

ASSISTANT CITY MANAGER/DIRECTOR OF PUBLIC SERVICES
EMPLOYMENT AGREEMENT

This Agreement is made as of ~~September 19, 2011~~ by and between the City of Mission Viejo ("City") and W. Keith Rattay ("Rattay"). City and Rattay are sometimes hereinafter referred to as the "Parties."

RECITALS

WHEREAS, City desires to employ the services of Rattay as Assistant City Manager/Director of Public Services, pursuant to the authorization provided the City Manager via action of the City Council; and

WHEREAS, the Parties further desire to establish certain benefits and certain conditions of Rattay's employment that are reflective of his duties; and

WHEREAS, as used in this Agreement, the term "City Council" shall mean the City Council of the City of Mission Viejo. Further "City Manager" shall mean the person lawfully acting as the City Manager of City.

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

1. **EMPLOYMENT.** City agrees to employ Rattay to render services as Assistant City Manager/Director of Administrative Services of City on the terms and conditions set forth in this Agreement, and Rattay accepts such employment on the terms and conditions set forth in this Agreement.
2. **TERM.** Rattay's employment as Assistant City Manager/Director of Public Services commenced July 9, 2011, and shall continue until September 1, 2014 (the "Initial Term"), or the date of termination of Rattay's employment in accordance with Paragraph 7 of this Agreement. Unless terminated or not renewed in accordance with the provisions of Paragraphs 7 and 8 of this Agreement, the Initial Term of this Agreement shall be automatically extended for successive periods of one (1) year commencing from September 1, 2014.
3. **POSITION AND DUTIES.** Rattay shall serve as Assistant City Manager/Director of Public Services of City. Pursuant to this Agreement, the Mission Viejo Municipal Code and the authority of the City Manager, Rattay shall serve at the pleasure of the City Manager. The City Manager shall have the power to determine the specific duties and responsibilities which Rattay must perform under this Agreement. Rattay agrees to devote all of his business time, skill, attention, and best efforts to the discharge of the duties and responsibilities assigned to him by the City Manager during the term of his employment, except that Rattay may consult or serve as a board member of a non-profit entity.

4. EMPLOYMENT STATUS, EXEMPTION FROM PERSONNEL SYSTEM, AND TERMINATION.

A. At-Will Employment

(i) Pursuant to this Agreement, the policy of the City, California Government Code Section 36506 and Municipal Code § 2.08.010.050, Rattay's employment is at the pleasure of the City Manager, and Rattay is appointed on an at-will basis, and holds an at-will position with the City. Pursuant to his at-will status, Rattay shall not have any property right in his job. Under applicable law, at-will employees may be dismissed or terminated from employment by the City Manager without advance notice or cause, and similarly, at-will employees may resign their employment without notice or cause by their employer. The procedures regarding termination from employment by either the City or Rattay are set forth in Paragraphs 7 through 10 of this Agreement.

(ii) Rattay is exempt from the City's Personnel System.

(iii) Rattay understands, acknowledges and agrees that no representative of the City has made or can make any promises, statements, or representations which state or imply that Rattay is hired or retained under any terms other than those set forth in this Agreement and the provisions of California Government Code § 36506 and Chapter 2 (commencing with Municipal Code §§ 2.08.010.050, *et seq.*), of the City of Mission Viejo Municipal Code. Rattay understands, acknowledges, and agrees that no agreement can impliedly arise that Rattay is employed under any terms other than those set forth in this Agreement.

(iv) By signing this Agreement, Rattay certifies and acknowledges that he has read this Paragraph 4 regarding his at-will status, and acknowledges and agrees that his employment shall be subject to these terms.

5. COMPENSATION AND BENEFITS. Rattay shall receive the following compensation:

A. Salary. Rattay shall receive an annual salary of one hundred sixty-six thousand four hundred forty dollars and no cents (\$166,440.00), effective on January 7, 2012. Rattay shall receive a salary/compensation review annually in conjunction with the Annual Performance Review process specified in Section 6. All future annual salary adjustments shall conform to the City's established personnel policies and City Council adopted salary schedules and shall be effective September 1 of that calendar year, unless otherwise agreed upon by both parties.

B. Group Insurance. The City agrees to put into force and make the required premium payments for Rattay as are being provided to all executive level personnel of the City as of January 1, 2008.

C. **Retirement.** The City shall contribute the City's share of the PERS contribution and that portion of Rattay's employee share as is paid on behalf of other city employees as of January 7, 2012, to maintain Rattay as a member of the Public Employee's Retirement System ("CALPERS") under the terms and conditions set forth in the City's agreement with CALPERS.

D. **Leave Benefits.** All provisions of the rules, regulations and ordinances of the City relating to comprehensive annual leave ("CAL") and holidays as of August 1, 2007 shall apply to Rattay except as herein provided. In addition to the CAL provisions applicable to other Executive management employees of the City, Rattay shall receive five (5) additional days of administrative leave each calendar year during the term of this Agreement.

E. **Deferred Compensation.**

(i) 457 - City shall provide Rattay an annual contribution of seven thousand five hundred dollars (\$7,500.00) to be deposited in the deferred compensation program of Rattay's choice. Said contribution will occur on the first regularly scheduled payday in January of each year.

(ii) 401(a) - Commencing December 29, 2007, the City shall provide Rattay a contribution equal to one percent (1%) of his base salary to be deposited in the City's 401(a) program. The timing of the City's contribution shall be in accord with the manner the contribution is made to other City employees.

F. **Automobile Allowance.** City shall provide Rattay with an automobile allowance in the amount of four hundred fifty dollars (\$450.00) per month.

G. **Service as City Manager Pro Tempore.** In the event of a temporary absence or disability of the City Manager and Rattay is required to serve as manager pro tempore of the City in accordance with Section 2.08.050 of the Municipal Code for a period in excess of thirty consecutive days, while continuing to be responsible for all his routine duties the City Council shall in good faith make an appropriate adjustment in Rattay's compensation to recognize Rattay's extraordinary services.

H. **Retiree Health Benefits.** Rattay, upon retirement, shall be provided the benefits under the City-adopted Retiree Insurances Program (RIP), at the initial monthly contribution level that is the contribution amount in force as of August 1, 2007 for active employees (Tier 2) at the same enrollment level as Rattay will be enrolled as of the date of his retirement. Subsequent to his retirement, Rattay shall receive all increases in the monthly contribution amount for which other retirees participating in the RIP who were retired as of August 1, 2007 and are enrolled at the same enrollment level as Rattay would be eligible.

6. **ANNUAL PERFORMANCE REVIEW.** The City Manager shall evaluate Rattay's performance annually. No later than May 1 of each year, Rattay shall submit

a memorandum to the City Manager discussing his performance during the prior year. The City Manager shall have until June 30 of each year to complete the performance review process. The annual review shall not in any manner modify or convert Rattay's status from that of an at-will employee to an employee with a property right in his job and/or who may only be terminated with notice and/or cause. The City Manager shall not delegate the evaluation of Rattay to any other person or entity, by full or partial assignment or delegation, provided, however, the City Manager shall have the authority to retain a consultant to investigate the factual basis of any allegation which might be made concerning Rattay.

7. RENEWAL OF AGREEMENT.

A. The City Manager is under no obligation to renew this Agreement upon completion of the Agreement's term, and the City Manager may decide to do so solely in his/her discretion. Not later than one year prior to the end of the Initial Term, or any successive term, the City Manager shall determine whether or not to renew the Agreement, and shall notify Rattay in writing of its decision. In the event that a notice of non-renewal has not been given to Rattay at least one year prior to the end of the term (or any successive term), the Parties agree that this Agreement shall be automatically extended for an additional term of one (1) year. The failure of the City Manager to give notice of non-renewal of this Agreement shall not preclude the City from terminating this Agreement in accordance with the provisions of Paragraph 8, below.

B. In the event the City Manager decides not to renew this Agreement, the following provisions shall apply during the one (1) year period prior to the expiration of the Initial Term or any successive term of this Agreement:

(i) Rattay shall continue to fulfill his professional responsibilities as in accordance with this Agreement, and shall cooperate and assist the City in the transition to a new Assistant City Manager/Director of Public Services until the date that is nine (9) months prior to the end of the term of the Agreement. During this working period, Rattay shall be entitled to use his available leave in accordance with the terms of this Agreement.

(ii) On the date that is nine (9) months prior to the end of the term of the Agreement, Rattay duties as Assistant City Manager/Director of Public Services shall cease and he shall be given a severance payment of nine (9) months salary calculated at Rattay's then current salary, with applicable payroll taxes withheld. Rattay shall not be entitled to any benefits or car allowance after this date.

(iii) Notwithstanding the provisions of Paragraph 8, Rattay may terminate this Agreement with two (2) weeks written notice during this working period. Upon the effective date of termination under this subparagraph (iii), Rattay shall receive the severance pay described in Section 7B(ii).

(iv) Except as otherwise provided in this subsection, all other terms of the Agreement shall remain in effect during the working period prior to the cessation of Rattay's duties as Assistant City Manager/Director of Public Services under this Paragraph 7B.

8. TERMINATION AND SEVERANCE.

A. Either Party may terminate this Agreement at any time, in accordance with the following procedures. As used in this Paragraph 8, "termination" or "terminate" shall mean any termination or removal of Rattay as Assistant City Manager/Director of Public Services other than a non-renewal under Paragraph 7 of this Agreement.

(i) If Rattay terminates this Agreement, Rattay shall provide the City Manager with thirty (30) days written notice prior to the date that he ceases to perform his duties and responsibilities under this Agreement.

(ii) If the City terminates this Agreement, the City shall provide Rattay with thirty (30) days written notice prior to the effective date of the termination.

B. If the City's termination of this Agreement is for any reason other than Rattay's misconduct, the City shall pay Rattay a severance payment equivalent to the number of months of salary derived from the following formula: two (2) weeks of salary for every one (1) year of employment with City; however, in no instance shall the severance payment exceed the sum equal to nine (9) months of salary. Salary shall be calculated at Rattay's then current salary, with applicable payroll taxes withheld. "Misconduct" means Rattay's dishonesty, fraud, self-dealing, or willful misconduct committed in the performance of Rattay's duties and responsibilities under this Agreement, or Rattay's violation of any law which can be punished as a felony committed at any time that adversely affects the reputation of the City. The determination of whether Rattay was terminated due to misconduct is in the City's sole discretion. If the City terminates this Agreement at any time due to Rattay's misconduct, as defined above, City shall not pay Rattay any severance payment. If Rattay terminates this Agreement at any time prior to the date on which notice of non-renewal must be given pursuant to Paragraph 7 of this Agreement, or the date on which notice of non-renewal is actually given, whichever is earlier, City shall not pay Rattay any severance payment. Upon the termination of this Agreement, Rattay shall not be entitled to any other compensation or payment, except as provided in this Paragraph or Paragraph 7.

Pursuant to California Government Code Sections 53243, 53243.1, 53243.2, 53243.3, Rattay shall fully reimburse City any and all funds, including salary, if he is convicted of a crime involving an abuse of his office or position as defined in California Government Code Section 53243.4

9. **REIMBURSEMENT.** The City shall reimburse Rattay for all actual and necessary expenses he incurs in the performance of his official duties as Assistant City Manager/Director of Public Services, including those expenses incurred when traveling on business pertaining to the City, in accordance with City policies applicable to employees.

10. **BOND.** Rattay shall furnish a corporate surety bond in the amount of one hundred thousand dollars (\$100,000.00) from a qualified surety for the faithful performance of the duties imposed upon Rattay as Assistant City Manager/Director of Public Services. This bond requirement may be satisfied by the City's acceptance of a blanket fidelity bond for City employees. The premium for such bond shall be a proper charge against the City.

11. **NONASSIGNMENT.** Rattay's duties and obligations under this Agreement are personal and not assignable.

12. **ARBITRATION.** City and Rattay agree that in consideration of the mutual benefits of arbitration, including but expressly not limited to, cost, efficiency and timing to both Parties, any disputes arising out of this Agreement, and/or the employment and/or termination of Rattay by the City, or Rattay's voluntary separation from employment, shall be resolved only and exclusively by arbitration conducted in accordance with the following provisions:

A. All disputes between City and Rattay with regard to his employment and/or termination from employment shall solely be subject to resolution via the arbitration provisions set forth herein. Such claims include but are expressly not limited to, claims by Rattay of wrongful conduct of any type by City, its agents or representatives, City conduct in violation of any express or implied condition, term or covenant of employment whether based in fact or in law (by means of example only, claims for violation of any policy, rule, ordinance, or regulation of the City, the California Fair Employment and Housing Act (Government Code §§ 12940, et seq.), Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967 (29 U.S.C. §§ 621-634), the Americans With Disabilities Act, whistleblower laws, false claims statutes, wrongful termination in violation of public policy, or otherwise), or claims of breach of this Agreement or any other alleged wrongful conduct by City as regards Rattay, and claims of wrongful conduct by Rattay towards the City. The only claims exempt from the arbitration provisions of this Agreement shall be claims arising under the California Workers Compensation statutes, and claims arising under the California Unemployment Compensation statutes.

B. Rattay, being currently forty (40) years of age or older, warrants and represents that he is fully aware of and understands all of his rights under the Age Discrimination in Employment Act of 1967 (29 U.S.C. §§ 621-634), including the amendments made by the Older Workers Benefit Protection Act, Pub. L. 101-433, 104

Stat. 978 (collectively "ADEA"), including any right to judicial review for any alleged violations of the ADEA. By signing this Agreement, including the arbitration provision of this Paragraph 13, Rattay voluntarily and knowingly relinquishes any right to judicial review of any claims under the ADEA, except as expressly provided herein; and knowingly and voluntarily agrees to submit any ADEA claims to arbitration.

(i) Rattay further acknowledges that under the ADEA he has the right to take twenty-one (21) calendar days to consider the terms and effects of this Agreement with respect to his rights to judicial review under the ADEA, prior to executing it; that his 21-day period would expire on March 12, 2012; that Rattay has been advised of his right to consult with legal counsel regarding his rights under the ADEA; and Rattay expressly acknowledges that he has had sufficient time to consider the Agreement and to consult with legal counsel and, by signing this Agreement, expressly waives the twenty-one day consideration period.

(ii) Notwithstanding Paragraph 13(B)(i) of this Agreement, Rattay further understands that under the ADEA, the terms of this Agreement with respect to Rattay's rights under the ADEA are not effective until eight (8) calendar days after its execution. Rattay may revoke this Agreement with respect to his rights under the ADEA within seven (7) calendar days of its execution. Revocation shall not be effective unless it is communicated in writing to and actually received by the City within seven (7) calendar days after the execution of this Agreement. If Rattay revokes this Agreement with respect to his rights under the ADEA, City shall be relieved of all of its obligations under this Agreement with respect to Rattay's rights under the ADEA. If not revoked, the Agreement will become effective on the eighth (8) day after the date set forth in the Preamble on page 1 of this Agreement (the Agreement's "Effective Date").

C. Except as provided in this Subparagraph C of Paragraph 13, arbitration shall be conducted in accordance with the provisions of Title 9 of Part III of the California Code of Civil Procedure §§ 1280, *et seq.* To the extent that the provisions of the Federal Arbitration Act ("FAA") (9 U.S.C. §§ 1, *et seq.*), are deemed to apply to any Federal statutory claims, the provisions of the FAA shall apply to any arbitration under this Agreement.

D. Rattay further expressly acknowledges and agrees that except as expressly provided in this Subparagraph (D), in any such arbitration the exclusive remedies available to Rattay, regardless of the basis for any such remedy, shall be limited to a sum equal to the wages that Employee would have earned from the date of any discharge until the date that an arbitration award is issued, and that Rattay shall not be entitled to reinstatement or any other remedy at law or in equity against City. With respect to State or Federal statutory claims, the available remedies shall also include any substantive and remedial remedy available to City and/or Rattay by virtue

of the statutory claim or claims upon which either Party may prevail under applicable Federal or State law in the arbitration.

E. The arbitrator shall not have the authority to modify any terms, covenants, or conditions of this Agreement, nor any terms, covenants or conditions of any ordinances, regulations, rules, or policies, of the City, or of applicable Federal or State constitutional or statutory law. The arbitrator shall be required to prepare a written decision which shall contain written findings and conclusions of law upon which the arbitration award is based, and such written decision shall be issued within thirty (30) days of the conclusion of the arbitration hearing.

F. City shall pay those costs that are unique to arbitration, including but expressly not limited to, the compensation of the arbitrator him/herself. Additionally, discovery shall be permissible pursuant to the provisions of Code of Civil Procedure §§ 1280 *et seq.*, including, without limitation, Code of Civil Procedure § 1283.05.

G. Selection of the arbitrator shall first be attempted through mutual agreement of the Parties. Absent the reaching of an agreement after reasonable effort is made to do so, the Parties shall through a joint written communication, direct a recognized judicial dispute resolution service to provide a list of nine (9) names of qualified arbitrators, such as the American Arbitration Association, State Mediation and Conciliation Service, JAMS, or similar organization. Absent agreement to appoint one of said individuals as the arbitrator, the Parties shall alternately strike names until one name remains. Said individual shall be the designated arbitrator. The initial strike of names shall be determined by lot.

H. Either Party may seek judicial review of the decision of the arbitrator only in accordance with and subject to the grounds set forth in California Code of Civil Procedure §§ 1285, *et seq.* and 1286, *et seq.*, as such statutes have been interpreted by California court decisions. To the extent that the FAA applies to any Federal statutory claims, judicial review of any arbitration decision pertaining to such Federal statutory claims shall be subject to judicial review only according to and subject to the grounds and criteria of the FAA.

I. In the event a matter proceeds to either or both arbitration as a contested action, the party deemed to be the prevailing party shall have all of its fees, costs and expenses reimbursed by the other party to the extent the actual amount and expenditure is reasonably supported by credible evidence.

13. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement and understanding among the Parties hereto, and contains all of the terms and conditions of the Parties' agreement. This Agreement supersedes all prior agreements and understandings relating to its subject matter. Each of the Parties represents that it/he is not relying, and has not relied, on any representation or statement made by any other Party with respect to the facts involved in this Agreement or with regard to its/his rights or asserted rights with respect thereto.

14. **MODIFICATION.** This Agreement may be modified or amended only by an agreement in writing executed by all of the Parties to this Agreement following its approval and execution by all Parties.

15. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

16. **NO WAIVER.** No Party's failure to enforce any provision or provisions of this Agreement shall be construed in any way as a waiver of any such provision or provisions, or prevent that Party thereafter from enforcing each and every other provision of this Agreement.

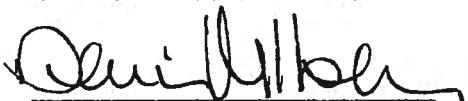
17. **SEVERABILITY.** If any provision or portion of this Agreement is held to be unconstitutional, invalid or unenforceable, the remainder of this Agreement shall be deemed severable and shall not be affected and shall remain in full force and effect.

18. **INTERPRETATION.** No interpretation or construction of any provision or portion of this Agreement will be influenced by the identity of the Party drafting the Agreement.


19. **HEADINGS.** Paragraph headings used in this Agreement are for convenience only and shall not be considered a part of the terms of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth in the Preamble on page 1 of this Agreement.

CITY OF MISSION VIEJO


Dennis Wilberg, City Manager

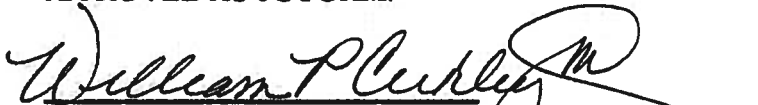
W. KEITH RATTAY


W. Keith Rattay

ATTEST:


Karen Hamman
City Clerk

APPROVED AS TO FORM:


William P. Curley III, City Attorney

**FIRST AMENDMENT TO ASSISTANT CITY MANAGER/DIRECTOR OF
PUBLIC SERVICES EMPLOYMENT AGREEMENT**

THIS FIRST AMENDMENT TO ASSISTANT CITY MANAGER/DIRECTOR OF PUBLIC SERVICES EMPLOYMENT AGREEMENT is made and entered into as of July 1, 2013 by and between the City of Mission Viejo ("City") and Keith Rattay ("Rattay.") In consideration of the mutual promises and agreements set forth below and in the Employment Agreement, City and Rattay agree as follows:

1. **Recitals.** This First Amendment is made with respect to the following facts and purposes, which the parties hereto agree are true and correct:

(a) On September 19, 2011, the City and Rattay entered into that certain agreement entitled "Assistant City Manager/Director of Public Services Employment Agreement" for Rattay's employment as Assistant City Manager/Director of Public Services for City ("Employment Agreement.")

(b) The parties now desire to amend the Employment Agreement in order to modify certain terms as set forth below.

2. **Modification of Benefits.**

(i) Section 5B of the Agreement is revised to read as follows as regards only the date specified therein. The date of January 1, 2008 shall be replaced with April 1, 2013.


(ii) Section 5C of the Agreement is revised to read as follows as regards only the date specified therein. The date January 7, 2012 shall be replaced with January 19, 2013.

3. **Effective Date.** Except as otherwise provided in this Amendment the terms of this Amendment shall be effective on, and continue without interruption, after July 1, 2013, unless terminated pursuant to this Employment Agreement, as amended. This Amendment shall have the effect of continuing the Employment Agreement without interruption.

4. **Other Provisions.** Except as expressly provided herein this First Amendment, all other terms and provisions of the Employment Agreement between City and Rattay shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this First Amendment on the date set forth above.

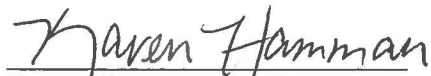
CITY OF MISSION VIEJO


Rhonda B. Reardon, Mayor

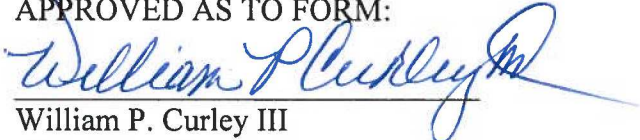
KEITH RATTAY


Keith Rattay

ATTEST:


Karen Hamman, CMC
City Clerk

APPROVED AS TO FORM:


William P. Curley III
City Attorney

**SECOND AMENDMENT TO ASSISTANT CITY MANAGER/DIRECTOR OF
PUBLIC SERVICES EMPLOYMENT AGREEMENT**

THIS SECOND AMENDMENT TO ASSISTANT CITY MANAGER/DIRECTOR OF PUBLIC SERVICES EMPLOYMENT AGREEMENT is made and entered into as of June 16, 2014 by and between the City of Mission Viejo ("City") and Keith Rattay ("Rattay"). In consideration of the mutual promises and agreements set forth below and in the Employment Agreement, City and Rattay agree as follows:

1. **Recitals.** This Second Amendment is made with respect to the following facts and purposes, which the Parties hereto agree are true and correct:

(a) On September 19, 2011, the City and Rattay entered into that certain agreement entitled "Assistant City Manager/Director of Public Services Employment Agreement" for Rattay's employment as Assistant City Manager/Director of Public Services for City ("Employment Agreement.").

(b) Effective July 1, 2013, the City Council approved the First Amendment to the Employment Agreement.

(c) The Parties now desire to amend the Employment Agreement in order to modify certain terms as set forth below.

2. **Modification of Benefits.** Section 5C of the Employment Agreement, "Retirement," is hereby amended to read as follows:

"C. **Retirement.** Effective June 7, 2014 through June 5, 2015, the City shall contribute all of the City's share of any California Public Employment Retirement System ("CalPERS") contribution and 1.25% of the normal member contribution required by Rattay. Rattay shall pay 6.75% of the normal member contribution, consistent with management staff PERS payment as of the date of this Agreement.

Effective June 6, 2015, the City shall contribute all of the City's share of any California Public Employment Retirement System ("CalPERS") contribution and 0.00% of the normal member contribution required by Rattay. Rattay shall pay 8.00% of the normal member contribution. Rattay is and shall remain a member of CalPERS under the terms and conditions as set forth in the City's Agreement with CalPERS."

3. **Effective Date.** Except as otherwise provided in this Amendment, the terms of this Amendment shall be effective on, and continue without interruption, after June 6, 2015, unless terminated pursuant to this Employment Agreement, as amended. This Amendment shall have the effect of continuing the Employment Agreement without interruption.

4. **Other Provisions.** Except as expressly provided herein this Second Amendment, all other terms and provisions of the Employment Agreement between City and Rattay shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth above.

CITY OF MISSION VIEJO

Trish Kelley
Trish Kelley, Mayor

KEITH RATTAY

Keith Rattay
Keith Rattay

ATTEST:

Karen Hamman
Karen Hamman, CMC
City Clerk

APPROVED AS TO FORM:

William P. Curley III
William P. Curley III
City Attorney