

# Attachment B

Exh C *mr*

## SEVERANCE AND RELEASE AGREEMENT

This severance agreement is made and entered into on March 8, 2022 by the City of Santa Clara ("City") and Deanna J. Santana ("Ms. Santana"). The City and Ms. Santana may be referred to collectively throughout this agreement as "the Parties." The effective date of this Agreement shall be the date of the signature of the last of the Parties to sign this Agreement.

### RECITALS

WHEREAS on or around October 2, 2017, Ms. Santana began her employment with the City as the City Manager;

WHEREAS on or around August 22, 2017, the City Council approved an employment agreement ("Employment Agreement") with Ms. Santana;

WHEREAS Ms. Santana holds an at-will position under the City Charter, and serves at the pleasure of the City Council;

WHEREAS Sections 1 and 6 of the Employment Agreement permits the City Council to terminate Ms. Santana's employment at any time subject to certain conditions;

WHEREAS the City Council has determined it appropriate to exercise the right under Section 6 of the Employment Agreement to terminate Ms. Santana's employment;

WHEREAS it is the intention of the parties in entering into this Agreement to amicably conclude the City Manager's employment relationship with the City effective MARCH 31, 2022 (insert date) ("Separation Date") and consistent with the terms of the Employment Agreement; and,

WHEREAS the parties enter into this Agreement in order to implement Section 6.2 of the Employment Agreement, and ensure a smooth transition of City leadership.

NOW, THEREFORE, in consideration of the promises and mutual obligations of the Parties, the sufficiency of which is hereby acknowledged, the Parties hereby covenant and agree with each other as follows:

### TERMS AND CONDITIONS

1. **Incorporation of Recitals.** The Recitals are incorporated herein by reference as though fully set forth herein.

2. **Return of Documents.** Ms. Santana agrees and represents that no later than MARCH 25, 2022 (insert date), she will return to the City all City property of which she has possession, custody or control, including, but not limited to, computer, electronic and telephonic equipment, as well as all City data and documents whether in hard copy or maintained on any electronic media.

3. **Non-Disclosure of Confidential Information.** The Parties acknowledge that as City Manager, Ms. Santana is the highest appointed official and an officer of the City, in that capacity she was and is responsible for, among other things, executing and enforcing all laws, policies of the City and administering the City's affairs, controlling and administering the City's financial affairs and supervising purchasing, contracting and confidential information. Consistent with her

Employment Agreement and the City Charter, Ms. Santana represents and agrees that she has not and shall not at any time or in any manner, either directly or indirectly, whether or not for compensation, use, divulge, disclose or communicate to any person, firm, corporation or any other entity in any manner whatsoever any confidential information concerning any matters affecting or relating to the business of the City except with the express written permission of the City or as required by court order or properly-issued subpoena. Such information includes but is not limited to, the identification of any of the City's licensees, sub-licensees, or any of the information concerning the business of the City, its manner of operation, its plans, or other proprietary data where such information is not publicly known and is not otherwise subject to public inspection or disclosure.

**4. Defense and Indemnity.** Consistent with her Employment Agreement and the City Charter, in accordance with the obligations imposed under Government Code sections 800 and 910, the City shall defend and indemnify Ms. Santana for any actions that result from work performed in the course and scope of her duties as the City Manager for the City of Santa Clara.

**5. Information Regarding Employment.** The City agrees that all inquiries with respect to Ms. Santana's separation will be referred to the Mayor who will provide only the following information: (a) the date of hire and date of separation; (b) that this is a mutual and amicable separation based on a mutual desire to terminate Ms. Santana's services, and provide a smooth leadership transition.

**6. Personnel File Documents.** No documents shall be entered into Ms. Santana's personnel file after the effective date of this agreement without both parties approving the entry of the document.

**7. Release of Claims.** Except for the rights and obligations created by this Agreement, Ms. Santana, on behalf of herself, her agents, representatives, attorneys, assignees, heirs, executors, administrators and successors in interest, hereby releases and forever discharges the City and all of its past, present and future Councils, agencies, divisions, and departments, as well as each of their respective former, current and future directors, department heads, supervisors, managers, employees, attorneys, elected and appointed officials, Councilmembers, City Managers, and any and all of them (all of the above collectively, the "City Released Parties"), to the extent permitted by law, from any and all liability, actions, causes of action, claims, charges, complaints, demands, grievances, obligations, losses, damages, injuries and legal responsibilities, of any type whatsoever, whether known or unknown, unforeseen, unanticipated, unsuspected or latent, which Ms. Santana ever had or held, now has or holds or hereafter can, shall or may have or hold against the City Released Parties, based on any claims or occurrences arising prior to the Effective Date of this Agreement (collectively, "Released Claims"). The Released Claims defined in the immediately preceding sentence and released herein by Ms. Santana as to the City Released Parties include, without limitation, all claims based upon, relating to or arising out of the City Manager's employment with the City, and/or the discontinuation of said employment, all claims in law, equity, contract and tort, and all claims under the California Constitution, California Civil Code, California Labor Code, California Code of Regulations, California Government Code, California Business & Professions Code, California Fair Employment and Housing Act, California Family Rights Act, the California Workers' Compensation Act, the Fair Labor Standards Act, the Equal Pay Act, National Labor Relations Act, Labor Management Relations Act, Employee Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, as amended, Civil Rights Act of 1991, Americans with Disabilities Act, as amended, the Rehabilitation Act, Executive Order 11246, Family and Medical Leave Act, Sarbanes-Oxley Act of 2002, Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, Age Discrimination in Employment Act

(ADEA), the Code of Federal Regulations, and all claims under any other federal, state, municipal or other governmental statute, regulation, ordinance or order.

**8.1 Ms. Santana specifically and expressly waives all rights under the provisions of Section 1542 of the Civil Code of California ("Section 1542 Waiver") with respect to the Released Claims. Section 1542 Waiver provides as follows:**

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

Thus, for the purposes of making a complete settlement of the Released Claims which Ms. Santana may have or claims to have against the City Released Parties, Ms. Santana waives and releases any and all Released Claims against the City Released Parties, including Released Claims which are unknown and unsuspected as of the Effective Date of this Agreement. Ms. Santana warrants that she has read this Agreement, including the Section 1542 Waiver, and has had an opportunity to consult with counsel of her own choosing about this Agreement and specifically about the Section 1542 Waiver, and that she understands this Agreement and the Section 1542 Waiver. Ms. Santana acknowledges that she may later discover facts different from or in addition to those now known or believed to be true regarding the matters released or described in this Agreement, and even so she agrees that the releases and agreements contained in this Agreement shall remain effective in all respects notwithstanding any later discovery of any different or additional facts. Ms. Santana assumes any and all risk of any mistake in connection with the facts involved in the matters, disputes, or controversies released or described in this Agreement or with regard to any facts now known to her relating thereto. Ms. Santana agrees, to the fullest extent permitted by law, that she will not initiate or file a lawsuit or internal City proceeding to assert any Released Claims. If any such action is brought, this Agreement will constitute an Affirmative Defense thereto, and the City shall be entitled to recover reasonable costs and attorneys' fees incurred in defending against any Released Claim.

**8.2. Ms. Santana acknowledges that she has not heretofore assigned or transferred to or purported to assign or transfer to any person or entity the Released Claims or any part or portion thereof, and agrees to indemnify and hold harmless the City Released Parties from and against any claim, demand, controversy, damage, debt, liability, account, reckoning, obligation, cost, expense, lien, action or cause of action (including the payment of attorneys' fees and costs actually incurred whether or not litigation commenced) based on, in connection with, or arising out of any assignment or transfer or claimed assignment or transfer thereof.**

**9. Non-Disparagement.** Ms. Santana, on the one hand, and the City Council, on the other hand, agree not to make any disparaging remarks nor take any action, written or oral, that is intended, or would reasonably be expected, to harm the other or their respective reputations or that would reasonably be expected to lead to unwanted or unfavorable publicity for the other. "Disparaging remarks, comments or statements" are those that impugn the character, honesty, integrity, morality or business acumen or abilities of the City, its staff, its City Council, or Ms. Santana.

**10. Interpretation of Agreement.** Consistent with the existing Employment Agreement, in the event of a dispute between Ms. Santana and the City with respect to the interpretation of this Agreement or any alleged breach of this Agreement which cannot be settled amicably by

agreement of the parties, the dispute shall be submitted to a single arbitrator in accordance with the employment arbitration rules of the American Arbitration Association and the judgment upon the award shall be final, binding, and conclusive and may be entered in the highest court having jurisdiction. The prevailing party in any arbitration pursuant to this paragraph shall be entitled to recover its reasonable attorney's fees and costs.

**11. Entire Agreement.** This Agreement supersedes any and all agreements, either oral or written, between the parties with respect to the severance of Ms. Santana's employment relationship with the City. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, that are not contained in this Agreement. No agreement, statement or promise not contained in this Agreement shall be valid or binding.

**12. Modification.** Any modification of this Agreement shall be effective only if it is in writing and signed by all parties to this Agreement.

**13. Severability.** If any part of this Agreement is determined to be invalid, unlawful, or unenforceable, that part shall not be deemed to be part of this Agreement.

**14. Legal Advice and Voluntary Execution.** Each Party represents and warrants that it: (a) had the opportunity to obtain legal advice from legal counsel of its choice before entering into this Agreement; (b) has read the contents of this Agreement; (c) fully understands the terms and consequences of this Agreement; (d) enters this Agreement voluntarily; and (e) shall not deny the validity of this Agreement on the grounds that it did not have advice of counsel or did not voluntarily and knowingly enter into this Agreement and agree to each of its terms.

**15. Full Execution Authority.** Each Party executing this Agreement warrants and represents that it or she has full authority to bind the corresponding Party to this Agreement.

**16. No Admissions.** By entering into this Agreement, the City Released Parties do not admit that they have engaged in, or are now engaging in, any unlawful conduct or employment practice. It is understood and agreed that this Agreement is not an admission of liability, and that the City specifically denies liability related in any manner to Ms. Santana's employment. The Parties agree that it is their mutual intention that neither this Agreement nor any terms hereof shall be admissible in any other or future proceedings against the City, except a proceeding to enforce this Agreement.

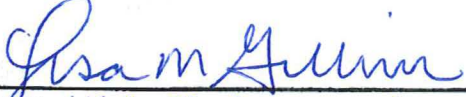
**17. Acknowledgment of Payment of Compensation/Benefits.** Ms. Santana acknowledges and affirms that she has been paid and/or will receive any and all compensation to which she is entitled pursuant to the terms of her employment agreement.


**18. Tax Consequences.** City has made no representation about and takes no position on the tax consequences of this Agreement. A dispute regarding the tax status of this Agreement shall not affect the validity of this Agreement. Ms. Santana has had an opportunity to discuss the potential tax consequences of this Agreement with her own counsel and agrees to indemnify and hold harmless the City from any and all costs and assessments including, but not limited to delinquent taxes, penalties and/or assessments levied against the City in connection with this Agreement.

**19. Older Workers' Benefits Protection Act.** It is the intention of the Parties that the releases contained in this Agreement apply to all claims of any kind against the City. In order to comply with the Older Workers' Benefits Protection Act (29 U.S.C. § 626(f)) and effectuate the


release by Ms. Santana of any potential claims under the federal Age Discrimination in Employment Act, Ms. Santana agrees as follows: (i) she has carefully reviewed the foregoing Agreement, and understands the terms and conditions it contains; (ii) by entering into this Agreement she is giving up potentially valuable legal rights, and she intends to be bound by all the terms and conditions set forth herein; (iii) she is entering into this Agreement freely, knowingly, and voluntarily; (iv) she has been advised of her right to at least twenty-one (21) days to consider whether to agree to the terms and conditions set forth herein; and (v) for a seven (7) day period following his execution of this Agreement she may revoke this Agreement by delivering a written revocation to City, and this Agreement shall not become effective nor enforceable until the revocation period has expired.


**THE UNDERSIGNED HAVE READ THE FOREGOING AGREEMENT AND ACCEPT AND AGREE TO THE PROVISIONS CONTAINED HEREIN, AND HEREBY EXECUTE IT, KNOWINGLY AND VOLUNTARILY AND WITH FULL UNDERSTANDING OF ITS CONSEQUENCES.**

  
Name: LISA M. GILLMORE  
Title: MAYOR  
City of Santa Clara  
Date: 3-24-2002

  
Deanna J. Santana  
Date: 3/8/2022

Approved as to Form and Legality:

  
Name: GARY M. BAUM *outside Council City of Santa Clara*  
City Attorney  
Date: 3/24/22

Alison Berry Wilkinson   
Name: \_\_\_\_\_  
Attorney for Deanna J. Santana  
Date: MARCH 8, 2022