

SEVERANCE AGREEMENT AND MUTUAL RELEASE

This Severance Agreement and Mutual Release (the "Agreement") is entered into between the San Diego Unified Port District (hereinafter the "District"), and Wayne Darbeau (hereinafter "Darbeau") (hereinafter the District and Darbeau are also collectively referred to as the "Parties" or "Party") for the following purposes and with reference to the following facts.

I. RECITALS

A. WHEREAS, Darbeau has been employed by the District for approximately 17 years;

B. WHEREAS, Darbeau has served as the District's Executive Director pursuant to the Employment Agreement between the Parties ("Employment Agreement") effective on or about December 10, 2010 through December 9, 2015;

C. WHEREAS, the District and Darbeau entered into a First Amendment to the Employment Agreement in or around November 2012 which extended the severance clause for other than "for cause" termination from 6 months to 12 months;

D. WHEREAS, the District and Darbeau entered into a Second Amendment to the Employment Agreement on or about March 14, 2014 which extended the term of the Employment Agreement to December 16, 2018, amended the Salary paragraph, amended the Annual Leave paragraph and amended the Evaluation paragraph;

E. WHEREAS, the District Board of Port Commissioners does not believe that Darbeau should continue to serve as the Executive Director of the District;

F. WHEREAS, the purpose of this Agreement is to settle and compromise any and all disputes and controversies including potential disputes and controversies that may exist between the District on the one hand, and Darbeau on the other, regarding the scope of Darbeau's Employment Agreement and Amendments thereto as well as any other potential "claims" by Darbeau, including but not limited to all claims arising out of, or in any way related to Darbeau's employment with the District and/or separation from the District, and/or all claims arising from any other facts or causes existing prior to the execution date of this Agreement, whether known or unknown, without limitation, and, those described in more detail hereafter.

NOW THEREFORE, and in consideration for the promises contained herein, the Parties agree as follows:

II. DISPOSITION OF CLAIMS

A. This Agreement shall not in any way be construed as an admission by the District or Darbeau of any unlawful or wrongful acts or other liability whatsoever against each other or against any other person or entity. The District and Darbeau specifically disclaim any liability to, or wrongful acts against each other, or against any other person or entity, on the part of

themselves, any related person or any related predecessor corporation or its or their agents, representatives or successors in interest and assigns.

B. Darbeau hereby releases on behalf of himself and his heirs, representatives, successors, and assigns, and hereby irrevocably and unconditionally releases and discharges the District and any of its related persons, corporations, past or present officers, directors, governing bodies, employees, agents, predecessors, attorneys, divisions, affiliates, representatives, successors in interest and assigns and/or all persons acting by, through, under, or in concert with any of the District, and all other persons or entities that could have been named as defendants in claims (hereinafter "District Releasees"), absolutely and forever from any and all claims, charges, complaints, lawsuits, liabilities, claims for relief, obligations, promises, agreements, contracts, interests, controversies, injuries, damages, actions, causes of actions, suits, rights, demands, costs, losses, debts, liens, judgments, indebtedness, and expenses (including attorneys' fees and costs actually incurred), and all other claims and rights of action of all kinds and descriptions, whether KNOWN OR UNKNOWN, suspected or unsuspected, actual or potential, which Darbeau now has, owns or holds, or claims to have, own or hold against the District or District Releasees, at common law or under any statute, rule, regulations, order or law, whether federal, state, or local, or on any grounds whatsoever, with respect to any act, omission, event, matter, claim, damage, loss, or injury arising out of the employment of and/or the termination of such employment between Darbeau and the District, and/or with respect to any other claims, matters, or events arising prior to the execution of this Agreement by the Parties.

C. The District does hereby and forever release and discharge Darbeau and his agents, attorneys, representatives and assigns from any and all causes of action, actions, judgments, liens, indebtedness, damages, losses, claims, liabilities, and demands of whatsoever kind or character, known or unknown, past, present and future, suspected to exist or not suspected to exist, actual or potential, anticipated or not anticipated, which exist at the time of execution of this Agreement, whether or not arising from or related or attributable in whole or in part to Darbeau's employment with the District, the separation of Darbeau's employment, whether or not heretofore brought before any state or federal court or before any state or federal agency or other governmental entity.

D. Darbeau understands and agrees that he is waiving any rights he has, may have had, or may have to all grievances, disputes or claims of every nature and kind, known or unknown, actual or potential, anticipated or not anticipated, suspected or unsuspected, existing and/or potentially existing against the District and the District's Releasees, as of the effective date of this Agreement to pursue any and all remedies available to him under any employment-related cause of action against the District and District Releasees, including, without limitation, any claims for discrimination, harassment and/or retaliation, claims under the California Fair Employment and Housing Act (California Government Code section 12900, et seq.), the California Family Rights Act (California Government Code section 12945.2), the Unruh and George Civil Rights Acts (California Civil Code section 51, et seq.), all provisions of the California Labor Code and any wage orders or similar directives or authorities issued by any federal or state authority having enforcement powers, the Constitution of the United States, the Constitution of the State of California, Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e, et seq.), the Age Discrimination in Employment Act (29 U.S.C. § 621, et seq.), the Equal Pay Act (29 U.S.C. § 206(d)), the Fair Labor Standards Act (29 U.S.C. § 201, et seq.), the Family

and Medical Leave Act (29 U.S.C. § 2601, et seq.), the Employment Retirement Income Security Act of 1974 (29 U.S.C. § 1001, et seq.), Sections 1981-88 of Title 42 of the United States Code (42 U.S.C. § 1981, et seq.), the American with Disabilities Act (42 U.S.C. § 12101, et seq.), claims of retaliation or whistle-blowing (including but not limited to California Labor Code section 1102.5, et seq. and Government Code section 12653), claims for breach of any type of contract, including written, oral or implied and, including, but not limited to the Employment Agreement and/or the Amendments thereto, breach of any covenant, promise or representation pertaining to Darbeau's employment and/or Darbeau's separation from employment, whether expressed or implied, and all other claims arising in contract, tort or equity or under any other statute, federal, state or local up to the date of execution of this Agreement.

E. **CIVIL CODE SECTION 1542 WAIVER.** The Parties further acknowledge that any and all rights granted to them under California Civil Code § 1542, or any other analogous federal or state law or regulation, are hereby expressly waived. California Civil Code § 1542 reads 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.

Each Party expressly waives the provisions of California Civil Code § 1542, and further waives any rights he or it might have to invoke said provisions now or in the future with respect to the releases set out in this Agreement. Each Party recognizes and acknowledges that factors which have induced him or it to enter into this Agreement may turn out to be incorrect or different from what he or it had previously anticipated, and expressly assumes all of the risks and further expressly assumes the risks of this waiver of California Civil Code § 1542. Each Party represents and warrants that he or it has read this Agreement, including this waiver of California Civil Code § 1542, that he or it has consulted counsel about this Agreement and specifically about the waiver of § 1542, that he or it understands this Agreement and the § 1542 waiver, and that he or it freely and knowingly enters into this Agreement.

F. Darbeau represents that he has not filed any lawsuits, complaints, claims, applications or charges against District or any related persons or corporations or against any of its or their past or present officers, directors, governing bodies, employees, agents, predecessors, attorneys, divisions, affiliates, representatives, successors in interest and assigns and/or all persons acting by, through, under, or in concert with any of them, with any state or federal court, or local, state or federal agency, or administrative or quasi-administrative tribunal or person, based on any events occurring on or prior to the date of execution of this Agreement.

G. Each Party to this Agreement acknowledges having carefully read this Agreement. Each Party understands and expressly agrees that this Agreement shall bind and benefit him or it, and his or its agents, attorneys, representatives and assigns. Each Party acknowledges that the only promises made to induce him or it to execute this Agreement are those stated herein. Having been fully advised and informed, each Party voluntarily enters into this Agreement, including the waiver of rights covered by this Agreement.

H. Each Party to this Agreement hereby covenants not to sue or initiate against any other Party to this Agreement or any person or entity described by or affected by this Agreement, any action or proceeding or to participate in the same, individually, or as a member of a class, under any policy, contract, law or regulation, federal, state or local, pertaining to any matter, including, but not limited to, Darbeau's employment and/or separation of Darbeau's employment, pursuant to any rights any Party may have under any policy, or local, state or federal statute, law, or regulation, which legal action relies upon any facts or issues pertaining in any manner whatsoever to Darbeau's employment and/or separation from employment, or any other facts or issues existing at or prior to the effective date of this agreement.

I. **SPECIFIC ACKNOWLEDGMENT OF WAIVER OF CLAIMS UNDER ADEA AND OWBPA.** The Age Discrimination in Employment Act of 1967 ("ADEA"; 29 U.S.C. §§ 621-634) makes it illegal for an employer to discharge any individual or otherwise discriminate with respect to the nature and privileges of an individual's employment on the basis that the individual is age forty (40) or older. The Older Workers Benefit Protection Act ("OWBPA"; 29 U.S.C. §§ 626, et seq.) augments the ADEA and prohibits the waiver of any right or claim under the ADEA unless the waiver is knowing and voluntary. By entering into this Agreement, Darbeau acknowledges that, in exchange for consideration stated herein, he knowingly and voluntarily waives and releases any rights that he may have under the ADEA and/or OWBPA. Darbeau further acknowledges that he has been advised and understands, pursuant to the provisions of the ADEA and OWBPA that:

1. This waiver/release is written in a manner understood by Darbeau.
2. Darbeau is aware of, and has been advised by a representative or legal counsel of his own choosing, of his rights under the ADEA and OWBPA and the legal significance of his waiver of any possible claims he currently may have under the ADEA, OWBPA, or similar age discrimination laws.
3. Darbeau is entitled to a reasonable time of at least twenty-one (21) days within which to review and consider this Agreement, and the waiver and release of any rights he may have under the ADEA, the OWBPA, or similar age discrimination laws, but he may, in the exercise of his own discretion, sign or reject this Agreement at any time before the expiration of the twenty-one (21) day period, in which case Darbeau expressly waives this twenty-one (21) day review period.
4. The waivers and releases set forth in this Agreement shall not apply to any rights or claims that may arise after the effective date of this Agreement. The effective date of this Agreement is seven (7) calendar days after Darbeau signs this Agreement. Darbeau must sign this Agreement no later than August 15, 2014, making the effective date of this Agreement seven (7) calendar days after he signs it and no later than August 22, 2014.
5. Darbeau has had an opportunity to discuss this waiver and release with, and to be advised with respect thereto, by an attorney of his choice, and that he does not need any additional time within which to review and consider this Agreement.

6. Darbeau has seven (7) calendar days following his execution of this Agreement to revoke it. If Darbeau desires to revoke the Agreement, he must give express and actual written notice of revocation to the District within seven (7) calendar days after he executes this Agreement. Such notice of revocation shall be effective only if and when received in writing by Karen Porteous before the close of business on the seventh (7th) calendar day after Darbeau signs this Agreement, depending on when Darbeau signs the Agreement.

DARBEAU ACKNOWLEDGES BY HIS SIGNATURE THAT HE FULLY UNDERSTANDS HIS RIGHT TO DISCUSS THIS WAIVER WITH LEGAL COUNSEL, THAT HE HAS CAREFULLY READ AND FULLY UNDERSTANDS THE WAIVER, AND THAT HE IS VOLUNTARILY AGREEING TO WAIVE ANY CLAIMS THAT HE HAS OR MAY HAVE UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT, THE OLDER WORKERS BENEFIT PROTECTION ACT, AND ANY OTHER LAWS PROHIBITING AGE DISCRIMINATION IN EMPLOYMENT ARISING FROM OR RELATED OR ATTRIBUTABLE TO THE PARTIES' ALLEGATIONS OR CLAIMS.

J. The parties agree that upon execution of this Agreement and following the seven (7) calendar day revocation period, the District and Darbeau shall perform the following acts:

1. Darbeau will be placed on paid administrative leave effective the date the Board approves this Agreement through December 30, 2014 during which time he will receive compensation and benefits according to the terms of his Employment Agreement and Amendments thereto.

2. While Darbeau is on paid administrative leave, he is subject to the following orders:

a) Darbeau is relieved of any and all duties as Executive Director of the District;

b) Darbeau is required to relinquish control over all District property, including but not limited to his identification card, any District-issued phones or computers, and any and all keys/access cards to the District facilities;

c) Darbeau is prohibited from accessing any electronic or other information maintained and/or stored on District computer systems or other information storage devices. Darbeau may, with Karen Porteous in attendance, retrieve any personal data from the District computer(s).

3. Darbeau's employment with the District shall be terminated at the close of business on December 30, 2014. Darbeau shall receive a six-month severance payment, which will include payment for all accrued leave, minus all applicable taxes and withholdings.

4. Darbeau warrants that he has returned all keys, documents, files, equipment, and property belonging to the District.

5. The District and Darbeau have agreed to a joint press release regarding his separation, which is attached to this Agreement as Attachment A.

K. By their signatures below, Darbeau and District conclude their employment relationship effective at the close of business December 30, 2014. It is agreed that District and Darbeau have each taken all necessary steps prerequisite to concluding Darbeau's employment as Executive Director. The parties agree that any and all contractual obligations set forth in the Employment Agreement and Amendments thereto, and otherwise, are extinguished and are superseded by the terms of this Agreement unless expressly stated otherwise.

L. Darbeau hereby expressly waives any and all claims now and forever that he has or may have for reinstatement to his position with the District. Darbeau further agrees that he will not seek or maintain employment, independent contractor status, or any other business relationship with the District in any position or capacity with the District whatsoever and that the District is entitled to reject, with or without cause, any application for employment or agreement for independent contractor status or any other business relationship with the District made by Darbeau. Darbeau further agrees that any rejection of any such application or offer made is not for a discriminatory or any other illegal purpose. Darbeau further agrees that this Agreement constitutes a legitimate, non-discriminatory, non-retaliatory business reason for any and all refusals by the District to employ him at the District in any capacity.

M. Each party agrees that District shall be required to indemnify, defend and hold harmless Darbeau in all matters related to course and scope of his employment with the District, if required by law, unless specifically excluded hereunder relating to conduct described herein. (Government Code Sections 825, 995 & 995.2.) District shall indemnify, defend, and hold harmless Darbeau from any and all claims, demands, costs or liability that arise out of, pertain to, or relate to the negligence of Darbeau in the performance of services, in accordance with applicable standards of indemnity and defense, as a District officer and employee, except as it relates to specific claims brought against Darbeau by law or administrative enforcement agencies, for civil or criminal penalties, related to the procurement of employment for persons with District contractors, vendors or operators not made in his official capacity as a District officer or employee. Any other claims for civil or criminal penalties shall be governed by applicable legal standards, including Government Code Sections 995.4, 995.6 and 995.8. For claims brought against Darbeau by any private party, including private attorney general claims, for acts related to the possible procurement of employment for persons with District contractors, vendors or operators, the District shall retain the right to determine if the facts justify providing for a defense of the action under applicable rules of law, including providing a defense with a legally appropriate reservation of rights. Darbeau expressly reserves all of his rights to contest any determination by District not to provide a defense of, or indemnity for, any claims. The parties expressly agree that this section will survive the expiration or early termination of this Agreement.

N. Darbeau recognizes that retiree benefits, including but not limited to defined benefit pensions, retiree medical and other post-employment benefits are governed by rules established on a uniform basis by the respective administrators of those benefits. Darbeau shall be solely responsible for determining the legal and financial impact this Agreement has on his pension, health and any other post-employment benefits. The District, its Board of Port

Commissioners, agents and representatives makes no representation regarding the impact this Agreement has on any of Darbeau's post-employment benefits.

III. GENERAL PROVISIONS

A. The District shall pay up to and no more than Ten Thousand Dollars of Darbeau's attorneys' fees he incurred in resolving his separation from the District including, but not limited to, finalizing this Agreement. Aside from the specification and limitation of paying up to Ten Thousand Dollars in Darbeau's attorneys' fees, each party shall bear its/his own costs, expenses and attorneys' fees incurred in connection with the proceedings and/or events resulting in and/or preceding this Agreement, or in connection with any claims made or investigated by either party against the other in any forum (civil, criminal, administrative or quasi-administrative), and each of the parties hereto expressly waives any claim for recovery of any such costs, expenses or attorneys' fees from the other party. Attorneys for all parties to this Agreement do likewise expressly waive any claim for recovery of costs, expenses and/or attorneys' fees from the opposing party(ies).

B. Darbeau represents that he has not heretofore assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein against the District.

C. This Agreement is made and entered into in the State of California, and shall be governed, interpreted, and enforced under the laws of the State of California. The Parties agree that jurisdiction and/or venue of any action involving the validity, interpretation, or enforcement of this Agreement or any of its terms, provisions, or obligations, or claiming breach thereof, shall exist exclusively in a court or government agency located within the County of San Diego, State of California. The Parties further agree that this Agreement may be used as evidence in any subsequent proceeding in which any of the Parties allege a breach of this Agreement or seeks to enforce its terms, conditions, provisions, or obligations.

D. No waiver by any party of any breach of any term or provision of this Agreement shall be construed to be, nor be, a waiver of any preceding, concurrent or succeeding breach of the same, or any other term or provision hereof. No waiver shall be binding unless in writing and signed by the party to be charged or held bound.

E. Each party hereto represents and agrees that he or it has carefully read and fully understands all of the provisions of this Agreement, and that he or it is voluntarily, without any duress or undue influence on the part of or on behalf of any party, entering into this Agreement.

F. Darbeau affirms that, prior to execution of this Agreement, he has consulted with his legal counsel concerning the terms and conditions set forth herein, and that he understands the advice provided to him.

G. District affirms that, prior to the execution of this Agreement, it has consulted with its legal counsel concerning the terms and conditions set forth herein, and that it understands the counsel provided to it.

H. This Agreement contains all of the terms and conditions agreed upon by the parties hereto regarding the subject matter of this Agreement. Any prior agreements, promises, negotiations, or representations, either oral or written, relating to the subject matter of this Agreement, including but not limited to the Employment Agreement and Amendments thereto with the exception of any provisions incorporated into this Agreement, not expressly set forth in this Agreement, are of no force or effect.

I. This Agreement has been jointly negotiated and drafted by counsel for the parties. The language in this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any of the parties.

J. In the event that any one or more provisions of this Agreement shall be declared to be illegal, invalid, unenforceable, and/or void by a court of competent jurisdiction, such provision or portion of this Agreement shall be deemed to be severed and deleted from this Agreement but this Agreement shall in all other respects remain unmodified and continue in force and effect.

K. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A photocopy or facsimile transmission of the Agreement, including signatures, shall be deemed to constitute evidence of the Agreement having been executed.

L. Neither Party will issue a press release nor other form of public announcement concerning this Agreement aside from what is contained in Attachment A to this Agreement. For avoidance of doubt, the District Board of Port Commissioners and Darbeau have agreed that the joint press release shall be the exclusive comment made to the press and public by Darbeau and the District Board of Port Commissioners, about the circumstances and terms of the separation of Darbeau's employment with District, except those facts that are a public record or otherwise as required by law.

M. This Agreement is contingent upon the approval of the District Board of Port Commissioners.

**PLEASE READ CAREFULLY. THIS SEVERANCE AGREEMENT AND
MUTUAL RELEASE INCLUDES A RELEASE BY DARBEAU OF ALL KNOWN AND
UNKNOWN CLAIMS.**

IN WITNESS WHEREOF, the parties hereto have executed the Severance Agreement
and Mutual Release.

Dated: July 24th 2014

By: Wayne Darbeau
Wayne Darbeau

SAN DIEGO UNIFIED PORT DISTRICT

Dated: July 25, 2014

By: Robert Nelson
Robert Nelson
Chairman of the Board of Port Commissioners

APPROVED AS TO FORM:

Dated: July 25, 2014

By: Thomas A. Russell

Thomas A. Russell
Port Attorney, San Diego Unified Port District

Dated: July 25, 2014

By: James P. Lough
James P. Lough, Special Counsel to the District
San Diego Unified Port District

Dated: July 24, 2014

By: Daniel E. Eaton
Daniel E. Eaton
Seltzer Caplan McMahon Vitek
Attorneys for Darbeau

ATTACHMENT A

STATEMENT ON THE DEPARTURE OF WAYNE DARBEAU AS CEO OF THE SAN DIEGO UNIFIED PORT DISTRICT

July 25, 2014: The San Diego Unified Port District announced today that the Board of Port Commissioners had placed Port District Chief Executive Officer Wayne Darbeau on paid administrative leave through December 30, 2014. Effective at the close of business December 30, 2014, Darbeau's 17 years of employment with the Port District will end.

The Port Board and Darbeau mutually agreed that transitioning to new leadership will enable the District to build on Darbeau's legacy during his nearly four years at the helm of the District, some of which is detailed below.

Darbeau was first named interim CEO of the Port District on October 5, 2010. The Board of Port Commissioners appointed Darbeau full-time to the key role on December 10, 2010 after deciding to end its national search for CEO in light of Darbeau's performance in the interim role.

In the almost four years that Darbeau served as CEO of the Port District, he streamlined the organization and improved business processes. The number of District employees went from 577 to only 496 today. This has been accomplished without layoffs and service delays. Through it all, Darbeau maintained the District's strong commitment to positive labor and management relations.

Darbeau also has played a key leadership role in improving the Port District's finances, its annual budget and credit rating. The Port District's FY 13/14 revenue has grown from a budgeted \$142.9 million to a projected \$155.7 million. Darbeau turned an inherited budget deficit into a projected budget surplus for upcoming FY 13/14 year-end closing. Key credit rating agencies have also restored the Port District's credit rating from A+ Negative to A+ Stable.

Darbeau's efforts also have contributed to a revival of the Port District's maritime operations in both its cargo and cruise businesses. Darbeau has worked closely with the Board on public policy initiatives, global trade outreach, and optimization strategies that have strengthened the District's ability to operate and grow its lines of business. His team's concerted outreach to the major cruise lines and to Mexico in a down economy has resulted in a rebound in cruise offerings and ship calls by major cruise lines, including Disney Cruises for the upcoming cruise season as the market recovers.

Darbeau also provided strong oversight of staff to ensure that all major Port District projects and Board initiatives, throughout the member cities, are on the path to implementation.

Bob Nelson, Chairman of the Board thanked Darbeau for his great stewardship of the District and executive leadership. "Wayne has made a great impact on, and terrific contribution to, the Port District, in almost four years as CEO and throughout a 17-year career at the Port in which he excelled in various high-level management roles. We thank him for a job well done and wish him all the best in his future endeavors."

Darbeau attributed the turnaround success of the District to teamwork. “I have been most gratified as CEO to have had the privilege of leading such a talented team of outstanding professionals and just plain hardworking employees throughout the Port District and to have worked closely with an engaged Board and region.” said Darbeau.