body and the ordinances and charter of the Employer.

C. It shall also be the duty of the Employee to direct, assign, reassign evaluate, and terminate, as appropriate, employees of the (name of Office: such as “Law Department”; “Office of City Attorney”; “Office of Corporation Counsel”; “Office of City Solicitor”) consistent with policies, ordinances, charter, state and federal law.

D. All duties assigned to the Employee by the governing body shall be appropriate to and consistent with the professional role and responsibility of the Employee.

*Comment to Section 3: The language in Section 3 assumes that the chief legal officer appoints the staff of the law office. IMLA recommends this employment process and recommends against having other officials making the hiring and firing decisions for the law office. In those cases where the local government chooses to follow a different course the language in the Section should be modified to describe the employment process for that local government.*

## **Section 4: Compensation**

A. Base Salary: Employer agrees to pay Employee an annual base salary of [\$ amount], payable in installments at the same time that the other (fill-in proper term, e.g. City Manager, management, executive) employees of the Employer are paid.

B. This agreement shall be automatically amended to reflect any salary adjustments that are provided or required by the Employer's compensation policies to include all salary adjustments on the same basis as applied to [ insert: the City Manager; or other Council appointees; or senior executives as appropriate].

**Option 1.** In lieu of “City Manager” where appropriate the Agreement could say “(fill-in term, e.g. management, executive) classification of employees.” In order to conform compensations adjustments to the manner in which the city adjusts other managerial employees.

C. In addition, consideration shall be given on an annual basis to an increase in compensation.

**Option 1** [if Employer does not provide for automatic annual salary adjustment as provided in Section 4C above, OR if Employer provides for automatic salary adjustment as other employees and provides additional compensation through a performance evaluation program, add or insert, as applicable, Option 1]

C. The Employer agrees to increase the compensation of the Employee dependent upon the results of the performance evaluation conducted under the provisions of Section 23 of this Agreement. Increased compensation can be in the form of a salary increase and/or performance incentive and/or an increase in benefits.

*Comment to Option 1. Section 23 is itself an option and must be included in the Agreement if this Option is used.*

### **Option 2**

C. The Employer agrees to increase the compensation of the Employee dependent upon the results of the performance evaluation conducted under the provisions of Section 23 of this Agreement in addition to providing a fixed annual increase in the Employee's salary based on [an agreed upon economic indicator, such as] the Consumer Price Index.

*Comment to Option 2. Section 23 is itself an option and must be included in the Agreement if this Option is used.*

### **Option 3**

C. The Employer agrees to increase the compensation by [%] each year.

### **Option 4**

C. The Employer agrees to increase the compensation each year by at least the average across the board increase granted to other employees of the Employer.

*Comment: Because, in the Council Manager form of government, the City Attorney occupies a position distinct from almost all others in the government the City Attorney should be compensated in a similar manner to the City Manager; i.e., raises, salary adjustments, benefits and other compensation unique to the City Manager or those direct reports and discussed in the ICMA suggested*

*contract for a city manager ought to find its parallel in the City Attorney contract. In other forms of government, such as the strong mayor form, or where the City Attorney is hired by and reports to the City Manager, the City Attorney should be treated as other senior management employees and the options available in this Agreement provide language that can carry forward that intent.*

## **Section 5: Health, Disability and Life Insurance Benefits**

- A. The Employer agrees to provide (or “and pay the premium for, or pay \_\_\_\_\_% of the premium for”) health, hospitalization, surgical, vision, dental and comprehensive medical insurance for the Employee and his/her dependents, at a minimum, equal to that which is provided to the City Manager (or “all (fill-in proper term, e.g., management, executive) classification of employees of the [local government]”). In the event no such plan exists, Employer agrees to provide coverage for the Employee, as follows: (fill-in agreed benefits)

*Comment: Employer and Employee should negotiate the extent to which the Employer contributes to the Employee’s insurance if at all. Where a domestic partner can be covered by insurance, the Employer and Employee should be careful to be certain that the coverage exists and is included. If a state allows same-sex marriage, the issue of domestic partner coverage may no longer be a subject for negotiation.*

- B. The Employer agrees to provide for short term and long term disability coverage for the Employee as it provides to the City Manager {or “all (fill-in proper term, e.g. management, executive) classification of employees of the [local government]”}.
- C. The Employee may elect to submit once per calendar year to a complete physical examination, including a cardio-vascular examination, by a qualified physician selected by the Employee, the cost of which shall be paid by the Employer.
- D. The Employer shall provide term life insurance to the Employee on the same basis as it provides to the City Manager {or “to all (fill-in proper term, e.g. management, executive) classification of employees of the [local government]”}. The Employee can name the beneficiary of the life insurance policy.

**Option 1**

- A. The Employer agrees to provide for full health, hospitalization, surgical, vision, dental and comprehensive medical insurance for the Employee and his/her dependents and Employer shall pay all premiums for the Employee and the Employee's dependents. In the event no such plan exists, Employer agrees to provide full coverage for the Employee and dependents in a manner mutually agreed upon by Employer and Employee.
- B. The Employer agrees to put into force and to make required premium payments for short term and long term disability coverage for the Employee.
- C. The Employee may elect to submit once per calendar year to a complete physical examination, including a cardio-vascular examination, by a qualified physician selected by the Employee, the cost of which shall be paid by the Employer.
- D. The Employer shall pay the amount of premium due for term life insurance in the face amount of (*fill in the appropriate number*)\_\_\_\_\_ times the Employee's annual base salary, including all increases in the base salary during the life of this agreement. If such coverage is not available through the Employer's insurance carrier or the Employee elects to obtain coverage through a different insurance carrier, the Employer shall reimburse the Employee for the cost of the premiums in an amount equal to the same value as that provided by the Employer's insurance carrier. The Employee shall own the life insurance policy and the life insurance policy shall be in the name of the Employee and the Employee shall have the right to name the beneficiary of the life insurance policy.

*Option 1 A: The Employer agrees to provide for full health, hospitalization surgical, vision, dental and comprehensive medical insurance for the Employee. The Employer will permit the Employee to purchase similar coverage for his or her dependents as Employer makes available to the City Manager (or the most senior executives) at the option and expense of the Employee."*

**Option 2**

- E. The Employer shall provide business travel insurance for the Employee while the Employee is traveling on the Employer's business, and the Employee shall name the beneficiary thereof. Should the Employee die while on travel for the Employer, the Employer shall cover the full cost of retrieving and

transporting the Employee's remains back to the custody of the Employee's family.

*Comment to Section 5: Local government employers often provide a wide variety of health care benefits, long term care insurance, life insurance and disability benefits. Where the Employer chooses to provide these benefits the attorney should receive them. Where the Employer offers enhanced benefits to the City Manager or any other senior executive, those benefits should be offered to the attorney and incorporated into a total compensation package. The Employer should carefully consider what benefits to offer any of its senior executives in consideration of the total compensation package.*

## **Section 6: Vacation, Sick, and Military Leave**

- A. Upon commencing employment, Employee shall accrue sick leave and vacation leave on an annual basis, at a minimum, as provided or made available to the City Manager {or “(fill in proper term, e.g. management, executive) classification of employees, under the same rules and provisions applicable to other employees of the [local government]”}. The Employee shall be entitled to military reserve leave time pursuant to state law and [local government] policy.

*Comment: Federal law provides certain benefits to members of the military and the Employer should ensure that its policies conform to those requirements for all of its employees.*

### **Option 1**

Beginning the first day of employment, Employee shall be credited with [#] accrued sick leave hours and [#] accrued vacation leave hours. Additionally, Employee shall accrue sick leave and vacation leave on an annual basis equivalent to an employee of the [local government] with (insert #) years of service.

- B. Upon commencing employment, the Employee shall have access to a bank of 180 sick days to be used in the case of serious medical conditions. This leave can only be used to provide coverage during the waiting period between the onset of illness or disability and the point at which short or long term disability coverage takes effect and may be renewed after each occurrence.

C. The Employee is entitled to accrue all unused leave, without limit, and in the event the Employee's employment is terminated, either voluntarily or involuntarily, the Employee shall be compensated for all accrued vacation leave, all paid holidays, and other executive leave.

D. The Employee shall be entitled to military reserve leave time pursuant to state law and [local government] policy.

## **Section 7: Automobile**

### ***Option 1*** - Monthly Vehicle Allowance

The Employer agrees to pay to the Employee, during the term of this Agreement and in addition to other salary and benefits herein provided, the sum of [dollar amount] per year, payable monthly, as a vehicle allowance to be used to purchase, lease, or own, operate and maintain a vehicle. The monthly allowance shall be increased annually by [% or \$] amount. The Employee shall be responsible for paying for liability, property damage, and comprehensive insurance coverage upon such vehicle and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of said vehicle. The Employer shall reimburse the Employee at the [fill-in appropriate mileage rate, e.g. IRS, state or local government] standard mileage rate for any business use of the vehicle beyond the greater [local government] area. For purposes of this Section, use of the car within the greater [local government] area is defined as travel to locations within a (*fill in number*) mile (recommended fifty (50) mile) radius of the local government limits.)

### ***Option 2*** – Employer Provided Vehicle

The Employer shall be responsible for providing Employee with a late model automobile for use in performing the duties of the position and for commuting and de minimus personal use. Employer is responsible for paying for liability, property damage, and comprehensive insurance, and for the purchase (or lease), operation, maintenance, repair, and regular replacement of the automobile.

### ***Option 3*** – Reimbursement for Use of Private Vehicle

Employee is expected to use the Employee's own vehicle in the performance of the Employee's duties. When the Employee is required to use the Employee's own vehicle, the Employer will reimburse the Employee according to the IRS standard mileage rates for the current tax year; or the Employee may rent a

vehicle and the Employer will reimburse the Employee for the reasonable costs of that rental.

*Comment to Section 7: The Employer and Employee should determine the extent to which the job will require use of an automobile. If the position requires infrequent use of an automobile, the Employer may determine not to include either option in this Agreement, but would be expected to pay a per mile fee to the attorney for use of the attorney's vehicle or to reimburse the attorney for a rental vehicle.*

## **Section 8: Retirement**

The Employer agrees to enroll the Employee into the (fill-in\_applicable state or local) retirement system [plan] and to make all the appropriate contributions on the Employee's behalf as it provides to the City Manager {or "as provided (fill in proper term, e.g. management or executive) classification of employees of the [local government]"}.

### **Option 1**

In addition to the Employer's payment to the (fill-in applicable\_state or local) retirement system (as applicable) referenced above, Employer agrees to execute and keep in force all necessary agreements provided by [fill-in as applicable, e.g. ICMA Retirement Corporation [ICMA-RC]] or any Section 457 deferred compensation plan for Employee's [continued] participation in said supplementary retirement plan. Employee will decide the percentage of base salary that is to be contributed/deferred to such plan and the Employer will implement Employee's decision to the extent allowed by law, among other things, deducting appropriate equal proportionate amounts each pay period.

### **Option 2**

In addition to the base salary paid by the Employer to Employee, Employer agrees to pay an amount equal to [percentage of Employee's base salary, fixed dollar amount of [ \$ ] , or maximum dollar amount permissible under Federal and state law into the designated plan on the Employee's behalf, in equal proportionate amount each pay period. The Employer and Employee shall fully disclose to each other the financial impact of any amendment to the terms of Employee's retirement benefit.

In lieu of making a contribution to a Section 457 deferred compensation plan, the dollar value of this contribution may be used, at the Employee's option, to purchase previous service from another qualified plan.

***Option 3***

Recognizing that effective service with the community is based in part on the stability provided through a long-term relationship, the Employer shall provide a retirement annuity, as directed by the Employee, at a rate of [dollar amount], payable at the completion of each quarter of the fiscal year. This annuity serves as a retirement contribution and does not require further action of the Employer.

***Option 4***

The Employer shall adopt a qualified 401(a) defined contribution plan offered through [fill-in as applicable, e.g., ICMA Retirement Corporation] for the Employee in the form of a money purchase plan to which the Employer shall contribute [%] of compensation annually. The 401(a) plan shall be established as an employer paid plan with non-discretionary contributions by the Employer and the Employee shall have no right to receive such contributions in cash. The 401(a) plan shall be established under a written plan document that meets the requirements of the IRS Code and such document is hereby incorporated herein by reference. The funds for the 401(a) plan shall be invested in such investment vehicles as are allowable under the IRS Code and the Employee shall make the sole determination as to how the funds are invested.

***Option 4A:*** The Employee shall be required to contribute [ % ] of base salary or [dollar amount] annually on a pre-tax basis as a condition of participation.

***Option 5***

The Employer shall adopt a qualified 401(a) profit-sharing plan offered through [fill-in as applicable, e.g. ICMA Retirement Corporation] for the Employee in the form of a money purchase plan to which the Employer shall contribute [% ] of all performance bonuses annually.

**Option 5 A:** The Employee shall be required to contribute [ % ] of base salary or [dollar amount] annually on a pre-tax basis as a condition of participation.

## **Section 9. General Business Expenses**

A. Employer agrees to budget and pay for licensing fees or charges that are required of lawyers to practice law in the State of [insert name of State] and professional dues, including but not limited to joining the International Municipal Lawyers Association, and subscriptions of the Employee necessary for continuation and full participation in national, regional, state, and local associations, and organizations necessary and desirable for the Employee's continued professional participation, growth, and advancement, and for the good of the Employer. These include:(*fill in the associations*)\_\_\_\_\_

*Comment: to avoid misunderstandings, the parties should agree on and list the various associations that are included in addition to IMLA.*

*Generally, these should include membership in the local bar association, the state bar association and the sections of each; the state and local municipal lawyers associations and national bar associations and its sections.*

### **Option 1 to Section 9(A)**

Employer agrees to budget and pay for professional dues and subscriptions of the Employee reasonably required by law or necessary for full participation in relevant national, regional, state and local associations and professional organizations. The Employer further agrees to pay for reasonable expenses associated with participation at the functions of such organizations.

B. Employer agrees to budget and pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions to adequately continue the professional development of Employee and to pursue necessary official functions for Employer, including but not limited to the IMLA Annual Conference, IMLA Chief Legal Officers Forum or IMLA Top50, the state league of municipalities (or municipal attorneys' association meetings if held at times different from the state league meetings), and such other national, regional, state, and local governmental groups and committees in which Employee serves as a member.

C. Employer also agrees to budget and pay for IMLA distance learning programs and travel and subsistence expenses of Employee for short courses, institutes, and seminars that are necessary for the Employee's professional development and maintenance of the Employee's required CLE obligations and for the good of the Employer.

*Comment: Most states require that an attorney obtain a certain number of Continuing Legal Education (CLE) credits either from in person programs or through distance learning. The Employer should pay for the Employee to get these credits and attend these programs. The required number of CLE credits should not be seen as a limit on the Employer's obligation to pay for the Employee's attendance at programs intended to enhance the Employee's ability to serve the Employer.*

D. Employer recognizes that certain expenses of a non-personal but job related nature will be incurred by Employee, and agrees to reimburse or to pay for those general expenses. These expenses may include meals where Employer business is being discussed or conducted and participation in social events of various organizations when representing the Employer. These expenditures are subject to annual budget constraints as well as state and Employer ethics and purchasing policies. The finance director is authorized to disburse moneys to pay these expenses upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits.

E. The Employer acknowledges the value of having Employee participate and be directly involved in local civic clubs or organizations. Accordingly, to the extent Employer does so for the City Manager or other Council appointees or senior managers, Employer shall pay for the reasonable membership fees and/or dues to enable the Employee to become an active member in local civic clubs or organizations.

F. Recognizing the importance of constant communication and maximum productivity, Employer shall provide Employee, for business and personal use, a laptop computer (or tablet at Employee's discretion), software, internet connection at Employee's permanent residence, mobile phone, required for the Employee to perform Employee's duties and to maintain communication with Employer's staff and officials as well as other individuals who are doing business with Employer. The equipment shall be fully depreciated at a rate of 4 years and upon termination of Employee's employment, the equipment described herein shall become the property of the Employee upon payment of any amount not depreciated and at the discretion of the Employee any mobile phone number shall be transferred to the Employee.

### **Option 1 to Section 9(F)**

Equipment. The Employer shall provide the Employee with all equipment customary and necessary for performance of his or her employment, including computer, internet service, and mobile telephone, at the sole cost and expense of the City. Except for *de minimis* use, Employee may use the equipment only as provided by Employer's applicable policies.

### **Option 2 to Section 9(F)**

The Employee shall reimburse Employer for any charges incurred as a result of any non-work use of such equipment.

## **Section 10. Involuntary Termination**

A. For the purpose of this agreement, involuntary termination shall occur when:

1. The majority of the governing body votes to terminate the Employee in accordance with (cite applicable local law) at a properly posted and duly authorized meeting of the governing body.
2. If the Employer, citizens or legislature acts to amend any provisions of the [charter, code, enabling legislation] pertaining to the role, powers, duties, authority, responsibilities of the Employee's position that substantially changes the form of government or the duties of the Employee, the Employee shall have the right to declare that such amendments constitute termination.
3. If the Employer reduces the base salary, compensation or any other financial benefit of the Employee, unless it is applied in no greater percentage than the average reduction of all department heads, such action shall constitute a breach of this agreement and will be regarded as a termination.

*Comment: In some states constitutional provisions or state law limit the reduction of a public officer's compensation.*

4. If the Employee resigns at the request of the Employer, whether formal or informal, then the Employee may declare a termination as of the date of the request.
5. In those situations where a breach of contract can be cured, breach of contract declared by either party with a 30 day cure period for either Employee or

Employer. Written notice of a breach of contract shall be provided in accordance with the provisions of Section 21.

B. The Employer may terminate the Employee with or without good cause, at any time.

**Option 1** [If Employer and Employee agree to define good cause. State law under its case law may define "good cause" and Employer and Employee may agree not to define it further or to include some or all of the causes identified below.]

C. For purposes of this Agreement the term "good cause" is defined as follows:

1. Failure to fulfill the Employee's Duties as required in this Agreement;
2. Incompetence in the performance of the Employee's duties as documented by evaluations, supplemental memoranda, or other written communication from the Employer; provided, however, the terms and conditions of this paragraph shall not justify good cause unless the Employer has provided the Employer a reasonable opportunity to remediate any incompetency;
3. Insubordination or failure to comply with lawful written Employer directives, unless compliance with such directive would violate the law or ethical rules applicable to the Attorney;
4. Neglect of duties;
5. Drunkenness or excessive use of alcoholic beverages;
6. Illegal use of drugs, hallucinogens, or other substances regulated by state law;
7. Conviction of a felony involving moral turpitude;
8. Disability, not otherwise protected by law, that impairs performance of the required duties of the Employer;
9. Knowingly falsifying records or documents related to the Employer's activities; or

10. Knowing misrepresentation of material facts to the Employer or other City officials in the conduct of the Employer's business;

11. Any willful, knowing, grossly negligent, or negligent misapplication or misuse, direct or indirect, by Employee of public or other funds or other property, real, personal, or mixed, owned by or entrusted to the Employer, any agency or corporation thereof, or the Employee in the Employee's official capacity; or

12. Loss of license to practice law.

D. In the event that the Employee is terminated, as defined in Section 10 of this agreement, the Employee shall be entitled to all compensation including salary, [accrued vacation and sick leave, car allowance paid in lump sum or in a continuation of salary on the existing [biweekly/monthly] basis, at the Employee's option], plus continuation of all benefits for the remainder of the term of this agreement.

E. Expiration of the term of this Agreement is neither an involuntary termination or a resignation. Upon expiration of the term, the Employee is entitled to those benefits that have vested under this Agreement, the Employer's personnel policies, state or federal law and any other benefits that are specifically stated below:

## **Section 11. Severance**

Employer must pay severance as described below to the Employee when employment is involuntarily terminated without good cause.

A. Employer shall provide a minimum severance payment equal to all amounts then due and owing to the Employee, plus twelve (12) month's salary at the then current rate of pay, less customary payroll deductions. This severance shall be paid in a lump sum or in a continuation of salary on the existing [biweekly/monthly] basis, at the Employee's option.

*Comment: State or local law may limit the amount of severance that can be paid.*

B. The Employee shall also be compensated for all vacation leave, all paid holidays (if holidays are not incorporated in the salary paid under the previous paragraph) and any leave or other payments to which [insert the City Manager; or appointees of the Council; or other senior executives, as appropriate] would be

entitled if terminated without good cause. The Employer agrees to make a contribution to the Employee's deferred compensation account on the value of this compensation calculated using the then current annual salary of Employee at the date of termination divided by two thousand and eighty (2080) hours. If the amount of the contribution under this Section exceeds the limit under the Internal Revenue Code for a contribution to the Deferred Compensation plan, the remainder shall be paid to the Employee in a lump sum as taxable compensation.

C. For a minimum period of one year following termination, the Employer shall pay the cost to continue the following benefits:

1. Health insurance for the employee and all dependents as provided in Section 5A, after which time, Employee will be provided access to health insurance pursuant to the Consolidated Omnibus Budget Reconciliation Act ("COBRA").
2. Life insurance as provided in Section 5D.
3. Out placement services should the employee desire them in an amount not to exceed [\$10,000 to \$15,000 recommended], and
4. Any other available benefits to which the Employee is entitled under this agreement or to which [insert: the City Manager; or other appointees of the Council; or other senior executives, as appropriate] would be entitled if involuntarily terminated without good cause.

***Optional provisions:***

5. Car allowance or payment of lease, or provide option to buy Employer's vehicle at depreciated value.
6. Short-term and long-term disability as provided in Section 5B.

*Comment: If the Employee receives a car allowance and if the Employee receives short and long-term disability, then these benefits should be included in severance unless negotiated out.*

D. If the Employee is terminated for good cause, then the Employer is not obligated to pay severance under this section but may be required to recognize and pay benefits that have vested and to which Employee is entitled under the Employer's personnel policies, state law or federal law.

E. The termination and severance of Employee shall be in accordance with the "Separation Agreement" agreed to by Employer and Employee. A template for such agreement is provided by IMLA, and is incorporated herein by reference.

*Comment: Provisions for severance and severance related benefits may be governed by state and/or local law. Before entering into negotiations, both parties should be knowledgeable about relevant legal provisions.*

## **Section 12. Resignation**

Nothing in this Agreement shall prevent, limit or interfere with the right of the Employee to resign at anytime. In the event the Employee desires to resign employment, the Employee shall give written notice to the Employer at least thirty (30) days prior to separation. The Employer shall have no obligation to pay Attorney any further compensation after the expiration of the notice period. Upon the effective date of resignation, the Employer shall pay to the Employee all accrued vacation leave and other leave to which Employee is entitled under this Agreement or to which the City Manager or any senior executive would be entitled if the City Manager or other senior executive resigned. Failure to give the required thirty day notice constitutes a waiver and forfeiture of pay for all accrued vacation leave and other leave.

## **Section 13. Hours of Work**

The Employee acknowledges the proper performance of the duties of the Employee will require the Employee to generally observe normal business hours and will also often require the performance of necessary services outside of normal business hours. The Employee agrees to devote such additional time as is necessary for the full and proper performance of the Employee's duties and that the compensation herein provided includes compensation for the performance of all such services. However, the Employer intends that reasonable time off be permitted the Employee, such as is customary for exempt employees so long as the time off does not interfere with the normal conduct of the office of the Employee.

The Employee will devote full time and effort to the performance of the Employee's duties, and shall remain in the exclusive employ of the Employer during the term of this Agreement; provided that, with the prior consent of the Employer, the Employee may accept temporary, outside professional employment which will not in any way interfere with the performance of, or the

Employee's availability for the performance of, the Employee's duties hereunder. The term "outside professional employment" means professional services provided to third parties for which the Employee is compensated and which are performed on the Employee's time off. The Employer encourages the Employee to accept invitations to speaking engagements, writing or other opportunities to communicate with the community, subject to the rules regarding confidentiality and attorney client privilege to make use of and share data and information with relevant persons and groups, and encourages the Employee to participate in pertinent seminars, groups, associations and organizations, as well as in informational meetings with those individuals whose particular skills, expertise, or backgrounds would serve to improve the capacity of the Employee to perform the Employee's Duties.

*Comment: Some charter and local law restrictions limit an attorney to the full time practice of law for the municipality and prohibit the attorney from accepting other clients. If this is the case, then this paragraph should be modified to except "the practice of law" from the definition of "outside professional employment."*

#### **Option 1**

Unless prohibited by law or ethical requirements, the Employee may offer *pro bono* services in conjunction with the requirements of the State Bar of [insert state here] without violating this Agreement.

### **Section 14. Ethical Commitments**

Employee shall not endorse candidates, make financial contributions, sign or circulate petitions, or participate in fundraising activities for individuals seeking or holding elected office in the governing body, nor seek or accept any personal enrichment or profit derived from confidential information, or holding office, or misuse of public time. Employer shall support Employee in keeping these commitments by refraining from any order, direction or request that would require Employee to undertake any of the aforementioned activities. Specifically, neither the governing body nor any individual member thereof shall request Employee to endorse any candidate, make any financial contribution, sign or circulate any petition, or participate in any fund-raising activity for individuals seeking or holding elected office, nor to handle any matter involving personnel on a basis other than fairness, impartiality and merit.

## **Section 15. Outside Activities**

The employment provided for by this Agreement shall be the Employee's primary employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to the Employer and the community, the Employee may elect to accept limited teaching, consulting or other business opportunities with the understanding that such arrangements must neither constitute interference with nor a conflict of interest with the Employee's responsibilities under this Agreement. Any outside consulting or business opportunities shall be subject to prior approval by the Employer.

*Comment: This Section must be read in conjunction with Section 13 and harmonized to ensure clarity. IMLA believes that a city attorney enhances the attorney's abilities by teaching and should be encouraged to teach and prepare for the classroom while off duty in a manner that does not affect the Employee's duties.*

## **Section 16: Moving and Relocation Expenses**

In connection with any relocation of the Employee and the Employee's family to the municipality, Employer shall reimburse Employee for necessary and reasonable expenses incurred in moving and relocating the Employee's family and belongings [up to \$\_\_\_\_\_]. The Employee shall document all moving and relocation expenses with receipts, cancelled checks or credit card statements, and the Employer shall reimburse the Employee for all such documented expenses within thirty (30) days of the Employer's receipt of such documentation.

### ***Option 1***

[If required by law or otherwise,] Employee agrees to establish residence within the corporate boundaries of the municipality, within [number] months of employment, and thereafter to maintain residence within the corporate boundaries of the municipality.

### ***Option 2***

Unless prohibited by law, Employee agrees to establish residence within the corporate boundaries of the municipality, within [number] months of employment, and thereafter to maintain residence within the corporate boundaries of the municipality.

### ***Option 3***

Employee is not obligated to live within the corporate boundaries of the municipality, but is encouraged to do so. Should Employee move into the corporate boundaries of the municipality within the first year of employment, Employer shall reimburse Employee as set forth above.

## **Section 17: Home Sale and Purchase Expenses**

If Employee must relocate to within the municipality in order to comply with applicable law, Employee shall be reimbursed for the reasonable costs associated with the sale of Employee's existing personal residence, such as real estate agents' fees and other closing costs that are directly associated with the sale. Said reimbursement shall not exceed the sum of [ \$ ]. In addition, Employee shall be reimbursed for the reasonable costs incidental to buying or building a primary residence within the municipality, including real estate fees, title insurance, and other incidental costs directly associated with the purchase or construction of the house, said reimbursement not to exceed the sum of [ \$ ]. Should Employee leave employment with Employer within the first year, Employee shall repay Employer the amount reimbursed under this Section.

*Comment: The Employer and Employee should discuss including this provision in the Agreement when the Employee is not required to move into the municipality, but where the Employer would like the Employee to do so.*

## **Section 18: Indemnification**

In addition to any requirement of Federal, State or Local Law, and to the extent permitted by law, Employer shall indemnify, defend, and hold Employee harmless against any and all claims (even if the allegations are without merit) or judgments for damages or injunctive relief arising from, related to, or connected with any tort, professional liability claim or demand or any other claim, whether civil, criminal, administrative, arbitrate or investigative, arising out of any alleged act or omission by Employee occurring in the performance of Employee's duties or resulting from the exercise of judgment or discretion by Employee in connection with the performance of his or her duties or responsibilities, unless the act or omission involved willful or wanton misconduct. In the event that the

provision of legal representation by Employer may reasonably present a legal conflict of interest, the Employee may request independent legal representation at Employer's expense, and Employer may not unreasonably withhold approval of such request. Legal representation provided by Employer for Employee shall extend until a final unappealable determination of the legal action. In the event independent legal representation is provided to the Employee, any settlement of any claim against Employee may not be made without prior approval of the Employer. Employee recognizes that Employer shall have the right to compromise any claim against Employee for which Employer is providing the defense.

*Comment: State or local law may address the issue of indemnification and duty to defend. Employer and Employee should consult state law to determine the extent of the duty required by law and determine if that duty can be modified before finalizing the terms of this paragraph. In some states, Employer may be prohibited from indemnifying for punitive damages. The issue of whether the Employer should be required to defend against criminal charges also should be negotiated as doing so may create adverse publicity for Employer. If the Employer does not agree to defend against criminal charges, then the Agreement ought to provide that upon a finding of not guilty or a dismissal of the charges that the Employer will reimburse the Employee for the costs of defense.*

## **Section 19: Bonding**

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

## **Section 20: Other Terms and Conditions of Employment**

The Employer, upon agreement with Employee, may fix other terms and conditions of employment, as it may determine from time to time, provided such terms and conditions are not inconsistent with or in conflict with any provisions of law.

### ***Option 1***

Employer has appropriated, set aside, and encumbered, and does hereby agree to budget and appropriate, set aside, and encumber, available and unappropriated funds of the municipality in an amount sufficient to fund and pay

all financial obligations of Employer pursuant to this Agreement, including but not limited to the Severance and other benefits set forth in this Agreement.

## **Section 21: Notices**

Notice pursuant to this Agreement may be given by personal service, by email, by nationally recognized courier, or by depositing in the custody of the United States Postal Service, postage prepaid, and addressed as follows:

- (a) EMPLOYER:           City of ()  
                                  address  
                                  city,state,zip
  
- (b) EMPLOYEE:           name  
                                  address  
                                  city, state zip

Notice shall be deemed given as of the date of personal service or email, as of the date of delivery by courier, or as the date five days after the date of deposit in the custody of the United States Postal Service.

## **Section 22: General Provisions**

A. Merger. This written Agreement contains all the terms and conditions agreed upon by the parties, and no other agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties, or to vary any of the terms contained in this Agreement.

B. Amendments. The Employer and Employee by mutual written agreement may amend this agreement. Such amendments shall be incorporated into and made a part of this agreement.

*Comment: Once the Employee has been hired, the relationship between the Employee and Employer also becomes an attorney client relationship and should be governed by the Lawyers Rules of Professional Conduct or such other ethical guidelines as have been adopted in the state. In a case involving the attorney for the City of Miami, a Florida court concluded that the city attorney had a duty to advise the governing board to seek independent advice while renegotiating his contract. That court also found that the resulting agreement was ambiguous and not clearly explained to the governing body. IMLA recommends that the governing body seek legal counsel to conduct an independent review of changes to this Agreement (and*

*its Agreement with other city officials) during the course of the employment relationship.*

C. Assignment. This Agreement may not be assigned by either party without the written consent of the other party.

C. Severability. If this Agreement contains any unlawful provision not an essential part of the Agreement and which shall not appear to have been a controlling or material inducement to the making of this Agreement, the unlawful provision shall be deemed of no effect and shall, upon agreement by the parties, be deemed stricken from the Agreement without affecting the binding force of the remainder.

### **Optional Section 23. Performance Evaluation**

A. Employer should annually review the performance of the Employee in [month] subject to a process, form, criteria, and format for the evaluation which shall be mutually agreed upon by the Employer and Employee. The annual evaluation process, at a minimum, shall include the opportunity for both parties to: (1) conduct a formulary session where the governing body and the Employee meet first to discuss goals and objectives of both the past twelve (12) month performance period as well as the upcoming twelve (12) month performance period, (2) following that formulary discussion, prepare a written evaluation of goals and objectives for the past and upcoming year, (3) next meet and discuss the written evaluation of these goals and objectives, and (4) present a written summary of the evaluation results to the Employee. The final written evaluation should be completed and delivered to the Employee within 30 days of the initial formulary evaluation meeting.

B. Unless the Employee expressly requests otherwise in writing, the evaluation of the Employee shall at all times be conducted in executive session of the governing body (if authorized by law) and shall be considered confidential to the extent permitted by law. Nothing herein shall prohibit the Employer or Employee from sharing the content of the Employee's evaluation with their respective legal counsel.

C. In the event the Employer determines that the evaluation instrument, format and/or procedure are to be modified by the Employer, such modifications shall be adopted by the Employer at least 9 months before being used to evaluate the Employee's performance.

D. Annually, the Employer and the Employee shall define such goals and performance objectives which they determine necessary for the proper operation of the Employer's organization in the attainment of the Employer's policy objectives, and the Employer and the Employee shall further establish a relative priority among those various goals and objectives to be reduced to writing. The annual performance reviews and evaluations shall be reasonably related to the Employee's written job description and shall be based, in whole or in part, on goals for the Employee's performance that are jointly developed and adopted by the Employer and the Employee.

***Comment: IMLA encourages the Employer to conduct regular and timely employment evaluations. If the state's Open Meeting Laws allow, these evaluations should be conducted in private and if the Open Meetings Laws do not allow the full board to conduct the evaluations in private, then the Employer is encouraged to have individual meetings with the Employee that would not violate the law but would allow for full and frank discussion of the Employee's performance.***

[insert Name of Employer]

By: \_\_\_\_\_

[insert name of Governing Body Representative]

Executed this the (number) day of (month), (year).

Employee

Signature: \_\_\_\_\_

Executed this the (number) day of (month),(year).

# Attachment 1

## SEPARATION OF EMPLOYMENT AND GENERAL RELEASE

This Separation of Employment and General Release Agreement (“Agreement”) is made by and between the [insert local government] (“Employer”) and \_\_\_\_\_ (“Employee”).

WHEREAS, Employer has employed Employee as its [insert title of position such as city attorney] \_\_\_\_\_; however, the parties wish to enter into a voluntary agreement to terminate their employment relationship and to resolve any actual or potential claims that either party may have against the other by reason of Employee’s employment or termination thereof; and

WHEREAS, The parties desire to set forth the terms and conditions governing Employee’s separation of employment and to provide for the settlement and release of any and all disputes or controversies that have arisen, or which may hereafter arise, between Employer and Employee, including without limitation, any and all claims arising out of or in any way related to Employee’s employment with or separation from the Employer.

*Comment: This Agreement is a legal document that should be reviewed and prepared by an attorney and both the Employer and Employee should review the terms of this Agreement with an attorney who can counsel them. This draft is a mutual release that releases all claims and rights except as specifically stated in this Agreement. It may not be appropriate for all separations of employment and should not be used in every case.*

NOW THEREFORE, in consideration of the mutual covenants herein contained and the mutual benefits to be derived therefrom, the sufficiency of which consideration is hereby acknowledged by the undersigned, Employer and Employee agree and state:

### 1. TERMINATION OF EMPLOYMENT.

Upon their mutual agreement, Employee’s employment \_\_\_\_\_ shall terminate on \_\_\_\_\_, 20\_\_, which shall be Employee’s final date of employment.

### 2. NO ADMISSION OF LIABILITY.

This Agreement is not an admission by Employee or Employer of any wrongful conduct whatsoever. Both parties deny and disclaim any liability to or wrongful conduct against the other or any third party.

### 3. PAYMENT AND BENEFITS.

In consideration for Employee's execution of this Agreement and Employee's release of all claims as set forth below and in full and complete satisfaction of all obligations due and owing Employee, the Employer shall within twenty-eight (28) days of the Effective Date of this Agreement:

- A. Issue a payment of \_\_\_\_\_;
- B. Employer shall issue to Employee, Employee's regular paycheck for the pay period ending \_\_\_\_\_, 20\_\_ on or before \_\_\_\_\_, 20\_\_;
- C. Employer shall pay Employee on or before \_\_\_\_\_, 20\_\_ an additional payment to compensate for accumulated leaves (vacation and floating holidays) and [comp time], subject to customary payroll deductions; and
- D. Employer shall make all payments as required by Sections 10, 11 and 12 of the Employee's Employment Agreement (as appropriate) on or before \_\_\_\_\_, 20\_\_.

*Comment: Under the Older Workers Benefit Protection Act an agreement to release and settle rights under that Act requires consideration in addition to that to which the Employee is otherwise entitled. In paragraph 3.A. this Agreement provides for consideration that may be in addition to what the Employee might otherwise be entitled; and if the settlement and release does not involve a person protected by the OWBPA, the Employer may want to eliminate the additional consideration.*

### 4. SURRENDER AND VACATION OF EMPLOYER'S PROPERTY.

Upon execution of this Agreement, Employee shall deliver all Employer's property in his/her possession and further, shall vacate Employer's property. Provided, however, the Employee may retain any property to which the Employee is entitled under section 9.F of the Employee's Employment agreement upon the payment required by section 9F.

### 5. RELEASE AND WAIVER OF CLAIMS.

A. In consideration of the benefits to be provided to Employee pursuant to this Agreement, Employee—including Employee's heirs and assigns—hereby irrevocably and unconditionally releases, acquits and discharges Employer and each of its past, present and future elected officials, department heads, officers, employees, agents, representatives and attorneys from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorneys' fees and costs actually incurred), of any nature whatsoever, whether known or unknown, arising

out of any act, omission, or event from the beginning of time up to the execution of this Agreement. Employee specifically acknowledges and agrees that Employee is releasing and giving up any right that Employee may now have under federal or state law or political subdivision thereof and any claims that Employee may now have or could have asserted against Employer. Employee specifically agrees to release all claims against Employer under many different laws, including but not limited to: the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, and Executive Order 11141, which prohibit age discrimination in employment; Title VII of the Civil Rights Act of 1964, Section 1981 of the Civil Rights Act of 1866, and Executive Order 11246, which prohibit discrimination based on race, color, national origin, religion, or sex; the Americans with Disabilities Act and Sections 503 and 504 of the Rehabilitation Act of 1973, which prohibit discrimination based on disability; any other federal, state, or local laws prohibiting employment or wage discrimination; the Fair Labor Standards Act of 1938 and state laws that regulate wage and hour matters; the Family and Medical Leave Act of 1993; the Employee Retirement Income Security Act of 1974; any federal, state, or local laws providing workers' compensation benefits, prohibiting retaliatory or wrongful discharge, otherwise restricting an employer's right to terminate employees, or otherwise regulating employment; claims for breach of contract, promissory estoppel, defamation, slander, or libel; claims for termination pay, severance, or other benefits; and any other federal, state, or local tort or contract claim. Employee expressly waives all rights that Employee might have under any law that is intended to protect Employee from waiving unknown claims. Employer hereby irrevocably and unconditionally releases, acquits and discharges Employee from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorneys' fees and costs actually incurred), of any nature whatsoever, whether known or unknown, arising out of any act, omission, or event from the beginning of time up to the execution of this Agreement.

***Comment: There may be applicable state laws that require parties to specifically mention them in a settlement and release and there may be laws adopted after this Model was created that also require specific mention. Employer and Employee should seek counsel to make certain that the Agreement they use includes all required language and satisfies their intent.***

B. This Release also includes a release of all claims and rights possessed by Employee against such persons under the federal Age Discrimination in Employment Act of 1967 ("ADEA"), as amended, except such claims and rights that may arise after the execution of this Agreement. Consistent with the ADEA, Employer provides compensation for this release to which the Employee would not otherwise be entitled and as agreed upon by the parties.

The federal Older Workers Benefit Protection Act, 29 U.S.C. § 626 (f), requires Employee be advised to consult with an attorney prior to executing this Agreement, which contains a release of claims under the ADEA. Employer specifically advises Employee to seek advice from an attorney about this Agreement and what it means.

The Older Workers Benefit Protection Act, 29 U.S.C. § 626 (f), requires that Employee be given a period of at least 21 days within which to consider this Agreement, since it contains a release of Employee's rights under the ADEA. Therefore, for a period of 21 days after Employee receives this Agreement, Employee has a right to reconsider Employee's decision to release Employee's rights under the ADEA. However, an employee may sign a release of ADEA rights prior to the end of the 21-day time period as long as the employee's decision to shorten the 21-day time period is knowing and voluntary. In order to expedite the processing of the retirement benefit that Employee will be receiving under this Agreement, Employee agrees, by signing this Agreement, to waive Employee's right to have 21 days in which to reconsider the decision to release Employee's rights under the ADEA. Employee acknowledges that this waiver of Employee's right to consider the terms of this Agreement for 21 days is knowing and voluntary.

In accordance with the Older Workers Benefit Protection Act, 29 U.S.C. § 626 (f), the parties agree that for a period of seven (7) days following Employee's execution (signature) of this Agreement, Employee may revoke the Agreement. Therefore, Employee acknowledges that Employee has been informed that this Agreement does not become effective or enforceable until the eighth day following Employee's signature (at which point the revocation period has expired), and that during the preceding seven-day period Employee has the right to revoke this Agreement.

## **6. REFERENCES AND [NON-DISPARAGEMENT].**

If it is necessary for Employer to provide a reference to a prospective employer, Employee agrees that he will direct the prospective employer to contact \_\_\_\_\_ **[insert name of person who will provide a reference on behalf of Employer]** who will provide a reference in a form substantially similar to the attached. **[Option if appropriate under state law and where agreed upon:** Additionally, Employee and the elected officials agree that they shall not disparage or make negative comments about each other; provided that this Section shall not apply to comments made to any other governmental entity or as required by law.]

***Comment: IMLA recommends that if the Employer and Employee agree to a form of recommendation or an official comment from the Employer that their agreement be***

*incorporated in this Agreement by an attachment having the agreed upon language. Some public officials and some employees may conclude that their First Amendment rights should be protected and may not agree to be bound by a non-disparagement clause. The parties may wish to include a value to the Employer or Employee of the disparagement, for example: Employer and Employee agree that if Employee disparages Employer, Employee shall forfeit and be liable to Employer for all payments made under this Agreement and Employer agrees that if it or any of its officers disparage Employee that Employer shall be liable to Employee for \$\_\_\_\_\_ .*

## **7. REPRESENTATIONS AND WARRANTIES.**

The undersigned parties hereby represent and warrant the following to the other:

- a. Employee represents and warrants that: the Employee is legally and mentally competent to sign this Agreement; Employee is the sole owner of any claims against the Employer; Employee has the requisite capacity and authority to make this Agreement, and no portion of any existing or potential claims has been sold, assigned or pledged to any third party; and Employee presently possesses the exclusive right to receive all of the consideration paid in exchange for this Agreement.
- b. Employee represents and warrants that Employee has not and will not file any complaints, charges or lawsuits against Employer or any of its past, present and future elected officials, department heads, officers, employees, agents, representatives or attorneys with any governmental agency or any court, including without limitation, any claim or matter of any nature whatsoever related to or arising out of Employee's employment with or separation of Employee's employment[, except Employee expressly reserves the right to file a claim for unemployment benefits]. Employee further agrees to indemnify and hold Employer harmless from any and all loss, costs, damages or expenses, including reasonable attorney fees incurred by Employer, arising out of any claim concerning the separation of employment that may hereafter be made by the Employee or any other party.

***Comment: Some states may prohibit as a matter of public policy an agreement not to file for unemployment benefits; if so, this agreement should include the bracketed language.***

- c. Employer represents and warrants that it has not and will not file any complaints, charges or lawsuits against Employee with any governmental agency or any court, including without limitation, any claim or matter of any nature whatsoever relating to or arising out of Employee's employment with Employer or the separation of Employee's employment from Employer. Employer further

agrees to indemnify and hold the Employee harmless from any and all loss, costs, damages or expenses, including reasonable attorney fees incurred by Employee, arising out of any claim arising from the separation of Employee's employment that may hereafter be made by Employer or any other party.

d. Each party is fully aware of the contents of this Agreement and of its legal effect and understands that it should obtain legal advice regarding this Agreement as they deem appropriate. The parties hereto and each of them, have carefully read this Agreement and know the contents thereof, and they signed the same freely and voluntarily.

e. This Agreement sets forth the entire agreement between the parties and supersedes any and all prior agreements or understandings between the parties pertaining to the subject matter herein, except those provisions of the Employee's Employment Agreement that address the responsibilities of Employer or Employee upon termination of employment unless otherwise specifically excepted in this Agreement. No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision of this Agreement or of any succeeding breach of the same provision. No delay in acting with regard to any breach of any provision of this Agreement shall be construed to be a waiver of such breach. If any provision in this Agreement is found to be unenforceable, all other provisions will remain fully enforceable.

***Comment: The Model IMLA Employment Agreement includes a number of provisions that address requirements of the Employer to fund Employee expenses and benefits and the responsibility of the Employee to reimburse the Employer.***

f. No promise or inducement has been made or offered, except as herein expressly set forth, and this Agreement is executed without reliance upon any statement or representation by any of the released parties or their representatives.

g. The language of all parts of this Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either party.

h. This Agreement and any amendments hereto may be executed in multiple counterparts by the parties. Each counterpart shall be deemed an original, but all counterparts together shall constitute one and the same instrument.

## **8. JURISDICTION.**

This Agreement shall be governed by the laws of the State of \_\_\_\_\_, and the venue shall lie with the court of competent jurisdiction of the county within which the Employer is located which shall have exclusive jurisdiction of any disputes arising under this Agreement.

**9. BINDING EFFECT.**

This Agreement shall be binding upon and shall accrue to the benefit of the parties hereto, their respective personal representatives, successors in interest and assigns.

**10. REVIEW & REVOCATION.**

The parties acknowledge that Employee may revoke Employee’s acceptance and execution of this Agreement at any time within seven (7) days of the date of the Employee’s execution of it. Any revocation shall be in writing and shall be effective upon timely receipt by the Employer’s Attorney. If the revocation is submitted by mail, the revocation must be postmarked before the expiration of the seven (7)-day revocation period, and must be sent by overnight mail or other method so that it is received at the above address no later than the next business day immediately following the expiration of the seven (7)-day period. **FURTHER, EMPLOYEE REPRESENTS THAT, BEFORE ACCEPTING AND EXECUTING THIS AGREEMENT, EMPLOYEE WAS GIVEN A REVIEW PERIOD OF TWENTY-ONE (21) DAYS IN WHICH TO CONSIDER IT.** Employee further represents that the Employee: (a) took advantage of as much of this period as required to consider this Agreement before signing it; (b) carefully read the Agreement and the Release included herein; (c) fully understands it; and (d) is entering into it voluntarily. Employee represents that Employer encouraged the Employee to discuss this Agreement with an attorney of choice before signing it. This Agreement shall not become effective or enforceable until the seven-day revocation period has expired without Employee having revoked acceptance of it and Employer shall not be obligated to act upon this Agreement until the time has expired for receipt of notice of revocation.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the respective dates set forth below and each hereby acknowledge receipt of an executed copy of this Agreement.

On behalf of the Employer of \_\_\_\_\_, \_\_\_\_\_:

\_\_\_\_\_

Employer

\_\_\_\_\_

Date

Attested by:

---

Employer's Representative

---

Date

On behalf of Employee:

---

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Date