

SETTLEMENT AGREEMENT
AND GENERAL RELEASE

THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE (hereinafter this “Agreement”) is entered into by and between Edward B. Johnson (“JOHNSON”), on the one hand, and the City of Nogales (the “CITY”), on the other hand.

WHEREAS, JOHNSON is employed as the City Manager for the CITY;

WHEREAS, the CITY and JOHNSON desire to terminate the employment relationship, and in the process, settle, compromise, and resolve any and all potential differences and disputes between them without the burden, expense and delay of litigation, and without admission of any fault or liability by either party.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, and for other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the CITY and JOHNSON voluntarily and knowingly agree as follows:

1. **Definitions.** For the purposes of this entire Agreement, the term “CITY” includes the City of Nogales and, to the extent applicable, as direct, intended and third party beneficiaries hereof, its past, present, and future officers, employees, representatives, trustees, administrators, fiduciaries, attorneys, insurers, agents, subsidiaries, affiliated entities, elected officials, councilmembers, predecessors, successors, heirs, and assigns, jointly and severally, in both their personal and official capacities (collectively, the “Released Parties”). For the purposes of this entire Agreement, the term “JOHNSON” shall refer to Edward Johnson, his marital community (if any), and his heirs and assigns.

2. **Resignation by JOHNSON.** This Agreement constitutes JOHNSON’s notice of the voluntary resignation of his employment with the CITY, to be effective immediately upon execution of this Agreement by both parties. The CITY agrees that its personnel records shall reflect that JOHNSON’s resignation was voluntary in nature.

JOHNSON shall return all property of the CITY in his possession within three business days of his resignation.

3. **Consideration by the CITY.** The CITY shall pay JOHNSON the total sum of \$35,000.00 (thirty-five thousand dollars), less applicable state and federal withholding taxes, which is the equivalent of twenty-five percent of his annual salary (the “Severance Payment”). The form of payment shall be a check payable to “Edward Johnson.” The CITY shall issue an IRS form W-2 for the payment.

The check shall be delivered to JOHNSON’s counsel, Mesch Clark Rothschild, not more than 30 days after the effective date of this Agreement, as set forth in Section 10 below.

4. **Release.** JOHNSON hereby irrevocably and unconditionally releases and discharges the CITY and all other Released Parties from any and all claims, demands, liens,

agreements, covenants, actions, suits at law or equity, obligations, debts, damages, judgments, liabilities, attorneys' fees, costs, and expenses of whatever kind, known or unknown, suspected or unsuspected, which he had or has based on any matter or thing occurring prior to his execution of this Agreement, including but not limited to claims that arise from or relate to JOHNSON's employment with the CITY or his resignation. The released claims include any claims arising under the Arizona Civil Rights Act, the Arizona Wage Payment Act, or Title VII of the Civil Rights Act of 1964. The released claims further include, but are not limited to, all claims for breach of contract, wrongful discharge or layoff, constructive discharge, retaliatory discharge, impairment of economic opportunity, intentional or negligent infliction of emotional harm, distress, or any other tort, including but not limited to defamation, invasion of privacy, intentional interference with contract or prospective advantage, violation of any constitutional right, sex discrimination, race discrimination, disability discrimination, age discrimination or any other form of employment discrimination or retaliation, and any and all claims arising from any alleged violations by or on behalf of the CITY or any other Released Party under every applicable federal, state or local law, rule, regulation, ordinance, public policy or common law, including under the Arizona Employment Protection Act, the Civil Rights Act of 1991, the Equal Pay Act, the Americans with Disabilities Act, or the Family and Medical Leave Act. JOHNSON also waives and releases any appeal or grievance rights pursuant to the CITY's personnel policies, charter, or municipal code.

JOHNSON understands and acknowledges that this release forever bars him from suing or otherwise asserting a claim against the CITY or any of the other Released Parties on the basis of any event occurring through his execution of this Agreement, whether the facts are now known or unknown, and whether the legal theory upon which such claim might be based is now known or unknown. JOHNSON further agrees and acknowledges that the Released Parties are intended third party beneficiaries of this release of claims.

JOHNSON understands and acknowledges that nothing in this Agreement shall be construed as prohibiting him from filing an administrative charge with a governmental agency.

5. **Acknowledgement of Full Payment.** JOHNSON acknowledges and agrees that has received payment in full by the CITY for all wages, overtime, bonuses, or other forms of compensation to which he was entitled as a result of his employment with the CITY.

6. **Provision for Unknown Claims.** JOHNSON warrants that he does not have any claim or charge pending against the CITY or any of the other Released Parties with any court, tribunal, administrative agency, governmental agency, or other such body.

7. **Waiver of Right to Recovery and No Inducement.** JOHNSON waives any right to monetary recovery should any administrative agency pursue any released claim on his behalf. To the extent permitted by law, and/or unless required by law, JOHNSON agrees that he will not induce, aid, or abet anyone in instituting or prosecuting any pending or future claim against the CITY or any other Released Party in any court, arbitral tribunal, or administrative agency. However, nothing in this provision shall be construed as prohibiting JOHNSON from communicating with any government agency regarding any matter within such agency's jurisdiction.

8. **Consultation with Legal Counsel.** JOHNSON acknowledges that this Agreement constitutes written notice from the CITY that it advises him to seek legal counsel before signing this Agreement.

9. **Notice of Time for Reflection Waiver.** JOHNSON acknowledges that he has fully discussed all aspects of this Agreement with his attorney to the extent he wishes to do so. JOHNSON agrees that he has carefully read and fully understands all of the provisions of this Agreement and that he is voluntarily entering into this Agreement. JOHNSON agrees that, as part of this Agreement, he has been provided with consideration in addition to anything of value to which he is already entitled. JOHNSON is advised that, prior to waiving claims he may have under the Age Discrimination in Employment Act, he may take up to twenty-one (21) calendar days to consider this Agreement before signing, and he may revoke this Agreement within seven (7) calendar days after he signs the Agreement. If JOHNSON wishes to revoke the Agreement, he must do so by delivering written notification of the revocation before the expiration of the revocation period to Stephen B. Coleman at Pierce Coleman PLLC, 7730 E. Greenway Rd, Suite 105, Phoenix, AZ 85260. In the event this Agreement is signed prior to the expiration of 21 days, JOHNSON acknowledges that he has voluntarily and knowingly agreed to waive his entitlement to take 21 days to consider this Agreement.

10. **Effective Date of Agreement.** This Agreement will be effective upon execution by both parties and the expiration of the seven-day revocation period outlined in Section 9 above without revocation by JOHNSON.

11. **Neutral Reference.** JOHNSON agrees to direct all reference requests from prospective employers to the CITY's human resources department. The CITY agrees that its human resources department shall respond to such reference requests by disclosing only the following information regarding JOHNSON: dates of employment and position(s) held.

12. **Representations and Warranties regarding Medicare.** JOHNSON hereby warrants that he is not, and has never been, a beneficiary of Medicare as of the effective date of this Agreement. JOHNSON further acknowledges and agrees that he has not incurred medical expenses for any physical or emotional injuries that were allegedly caused by the CITY or any other Released Party for which coverage or reimbursement has been provided by Medicare. Nonetheless, if the Centers for Medicare & Medicaid Services (the "CMS") (this term includes any related agency representing Medicare's interests) determines that Medicare has an interest in any payment made by the CITY under this Agreement, JOHNSON agrees to indemnify, defend, and hold the CITY harmless from any action by the CMS relating to medical expenses that JOHNSON incurred, including any penalties or fines. JOHNSON also agrees to reasonably cooperate with the CITY upon request with respect to any claim the CMS may make and for which JOHNSON is required to indemnify the CITY under this Section.

13. **Full Consideration.** JOHNSON agrees that payment by the CITY of the sum stated in Section 3, as well as compliance with the other terms and conditions set forth herein, constitutes full and sufficient legal consideration for the promises and covenants in this Agreement.

14. **No Admission of Wrongdoing.** The parties each agree that nothing in this Agreement shall be construed as an admission by either of them of any wrongdoing or violation of any applicable law, and that nothing in this Agreement shall be so construed by any other person.

15. **Confidentiality.** The CITY and JOHNSON intend that terms and conditions of this Agreement be treated as confidential. The CITY and JOHNSON will not disclose the terms of this Agreement or the negotiations leading up to this Agreement to any person or entity at any time, except as provided herein.

JOHNSON may disclose the terms of this Agreement to (a) to his attorney, spouse, or tax or financial advisor upon obtaining such person's agreement to be bound by this confidentiality provision; or (b) in response to a compulsory process required by law or court order.

The CITY may disclose the terms of this Agreement (a) for the rendition of professional advice and/or services from an attorney, tax preparer, financial advisor, insurance provider, or accountant; (b) internally for legitimate business purposes on a "need to know" basis; (c) for the purpose of making disclosures required by law, including responding to public records requests; or (d) in response to a compulsory process required by law or court order.

16. **Non-Disparagement.** JOHNSON agrees not to disparage the CITY or any of the other Released Parties to any third party, either orally or in writing.

The CITY agrees to direct its current councilmembers not to disparage JOHNSON to any third party, either orally or in writing.

17. **Bar.** JOHNSON specifically agrees that this Agreement may be pled by the CITY or any of the other Released Parties as an absolute bar to any released claim.

18. **Complete Agreement.** This Agreement sets forth all of the terms and conditions of the agreement between the parties and shall be considered and understood to be a contractual commitment and not a mere recital. This Agreement shall be binding upon the CITY and its successors and assigns and upon JOHNSON and his respective agents, heirs, executors, representatives, and assigns.

19. **Fees and Costs.** Each party shall bear and pay his or its own costs and attorneys' fees with regard to this Agreement and any matters covered herein. However, in an action to enforce any term or terms of this Agreement or to seek damages for breach of this Agreement, the prevailing party in that action shall be entitled to recover reasonable attorney's fees.

20. **Waiver and Amendment.** A waiver of any right under this Agreement must be in writing to be effective. This Agreement may be amended only by a writing signed by the parties. Any oral representation or modification concerning this Agreement shall be of no force or effect.

21. **Severability.** If any portion of this Agreement is held invalid by operation of law, the remaining terms of this Agreement shall not be affected, provided, however, that if the

release in Section 4 of this Agreement is held invalid, the CITY shall have the right to seek rescission of this Agreement.

22. **Choice of Law.** 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 of the parties. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona, except to the extent that federal laws apply.

23. **Acknowledgement.** JOHNSON acknowledges that in executing this Agreement, he does not rely on any inducements, promises or representations made by the CITY other than those expressly stated herein. Further, JOHNSON declares that he has read this Agreement and fully understands its terms and contents, including their rights and obligations hereunder, and freely, voluntarily and without coercion enters into this Agreement. JOHNSON agrees and acknowledges that the waiver and release of all rights or claims he may have under any local state or federal law is knowing and voluntary.

24. **Cancellation.** This agreement is subject to cancellation pursuant to A.R.S. § 38-511.

CITY OF NOGALES

By _____
Its MAYOR

Dated: _____

EDWARD B. JOHNSON

Dated: _____